

RESEARCH ARTICLE

## Assessment of the Responsibility of Local Governments in Indonesia for the Management of Refugee Care

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### Abstract

This article assesses the responsibility of local governments in Indonesia for the management of refugee care, following the enactment of Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees (the “PR”). It highlights the limited authority of local governments in handling refugee issues—which is an issue that cuts across several national legal and administrative regimes including Foreign Affairs, Human Rights, and Immigration. This article focuses on the constraints of local political dynamics and budgeting in allocating local government funds for refugee care. In addressing these concerns, the authors argue that the PR should be amended to explicitly define the role of local governments in managing refugee issues and to include the regional revenue and expenditure budget as a source of funding. In addition, the authors argue that local governments that are hosting refugees should establish relevant local regulations for implementation of the PR.

**Keywords:** refugees; local government; financial responsibility; Indonesia

### 1. Introduction

The Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees (the “PR”) shifted responsibility for front-line management of refugees from the national level to the local level.<sup>1</sup> Many local governments in Indonesia were ill-prepared, and, to varying extents, unwilling, to provide proper care for refugees. For example, although, in 2019, the Governor of the Special Capital Province of Jakarta expressed a commitment to provide shelter for refugees based on “humanitarian” grounds, the Jakarta local government later reiterated that the responsibilities held by the national government of Indonesia for handling refugees should not be shifted to the Jakarta Province.<sup>2</sup> In another case, the Governor of South Sulawesi Province expressly objected to the presence of Rohingya refugees in the area and asked them to return home immediately.<sup>3</sup> Further, in 2016, the Municipality Government of Medan refused to provide assistance to refugees when facing protests from its residents (represented by *Aliansi Masyarakat Pribumi* (Indigenous

<sup>1</sup> As discussed in Arts 24, 25, 26, 27 of the Presidential Regulation (PR). Also see Missbach & Adiputera in this Special Issue.

<sup>2</sup> Yuliani (2019).

<sup>3</sup> Alief (2017).

Community Alliance)) that they needed government funding more than refugees did.<sup>4</sup> These tensions are typical of those faced by local governments across Indonesia.

Indonesia has not ratified the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) or its 1967 Protocol. Nevertheless, the PR states that the management of refugees should take into account “generally applied international provisions”<sup>5</sup> and implies that Indonesia should respect the principle of *non-refoulement* as a rule of customary international law.<sup>6</sup> In practice, Indonesia works with international organizations such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) to facilitate resettlement in third countries or temporary placements for refugees in Indonesia, with the government issuing temporary-residency permits for refugees.<sup>7</sup> Against this background, the enactment of the PR was considered by some as a pivotal stepping stone towards the management of refugees in Indonesia.<sup>8</sup> The PR is the most comprehensive normative and legal basis for ministries and agencies to co-ordinate the handling of refugees.<sup>9</sup> Notably, it calls for the involvement of local governments to deal specifically with the shelter (*tempat penampungan sementara*) and community housing (*tempat penampungan*) of refugees.<sup>10</sup>

Since the enactment of the PR it has become clear that some high-ranking officials in the national government do not share a common understanding when interpreting the norms contained in the PR. For instance, in September 2017, the Director General of Regional Autonomy of the Ministry of Home Affairs, Soemarsono, stated that refugees in Indonesia were the responsibility of UNHCR and the national government, and data collection and shelter were the responsibility of UNHCR assisted by the Ministry of Foreign Affairs.<sup>11</sup> This view differs from the statement of the Minister of Law and Human Rights, Yasonna Laoly, who stated in January 2018 that local governments must be involved in handling refugees.<sup>12</sup> Some analysts consider that the allocation of responsibilities in the PR goes beyond the “usual business” of local governments—as Law No. 23 of 2014 on Regional Government explicitly mentions that issues relating to foreign affairs fall within the national government’s jurisdiction. Based on this interpretation, local governments would have limited jurisdiction to deal with any issues related to foreign persons (such as refugees) in Indonesia.

It is common knowledge that the PR has as yet not been implemented optimally in most local government areas. A primary barrier to implementation has been the failure of local governments to enact implementing regulations. As mentioned, one of the reasons for this is because of a lack of clarity on the authority of local governments to do so, with lingering questions surrounding the limitations of their jurisdiction relating to foreign affairs. This has led to a view by some local governments that the handling of refugees is an immigration matter to be tackled by the national government via national government agencies, not by local governments.<sup>13</sup> A further issue is that, even though some national government regulations and policies authorize the use of local government budgets and expenditure

<sup>4</sup> Inilahmedan (2016).

<sup>5</sup> Art. 3 of the PR.

<sup>6</sup> This point is discussed further by Tobing in this Special Issue.

<sup>7</sup> Liliansa & Jayadi (2015). See also the Introduction to this Special Issue.

<sup>8</sup> See Save the Children Asia Regional Office (2018), pp. 9, 36; Affan (2017).

<sup>9</sup> Ministry of Foreign Affairs of the Republic of Indonesia (2019).

<sup>10</sup> See, in particular, Arts 24, 25, 26 of the PR.

<sup>11</sup> Yuliani (2017).

<sup>12</sup> Akbar (2018).

<sup>13</sup> E.g. the governor of Jakarta argues that finding a permanent solution for refugees is not part of the role of the government of the Special Capital Province of Jakarta Government, but is entirely the responsibility of the UNHCR and the national government (i.e. the Ministry for Foreign Affairs and Ministry of Law and Human Rights, especially the Immigration Department): Novika (2019).

for handling refugees,<sup>14</sup> as at the date of writing, the authors have not found any instances of local governments having made such allocations. So far, mainly national government ministries and agencies, such as the Coordinating Ministry for Political, Legal, and Security Affairs, have allocated a budget for implementing the PR.<sup>15</sup> The lack of legal clarity regarding jurisdiction, and lack of budget allocation at all levels of government, has created a challenging situation for refugees, who arrive or temporarily reside in Indonesia, especially since external funding is increasingly limited—with the IOM terminating its support for new refugees who arrive post 15 March 2018.<sup>16</sup>

Against this background, this article provides a legal analysis of the basis for delegating the financial responsibility for refugee management to local governments. The authors frame the delegation of such responsibilities as a form of decentralization,<sup>17</sup> as will be explained below. The primary argument is that local governments in Indonesia are hesitant to implement the PR due to two factors: (1) the lack of clarity with respect to jurisdiction and authority to do so (with respect to the broader legal hierarchy); and (2) the dynamics of local politics (which include tensions and conflict with respect to budget priorities). Overall, this article seeks to clarify the legal authority of local government and limits of their jurisdiction in the handling of refugees.

With respect to the methodology, the analysis is based on relevant Indonesian law, regulations, administrative decrees, and technical policies/guidelines that relate to refugee law and local government. Further, field research was conducted in the Province of Kepulauan Riau in August 2018. Interviews were conducted with officials from the Immigration Detention Center in Tanjungpinang, officials of the Political Development Unity and Community Protection Agency of Bintan Regency, representatives of the IOM and the UNHCR, and local scholars. In addition, researchers visited community housing for refugees at Badra Resort (Bintan Regency) and Hotel Kolekta (Batam city), and conducted informal interviews with residents.

## 2. Defining local government, local regulations, and local budgets

The primary legal instrument that regulates the authority of regional governments in Indonesia is Chapter VI (“Regional Authorities”) of the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution). It states that Indonesia shall be divided into provinces.<sup>18</sup> Indonesia currently consists of 34 provinces. These provinces are divided

<sup>14</sup> In particular, see Circular Letter of Director General of Politics and General Governance of the Ministry of Home Affairs No. 188/3200/Polpum (2017) on the Implementation of the Regulation of the Minister of Home Affairs No. 33 of 2017 (Guidance on Composing the Regional Budget and Expenditure in the Year 2018), Regulation of the Minister of Home Affairs No. 38 of 2018 (Guidance on Composing the Regional Budget and Expenditure in the Year 2019), and Regulation of the Minister of Home Affairs No. 33 of 2019 (Guidance on Composing the Regional Budget and Expenditure in the Year 2020).

