Government responsibility in the settlement of disaster observed from the aspect of human rights

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Abstract. The purpose of this research is to study government responsibility in protecting the people from the impact of disaster in guarantee of fulfilling human rights to every person to live and secure performing his/her activity. The method of research is legal normative. The analysis on the primary and secondary legal materials are conducted comparatively and systematically and the result are explained descriptively and systematically. The result of the research indicates that the urgency of establishing legislation regulations in the settlement of disaster is focused on the disaster settlement such as; emergency action, rehabilitation, reconstruction in case there is natural, unnatural and social disaster in order to provide legal certainty and justice to the victims of disaster. Law enforcement is necessary to impose measures on the parties in abusing peoples confidence to help me victims of natural, unnatural and social disaster. Other problem that arouse in the settlement of disaster is that there is no effective coordination among the concerned government instances, resulting in the emergence of problems at the field concerning the competence of the instances, where as preparation in encountering disaster needs good planning so that the performance will be running well. As conclusion, government responsibility in the settlement of disaster, observed from the aspect of human rights, is performed through determination of development policy potential for the emergence of disaster, activity of disaster prevention, emergency action, and rehabilitation to prevent matters that may threatening and disturbing the life and the living as fulfillment of the rights to live freely from fear and anxiety as result of disaster threat, cause by natural factor, unnatural factor as well as human beings resulting in the death of human life, environmental damages, loss possession and psychological impact.

1. Background
In the Explanation of Law Number 24 Year 2007 on Disaster Management, described in part I. General, Alenia IV The Preamble of the Constitution of the Republic of Indonesia Year 1945 mandated that the Government of the Unitary State of the Republic of Indonesia to protect the entire nation and all the blood of Indonesia, promote the common welfare, educate the nation and participate in the implementation of world order based on freedom, eternal peace and social justice.

As the implementation of the mandate is implemented national development which aims to create a just and prosperous society who always pay attention to the right to livelihood and protection for every citizen within the framework of the Unitary State of the Republic of Indonesia. The Unitary State of the Republic of Indonesia has a large area and is located on the equator in a cross position between two continents and two oceans with natural conditions that have various advantages, but on the other hand
its position is in an area with geographical, geological, hydrological and demographic conditions that are vulnerable against the occurrence of disasters with a high enough frequency, so that requires a systematic, integrated, and coordinated.

Potential causes of disasters in the territory of the unitary state of Indonesia can be grouped into 3 (three) types of disasters, namely natural disasters, non-natural disasters, and social disasters. Natural disasters include earthquakes due to nature, volcanic eruptions, hurricanes, landslides, drought, forest/land fires due to natural factors, plant pests, epidemics, extraordinary events, and the occurrence of space / celestial bodies.

Non-natural disasters such as forest/landfires caused by humans, transportation accidents, construction/technology failures, industrial impacts, nuclear explosions, environmental pollution and activities, Social disasters include social unrest and social conflicts within the community. Disaster management is one part of the national development that is a series of disaster management activities before, during and after the disaster. So far, there are still weaknesses in the implementation of disaster management and related to the legal basis, because there is no law that specifically handles disaster.

Given that every person has been guaranteed by Law Number 39 Year 1999 on Human Rights to have a clean and healthy environment, in the perspective of human rights all forms of the above acts are human rights violations. Humans must live and live in a proper environment so that their health can be guaranteed to maintain survival.

Pancasila as the basis of the state contains the idea that, humans are created by God Almighty with two aspects, namely aspects of Individuality (person) and socialitas (social). Therefore, the freedom of every person is limited by the rights of others. This means that everyone carries the obligation to recognize and respect the rights of others.

This obligation also applies to any organization at any level, especially the state and government. Thus, the state and government are responsible for respecting, protecting, fulfilling and ensuring the human rights of every citizen and the population without discrimination.

In the Elucidation of Law of the Republic of Indonesia Number 24 Year 2007 on Disaster Management, it is explained that looking at the things mentioned above and in order to provide a strong legal basis for the implementation of disaster management, drafted the Law on Disaster Management which in principle set the stage of disaster including pre-disaster, during emergency and post-disaster response.

