

CHAPTER FOUR

FINDING AND ANALYSIS

A. Disasters Potential Threat of Indonesia

Located in the area of Pacific Ring of Fire³⁰ and lies on the juncture of four active tectonic plates, the Asian plate, Australian plate, Indian Ocean plate, and Pacific Ocean plate, under that circumstances, Indonesia is one of the areas in the world that has a lot of active volcanoes and seismic activities (See Figure 4.1).³¹ By the geographic condition, Indonesia has to cope with the constant risk of volcanic eruptions, earthquakes, floods and tsunamis due to a lot of tectonic activities.

On several occasions during the last 20 years, Indonesia has successfully drawn the global attention due to devastating natural disasters, which resulted in the deaths thousands of humans and animals. All of the natural disasters which happened in last 20 years, caused destructive effects on the land area, including infrastructures that will lead to the economic loss on the affected areas.

³⁰ The Ring of Fire is a string of volcanoes and sites of seismic activity, or earthquakes, around the edges of the Pacific Ocean. Roughly 90% of all earthquakes occur along the Ring of Fire, and the ring is dotted with 75% of all active volcanoes on Earth. The Ring of Fire isn't quite a circular ring. It is shaped more like a 40,000-kilometer (25,000-mile) horseshoe. A string of 452 volcanoes stretches from the southern tip of South America, up along the coast of North America, across the Bering Strait, down through Japan, and into New Zealand. Several active and dormant volcanoes in Antarctica, however, "close" the ring. See more at <http://education.nationalgeographic.org/encyclopedia/ring-fire/> accessed on February 18, 2016 at 10:14 PM.

³¹ The figure is in p. 24.

The effects of an extreme weather in Indonesia added the list of serious issues that must be faced by the Indonesian government along with civil societies. The extremely dry or wet seasons caused simultaneous effects towards society. For example, it might ruin the crop harvests that would trigger the inflation and severe financial pressure on the Indonesian population, especially those who live in poverty.

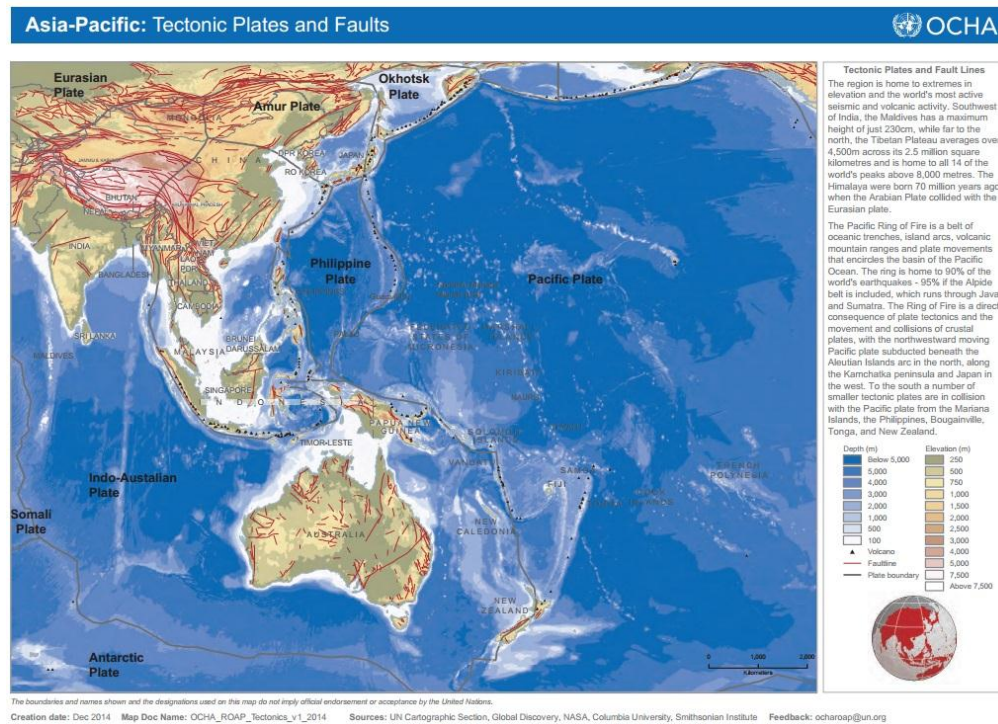
Recently, Indonesia has made global headlines due to natural and man-made disasters, such as forest fires brought on by slash-and-burn culture and economical reason. Another example is, lack of waste management by using rivers to dispose wastes which lead to flooding. These disasters may result in more serious environmental and health consequences to both Indonesia and its neighboring countries.

One important note is that Indonesia's notorious weak infrastructure caused by mismanagement, uncontrolled population growth and improper development in certain region in Indonesia. The other causes are lack of disaster risk assessment, lack of skills, or corruption. Disaster potential awareness in fact aggravates the resulting situation after a natural disaster has made its impact felt, meaning that natural disasters in Indonesia can cause more casualties and more damage than it should be.³²

³² *Anonymous*, "Natural Disaster in Indonesia", Indonesia Investments, accessed from <http://www.indonesia-investments.com/business/risks/natural-disasters/item243>, on 17 February 2016 at 05:46 PM.

Figure 4. 1

Tectonic Plates and Faults in Asia-Pacific



Source: <http://reliefweb.int/map/world/asia-pacific-tectonic-plates-and-faults-december-2014>.

1. Volcanic Eruptions in Indonesia

Geographically, Indonesia is one of the areas that have a lot of active volcanoes. In the southern and eastern parts of Indonesia, there are volcanic arcs that extend from the island of Sumatra, Java, Nusa Tenggara, Sulawesi which sides are old volcanic and low plains that partially dominated by swamps. It is estimated that Indonesia has 129 active volcanoes, all carefully observed by the Center for Volcanology and Geological Hazard Mitigation, to predict when the time of natural disaster

could occur which are caused by the volcanos since a number of Indonesian volcanoes show continuous activity till nowadays.³³

Historically, the volcano eruption in Indonesia was engendered massive breakdown of land area or even it can lead to transformation the surface of the island, just like the Toba super eruption. Researchers say that Toba was responsible for two major global environment altering events in the last 2 million years, erupting on four different occasions in the Quaternary Period: 840,000 years ago, 700,000 years ago and finally about 75,000 years ago. The Toba catastrophe hypothesis holds that this event caused a global volcanic winter of 6-10 years and possibly a 1,000 year-long cooling episode.³⁴ The number of deaths caused by the earthquakes is less than that of tsunamis but, they occur frequently.

Understanding that as the country that contains the most active volcanoes of all countries in the world, it makes almost all of Indonesian areas are aware of possible volcanoes eruption, which can cause a massive destruction of society. Some notable volcano eruptions in Indonesia's history are listed below:

³³ *Ibid.*

³⁴ Johnthomas Didymus, "Indonesia's Lake Toba Supervolcano Threatens Global Volcanic Winter: Eruption Caused Mass Extinction 75, 000 Years Ago", Inquisitr News Worth Sharing, taken from <http://www.inquisitr.com/2160555/indonesias-lake-toba-supervolcano-threatens-global-volcanic-winter-eruption-caused-mass-extinction-75-000-years-ago/>, accessed on February 17, 2016 at 08:21 PM.

Table 4. 1
Notable Volcano Eruptions in Indonesia

Location	Date	Magnitude	Casualties
Sumatra	25 October 2010	7.7	435
Sumatra	30 September 2009	7.6	1,117
Java	17 July 2006	7.7	730
Java	26 May 2006	6.3	5,780
Sumatra	28 March 2005	8.6	1,313
Sumatra	26 December 2004	9.2	283,106

Source: <http://www.indonesia-investments.com/business/risks/natural-disasters/item243>.

