

THE IMPLEMENTATION OF NATURAL DISASTER MANAGEMENT PROGRAM IN INDONESIA BETWEEN 2007 AND 2013*

Heribertus Jaka Triyana**

International Law Department, Faculty of Law, Universitas Gadjah Mada
Jalan Sosio Justicia Nomor 1, Bulaksumur, Sleman, D.I. Yogyakarta, 55281

Abstract

This article focuses on the implementation of the natural disaster management program (NDMP) after the promulgation of Act No. 24 of 2007 on Disaster Management. This implementation will be viewed both from legal and political frameworks. The aim of this article is twofold: First, to assess whether the community-based natural resources management system principle in Act No. 24 of 2007 has been implemented as the core principle for executing the NDMP. Second, to evaluate the hindrance caused by political decentralization to the effective implementation of the NDMP under Act No. 24 of 2007 as taken by local governments under the community-based natural resources management system principle.

Keywords: disaster, disaster management, community-based.

Intisari

Artikel ini fokus pada pelaksanaan program penanggulangan bencana alam setelah diundangkannya Undang-Undang Nomor 24 Tahun 2007 tentang Penanggulangan Bencana dengan menggunakan perspektif kerangka hukum dan politik. Tujuan artikel ini ada dua: Pertama, untuk menilai apakah prinsip pengelolaan sumberdaya alam berbasis masyarakat dalam Undang-Undang Nomor 24 Tahun 2007 telah diimplementasikan sebagai prinsip inti untuk melaksanakan program penanggulangan bencana alam tersebut. Kedua, untuk mengevaluasi kendala yang disebabkan oleh desentralisasi politik terhadap keefektifan pelaksanaan program penanggulangan bencana alam menurut Undang-undang Nomor 24 Tahun 2007 sebagaimana ditempuh oleh pemerintah daerah di bawah prinsip sistem pengelolaan sumberdaya alam berbasis masyarakat.

Kata Kunci: bencana, penanggulangan bencana, berbasis masyarakat.

Pokok Muatan

A. Introduction.....	103
B. Discussion.....	104
1. Background and Rationales of the Principle of NDMP.....	104
2. Legal and Political Analysis of the Implementation of the Principle of NDMP in Indonesia.....	106
3. The Principle and its Application to the Series of Disaster Events between 2007 and 2013	110
C. Conclusion	118

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** Correspondence address: jaka.triyana@mail.ugm.ac.id

A. Introduction

This article begins with two considerations. First, natural resources are commonly perceived as potential or promising sources of domestic incomes for development; denying a fact that they also play a role as potential natural hazards contributing to human vulnerability.¹ Secondly, management of natural resources is a form of everyday political concerns full with vested interests.² Consequently, a legal and political in-depth analysis is needed to review the strength or weakness of its effective implementation and to reveal proper advocacy strategies in order to empower local communities as the subject of the NDMP in Indonesia.³

Arguably, ignorance from local governments and skepticism from communities to the implementation of this principle lessens its applicability as the core principle for the implementation of the NDMP.⁴ This argument is justified by the application of method on making spatial planning and by the examination of six-phased implementation of community-based disaster management (CBDRM) or the implementation of the NDMP cycle management viewed using legal and political analysis.⁵ In the former, the process of making spatial planning is directed to the management of natural resources accepted as a system or guidance for conducting management of natural resources while the latter is directed to the ways, methods and policies on how to cope with natural hazards developed by local governments to their communities.⁶

Legal point of view is derived by the application of the rights based approach for full realization of economic, social and cultural rights focusing on indicators of accessibility to, availability of, acceptability from and adaptability to management of natural resources in those two mechanisms.⁷ Viewed from a political point of view, empirical positives or negative tendencies and stereotypes taken by local governments and by central governments in the political decentralization regime will be directed to reveal facts of “to what extent that the political decentralization hinder or support for the implementation of the NDMP taken by local governments to their communities in Indonesia after the promulgation of Act No. 24 of 2007⁸ and Act No. 26 of 2007”. So, arguably this article topic and its substance gain its relevance since they are very relevant within the current Indonesian context and perspective after the issuance of the Law dealing with natural disaster events between 2007 and 2013.