The content of this law contains the following key provisions:

1. The implementation of disaster management is the responsibility and authority of the Government and regional government, which is implemented in a planned, integrated, coordinated, and comprehensive manner.
2. Implementation of disaster management in the emergency response phase is carried out entirely by the National Disaster Management Agency and the Regional Disaster Management Agency (Badan Penanggulangan Bencana). The disaster management agency consists of the steering elements and the implementing elements. National Disaster Management Agency and Regional Disaster Management Agency has duties and functions, among others, coordinating the implementation of disaster management in a planned and integrated manner in accordance with its authority.
3. Implementation of disaster management is carried out with due regard to the rights of the community which among others receive basic needs fulfillment, social protection, education and skills in disaster management, participate in decision making.
4. Disaster management activities are carried out by giving wide opportunities to international business institutions and entrepreneurs.
5. Disaster management is carried out at the pre-disaster stage, during emergency response, and post disaster, because each stage has different confectionary characteristics.
6. At the time of emergency response, disaster management activities in addition to the funds supported by the State Revenue and Expenditure Budget and the Regional Revenue and Expenditure Budget, are also provided with ready-to-use funds with responsibility through a special mechanism.
Monitoring of all disaster management activities is carried out by the government, local government, and community at every stage of the disaster, in order to avoid deviations in the use of disaster management funds.

To ensure compliance with this law and at the same time to provide deterrent effect to the parties, either due to negligence or because of deliberate causing the occurrence of disasters that cause losses, both to property and death of people, inhibits the ease of access in disaster prevention activities, and abuse the management of disaster relief resources shall be subject to criminal sanctions, both imprisonment and fine, by applying minimum and maximum penalties.

Another problem that arises in disaster management is that there is no effective coordination between related government agencies, thus causing problems in the field regarding the authority of each agency, whereas the preparedness in the face of disaster requires good planning to run smoothly. In the implementation of disaster management, readiness of legislation, institutional capacity, adequate facilities and infrastructure, so that problems that occur in the field as soon as possible can be anticipated so as not to cause disruption and obstacles in handling victims of natural disasters.

2. Problem Formulation
   - What is the responsibility of the government in the handling of disaster mitigation in terms of human rights aspect?
   - What is the oversight mechanism that needs to be implemented by the government as an effort to prevent the occurrence of disasters against vulnerable community groups?

2. Results of Research And Discussion

2.1 The Implementation of Government Responsibilities and Authorities.

In Law Number 24 Year 2007 on Disaster Management stated that: "Recovery is a series of activities to restore the condition of affected communities and environment by re-functioning institutions, infrastructure and facilities by doing rehabilitation efforts". Paragraph (16) states that: "Disaster prevention is a series of activities undertaken to reduce or eliminate disaster risks, both through disaster reduction and the vulnerability of disaster-prone parties". Article 1 paragraph (9) states that militarization is a series of efforts to reduce disaster risk, both through physical development and awareness and enhancement of capacity to face disaster threats.

Human rights must be understood as a mandate, determination and opportunity to uphold humanity itself and not just as a right to be guaranteed. The experience of the New Order became a valuable lesson for nation and state practitioners in Indonesia. Perhaps it is premature to conclude human rights abuses, other disintegrations which are the implications of a state-of-the-art constitutionality of power rather than law. Reality to the political intervention of power can not be denied has destroyed the legal values. Reality to the political intervention of power can not be denied has destroyed the legal values.

The first responsibility requires the state, in particular its organs to do nothing that violates the fundamental rights and freedoms of the individual, such as dissolving a peaceful community meeting, while the second responsibility requires the state to take the necessary measures to protect the rights and freedom of citizenship within its territory.

For example, make laws that provide protection for the rights and freedoms of the victims of disaster. In the third form of responsibility, the state is required to take what steps need to guarantee the fulfillment of the basic needs of its citizens (such as the right to health care or a decent standard of living). In Act No. 24 of 2007 on Disaster Mitigation Article 1 Paragraph (17) states that: "Disaster risk is the potential loss caused by a disaster in a region and a certain period of time can be death, injury, illness, threatened soul, loss of feeling safe, displaced, damaged or lost property, and disruption of community activities. In Act Number 24 of 2007 on Disaster Management, stated in Article 1 paragraph: (18) Disaster emergency assistance is an effort to provide assistance to meet basic needs in times of emergency.

(19) The status of a state of emergency is a state set by the Government for a period of time on the
basis of the recommendation of the Agency assigned to tackle the disaster.

(20) Refugees are persons or groups of people forced or forced out of their homes for an uncertain period as a result of adverse events.

(21) Everyone is an individual, a group of persons, and/or a legal entity.

(22) Disaster victims are persons or groups who suffer or die from disasters.

From the above description it is clear that the state of Indonesia is responsible for protecting the entire Indonesian nation and the whole of Indonesia’s blood sphere in order to provide protection for the disaster, in order to realize the common prosperity based on Pancasila and the 1945 Constitution. Indonesia is also located at the meeting of two tectonic plates of the world and is influenced by 3 movements; the movement of the Sundanese system in the West; Movement of peripheral systems in East Asia and the Australian Sirkum movement. Such conditions make 83 percent of Indonesia’s area vulnerable to disaster. The condition is more alarming with the fact that 98 percent of Indonesian people are in a position vulnerable to disaster threats [1].

