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**Legal Analysis of Human Rights Protection in
Times of Natural Disaster and Its
Implementation in Indonesia**

Natalia Yeti PUSPITA

Faculty of Law, Atma Jaya Catholic University of Indonesia
Asian Law Institute, National University of Singapore, Singapore

natalia.yeti@atmajaya.ac.id

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Asia Law Institute

c/o Faculty of Law,
National University of Singapore
Eu Tong Sen Building
469G Bukit Timah Road,
Singapore 259776
Tel: (65) 6516 7499
Fax: (65) 6779 0979
Website: <http://law.nus.edu.sg/asli>
Email: asli@nus.edu.sg

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LEGAL ANALYSIS OF HUMAN RIGHTS PROTECTION IN TIMES OF NATURAL DISASTER AND ITS IMPLEMENTATION IN INDONESIA

NATALIA YETI PUSPITA¹

ABSTRACT:

In the last decade, the occurrences of natural disasters in Indonesian territories have intensified. The latest big disaster reported was an earthquake of 7.6 on the Richter scale in West Sumatera which caused severe damage and resulted in the deaths of hundreds of people. The enactment of law based on human rights has not been prioritized in disaster management, even though in managing disasters an understanding of law in the context of human rights protection is crucial at every stage – ie, the pre-disaster phase, the emergency phase and the post-disaster phase. A lack of understanding of the significance of human rights may postpone the implementation of humanitarian aid programs and even threaten the survival of victims. Law is needed to protect the vulnerable by providing safeguards against the illegal adoption of orphaned children, the trafficking of women and children, violation of marginal groups and discrimination in humanitarian aid distribution. This paper will analyze human rights protection in times of natural disaster, focusing on its implementation in Indonesia.

I. INTRODUCTION

“The devastation is tremendous, and we can’t describe it adequately, temporarily they can receive assistance which was offered before them, yesterday eat rice with eggs, today eat an instant noodle, and tomorrow get clothes....”²

The events referred to above occurred during the earthquake and tsunami which hit Nanggro Aceh Darussalam on 26 December 2004, destroying large parts of Aceh. Aceh is one of territories in the Indonesian Archipelago which is particularly prone to natural disaster in a nation which is in general subject to many natural disasters. Indonesia, the largest archipelago state in the world, is located on the equator. It is positioned between the Indian and Pacific Oceans, and between Asia and Australia. Its location is of strategic significance, particularly in relation to biological diversity and natural resources, but its position in the Pacific ring of fire means that it is at constant risk from natural disasters such as earthquakes, tsunamis and volcanic eruptions.

Almost all territories in the Indonesian Archipelago except Kalimantan Island are disaster-prone. The Indonesian Board of Meteorology and Geophysics has studied both the large and small tectonic earthquakes which have affected the south and west of Indonesia, including Nusa Tenggara, Sumatera, Sulawesi, Maluku (Moluccas) Islands

¹ ASSISTANT PROFESSOR OF LAW, UNIVERSITY OF THE PHILIPPINES, COLLEGE OF LAW.

² P. Cahanar, *Bencana Gempa dan Tsunami* (Jakarta: Penerbit Buku Kompas, 2005) at 195.

and Papua.³ The explosion of Krakatau Mountain, which was followed by a tsunami in Sunda Strait on 27 August 1883, created history by becoming the biggest in the world. The earthquake and tsunami in Aceh on 26 December 2004 also proved that natural hazards are a big threat for the people of Indonesia. The earthquake, which measured 8.7 on the Richter scale, and the subsequent tsunami, caused the deaths of 150,000 people in West Aceh, the Nicobar Islands, and Andaman India.⁴

The Indonesian earthquake geologist, Dr. Dany Hilar Natawijaya, has predicted that tsunamis will continue to threaten Indonesia, especially Sumatera Island, due to the convergence of continents at the bottom of the sea.