2. Earthquakes in Indonesia

Based on the data shown, nearly all regions in Indonesia have a volcano that till nowadays those volcanoes are to indicate the increasing of seismic activity. Following the data, in some territories that have direct links with the volcano activities, a potential natural disaster, known as an earthquake, is highly possible.

The earthquake is probably the biggest threat regarding its massive destruction effects. Regardless the area that do not have any seismic activity by volcanoes, the earthquake still can happen. Since the Eurasian Plate, Pacific Plate, Indian Ocean Plate and Indo-Australia Plate are four active plates that cause such a lot of other seismic activity in nearly all

islands of Indonesia. The data shows that Indonesia is one of the countries in the world that has a high level of seismicity, 10 times higher than the level of seismicity in the United States.³⁵ That indicates that Indonesia is one of most dangerous state in terms of the level of earthquakes. Therefore, the Indonesian government should establish a well-prepared disaster management due to that reason.

Since 1997, 24 earthquakes with a magnitude of 8 or more have been recorded in and around Indonesia. The 2004 Indian Ocean Earthquake with magnitude 9.1 Richter scale was the largest ever recorded in the past 30 years.³⁶ More than 1.000 people were killed in 7 of those earthquakes. Additionally, 10.000 people were killed by the earthquakes that occurred in 1815 and 1917 in Bali. The earthquakes that greatly impacted the Indonesian economy were the 2004 Indian Ocean Earthquake, the 2006 Central Java Earthquake, and the 2009 Sumatra Earthquake with the magnitude of 7.5 Richter scales.³⁷

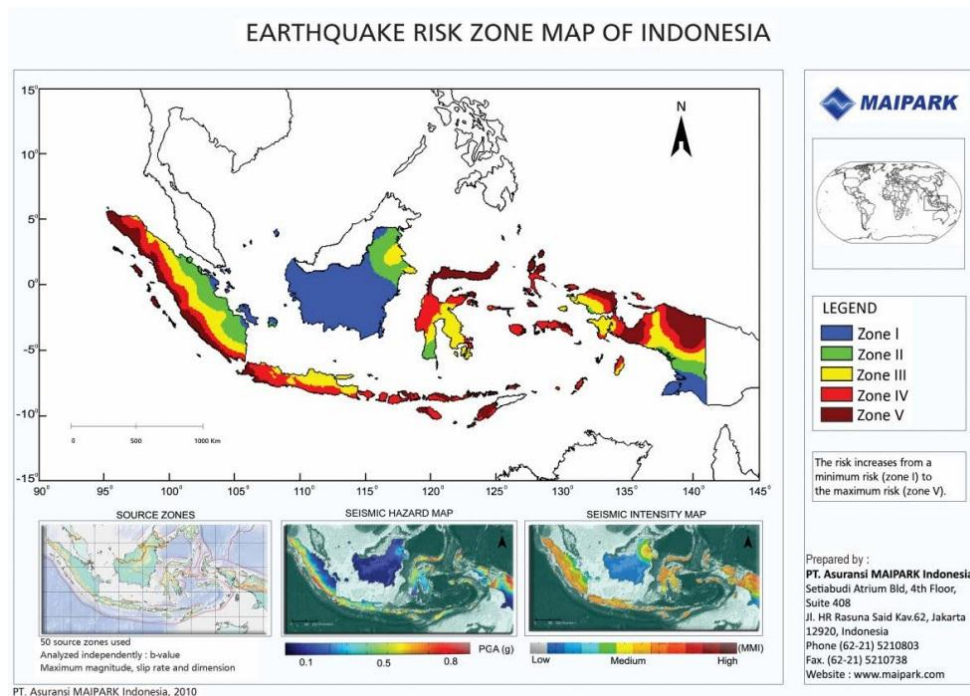
³⁵ Badan Nasional Penanggulangan Bencana, "Disaster Potential Threat", BNPB, taken from <http://www.bnpb.go.id/pengetahuan-bencana/potensi-ancaman-bencana#english>, accessed on November 1, 2015 at 12:07 PM.

³⁶ AHA Center, Japan International Cooperation Agency (JICA), *Country Report Indonesia: Natural Disaster Risk Assessment and Area Business Continuity Plan Formulation for Industrial Agglomerated Areas in the ASEAN Region*, Jakarta, 2015. p. 11.

³⁷ *Ibid.*

Figure 4. 2

Earthquake Risk Zone Map of Indonesia (MAIPARK 2010)



Source: <http://www.maipark.com/download/File/other/MAIPARK%20EQ%20Zone%202010.pdf>.

The map is the Earthquake Risk Map developed by the insurance company, Pt. Asuransi MAIPARK Indonesia. The map illustrates the Sunda Trench sides of Sumatra and Java and the Pacific Ocean sides of New Guinea and Sulawesi have a high earthquake risk. On the other hand, the Java Sea and the Banda Seasides have a low earthquake risk. The earthquake risk of Kalimantan is especially lower than other areas.³⁸

³⁸ *Ibid.*

Yearly, two or three earthquake with a magnitude of seven or higher occur in Indonesia and cause casualties and damage the infrastructure or environment. Below is a selected list of recent earthquakes that lead severe damage:³⁹

Table 4. 2

Recent Earthquakes that Lead Severe Damage in Indonesia

Location	Date	Magnitude	Casualties
Sumatra	25 October 2010	7.7	435
Sumatra	30 September 2009	7.6	1,117
Java	17 July 2006	7.7	730
Java	26 May 2006	6.3	5,780
Sumatra	28 March 2005	8.6	1,313
Sumatra	26 December 2004	9.2	283,106

Source:http://www.indonesia-investments.com/business/risks/natural_disasters/item243.

3. Tsunami in Indonesia

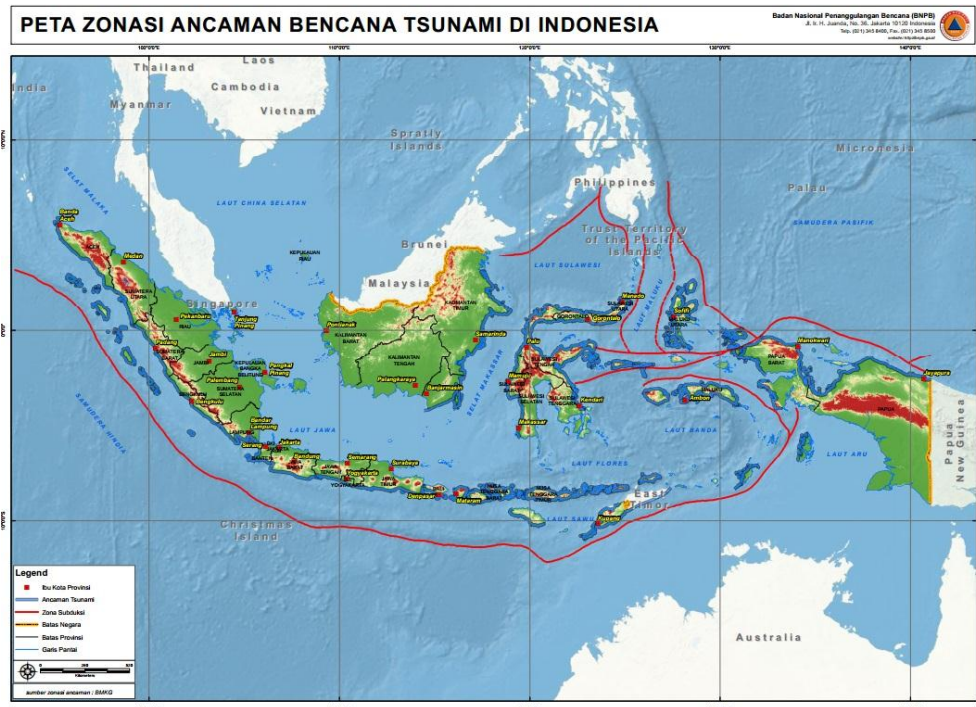
In fact, Indonesia is an archipelago country and around half of its territory covered by the sea, which for some circumstances it would be as one of the abundant natural resources. On the other hand, considering the geographic condition of Indonesia and the daily seismic activity, a submarine earthquake or volcanic eruption in the ocean can cause a

³⁹ *Anonymous*, "Natural Disaster in Indonesia", Indonesia Investments, *Op.Cit.*

tsunami water wave which has a devastating effect on the people and objects near the sea.