This paper will discuss three issues as follow. **First**, the effectiveness of the implementation of the principle after the issuance of the Act toward recent natural disaster events viewed from both legal and political perspectives. **Secondly**, the implementation of the principle in the series of natural disaster events between 2007 and 2013. **Lastly**, it will draw faithful advocacy strategies for more effective implementation of the principle. Referring to primary, secondary and tertiary data

¹ Imelda Abarquez and Murshed, 2005, *Community-based Disaster Risk Management: Field Practitioners' Handbook*, ADPC, pp. 5-9.

² J. Friedman, 1992, *Empowerment: The Politics of Alternative Development*, Cambridge MA, Blackwell, pp. 23-45.

³ J. Christanto, 2007, “Otonomi Daerah dan Skenario Indonesia 2010 Dalam Konteks Pembangunan Daerah Pendekatan Kewilayahan”, *Paper* (unpublished).

⁴ J. Benton Heath, “Disaster, Relief and Neglect: The Duty to Accept Humanitarian Assistance and the Work of the International Law Commission”, *New York University Journal of International Law and Politics*, Vol. 43, No. 2, 2011 pp. 419-477.

⁵ M. Baiquni and R. Rijanta, “Konflik Pengelolaan Lingkungan dan Sumber Daya Dalam Era Otonomi dan Transisi Masyarakat”, *Bumi Lestari*, Vol. 1, 2007, pp. 2-22.

⁶ T. Notohadikusumo, 2005, *Implikasi Etika Dalam Kebijakan Pembangunan Kawasan*, Forum Perencanaan Pembangunan, PSPR UGM, Yogyakarta.

⁷ W. P. Samadhi, 2005, “Desentralisasi Setengah Hati: Berpindahnya “Sentralisme” ke Daerah”, <http://www.demosindonesia.org/diskursus/3068-desentralisasi-setengah-hati-berpindahnya-sentralisme-ke-daerah.html>, accessed in 2012.

⁸ This law was enacted on 26 April 2007 in State Gazette No. 66 of 2007. It consists of 13 chapters and 85 articles and it changes many pre-existing regulations on disaster response, e.g. Presidential Decree Number 28 of 1979 on the Formation of the Natural Disaster Management Coordinating Board, Presidential Decree Number 3 of 2001 on the National Coordinating Board for the Management of Disaster and Refugee, and Act No. 4 of 1984 on Epidemics. Due to Aceh Tsunami tragedy on 26 December 2004, the Act was relatively easy to pass between the Government and the House of Representatives in response to the national and international scrutiny of the Indonesian disaster response laws and regulations. The Act was followed by Government Regulation No. 22 of 2008 on the Financial Arrangement of Disaster Management and Government Regulation No. 23 of 2008 on the Role and Function of International Organizations on Disaster Management, State Gazette No. 43 and 44 of 2008.

on disaster response initiatives is the main method to answer those questions above.

B. Discussion

1. Background and Rationales of the Principle of NDMP

The community-based disaster reduction management (CBDRM) is the newest paradigm of disaster management (DM) in Indonesia. The CBDRM is understood as “a process in which at-risk community are actively engaged in the identification, analysis, treatment, monitoring, and evaluation of disaster risk in order to reduce their vulnerabilities and enhance their capacities”.⁹ Prevention and mitigation efforts are placed as the basic rationales for this adoption in the Act. As a new paradigm, it tries to adjust with the only internationally-accepted paradigm for conducting disaster management in South East Asia: the ASEAN Agreement on Disaster Emergency Response (AADMER)¹⁰ by taking into account several considerations below.

First, Act No. 24 of 2007 gives emphasis for the implementation of the NDMP which is compulsory to be taken by local governments. This is due to a fact that Indonesia is labeled as a “supermarket” of natural disaster by the international community.¹¹ Commonly, natural disaster is defined as “an occurrence of natural hazards impact on section of society causing death, injury, loss of property or economic losses that overwhelm society’s ability to cope”¹² from which the Act takes this definition in Article 1 (2). In this Article, tsunamis, earthquakes, floods,

droughts, landslides, and volcanic eruptions are literal examples for contextualizing this definition in Indonesia by emphasizing the fact that they “disrupt life of individuals, social interaction within society and living environments”.¹³

