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A Responsible Sovereign?

Between Sovereignty and Responsibility in Refugee and Asylum Seeker Protection in Indonesia – The Case of Presidential Regulation No. 125 of 2016

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Introduction

Indonesia is not a signatory to the 1951 Refugee Convention or the 1967 Refugee Protocol. As a consequence, for years, there has been no legal basis to differentiate between refugees, asylum seekers and 'illegal migrants'. Any matter relating to the influx of refugees into the archipelago was – and, we argue, still is – treated more like a security matter than a humanitarian concern. Prior to the creation of PR 125, the handling of refugees was carried out under the securitized framework of Law No. 6 of 2011 on Immigration (hereinafter 'Law No. 6') in which asylum seekers were perceived as either victims of trafficking/smuggling or illegal immigrants. This aimed to limit the movement of asylum seekers. There have also been issues relating to accommodation: by 2012, there were thirteen Immigration Detention Centres in Indonesia, but due to limited capacity, not all asylum seekers and refugees were housed in the centres. This was despite the existence of laws and policies that demanded that refugees

and asylum seekers had accommodation (Kneebone, Missbach and Jones 2021: 8–10). In the absence of implementation through a legal framework, government agencies in Indonesia have relied on their own discretion when making decisions about refugees (Tobing 2017). Representing sovereignty through the building of new infrastructure and 'mega projects' is a practice that existed during the presidency of Susilo Bambang Yudhoyono (2004–14) and has become even more apparent during Joko Widodo's presidency (2014–present). These projects are similar to former President Suharto's developmental politics and represent sovereignty by enhancing both internal trust and authority, and external representation (Warburton 2018: 355). The protection of human rights has regressed during Widodo's presidency, especially with regard to the discourse around political expression and religious tolerance (Amnesty International 2005; Mujani and Liddle 2021: 76).

In 2016, President Joko Widodo signed PR 125. Although not without its limitations, the relatively new PR 125 has been viewed optimistically by many commentators (Kneebone, Missbach and Jones 2021), especially as it will formally give refugee status to asylum seekers. However, an analysis by Mahardhika Sjamsoe'oed Sadjad shows that PR 125 is still security-heavy in its approach and denies refugees a considerable amount of agency (Sadjad 2021). In this chapter, we examine how PR 125 changes the Indonesian government's approach to dealing with refugees in Indonesia. More specifically, this chapter seeks to map out how PR 125 has become an arena in which sovereignty and responsibility – two concepts that are often portrayed as in opposition to each other – not only compete but also complement and even transform each other. This is an important debate as PR 125 may be indicative of two changes to the Government's perceptions. First, there is a change in the Indonesian government's attitude to 'foreign' refugees. In the past, Indonesia has been labelled 'overly cautious' due to its failure to take responsibility for humanitarian concerns occurring outside of its borders. Second, there is a change in how the Indonesian government understands the concept of sovereignty itself. It is important to follow changes in how actors perceive core concepts as any changes in perspective may lead to normative and practical consequences. In this chapter, we examine such changes and their implications for sovereignty and responsibility for refugees.

The History of Refugee Protection in Indonesia

To understand how the concept of sovereignty has evolved in the context of refugee protection, it is paramount that we first consider the development of the refugee protection regime and its historical context. This context will not only serve as a background to this discussion, but it is also

the very arena in which the notion of sovereignty and responsibility are juxtaposed.

When the 1951 Refugee Convention was conceived of and subsequently signed by its signatories, Indonesia and other Southeast Asian countries were reluctant to sign. During this time, nations in Southeast Asia were still struggling to exert their sovereignty after centuries of colonialism. The continued occupation of Malaysia by the UK government, which lasted until 1957, was additional ammunition towards the sense of alienation from the West felt by Southeast Asian states. For the newly independent nations, rejecting Western ideas, including the concept of human rights, was an important part of their sovereignty and the rejection of refugee protection was an unfortunate casualty (Davies 2007).

After Indonesia gained de facto independence in 1949, the state's first leader was President Sukarno, a staunch anti-colonialist. His stance on refugee protection was somewhat inconsistent. On the one hand, the idea of human rights, as is propagated by the 1951 Refugee Convention, was seen as inherently Western; on the other hand, solidarity among postcolonial nations demanded cooperation between them.[1] While the Circular Letter of the President No 11/R.1/1956 of 1956 on Political Refugees recognized the status of political refugees in Indonesia and the protections that came with this status, in practice, only one refugee is known to have been granted this protection: an Algerian exiled by the French colonial government (Kneebone, Missbach and Jones 2021).