Figure 4.3

Tsunami Disaster Risk Map of Indonesia



Source: <http://geospasial.bnpb.go.id/2011/02/23/peta-zonasi-ancaman-bahaya-tsunami-di-indonesia/>.

Figure 4. 3 is the Tsunami Disaster Risk Map of Indonesia developed by the National Agency for Disaster Management (BNPB). It illustrates that the coasts of Sumatra and Java along the Sunda Trench, the coasts of Lesser Sunda, Sulawesi, and the Moluccas, and the east coast of Kalimantan have tsunami risk.⁴⁰

⁴⁰ AHA Center, Japan International Cooperation Agency (JICA), *Country Report Indonesia: Natural Disaster Risk Assessment and Area Business Continuity Plan Formulation for Industrial Agglomerated Areas in the ASEAN Region*, Op.Cit. p. 18.

Tsunamis caused the largest impact in terms of the number of deaths. The experience has shown that on the Southeast Asia tsunami is the extremely deadly natural disaster, which struck on 26 December 2004, affected 11 countries, killing more than 225 000 people mainly in Aceh and displacing an estimated 1.2 million.⁴¹ In addition, a further 7 tsunamis have caused more than 1000 deaths since the 17th century.⁴²

Although a massive tsunami such as the 2004 tsunami is rare, the Sumatra region is often startled by offshore earthquakes that can potentially trigger a tsunami. With the 2004 tsunami still fresh in mind, the level of fear is high. Often Indonesians who live in villages or cities close to the coast, flee to the hills (located more inland) after an earthquake has taken place. On average, once every five years a large tsunami happens in Indonesia, usually on the islands of Sumatra and Java. Generally, damage to the infrastructure exceeds the loss of lives. There are warning systems installed in many coastal areas but there have been reports that not all are functioning properly.⁴³

⁴¹ *Anonymous*, “Humanitarian Health Action: South Asia earthquake and Tsunami”, World Health Organization, accessed from http://www.who.int/hac/crises/international/asia_tsunami/en/, February 18, 2016 at 01:42 PM.

⁴² AHA Center, Japan International Cooperation Agency (JICA), *Country Report Indonesia: Natural Disaster Risk Assessment and Area Business Continuity Plan Formulation for Industrial Agglomerated Areas in the ASEAN Region*, *Op.Cit.* p. 18.

⁴³ *Anonymous*, “Natural Disaster in Indonesia”, Indonesia Investments, *Op.Cit.*.

4. Floods in Indonesia

Indonesia's rainy season which runs from December to March can bring plenty of rainfall. In combination with deforestation and waterways clogged with debris, it can cause rivers to overflow and result in floods. Heavy rainfalls in the mountain area cause floods in the plains downstream. Many floods have occurred due to the east-west monsoons in the rainy season. Heavy rainfalls in the mountainous region cause floods in the plain and extensive damage swamps and coastal low-lying areas. Urban areas become inundated because of an insufficient drainage system and poor maintenance work. Land subsidence is common in coastal town due to groundwater use by industries, etc., and due to an increasing in pounding.⁴⁴

Floods and landslides occur in most parts of Indonesia and can cause hundreds of casualties, destroy houses and other infrastructure, and ruin local businesses. Even in a mega city as Jakarta, floods occur regularly due to weak water management. In January 2013, a large part of Jakarta was flooded, affecting more than 100.000 households and resulting in the loss of lives of more than 20 people.⁴⁵

⁴⁴ AHA Center, Japan International Cooperation Agency (JICA), *Country Report Indonesia: Natural Disaster Risk Assessment and Area Business Continuity Plan Formulation for Industrial Agglomerated Areas in the ASEAN Region*, *Op.Cit.* p. 7.

⁴⁵ *Anonymous*, "Natural Disaster in Indonesia", *Indonesia Investments*, *Op.Cit.*.

There is a high frequency of flood in Indonesia. Java Island has the highest frequency, followed by Sumatra Island and Sulawesi Island, but Kalimantan Island has a low frequency. Based on data, there are several hot spots of flood disaster that include:⁴⁶

- a. Java Island: Banten Province, Jakarta Special Capital Region, West Java Province, Central Java Province, East Java Province; and
- b. Sumatra Island: Aceh Province and North Sumatra Province.

That condition is potential and prone to disasters, such as volcanic eruptions, earthquakes, tsunamis, floods, and landslides. According to United Nations International Strategy for Disaster Reduction, Indonesia is the most a disaster-prone country in the world. From several natural disasters, UNISDR ranks six natural disasters based on a number of victims, that are tsunamis, landslide, floods, earthquakes, hurricane, and drought. Indonesia is the first rank in tsunami and landslide, the third rank for earthquakes, and the sixth rank for flood, only for hurricane and drought, Indonesia's rank is out of the sixth rank.⁴⁷ Therefore, *Badan Nasional Penanggulangan Bencana* as the main actors which will deal

⁴⁶ AHA Center, Japan International Cooperation Agency (JICA), *Country Report Indonesia: Natural Disaster Risk Assessment and Area Business Continuity Plan Formulation for Industrial Agglomerated Areas in the ASEAN Region*, *Op.Cit.* p. 6.

⁴⁷ Veri Antoni, "Possibility of Implementation Natural Disaster Insurance in Indonesia and ASEAN", (Unpublished paper, Paper unpublished, Presented on 2nd CILS Conference 2011: International Conference on ASEAN's Role in Sustainable Development in the Faculty of Law Universitas Gadjah Mada 21th and 22th November 2011), p. 1.

with the issue of response natural and man-made disaster issued the data concerning the disaster potential threat of Indonesia:

Figure 4. 4

Level of Disaster Potential Threat in Each Region in Indonesia



Source: <http://www.indonesia-investments.com/business/risks/natural-disasters/item243>.

By looking serious potential threat of natural and man-made disaster which cannot measure when it happened, Indonesian Government has been issued Law No 24 of 2007 on Disaster Management to establish a well-prepared disaster management. Likewise, accepting the humanitarian assistance in responding the natural disaster that happened in Indonesia which resulted in the wide-scale damage and the loss of human by means accepting the humanitarian assistance in form of disaster relief during the disaster response from international organization or non-governmental organization, the Government Regulation No. 21 of 2008 on Disaster

Management and Government Regulation No. 23 of 2008 on International and NGO Assistants in Disaster Management are the instrument which give the fundamental principles on the issue of how the mechanism of International Organizations and Foreign Non-Governmental Organizations giving disaster relief during disaster response in Indonesia.

B. The Legal Framework for Disaster Management

1. International Regulation on Disaster Management

The attention of international community regarding disaster issues, particularly on the issue of disaster management, has developed significantly in recent decades, as clearly proven by the increasing number of relevant treaties which have been signed and ratified worldwide,⁴⁸ as well as part of commitment towards partnership and local as well as global cooperation on humanitarian assistance, especially if the disaster involves the loss of many lives. There are now more than 200 international treaties (universal, regional, and even bilateral) regulating various matters related to the prevention, management of disasters, and post-disaster rehabilitation and reconstruction.⁴⁹

⁴⁸ Harper E, 2009, *International Law and Standards Applicable in Natural Disaster Situations*. Rome: International Development Law Organization IDLO. p. 15.