Natural disasters can happen at any time, yet only once disaster actually strikes do the Indonesian authorities turn their minds to matters such as the provision of humanitarian aid through financial assistance, food aid, finding volunteers etc. And once a disaster ends, the attention of both the government and society tend to end with it.

The need to have in place proper legal measures is particularly acute in the post-disaster phase, when existing law is often inadequate to deal with the demands of a traumatized society, and at times even conflicts with the requirements on the ground. All persons should be assured that their human rights will be protected, and under the Millennium Development Goals (MDGs), all states must protect, respect, and fulfill those rights without discrimination, ensuring that in times of disaster persons are free from fear and want. In this respect, this paper poses two specific questions: (1) how is protection of human rights in times of natural disaster regulated; and (2) how are measures to protect human rights in times of natural disaster implemented in Indonesia?

II. HUMAN RIGHTS PROTECTION IN TIMES OF NATURAL DISASTERS

A. The View of Natural Disasters

1. The Definition of Natural Disasters

A “natural disaster” is the effect of a [natural hazard](#) (e.g. [flood](#), tornado, [volcano eruption](#), [earthquake](#), or [landslide](#)) on the environment, leading to financial, environmental and/or human losses.⁵ The resulting loss depends on both the capacity of the population to support or resist the disaster and their resilience in coping with it. This understanding is concentrated in the formulation: “disasters occur when hazards meet [vulnerability](#).”⁶ A natural hazard will hence never result in a natural disaster in areas without vulnerability, e.g. strong earthquakes in uninhabited areas. The term *natural* has consequently been disputed, because events do not become disasters without human involvement.⁷ On other hand, the United Nations Development Programme (UNDP) has stated that a “natural disaster” is a serious disruption of the functioning of a society, causing widespread human, material, or environmental losses which exceed the ability of an affected society to cope with using only its own

³ *Ibid.* at 35.

⁴ *Ibid.* at 5.

⁵ *Natural Disaster* online: Wikipedia http://en.wikipedia.org/wiki/Natural_disaster, [“*Natural Disaster*”].

⁶ *Ibid.*

⁷ *Ibid.*

resources.”⁸ “Natural disaster” also refers in more general terms to the consequences of events triggered by such natural hazards as earthquakes, volcanic eruptions, landslides, tsunamis, floods and drought.⁹

2. The Cause of Natural Disasters

There are many causes of natural disasters, which are sometimes viewed by traditional communities as divine punishment for human violation of community rules. Some see natural disasters as purely natural phenomena, nature’s system of checks and balances, designed to control the world’s population, while others attribute them to God’s will. However one looks at them, it is clear that natural events require human involvement to become natural disasters.

3. The Types of Natural Disasters

There are many types of natural disasters. Earthquakes occur when the Earth literally quakes, and we feel the vibrations.¹⁰ An earthquake is defined as the sudden, fast shaking of the earth, caused by the breaking and shifting of subterranean rock.¹¹ Extreme heat occurs when continents drift and ocean basins open and close, cutting off large regions from supplies of moisture, resulting in long-term desert conditions.¹² Therefore, extreme heat is defined as a heat wave which lasts for a prolonged period.¹³ Floods are caused by high rainfall intensity, often attributed to global warming. Hurricanes, typhoons and cyclones are severe tropical storms that form in the southern Atlantic Ocean, the Caribbean Sea, the Gulf of Mexico and in the eastern Pacific Ocean.¹⁴ A hurricane or typhoon is the only natural disaster that is given a human name. For example, Camille, Hugo, Iniki, Mitch, Pauline, etc. are large tropical cyclones. They are heat engines that convert the heat energy of the tropical ocean into winds and waves.¹⁵ Landslides, also known as mudslides or debris flow, occur in all U.S. states and territories.¹⁶ Thunderstorms produce lightning, with its immense potential for danger to humans, as well as tornadoes, strong winds, hail, wildfires and flash floods.¹⁷ Thunderstorms occur when warm, moist air has absorbed enough heat and moisture to be significantly less dense than the surrounding air.¹⁸ Tornadoes are nature’s most violent storms. They can appear suddenly without warning and can be invisible until dust and debris are picked up or a funnel cloud appears.¹⁹ Tsunamis, also

⁸ A.B. Susanto, *Disaster Management di Negeri Rawan Bencana, PT* (Jakarta: Aksara Grafika Pratama, 2006) at 2 [“Susanto”].