<sup>15</sup> Missbach et al. (2018). See Circular by the Minister of Home Affairs No. 185/2793/Sj regarding the Role of Local Government in the Handling of Foreign Refugees to Implement the Mandate of Presidential Regulation No. 125 of 2016 regarding Handling of Foreign Refugees. Also see the Regulation of the Minister of Home Affairs No. 38 of 2018 (Guidance on Composing the Regional Budget and Expenditure in the Year 2019), which in its appendix explicitly mentions refugees as one recipient of local government attention.

<sup>16</sup> Hirsch (2018). The reliance of Indonesian institutions on external funding has been discussed in greater depth by Missbach and Adiputera in this Special Issue.

<sup>17</sup> For more information on the theory of decentralization, see Martinez-Vazquez (2011), pp. 2–3; for the Indonesian context of the theory, see Hammarlund (2015), pp. 3–8; Diprose, McRae, & Hadiz (2019), p. 694. Historically, the decentralization era in Indonesia was initiated after the fall of Suharto in 1998, characterized by the substantial transfer of authority from the national government to regency and municipality governments. Missbach and Adiputera categorize this as a “local turn” in their article in this Special Issue.

<sup>18</sup> Art. 18(1) of the Indonesian Constitution.

**Table 1.** Overview of government

Level	Type of government	Division of power	Executive leader
National	National government of a unitary state	Divided into provinces	President, assisted by vice president and state ministers
Provincial	Provincial government	Divided into regencies and municipalities	Governor, assisted by vice governor
Local	Regency government and municipality government	Divided into <i>kecamatan</i> (sub-regencies or subdistricts)	<i>Bupati</i> (regent/head of regency), assisted by vice regent Mayor of the city, assisted by vice mayor

Source: Indonesian Constitution and Law No. 23 of 2014 concerning Regional Government.

into *kabupaten* (district/regency government) and *kota* (city/municipality).<sup>19</sup> Provinces, regencies, and municipalities have regional authority, and administer and manage their own affairs according to the principles of *otonomi daerah* (regional autonomy) and *tugas pembantuan* (the duty of assistance).<sup>20</sup>

This article uses the term “national government” as having a similar meaning to “central government” to refer to the Government of the Republic of Indonesia (*Pemerintah Pusat*). In the case of Indonesia, the national government holds executive power, led by the president of the Republic of Indonesia, assisted by the vice president and state ministers, in accordance with the Indonesian Constitution.<sup>21</sup> The term “*pemerintah daerah*” in Indonesian is commonly translated into English as regional government, regional authority, local government, or local authority. In this article, regional government refers to the lower governmental structures under the national government, covering *pemerintah daerah provinsi* (provincial government), *pemerintah kabupaten* (district/regency government), and *pemerintah daerah kota* (city/municipality government). Further, this article defines “local government”<sup>22</sup> as including *kabupaten* (district/regency government) and *kota* (city/municipality government), described in Table 1.

This breakdown of government administrations becomes relevant as the PR only specifies authority over the management of refugees for two types of governments—regency and municipality (i.e. the “local” government)—without mentioning the role of the provincial government. The lack of an explicit role for the provincial government in the PR may be due to the fact that local (regency and municipality) governments are closer to the people and can, therefore, technically execute roles such as placing refugees in accommodation. The significance of this exclusion in the PR will be discussed further below.

Further, to understand the interrelationships between the relevant Indonesian laws and regulations, such as the Constitution and the Regional Government Law, we must refer to

<sup>19</sup> Both regency and municipality governments are placed at the same level of government—the only difference between them is that municipality governments administer city or urban areas, while regency governments administer suburban or rural areas.

<sup>20</sup> Art. 18(2) of the Indonesian Constitution. *Otonomi daerah* (regional autonomy) is the right, authority, and obligation of autonomous regions to regulate and manage themselves with regard to government affairs and the interests of the society in the Unitary State of the Republic of Indonesia. *Tugas pembantuan* (the duty of assistance) is a delegation from the national government to autonomous regions to carry out some government affairs that are the authority of the national government or delegation from the provincial government to regency/municipality governments to carry out some government affairs that are the authority of the provincial government. Simply, the duty of assistance is a transfer of authority from a higher to a lower level of government. See Law No. 23 of 2014 on Regional Government, Arts 1(6), (11).

<sup>21</sup> *Ibid.*, Art. 1(1).

<sup>22</sup> Local government is commonly defined as the lowest tier of public administration within a given state: Human Rights Council (2015), para. 8.

**Table 2.** Hierarchy of law in Indonesia

No.	Type	Organs that establish the law and its function
1	The Indonesian Constitution	Promulgated by the People's Consultative Assembly to be positioned as both the basic law and highest law in Indonesia
2	Decrees of the People's Consultative Assembly	Adopted by the People's Consultative Assembly
3	Laws/government Regulations in lieu of laws	The primary authority to enact law is vested in the National House of Representatives, with joint approval by the president Government Regulations in lieu of laws are the rules enacted by the president in emergency circumstances
4	Government Regulations	Created by the president to implement laws
5	Presidential Regulations	Created by the president to implement higher rules or in the conduct of governmental power. The content of Presidential Regulations includes content that is ordered by law, content for implementing Government Regulations, or content for carry out the administration of government power
6	Provincial Regulations	Created by the Provincial/Regional Peoples' Representative Councils by joint approval with the governor
7	Regency Regulations and Municipality Regulations	Regency Regulations are established by the Regional People's Representative Council of the regency by joint approval from the head of the regency ( <i>Bupati</i> ) Municipality Regulations are established by the Regional People's Representative Council of the municipality by joint approval from the mayor of the municipality government ( <i>Walikota</i> )

Source: Indonesian Constitution, Law No. 12 of 2011 on the Establishment of Law & Regulations & Law No. 23 of 2014 on Regional Government.

Article 7(1) of Law No. 12 of 2011 on the Establishment of Law and Regulations, which outlines the types and hierarchy of law in Indonesia.

This article references many *surat edaran* (circular letters). Circular letters are not part of the hierarchy of law and regulations. Circular letters are classified as “pseudo-legislation” and are used by an official (minister or director general) to inform his subordinates about a policy that must be implemented relating to public services.<sup>23</sup> A ministerial circular letter serves as an official document containing notice, explanation, and/or instructions on how to carry out certain tasks that are considered important and urgent.<sup>24</sup> There is still academic debate, following inconsistent court decisions, that, on the one hand, classifies circular letters as only “administrative decisions” and, on the other hand, views them as a type of law outside of the seven-level hierarchy (outlined in Table 2), which is made pursuant to delegated authority or the inherent powers of the maker of the instrument.<sup>25</sup>

According to the hierarchy, the PR is positioned at level five, while the laws that structure legal regimes in Indonesia (including those that are relevant to this discussion, such as the Foreign Relations Law, Human Rights Law, Immigration Law, and Regional Government Law) are positioned at level three. This legal hierarchy is important for understanding the aforementioned issue of jurisdiction and allocation of authority over the management of refugees between national, provincial, and local governments.

<sup>23</sup> Salim (2011).

<sup>24</sup> Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 42 of 2016 on Official Letters under the Ministry of Home Affairs, Elucidation Section IA(1)(a)(5).

<sup>25</sup> Butt (2019), p. 74.

Starting at the top of the hierarchy, Article 18A(2) of the Indonesian Constitution states that the relations between the national government and local government with respect to finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law. The Constitutional provision is obviously too broad to resolve the lack of legal clarity. Therefore, the relevant lower laws that regulate this relationship will be discussed in detail in the next section.