When the Indochina crisis occurred in the 1970s, Indonesia and other Southeast Asian countries believed that the issue of mass refugee exodus, which was a result of the growing number of communist states in Indochina, was the responsibility of Western states (Davies 2007). Following this crisis, the Comprehensive Plan of Action was formed and agreed upon, with the aim of eventually resettling refugees in Western countries (Kneebone and Rawlings-Sanaei 2007: 11–17). Indonesia reluctantly participated in and conducted the screening of refugees on Galang Island under the supervision of the UNHCR, whose main focus at the time was to secure entry and a temporary stay for Indochina refugees in Indonesian territory – not the creation of new law within Indonesia's legal framework (Soeprapto 2004; Kneebone 2017). Asylum was not featured in the Indonesian Constitution until 1999, when an amendment was added and stated that 'every person has the right to … obtain political asylum' (1945 Indonesian Constitution: art 28G(2)). At that time, Indonesia was democratizing and implementing several progressive laws, especially regarding human rights (Kneebone, Missbach and Jones 2021: 4–6).

Thus, it can be argued that the laws relating to human rights in Indonesia are mostly concerned with preventing the government from committing acts of inhumane treatment of its own citizens, a measure that was enacted

to prevent future instances of the atrocities that occurred during Suharto's thirty-two-year rule. Nonetheless, one law stipulates the possibility of foreign individuals seeking asylum in Indonesia: Articles 25–27 of Law No. 37 of 1999 on Foreign Relations (hereinafter 'Law No. 37') states that 'the authority to give asylum is in the hand of the President by the recommendation of the Minister of Foreign Affairs' and that the 'President enacts the policy regarding foreign refugees based on the recommendation of the Minister of Foreign Affairs'. These provisions were never implemented and the President has never granted asylum through these measures. While, according to one of the drafters, the article was meant to be a 'stop-gap measure' with the expectation that the 1951 Refugee Convention would be signed in the near future (at some point, it was planned that this would occur in 2009), the signing never took place (Soeprapto 2004, 2021).

Arguably, these once potential moves towards refugee protection were also influenced by the momentum of the moment, as the state implemented progressive human rights provisions in the aftermath of Suharto's fall from power in 1999. However, in the following years, Indonesia's attitude towards refugees changed. Asylum seekers have been perceived as either victims of trafficking/smuggling or illegal immigrants, which has most frequently and evidently occurred since the implementation of Law No. 6.

Another important milestone in the development of a legal framework to handle foreign migrants in Indonesia was the Bali Process. The Bali Process is a joint project that was initiated in 2002 between the Indonesian and Australian governments. It was led by the IOM with significant UNHCR involvement on processing refugees found in Indonesian waters (Kneebone 2014). In 2009, amidst growing concern about the thousands of Rohingyas fleeing from Myanmar, the Bali Process was re-activated. After the third meeting of the Process, there was an increased focus on framing the relocation of asylum seekers to Australia within the smuggling–trafficking discourse. This approach was also woven into Law No. 6, which has a strong focus on tackling irregular migration and human trafficking. Up until this point, the issue of refugee protection was still regarded as a nonpriority by the Indonesian government and seemed to have been forgotten, as Indonesia was more focused on economic recovery and maintaining territorial integrity in order to prioritize the interests of its own citizens.

Sovereignty versus Responsibility: Putting PR 125 into Context

Before we can discuss further how PR 125 became an arena in which both sovereignty and responsibility exist, we must first define sovereignty and responsibility, as well as discuss how these concepts interact. This

will help to identify the parts of PR 125 that represent sovereignty and responsibility.

Sovereignty is traditionally defined as the right of sovereign states to exercise supreme power within their own borders and to maintain independence through equality with other states in the international arena (Weston and Franklin 1978; Jackson 1999). This definition suggests that a sovereign state has an inherent and absolute right to exercise authority within its borders. In this absolutist perspective of sovereignty, responsibility is perceived as voluntary and as a deliberate or conscious exercise of sovereignty.

When framing responsibility through this perspective of sovereignty, responsibility is often considered a burden or, worse, an enemy of sovereignty. Responsibility – understood as the commitment of the state to providing protection against genocide, war crimes, crimes against humanity and ethnic cleansing to both its own population and groups from other states – is often seen as a threat to national security (UN Doc. A/RES/60/1). These obligations are frequently perceived as corroding the authority of the state, as it renders the state incapable of exercising its sovereignty to the fullest extent. This belief is notably held by ASEAN countries, which tend to be wary about extending the implementation of human rights protections in the region for fear that it may pose a threat to their sovereignty (Capie 2012). The ASEAN Charter – and, later, the ASEAN Way[2] – have placed tremendous emphasis on the importance of the sovereignty of states within their own borders through the noninterference principle, which challenges the idea of a higher power. In this ideational setting, human rights protections are only extended to the extent that they do not interfere with the state's interests. The first and second pillars of the responsibility to protect – the obligation of the state to protect its own citizens and the obligation of the international community to assist – are acceptable to states, while the third pillar, which calls for external intervention, is often considered objectionable (Caballero-Anthony 2012: 131). The discourse of human rights is not generally well received by most ASEAN member states (Kneebone 2019). When it comes to refugees, the most dominant approach is the security approach, which characterizes refugees as 'irregular migrants' (Song 2015; Chapter 11). Indonesia, in particular, has historically favoured this power-based view of sovereignty (Alexandra 2012). Human rights, for example, have been perceived by past governments as a threat to sovereignty and security (see Chapter 11). This was especially so during the height of the international concern about the allegations of genocide and the need for humanitarian intervention in East Timor (Wheeler and Dunne 2001; Robinson 2005).