⁹ Brookings-Bern Project on Internal Displacement, *Human Rights and Natural Disasters, Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters*; see also IASC IDP Policy, Annex 3 (referring to Sylvie Giossi Caverzasio, ed., *Strengthening Protection in War – A Search for Professional Standards* (Geneva: ICRC, 2001) at 6; see also the glossary of the International Society for Disaster Reduction; online: <http://www.unisdr.org/eng/library/lib-terminologyeng%20home.htm> [“Human Rights and Natural Disasters”].

¹⁰ Patrick L. Abbott, *Natural Disasters*, 4th ed. (New York: McGraw-Hill, 2004) [“Abbott”] at 61.

¹¹ *Natural Disaster*, *supra* note 5.

¹² Abbott, *supra* note 10 at 299.

¹³ *Natural Disaster*, *supra* note 5.

¹⁴ *Ibid.*

¹⁵ Abbott, *supra* note 10 at 302.

¹⁶ *Natural Disaster*, *supra* note 5.

¹⁷ *Ibid.*

¹⁸ Abbott, *supra* note 10 at 283.

¹⁹ *Natural Disaster*, *supra* note 5.

known as seismic sea waves, occur as a result of undersea earthquakes. Volcanoes erupt when pressure builds up within a volcano's molten rock, sending lava flows, poisonous gases and flying rock and ash that can sometimes travel hundreds of miles downwind.²⁰ Finally, winter storms and extreme cold may result in heavy snow or subfreezing temperatures, as well as strong winds and icy rain storms.²¹

4. The Impact of Natural Disasters

Natural disasters always cause severe losses. These losses cover all aspects of human life, having a physical, psychological, economic and cultural impact. The physical impact takes the form of death and injury, as well as environmental damage and the destruction of buildings and infrastructure. The psychological impact takes the form of trauma, which is suffered by many of the survivors. A.B. Susanto, an Indonesian disaster management expert, has stated that there are several factors which make the consequences of a natural disaster even worse.²² These include poverty, dense populations and urbanization, all of which make it very difficult to get sufficient aid to large numbers of people, who have nowhere else to go when disaster strikes. In addition, environmental destruction through deforestation and logging can lead to floods, and lack of information and awareness may also exacerbate already difficult situations in the wake of a natural event. Moreover, the lack of any legal enforcement mechanism may hamper disaster management.

B. The Regulation of Human Rights Protection in Times of Natural Disasters

1. Definition of Human Rights Protection

a. Definition of Human Rights

“Human rights” are the fundamental rights to which all human beings should be entitled. There are three types of human rights, the first being civil and political rights, most commonly associated with capitalist societies, where citizens claim the freedom to express their opinions freely. The second type is economic, social and cultural rights, most commonly associated with socialist societies, where citizens claim the rights to education, work, healthcare etc. The third is the claim to rights such as peace, self-determination, development, minority rights, a clean environment etc.²³

b. Definition of Protection

“Protection” encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law and, where applicable, international humanitarian law).²⁴ Protection activities by international actors can be:

²⁰ *Ibid.*

²¹ “What are Different Types of Natural Disasters”, online: Ways2cope <<http://www.ways2cope.com/Articles/Disaster/Disaster%20-%20natural%20disaster.aspx>>.

²² Susanto, *supra* note 8 at 4-8.

²³ Peter Malanczuk, “Akehurst’s Modern Introduction to International Law”, online: <<http://www.netlibary.comlibproxy1.nus.edu.sg/Reader/>> at 209-210 [“Malanczuk”].

