Acceleration for disasters: Evaluation of the disaster management act in Indonesia

Qurattu Ayuni¹ and Fitra Arsil¹

¹ Faculty of Law, Universitas Indonesia, Depok, 16424, Indonesia

Abstract. This paper discusses disaster law evaluation in Indonesia after enacting Law Number 24 of 2007 concerning Disaster Management (Disaster Management Act). Several issues, such as the affirmation of the central and regional government’s authority, the role of Disaster Management Agency, and the accountability of emergency funds, are noteworthy to reform the Disaster Management Act in Indonesia. The methodology is legal, library-based research focusing mainly on primary and secondary sources. This paper argues that the amendment to the Disaster Management Act's urgency is crucial to respond to some accelerations after a decade of the Disaster Management Act. Completing the Disaster Management Act is expected to be a comprehensive legal umbrella in guaranteeing citizens' constitutional rights and duty when a disaster is in Indonesia.

1. Introduction

Apprehension as a "Supermarket of Disasters" makes Indonesia one of the world's most dangerous countries [1]. This is due to Indonesia's archipelago's position in the "Pacific Ring of Fire," which caused Indonesia to become one of the world's most disaster-prone countries [2]. In the inter-continental plates meeting, Indonesia is often exposed to earthquakes and tsunamis due to being in the Pacific Circular and Alpide Trans-Asian earthquake [3].

Data from The National Disaster Management Agency (BNPB) shows that an average of 2,000 disasters occurred each year during the last ten years [4]. These disasters include floods, landslides, tornadoes, drought, earthquakes, volcanic eruptions, tsunamis, and forest fires. Losses due to disasters are also estimated at 30 trillion rupiah per year.
For more than a decade, Indonesia has used Law Number 24 of 2007 concerning Disaster Management (Disaster Management Act). This law becomes the main legal framework for the state’s role in providing constitutional protection and governance during disasters. The Disaster Management Act changed the paradigm of disaster management from an emphasis on emergency response aspects to all aspects of disaster management, including pre-disaster, emergency, and post-disaster response. Furthermore, it also expressly provides the concept of "disaster is everyone's concern," which includes awareness of the mainstreaming of disaster risk reduction in Indonesia [6].

In 2017, the Regional Representative Council (Dewan Perwakilan Daerah/DPD) proposed a Disaster Management Act revision. In this regard, improvements to the Disaster Management Act are considered a priority agenda in the 2014-2019 National Medium-Term Development Plan (RPJMN). In its academic paper, the DPD states that legal substance issues have not been regulated in the Disaster Management Act. Some legal matters, such as outdated regulations, not harmonious, overlap with other rules [4].

Another issue is legal inequality and affirming the central and regional governments' main tasks and functions in disaster coordination and management. The distribution of authority between the President, the Governor, and the Regent / Mayor in declaring a disaster emergency state is considered to have no clear standard. It also needs to be emphasized about the institutional aspects of BNPB and Regional Disaster Management Agency (BNPD), which are considered not optimal.

An addition issue is the use of emergency funds that have the potential to be misused. The DPD academic paper notes that there is a tendency for the Regional Government to establish an emergency alert status in their area without a detailed study. The emergency alert period can be carried out over a long period, and ready-to-use funds can continue to be used. In some disaster management cases, there are often lengthen of the emergency period because only to get access to funds rather than based on a study of community readiness to restore life towards everyday life [5].

2. Method
The method is legal, library-based research focusing mainly on primary and secondary sources. The legal materials used in this research are primary and secondary legal materials. The traditional materials consist of: 1) Primary legal materials whose contents have binding power to society to society, namely the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2012 Concerning Social Conflict Management, Presidential Regulation No. 8 of 2008, and Government Regulation No. 22 of 2008 concerning Funding and Management of Disaster Assistance; 2) Secondary legal materials, namely materials that provide information or matters relating to primary legal materials and their implementation. Secondary legal materials used in this study are the views of experts in literature books, journals, and articles that support the understanding of primary legal materials, assisted by information via the internet.
3. Results and discussion

3.1. Legal framework the disaster act

Indonesia's commitment to prioritizing disasters emerged after the 2004 Aceh tsunami, which gave birth to Law Number 24 of 2007 concerning Disaster Management. The Disaster Management Act regulates some rights and responsibilities of the government, the community, and the business community in disaster management efforts in an integrated, systematic, and coordinated manner. The Disaster Management Act provides the foundation for the National Disaster Management Agency (BNPB) and the Regional Disaster Management Agency (BNPD), which pointed as the leading sector in disaster management.