### 3. The authority of local governments to handle refugees as derived from various legal regimes

The PR outlines the authority of both the national and local governments for handling refugees. The authority of the national government with respect to the issue of refugees is extremely broad, specifically encompassing foreign co-operation with the United Nations through the UNHCR in Indonesia and/or international organizations,<sup>26</sup> as well as co-ordination with domestic agencies in the context of policy formulation for search and rescue, placement, supervision, and safeguarding of refugees.<sup>27</sup> Comparatively, the PR allocates only limited authority to local governments, specifically with respect to accommodation<sup>28</sup> and funeral arrangements<sup>29</sup> for refugees. As mentioned, allocating certain responsibilities to local governments for handling refugees has raised concerns about legal hierarchy and jurisdiction. On the one hand, the PR is part of the Foreign Relations legal regime as it was created as an implementing regulation for Law No. 37 of 1999 on Foreign Relations.<sup>30</sup> On the other hand, the general authority of regional governments to administer originates from the Regional Government legal regime in Law No. 23 of 2014 on Regional Government. The latter law places clear limitations on regional government authority—with foreign policy delineated as an absolute matter for the national government.<sup>31</sup> The involvement of regional governments in the management of refugees not only crosses the Foreign Relations and Regional Government legal regimes, but also intersects with the Human Rights and Immigration legal regimes, discussed in turn below.

#### 3.1 Foreign Relations legal regime: a “decentralization” of foreign affairs

As explained in the Introduction to this Special Issue, Law No. 37 of 1999 on Foreign Relations is the legal basis that gives authority to the president to grant asylum to foreigners and determine policy on refugees. The Foreign Relations Law vests the authority to grant asylum in the president, taking into account the views of the minister for foreign affairs,<sup>32</sup> and international laws, customs, and practices.<sup>33</sup> However, as explained in the Foreword to this Issue, the presidential authority to grant or to implement laws on asylum has never been exercised.

<sup>26</sup> Art. 2 of the PR. See also the Introduction to this Special Issue, where the roles of the IOM and the Regional Cooperation Agreement (RCA) are discussed.

<sup>27</sup> Art. 4 of the PR.

<sup>28</sup> Arts 24, 25, 26, 27 of the PR.

<sup>29</sup> Arts 16, 23 of the PR.

<sup>30</sup> The Preamble of the PR explains that it has been established to implement Art. 27(2) of the Law No. 37 of 1999 on Foreign Relations. See also the Introduction to this Special Issue.

<sup>31</sup> Art. 10(1)(a) of Law No. 23 of 2014 on Regional Government.

<sup>32</sup> Arts 1(4), 25(1), (2) of Law No. 37 of 1999 on Foreign Relations. The term “Presidential Decree” as stipulated in Art. 25(2) of that Law must be read as “Presidential Regulation” in accordance with Arts 1(6), 7(1)(e) of Law No. 12 of 2011 on Law-Making.

<sup>33</sup> *Ibid.*, Art. 26.

Further, the authority to determine policy on refugees under the Foreign Relations Law authorizes the president to set forth such a policy in a Presidential Regulation.<sup>34</sup> The Elucidation<sup>35</sup> of this provision explains:

Basically the problem faced by refugees is a humanitarian problem, therefore the treatment of refugees should, as far as possible, avoid the disruption of good relations between Indonesia and the country of origin of the refugees. Indonesia will cooperate with competent organisations in an effort to find a solution to the refugee issue.<sup>36</sup>

With respect to the local government's roles, Article 26(1) of the PR states that the regency/municipality ("local") government is responsible for community housing for refugees. Further, Article 26(3) and (4) clarify that community housing may be facilitated by an international organization operating in the field of migration. As stated above, Article 2 of the PR explicitly mentions the role of the UNHCR and/or international organizations in the field of humanitarian and migration issues that have an agreement with the national government.<sup>37</sup> However, the PR does not explicitly grant local governments the authority to co-operate with international organizations and local authorities do not have foreign-policy jurisdiction. Therefore, facilitation between international organizations and local governments must be conducted by the Ministry of Law and Human Rights, after co-ordinating with the Coordinating Ministry for Political, Legal, and Security Affairs. Under the PR, the implementation of local government responsibilities necessarily involves the co-operation of local government, national government, and international organizations. This arrangement requires intensive communication between the local and national governments and UNHCR and IOM representatives in the region (discussed later) to realize the aims of the PR on the ground.

### 3.2 Human Rights legal regime: the obligation to protect refugees' basic rights

As explained in the Introduction, Article 28 of Law No. 39 of 1999 on Human Rights provides "a right to seek asylum to obtain political protection." Article 28(1) refers to the rights of *pencari suaka* (asylum seekers), but does not explicitly include the term *pengungsi* (refugee) (in contrast to the PR).<sup>38</sup> However, not much turns on this, as the concept of asylum seeker implies "seeking the status of refugee."<sup>39</sup> The Law on Human Rights implies protection for refugees<sup>40</sup> and emphasizes that the government is responsible for protecting, promoting, enforcing, and fulfilling human rights.<sup>41</sup> In addition, it requires government to implement measures to effectively protect rights.<sup>42</sup>

<sup>34</sup> *Ibid.*, Arts 27(1), (2).

<sup>35</sup> An Elucidation is the part of an Act that functions as an official interpretation. For example, an Elucidation may clarify the meaning of norms or phrases contained in the main body of the legislation: Law No. 12 of 2011 on Law-Making, para. 176.

<sup>36</sup> See the Introduction and Dewansyah and Nafisah's article in this Special Issue.

<sup>37</sup> Arts 2(1), (2) of the PR.

<sup>38</sup> On this point, see Sadjad's article in this Special Issue.

<sup>39</sup> This is consistent with the "declaratory theory" of refugee status, which is discussed in the Introduction and articles by Sadjad, Dewansyah, and Nafisah in this Special Issue.

<sup>40</sup> Afriansyah argues that, in Indonesia, there is generally no differentiation in law between "asylum seekers" and "refugees." References to "refugees" (*pengungsi*), being all people who seek protection, may further distinguish between "internal" refugees (*Pengungsi Dalam Negeri*) and "foreign" refugees (*Pengungsi Luar Negeri*): Afriansyah (2018), p. 685.

<sup>41</sup> Law No. 39 of 1999 on Human Rights, Art. 8: "The protection, promotion, enforcement and fulfilment of human rights are primarily the responsibility of the Government." See also the Introduction to this Special Issue.

<sup>42</sup> *Ibid.*, Arts 71, 72. Note that the Law on Human Rights does not explicitly mention the regional government at all. It references only the "*pemerintah*" (government) more broadly, without specifying whether this is the provincial, regency, or municipality government.

The Law on Human Rights strengthens the position of the National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*—NHRC), which has a mandate to perform studies, research, dissemination, monitoring, and mediation,<sup>43</sup> including refugee issues. For example, the NHRC adopted a Memorandum of Understanding (MoU) with the UNHCR for the period of 2015–18 that included a joint collaboration involving the Indonesian government to end the detention of refugees for immigration-related reasons.<sup>44</sup> When continuing the MoU for the period of 2019–22, both institutions committed to seeking alternative, non-custodial options for refugees and to explore the possibility for refugees to work in Indonesia.<sup>45</sup>

The National Action Plan on Human Rights (NAPHR) is also relevant to our discussion about human rights protection and refugees in Indonesia. The NAPHR is a document that summarizes the national human rights problems, goals, challenges, indicators of achievement, and policy focuses. The existing NAPHR states that human rights must be respected, protected, fulfilled, enforced, and promoted by the government, including the protection of refugees, as implied by the Indonesian Constitution and the Law on Human Rights. Specifically, Article 28H(2) of the Indonesian Constitution states that everyone has the right to the same opportunities and benefits to achieve equality and justice, while Article 5(3) of the Law on Human Rights establishes that vulnerable groups are entitled to greater protection of human rights.