²⁴ *Human Rights and Natural Disasters*, *supra* note 9.

- *Responsive*: aimed at “stopping, preventing or mitigating a pattern of [ongoing] abuse;”
- *Remedial*: “aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of violation, through rehabilitation, restitution, compensation and repair;”
- *Environment-building*: “aiming to create and/or consolidate an environment, political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual.”²⁵

c. Definition of Human Rights Protection

Human rights protection is an action which is associated with prevention, response, rehabilitation, reconstruction and environmental development in connection with human rights.

2. International Regulations on Human Rights

International regulations on human rights are found in the following regulations:

- a. The United Nations Charter, Article 1, and also Articles 55 and 56, which were further explained in the Advisory Opinion of International Court of Justice (ICJ) in the Namibia Case. The ICJ stated that to establish, “Distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, color, descent, or national ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the charter.”²⁶
- b. The Universal Declaration on Human Rights (UDHR) 1948. The UDHR is a resolution which was passed by the United Nations General Assembly on 10 December 1948.²⁷ After the preamble, the opening words of the resolution state: “The General Assembly proclaims this UDHR as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”²⁸ This is further explained in the UN Conference on Human Rights at Teheran in 1968, which passed a resolution proclaiming, inter alia, that “the UDHR... constitutes an obligation for the members of the international community.”²⁹
- c. The International Covenant on Civil and Political Rights 1966 & its Protocol. This covenant regulates human rights in civil and political respects.
- d. The International Covenant on Economic, Social and Cultural Rights 1966 & its Protocol. This covenant regulates economic, social and cultural aspects of human rights.

²⁵ *Ibid.* at 9.

²⁶ Malanczuk, *supra* note 23 at 212.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

There are also numerous other international human rights treaties which have been adopted under the auspices of the UN since 1948.³⁰ They include the 1948 Convention on the Prevention and Punishment of Genocide, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1989 Convention on the Rights of the Child. In addition, there are many other human rights treaties, concluded under the umbrella of the International Labor Organization, UNESCO, and other specialized agencies of the UN.³¹

It is clear from documents such as the United Nations Charter that originally less significance was attached to the promotion and protection of human rights than to the maintenance of international peace and security,³² even though the protection of Human Rights is of paramount importance. As can be seen from the words of International Court of Justice in the Barcelona Traction Case 1970, certain basic rights, such as protection from slavery, racial discrimination, or genocide should be accorded to all persons. Furthermore, under Article 19 of the International Law Commission of the United Nations, dealing with State Responsibility, breaches of international obligations to safeguard people from slavery, genocide and apartheid are classified as international crimes.³³ The jurisprudence of the International Court of Justice shows that the Court has clearly accepted that the obligation to respect fundamental human rights is an obligation of general international law.³⁴

Unfortunately, however, there are still no well recognized, comprehensive and legally-binding regulations which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disaster. In addition, many international disaster response operations are subject to ad-hoc rules and systems, which vary dramatically from country to country and impede the provision of fast and effective assistance, thus putting lives and dignity at risk.³⁵

3. The Basic Principle of the Human Rights Protection in Times of Natural Disasters

The level of human rights protection required in times of natural disaster is not limited to securing the survival and physical security of those affected. Protection encompasses civil and political rights, as well as economic, social and cultural rights – all of which are recognized by international human rights law and, where applicable, international humanitarian law. Although all human rights are fundamentally interrelated, for practical reasons, these rights can be divided into four groups, namely:³⁶ (i) rights related to physical security and integrity (e.g. protection of the right to life and the right to be free from assault, rape, arbitrary detention, kidnapping, and threats concerning the above); (ii) rights related to the basic necessities of life (e.g. the

³⁰ *Ibid.* at 216.

³¹ *Ibid.*

³² *Ibid.* at 220.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ DR I.B.R. Supancana, Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC), “International Disaster Response Law, Rules and Principles (IDRL)” at 1; see also *International Disaster Response Law (IDRL)*, Appeal No. 01.100/2004 at 1 and compare with David P Fidler, “The Indian Ocean Tsunami and International Law” (2005) ASIL Insight at 1-2.