The already dangerous nature and the vulnerable people are not yet fully able to alert the government of its obligation to provide protection to its people. The proof until now the government does not have an integrative national disaster prone map. Even if there is a disaster-prone map it is only owned sectorally by a particular department or agency. More ironic maps of disaster-prone scattered diverse institutions that have not been well socialized to the public.

As a result residents do not know there is a serious threat of natural disasters around his residence. In addition to less able to provide socialization of natural disaster threats the government also looks always less ready when helping people affected by natural disasters. Coordination the provision of assistance during the emergency response period, rehabilitation and reconstruction period has always drawn criticism from all walks of life as it is slow, bureaucratic and in many cases misappropriation of aid.

In Chapter III of Law Number 24 Year 2007 on Disaster Management is regulated on the responsibility and authority of the government in tackling disasters. Governments and local governments are responsible for disaster management. Article 6 states that: the responsibility of the government in the implementation of disaster management includes:

- a) Disaster risk reduction and disaster risk reduction guidance with development programs;
- b) Community protection from disaster impacts;
- c) Guarantee the fulfillment of the rights of affected communities and refugees fairly and in accordance with minimum service standards;
- d) Recovery of the conditions of disaster impacts;
- e) The allocation of the disaster management budget within an adequate budget of State Revenue and Expenditure;
- f) Maintaining authentic and credible archives/documents from disaster threats and impacts.
- g) Allocation of disaster management budget in the form of ready-made funds; and

Article 7 Paragraph (1) of Law Number 24 Year 2007 on Disaster Management states that: the authority of the Government in the implementation of disaster management includes:

- a) Determination of disaster management policies in line with national development policies;
- b) Preparation of development planning which includes elements of disaster management policy;
- c) Determination of national and regional disaster status and level;
- d) Determination of cooperation policy in disaster management with other countries, agencies, or other international parties;
- e) Formulation of policies on the use of technology with the potential to be a source of threat or disaster hazard.

3.2 Government Supervisory Mechanism in Tackling Disaster.

3.2.1 Disaster Management Implementation. The earthquake that occurred in Yogyakarta, Klaten and surrounding areas on May 27, 2006 at 5:50 pm for 57 seconds and an unexpected magnitude 6.3
magnitude earthquake destroyed thousands and killed at least 5,782 people [2]. In Chapter YII, Law Number 24 Year 2007 on Disaster Management states that: Disaster Management Implementation is carried out based on 4 (four) aspects including:

a) Social, economic, and cultural societies;
b) Environmental sustainability;
c) Utilization and effectiveness; and
d) Scope of area.

Article 32 of Law Number 24 Year 2007 concerning Disaster Management, stated that:
(1) In the implementation of disaster relief, the Government may:
   a) To establish disaster prone areas to be restricted areas for settlements; and / or
   b) Repeal or reduce some or all of the ownership rights of any person or thing in accordance with the Laws and Regulations.
(2) Any person whose ownership rights are revoked or deducted as referred to in paragraph (1) letter b shall be entitled to compensation in accordance with the Laws and Regulations.

Indonesia is an archipelago where the cross between two Pacific Ocean and Indian Ocean and two geological, geophysical and oceanographic plates of Asia and Australia, and the middle position which is crossed by the main axis of the earth equator but has the potential of resources natural minerals, natural gas, marine and terrestrial biota also contain the threat of natural disasters such as earthquakes, volcanoes, tsunami waves, and other ground movements.

Chapter VIII deals with the Funding and Management of Disaster Relief, Part One Funding, Article 60 states that:
(1) Disaster management funds shall be a joint responsibility between the Government and the regional government.

3.2.2 Funding and Management of Disaster Assistance. A devastating disaster throughout the history of humanity in the 2004 decade that hit the Southeast Asia region, South Asia, and its surrounding grooves, stated that world leaders help and seek efforts to anticipate future events. The joint agreement on the establishment of a tsunami hazard warning system in the Indian Ocean has dominated meetings leaders of donor countries and countries affected by disasters [3] This shows the concern and efforts of countries to anticipate disaster events.

The government seems to have not seriously realized the reconstruction of destroyed school buildings, such as the simple expectations of school children. The government should provide emergency response assistance in the education sector. Ministry of National Education through the Ministry of National Education BambangSudibyo had given assistance in the field of education as much as 25 billion for the Bantul region and 30 billion for the Klaten region, while for SD, Middle School and equivalent repairs damaged by the earthquake, the Central Java Education and Culture Office paid at least Rp.16,36 billion.