The term *pengungsi* (refugee) appears only once in the Attachment to the Presidential Regulation No. 75 of 2015 on the NAPHR 2015–19. Despite the NAPHR 2015–19 not expressing any willingness to ratify the 1951 Refugee Convention and its 1967 Optional Protocol, this Attachment extends the meaning “*kelompok masyarakat yang rentan*” (vulnerable community groups) to include *pengungsi* (refugee) as part of such vulnerable groups.<sup>46</sup> Since there is no further explanation provided in the Attachment, the term “*pengungsi*,” as generally understood in Indonesian, may be interpreted to mean both “internally displaced persons” with regard to natural or man-made disasters and “foreign refugees” who enter Indonesia.

The Joint Secretariat of the NAPHR consists of five national ministries, namely the Ministry of Law and Human Rights, Ministry of Social Affairs, Ministry of National Development Planning, Ministry of Home Affairs, and Ministry of Foreign Affairs.<sup>47</sup> The Secretariat receives a regular report every three months on the progress of the implementation of human rights actions from the ministries, agencies, and regional governments to use as a basis for reporting on the achievement of the NAPHR to the president.<sup>48</sup> However, in practice, the implementation of the NAPHR is challenging due to a lack of common understanding regarding the tasks given to the NAPHR Committee at the provincial and regency/municipality levels and lack of local government support for its implementation.<sup>49</sup>

Under the NAPHR, it is the state’s or national government’s responsibility to protect human rights. The NAPHR delegates some responsibilities to regional governments, among

<sup>43</sup> *Ibid.*, Art. 76(1).

<sup>44</sup> Memorandum of Understanding between The National Human Rights Commission of the Republic of Indonesia and the Office of the United Nations High Commission for Refugees 2015–18, para. 4.A.v. See also Missbach and Adiputera’s article, as well as the Introduction in this Special Issue.

<sup>45</sup> Komnas HAM IR (2019).

<sup>46</sup> Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights, Attachment, Chapter I, Part A. The Elucidation of Art. 5(3) of the Law No. 39 of 1999 on Human Rights explains that vulnerable groups include the elderly, children, the poor, pregnant women, and people with disabilities.

<sup>47</sup> Presidential Regulation No. 33 (2018) on the Amendment of Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights, Art. 4.

<sup>48</sup> Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights, Art. 8.

<sup>49</sup> See Sinaga (2016), pp. 156, 160.

others, to determine human rights action annually.<sup>50</sup> But the NAPHR underlines that the funding for its implementation in the provincial, regency/municipality government must come from the respective regional revenue and expenditure budget.<sup>51</sup> This means that local budgets should be reserved to implement the NAPHR. The PR similarly places primary responsibility for managing refugee issues with the national government, with only certain subsidiary tasks delegated to local governments. Therefore, although not directly implementing the Law on Human Rights, the PR should be regarded as complementary to the NAPHR.<sup>52</sup>

### 3.3 Immigration legal regime: co-operation between immigration detention centres and local governments

Law No. 6 of 2011 on Immigration determines that everyone who enters the territory of Indonesia must have a valid travel document and visa.<sup>53</sup> In practice, from 2008, and increasingly since 2011, immigration detention centres (IDCs) have played a significant role in managing the entry of refugees into Indonesia. IDCs are technical units that serve immigration functions as temporary shelters for foreigners, who are subject to immigration administrative measures.<sup>54</sup> Immigration officers are authorized to detain foreigners, without legal travel documents, and foreigners whose citizenship status is in doubt when they enter the territory of Indonesia.<sup>55</sup>

The 2013 Standard Operational Procedure for IDCs outlines that, if, during the registration process, it is found that the detainee is a refugee, it is possible to temporarily house them outside of the detention centre and that, in order to transfer the person to a non-custodial shelter, registration officers can contact the UNHCR or IOM.<sup>56</sup> The 2016 Regulation of the Directorate General of Immigration reiterates that refugees may be placed in an immigration detention centre, immigration detention room, or another place<sup>57</sup> and mentions that any expenses in facilitating asylum seekers and refugees will be borne by the IOM or other international organizations.<sup>58</sup>

<sup>50</sup> Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights, Art. 6.

<sup>51</sup> *Ibid.*, Art. 10(2).

<sup>52</sup> In 2019, the government commenced efforts to create a new NAPHR for the period of 2020–24. However, as at mid-July 2020, the new NAPHR had not yet been instituted. Some ministries and civil-society groups submitted recommendations to improve the current NAPHR. Art. 11 of the Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights makes clear that, in the event that the 2020–24 RANHAM has not been determined, the making of human rights actions for 2020 shall refer to the 2015–19 NAPHR: Directorate General of Human Rights (2020).

<sup>53</sup> Law No. 6 of 2011 on Immigration, Arts 8(1), (2).

<sup>54</sup> *Ibid.*; Regulation of the Minister of Law and Human Rights No. 4 of 2017 on Immigration Supervision Procedures, Arts 1(21), 1(33).

<sup>55</sup> Government Regulation No. 31 (2013) on Implementing Law No. 6 of 2011 on Immigration, Arts 208(1)(b), 209(b).

<sup>56</sup> Regulation of the Directorate General of Immigration No. IMI.1917-OT.02.01 of 2013 on Standard Operational Procedure of the Immigration Detention Center, Elucidation I, Part V.1.b.4.

<sup>57</sup> Art. 4(1) of the Regulation of the Directorate General of Immigration No. IMI-0352.GR.02.07 of 2016 on Handling of Illegal Immigrants who are Declared as an Asylum Seeker or Refugee. Regarding the terms, both IDCs and detention rooms have a similar function, namely to be a temporary shelter for foreigners subject to immigration administrative measures. However, IDCs are technical implementing units that are managed by a self-organized offices, while detention rooms are located at the Directorate General of Immigration and the Immigration Office. See Arts 1(21), (22) of the Regulation of the Minister of Law and Human Rights No. 4 of 2017 on Immigration Supervision Procedures.

<sup>58</sup> Regulation of the Directorate General of Immigration No. IMI-0352.GR.02.07 of 2016 on Handling of Illegal Immigrants who Declared as an Asylum Seekers or Refugee, Art. 15. See discussion of the *Qasemi* case in the Introduction to this Special Issue.

On 30 July 2018, the Directorate General of Immigration issued Circular Letter No. IMI-UM.01.01–2827 on Restoration of the Immigration Detention House Function. The circular letter assigned the Heads of Regional Offices of the Ministry of Law and Human Rights the responsibility to co-ordinate with IOM and regional and local governments to ensure the availability of temporary shelters for asylum seekers and refugees (who were to be transferred from detention centres).<sup>59</sup> The circular letter also gives full authority to the heads of the regional officers to approve the transfer of responsibility for community housing and temporary shelter of asylum seekers and refugees to local governments, in accordance with Articles 24 and 26 of the PR.<sup>60</sup> This clearly indicates that immigration offices, representing the national government, are beginning to scale back their role in dealing with refugees, by transferring responsibility for non-custodial accommodation to local governments.

Although, in Indonesia, policy and legal changes are often long-term processes, there has been a significant shift in immigration law and policy in Indonesia between 2011 and 2018. In particular, there has been a remarkable effort to decrease the detention of refugees for immigration-related reasons,<sup>61</sup> as indicated by the willingness to transfer authority over the temporary shelter of refugees to local governments. In this regard, local governments are positioned to play an important role in providing more flexible accommodation options for refugees, rather than relying exclusively on the detention model.<sup>62</sup> The next section elaborates on how the local government legal regime has responded to the new tasks allocated to local governments in handling refugees.