However, there is a problem with defining sovereignty as so incompatible with responsibility, as this categorization prevents the whole picture

from being understood. The either/or definition forces states to choose one of the two approaches, as the disparity between sovereignty and responsibility means that they cannot ever be seen as able to coexist in a state. States' beliefs about responsibility, especially in the context of refugees, are frequently seen as leading to only two possible types of action: those that represent the will of the sovereign and those that represent responsibility.

In recent years, scholars such as Christian Reus-Smit (2001) have argued that sovereignty has evolved alongside the increasing presence of human rights discourse in international society. This perspective converges from the traditional understanding of sovereignty as a form of absolute power and authority over the state's subjects; instead, the duty of the powerholder to uphold certain norms and duties is attached to sovereignty. As the role of human rights in international society has increased, the need to incorporate them into the basis for sovereignty has increased as well (Dunne and Hanson 2016). Reus-Smit (2001) illustrates how, in many postcolonial states, the rights to independence, basic human rights and self-determination became the basis on which newly founded governments justified their independence and subsequent rule. Helle Malmvig (2006) goes further by claiming that sovereignty is a constructed idea that can be used to justify intervention to ensure that human rights protections exist in practice (Malmvig 2001: 265, 268). In its very essence, this new interpretation of sovereignty suggests that the concept involves the responsibility of the sovereign to answer to its subjects *and* its duty to the international community (Deng 1995). Alex J. Bellamy and Catherine Drummond (2011) have a similar idea, although they also note that this interpretation of the concept of sovereignty – that states are only legitimate if they respect their people's rights – is hardly a new idea. The idea of 'popular sovereignty' – sovereignty derived from the people – was already in existence by the eighteenth century (see the Conclusion in this book).[3]

Regardless of whether this interpretation of sovereignty is new or merely an isolation of a longstanding and pre-established element of the definition, it is vitally important to understand that sovereignty, like any ideational concept, is prone to changes and reinterpretations by state officials (Sikkink 1993; Devetak 2007; Jackson 2007; Glanville 2013). Robert Jackson (2007) details the gradual changes that sovereignty discourse has undergone. While the discourse was once dominated by ideas of supremacy and authority, it now encompasses the duty to uphold human rights principles. According to Reus-Smit (2001), sovereignty relies upon the hegemonic belief about the 'moral purpose of the state'. In simple terms, this moral purpose is 'grafted' onto the idea of sovereignty and becomes the raison d'être with which sovereign actors justify their rules and authorities. Governments are not inherently legitimate; they can only become so by fulfilling this moral purpose. When the moral purpose of the state expands, the very concept

of sovereignty changes. In recent decades, a relevant expansion is the expectation that states must protect the basic human rights not only of its own citizens, but also those of humanity in general. As evidenced by this new expectation, the rationale for state authority has increasingly been tied to the protection of human rights (see Conclusion).

An interesting discursive turn was the introduction of two dimensions of sovereignty: internal and external (Grimm and Cooper 2015). Internal sovereignty describes the state's ability to exert its sovereignty within its borders, while external sovereignty refers to the state's independence from the power of entities that are outside of its borders. In practice, however, discussions about external sovereignty have put more emphasis on how a state's external sovereignty is superseded by (or voluntarily relinquished to) supranational instruments, such as laws and organizations. The development of these two dimensions of sovereignty was tied closely to the aforementioned transformation of the very concept of sovereignty (Grimm and Cooper 2015). The idea that human rights are embedded into sovereignty is drawn from international legal instruments. More importantly, in recent years, the very idea of external sovereignty itself has been transformed in a way that is similar to its internal counterpart. External sovereignty is no longer understood as the complete absence of external influence; instead, it is understood as incorporating certain obligations that are required by states to uphold international norms, especially in relation to human rights (Jackson 2007).

In the context of refugee protection in Indonesia, this idea of external/internal sovereignty, coupled with the theory of the evolving idea of sovereignty, is an important tool in our analysis of PR 125. First, understanding that sovereignty and responsibility may be entwined allows us to gain a nuanced picture of the role that PR 125 may have in the protection of refugees in Indonesia. Rather than determining that PR 125 serves as an expansion of the protection regime or is diluted and weak, we believe that it is more important to understand where in PR 125 the logic of sovereignty prevails and where, in other parts of PR 125, the logic of responsibility prevails. This analysis will allow us to predict how the Indonesian regime of protection may be expanded in the future.

Second, based on an understanding of sovereignty that acknowledges that it may evolve, we argue that this change must be followed by the evolution of the actor's perception of sovereignty. This is where the theory of external/internal sovereignty plays an important part. At the same time that the idea of internal sovereignty has been evolving to incorporate more obligations on states, as is observed by Reus-Smit (2001), the idea of external sovereignty has also been evolving in a similar way by incorporating external acts that are legislative, administrative and judicial in nature (Grimm and Cooper 2015). Refugee protection is an example of one such act. As a

result, rather than assuming that the state's sovereignty is eroded with each expansion of the human rights regime, we are interested in considering how Indonesia constantly negotiates its sovereignty in relation to refugee protection (Biersteker and Weber 1996).

