

CHAPTER TWO

LITERATURE REVIEW

A. Natural and Man-Made Disaster

Natural and man-made hazard, as well as disaster, has been defined by many scholars based on different perspectives. Since the issue of climate change and natural and man-made hazard and disaster has been one of the common interests for international community, following the United Nations International Decade for Natural Disaster Reduction (1990-1999), the term of natural and man-made hazard and disaster by UNISDR is defined as a potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation.⁸

Hazards can include latent conditions that may represent future threats and can have different origins: natural (geological, hydro-meteorological and biological) or induced by human processes (environmental degradation and technological hazards). Hazards can be single, sequential or combined in their

⁸ UNISDR was established in 1999 as a dedicated secretariat to facilitate the implementation of the International Strategy for Disaster Reduction (ISDR). It is mandated by the United Nations General Assembly resolution (56/195), to serve as the focal point in the United Nations system for the coordination of disaster reduction and to ensure synergies among the disaster reduction activities of the United Nations system and regional organizations and activities in socio-economic and humanitarian fields. It is an organizational unit of the UN Secretariat and is led by the UN Special Representative of the Secretary-General for Disaster Risk Reduction (SRSG). See more at <http://www.unisdr.org/who-we-are> accessed on February 21, on February 22, 2016 at 02:34 PM.

origin and effects. Each hazard is characterized by its location, intensity, frequency, and probability.

Meanwhile, a disaster is a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses, which exceed the ability of the affected community or society to cope using its own resources. A disaster is a function of the risk process. It results from the combination of hazards, conditions of vulnerability, and insufficient capacity or measures to reduce the potential negative consequences of risk.⁹ A disaster is also defines as a natural or man-made hazard resulting in an event of substantial extent causing significant physical damage or destruction, loss of life, or drastic change to the natural environment.¹⁰

Natural hazards are naturally occurring physical phenomena caused either by rapid or slow onset events which can be geophysical (earthquakes, landslides, tsunamis and volcanic activity), hydrological (avalanches and floods), climatological (extreme temperatures, drought and wildfires), meteorological (cyclones and storms/wave surges) or biological (disease epidemics and insect/animal plagues).

⁹ International Strategy for Disaster Reduction, *Living with Risk: A Global Review of Disaster Reduction Initiatives*, Geneva: United Nations publication, 2004. p. 16-17.

¹⁰ Alberto Alemanno, "Governing Disaster-The Challenges of Emergency Risk Regulation" *Edward Elgar*, (2011). p. 4.

Technological or man-made hazards (complex emergencies/conflicts, famine, displaced populations, industrial accidents and transport accidents) are events that are caused by humans and occur in or close to human settlements. This can include environmental degradation, pollution, and accidents. There is a range of challenges, such as climate change, unplanned-urbanization, under-development/poverty as well as the threat of pandemics, that will shape humanitarian assistance in the future. These aggravating factors will result in increased frequency, complexity and severity of disasters.¹¹

In short, the definition of a disaster states that the disaster is caused by natural, non-natural, and human factors. Therefore, the Indonesian Government through Law Number 24 of 2007 defines natural disasters, non-natural and social disasters as follows:¹²

1. A disaster is an event or a series of events that threaten and disrupt the lives and livelihoods caused by natural factors and/or non-natural factors and human factors that lead to the emergence of human casualties, environmental damage, loss of property, and psychological impacts;

¹¹ *Anonymous*, "Types of disasters: Definition of hazard", International Federation of Red Cross and Red Crescent Society, Accessed from <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/>, on February 25, 2016 at 04:01 PM.

¹² *Anonymous*, "Definition and Type of Disaster", Badan Nasional Penanggulangan Bencana, Accessed from <http://www.bnpb.go.id/pengetahuan-bencana/definisi-dan-jenis-bencana>, on February 25, 2016 at 04:05 PM.

2. Natural disaster is a disaster caused by an event or a series of events caused by nature, which include earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides;
3. Non-natural disaster is a disaster caused by a non-natural event or a series of non-natural events, which include failure of technology, failure of modernization, epidemics, and outbreaks of disease; and
4. Social disaster is a disaster caused by an event or a series of events caused by humans, which include inter-community, inter-group or people social conflicts, and terrors.

B. International Disaster Response Laws

The International Federation of Red Cross and Red Crescent Societies initiated the International Disaster Response Laws (IDRL) in response to resolution 5 of the Council of Delegates of the International Red Cross and Red Crescent Movement in November 2001. This project aims to reduce the vulnerability and suffering of people affected by disasters. Under this project, the conventions, treaties, and other arrangements at the international, regional and national level are studied so that an effective mechanism can be formulated for the effective management of disasters.¹³

¹³ International Federation of Red Cross and Red Crescent Societies, *International Disaster Response Laws (IDRL) Project Report 2002-2003*, Geneva, 2003. p. 12.

It is hoped that this will be achieved through the promotion and development of international disaster response law mechanisms to better facilitate the provision of expedient and effective international humanitarian assistance. The project involves several stages, including the collection of relevant legal and non-legal materials for publication, a legal study to examine the current state of international laws in this regard and several field studies to examine the effectiveness of existing law in an operational context, which in particular requested the International Federation to:

- a. advocate the development and, where applicable, the improvement and faithful application of International Disaster Response Laws through in particular, but not limited to, the compilation and publication of existing international laws and regulations, and the evaluation of their actual effectiveness in humanitarian operations; and
- b. to engage or, where applicable, continue the dialogue with governments and promote appropriate disaster response laws and regulations, allowing relief actors to meet the needs of the disaster victims in the most effective way.

