

# Rules Versus Discretion:

## Lessons from Earthquake and Liquefaction in Central Sulawesi, Indonesia

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**Abstract**—Natural disasters are situations beyond human control. An earthquake hit Donggala County, Central Sulawesi Province, Indonesia, on 28 September 2018, triggering a tsunami and liquefaction in Palu City, Sigi, and Donggala. Geologically, liquefaction occurs when the soil loses shear strength due to increased pore water stress resulting from high-speed and instantaneous cyclic loads (earthquake loads). As in natural disasters, the safety of the people is the highest law. Against this concept, the issue of discretion can, of course, occur in an emergency. Therefore, this research is needed to answer these problems. The research is empirical legal research with a non-random sampling technique. This research was conducted using the perspective of social jurisprudence. The results show that an extraordinary authority must exist in the life of the nation and state. However, as it turns out into practice, there is no guarantee that situations and emergencies cannot be resolved only based on existing provisions at a particular time. Therefore, even though the sky will fall, the law must still be enforced. Hence, the room for decision-making and action is for things that have not been regulated.

**Keywords**—discretion, local government, natural disaster, earthquake, liquefaction

### I. INTRODUCTION

Natural disaster is a necessity that accompanies human life. It cannot be avoided, but at least efforts can be made so that the risks and impacts that arise do not cause many losses, both life and material and non-material losses. Because it concerns the interests and safety of the wider community, the presence of the state in countermeasures is absolutely necessary.

Disaster management is an implementation of the realization of the Government responsibility in providing protection for every citizen. The pattern of disaster management in the regions has taken on a new dimension with the issuance of Act No. 24 of 2007 concerning Disaster Management. In Article 8 of Act No. 24 of 2007 it is stated that the responsibility of the regional government is in the implementation of disaster management.

The responsibilities and authorities of local governments play a role in the disaster management system. Both in terms of legislation and planning aspects, local governments must make

emergency operation plans and integrate disaster management plans with regional spatial plans.

Disaster management is one part of national development, namely a series of disaster management activities before, during and after a disaster occurs. So that the regional head must be responsible for the implementation of disaster management in the region, in the implementation of disaster management it is the regional head that must be responsible, but in the division of affairs, there is no concurrent and absolute division of government affairs, especially in disaster management in the regions. Then it is not explicitly regulated in laws and regulations regarding the use of regional head discretion, especially in regional disaster management.

### II. INTER-INSTITUTIONAL COORDINATION IN NATURAL DISASTER MANAGEMENT

Basically, discretion is something that cannot be avoided both for the application of the law itself and in the government. It is needed as a complement to the principle of legality, namely the legal principle which states that every act or act of state administration must be based on applicable laws and regulations. According to Bagir Manan, there are at least 2 (two) causes of the limitations and weaknesses of written law [1], namely the first, law as part of society covers all aspects of life which are very broad and complex, so it is impossible for all of them to be incarnated in the form of written legislation; and the second, legislation as written law is generally static in nature which cannot quickly follow the movement of growth, development and change in society that must be carried out.

Discretion in administrative law is a necessity. If a government administration official must use discretion in making a government administrative decision, the official concerned must pay attention to the purpose of granting discretion, applicable legal limits and the public interest. So that the discretion that exists in the state administration is not misused, it is necessary to have a benchmark limiting its use. The elements that must be met by discretion are [2]:

- Exists because of the public service tasks conducted by the state administrator;

- In doing these tasks, state administrators are given the freedom to determine policies;
- These policies can be accounted for both morally and legally.

The discretion of administrative officials has the power to act in dealing with urgent problems because the rules do not yet exist, the regulations are unclear or provide choices, and a situation that results in a state of stability, including when faced with disaster conditions. Basically, in this kind of situation, the administrative officer determines “what is the law” for the problem and is related to the responsibility for solving the problem. Yang-Yang in his article “*Fundamental Research on the Administrative Discretion Standard*” stated that the standard of administrative discretion must meet efficiency for the community [3]. According to its etymological origin, the idea of discretion is consideration, especially good judgment, according to its etymological, “*the idea of discretion judgment particular good judgment.*” [4].

According to responsive law, discretion is expanded but the goal to be achieved remains the goal. To do this, responsive law reinforces the ways in which openness and integrity can support each other even when there are conflicts between the two. Essential justice that prioritizes the interests and needs or interests of individuals and society, through a participatory law-making process, the function of law as an instrument of implementing the people’ will. Goals set standards for critiquing established practice, and thereby pave the way for change. At the same time, if properly used, objectives can control administrative discretion and thereby reduce the risk of institutional disengagement [5].