⁴⁹ There are various archives containing disaster-related agreements: see more at <http://www.ifrc.org/en/what-we-do/idrl/research-tools-and-publications/disaster-law-publications/>; the UN Treaty Collection <http://treaties.un.org/>; the IDRL legal database, a collection of international and national legal documents such as treaties, resolutions, laws and regulations relevant to international disaster response operations, which was promoted and is managed by the International Federation of

Until now there are no well recognized and comprehensive internationally agreed rules, principles, and standards for the protection and assistance of people affected by natural and man-made disasters. There are some existing relevant international legal instruments related to disaster management, among others:⁵⁰

a. International Conventions

- 1) Convention Establishing the International Relief Union of 1927;
- 2) Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency 1986;
- 3) Convention on Early Notification of a Nuclear Accident of 1986;
- 4) Council's of Europe Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disaster of 1987;
- 5) Convention on Temporary Admission of 1990 (in particular annex B.9 concerning goods imported for humanitarian purposes);
- 6) Inter-American Convention to Facilitate Disaster Assistance of 1991;
- 7) Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997;

Red Cross and Red Crescent Societies, the OCHA Disaster Response Preparedness Toolkit available at <http://ocha.unog.ch/drptoolkit/PNormativeandLegalInstruments.html>, etc.

⁵⁰ Jiri Toman, "International Disaster Response Law: Treaties, Principles, Regulations and Remaining Gaps", *SSRN Electronic Journal*, (April, 2006). p. 10.

- 8) The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998;
- 9) The International Convention on the Simplification and Harmonization of Customs Procedures as amended in 1999;
- 10) Framework Convention on Civil Defense Assistance of 2000; and
- 11) The “Seville Agreement” on the Organization of International Activities of the Components of the International Red Cross and Red Crescent Movement of 1997.⁵¹

And also (UN Conventions)

- 1) UN Convention on the Privileges and Immunities of the United Nations 1946;
- 2) UN Convention on the Privileges and Immunities of the Specialized Agencies 1947;
- 3) Framework for Action for the International Decade for Natural Disaster Reduction of 1989;

⁵¹ Ida Bagus Rahmadi, Supancana, 2007, “International Disaster Response Law, Rules and Principles (IDRL) Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC)” (Paper unpublished, Presented at the Conference on Space Law and Space Applications for Disaster Management in the Asia Pacific Region, Chiangmai-Bangkok, 22 November 2007). p. 3.

- 4) The Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness, and Mitigation and its Plan of Action, adopted in 1994
- 5) UN Convention on the Safety of United Nations and Associated Personnel 1994;⁵²
- 6) The International Strategy for Disaster Reduction of 1999.
- 7) Optional Protocol to UN Convention on the Safety of United Nations and Associated Personnel 2005;
- 8) The Hyogo Framework for Action (HFA) 2005-2015: Building the Resilience of Nations and Communities to Disasters adopted at the Second UN World Conference in Hyogo, Japan 2005; and
- 9) The Sendai Framework for Disaster Risk Reduction 2015-2030 adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015.⁵³

And also (Regional Cooperation Agreements)

- 1) EUR-OPA Major Hazards Agreement (Partial Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters) 1987;

⁵² Natalia Yeti Puspita, 2011, "Human Rights Protection to Women in times of Natural Disasters in the Frame of ASEAN Regulations" (Paper unpublished, Presented on 2nd CILS Conference 2011: International Conference on ASEAN's Role in Sustainable Development in the Faculty of Law Universitas Gadjah Mada 21th and 22th November 2011). p. 7.

⁵³ United Nations Office for Disaster Risk Reduction, *Sendai Framework for Disaster Risk Reduction 2015-2030*, Geneva: UNISDR, 2015. p. 5.

- 2) ASEAN Agreement on Disaster Management and Emergency Assistance 2005; and
- 3) Inter-American Convention Disaster Assistance 1991.

b. General Normative Guidance

- 1) UN General Assembly Resolution 46/182, 1991 “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”;
- 2) UN General Assembly Resolution 57/150 of 2002; and
- 3) IASC Operational Guidelines on Human Rights and Natural Disasters (2006) and their Manual (2008).⁵⁴

c. Normative Guidance on Specific Issues

- 1) INSARAG Guidelines (Urban Search and Rescue) 2002;
 - 2) Guiding Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) 2005;
 - 3) UN Principles on Internal Displacement;
 - 4) Civil-military-relations (OSLO Guidelines, MCDA Guidelines);⁵⁵
- and

⁵⁴ Natalia Yeti Puspita, Op. Cit., p. 7.

⁵⁵ *Ibid.*

- 5) Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (IDRL Guidelines) 2007.⁵⁶

Other relevant legal documents, including but not limited to

- 1) Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disaster of 2000;
- 2) The statutes of the International Red Cross and Red Crescent Movement as amended in 1995;
- 3) The Principles and Rules of Red Cross and Red Crescent in Disaster Relief as amended in 1995;
- 4) The supplementary measures to enhance the implementation of the Seville Agreement of 2005; and
- 5) The measures to Expedite International Relief of 1977.⁵⁷

One of the most fundamental international instrument which regulated on the mechanism and gives fundamental principles on disaster management in a time of disaster response is the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines) 2007.

⁵⁶ *Anonymous*, "IDRL Guidelines", International Federation of Red Cross and Red Crescent Societies, accessed from <http://www.ifrc.org/en/what-we-do/idrl/guidelines/>, February 19, 2016 at 03:42 PM.

⁵⁷ Natalia Yeti Puspita, *Op. Cit.*, p. 8.

The guidelines are primarily intended as a set of recommendations to governments to help them to strengthen their own national laws and policies related to international disaster assistance. Using the guidelines, governments can prepare themselves to avoid the common bureaucratic barriers to relief (e.g., in visas, customs clearance, overflight and landing permission, tax exemptions, and recognition of domestic legal status) while also ensuring adequate systems of oversight and monitoring of the quality and coordination of relief efforts. This will help to ensure that affected communities receive the right aid at the right time.⁵⁸

They may also prove useful for the development of bilateral and regional agreements and for agreements between governments and humanitarian organizations. States and National Societies unanimously adopted the Guidelines in 2007 at the 30th International Conference of the Red Cross and Red Crescent.⁵⁹

The IDRL Guidelines recognize that the affected state holds primary responsibility for disaster response.⁶⁰ However, if the state determines that the effects of a disaster exceed national capacities to respond effectively, it

⁵⁸ International Federation of Red Cross and Red Crescent Societies, *Introduction to the Guidelines; for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*, Geneva: IFRC Publisher, 2011. p. 11.

⁵⁹ *Ibid.*

⁶⁰ Paragraph 3, IDRL Guidelines. See also UN GA Resolution 46/182 (1991), UN GA Resolution 57/150 (2002), and Hyogo Framework of Action (2005) (hereinafter referred to as the 'Hyogo Framework').

should seek regional/international assistance.⁶¹ Moreover, the IDRL Guidelines recognize that the state has the sovereign right to coordinate, regulate and monitor disaster relief and initial recovery assistance provided on its territory, consistent with international law.⁶² The IDRL Guidelines state that international responders should comply with applicable national and international law, coordinate with government, and respect the dignity of affected persons.⁶³

2. ASEAN Regulation on Disaster Management

Disaster management issues continue to represent one of the most pressing areas for cooperation in the Association of Southeast Asia Nations (ASEAN) Regional Forum (ARF) region. In part due to the dialogue within ARF, a consensus has emerged on the need to better mitigate, manage and respond to disasters.⁶⁴

The commitment of ASEAN towards disaster management due to facts that countries of ASEAN are: geographically located in one of the most disaster-prone regions of the world, the ASEAN region sits between several tectonic plates causing earthquakes, volcanic eruptions, and

⁶¹ See UN GA Resolution 46/182 (1991), and Hyogo Framework.