Isabelle Reinecke stated that IDRL includes the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters of natural, technological or industrial origin. Unlike International

Humanitarian Law (IHL),¹⁴ IDRL applies to (usually) unintended disasters in a co-operative peacetime context when states or intergovernmental humanitarian or other organizations offer, request, provide, or accept cross-border disaster assistance.¹⁵

IDRL itself was described as the body of laws and other regulations relating to disaster response, International law—includes treaty law, agreements between states and international organizations, including the International Federation and “soft law” emanating from declaratory instruments and relevant resolutions adopted by intergovernmental meetings. Disaster response—includes preparedness, relief and rehabilitation activities in the event of natural, technological and other disasters which are not classified as armed conflict.¹⁶

This could be summarized as the laws, rules and principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict related disasters, which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities.

¹⁴ International Humanitarian Law is a set of rules that seek to limit the effects of armed conflict. It also known as the laws of war and the law of armed conflict, is the legal framework applicable to situations of armed conflict and occupation. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. See more at <http://www.ijrcenter.org/international-humanitarian-law/> accessed on April 19, 2016 at 01:46 PM.

¹⁵ Isabelle Reinecke, “International Disaster Response Law and the co-ordination of international Organizations”, *The ANU Undergrad Research Journal*, II (2010). p. 145-146.

¹⁶ International Federation of Red Cross and Red Crescent Societies, *IDRL Fact Sheet Number 3: Current Issues for the IDRL Project*. Geneva, 2002. p. 39.

IDRL could also encompass any kind of crisis, emergency or disaster, ranging from nuclear disasters and chemical spills to economic collapse and poverty to floods, droughts, and earthquakes, to forest fires and aviation accidents. In addition, IDRL could apply to all phases of disasters including prevention, preparedness, mitigation, relief, recovery, rehabilitation and development.

C. Sovereignty Principles

The term sovereignty has been used in four different ways of international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty. International legal sovereignty refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence. Meanwhile, Westphalian sovereignty refers to a political organization based on the exclusion of external actors from authority structures within a given territory. Domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity. Finally, interdependence sovereignty refers to the ability of public authorities to regulate the flow of

information, ideas, goods, people, pollutants, or capital across the borders of their state.¹⁷

The sovereignty of states represents the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having, in principle, a uniform legal personality.¹⁸ If the international law exists, the dynamics of state sovereignty can be expressed in terms of the law. If states (and only states) are conceived of as sovereign, then in this respect, at least, they are equal, and their sovereignty is in a major aspect a relation to others states (and to organizations of states) define by law.¹⁹

The corollaries of the sovereignty and equality of states are: (a) a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there; (b) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (c) the ultimate dependence upon consent of obligations arising whether from customary law or from treaties.²⁰

Under current international law, sovereignty is defined as: sovereignty in the sense of contemporary public international law denotes the basic international legal status of a state that is not subject, within its territorial

¹⁷ Stephen D. Krasner, 1999, *Sovereignty: Organized Hypocrisy*, New Jersey: Princeton University Press. p. 3-4.

¹⁸ *Anonymous, Reparation for Injuries Suffered in the Service of the United Nations*, The Hague: ICJ Report, 1949. p. 174, 177-178.

¹⁹ James Crawford, 2012, *Brownlie's Principles of Public International Law*, United Kingdom: Oxford University Press. p. 447.

²⁰ *Ibid.* p. 448.

jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign state or to foreign law other than public international law.²¹

Jean Bodin defines sovereignty as state attribute and as one of the importance element of state. Sovereignty is absolute and immortal authority from state which is unlimited and cannot be divided. Furthermore, Jean Bodin stated that no other higher authority that can limit the authority of the state. According to Bodin, what is called by sovereignty is one and only authority which are; original, which means it is not derived from other authorities; the highest, which refers to that there is no other higher authority that can limit its authority; immutable and eternal, which means that it; cannot be divided since there is only one supreme authority.²²

Sovereignty is also defined as the ultimate authority, held by a person or institution, against which there is no appeal. In other words, sovereignty is the ultimate power, authority and/or jurisdiction over a people and a territory. No other person, group, tribe or state can tell a sovereign entity what to do with its land and/or people. A sovereign entity can decide and administer its own laws, can determine the use of its land and can do pretty much as it pleases, free of external influence (within the limitations of international law).²³

²¹ H Steinberger, 'Sovereignty', *Max Planck Institute for Comparative Public Law and International Law: Encyclopedia for Public International Law*, Vol. X, (1987). p. 414.

²² F.X Adji Samekto, 2009, *Negara Dalam Dimensi Hukum Internasional*, Bandung: Citra Aditya. p. 49.

²³ Yordan Gunawan, "Penegakan Hukum Terhadap Pembajakan di Laut Melalui Yurisdiksi Mahkamah Pidana Internasional", *Media Hukum*, Volume 19, June, 2012. p. 83.