Such a large amount of funds, according to Deputy Head of P and K Services, Drs.Gatot Bambang Hastowo, comes from the Klaten Regency Special Allocation Fund (DAK) of Rp.4.18 billion, Rp.9.6 billion in deconcentration funds, Klaten level II APBD Rp.1.98 billion, the Level I APBD is Rp. 600 as well, while the assistance of the Central Java Governor and Minister of National Education is still in the data verification stage [2].

One aspect of humanity that is very basic and basic, namely the right to life and the right to carry on life, because these rights are given directly by God to every human being. Therefore, any attempt to seize lives, including other acts of violence, is essentially a gross violation of human rights if carried out arbitrarily and without legal justification and applicable [4]

Chapter VIII is regulated regarding Funding and Management of Disaster Assistance, Part One of Funding, Article 60 states that:
(1) Disaster management funds are a joint responsibility between the Government and the regional government.
(2) The government and regional governments encourage community participation in the provision of funds sourced from the community.

Article 61 states that:

(1) The Government and regional governments allocate adequate disaster management budget as referred to in Article 6 letter e, letter f and Article 8 letter d.

(2) The use of an adequate disaster relief budget as referred to in paragraph (1) shall be carried out by the Government, regional governments, the National Disaster Management Agency and the Regional Disaster Management Agency in accordance with their main tasks and functions.

3.2.3. Disaster Management Supervision. The legal state is a dimension of a democratic state and contains the substance of human rights, if not feared loses its essence and tends to be a tool of authority to justify the people, as well as an instrument to justify government policies that actually violate human rights [5]. The use of errors as a basis for displacement is not mandatory under an empirical, but normative law [6]. Consequently, as if there is no standard in determining criminal wrongdoing and accountability. This has an impact on the absence of a uniform pattern determining this in any court decision [7].

In Article 71 it is stated that:

(1) The government and regional governments carry out oversight of all stages of disaster management.

(2) Supervision as referred to in paragraph (1) includes:

a) Source of disaster threat or danger;

b) Development policies that have the potential to cause disasters;

c) exploitation activities that have the potential to cause disasters;

d) Utilization of domestic goods, services, technology and engineering and design capabilities;

e) Environmental conservation activities;

f) Spatial planning;

g) Environmental management;

h) Reclamation activities; and

i) Financial management.

In Article 72 it is stated that:

(1) In carrying out supervision of reports on efforts to collect donations. The government and regional government can request a report on the results of collecting donations so that an audit is conducted.

(2) Based on the report as referred to in paragraph (1) the Government and the public may request an audit.

(3) If the results of the audit referred to in paragraph (2) are found to have deviated from the results of donations, the organizer of collecting donations will be subject to sanctions in accordance with the Laws and Regulations.

4. Conclusions and Recommendations

4.1 Conclusion.

a. The responsibility of the government in the implementation of disaster management in terms of human rights aspects, carried out through the establishment of development policies at risk of disasters, disaster prevention activities, emergency response, and rehabilitation to prevent things that can threaten and disrupt life and livelihood as the fulfillment of the right to live freely from fear and worry to carry out its activities due to the threat of disaster, whether by natural factors, nonalam or humans resulting in the occurrence of human casualties, environmental damage, property loss and psychological impact.

b. Supervision mechanisms that need to be implemented by the government as an effort to prevent the occurrence of disasters against vulnerable community groups include efforts to establish:
a) Source of threat or danger of disaster;
b) Potential disaster-generating development policies;
c) Exploitation activities that are potentially catastrophic
d) Utilization of goods, services, technology, as well as engineering and design abilities in the
country;
e) Environmental conservation activities;
f) Planning of spatial planning;
g) Environmental management;
h) Reclamation activities; and
i) Financial management.

4.2. Recommendations.
a. The responsibility of the government in the implementation of disaster management needs to be done
cross-sectorally or by related agencies with support from other parties such as non-governmental
organizations, NGOs, community organizations and all those concerned with the disaster victims, to
monitor, evaluate and report on the situation and conditions which are prone to disasters in various
regions, both natural disasters, nonalam, and social.
b. Monitoring mechanisms that need to be implemented in tackling disasters against vulnerable
community groups need to be supported by monitoring efforts on donation collection reports for
disasters. Governments and local governments and communities may request reports on the results
of donations to be audited. If an audit result is found to be a deviation of the use of the proceeds of
the donation, the donation collection organizers may be subject to sanctions in accordance with the
laws and regulations.

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