### **3.4 Regional Government legal regime: the unexpected shift to managing refugees**

Law No. 23 of 2014 on Regional Government explicitly determines that foreign policy is a matter to be handled by the national government.<sup>63</sup> However, some regulations enable the local government to collaborate with foreign partners on specific matters. Government Regulation No. 28 of 2018 on Regional Cooperation was enacted in order to implement the norms laid down in Article 369 of the Regional Government Law. This Regulation provides authority for local governments to enter into co-operation arrangements between Indonesian local governments and their counterparts in a foreign country (e.g. sister cities)<sup>64</sup> or between an Indonesian local government and a foreign institution.<sup>65</sup>

According to Regulation No. 3 of 2008 of the Ministry of Home Affairs on Guidance for Implementing Cooperation between Regional Governments and Foreign Parties, local governments may co-operate with the IOM and the UNHCR, as these entities fit into the classification of a foreign party. As stipulated in Article 1(8) of Regulation 3 of 2008, the definition of a foreign party includes the United Nations and its organs as well as other international organizations. Article 3(b) of this Regulation states that co-operation may be in the form of technical co-operation, including humanitarian aid. As a basic principle, co-operation should at least give advantages or mutual benefits

<sup>59</sup> Circular Letter of Directorate General of Immigration No. IMI-UM.01.01–2827 of 2018 on Restoration of the Immigration Detention House Function, First Instruction to Head Division of Immigration.

<sup>60</sup> *Ibid.*

<sup>61</sup> This is in line with the Memorandum of Understanding (MoU) between The National Human Rights Commission of the Republic of Indonesia and the UNHCR 2015–2018 that aims to end the detention of refugees for immigration-related reasons.

<sup>62</sup> See the conclusion on containment models, “Alternative to Detention in Indonesia” in Missbach (2017), p. 40.

<sup>63</sup> Law No. 23 of 2014 on Local Government, Art. 10(1)(a).

<sup>64</sup> Government Regulation No. 28 of 2018 on Regional Cooperation, Art. 1(4).

<sup>65</sup> *Ibid.*, Art. 1(5).

and should not interfere with the political stability and economic security in Indonesia.<sup>66</sup> Co-operative operations with respect to refugees theoretically fulfil these requirements.<sup>67</sup> Further, Article 6(b) of this Regulation states that co-operation in the field of humanitarian aid must take into consideration local financial capacity. According to the Regulation, the financing of such co-operations can be sourced from local revenue and budget, and/or other legitimate sources agreed upon in an MoU between the relevant parties.<sup>68</sup> At the date of writing, the only example of such an arrangement that the authors could find in practice is an MoU between the Municipality of Makassar with the IOM regarding the handling of refugees in 2015. The 2015 MoU represents the first time in Indonesia that a local government has directly co-operated with a foreign partner to formally agree upon the roles and responsibilities of each partner with respect to the provision of care for refugees. Further, the Makassar government initiated a “blueprint” for the handling of refugees that could not only be used in Makassar, but may also be referenced by other local governments in Indonesia,<sup>69</sup> as it covers comprehensive co-ordination among many stakeholders and government agencies.<sup>70</sup>

The above analysis clarifies the legal position of local government responsibility for managing refugees. Under the Regional Government legal regime, local governments have the authority to formally partner with foreign parties to achieve the implementation of certain tasks that have been delegated by the national government—such as the accommodation of refugees under the PR. The second issue that remains to be clarified at the provincial and local government levels is the financing of the provision of care for refugees. It is both legally and politically important for regional and local governments to have a clear, legitimate avenue by which to allocate budgets for dealing with refugee issues. On 23 August 2017, a circular letter from the Director General of Politics and General Governance of the Ministry of Home Affairs requested Regional Secretaries at the regency/municipality level to prioritize budget allocation in the Regional Budget and Expenditure in the Year 2018 to a number of specified activities, including the handling of refugees in accordance with the PR.<sup>71</sup>

The circular letter was then strengthened by a Regulation of the Minister of Home Affairs No. 38 of 2018 on Guidance on Composing the Regional Budget and Expenditure in the Year 2019, which explicitly authorizes the use of regional budgets for handling refugee issues. This Regulation suggests that regional governments should synergize budgeting programmes and activities with national policies when preparing the regional budget and expenditure for 2019. Therefore, in implementing or facilitating national policy priorities, regional and local governments are authorized to use their budget and expenditure to manage refugees as guided by the PR.<sup>72</sup> Similarly to the Regulation of the Minister of Home Affairs No. 38 of 2018 on Guidance on Composing the Regional Budget and Expenditure in the Year 2019, the same guidelines are reiterated in the Regulation of the Minister of Home Affairs No. 33 of 2019 on Guidance on Composing the Regional Budget and Expenditure in the Year 2020. Although these guidelines are

<sup>66</sup> Regulation of the Ministry of Home Affairs No. 3 of 2008 on Guidance for Implementing Cooperation between Regional Government and Foreign Party, Art. 2(b), (c).

<sup>67</sup> *Ibid.*, Art. 4(a), (c).

<sup>68</sup> *Ibid.*, Art. 15.

<sup>69</sup> Missbach, Adiputera, & Prabandari (2018), p. 207. See also Missbach & Adiputera in this Special Issue.

<sup>70</sup> Gabiella & Putri (2018), p. 6.

<sup>71</sup> Circular Letter of Director General of Politics and General Governance of the Ministry of Home Affairs No. 188/3200/Polpum (2017) on the Implementation of Regulation of Minister of Home Affairs No. 33 of 2017 on Guidance of the Composing Regional Budget and Expenditure in the Year 2018.

<sup>72</sup> Regulation of Minister of Home Affairs No. 38 of 2018 on Guidance of the Composing Regional Budget and Expenditure in the Year 2019, Attachment Part V 60.0.4(e).

the primary policy documents for preparing the regional budget and should, therefore, be influential in guiding budget allocation, there are no sanctions for regional governments that do not allocate budget to manage refugee issues in accordance with these regulations. As previously mentioned, at present, most regional governments have been reluctant to allocate budget towards implementing the PR.

The most specific development on this point is the issuance of a 2018 circular letter from the Ministry of Home Affairs No. 185/2793/SJ on the Role of Local Government in the Treatment of Refugees. This circular letter requests mayors of the relevant cities to take action as follows:

1. To immediately carry out the construction of a refugee shelter under the framework of land acquisition for development that has to fulfil three criteria (to be close to health and worship facilities, is in the same area as the immigration detention house, and has supportive security conditions);
2. If refugee shelters are not yet available, for temporary accommodation needs to be determined immediately;
3. To coordinate with the closest Immigration Detention Center and Coordinating Ministry of Politics, Law, and Security on the treatment of refugees, budget facilitation for the construction of a refugee shelter, and the fulfilment of their basic needs;
4. To immediately deport asylum seekers who are rejected by UNHCR; and
5. To submit a regular report every three months on the implementation of refugee initiatives to the Governor, Coordinating Minister of Politics, Law, and Security, Minister of Law and Human Rights, Minister of Home Affairs, and Minister for Foreign Affairs.

Although the circular outlines specific obligations for regional and local governments, similarly to the Regulation discussed above, it does not contain coercive measures to be imposed on governments that cannot (or do not) fulfil such requests.

#### *3.4.1 An example of local government implementation of the PR (or lack thereof)*

The transfer of refugees from IDC Tanjungpinang to a shelter located in Bintan Regency is an example of how IDCs, local governments, and the IOM can work together in implementing the PR.<sup>73</sup> On 6 April 2017, the Head of Tanjungpinang IDC sent a letter to the Head of Bintan Regency,<sup>74</sup> requesting support and approval to create community housing in the Bintan Regency area in order to transfer refugees who were placed at Tanjungpinang IDC. The letter was carbon-copied to the Director General of Immigration in Jakarta, Head of the Ministry of Law and Human Rights of Kepulauan Riau Province, and IOM representatives at Tanjungpinang. On 11 April 2017, the letter was replied to by the acting regional secretary on behalf of the Head of Bintan Regency.<sup>75</sup> The reply stated that the Government of Bintan Regency strongly supported the efforts of Tanjungpinang IDC towards handling refugees in the area of Kepulauan Riau Province and that the government was willing to facilitate the plan to create community housing for refugees who were placed at Tanjungpinang IDC, as needed. However, in practice, the support was limited to approval of the plan going ahead, as the Bintan Regency did not allocate any budget to

<sup>73</sup> The UNHCR was not technically involved in this transfer process, although UNHCR representatives in Tanjungpinang played a role in the data collection of foreign refugees' identity: Interview with Melisa Sidabutar, UNHCR representative in Tanjungpinang, 28 August 2018.