⁶² See UN GA Resolution 46/182 (1991).

⁶³ Paragraph 4, IDRL Guidelines. See also UN GA Resolution 46/182 (1991), Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, updated 2006 (Oslo Guidelines), and Sphere Humanitarian Charter and Minimum Standards in Disaster Response (Sphere Handbook).

⁶⁴ ASEAN Regional Forum, *ASEAN Regional Forum: Work Plan for Disaster Relief 2015-2017*, Jakarta: ASEAN Secretariat, 2015. p. 4.

tsunamis; the region is also located in between two great oceans namely the Pacific and the Indian oceans causing seasonal typhoons and in some areas, tsunamis, and the countries of the region have a history of devastating disasters that have caused economic and human losses across the region.⁶⁵

In the ASEAN region, ASEAN has the regulation on disaster management, there are:⁶⁶

- 1) Agreement on Disaster Management and Emergency Response, Vientiane, 26 July 2005;
- 2) ASEAN Declaration on Mutual Assistance on Natural Disasters, Manila, 26 June 1976;
- 3) Declaration on Action to Strengthen Emergency Relief, Rehabilitation, Reconstruction and Prevention on the Aftermath of Earthquake and Tsunami Disaster of 26 December 2004;
- 4) The ASEAN Agreement on Transboundary Haze Pollution of 10 June 2002;
- 5) The ASEAN Agreement for the Facilitator of Search of Ships in Disasters and Rescue of Survivors of Aircraft Accidents of 14 April 1972;

⁶⁵ Sushil Gupta et al, *Synthesis Report on Ten ASEAN Countries Disaster Risk Assessment; ASEAN Disaster Risk Management Initiative*, Jakarta: ASEAN Secretariat, 2010. p. 1.

⁶⁶ Natalia Yeti Puspita, *Op. Cit.*, p. 13.

- 6) The ASEAN Agreement for the Facilitation of Search of Ship in Disasters and Rescue of Survivors of Ship Accidents of 15 May 1975; and
- 7) The Agreement on the ASEAN Food Security Reserve of 4 October 1979.

The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) is a manifestation of ASEAN's strong commitment to reducing disaster losses in the region and to jointly respond to disaster emergencies.⁶⁷ Signed by the Foreign Ministers of ASEAN in Vientiane, Lao PDR in July 2005, just a few months after the 2004 Indian Ocean Tsunami affecting four Member States of ASEAN, AADMER captured the enormous experience of the individual ASEAN Member States and ASEAN as a region in responding to the mega-disaster.⁶⁸

AADMER affirms ASEAN's commitment to the Hyogo Framework for Action (HFA) and is the first legally-binding HFA related instrument in the world. It serves as the foundation for disaster management initiatives in the region, including for the establishment of AHA Centre.⁶⁹

In relation to the implementation regulation on disaster management,

⁶⁷ Heribertus Jaka Triyana, "The Implementation of Natural Disaster Management Program in Indonesia between 2007 and 2013", *Mimbar Hukum*, Volume XXV, February, 2013. p. 199.

⁶⁸ AHA CENTRE, *AADMER Work Programme Phase 1: Accomplishment Report*, Jakarta: ASEAN Secretariat, 2010. p. 1.

⁶⁹ AHA CENTER, "About AADMER: The Framework for Effective Disaster Management Initiatives in ASEAN", The ASEAN Coordinating Centre for Humanitarian Assistance on disaster management, taken from <http://www.ahacentre.org/about-aadmer>, accessed on March 12, 2016 at 02:14 PM.

ASEAN has The ASEAN Committee on Disaster Management (ACDM). ACDM is an institutional mechanism in the form of expert group and would also function as the Governing Board for the AHA Centre. In 2004-2010, ACDM established an ASEAN Regional Programme on Disaster Management (ARPD) to provide a framework for cooperation.⁷⁰

All the ASEAN legal frameworks regarding the disaster management particularly on the management of international assistance during emergency response shall in line with The Treaty of Amity and Cooperation (TAC) which adopted by the Heads of State/Government at the 1st Association of Southeast Asian Nations (ASEAN) Summit in Bali, Indonesia on 24 February 1976 is a foundational treaty by the ASEAN to establish a code of conduct to govern inter-State relations in Southeast Asia.

It was amended on 15 December 1987 by a protocol to open the document for accession by the states outside Southeast Asia, and again on 25 July 1998, to condition such accession on the consent of all member states. India and China were first, outside ASEAN to sign the treaty in 2003 at Bali, Indonesia. As of July 2009, sixteen countries outside the

⁷⁰ Natalia Yeti Puspita, *Op.Cit.* p. 13.

bloc have acceded to the treaty. The treaty has been endorsed by the UN General Assembly stating that:⁷¹

"The purposes and principles of the Treaty of Amity and Cooperation in Southeast Asia and its provisions for the pacific settlement of regional disputes and for regional co-operation to achieve peace, amity and friendship among the peoples of Southeast Asia [are] in accordance with the Charter of the United Nations."

The states in Southeast Asia desiring to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia are consistent with the spirit and principles of the Charter of the United Nations, the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955, the Declaration of the Association of Southeast Asian Nations signed in Bangkok on 8 August 1967, and the Declaration signed in Kuala Lumpur on 27 November 1971. This treaty is often referred as a form of global values which underlying the foundation of the establishment of regional organizations since there are some fundamental principles which guide all ASEAN members in appertaining with one another. In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles. Article 2 TAC, as follows:⁷²

1. mutual respect for the independence, sovereignty, equality, territorial; integrity and national identity of all nations;

⁷¹ *Anonymous*, "Review and Implementation of the Concluding Document of the Twelfth Special Session of the General Assembly", United Nations General Assembly, Accessed from <https://papersmart.unmeetings.org/ga/first/69th-session/agenda/97/>, 14 March 2016, at 3:34 PM.

⁷² Bambang Cipto, 2007, *Hubungan Internasional di Asia Tenggara, Teropong terhadap Dinamika, Realitas dan Masa Depan*. Yogyakarta: Pustaka Pelajar. p. 23.

2. the right of every State to lead its national existence free from external interference, subversion or coercion;
3. non-interference in the internal affairs of one another;
4. settlement of differences or disputes by peaceful means;
5. renunciation of the threat or use of force; and
6. effective cooperation among themselves.

The ASEAN legal instruments concerning the international humanitarian assistance during disaster emergency response shall respect the independence, sovereignty, equality, territorial, integrity and national identity of host state.⁷³ Therefore, all means of international humanitarian assistance during disaster emergency response in Southeast Asia region and all contracting parties who ratify the TAC shall respect the sovereignty of host State.

C. The Implementation of International Disaster Response Law of Indonesia

1. The Historical Background of International Disaster Response Law of Indonesia

Like the Krakatau Island volcanic eruption in May 1883, which caused immense waves to crash onto the shores of South Sumatera and West Java killing anyone in their path, the tsunami that ripped through

Aceh on 26th December 2004 will be remembered for many years to come.⁷⁴

What is less well known about the tsunami is how the monumental relief effort that followed revealed significant challenges for Indonesia's legal and institutional regime for disaster response and precipitated the enactment of a new law in 2007 to regulate disaster relief and govern the entire disaster management system, from preparedness to response and recovery. As a result, Indonesia is now at the forefront of disaster-prone countries that have developed and are continuing to develop, comprehensive legal regimes to support the entire disaster management spectrum.⁷⁵

In early 2007, Indonesian Government enacted a Law No. 24 of 2007 on Disaster Management which heralded a shift in the overall disaster management paradigm from responding to disasters to managing all phases of the disaster management spectrum; pre-disaster, emergency response, and post-disaster⁷⁶.