The Disaster Management Act classifies three disasters: natural disasters, non-natural disasters, and social disasters. First, natural disasters are disasters caused by events or a series of events caused by nature, such as earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides. Second, non-natural disasters are disasters caused by events or a series of non-natural events, including technical failures, modernization failures, epidemics, and disease outbreaks. Third, social disasters are disasters caused by events or a series of events caused by humans, including social conflicts between groups or between communities and terror [6].

There is criticism of the concept of disaster categories that exist in this 2007 Disaster Act. One of the proposals raised was to exclude social disasters from existing disaster categories. This is because Indonesia has arranged in more detail about social conflicts regulated in Law Number 7 of 2012 Concerning Social Conflict Management. The Social Conflict Act is considered to be more detailed in providing legal certainty in social disasters. Therefore the Disaster Management Act is expected to focus more on natural disasters and non-natural disasters.

Article 33 of the Disaster Management Act also emphasizes the three stages of disaster management: the pre-disaster stage, the emergency response stage, and the post-disaster stage. The concept of division of stages provides a new paradigm of disaster that initially only focused on emergencies. Kreps later renewed this classical thinking, who stated that preparedness is a critical foundation in emergency management [7].

![Figure 2. Disaster mitigation](image)

The pre-disaster stage is a condition where there is no disaster happening and/or potential for disaster. Indonesian geographic conditions that differ between regions require the government and the community to identify disaster threats at this pre-disaster stage. Fei He and Jun Zhuang argue that understanding the pre-disaster stage is essential in managing disaster risk [9]. One of the pre-disaster stage goals is to anticipate and predict problems that will arise and identify resolution [10].

It is explained in Article 35 of the Disaster Management Act that the pre-disaster stage includes; disaster management planning, disaster risk reduction, prevention, integration in development planning,
disaster risk analysis, implementation and enforcement of spatial plans, education, training, and technical standard requirements for disaster management. McEntire and Myers stressed the importance of governments and communities to identify potential disasters in their environment [11].

The Article 49 Disaster Management Act stated that the emergency response phase identifies the disaster site's extent, the number of victims, the damage to facilities and infrastructure, disruption to public service functions, and resource capabilities. Handling communities and refugees affected by disasters is carried out with data collection, placement in a safe location, and meeting basic needs. The post-disaster stage is meant by rehabilitation and reconstruction to restore the community to its normal condition. A critical element in the post-disaster stage is rebuilding shelter for refugees as part of community rehabilitation and reconstruction [12].

The Disaster Management Act also provides criminal penalties for every person and legal entity that carries out high-risk construction and risks causing disasters. Besides, Article 78 of the Disaster Management Act also provides legal threats of 4 to 20 years in prison for individuals who intentionally misuse disaster aid/relief. These sanctions may also be imposed on corporations with additional penalties for revoking business licenses and revoking the corporation's legal entity status, as stated in Article 79 Paragraph (2) Disaster Management Act.

3.2. Declaration state of disaster

There are no rigid standards to determine whether a disaster will be a national disaster and a regional disaster. Article 51 of the Disaster Management Act states:

"(1) Determination of disaster emergency status is carried out by the government under the scale of the disaster. (2) The determination, as referred to in paragraph (1) for the national scale, is carried out by the President, the Governor carries out the provincial scale, and the regent/mayor carries out the district/city scale."

The Disaster Management Act authorizes the President, governors, regents/mayors to declare a state of disaster emergency. Clarity regarding authority division is vital to determine the primary responsibility for coordination and leadership in disaster management [16]. Unfortunately, there is no adequate explanation regarding the minimum standard of disaster emergency. However, not all disasters have an element of emergency. Many disasters can be handled independently by certain regions, and there is no emergency element. Local governments tend to declare a disaster emergency that can weaken the community's resilience when dealing with disasters [17].