³⁶ *Human Rights and Natural Disasters*, *supra* note 9 at 8.

rights to food, drinking water, shelter, adequate clothing, adequate health services, and sanitation); (iii) rights related to other economic, social and cultural needs (e.g. the rights to have access to education and work as well as to receive restitution or compensation for lost property); and (iv) rights related to other civil and political needs (e.g. the rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination). The first two groups of rights are most relevant during the emergency, life-saving phase of a natural disaster. Only the full respect for all categories of rights, however, can ensure adequate protection of the human rights of those affected by natural disasters, including the displaced.³⁷

In disaster management, there are at least three phases, creating three distinct needs:

a. The need to get information during the pre- natural disaster phase

In this phase, the society in a natural disaster-prone territory must obtain effective information about natural disasters. Education, training about natural disasters, and preparation for evacuation to a safe location are all required.

b. The need to ensure non-discrimination during the emergency-relief phase

In this phase, there must be no discrimination in the distribution of assistance. The definition of non-discrimination in this respect is that all people have the same position before the law, subject to cultural and religious differences – such as respecting Muslim society in food assistance distribution and in the division of women and men so that they do not share evacuation shelters.

c. The need to monitor during the post-disaster phase

In this phase, the most important things are monitoring assistance distribution, providing rehabilitation, and furthering recovery development. It is essential to establish effective monitoring mechanisms, benchmarks and indicators to ensure that the protection of the human rights of those affected by natural disasters, including those who are internally displaced, is effectively implemented. Furthermore, all disaster prevention, relief and recovery should be assessed so as to evaluate whether those activities are being carried out in accordance with international human rights and humanitarian standards as outlined in the Operational Guidelines.³⁸

4. The regulation on Human Rights Protection in Times of Natural Disaster (Ideal Condition in Natural Disasters)

a. Protection of Life, Security, Physical, Mental and Moral Integrity

Below are the articles which are relevant to the protection of human rights:³⁹

³⁷ *Ibid.*, and see also *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, E/CN.4/2006/71 at 4-8.

³⁸ *Human Rights and Natural Disasters*, *supra* note 9 at 13.

³⁹ *Ibid.* at 19.

- i). Every human being has the inherent right to life, which shall be protected by law.⁴⁰
- ii). Every human being has the right to dignity and physical, mental and moral integrity. Everyone shall be protected, in particular, against torture, cruel and inhuman or degrading treatment or punishment,⁴¹ rape and other acts of gender-based and gender-specific violence, or indecent assault and domestic violence.⁴²
- iii). Everyone has the right to be protected against acts of violence threatened or committed by private parties and other non-state actors.⁴³
- iv). Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.⁴⁴
- v). Every human being has the right to liberty of movement and freedom to choose his or her residence.⁴⁵
- vi). Every human being shall be protected against forced or compulsory labor and human trafficking or other contemporary forms of slavery such as sale into marriage, forced prostitution or sexual exploitation. Services exacted in order to deal with the consequences of the disaster and necessary for the life or well-being of the community shall not be regarded as forced or compulsory labor.⁴⁶
- vii). Children shall be protected against economic exploitation and hazardous or harmful work, particularly against the worst forms of child labor, including recruitment into armed forces or groups.⁴⁷

b. Protection of Rights Related to the Basic Necessities of Life

Below are the articles which are relevant with human rights protection:⁴⁸

- i). In providing humanitarian assistance, as well as access to it, discrimination of any kind on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status is strictly prohibited.⁴⁹

⁴⁰ See also Art. 3, *Universal Declaration of Human Rights* [UDHR] (1948); Art. 6, *International Covenant on Civil and Political Rights* [CCPR] (1966); Common Art. 3, *Geneva Conventions* (1949).

⁴¹ See also Art. 5 UDHR; Art. 7 CCPR.