In the same year, the 30th International Conference of the Red Cross and Red Crescent was adopted the 'Guidelines for the domestic facilitation and regulation of international disaster relief and initial

⁷⁴ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *International Disaster Response Law (IDRL) in Indonesia; An analysis of the impact and implementation of Indonesia's legal framework for international disaster assistance*, Geneva: IFRC Pub, 2014. p. 7.

⁷⁵ *Ibid.*

⁷⁶ See Article 33 of Law No. 24 of 2007 on Disaster Management.

recovery assistance' (also referred to as the 'IDRL Guidelines').⁷⁷ This lately becomes the fundamental instrument to provide guidance to national governments on strengthening their legal frameworks for international participation in disaster response. The IDRL Guidelines provide a set of recommendations to help States avoid common legal and regulatory barriers often experienced in disaster response operations, many of which emerged during the response to the 2004 tsunami.⁷⁸

Following the enactment of new Law on disaster management, in 2008, three new government regulations were developed in order to implement Law No. 24 of 2007 on Disaster Management, with aspects of the new regulations drawing upon the IDRL Guidelines. The Government Regulation No. 21 of 2008 on Disaster Management but it governs more broadly, Government Regulation No. 22 of 2008 on Disaster Aid Financing and Management, and Government Regulation No. 23 of 2008 on Participation of International Organizations and Foreign non-government Organizations in Disaster Management which gives more specific understanding and mechanism on how the International humanitarian assistance during emergency response.

⁷⁷ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op.Cit.* p. 10.

⁷⁸ *Ibid.*

The law also established a new National Agency for Disaster Management (BNPB) to manage these new areas.⁷⁹ Moreover, the new legal instrument issued by BNPB to give a clear understanding of the mechanism of international organization and foreign non-governmental organization giving disaster relief during emergency response which is in line with the legal framework in Indonesia and the IDRL Guideline, namely Head of BNPB Regulation No. 22 of 2010 on Guideline on the Role of International Organization and Foreign Non-Governmental Organization During Emergency Response.

2. The Mechanism of International Assistance during Disaster Emergency Response

The IDRL Guidelines recommend that disaster relief or initial recovery assistance should be initiated only with the state's consent and, in principle, on the basis of an appeal.⁸⁰ The state should decide in a timely manner whether to request for disaster relief or initial recovery assistance by assessing its needs and communicating its decision promptly.

The challenge in accepting the international assistance is the practice of states invoking sovereignty to keep out foreign relief agencies. Indeed,

⁷⁹ *Ibid.* p. 11.

⁸⁰ Paragraph 10, IDRL Guidelines. See also UN GA 46/182 (1991) and ASEAN Agreement on Disaster Management and Emergency Response, 2005 (AADMER).

relief agencies cannot have access to a disaster area without prior approval from the government of the disasters truck country.⁸¹ Regardless of the severity of a disaster or the number of victims waiting to be rescued, state sovereignty cannot be superseded. State sovereignty and humanitarian intervention are two concepts that, unless reconciled, will continue to limit the effectiveness of relief agencies.⁸²

Based on the BNPB Regulation No. 22 of 2010 on Guideline on the Role of International Organization and Foreign Non-Governmental Organization During Emergency Response, initiation or commencement of international assistance during emergency response includes triggers for the entry of international assistance, mechanisms, and permit for the entry of international assistance, that is a permit for organizations and personnel as well as for goods.⁸³

a. Triggers for the Entry of the International Assistance

Humanitarian assistance from international organizations and foreign non-government organizations may be accepted by the following triggers:

⁸¹ Armador III, Julio Santiago, "Community Building at the Time of Nargis: The ASEAN Response", *Journal of Current Southeast Asian Affairs*, Volume III, (April, 2009). p. 17.

⁸² Allen Yuhung Lai, et al., *Op.Cit.* p. 4

⁸³ *Anonymous*, "Pedoman Peran Serta Lembaga Internasional dan Lembaga Asing Nonpemerintah Pada Saat Tanggap Darurat", Badan Nasional Penanggulangan Bencana, taken from http://docplayer.info/371149-Pedoman-peran-serta-lembaga-internasional-dan-lembaga-asing-nonpemerintah-pada-saat-tanggap-darurat.html#show_full_text, Accessed on March 13, 2016 at 08:35 PM.

- 1) The magnitude of the disaster exceeds the government's ability to overcome thereby requires the assistance of international organizations and foreign non-government organizations; and
 - 2) Statement from the government to accept the offer from the international organizations and foreign non-government organizations in compliance with the needs of the affected area.⁸⁴
- b. Mechanism for the Entry of the International Assistance
- 1) The entry of international aid begins with formal statement from the Government on the acceptance of international assistance;
 - 2) The type and amount of international aid is based on the results of a rapid assessment coordinated by BNPB and/or BPBD;
 - 3) The National Disaster Management Agency (BNPB) will send a circular letter of the initiation of international aid to international institutions and foreign non-government organizations using Forms 1 and 2 containing:
 - a) Summary report on the disaster;
 - b) Length of emergency response period;
 - c) Information on urgent need for logistics and equipment (based on reports from District Disaster Management Agencies (BPBD) and Rapid Assessment Team); and

⁸⁴ *Ibid.*

- d) Information on the professional personnel needed;
- 4) To handle emergency response in a certain area, BNPB in cooperation with relevant government institutions/ministries at the national level, relevant offices of local government at provincial level or district/city to establish the Emergency Response Command Post (or Main Command Post); and
- 5) To facilitate the entry of international assistance, BNPB in cooperation with relevant government at national and local levels of province or district/city will:⁸⁵
 - a) Determine the military base, airport and seaport as entry point for international assistance (entry point); and
 - b) Establish the Supporting Post at each military base, airport and seaport already set up as the entry point for international assistance which consists of representatives from:
 - (1) The National Disaster Management Agency (BNPB);
 - (2) Ministry of Defense;
 - (3) Ministry of Health;
 - (4) Ministry of Agriculture (Quarantine Division);
 - (5) Ministry of Law and Human Rights (Directorate General of Immigration);

⁸⁵ Syamsul Maarif, *Op. Cit.* p. 11.

- (6) Ministry of Finance (Directorate General of Duties and Excises);
- (7) Ministry of Foreign Affairs;
- (8) The National Police of the Republic of Indonesia (POLRI);
- (9) Ministry of Trade;
- (10) Ministry of Transportation;
- (11) National Intelligence Agency (BIN);
- (12) Food and Drugs Surveillance Agency; and
- (13) Local Governments/Local Agency for Disaster Management.

3. State Sovereignty in International Disaster Relief during Emergency Response

At the late of the twentieth century, public international law is firmly grounded on the principle of State sovereignty, which implies that every sovereign State has the right to conduct its affairs without interference from outside (foreign States). As a consequence, the prohibition of intervention in domestic affairs is recognized as a customary rule having general application. This has been reflected in a number of well-known declarations and resolutions adopted by the United Nations bodies and international conferences, as well as in the jurisprudence of the

International Court of Justice. In principle, the exercise by a state of any elements of sovereignty in the territory of a foreign State is a wrongful act.⁸⁶

The sovereignty principle clearly suggests that disaster response falls within the jurisdiction of the State in whose territory the catastrophic of natural and man-made disaster has occurred. Whenever assistance from foreign states or international organizations and foreign non-governmental organization is needed, it must be requested by the host state. Consent could arguably take the form of acquiescence, i.e., acceptance of relief provided without a request.