According to Paripurno in Liesnoor [6], disaster is a phenomenon that occurs because the components of triggers, threats, and vulnerabilities work together systematically, causing risks to the community. The definition of disaster according to Act No. 24 of 2007 is an event or series of events that threaten and disrupt people’ lives and livelihoods caused, both by natural factors and/or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property losses and psychological impacts.

After a disaster occurs, disaster management must be understood as a complete, continuous, and synergistic management cycle consisting of: (1) emergency management, (2) rehabilitation, (3) reconstruction, (4) development, (5) prevention, (6) mitigation or impact reduction, and (7) preparedness, which includes the development of an early warning system. Meanwhile, natural disasters tend to be managed with an “*effect*” approach, especially taking emergency actions, such as searching for refugee victims. These efforts are unlikely to solve the problem. Therefore, it is necessary to consider immediately carrying out disaster management with a “*cause*” approach, by reducing vulnerability. According to the International Strategy for Disaster Reduction (ISDR), a serious disruption to the functioning of a society, causing widespread harm to human life in material, economic or environmental terms and beyond

the ability of the communities concerned to cope using their own resources.

There are 2 (two) models of approaches in disaster management, especially for emergency assistance, namely “*conventional*” and “*empowerment*”. The difference between both approaches mainly lies in the way they “*see*”: (1) the condition of the victim, (2) the assessment of needs, (3) speed and accuracy, (4) the focus of the assistance; (5) the final target. Disaster risk is the potential loss arising from a disaster in an area and a certain period of time which can be in the form of death, injury, illness, threatened life, loss of sense of security, evacuation, damage or loss of property, and disruption of community activities. Threat is an event or event that can lead to disaster. However, if the planning is good and the preparation is sufficient, then the threat of the emergence of victims and the occurrence of death may not occur. Earthquakes, floods and tsunamis are a threat. With the conventional paradigm, disasters that occur are generally handled after a disaster occurs.

In this research, several incidents that were handled pre-disaster, during emergency response and post-disaster, the research sample took Donggala Regency area, including the following [7].

**A. Pre-Disaster**

The implementation of disaster management at pre-disaster stage in accordance with Local Regulation No. 5 of 2011 concerning Regional Disaster Management in the form of early warning, prevention and community preparedness activities and local government apparatus aims to minimize the incidence of human casualties, property losses and environmental damage.

**B. During Disaster**

The implementation of disaster management during the emergency response stage in accordance with the regional regulation of Donggala Regency No. 5 of 2011 concerning regional disaster management is carried out through several activities, namely (fig. 1):

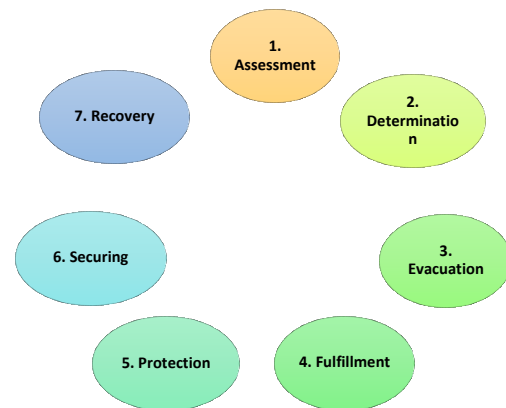


Fig. 1. The emergency response stage in accordance with the regional regulation of Donggala Regency No. 5 of 2011.

Information:

1. Rapid, precise and responsive assessment of the location of damage to losses and resources;
2. Determination of the status of a disaster emergency;
3. Search, rescue and evacuation of disaster victims;
4. Fulfillment of basic needs of clothing, food and shelter for disaster victims;
5. Protection of victims who fall into the vulnerable category;
6. Securing disaster-affected areas
7. Immediate recovery of vital infrastructure and facilities.

Mobilization of human resources, equipment and logistics during a disaster emergency, the Head of Regional Disaster Management Agency is authorized to mobilize potential human resources from elements of Civil Servants, Indonesian National Armed Forces, Indonesian National Police, and the community to conduct emergency response. The deployment of equipment and logistics is carried out for the rescue and evacuation of disaster victims, fulfillment of basic needs, and restoration of the function of vital infrastructure and facilities damaged by the disaster. In terms of human resources, equipment and logistics in the regions, local governments can ask for assistance from the central government and the provincial government. The reception and use of human resources, equipment and logistics at the disaster site is carried out under the command of the Regional Disaster Management Agency.