Therefore, we do not want to see PR 125 as a mere legal document that has been poorly or effectively enforced; rather, we would like to see PR 125 as the evolution of both the internal and external sovereignty that it represents. We argue that the expansion of protections for refugees in Indonesia is not merely a case of sovereignty yielding to responsibility, but a case in which the very concept of sovereignty has evolved, due to the Indonesian government's changing perspective on the moral purpose of the state, both internally and externally.

Elements of Humanitarian Responsibility in PR 125

In principle, Indonesia acknowledges the need to protect refugees on the basis of humanitarianism. As a nonsignatory to the 1951 Refugee Convention, Indonesia's international commitment to the protection of refugees originates with its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratified in 1984, the CAT contains a requirement that signatories do not expel or extradite a person to another state where there are 'substantial grounds' to believe that that person will be tortured upon their return (Article 3(1)). At the field or operational level, there is a clear lack of regulation on the treatment of refugees. Prior to PR 125, the handling of refugees was carried out under the securitized framework of Law No. 6 in which asylum seekers are perceived as either victims of trafficking/smuggling or illegal immigrants. The absence of a special status for refugees meant that, in the view of Indonesian law and immigration officers in the field, refugees were ultimately, or at least tantamount to, illegal immigrants who entered the State without a permit or proper documentation (Kneebone, Missbach and Jones 2021: 440, 447–48).

This is one of the reasons why many commentators felt optimistic about PR 125, believing that it would be a promise of refugee rights or, at the very least, a step in the right direction (Malahayati et al. 2017; Syahrin 2017; Varagur 2017; Yonesta 2019). The term 'refugees' is translated into Indonesian as 'pengungsi', a term that refers to both those who migrate from abroad and those who are internally displaced. Consequently, PR 125 uses the term 'refugees from abroad' to differentiate external refugees from internally displaced persons (Sadjad 2021) and defines the term in a way that aligns with the definition of 'refugee' in the 1951 Refugee Convention. In Article 1(1), PR 125 states that:

> refugees from abroad … are foreigners who reside on Indonesian territory due to reasonable fear of persecution based on race, religion, nationality, membership of particular social group, and political opinion who do not intend to seek protection from their country of origins and/or have been granted the status of asylum seekers or refugees from the United Nations through the High Commissioner for Refugees in Indonesia.

This definition suggests that refugees and asylum seekers will be treated differently from 'illegal migrants'. Kneebone, Missbach and Jones (2021) explain that in Indonesian, the terms 'refugee' and 'asylum seeker' are translated into 'pencari suaka' (asylum seeker) and 'pengungsi dari luar negeri' (foreign refugee). 'Pengungsi' refers to internally displaced persons, while 'pensgusi mandiri' means 'independent' or 'autonomous refugees'. The terms 'imigran gelap', 'imigran haram' and 'imigran ilegal' which mean 'illegal immigrants' are frequently used in the media for 'refugees' (Kneebone, Missbach and Jones 2021).

PR 125 creates a special status for both asylum seekers and refugees, which is an unprecedented move by the Indonesian government, and also serves as the legal basis for the presence and cooperation of 'international actors', including the UNHCR, in providing protection for refugees in Indonesia. Article 2 of PR 125 states that:

> The handling of refugees is carried out through cooperation between the central government with UNHCR and/or other international organisations … in the field of migrations or humanitarian actions who have agreements with the central government.

This element of PR 125 is closely related to the previous element: that the Indonesian government will acknowledge both the UNHCR's role in determining the status of asylum seekers and refugees and its presence and operation in Indonesian territory. Before PR 125, international actors, such as the UNHCR and the IOM, already carried out operations in Indonesia and this role was acknowledged in an agreement with Australia (Kneebone 2017: 32).

PR 125 also indicates that there are roles and responsibilities for local governments in caring for refugees. Chapter III of PR 125, which is entitled 'Shelter', states that municipal authorities can decide where refugees are placed in their region and may be supported by international organizations to realize this responsibility (Article 26(4) and (5)). Local authorities also have the power to apply local rules and regulations to refugees who are sheltered within their territory of authority (Articles 25(h) and 30(1)).[4]

Establishing a legal basis is especially important for improving the day-to-day operations of refugee protection in practice and signalling Indonesia's commitment to and humanitarian responsibility for refugees in Indonesia. The responsibility required by Indonesian authorities to assist refugees is

apparent in Article 9 of PR 125. It states that Badan Nasional Pencarian dan Pertolongan (hereinafter 'BASARNAS'), the National Search and Rescue Agency of Indonesia, with the help of the Indonesian Army, the Indonesian National Police and the government ministries that are in charge of transportation, ocean safety and other related fields, must immediately help refugees who are found to be in need of emergency assistance. These situations include near-drowning, escorting refugees to the safety of nearby harbours and land, and identifying refugees who need immediate medical assistance.