⁴² See also Art. 5 UDHR in conjunction with Art. 1 UDHR; Art. 7 in conjunction with Art. 2, para. 1 CCPR.

⁴³ See also *Human Rights Committee*, General Comment No. 31 at 8.

⁴⁴ See also Art. 9 UDHR; Art. 9 CCPR.

⁴⁵ See also Art. 13 UDHR; Art. 12 CCPR.

⁴⁶ See also Art. 4 UDHR; Art. 8 CCPR.

⁴⁷ See also Art. 32, *Committee on the Rights of the Child* [CRC]; Art. 3 *International Labour Organisation Convention on the Worst Forms of Child Labor*, Nr. 182; *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*.

⁴⁸ “Human Rights and Natural Disasters”, *supra* note 9 at 29.

⁴⁹ See also Art. 2 in conjunction with Art. 25 UDHR; Art. 2, para. 2 *Committee on Economic, Social and Political Rights* [CESCR] (1985).

- ii). Every human being has the right to an adequate standard of living for him or herself and his or her family. At a minimum, persons affected by disasters have a right to have access to or be provided with (a) essential food and water; (b) basic shelter and housing; and (c) appropriate clothing.⁵⁰
- iii). Every human being has the right to health. At a minimum, those affected by disasters have the right to receive essential medical services and sanitation.⁵¹

c. Protection of other Economic, Social and Cultural Rights

Below are the articles which are relevant to human rights protection:⁵²

- i). Every human being has the right to education. As soon as conditions permit, children affected by disasters, whether displaced or not, have the right to receive education that shall be free and compulsory at the primary level.⁵³
- ii). No one shall be arbitrarily deprived of property and possessions. Everyone has the right to recover, to the extent possible, property and possessions lost in the course of a disaster.⁵⁴
- iii). Everyone has the right to work and to have access to a livelihood without discrimination.⁵⁵

d. Protection of other Civil and Political Rights

Below are the articles which are relevant to human rights protection.⁵⁶

- i). Every human being has the right to recognition everywhere as a person before the law,⁵⁷ and to be provided, for this purpose, with the necessary official documents.
- ii). Every human being has the right to liberty of movement and freedom to choose his or her residence.⁵⁸
- iii). Every human being has the right to respect for his or her family,⁵⁹ including the right to know the fate and whereabouts of missing relatives.
- iv). Every human being has the right to freedom of thought, conscience, religion or belief, of opinion and expression, of assembly, and of association.⁶⁰

⁵⁰ See also Art. 22 and 25 UDHR; Art. 11 CESCR.

⁵¹ See also Art. 25 UDHR; Art. 12 CESCR.

⁵² *Human Rights and Natural Disasters*, *supra* note 9 at 40.

⁵³ See also Art. 26 UDHR; Art. 13 and 14 CESCR; Art. 28 CRC.

⁵⁴ See also Art. 17 UDHR; Art. 1 Protocol 1/ECHR.

⁵⁵ See also Art. 23 and 24 UDHR; Art. 6 and 7 CESCR.

⁵⁶ *Human Rights and Natural Disasters*, *supra* note 9 at 51.

⁵⁷ See also Art. 6 UDHR; Art. 16 CCPR.

⁵⁸ See also Art. 13 UDHR; Art. 12 CCPR.

⁵⁹ See also Art. 12 UDHR, Art. 17 CCPR.

⁶⁰ See also Art. 18 - 20 UDHR; Art. 19 - 22 CCPR.

- v). Every citizen has the right to take part in the conduct of public affairs and to vote and be elected at genuine periodic elections.

