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National Disaster Declaration for Lombok's Earthquake in Indonesia and Its Relation to International Human Rights Law

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Abstract:

The earthquake happening in Lombok, Indonesia has brought devastation not only to the still-standing civilizations there, but also to the heart of Indonesians all around Indonesia. Despite the high number of victims and other losses, the disaster is still not acknowledged as a national disaster, assuming that the local government's still capable in conducting the disaster management. Unequal distribution of relief and the inadequate number of relief raise complains from the victims who already suffer from the earthquake, while initially, the victims of the earthquake shall be treated no less than the other citizens who are not affected, and that the government has the responsibility in ensuring their basic rights. This paper will discuss how declaring Lombok earthquake as national disaster will be affecting better fulfillment of human rights of the citizens, based on normative analysis of the existing regulations in Indonesia.

Keywords: Disaster, human rights, international law, earthquake

1. Introduction

In the midst of Asian Games' euphoria, hosted by Indonesian Government in Jakarta and Palembang, in the other part of Indonesia, people are still suffering from the devastation caused by an earthquake with a magnitude of 6.9 in Lombok on August 5th, 2018 (Indonesia Earthquake Death Toll Rises to 555, 2018). The victims and losses are increasing due to the following aftershocks – the last count shows 160 aftershocks – which also forced people to flee their homes (Azhar, 2018). The death toll reached 555 on Friday, and more than 1,300 people were injured while almost 353,000 people have fled their homes. Until Tuesday, August 21, 2018, the National Board for Disaster Management stated that the superseding earthquakes have happened 1,005 times, causing more casualties (Ihsanuddin, 2018). The fact that Lombok is one of the main tourist destinations also made it worse, since the earthquake has caused Lombok to lose around 100,000 tourists (Edoardo, 2018).

There have been efforts being done for Lombok's disaster management, but there are still difficulties being faced, particularly the width of affected area with difficult terrain, sanitation and medication problems. Aside of that, as confirmed by the National Board for Disaster Management, they are racing with time since they also need to mitigate the aftermath of previous earthquakes while also needing to inform the citizens about the aftershocks (Gempa Lombok: Menangani Bencana 'Berjibaku 24 Jam' di Tengah Gempa Susulan, 2018). Indonesian Government has decided to declare that Lombok's earthquake is not a national disaster. The disaster management will be handled by the local government while the central government will issue a Presidential Decree stating that they will support the local government in terms of disaster management (Sani, 2018). Recently, President of the Republic of Indonesia, Joko Widodo, has signed and established Presidential Instruction (Instruksi Presiden, abbreviated as Inpres) for Lombok's Disaster Management. In his statement, Joko Widodo implied that declaring Lombok's earthquake as a national disaster is not necessary, since the disaster management is now national-scale (Ihsanuddin, 2018). Furthermore, Ministry of Social Services also stated that the reason why central government hasn't declared Lombok's earthquake as a national disaster is because local government is still capable to handle the disaster management (Erdianto, 2018).

The problem that occurs now is the limited capacity of local government to handle such casualties. National and local agencies being responsible for disaster management and the flow of coordination are still unclear, leaving the disaster management with the probability of ineffectiveness. Aside of that, the fact that Lombok is one of the main tourist attractions – which simply attracts income for Indonesia as well – should also be considered by the central government to increase the status of this disaster as national disaster. On the subsequent parts of this paper, the writer will discuss the international and national legal frameworks of disaster management, the significance of national disaster status declaration for Lombok earthquake, and comparison with other countries.

2. Disaster Management and Human Rights

Everyone has a right to life and the continuation of life, upon which can't be infringed by anything, anyone. This right shall be promoted and protected, and the implementation of this right should not be discriminatory. These rights serve as a basis for other rights, such as a right to basic necessities, such as access to goods, service, foods, water, and many

others. In times of disasters, the life of people is already threatened, and they become victims who lose their homes, their relatives or family members, their properties, and their schools. So many people are forced to flee their homes, can't go to school, depend on humanitarian aid to fulfill their basic necessities, such as water, food, healthcare and sanitation.