PR 125 is both a legal basis for and guidance on refugee protection. This guidance can assist government agencies and local governments to reduce and mitigate actions that contradict the principles of humanitarianism and responsibility.[5] Before PR 125, there was no clear guidance on how local forces or agencies should respond to refugees found in Indonesian waters. Without a concrete legal basis and clear guidance, local governments and security forces based their decisions on instinct and discretion. The uncertainty that existed prior to the creation of PR 125 often led to decisions and actions that contradicted humanitarian principles and Indonesia's human rights obligations. For example, in May 2015, the Indonesian government turned away a boat of Rohingya refugees in the Andaman Sea after providing them with food and water (Human Rights Watch 2015). Another decision that illustrates this point was made in 2016, when an Indonesian local government in Aceh reportedly planned to tow a stranded boat back to sea, although this plan was later abandoned (Marszal 2016). A similar incident occurred in 2021, when the government planned to return a boat to sea but subsequently relented (*The Guardian*, 29 December 2021; *BBC News*, 31 December 2021).[6] Under PR 125 (Article 9), BASARNAS has a lead role in coordinating the efforts of local authorities and security forces to escort refugees who are found in Indonesian waters to safety on land (Presidential Regulation No 125/2016: Chapter 2; Kneebone 2020a, 2020b).

The unwillingness shown by local governments to assist refugees was likely fostered by the lack of legal basis and guidance on how to handle refugees who came ashore. The lack of a legal basis also made it challenging for government agencies to coordinate. Without a proper legal basis and funding,[7] bringing refugees ashore and housing them could be perceived as an administrative burden or even a legal mistake by local governments, especially if the refugees would be dependent on the local government's budget. PR 125 helps to erase this fear by dictating that all refugees must be brought ashore and housed. Moreover, Article 26 of PR 125 states that the shelters provided for refugees must have basic amenities such as clean water, food, drinks, clothing, health and hygiene services, and religious facilities. This is a guarantee of at least some humane treatment for refugees on Indonesian territory. PR 125 also specifies that refugees with special needs, including those who are ill, pregnant, disabled, children and older persons,

must be provided with the necessary special treatment, which includes off-site medical attention. A related circular that was issued by the Ministry of Culture and Education states that children with refugee status may attend local schools (Ministry of Education and Culture of Indonesia 2019: 1). This is considered progress, although, in practice, most refugee children do not attend Indonesian schools.

The element of responsibility embedded into PR 125 is also evidenced by improvements to the treatment of refugees by the Indonesian government. Before PR 125 enabled asylum seekers and refugees to possess a legal status and an ID, they were considered and treated as illegal immigrants. However, this discourse is persuasive and has become ingrained in Indonesia's public consciousness. Even after PR 125 was made official, incidents involving refugees being treated as illegal migrants have continued, and some refugees have even been tried in court (Sadjad 2021). Refugees were, and some still are, housed in immigration detention centres. The UNHCR Indonesia's monthly statistical report from February 2022 demonstrates that there were still thirteen people who were registered with the UNHCR in immigration detention (UNHCR Indonesia 2022). In the detention centres, refugees are confined alongside other migrants, including people who have overstayed their visas and foreign prisoners awaiting deportation (Brown and Missbach 2017: 12; UNHCR Indonesia 2022). As Indonesia is a partner to UNHCR's Beyond Detention campaign (2014–19), which seeks to end the detention of asylum seekers and refugees, the state has made an effort to enact these goals (UNHCR 2019).

PR 125 emphasizes the responsibility that the Indonesian government has to assist refugees by formalizing the processes that ensures all refugees are placed in special shelters (named *penampungan*) for refugees in the subnational (provincial) level. The responsibility element is evidenced in Article 26(2) and (5), which states that shelters and community houses must be located close to medical and religious facilities. PR 125 tasked location governments and mayors with choosing the locations for refugee shelters. Shelters and community houses are preferable for housing refugees, as opposed to detention centres that operate like prisons. In shelters and community houses, refugees are allowed to leave for the day and are given special IDs that declare their refugee status. However, many shelters and community houses, despite being alternatives to detention facilities, also similarly restrict refugees, particularly regarding when the refugees can leave the facilities, where they may go and for how long (Brown and Missbach 2017; Missbach 2021).

The responsibility element is also evident in PR 125's portrayal of the Indonesian government as the stronger 'humanitarian protector' and 'helper' to the 'powerless and passive refugees' (Sadjad 2021: 460–63). PR 125 describes refugees as those who 'call for help' when stranded at

sea (Article 6) and therefore should 'obey' the government (Article 32). Sadjad (2020: 2) argues that although PR 125 is considered progressive in Indonesia's approach to its humanitarian responsibility as it acknowledges the existence and needs of refugees, it fails to provide meaningful protection for them. This lack of meaningful protection may originate in PR 125's overarching perspective: as PR 125 treats security issues as being of the highest concern, refugees are framed as a security threat to Indonesian society. The issue of sovereignty was prominent in the formulation of PR 125, resulting in this partial conflict about the level of responsibility owed. In the next Part, we will further elaborate on the sovereignty elements of PR 125 and consider the extent to which these elements hinder the humanitarian responsibility that appears to exist in PR 125.