<sup>74</sup> Letter of Immigration Detention Center of Tanjung Pinang No. W.32.IMI.9-GR.04.02-0389 dated 6 April 2017 sent to the Head of Bintan Regency.

<sup>75</sup> Letter of the Government of Bintan Regency No. 189/Hk/376 dated 11 April 2017 sent to the Head of the Tanjung Pinang IDC.

assist in building the community housing. The shelters were funded by the IOM,<sup>76</sup> after which all refugees housed at the IDC were moved to Tanjungpinang.

The Bintan Regency government effectively side-stepped making any financial contribution to establishing community housing located in its territory, relying on funding from international organizations. Further, the local government officials tended to conceptualize their responsibilities to refugees as limited to the monitoring of potential social, cultural, and security impacts from the presence of refugees—as opposed to financial responsibilities.<sup>77</sup> The treatment of refugees as a social or security related issue is illustrated by the fact that the *Badan Kesatuan Pengembangan Politik dan Perlindungan Masyarakat* or *Bakesbangpolinmas* (Political Development Unity and Community Protection Agency) in Bintan Regency was assigned by the regency leaders as the relevant body to monitor the daily activities of refugees.<sup>78</sup> Monitoring includes ensuring compliance with the rules of conduct, customs, and laws, and recording entry and exit of refugees from the shelter, as stipulated in Articles 25 and 30 of the PR. For example, when refugees conducted a protest outside of the UNHCR headquarters on 9 August 2019, the Head of *Bakesbangpolinmas* sent an official report to the regent and carbon-copied in the relevant authorities.<sup>79</sup>

This approach is not surprising considering that there are neither local regulations nor directives issued by the Government of Bintan Regency that specifically address the issue of refugees. As mentioned earlier, there is little incentive legally or politically for local governments to implement, let alone fund, the implementation of the PR. Even where the responsibilities of local governments to do so are made clear, due to the absence of coercive regulatory mechanisms or other consequences for non-allocation of local budget, it is common for local leaders to lack the political will to take action.<sup>80</sup>

### **3.5 Harmonizing responsibilities: the role of the Coordinating Ministry for Politics, Legal, and Security Affairs**

The above analysis has illustrated how the authority of local governments for handling refugees is derived from higher legal regimes including foreign relations, human rights, immigration, and local government. In this section, it is argued that the Coordinating Ministry for Politics, Legal, and Security Affairs (hereinafter, “the Coordinating Ministry”) has the potential to play a key part in harmonizing the different role and institutions that derive from these sources, for at least two reasons.

First, the Coordinating Ministry is assigned to co-ordinate ministries and institutions, including the Ministry for Foreign Affairs (national lead on implementing the Foreign Relations legal regime), Ministry of Law and Human Rights (national lead on implementing the Human Rights and Immigration legal regimes), and Ministry of Home Affairs (national lead on implementing the local government legal regime).<sup>81</sup> The Desk for Human Smuggling, Refugees and Asylum Seekers (*Desk Penanganan Penyelundupan Manusia*,

<sup>76</sup> Interview with Pierre King, Ni Nyoman Ayu, Wisnu A. Nugroho, and Khairul Bahri, IOM representatives, Tanjung Pinang, 28 August 2018, IOM Office Tanjung Pinang, 27 August 2018.

<sup>77</sup> Interview with Jamsuri and Dedi Wizani, Secretary and Staff of Political Development Unity and Community Protection Agency of Bintan Regency, Tanjung Pinang, 28 August 2018.

<sup>78</sup> *Ibid.*

<sup>79</sup> Letter from the Head of Political Development Unity and Community Protection Agency of Bintan Regency No. 91/Kesbang-Kesb/Bid.3 to Regent of Bintan on the Daily Situation Report of Ideology, Political, Social, Cultural, Defence, and Security Affairs dated 9 August 2019.

<sup>80</sup> For further examples of how the implementation of the PR has played out in other regional contexts, see Missbach, Adiputera, & Prabandari, *supra* note 69.

<sup>81</sup> Art. 4 of Presidential Regulation No. 43 of 2015 on Coordinating Ministry for Politics, Legal, and Security Affairs.

*Pengungsi dan Pencari Suaka—P2PM2S*), established in 2013 and directed by the Coordinating Ministry, also involves the three aforementioned ministries.<sup>82</sup> The Coordinating Ministry has a role in facilitating the temporary housing of refugees and asylum seekers in Indonesia by co-ordinating and synchronizing activities both internally through the Desk P2MP2S and internationally through the Bali Process.<sup>83</sup>

For example, the Coordinating Ministry has established a Task Force on the Treatment of Refugees that consists of officials who are assigned specific responsibilities for matters including research, data collection, shelter/accommodation, security and supervision, international co-operation, deportation and voluntary return, and basic needs for education and health.<sup>84</sup> This National Task Force has encouraged the local government to create equivalent local task forces. For instance, during a meeting in Pekanbaru, the chief of the National Task Force supported the Municipal Government of Pekanbaru in creating a task force that included immigration, police, relevant local agencies, the IOM, and the UNHCR.<sup>85</sup> Further, in December 2019, the Bintan Regency established a Task Force on the Treatment of Refugees in the Territory of Bintan Regency through Decree of the Regent of Bintan No. 542/XII/2019.<sup>86</sup>

Second, the PR explicitly identifies the Coordinating Ministry as the responsible department for its implementation.<sup>87</sup> In practice, the Coordinating Ministry regularly arranges co-ordination meetings—inviting relevant regional and local government authorities, including IDCs and police, to meet with higher ministries and international parties such as the UNHCR and the IOM.<sup>88</sup> However, it should be kept in mind that the Coordinating Ministry does not have executorial authority for handling refugees at the technical level, but is limited to managing the relevant sectoral bodies and local governments as the spearhead.

#### **4. The dynamics of local politics: financial constraints and tensions at the local level**

It is common for host states to negatively stereotype refugees as a financial burden.<sup>89</sup> Indonesia is no exception to this trend.<sup>90</sup> With this framing as the starting point, this section analyses the dynamics of local politics with respect to decision-making related to the provision of care for refugees. In the above section, the example of Bintan Regency illustrated how local governments tend to avoid financial responsibility for refugees. On the assumption that local governments may, in future, accept their responsibilities under the PR and seek to implement them, this section takes a more in-depth look at the technicalities of budgeting.

The primary financial source for the regions originates from the *Anggaran Pendapatan dan Belanja Daerah* (Regional Revenue and Expenditure Budget—APBD). At the regional and local levels, the regent/mayor has the authority to prepare and submit a Bill of the APBD to be discussed with and obtain approval from the Regional People's Representative

<sup>82</sup> Decree of Coordinating Ministry for Politics, Legal, and Security Affairs No. KEP-10/Menko/Polhukam/1/2013 on Desk for People Smuggling, Refugees and Asylum Seekers, Attachment I, Part II.

<sup>83</sup> Coordinating Ministry for Politics, Legal, and Security Affairs (2017).

<sup>84</sup> Coordinating Ministry for Politics, Legal, and Security Affairs (2019).

<sup>85</sup> Lusiana (2019).

<sup>86</sup> National and Political Unity Agency (Kesbangpol) Bintan Regency (2019).

<sup>87</sup> Arts 1(5), 4(1) of the PR.

<sup>88</sup> For example, on 15 March 2019, there was a co-ordination meeting in Medan; see Medan City Communication and Information Agency (2019).

<sup>89</sup> Zetter (2012), p. 50.

<sup>90</sup> For more information on framing, see Sadjad in this Special Issue.