The government has the obligation to ensure the fulfillment of the essential rights of its people, and disaster management that acknowledges these essential rights is the way to protect the people's rights. A good and effective disaster management that focuses on the victims shall be initiated to make their life better. Emergency relief for such disaster isn't enough. It's supposed to be followed by a right plan to reconstruct and rehabilitate. Disaster management and human rights are inseparable; thus, disaster management will comply with existing human rights principles and human rights law.

3. International Legal Frameworks on Disaster Management

The Inter-Agency Security Committee (IASC) has established an IASC Operational Guidelines on Human Rights and Natural Disasters which has set the operational standards for disaster management by using international human rights standards, including those which are related, such as humanitarian law standards and law on Internally Displaced Persons (IDP). Based on the IASC Operational Guidelines, there are four categories of rights on disaster respond, which are (Ferris, 2012):

- Protecting the lives, security, and physical integrity of persons affected by disasters and to uphold family unity;
- Protecting the rights to food, health, shelter, and education;
- Protecting the rights to housing, land, property as well as restoration of livelihoods and education, which includes reclaiming their houses or lands after the disaster;
- Protecting the rights of information or documentation, freedom of movement, and other civil and political rights.

Aside of this, the UN has established the Sendai Framework for Disaster Risk Reduction 2015 – 2030, which give directions to countries on disaster risk reduction, especially in re-building the resilience to disasters and rehabilitation as well as reconstruction process. It is reiterated that disaster risk reduction practices should be inclusive by engaging various parts of society and stakeholders, such as youth, children, migrants, poor people, indigenous people, and many others. The preparation for future disasters through monitoring, assessing and understanding disaster risk should also be done (Nations, 2015).

4. National Regulations on Disaster Management in Indonesia

Indonesia already has Law No. 24 Year 2007 on Disaster Management. This law is an elaboration of the government's commitment in implementing all directions that have been included in Hyogo Framework for Action (before the Sendai Framework of Disaster Risk Reduction) (IFRC). Under this law, there is no specific article that mentions the significance of declaring a disaster as a national disaster. It only stipulates who is authorized to determine the status of such disaster, which is under the National Board for Disaster Management. There is indeed a set of indicators – as stipulated in Article 7 (1) of this Law -- of determining such disaster, but it doesn't specify on what scale or to what extent a disaster shall be declared as a national disaster. It opens a wide possibility of disparities between the practices.

Law No. 24 Year 2007 on Disaster Management also mentions other agencies or bodies other than the government that will be involved in the disaster management. Although it's inclusive enough, it shows that the one who will be responsible if the disaster management doesn't meet the expectation is not the government only. This also means that the government holds no sole responsibility in ensuring the fulfillment of the fundamental human rights of the victims. The government can't be blamed if the disaster management doesn't make the victims enjoy the fulfillment of their human rights.

Other relevant regulations on disaster management in Indonesia are Government Regulation No. 21 Year 2008 on Implementation of Disaster Management, Government Regulation No. 22 Year 2008 on Funding and Management of Disaster Relief, and Government Regulation No. 23 Year 2008 on Contribution of International Agencies and International Non-Governmental Agency in Disaster Management.

As aforementioned, the President of the Republic of Indonesia has established a specific Presidential Instruction on the earthquake's disaster management, which is Presidential Instruction No. 5 Year 2018. Under the new Presidential Instruction, there are 19 ministers and 12 leaders of national agencies and the head of districts and provinces that need to synergized their actions as part of disaster management.

5. Significance of Declaration of National Disaster for Lombok's Earthquake

The disaster agency of Indonesia, National Board for Disaster Management has unleashed a statement which pointed out the possibility of having more international assistance if Lombok's earthquake is declared as a national disaster. This international assistance would more likely cause new problems – as this agency said – and Indonesia hasn't declared any disaster as a national disaster since tsunami that hit Aceh in 2004. Although it is not declared as a national disaster, the central government will do the support in terms of disaster relief fund as well as reconstruction fund (Indonesia: Lombok quakes don't meet national disaster status, 2018). Moreover, the local government showed strong opposition in declaring such earthquake as national disaster, since they concerned about how this declaration will impact their tourism and national pride, as confirmed by Sutopo Nugroho, the spokesman for the National Board for Disaster Management. The officials stated that, "When a disaster happens, not many countries are willing to declare a 'national disaster' status, as it will show the weakness of the country." (Lipson, 2018)