The granting of authority to declare a disaster is reserving a more complicated theoretical problem. This is since the President can only exercise the constitutional power to declare an emergency status. Article 12 of the 1945 Constitution states that the President can only declare a state of emergency. Whereas in the Disaster Act, the state of disaster can be delegated to governors and regents/mayors.

Based on Article 7 paragraph (2) Disaster Management Act, the determination of the status of national and regional disasters is based on indicators such as (a) the number of victims, (b) property loss, (c) damage to facilities and infrastructure, (d) the broad area of the area affected by the disaster and (e) socio-economic impact. However, it is not explained about the amount and scale of damage that can confirm the state of disaster nationally or locally.

The dilemma of declaring the state of disaster allows the governor and regent/mayor to declare the state of disaster freely. This is because there is no provision regarding the obligation to seek consideration or approval from the President in declaring a state of disaster. Whereas in a state of disaster condition, a legal regime is in place that allows a leader to carry out legal coverage in a constitutional manner.

In a disaster state, the local government can impose a curfew, limit human rights freedoms, and take over certain rights in the public interest [18]. If this condition is declared without a clear standard, the exception can potentially lead to new problems in disaster conditions. An evaluation of the regional
emergency status's determination shows a tendency for the local government to extend the disaster emergency period, allowing unlimited access to disaster emergency funds.

This paper proposes that it should be regulated in more detail regarding the procedure for establishing a state of disaster that requires approval from the President or local parliament. It is also necessary to initiate supervision from regional representative institutions to monitor and limit the emergency period's application within a certain period. The proposed addition of administrative procedures and requirements to provide legal certainty and constitutional protection in the rule of law in Indonesia.

3.3. The role of disaster management agency
Disaster Management Act emerges as a new institution as a leading sector in disaster management in Indonesia. The agency was named the National Disaster Management Agency (Badan Nasional Penanggulangan Bencana/BNPB) and the Regional Disaster Management Agency (Badan Penanggulangan Bencana Daerah/BPBD). It is explained in Article 10 of the Disaster Management Act that BNPB is a ministerial-level non-departmental government institution. BNPB is led by a head that is directly responsible to the President.

Specifically, the formation of BNPB was emphasized in Presidential Regulation No. 8/2008 concerning the National Disaster Management Agency. Besides, the BPBD was formed within the scope of the regional government. However, these two bodies do not have a strict command line. This is because the head of the BPBD is responsible to the head of local government, namely the Governor and the Regent/Mayor. However, good collaboration between multi-organizations will provide maximum results to respond to disasters [19].

Also, the Disaster Management Act's mandate to local governments to form BPBDs is not in line with the mandate of the Regional Government Act, which gives options to local governments to create regional apparatus organizations that have the potential to overlap with BPBD authority. In some areas, the function of disaster management is combined with agencies that are within the scope of the local government with two types, namely the merging of the disaster management function with the local service (the Jakarta Fire and Disaster Management Agency) and the implementation of the disaster management function by the local office (the Office Pekanbaru City Fire Department) [20].

Although considered a leading sector in disaster management, BNPB also often intersects with the National Search and Relief Agency (BASARNAS), a leading sector in the search and rescue of victims during emergency response. This has the potential to create overlapping responsibilities and commands in the field. So it takes clarity and clears Standard Operating Procedures when dealing with many related institutions, which are also leading sectors in a specific scope.

The House of Representatives (Dewan Perwakilan Rakyat/DPR) review board noted various coordination problems between BNPB and BPBD. In this case, the DPR Study highlights the administration problem that points to the head of the BPBD by the local government's secretary. This results in a suboptimal workload because the secretary has routine responsibilities in a particular local government's scope.

In its implementation, the tasks and functions of BPBD have not been optimally integrated at all stages in disaster management (pre-disaster, disaster response, and post-disaster). The role of the BPBD was only felt during the emergency response, but in the pre-disaster and post-disaster sectors, it was still not optimal. In the emergency response stage, which is an urgent situation, the use of disaster relief resources to meet disaster victims' needs must get easy access [21]. However, in its implementation, it is challenging to access buffer stock to meet disaster victims' needs during the emergency response due to different policies in each agency [22].

