



Legal Vacuum Regarding State Responsibility for Flood Disasters in Indonesia

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Abstract. This study discusses the legal vacuum regarding state responsibility for tidal flood (rob) disasters in Indonesia, focusing on a juridical-sociological analysis of the implementation of Law No. 24 of 2007 on Disaster Management and the 1945 Constitution. The main issue lies in the absence of legal recognition of rob as a natural disaster, resulting in the lack of a legal basis for the state to provide adequate protection and recovery measures for affected communities. This situation creates a gap between *das sollen* (what the law should be) and *das sein* (what actually happens), where constitutionally the state must guarantee the right to a decent life, yet in reality, coastal communities such as those in Sayung District, Demak, receive limited protection. Using a juridical-sociological and qualitative descriptive approach, the study finds that the state's responsibility remains reactive, fragmented, and unsupported by a clear legal framework. Therefore, legal reform is urgently needed through the revision of Law No. 24 of 2007 to include rob as a natural disaster and to strengthen the mechanisms of state accountability in ensuring the right to life and welfare of coastal communities.

Keyword: Legal vacuum, state responsibility, tidal flood, right to life, disaster management.

1 Introduction

The phenomenon of tidal flooding is a serious problem that occurs in various coastal areas of Indonesia, one of which is in Sayung District, Demak Regency, Central Java. The continuous flooding that has hit the area has caused significant economic, social, and environmental damage. The community lost their homes, farmland, and access to public facilities. However, to date there has been no clear regulation regarding the status of tidal waves as natural disasters in the Indonesian legal system, particularly in Law No. 24 of 2007 on Disaster Management. This situation creates a legal vacuum in terms of the state's responsibility towards communities affected by tidal flooding [1].

The Indonesian Constitution affirms that the state is responsible for protecting the entire nation and all Indonesian citizens, as stated in the fourth paragraph of the Preamble to the 1945 Constitution. In addition, Article 28H paragraph (1) of the 1945 Constitution states that every person has the right to live in physical and spiritual prosperity and to enjoy a good and healthy environment. This provision indicates that the state is obliged to guarantee the right to a decent life for all citizens, including those living in flood-prone areas [2].

However, in empirical reality (*das sein*), communities in coastal areas such as Sayung actually face legal uncertainty and minimal policy support. Although tidal flooding occurs almost every year, it is still considered a local event without comprehensive state intervention [3]. As a result, the policies adopted are reactive and do not address the root of the structural problem.

Conversely, normatively (*das sollen*), the law should provide protection against all forms of disasters that threaten people's lives without exception. However, Article 1 paragraph 2 of Law No. 24 of 2007 does not mention tidal flooding as a category of natural disaster. This creates a legal vacuum that weakens the legal basis for tidal flooding victims to obtain state assistance.

This legal vacuum has resulted in a lack of clear division of responsibilities between the central and regional governments. In practice, flood management in Sayung has been limited to the construction of embankments and the raising of roads, without any long-term solutions [4]. In fact, flooding is a structural phenomenon caused by rising sea levels and land subsidence, which requires cross-sectoral policies.

This situation contradicts the principles of the 1945 Constitution, which guarantees the right to a good and healthy environment. In the context of Sayung, thousands of homes have been submerged and many residents have been forced to migrate to other areas due to the loss of their homes. The state should be actively present to guarantee the constitutional rights of coastal communities [5].

The right to a decent life is also related to Article 27 paragraph (2) of the 1945 Constitution, which affirms that every citizen has the right to work and a decent livelihood. Tidal flooding in Sayung has destroyed agricultural land and fish ponds, causing many residents to lose their jobs and sources of income.

The legal vacuum regarding the status of tidal flooding as a natural disaster has resulted in weak government legitimacy in providing legal protection and structured assistance [6]. In fact, based on Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a country based on the rule of law that requires all government actions to have a clear legal basis [7].

In the context of *das sollen*, the state should update the law so that the definition of natural disasters includes tidal flooding and other coastal disasters. This is in line with the Sendai Framework for Disaster Risk Reduction 2015–2030, which emphasizes the importance of state preparedness for disasters caused by climate change.

In terms of *das sein*, tidal flooding management policies in Indonesia are still sectoral and reactive. Relocation programs are not accompanied by job guarantees and economic rights for the affected communities. As a result, many residents return to tidal flooding areas because they are unable to adapt.

In legal theory, state responsibility requires the state to protect the basic rights of its citizens from the threat of disasters. The state is considered negligent if it fails to take preventive measures against foreseeable disasters.