As stated in the Introduction part of this paper, disaster relief has been initiated, but it needs to be well-coordinated and well-maintained to make sure that every victim of this earthquake received the help they need. The capabilities of the local government in handling the response to the earthquake shall be measured by how the local government manages the incoming help from other institutions, even other regions with good coordination and effective delivery to the victims. No matter how much amount of relief being delivered, if it's not being coordinated effectively, it wouldn't give much impact to the betterment of the victims. What is happening currently is that the earthquake relief hasn't met the demand, since it took a very long time for the relief to reach the victims and how it can't fulfill the basic needs of the victims (Lipson, 2018). Aside of that, the victims of the earthquake who are living in Mataram, complained that the logistics being sent were kept in district (village) government, which were never received by the victims.

Another thing that should be highlighted is that the National Board for Disaster Management is the one who has the authority in declaring whether a disaster is a national disaster or not, and the consideration of such declaration is under the capacity of the National Board. However, seeing from the facts that happened, the response of local government – who are being so sure in handling the earthquake – has affected the decision being made by the National Board. Victims and recovery efforts should be the focus of attention, but the attempt of the local government in defending their pride and image has hampered the whole process of disaster management for the earthquake.

To compare with tsunami in Aceh in 2004, the decision to make its status as a national disaster is based on how much the government in the province was affected, which would further require a central command (APNews, 2018). Seeing the numerical comparison of the impacts caused from the tsunami in Aceh and earthquake in Lombok, the disaster in Aceh brought bigger devastation and calamities. However, the fact that there are so many people being displaced because of the earthquake is overwhelming, and it does need a national attention by the central government.

If the government declares Lombok's earthquake as a national disaster, more international aid will eventually come and the central government will become the one who gives commands, preventing further clashes and redundancy between agencies that are working on the relief. Acknowledging the fact that Lombok is one of the top tourist destinations, especially foreign tourists, the disaster happening will attract more aid from international agencies, even from other countries, so that there will be no need of trying to gather donations from all over Indonesia for the victims. Mirroring from tsunami relief in Aceh, the master plan for reconstruction is made by the National Board. The central command was held by the President which was given to the Rehabilitation and Reconstruction Agency (BRR) that further coordinated responses and reconstruction (Schepet, 2006). By this, the relief as well as the rehabilitation and reconstruction process will be effectively executed. By making the President and central government as the main command, not only as the one who gives assistance, the whole implementation of the disaster management plan will be well-executed and well-monitored.

6. Internally Displaced Persons of Lombok Earthquake

As aforementioned in the Introduction part of this paper, the disaster management should also adhere to the regulations on internally displaced persons (IDP) if such disaster forces so many people to flee their homes and stay in camps. Lombok earthquake is not an exception. This part will analyze further the suitability between the practice of handling IDP resulted from the earthquake and the UN Guiding Principles on Internal Displacement.

The term 'Internally Displaced Persons' (IDP) is those who are forced or obliged to leave and remain away from their homes but remain within the borders of their own countries. What should be highlighted with the cases of IDPs are the infringement of their fundamental rights due to the forced displacement they experienced, such as the loss of access to homes, lands, livelihoods, personal documentation, family members and social networks. They become so dependent on others to fulfill their basic necessities, such as foods, shelter, water, and sanitation. They are also vulnerable to any act of economic and social exploitation (Brookings Institution, 2008).

Within the Guiding Principles, there are several principles that are important in the case of Lombok earthquake, which are:

- Non-discriminatory treatment between IDPs and other persons in the country (Principle 1.1);
- National authorities have the primary responsibility to provide protection and humanitarian assistance to IDPs, which can be requested by IDPs (Principle 3.1 and 3.2);
- Special assistance shall be given to certain IDPs, such as children, expectant mothers, mothers with young children, female heads of households, persons with disabilities and elderly persons (Principle 4.2);
- Displacement shall last no longer than required by the circumstances (Principle 6.3);
- All IDPs have the right to know the information of their missing relatives (Principle 16);
- All IDPs have the right to an adequate standard of living, which include at least essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation (Principle 18.1 and 18.2);
- The right to receive humanitarian assistance, including those from international humanitarian organization and other actors which should be facilitated by national authorities, and shouldn't be regarded as an unfriendly act or interference (Principle 25.2);