Sovereignty Elements in PR 125

Despite signalling a move towards greater protection for refugees, PR 125 is still far from ideal or even adequate. Although there have been numerous legal improvements to the protection of refugees in Indonesia, there is still much work to be done by the Indonesian government to improve the protection regime.

It was clear, even during the drafting of PR 125, that the Indonesian government was not prioritizing the protection of refugees. In 2015, when the Rohingya crisis emerged, the lack of a legal framework on refugee protection made the Indonesian government's attempt to assist refugees problematic as it caused tension between the security forces, immigration officers and local governments. Although the drafting of PR 125 had been in process for years, the institutional problem caused by the Rohingya crisis was further evidence of the need for an improved legal framework. Even during the 'socialization and internalization' stage of PR 125's development, when it was presented to different agencies, it was made clear that PR 125 was devised as a means to address the lack of legal certainties and coordination between governmental agencies in dealing with refugees, rather than to expand the protection regime in Indonesia (Riau Provincial Government 2016; Surya, 19 June 2016). This is a proof that, although PR 125 is indicative of the Indonesian government's willingness to embrace their humanitarian responsibility, its formulation was based on the principle of sovereignty.

The sovereignty elements of PR 125 are apparent in the specific emphasis on the importance of maintaining the negative and fearful sentiments about refugees held by local populations in the communities where refugees are hosted. To achieve this, the freedom of refugees is limited. In Article 32, PR 125 explicitly asks the local government who administers shelters and community houses to keep the refugees within these spaces to protect

the local populations' feelings of security. Once again, PR 125 maintains its commitment to sovereignty as it prioritizes order, security and the stability of Indonesian society, and enacts these aims by reducing potential conflict with local populations by limiting the freedom and mobility of refugees.

Sovereignty is also apparent in the implementation of PR 125, as refugees are still regarded as a security issue rather than a humanitarian concern. This is evidenced by the agents who are charged with managing refugees. The primary state agents responsible for this task are immigration officers who lack the training to implement PR 125 with respect for the human rights and the humanitarian needs of refugees. Although the IOM has provided these officers with human rights training, it is still evident that the main concern of PR 125 is immigration, not protection. The main task of immigration officers is handling immigrants and violations of immigration law. According to Law No. 6, the Directorate General of Immigration is charged with upholding the law and national security. The agency was not designed to handle humanitarian matters; agents are trained to handle illegal immigrants, not refugees, and tend to see refugees in the same light as their usual charges (Suastha 2018; Utami 2019). This perspective also affects the agents who manage community houses. In line with their framing by PR 125, community houses and shelters are perceived by state agents as a tool for monitoring refugees to prevent security problems or turmoil among local populations, rather than as places that provide protection. In the community houses in Pekanbaru, Riau and Makassar, refugees have a curfew and are not allowed to be out after 8:00 pm (Erlinda 2021; Missbach 2021; Shalihah and Nur 2021).

Another key problem is the lack of political will and funding in the implementation of PR 125 and the creation of related regulations. PR 125 (and its subsequent implementation) sees refugees as a potential financial and political burden rather than as people in need of humanitarian protection. PR 125 reads as almost hesitant to have a strong stance on how refugees should be handled. The bulk of the responsibility is given to local government, but no special funding is allocated for that purpose (Suyatna et al. 2021). There is also no clear mechanism to deal with or sanctions against local governments that refuse to act as PR 125 dictates; however, one possibility is the Indonesian Constitution, under which the President has the power to impose sanctions on local governments and remove mayors and regents (Suyatna et al. 2021: 478; Law No. 23 of 2014 on Regional Government: Articles 79 and 91). In practice, it is unlikely that the President would do so and there is no documented instance of such a sanction ever being imposed. In fact, quite the opposite has occurred in practice: in 2018, the district government of Tangerang used local immigration law to override PR 125. In essence, the compliance of local governments with PR 125 and thus refugee protection depends on their willingness to make the effort to establish community houses for the refugees.

The lack of commitment to funding refugee protection is even more apparent in both the text of PR 125 and its implementation (see Kneebone, Missbach and Jones 2021: 448). PR 125 states that the funding for refugee protection activities will be provided by the Indonesian government and international organizations; however, it is implicit in PR 125 that international organizations will provide the bulk of the funding. In Article 26, PR 125 states that international organizations will satisfy the basic needs of refugees, including clean water, food, clothing, hygiene, medical facilities and religious services. Additionally, local governments can assist international organizations by providing these services and goods in community houses. There is no clear delineation between the services and goods that must be funded by the Indonesian government and those funded by others. As of 2020, there has never been special funding allocated to this refugee protection in the national budget (*Anggaran Pendapatan dan Belanja Negara*), despite PR 125 having been effective for at least three years (see Suyatna et al. 2021). That the protection of refugees is not a priority for the Indonesian government became obvious when the IOM's budget for providing living assistance to refugees in Indonesia was cut due to a reduction in Australian funding to the IOM. Without specially allocated funding from the government, the IOM's budget cuts meant that the Indonesian government limited its support for refugees found in the Indonesian sea territory; however, this reduction of support did not apply to refugees who came independently or legally to Indonesia, in accordance with a circular written by the Indonesian Directorate General of Immigration (Regulation of Director General of Immigration No. IMI-0352.GR.02.07 of 2016 on Handling Illegal Immigrants Who Claim to be Asylum Seekers or Refugees).