State responsibility in the context of tidal flooding must be preventive and curative, through coastal mitigation policies and spatial planning. The government needs to integrate the issue of tidal flooding into sustainable development plans.

Finally, recognizing tidal flooding as a natural disaster is not only a technical matter, but also a manifestation of the state's constitutional responsibility for the right to life and social justice.

2 Method

The research method used in this study is the sociological-legal method, which examines legal issues not only from the perspective of written norms (law in books), but also from their application in society (law in action) [8]. This approach is used to understand how the legal vacuum regarding state responsibility for tidal flooding affects social conditions and community life in coastal areas, particularly in Sayung Subdistrict, Demak Regency. This study examines laws and regulations such as the 1945 Constitution and Law No. 24 of 2007 on Disaster Management, then compares them with the reality on the ground, which shows that tidal flooding has not been legally recognized as a natural disaster. Thus, the legal approach is used to analyze applicable legal norms, while the sociological approach is used to examine the extent to which these norms are effectively implemented in protecting the rights of communities affected by tidal flooding.

This study is descriptive and analytical in nature, with the aim of describing the gap between *das sollen* (the law that should apply) and *das sein* (the reality that occurs) regarding the role and responsibilities of the state towards flood victims [9]. Primary data was obtained through field observations and interviews with communities and local government officials affected by flooding.

Meanwhile, secondary data was obtained from legal literature, policy documents, and court decisions relevant to the research issues [10]. The analysis was conducted qualitatively, by interpreting legal data and social facts to determine the relationship between legal norms and their implementation practices.

Through this sociological-judicial method, the study is expected to provide a comprehensive picture of the legal vacuum in the designation of tidal flooding as a natural disaster and offer normative solutions for strengthening the state's responsibility in guaranteeing the right to a decent life for Indonesia's coastal communities.

3 Result and Discussion

The significant gap between applicable legal norms (*das sollen*) and social reality in the field (*das sein*) regarding the state's responsibility for tidal flooding in Indonesia remains a serious problem. Based on a review of the 1945

Constitution and Law No. 24 of 2007 on Disaster Management, it was found that there are no explicit provisions recognizing tidal flooding as a type of natural disaster [11]. Article 1 paragraph 2 of the law limits the definition of natural disasters to earthquakes, tsunamis, volcanic eruptions, floods, droughts, typhoons, and landslides. The absence of the term "rob" means there is no clear legal basis for the state to be responsible for providing legal protection, assistance, and recovery to communities affected by rob, as happened in Sayung Subdistrict, Demak Regency [12].

Normatively, the state has a constitutional responsibility to guarantee the right to a decent life and a good environment as stipulated in Article 28H paragraph (1) and Article 33 paragraph (3) of the 1945 Constitution. However, in practice, this responsibility has not been effectively realized for flood victims. The government, both central and regional, tends to treat tidal flooding as a normal local natural event that does not fall under the category of a national disaster. This has resulted in a lack of mitigation, rehabilitation, and permanent relocation policies for affected residents [13]. For example, in Sayung District, most of the community still lives in an area that is flooded by seawater every year without any certainty of relocation or adequate compensation.

From interviews and field observations, it is evident that the handling of tidal flooding is more administrative and technical in nature, such as the construction of temporary embankments, raising roads, and distributing temporary social assistance [14]. This approach does not address the root of the problem, which is the absence of a legal basis that defines tidal flooding as a natural disaster that imposes legal obligations on the state. As a result, communities affected by tidal flooding cannot hold the state accountable through legal channels because there are no positive norms on which to base their claims. This situation highlights the existence of a legal vacuum that is detrimental to coastal communities.

From the perspective of state responsibility, the state should be responsible not only after a disaster occurs (curative), but also in the form of preventive measures through coastal disaster adaptation and mitigation policies. However, the facts show that existing policies are still fragmented between ministries and agencies without clear coordination [15]. For example, BNPB does not have the legal basis to declare a tidal flood emergency, while the Ministry of Public Works focuses more on the technical aspects of infrastructure without considering the socio-economic rights of the community. As a result, the principles of coordination, fairness, and effectiveness of public policy are not being implemented as they should be.

In addition, the state's responsibility to provide a decent standard of living as guaranteed in Article 27 paragraph (2) of the 1945 Constitution has not been realized [16]. The impact of flooding in Sayung has destroyed the livelihoods of residents who previously depended on fish farming and agriculture. Many people have lost their jobs and are forced to live in extremely limited conditions. The state has not provided a sustainable economic recovery program for this vulnerable group. This means that the state has not fulfilled its socio-economic responsibilities as mandated by the constitution and the principles of the welfare state [17].