In any case, states, international organizations and foreign non-governmental organizations providing assistance must keep within the limits of the consent given. Current treaties dealing with cooperation in the event of accidents and disasters are constantly based on those principles. If assistance is offered by foreign non-governmental organizations or other private foreign entities that recognized under international law, the territorial state is free to admit them or to refuse

⁸⁶ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, A/RES/2131(XX) of 21 December 1965; Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, A/RES/36/103 of 9 December 1981.

entrance; admission entails their duty to abide by the laws and regulations of that State.⁸⁷

Meanwhile, International disaster response laws of Indonesia in Article 5 mention that international institutions or foreign non-governmental organizations that will participate in disaster management shall prepare a proposal, a memorandum of understanding and work plan. Furthermore, Article 6 and Article 7 regulate that a memorandum of understanding and work plan that shall be prepared by international institutions or foreign non-governmental organizations shall be under the coordination of the BNPB as the main actor for disaster management at the national level.⁸⁸

Those Articles, in line with traditional sovereignty principle in which sovereignty of Indonesia, shall be respected by international organizations and foreign non-governmental organizations in giving humanitarian assistance in form of disaster relief during emergency response situation regardless how many people that are affected waiting to be rescued. State sovereignty cannot be violated by entering into Indonesia territory without a permit issued by Indonesian Government.

On the other hand, Article 8 regulates that during the emergency response, international organizations and foreign non-governmental

⁸⁷ Andrea de Guttry et al, 2012, *International Disaster Response Law*, The Hague: Asser Press. p. 48.

⁸⁸ See Government Regulation No. 23 of 2008 on Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management

organization can directly provide aid or disaster relief without going through the procedure as referred to in Article 5 and Article 6. Disaster relief from international organizations and foreign non-governmental organization shall be provided along with a list of personnel, logistics, equipment, and location of the activities. The list of requirements may be submitted before, on, or immediately after the aid arrival in Indonesia and also mobilization of personnel, logistics, and/or equipment shall have accessibility in accordance with the provision of legislations.

In the case of emergency response situation, the international disaster response laws of Indonesia give convenience to international organizations and foreign non-governmental organization in giving disaster response. Therefore, without a good supervision, in this case, the sovereignty of Indonesia may be violated.

4. Case Studies of International Assistance during Disaster Emergency Response in Indonesia

The implementation of IDRL through Indonesia's legal instrument⁸⁹ was established to overcome the common bureaucratic barriers to relief (e.g., in visas, customs clearance, overflight and landing permission, tax

⁸⁹ Law No. 24 of 2007 on Disaster Management, Government Regulation No. 21 on Disaster Management, Government Regulation No. 22 of 2008 on Disaster Aid Financing and Management, Government Regulation No. 23 of 2008 on Participation of International Organizations and Foreign non-government Organizations in Disaster Management and Head of BNPB Regulation No. 22 of 2010 on Guideline on the Role of International Organization and Foreign Non-Governmental Organization During Emergency Response.

exemptions, and recognition of domestic legal status) while also ensuring adequate systems of oversight and monitoring of the quality and coordination of relief efforts. Furthermore, IDRL needs to analyze the recent disasters in Indonesia that cause a massive destruction, like West Sumatra earthquake in 2009 and the Yogyakarta volcanic eruption in 2010.

a. Case Study 1: West Sumatra Earthquake 2009

In the late afternoon of 30 September 2009, a powerful earthquake struck off the western Sumatra coast in Indonesia, measuring 7.6 degrees on the Richter scale. The epicenter was 45 kilometers west-northwest of the port city of Padang, Sumatra (population approximately 900,000 people). Following the first powerful earthquake, a second earthquake coming with measuring 6.2 occurred 22 minutes later. Then a third earthquake struck in an inland area 225 km southeast of Padang on the early following morning with measuring 6.8 Richter scale.⁹⁰

The earthquakes killed over 1,000 people in different areas and lead to serious massive destruction over 200,000 buildings and houses

⁹⁰ United Nations Office for the Coordination of Humanitarian Affairs, *West Sumatra Earthquake: Humanitarian Response Plan in Coordination with The Government of Indonesia*, New York: UNICHA Pub, 2009, p. 1.

both in the coastal province and further inland.⁹¹ The power of the West Sumatra earthquakes in 2009 can be seen through damaged building as illustrated in figure 4. 5. It was clear that with that power of destruction, local government needs an international assistance during the emergency response in giving disaster relief in recovery the situation.

Figure 4. 5

Massive Destructions of Earthquakes Effects in Padang



Source:http://archive.boston.com/bigpicture/2009/10/2009_sumatra_earthquakes.html.

With the Indonesian President aboard at the time of disaster, the Vice President Jusuf Kalla led a coordination meeting of seven ministries, including BNPB, to analyze at least six assessment reports.

⁹¹ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op.Cit.* p. 37.

BNPB confirmed that foreign Search and Rescue (SAR) teams were welcome as long as they were required. Following a cabinet meeting the next day, the President declared a state of emergency for a period of two months, on the basis of the various assessment reports. He also welcomed international assistance in coordination with national relief efforts.⁹²

Figure 4. 6

**International Assistance Rescue Workers Conducting Meeting
before Carrying Out Activities as Dusk Settles in Padang**



Source:http://inapcache.boston.com/universal/site_graphics/blogs/bigpicture/sumatra_quake_10_05/s05_20605379.jpg.

In the following two weeks after the first meeting at the national level, the President categorized the earthquake as a provincial level

⁹² *Ibid.*

emergency, after considering new assessment reports that limited the scale of its effects to one province.⁹³ According to interviews conducted by IFRC and PMI, it was unclear whether the national government formally announced the end of the emergency response stage, but it was generally accepted that the phase was finished in Padang on 21 October 2009, and in all other areas by 30 October, except for the two worst-hit districts.⁹⁴

At this situation, it was understood that at the very crucial time there is no clear cooperation between the Indonesian government, international organization, and foreign non-governmental organization at that time, about the information of the time of termination of disaster relief that should be announced by host state to prevent the extension of time in giving disaster relief by international organization and foreign non-governmental organization.

Speaking of international assistance, international community gave humanitarian assistance and were generous in their response to the West Sumatera earthquake. Two countries sent air and sea transport vehicles while others sent SAR and medical teams (including search dogs) equipment, shelter and medicines. In addition, some

⁹³ Fumihiko Imamura et al, "Tsunami Disaster Mitigation by Integrating Comprehensive Countermeasure in Padang City, Indonesia", *Journal of Disaster Research*, Volume VII, (December, 2011), p. 49.

⁹⁴ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op.Cit.* p. 38.

countries transferred substantial funds to the government and international institutions already based in Indonesia to implement the response. INGOs based in Indonesia, and their local partners, were very active in providing relief, both as a specific response to this disaster and through existing development programs⁹⁵

One thing found by IFRC and PMI while conducting research on the next year after the earthquake happened became the interesting points from some of the interviews conducted with an international organization and foreign non-governmental organization stakeholders were that they continued to conduct their own assessments following the passing of the law without cooperation with the government. Moreover, some expressed a desire to continue doing so based on this past practices.⁹⁶

This fact indicates that some international organization and foreign non-governmental organization while giving disaster relief during disaster response in Padang 2009 was violated the law⁹⁷ mentioning that government and regional governments shall exercise supervision over entire stages of disaster management. This situation could happen due to the lack of trust by the international organization

⁹⁵ *Ibid.* p. 39.

⁹⁶ *Ibid.*

⁹⁷ See Article 71 Paragraph (1) of Law No. 24 of 2008 on Disaster Management.

and foreign non-governmental organization of the early assessment report made by the government.