As the task of designating and preparing community houses is given to local governments, it seems implicit that some funding for refugees' amenities must be included in local government budgets. However, this is no simple matter. Local heads of government in Indonesia are elected through a popular vote and, as a result, tend to allocate their funding with re-election in mind. Therefore, allocating funding to refugees who are not citizens and cannot vote for local politicians would be politically nonsensical for local government leaders. In this context, funding commitments from local governments are, at best, precarious.

Additionally, the Indonesian government is hesitant to put what it sees as an 'unnecessary burden' on Indonesia's budget. According to a circular issued by the General Secretary of the Ministry of Education and Culture, Circular Letter No 75253/A/A4/HK/2019, although refugee children are allowed to attend local schools, this is only permitted so long as their attendance does not place a financial burden on local governments. A related circular, issued by the Directorate General for Immigration, which responds to the aforementioned circular, states that the Head of Detention Centres

may provide a letter of recommendation for a refugee child, so long as their school attendance will not create a financial burden on the local government to provide, among other necessities, tuition fees, transportation, school supplies and other educational needs (Ministry of Law and Human Rights of Indonesia 2019).[8] A 2019 study conducted in Jakarta and Semarang showed that refugee children have been admitted to formal schools but have done so with funding from the IOM (Asti et al. 2019; SUAKA Indonesia 2014). There have not been any documented reports of refugee children attending formal schools in reliance on government funding. Again, although the government may seem to have expanded its protection regime, it only does so where the political and financial cost is minimal. In this regard, the humanitarian responsibility aspect of PR 125 only covers such minimal issues.

Transformation of the Sovereignty Concept

This chapter argues that the juxtaposition of the sovereignty and responsibility elements in PR 125 is the result of a transformation of the Indonesian government's understanding of the concept of sovereignty rather than being indicative of a reduction in sovereignty. It was not until Indonesia's incompetence and lack of legal framework was highlighted in the aftermath of the 2015 Andaman Sea Crisis that there was sufficient pressure to begin creating PR 125. The lack of a legal framework caused tension between the various Indonesian agencies that deal with refugees. Therefore, although PR 125 does signal a move towards an expanded refugee protection regime, it also must not be understood as a reduction of state sovereignty just because it was arguably born out of a political motivation rather than a humanitarian concern. There is no evidence to suggest that the Indonesian government is relenting in its belief that the state's sovereignty is remains supreme. If anything, PR 125 actually originated in the fear that the Andaman Sea refugee crisis would corrode both Indonesian external sovereignty, through the international community perceiving the Indonesian government as callous and inhumane due to its 'pushback' policy, and internal sovereignty, through local players seeing the government as 'weak' and 'indecisive' due to the apparent lack of coordination between agencies and between the local and central governments.

PR 125 was thus created to maintain external and internal sovereignty. In Indonesia's refugee protection responses, internal sovereignty was preserved and asserted through maintaining the image of a strong and coordinated government. This was threatened by the Andaman Sea Crisis, which highlighted the lack of clear legal frameworks and coordination between different governmental agencies and different levels of government. Representatives of the Ministry of Law and Human Rights have repeatedly

stated that these negatives perceptions were an influential factor in the creation of PR 125 (*Hukum Online*, 10 May 2017). Internally, however, the need to present the Indonesian government as strong means that the government is still reluctant to make refugees its top priority, as the public views refugees negatively. According to a 2016 survey published by Amnesty International, Indonesia is among the least-welcoming countries for refugees (Amnesty International 2016). Media portrayals of refugees in Europe and how they have created social, security and economic problems for local communities may have had an effect on Indonesian citizens, further deepening their aversion to accepting refugees and expanding the role of the state – and its budget. Externally, Indonesia also feels pressured to adhere more to international norms and present itself as a 'good international citizen'. Simply 'turning boats back' is no longer a politically sustainable option, particularly when considering the international backlash that the Indonesian government received, especially in 2015 and 2021, when it turned back the boats of Rohingya refugees before later allowing them to come ashore.[9] We argue that PR 125 is a compromise that the Indonesian government was willing to make to ensure that it has a presentable image internationally, without committing too much and appearing as though it is 'weak' and succumbing to foreign pressure. Despite Indonesia's commitments made at the Global Refugee Forum in 2019, implementation of these promises is yet to be seen.[10] The aforementioned elements of PR 125 incorporate parts of the international refugee protection regime while also ensuring that refugees do not become a financial and political burden for the state.