BNPB, which coordinates disaster management activities in a planned, integrated, and comprehensive manner, in its implementation, the BNPB function as a leading sector for disaster management, is not running optimally. The problem that often occurs is the overlap between the BNPB and BPBD if a disaster occurs, especially a strategic disaster that attracts many people because there is no permanent procedure for BNPB's relationship with the local BPBD [23].
3.4. *The use of emergency funds*

The Disaster Management Act specifically regulates funding and management of assistance in Chapter VIII. Furthermore, arrangements regarding funding and assistance management are also held in Government Regulation No. 22/2008 concerning Funding and Management of Disaster Assistance. Government Regulation for Disaster Relief Funding is further regulated in Regulation of the Minister of Finance Number 105/PMK.05/2013 concerning Disaster Management Budget Implementation Mechanisms. Funding for Disaster Management is intended for all stages or activities of a disaster, including funding during Pre-Disaster, Funding during Emergency Response, and Funding during Post-Disaster.

There are several problems in using emergency funds; namely, there is no minimum standard for providing emergency funds in each local government. Each local government is instructed to provide an adequate emergency fund, but the Disaster Management Act does not mention the amount or minimum percentage of the emergency fund.

The provision of emergency funds is also closely related to the income of each region. For disaster-prone areas, but do not have adequate regional income, emergency funds will probably receive a small allocation. Likewise, the opposite, in the regions that are not potentially catastrophic but have high regional income, the percentage of emergency funds has the potential not to be optimally absorbed. However, the earliest disaster management must be done at the local level [24]. Therefore it is essential to provide emergency funds in each region in Indonesia.

The absence of a minimum standard of emergency funds in a region with certain characteristics and potential disasters creates a gap that impacts on the protection of citizens against disasters. Regions with high potential for disaster but the low regional opinion should also be able to access more optimal emergency funds with a certain balance through National Expenditure Budget (APBN) funds.

Disaster management funding under the Presidential Decree of Disaster Relief Funding is a shared responsibility between the government and regional governments (budget sharing) allocated in the APBN and APBD and sourced from the community. Disaster management funds from the National Budget consist of disaster contingency funds, ready-made funds, and grant-funded social assistance funds [25]. Carmen and Rotz (1992) also claim that there are different uses in this category. In essence, every use of emergency funds must be clearly regulated to relieve the distressed rationale in disaster conditions.

Another problem found from the budget aspect is multiple interpretations of ready-made funds and unexpected expenditure funds when disasters occur. This emergency fund's preparation is one of the crucial factors in reducing disaster risk [26]. In many cases, BPBDs have difficulty in using ready-made funds when disasters occur. The allocation of funds related to disaster management has only focused on the emergency response stage and the lack of funds distribution at the pre-disaster stage. The distribution of funds in disaster management should not only be focused on the emergency response stage, but the local government must also allocate funds related to disaster risk reduction [27].

The question that arises and needs to be explained is the scope of income used using emergency funds. Pros and cons related to whether emergency funds can be accessed during pre-disaster or post-disaster arise to emphasize the importance of using the principle of proportionality in the use of emergency funds. The limited amount with the potential for disaster that cannot be predicted makes emergency funds use the precautionary principle.

Access to emergency funds, which tends to be accessible through extended periods of disaster emergency, can harm building community and local government independence. This is because accessing emergency funds can be provided without a clear maximum limit because of the disaster needs that are considered urgent.

4. Conclusion

This paper concludes that several changes to Law Number 24 of 2007 concerning Disaster Management are needed. An improved approach is required to provide a legal umbrella within the state administration's disaster conditions scope. One of the issues discussed in this paper is the President's
approval to declare a state of disaster by the regional head. Secondly, it was concluded that there needed to be a firmer explanation of the national disaster and local disaster criteria. A firmer explanation is required to provide regional governments legal certainty to determine each disaster's coordination and command center. Third, clarity is needed regarding the National Disaster Management Agency's coordinating function, the Regional Disaster Management Agency, and the National Search and Relief Agency (BASARNAS). This is due to several slices' existence in carrying out its functions in disaster management as a leading sector in each stage. Fourth, the need for minimum standards of regional and national emergency funds that are explicitly regulated in the law. To make sure that the local budget has a proportional amount as readiness for an emergency.

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