In reality, SATKORLAK⁹⁸ and BNPB appeared to have played a coordination rather than command role, with SATKORLAK coordinating the provincial level efforts and BNPB the national level. While the government did not make the decision on disaster management status for two weeks after the disaster, it appeared as though the response was carried out as if the disaster was of national rather than provincial status.⁹⁹

In accordance with the legal framework, BNPB should have appointed a commander once the emergency response stage commenced, in order to establish the various command posts and field posts and manage the coordination of relief efforts. However, according to stakeholder interviews, this did not happen until a later stage. Furthermore, some interviews suggested that the government did not identify and/or adequately disseminate information regarding a date for the end of the emergency response stage, whereas, according

⁹⁸ The Provincial Coordinating Body for Disaster Management (SATKORLAK) is the inter-sectoral coordinating body which depends directly on the Province Government. SATKORLAK members are all the heads of the Government Administrations, including the Armed Forces, the Police and local PMI (Indonesian Red Cross). See more at <http://reliefweb.int/report/indonesia/indonesia-emergency-shelter-coordination-group-situation-report-12-jun-2006> accessed on March 29, 2016 at 09:10 AM.

⁹⁹ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op.Cit.* p. 40.

to the definition outlined in Law No. 24 of 2007, disaster emergency status should be determined for a certain period of time.¹⁰⁰

Overall, the international assistance during an emergency response in Padang 2009 was established well in terms of the permit. In addition, there were no significant reports of problems relating to transport, immigration, customs, tax, and security-no aircraft were refused to land, and no SAR equipment and search dogs were refused entry.¹⁰¹ The Quarantine Department reported that search dogs were accompanied by the necessary documentation and entered the country through the designated entry points.¹⁰²

According to the National Food and Drug Agency, when a large food volumes arrive, it can normally take a few days to inspect these products to ensure that they are halal and have not passed their expiry date.¹⁰³ According to one of the interviews with BNPB, some government officials thought that the entry of assisting states and international institutions into the country for the West Sumatera earthquake response was ‘too easy’ and lacked quantity and quality

¹⁰⁰ Article 1, Law No. 24 of 2007 on Disaster Management.

¹⁰¹ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op.Cit.* p. 40.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

control methods, such as allowing too many SAR teams to enter and failing to check the professional qualifications of medical staff.¹⁰⁴

b. Yogyakarta Mount Merapi Volcanic Eruption 2010

On 26 October 2010 at 17:02 local time (10:02 GMT) the most active volcano in Indonesia, Mount Merapi erupted, causing 29 casualties. The eruption continued over several days, killing more than 350 villagers. A mass evacuation began immediately.¹⁰⁵ With the largest eruption taking place on 5 November 2010, President Susilo Bambang Yudhoyono declared the ongoing volcanic eruptions on Mount Merapi is a national emergency, and decided that BNPB was responsible for disaster management, supported by the Yogyakarta and Central Java Governor, Central Java and Yogyakarta Military Commander, Police Chief of Central Java and Yogyakarta; and the government would be represented by Menko Kesra.¹⁰⁶

The fast response from the government indicated that the eruption resulted in serious damage towards environment surrounding the affected area. The situation that illustrates from figure 4. 7 is one

¹⁰⁴ *Ibid.* p. 41.

¹⁰⁵ See pages 6 and 8, IFRC IDRL consultation workshop report (2013), available online at <http://bit.ly/1MlwYRg> last accessed on March 16, 2016 at 08:58 AM.

¹⁰⁶ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op. Cit*, p. 43.

of the examples that becomes the reason of the Indonesian Government directly put the eruption as a national emergency.

Figure 4. 7

Situation around Mount Merapi after the Eruption



Source: https://boufosnews.files.wordpress.com/2011/03/i27_25658521.jpg?w=614&h=408

All emergency services and local security forces dealing with this crisis then was coordinated by the central government. A football stadium in the center of Yogyakarta set up as a central reception center for the displaced.¹⁰⁷

After the Mount Merapi volcanic eruption, the Indonesian Government did not issue a formal request for international

¹⁰⁷ European Commission Humanitarian Aid and European Civil Protection, *Factsheet Indonesia Merapi Eruption*, Bruxelles, 2009. p. 1.

assistance.¹⁰⁸ The only important note was the replacement of destroyed volcanic monitoring equipment by the United States Geological Survey. According to an interview with the United States Agency for International Development (USAID), it would have been difficult to import the equipment but in the midst of a crisis, the customs procedures were relatively smooth.¹⁰⁹

Local government, the security forces, the Indonesian Red Cross, NGOs, and hundreds of volunteers distributed food, water and organizing basic medical care at Yogyakarta's main stadium. Some 36,000 people have found shelter and receiving basic supplies. The European Commission decided to provide Euro 1.5 million (US\$2.1 million) through its Humanitarian Aid department (ECHO) for humanitarian assistance to the survivors of the Tsunami in western Sumatra and those displaced by the volcano.¹¹⁰

Notwithstanding the lack of a request for international assistance, both in Yogyakarta and Jakarta airport and seaport were deemed to be entry points for international assistance. Similar to the response to the West Sumatera earthquake, foreign assistance largely

¹⁰⁸ World Health Organization, Emergency and Humanitarian Action, WHO Indonesia, *Emergency Situation Report: Mt. Merapi Volcano Eruption Central Java Province Indonesia*, Geneva; Relief Web, 2010. p. 3.

¹⁰⁹ Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op. Cit*, p. 43.

¹¹⁰ ECHO Bangkok 1, 2010, "Mount Merapi: Massive aid effort underway after volcanic eruptions", CNN iReport, accessed from <http://ireport.cnn.com/docs/DOC-516173>, March 16, 2016 at 08:49 AM.

provided in the form of fund transfers to the government and Indonesia-based INGOs to provide disaster relief. INGOs, already based in Indonesia, such as Oxfam and UNICEF¹¹¹, were involved in the relief effort and cooperated extensively with the government, including in the sourcing relief items from already existing stocks.

Since assisting states transferred funds but did not send personnel to operate in the country after the disaster, (nor did any international institutions that were not already based in Indonesia), the ‘easy access’ provisions relating to the mobilization of equipment, immigration, quarantine and licensing were not applicable. There were no major challenges identified in relation to the facilitation and regulation of international assistance after the Mount Merapi eruption, largely because the relief operation was handled by national and local authorities, and international assistance was not required.¹¹²

Based on the experience, the practice of international assistance in giving disaster relief during emergency response at West Sumatra earthquakes 2009 and Yogyakarta Mount Merapi Volcanic Eruption 2010 showed several miss-coordination’s between international organizations and foreign non-governmental organization and the lack preparation of Indonesian Government as the host state.

¹¹¹ United Nations International Children’s Emergency Fund

¹¹² Palang Merah Indonesia (PMI), International Federation of Red Cross and Red Crescent Societies (IFRC), *Op. Cit*, p. 43.

As demonstrated in West Sumatra earthquakes 2009, the international organization and foreign non-governmental organization conducted their own risk assessment in emergency situation, the Indonesian Government did not issue a clear period of time for international assistance during disaster response and a major challenge faced by Indonesian Government in receiving some massive goods volumes from other countries that were not labelled in Bahasa Indonesia or English.

In addition, the legal instruments, which have been enacted to deal with this issue yet, faced some challenges in order to protect and keep the Indonesian sovereignty in terms of international assistance during emergency response. Understanding that the natural and man-made disaster, which can lead a serious damage to affected states then there is no excuse to refuse the international humanitarian assistance due to help the affected states. Therefore, a basic understanding on this issue is required so that every state shall respect the sovereignty of host state. Therefore, Indonesia as the state that has a lot of potential natural and man-made hazard must establish a well-prepared mechanism to prevent the same action faced in West Sumatra earthquake 2009.

Indeed, in some case, the local handling of the disaster relief operation indicates the increasing capacity and experience of national,

provincial and district authorities, civil society organizations, and communities themselves to prepare for and respond to relatively small-scale disasters like Merapi eruption in 2010.