However, it must be noted that viewing PR 125 as simply a political compromise potentially misses the point. It is a compromise, but not between political control and the responsibility to protect; instead, the compromise is between maintaining a strong image domestically and internationally. In its very essence, PR 125 is still very much about political control. Ever since Independence, the Indonesian government's prevailing narrative has been about sovereignty. This recent change is about how the concept of sovereignty is understood. This aligns with Reus-Smit's (2001) theory of sovereignty being attached to the perceived obligations of the state. Tracing Indonesia's history of human rights protection makes clear that the dominance of sovereignty, albeit in different forms, has been present at all times. In its early years, during the era of Sukarno's rule, the Indonesian enactment of sovereignty mostly involved resisting Western influence. Refugee protection was introduced within the framework of solidarity between post-colonial states and defiance against colonial powers, demonstrated by the instance when the status of political refugee was given to an Algerian person who was wanted by a colonial government. Although there were signs that Indonesia might expand its refugee protection sphere, as signalled by the creation of Law No. 37, the focus shifted in later years. In the mid-2010s,

this concept of sovereignty was challenged by Indonesia's inability to provide legal certainty for its governmental agents in dealing with refugees, demonstrated by the confusion about responsibility division between different ministries, and between the local and central governments. Arguably, this uncertainty became one of the driving factors behind the creation of PR 125, although by no means should this discount the relentless work done by various human rights actors to ensure that Indonesia is moving in the right direction in its approach to refugee protection.

The history of PR 125, and particularly its basis in the logic of sovereignty, creates uncertainty about the future of refugee protection in Indonesia. First, it is likely that the road towards an ideal protection regime and the ratification of the 1951 Refugee Convention and its 1967 Refugee Protocol will be longer than anticipated, arguably due to the lack of public support. Since the logic of sovereignty is still the most popular theory adopted by the Indonesian government and the Indonesian population, the expansion of the Indonesian protection regime will not be done at the expense of the state's sovereignty. Any move towards greater protection must either support the state's sovereignty or, at the very least, not be in direct opposition to it. Policies that may be perceived as hampering the state's ability to provide for its own citizens are too politically costly. Second, and less bleakly, protection is still possible when the prevailing logic is that of sovereignty. By conjoining the state's obligations and the protection of human rights, it is possible to create a protection sphere, even when the logic of sovereignty is the prevailing viewpoint held by the authorities. To some degree, this aligns with Atin Prabandari and Yunizar Adiputera's (2019) theory of alternative pathways to refugee protection. Third, future discourse on the expansion of the refugee protection regime in Indonesia cannot rely on the logic of protection alone. To make a meaningful impact, the logic of sovereignty must also be incorporated into the discourse, especially in terms of considering how Indonesia can 'renegotiate' its external sovereignty to maintain its image of being a 'good' country. However this is achieved, providing protection for refugees must be understood as an inherent obligation of the state and expanding protection must be seen as enforcing the state's sovereignty rather than corroding it.

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Notes

1. For a discussion of the AALCC principles, see Chapter 1 in this book.
2. The ASEAN Way is a set of principles concerning the behaviour of ASEAN states towards one another. The ASEAN Way places significant emphasis on respecting the sovereignty of others through the principle of noninterference. In this context, member states publicly questioning other member states' commitments to human rights, let alone discussing their violations of those rights, is highly discouraged (Acharya 1997: 328; ASEAN 2007: Article 2(2); Suzuki 2019: 171).
3. For further discussion, see the Conclusion of this book.
4. However, in practice, local governments have been protesting against the responsibility of becoming hosts for refugees on the basis of limited funding and the absence of clear policies, as well as concerns about potential conflicts between refugees and the Indonesian locals (Missbach et al. 2018, 16; Suyatna et al. 2021: 473).
5. There has been at least one incident where the local government of Tangerang used local immigration law to override PR 125 in an attempt to detain two Afghan asylum seekers (see Muntarbhorn 2021: 435).
6. The refugees were eventually rescued by a warship that belonged to the Indonesian Army.
7. There has been no documented, dedicated government funding for refugees in the Indonesian national budget.
8. See also the Circular Letter issued by General Secretary of the Ministry of Education and Culture on 12 May 2022, which clarifies that refugee children can go to school if they are sponsored (Circular Letter No 30546/A/A5/HK.01.00/2022).
9. See, for example, international media opinions on the Indonesian government's treatment of the Rohingya (*Al Jazeera*, 12 May 2015; *Al Jazeera*, 28 December 2021; *Asia Sentinel*, 19 May 2015).
10. One of the 'commitments' that was presented at the Global Refugee Forum was access to education for refugee children. However, as has already been established in this chapter, there has been no financial or material support given

to improve access to education and, to date, there have been no documented cases of refugee children attending public schools in Indonesia (see Permanent Mission of the Republic of Indonesia to the United Nations 2019).

Editors' note: at the Global Refugee Forum 2023, Yayasan Dompet Dhuafa, an Islamic philanthropic institution, pledged to build a learning centre for refugee empowerment in Indonesia to fulfil this pledge. Further the United Nations Country Team (UNCT) in Indonesia pledged to continuously support the government's previous pledges in the areas of: refugees' health rights and access to health services; access to primary and secondary education for refugee children; and inclusion of refugees in national policies and postsecondary training and educational programmes.

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