Council of the regency/municipality.<sup>91</sup> In addition, the Regional People's Representative Council of the regency/municipality has the authority to supervise the implementation of the APBD.<sup>92</sup>

Before the PR was created, local governments were unsure how to provide funds to refugees. For example, in September 2015, the North Sumatra Provincial Government, through the head of the Political Development and Community Protection Unity Agency, revealed two factors that caused difficulties in handling refugees in the region, namely: the absence of an available budget; and the absence of a legal umbrella for efforts in managing refugees. This led to ad hoc handling efforts based on each region's initiatives.<sup>93</sup> After the PR was enacted, local governments were explicitly authorized to allocate budget to the handling of refugees.<sup>94</sup> Although the legal authority to allocate budget to refugee issues has been clarified, in practice, the determination of the regional budget remains a political matter. Therefore, the allocation of financing for refugees issued by the regional budget (APBD) continues to be difficult to realize.

From a legal perspective, the APBD is a legal product in the form of a Regional Regulation (i.e. Regency Regulations/Municipality Regulations). From a political perspective, the creation of the APBD must be jointly adopted by both legislative and executive powers in the region. For example, even if the mayor of the municipality or head of the regency strongly supports the idea of financing refugees, they have to obtain formal approval from the local parliament. The local parliament consists of members of political parties who are directly elected by the people in the region. This means that the political will of regional parliamentarians strongly influences the determination of priorities and allocation of the APBD. As many parliamentarians hold the opinion that the APBD must be allocated for programmes that directly promote the wealth of regency/municipality residents (the constituents who directly vote for them), there is little chance of a budget being allocated to refugee programmes due to a lack of political will. Illustratively, on a number of occasions, members of the local parliament have expressed objection to the presence of refugees in their territory. For example, in 2018, the deputy speaker of the Regional People's Representative Council of the Municipality of Balikpapan-East Kalimantan Province rejected the idea of creating community housing for refugees in the local area.<sup>95</sup> Further, even if the APBD was jointly adopted, this does not mean that the budget would easily be executed. The Peoples' Representative Council at the regency/municipality level may also raise political objections against the implementation of funds towards refugee programmes.

#### 4.1 Specific schemes for budget allocation

Despite the aforementioned barriers to budget allocation, this section analyses the specific schemes that, in fact, can be used by local governments to allocate funds for refugees—namely the National Revenue and Expenditure Budget (APBN) and the APBD. The analysis is written based on the hypothetical presumption that such a budget is politically achievable.

The first relevant scheme is *Dana Alokasi Khusus* (the Special Allocation Fund) that consists of physical and non-physical funds.<sup>96</sup> *Dana Alokasi Khusus Fisik/DAK Fisik* (the Physical Special Allocation Fund) is a fund sourced from the national budget allocated to the regions with the main goal of funding basic public services, such as infrastructure and facilities, to fulfil minimum service standards, achieve national priorities, and accelerate

<sup>91</sup> Law No. 23 of 2014 on Regional Government, Arts 65(1)(d), 154 (1)(b).

<sup>92</sup> *Ibid.*, Art. 154(c).

<sup>93</sup> Secretariat of the Vice President of the Republic of Indonesia (2015).

<sup>94</sup> Art. 40 of the PR.

<sup>95</sup> Prokaltim (2018).

<sup>96</sup> Law No. 12 of 2018 on State Budget and Expenditure in the Year 2019, Art. 12(1).

**Table 3.** Scheme of the Affirmation Special Allocation Fund of the Bintan Regency in the year 2019

Field allocated	Budget (USD) <sup>a</sup>
Health (Strengthening the Community Health Center)	359,032
Housing and Settlement	296,833
Transportation	381,944
Education	69,131
Drinking Water	172,222
Sanitation	172,917
<b>Total</b>	<b>1,452,079</b>

<sup>a</sup>The exchange currency between Indonesian Rupiah and the American dollar is based on the Elucidation of Law No. 20 (2019) on State Budget Revenues and Expenditures of the Year 2020, which assumes that USD 1 is equal to IDR 14,400. Source: Directorate General of Financial Balance, Ministry of Finance of the Republic of Indonesia (2018a).

development in the regions.<sup>97</sup> The allocation of *DAK Fisik* is determined based on proposals submitted by local governments with regard to national priorities, state financial capacity, and good financial governance.<sup>98</sup> In 2019, *DAK Fisik* was allocated to support areas including education, health and family planning, housing and settlements, small and medium industry, agriculture, marine and fisheries, tourism, roads, drinking water, sanitation, irrigation, environment and forestry, and transportation.<sup>99</sup>

In theory, *DAK Fisik* could be allocated to create facilities enjoyed by both local citizens and refugees, such as to provide education, housing, or drinking water. However, this is only politically possible if, under this scheme, refugee issues are identified as a national priority. Further, approximately 43 regencies/municipalities were listed as “Priority Locations” of *DAK Afiriasi*.<sup>100</sup> This includes some regencies and municipalities that receive or handle refugees, such as the Municipality of Batam, Bintan Regency, Natuna Regency, and Kepulauan Anambas Regency.<sup>101</sup> As an example, the Municipality of Batam was allocated around USD 708,000 for Operational Assistance for the Implementation of Early Childhood Education.<sup>102</sup> If provision of care for refugees was listed as an issue of national priority, this would facilitate the use or sharing of funds for refugees, such as the sharing of educational services with refugee children.<sup>103</sup> As another example, Bintan Regency was allocated a Regular Special Allocation Fund for basic health services (USD 69,000) and referral health services (USD 1,190).<sup>104</sup> If provision for refugees was listed as an issue of national priority, funds could potentially be allocated to complement the current health services provided to refugees sheltered at Badra Resort in Bintan Regency.<sup>105</sup> Table 3 describes the other schemes of the Special Allocation Fund for Bintan Regency.

<sup>97</sup> *Ibid.*, Elucidation of Art. 12(1)(a).

<sup>98</sup> *Ibid.*, Art. 12(2).

<sup>99</sup> Presidential Regulation No. 141 of 2018 on Technical Guidance on Physical Special Allocation Fund, Art. 2(2).

<sup>100</sup> Memorandum of Director for Disadvantaged, Transmigration, and Rural Areas of the Ministry of National Development Planning No. 028/Dt.2.3.M/02/2018 concerning the Adjustment of Priority Location for *DAK Afiriasi* Year 2019.

<sup>101</sup> Director for Disadvantaged, Transmigration, and Rural Areas, National Development Planning Agency, Priority Location of Affirmation Special Allocation Fund Year 2019.

<sup>102</sup> Ministry of Finance of the Republic of Indonesia (2018b), p. 57.

<sup>103</sup> I Nyoman Suyatna and I Made Budi Arsika visited Hotel Kolekta, Municipality of Batam on 29 August 2019 and met with refugees temporarily housed at this location.

<sup>104</sup> Ministry of Finance of the Republic of Indonesia (2018a).

<sup>105</sup> I Nyoman Suyatna and I Made Budi Arsika visited Badra Resort, Bintan Regency on 27 August 2019 and met with refugees temporarily housed at this location.

The table identifies policy areas to which the national government allocated funds in Bintan Regency under the Scheme of the Affirmation Special Allocation Fund. Regarding the sharing of funds with refugees, it must be noted that socioeconomic programmes are underfunded in general—as can be seen in the data.<sup>106</sup> The point of this analysis is to illustrate a legal pathway for funding—the impetus would be on the national government to increase funding accordingly in response to its national priorities. In other words, if the national government were to make the management of refugees a priority, this would legally empower the regional and local governments to utilize these funds for that purpose. However, without the additional allocation of funds from the national government, regional and local governments are unlikely to prioritize funds for refugees, as these issues are competing for funds against all other local policy areas.