States may not take measures derogating from these rights unless the disaster creates a public emergency which threatens the life of the nation, the existence of which is officially proclaimed. Such measures must be strictly required by the exigencies of the situation, cannot be inconsistent with the state's other obligations under international law, and cannot involve discrimination based on race, color, sex, language, religion or social origin. Derogations from the right to recognition everywhere as a person before the law, to freedom of thought, conscience and religion are never permissible.⁶¹

Below are other regulations which are not binding but could offer guidance for those who work in natural disaster situations:

- (i) Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters (2006);
- (ii) Guiding Principles on Internal Displacement (1998);
Code of Conduct for International Red Cross and Red Crescent Movement;
- (iii) NGOs in Disaster Relief (1994); and
- (iv) Sphere Project Handbook and Humanitarian Charter.

III. The Implementation of Human Rights Protection in Times of Natural Disaster in Indonesia

1. General Regulations

Indonesia has a number of regulations with respect to natural disaster:

- a. The Law of the Republic of Indonesia Number 24 Year 2007 concerning Disaster Management;
- b. The Government Regulation of the Republic of Indonesia Number 21 Year 2008 concerning Disaster Management Fostering (*Peraturan Pemerintah RI No. 21 Tahun 2008 tentang Penyelenggaraan Penanggulangan Bencana*);
- c. The Government Regulation of the Republic of Indonesia Number 22 Year 2008 concerning Funding and Management of Disaster Assistance (*Peraturan Pemerintah RI No. 22 Tahun 2008 tentang Pendanaan dan Pengelolaan Bantuan Bencana*);
- d. The Government Regulation of the Republic of Indonesia Number 23 Year 2008 concerning The Role of International Organization and International Non-

⁶¹ *Human Rights and Natural Disasters*, supra note 9.

Government Organization in General Disaster Management (*Peraturan Pemerintah No 23 Tahun 2008 tentang Peran serta Lembaga Internasional dan Lembaga Asing Non-pemerintah dalam Penanggulangan Bencana Umum*);

- e. The Government Regulation of the Republic of Indonesia Number 36 Year 2006 concerning Assistance (*Peraturan Pemerintah RI No. 36 Tahun 2006 tentang Pencarian dan Pertolongan*);
- f. *Peraturan Menteri Dalam Negeri No. 12 Tahun 2006 tentang Kewaspadaan Dini Masyarakat di Daerah*;
- g. *Peraturan Menteri Dalam Negeri Nomor 33 Tahun 2006 tentang Pedoman Umum Mitigasi Bencana*;
- h. *Peraturan Menteri Dalam Negeri Nomor 27 Tahun 2007 tentang Pedoman Peyiapan Sarana dan Parsarana Penanggulangan Bencana*

The Law of the Republic of Indonesia Number 24 Year 2007 states that a “disaster” is an event or series of events that threatens and disrupts lives and livelihoods caused either by natural and/or non-natural and man-made factors to claim environmental damage, loss of assets, and psychological impact (Article 1, Point 1). The definition of a “natural” disaster is that it is triggered by a natural event or series of events, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides (Article 1, Point 2).

It is thus apparent that the definition of a “disaster” under Indonesian Law is different from that of the United Nations Development Programme (UNDP). The Indonesian definition is confined to purely natural events, and it therefore does not take account of human action or negligence. The implication is that a disaster is an Act of God, which does not necessarily mandate immediate response.

2. Human Rights Protection in Times of Natural Disaster based on The Law of the Republic of Indonesia Number 24 Year 2007 Concerning Disaster Management

Under Article 26 the Law of the Republic of Indonesia Number 24 Year 2007 concerning Disaster Management:

(1) Every person is entitled:

- a. to social protection and a sense of security, in particular disaster vulnerable community groups;
- b. to education, training, and skills in organization of disaster management;
- c. to have access to written and/ or verbal information on disaster management policies;
- d. to participate in planning, operating, and maintaining health service assistance delivery programs, which includes psychological support, and to participate in decision-making with respect to disaster management activities, especially when having relevance to him or herself and his or her community; and

- e. to conduct monitoring in accordance with the approved mechanisms for implementation of disaster management policies.

Furthermore:

- (2) Every person impacted by disaster is entitled to assistance in fulfilling basic needs.
- (3) Every person is entitled to compensation for disaster caused by construction failure.