From the results of sociological legal analysis, it can be seen that the main problem is not only the weak implementation of the law, but also the absence of norms in legislation. This void has resulted in reactive, sectoral, and unsustainable policies [18]. The handling of tidal flooding is still within the realm of local government administrative policy, rather than within the framework of national disaster management law. Empirically, tidal flooding has had a widespread and recurring impact every year, equivalent to other natural disasters such as floods or landslides [19].

When viewed from the principle of the rule of law (Article 1 paragraph (3) of the 1945 Constitution), all forms of state responsibility and policy must have a clear legal basis [20]. In this context, the lack of recognition of tidal waves as natural disasters indicates a violation of the principles of legality and state accountability. The state seems to have "no obligation" under the law to protect coastal communities from suffering, even though morally and constitutionally it should be present to protect them [21]. This is evidence that positive law in Indonesia is not yet fully capable of responding to the dynamics of non-conventional disasters such as tidal flooding caused by climate change and environmental damage [22].

The results of the study also show a discrepancy between legal policy and development policy. The government has placed greater emphasis on economic development and coastal industrialization without considering environmental carrying capacity. Groundwater exploitation and land reclamation have exacerbated land subsidence and accelerated seawater intrusion [23]. However, in terms of accountability, the state does not yet have clear legal instruments to prosecute perpetrators or restore the conditions of affected communities.

In the context of *das sollen*, the state should undertake legal reform of Law No. 24 of 2007 so that the definition of natural disasters includes tidal flooding and other coastal phenomena. With this recognition, the state will have a legal basis for action and the community will have legal legitimacy to demand their rights. Legal strengthening also needs to be followed by the implementation of a human rights-based approach that places disaster victims as legal subjects who must be protected, not merely as objects of social assistance.

Meanwhile, in terms of *das sein*, the reality on the ground shows that the enforcement of state responsibility is still formalistic and administrative in nature. The government often argues that tidal flooding is the result of natural phenomena or global climate change, and therefore beyond human control. In fact, neglect of spatial planning, exploitation of coastal resources, and weak environmental supervision constitute forms of state negligence. Thus, the state's responsibility for tidal flooding is twofold: legal responsibility for negligence in prevention, and moral responsibility for neglecting the basic rights of citizens.

Overall, the results of this study show that the legal vacuum regarding the designation of tidal flooding as a natural disaster has weakened the position of coastal communities *vis-à-vis* the state. They have lost the legal basis for demanding protection, while the state has lost its legitimacy to take comprehensive action. To overcome this, it is necessary to reformulate disaster management laws to include tidal flooding as a national disaster, clarify the state's accountability mechanisms, and strengthen inter-agency coordination in handling coastal disasters.

With these steps, the state can carry out its constitutional role more fairly and effectively in protecting the community from the threat of tidal flooding. Legal reform will not only eliminate the existing legal vacuum, but also be a tangible manifestation of the state's responsibility for the people's right to a decent life and welfare as mandated by the 1945 Constitution.

4 Conclusion

This study concludes that there is a regulatory gap and weak state accountability regarding tidal flooding in Indonesia. Law No. 24 of 2007 on Disaster Management does not explicitly classify tidal flooding as a natural disaster, resulting in the absence of a firm legal basis for state protection, assistance, and recovery efforts. Consequently, coastal communities, such as those in Sayung District, Demak Regency, face legal uncertainty and inadequate protection of their constitutional right to a decent life. Normatively (*das sollen*), the state is obligated to protect citizens and guarantee environmental and welfare rights under the 1945 Constitution. Empirically (*das sein*), these obligations remain unrealized, as flood management is still technical, reactive, and sectoral rather than grounded in comprehensive legal policy. The lack of clear regulation undermines the rule of law and state accountability, limiting the fulfillment of citizens' rights. Therefore, legal reform is necessary through revising Law No. 24 of 2007 to recognize tidal flooding and strengthen accountability mechanisms. Such recognition represents not merely administrative adjustment, but the constitutional implementation of welfare state principles, ensuring protective policies, stronger mitigation, and the fulfillment of citizens' rights to safety and well-being.

Acknowledgments

The authors would like to express their gratitude to the Faculty of Law, Universitas Semarang, for the academic support provided in the completion of this research. Appreciation is also extended to the local government officials and members of the coastal community in Sayung District, Demak Regency, whose insights and cooperation contributed significantly to the sociological-legal analysis presented in this study

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