After the adoption and the launch of the Presidential Instruction, related ministries held a meeting together to discuss the division of responsibilities and coordination in the disaster relief. Based on the Presidential Instruction, the National Board for Disaster Management has conducted a data collection on the displaced persons and their distribution, and the Ministry of Women Empowerment and Child Protection has divided the data based on sex and age groups. The problem that is now arising is despite the data being collected and the recognition of specific needs that each group of

people has, the utilization of this data has yet to be effective. The distribution of the relief that has been successful to gather hasn't covered all IDPs in shelters, since there are shelters who are isolated and difficult to be reached.

The reality that is happening right now is that there are several regions in Lombok that received lesser relief than the other regions, namely North Lombok and East Lombok. IDPs in North Lombok received more relief than those in East Lombok, making the people in East Lombok beg for aid from the road users. Even one of the members of the involved non-governmental organization, Sonny Yudhawan from Cakra Indonesia, stated that the distribution of logistics for East Lombok is lesser than North Lombok. It's not fair because they already suffer because of the aftershocks they feel every day (Media Indonesia, 2018). The practice has obviously violated the principle of non-discrimination which should be under the responsibility of national authorities.

On the other hand, there have been several international organizations as well as non-governmental organizations who help in distributing the relief. However, based on Government Regulation No. 23 Year 2008 on Contribution of International Agencies and International Non-Governmental Agency in Disaster Management, the National Board for Disaster Management can coordinate the relief distribution by those international organizations so that the relief will reach all the victims in affected regions equally. The facilitation in terms of regulation has been there, but the implementation is still zero. This is also not suitable with the Principle 25.2 in the Guiding Principles.

Another thing that should be noted is how the central government insist on having local government lead the progress of disaster management, and the only responsibility of the central government is to assist them. The lack of plan in handling thousands of IDPs caused by the earthquake shows how the central government and its authorities don't want to have a main responsibility to provide basic necessities and protect fundamental rights of the victims, which obviously contradicts Principle 2 of the Guiding Principle.

7. Recommendation

Due to the massive impact of the earthquake as well as the lack of capability of the local government in doing disaster management effectively, the declaration for Lombok earthquake as a national disaster is needed. Afterwards, the central government, particularly the President, can authorize the National Board for Disaster Management to coordinate the implementation of disaster management as stipulated in Article 13 of Law No. 24 Year 2007. As stated in Article 12 of Law No. 24 Year 2007, the National Board for Disaster Management will be responsible for using all aids (both national and international), and also be responsible for managing the budgeting from government budget. So instead of appointing different ministries with different roles and sectors of responsibilities, the National Board for Disaster Management will hold the central command and create a special team for Lombok earthquake rehabilitation and reconstruction process as what has been implemented in Aceh. This special team will consist of the members of the National Board for Disaster Management, the staffs of local government and its responsible agency, as well as staffs from related ministries. They will plan the rehabilitation and reconstruction process as well as communicate the plan to the related ministries, so that the ministries won't have to hold a lot of coordination meetings on Lombok earthquake.

8. Conclusion

In conclusion, declaring a disaster as a national disaster in Indonesia will put the leading command towards the President, which will enable the authorization or appointment of specialized agency to do the coordination in terms of relief, as well as reconstruction and rehabilitation process, instead of giving the coordination to the local government alone. Creating a Presidential Instruction which outlines the responsibilities of each ministry and agency – with so many ministries and agencies involved – isn't the best solution to the disaster. What should be done is to create a special team under the National Board for Disaster Management with inclusive membership, to coordinate all the relief from local governments of other provinces or cities as well as relief from organizations or agencies, instead of having so many ministries and agencies to hold coordination meetings for so many times. The government also needs to bear in mind the protection for Internally Displaced Persons (IDPs) resulted from the earthquake which has reached several hundred thousand people, which complies with the existing principles in the UN Guiding Principles on Internal Displacement.

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