C. Post Disaster

The implementation of disaster management in Pre-disaster stage is conducted in 2 ways, namely rehabilitation and reconstruction. As Local Regulation No. 5 of 2011 concerning Regional Disaster Management, namely (fig. 2):

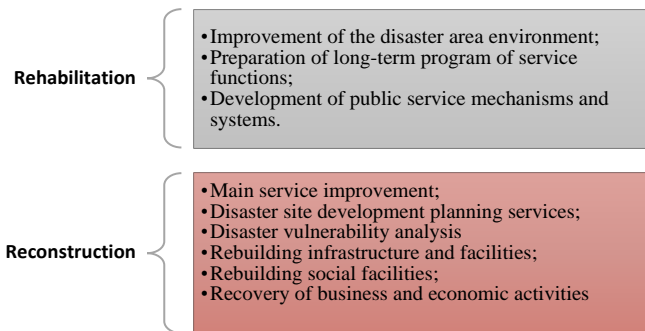


Fig. 2. The implementation of disaster management in Pre-disaster.

Rehabilitation and reconstruction are carried out in the restoration of civil rights of disaster-affected communities and rights to local economic, social and cultural access. The three disaster periods, namely Pre-disaster, during disaster and post-disaster involve related institutional organizations. In this

research, it is emphasized that every condition requires coordination between institutions. If you look at the concept of disaster management, at first glance it is quite simple. But basically in disaster management, it is quite complex. Things that are always a problem are communication, information, coordination and cooperation, because in handling disasters, whether in emergency conditions, mitigation or preparedness, everything cannot be done alone. There needs to be cooperation from every element of society in disaster response and disaster management. Communication is important in disaster management. Communication is part of inter-institutional coordination, campaigns, stakeholder communication to victimized communities, journalistic work, and so on. So what is disaster communication? Disaster communication is the effectiveness of communication and disaster events and the promotion of disaster risk reduction efforts, including the ineffectiveness of communication and also failures in disaster response operations [8].

The study of the effectiveness of disaster communication strategies departs from 5 (five) critical assumptions, namely; a) *Customer focus* is to understand the information they need and build a communication mechanism that produces information accurately and on time, b) *Leadership commitment*, emergency operations leaders must have a commitment to be able to communicate effectively, and must be committed to fully participate in the communication process, c) *Inclusion of Communication in Planning and Operations*, communication experts or communications department must be involved in all emergency and operational planning activities in order to be able to ensure that communication proceeds in a timely manner and accurate information can be considered, where action decisions are being considered, d) *Situational awareness*, effective communication is based on the right time in collecting, analyzing, and disseminating information from disasters as part of effective communication, e) *Media Partnership*, mass media is the most effective medium to communicate in a timely manner in terms of accurate information to the public. Partnerships with the media involve understanding the needs of the media; in addition we also employ trained staffs to work directly with the media so that information can easily reach the public [8].

The table below explains how disaster communication and information works within the scope of disaster management. The response to disaster management at each institution is good but it is just that there is no coordination between institutions in disaster management in Donggala Regency. However, what still needs attention is that all institutions or institutions tend to only focus on emergency response, not on mitigation or disaster preparedness. Coordination can basically start in pre-disaster. This makes coordination between institutions or institutions not optimal.

Coordination is main problem in disaster management. One of the barriers to coordination is sector ego of each institution, because each institution is autonomous. In addition, because there is no clear coordination, what happens is an overlap of orders or commands. All of them have actually worked

according to their respective scopes, but because there is no coordination it can trigger the overlapping of organizational activities carried out. Disaster management is also difficult if the Dinas do not do it within the logic of disaster management. Therefore, it is important to open communication of disaster management coordination with the agencies which are basically quite close to the disaster event, opening communication for joint discussions in building communication relations, coordination and cooperation with service agencies in terms of disaster mitigation and preparedness.

Overall, it shows that coordination, integration and synchronization of thought, planning, implementation and supervision are still problems that must be solved. The coordination mechanism includes, among others: policy, which is the direction of the goal, the plan, which states how to carry out, the time of implementation, the person who carries it out, procedures and work procedures, which contains who does what, when it is carried out, and with whom to communicate which is made in the form of instructions [9].

Coordination is a process of integrating goals and activities in separate units (departments or functional areas) of an organization to achieve organizational goals efficiently. Through this theory the author will make this reference as a reference or basis in solving problems. Therefore, inter-institutional coordination in natural disaster management cannot be separated from institutional communication, in which has an important role in establishing the effectiveness and efficiency of cooperation between institutions and reducing miscommunication towards the goals to be achieved.

### III. CONCLUSION

Inter-institutional coordination in natural disaster management cannot be separated from effective disaster

communication in order to build synergistic activities on disaster events and promote disaster risk reduction efforts including avoiding ineffective communication to reduce failures between institutions in disaster response operations, it is necessary to have customer focus actions, leadership commitment, inclusion of communication in planning and operations, situational awareness, media partnership, and partnership with the media involve understanding the needs of the media so that information can easily reach the public. Basically disaster communication is how to build effective communication and information before and after a disaster occurs.

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