It is important to note that whereas under Article 17 UDHR and Article 1 Protocol 1/ECHR “No one shall be arbitrarily deprived of property and possessions. Everyone has the right to recover, to the extent possible, property and possessions lost in the course of a disaster,” under the equivalent Indonesian provisions compensation in the case of a natural disaster need only be given for loss caused by construction failure. The government is thus not obliged to compensate in other circumstances, which arguably violates human rights.

3. Human Rights Protection in the Pre-Natural Disaster Phase

This is the information phase, in which the main aim is to educate and inform the population, so that it can be prepared to deal with possible disasters. Preparedness is particularly critical in terms of planning and mitigation. It requires the local population to be trained and equipped, and the authorities to evaluate the possible consequences of a disaster, thus enabling them to take corrective action to mitigate its effects. Planning is regulated by Articles 34 to 47 the Law of the Republic of Indonesia Number 24 Year 2007 concerning Disaster Management. This phase can cover situations where there is not yet any specific threat of a disaster and those where a particular event is threatened.⁶² However, in practice the following factors make the information phase of natural disaster management less effective:

- a. Lack of information about natural disasters;
- b. Lack of training in natural disasters;
- c. Failure of city and environmental planning;
- d. Lack of appropriate laws or failure of enforcement (e.g. illegal logging, etc).

As a result, the Indonesian Government fails to meet the standards required by Article 26 UDHR and Article 13 CESC on the Protection of Economic, Social and Cultural Rights and Protection of Civil and Political Rights.

4. Human Rights Protection in the Natural Disaster Emergency Phase

This is the response phase. Response is any action taken immediately before, during, or directly after a disaster to save lives, minimize damage to property, and enhance the effectiveness of recovery. Human rights protection in the emergency phase is regulated under Articles 48 to 56 of the Law of the Republic of Indonesia

⁶² *Law of the Republic of Indonesia* (No. 24 of 2007), art. 34.

Number 24 Year 2007. However, in practice there are a number of factors which prevent an effective response:

- a. Lack of planning and mitigation;
- b. Lack of coordination between central and local government with respect to the distribution of aid and assistance;
- c. Discrimination in the giving of aid and assistance;
- d. Fraud; and
- e. Illegal adoption and human trafficking.

5. Human Rights Protection in the Post-Natural Disaster Phase

This phase is the recovery phase. Recovery is short term activity to return vital life- support systems to a level of minimum operating standards, and long term activity to return life to normal. Human rights protection in the post-natural disaster phase is regulated by Articles 57 to 59 of the Law of the Republic of Indonesia Number 24 Year 2007 on Disaster Management. There are many problems in the protection of human rights in this phase. These include:

- a. Lack of attention to the needs of victims, particularly in mental health recovery;
- b. Corruption in the development process;
- c. Development which is not suited to the local culture;
- d. Compensation which focuses only on the rights of men and not women (eg, (land certification)).

As a result of these factors, it is apparent that implementation of human rights protection in the post natural disaster phase by the Indonesian Government violates Article 17 UDHR and Article 1 Protocol 1/ECHR.

III. CONCLUSION

It is clear that:

- a. Indonesia lacks well recognized, comprehensive and legally-binding regulations which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disasters; and
- b. Indonesia lacks awareness and understanding of the provisions which it should enact to comply with international requirements on the protection of human rights in the wake of natural disasters.

It is suggested that:

- a. Human rights protection be recognized as a basic principle in the management of natural disasters;
- b. As a matter of urgency, an International Natural Disaster Response Law be enacted as a binding international regulation;
- c. Human rights protection must be implemented at every phase of natural disaster management;
- d. The Indonesian Government must recognize its responsibility to protect human rights, and as a matter of good governance must activate the role of the National Board on Disaster Management and the Regional Board on Disaster Management;
- e. There must be cooperation at all levels – by individuals, states and international organizations (including NGOs) – to conduct natural disaster management based on the need to protect human rights.