The second scheme is the APBD. As mentioned above, this scheme is jointly adopted by the head of the province/regency/municipality and their Peoples' Representative Council in each region. Among many purposes, the APBD may be used to support the implementation of the NAPHR. The Presidential Regulation on NAPHR determines that funding for its implementation in ministries and institutions is borne by the National Revenue and Expenditure Budget,<sup>107</sup> while funding for its implementation at the provincial/regency/city level is borne by the respective APBD.<sup>108</sup> However, the same constraints apply as above. Without additional funding allocated by the higher institutions for this purpose, regional and local governments would continue to face financial constraints, as regional and local budgets are already often stretched. This is why regional and local governments that engage with refugee issues generally rely on funds designated by international partners for humanitarian purposes.<sup>109</sup> As has been stressed by other authors in this Special Issue, international funding is increasingly limited—which brings us back to the need for the Indonesian government to assign a proportion of the national budget to deal with refugees in Indonesia.

## 4.2 What next?

This article has illustrated that local governments have a responsibility to co-ordinate with the national government and international organizations in order to provide, in particular, community housing and other non-custodial shelter for refugees. Further, at legal and technical levels, Indonesian laws and regulations do, in fact, authorize local governments to allocate budget towards the management of refugees to fulfil new responsibilities under the PR. However, at the time of writing, no local government in Indonesia has explicitly allocated local budget to provide care for refugees.

It should be noted that there is an obvious loophole in the PR—namely the failure to give explicit authority to the provincial government to be involved in the management of refugees. On the one hand, it is clear that the PR was enacted to implement the Foreign Relations Law and is therefore connected to issues of *politik luar negeri* (foreign policy).<sup>110</sup> On the other hand, the Regional Government legal regime determines that foreign policy is an absolute matter to be handled by the national government.<sup>111</sup> The national government

<sup>106</sup> The official report made in August 2018 released that the total income of Bintan Regency was USD 73,610,180 and the budget spent was USD 70,845,074. See Art. 2 of the Regulation of Bintan Regency No. 4 of 2018 on Implementation Accountability of the Revenue and Expenditure Budget of the Year 2017.

<sup>107</sup> Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights, Art. 10(1).

<sup>108</sup> *Ibid.*, Art. 10(2).

<sup>109</sup> Law No. 12 of 2018 on State Budget and Expenditure in the Year 2019, Art. 20(1).

<sup>110</sup> Law No. 37 of 1999 on Foreign Relations, Art. 1(2).

<sup>111</sup> Law No. 23 of 2014 on Regional Government, Art. 10(1)(a).

may delegate this authority to its agencies in the regions, or to governors as representatives of the national government, based on the deconcentration principle.<sup>112</sup> Governors are the heads of provinces and *ex officio* represent the national government at the regional level. In this position, the governor has the authority to supervise and monitor the programmes of regency/municipality governments as a go-between for the national government and local governments.<sup>113</sup> The governor also has a strategic position regarding funding, as they are responsible for evaluating the APBD of the regency and municipality governments.<sup>114</sup> The governor is also responsible for making recommendations with respect to regency and municipality government proposals for the *Dana Alokasi Khusus* (DAK/the Special Allocation Fund) to the national government.

In practice, some provincial governments (i.e. in North Sumatra, South Sulawesi, and the Special Capital Regions of Jakarta) have been involved with the handling of refugees, which is not surprising considering that refugees may be housed across different regencies and cities within a province. However, the role of the provincial government is not explicitly acknowledged in the PR. Therefore, the PR should be amended to define the role of the governor and the authority of the provincial government in managing refugees.

In addition, the PR should be amended with respect to the source of funding for refugees at the regional level. Article 40 of the PR determines that funding required for refugees can be sourced from the APBN through the relevant ministry/agency and/or other sources in accordance with the prevailing laws and regulations. However, as discussed above, since 2017, there have been a number of regulations and circular letters issued by the Ministry of Home Affairs that encourage local governments to allocate funds from the APBD. The failure to explicitly include the APBD in the PR leaves local governments in doubt, contributing to hesitation in allocating local budget towards refugee issues.

In addition to amending the PR, there is a need to establish local implementing regulations. The law and regulations on refugees at the national level should be implemented through the enactment of local regulations to clarify the legal position for local governments in dealing with refugee issues. The relevant local regulations (Regency Regulations and Municipality Regulations) should at least include the establishment of a local implementing agency and clear avenues for funding. In order to encourage local governments to establish local regulations, the national government should adopt measures to support the implementation of the PR at the local level. For example, the president, along with the co-ordinating minister and relevant ministers, could establish financial incentives or grant schemes for regency and municipality governments to establish local regulations (financial support) or otherwise provide technical support.

Further, it must be noted that the provision of government financial support alone would not alleviate financial pressures on economically “independent” refugees, namely refugees who are not sheltered or supported by the UNHCR or the IOM—as discussed in the Introduction and by Missbach and Adiputera in this Special Issue. The fact that many refugees are not supported by the Indonesian government in co-operation with international partners raises the need for the government to consider allowing refugees to work productively in Indonesia. In fact, some studies suggest that host governments would be better able to supply public services and infrastructure to meet the needs of refugees as

<sup>112</sup> *Ibid.*, Arts 1(8), 1(9), 10(2)(b). Note that deconcentration is different from decentralization. On the one hand, deconcentration is the delegation of a part of government affairs under the authority of the national government to the governor as the representative of the national government, to vertical agencies in certain areas, and/or to governors and regents/mayors as the person in charge for general government affairs. On the other hand, decentralization is the transfer of government affairs by the government to autonomous regions based on the principle of autonomy.

<sup>113</sup> Government Regulation No. 33 of 2018 on Implementation of Governor’s Duties and Authorities as a Representative of National Government, Art. 1 and Elucidation, Part I.

<sup>114</sup> *Ibid.*, Art. 1(1)(d).

well as the local population if refugees were given the opportunity to integrate economically and socially into their host societies.<sup>115</sup> Although this topic was not covered in the present article, it should be noted that government budget allocation for refugee issues does not exist in a vacuum, but within a broader network of the socioeconomic circumstances in Indonesia.

## 5. Conclusion

Indonesian laws, regulations, and policies on the treatment of refugees have gradually shifted from being exclusively national government matters to a more decentralized model through the delegation of responsibilities to regional governments, such as the provision of community housing and shelters. In parallel with this paradigm, there is a movement to reduce the detention of refugees for immigration-related reasons and to introduce more flexible, non-custodial accommodation. Some remarkable adjustments in the Regional Government legal regime have complemented the regulations on refugees as stipulated in the Foreign Relations, Human Rights, and Immigration legal regimes. For example, in 2018, a progressive step was taken by the Ministry of Home Affairs to issue Circular Letter No. 185/2793/SJ that explicitly requests the mayors of the relevant cities to take action to immediately carry out the construction of refugee shelters under the framework of land acquisition for development. Such a directive from the Ministry of Home Affairs leads to an expectation that regional and local governments in Indonesia will adopt these measures, as well as take action to implement the PR.

In practice, the situation has not progressed as rapidly as the legal and policy developments may suggest. No local governments have allocated their APBD to the management of refugees, illustrating a complete lack of will to implement their new responsibilities under the PR. This article has identified the constraints of local budgets, lack of economic support from the national government, and weak political will as factors that have contributed to this lack of action. In conclusion, there are compounding structural issues that currently prevent the allocation of regional and local budgets towards refugee management. However, as this article has clarified, if there was the political will to act at both the national and local government levels, there are, in fact, existing legal avenues to do so.

In saying this, it must also be recognized that there is a lack of clarity in some parts of the PR and this article recommends amendment of the PR in three respects. First, the PR should expressly recognize the authority of governors (as the heads of provincial governments—see Table 2) to manage refugees. Second, the PR should explicitly identify the APBD as a source of funding for refugee issues, in order to alleviate the doubts and hesitation of local governments to allocate local budget for refugee issues. Third, local implementing regulations should be enacted to clarify the legal position of local government in dealing with refugee issues.

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<sup>115</sup> See Luecke & Schneiderheinze (2017), pp. 7–8.

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