As a result, the NDMP has become a common terminology for massive campaign of mitigating and preventing negative impact of natural disaster, and it has become a part of issue of sustainable development in Indonesia.¹⁴ The lessons learned from the Aceh tsunami tragedy in 2004 and from the Yogyakarta earthquake tragedy in 2006 support this emphasis. The paradigm aims to minimize communities’ vulnerability and disaster risks by increasing public participation in the development process (Preamble of Act No. 24 of 2007). Although it has been accepted as a common terminology, many people do not have clear understanding about its substantial and its practical uses due to it being too broad as an Act and full of technical meanings. Factually, those who are labeled as marginalized groups such as rural communities are not aware of and do not take care of the principle’s contextual application in their daily life.¹⁵ As a basic reference, Hoffman defines disaster management as the genus of NDMP as “a broad development and application of policies, strategies and practices to minimize vulnerability and disaster risks throughout society, through prevention, mitigation, preparedness, emergency response and recovery measures”.¹⁶

Secondly, deriving from the above definition, CBDRM is used exhaustively for conducting the NDMP in a natural disaster event as a way, tool,

⁹ ASEAN Disaster Preparedness Center, 2006, *Community-Based Disaster Risk Management*, ASEAN, Bangkok, pp. 14-15.

¹⁰ Signed in July 2005, this Agreement has been ratified by all ten Member States and it came into force on 24 December 2009. It is the first international legally-binding norm on disaster response in the world, applicable to South-East Asian countries. All ten ASEAN Member States are obliged to implement the AADMER in their national development process either by passing laws and regulations or by guaranteeing concrete actions and initiatives to be implemented from 2010 to 2015 in order to achieve the ASEAN vision of disaster resilient nations and safe communities by 2015, as stated in the ASEAN Press Release of 2010.

¹¹ G. L. Acciaoli, “Archipelagic Culture” as An Exclusionary Government Discourse in Indonesia”, *The Asia Pacific Journal of Anthropology*, Vol. 2, No. 1, pp. 1-23.

¹² H. S. Naryanto, “Prinsip Dasar Bencana, Mitigasi, dan Penanggulangan Bencana di Indonesia”, in LPPS KWI, 2001, *Penanganan Bencana: Kumpulan Bahan-bahan Pelatihan Penanganan Bencana*, LPPS-KWI and Caritas Indonesia.

¹³ S. H. Hoffman and A. Oliver-Smith, 2002, *Catastrophe & Culture, The Anthropology of Disaster*, Oxford, pp. 15-25.

¹⁴ R. Permana, 2007, *Mengubah Paradigma Penanganan Bencana di Indonesia*, Paper, West Java Disaster Reduction Studies Center.

¹⁵ N.A. Permana, “Revitalisasi Lembaga Adat dalam Menyelesaikan Konflik Etnis Menghadapi Otonomi Daerah: Studi Kasus Pulau Bangka”, *Antropologi Indonesia*, Vol. 68, 2002, pp. 74-85.

¹⁶ S. H. Hoffman and A. Oliver-Smith, *Op.cit.*, pp. 15-16.

method, or steps to cope with the negative impacts of a natural disaster. In Act No. 24 of 2007, CBDRM's definition is adopted in Article 1 with special acknowledgement to performance and outcome indicators construed in the Hyogo Framework for Action 2005-2015, the ASEAN Agreement for Disaster Management and Emergency Assistance, and from the United Nations General Assembly Resolution 46/182. Although there is no literal definition of the NDMP in Act No. 24 of 2007, it can be interpreted loosely according to CBDRM's definition that the NDMP is "a process in which at-risk community to natural disaster are actively engaged in the identification, analysis, treatment, monitoring and evaluation of natural disaster risk in order to reduce their vulnerabilities and enhance their capacities".

The Act further proposes that the NDMP shall consist of six interrelated natural disaster risk reduction process labeled as "the NDMP-cycle management". They are: selecting the community, rapport building and understanding, participatory natural disaster risk assessment, community-based natural disaster risk management planning, community-managed implementation, and monitoring and evaluation. They have to be cumulatively implemented by all stakeholders with special emphasis to roles of local governments as facilitators, enablers or resources providers, and communities.

Thirdly, the Act substantially regulates NDMP in accordance to the CBDRM's paradigm by initiating community-based natural resources management system principle as the core or legal ethical principle under Article 3. According to Article 3 (3), the operational principles such as the principles of justice, humanity, balance, and harmony, and the implementation principles for examples the principles that the use of appropriate technology and science is to be implemented in accordance with the community-based natural resources management system principle.

The fact that this principle is construed extensively in many sections in this Act makes legal and political analysis worth doing. Although there are no official explanations for this legal stance, arguably by applying the teleological interpretation, the Government intentionally wants to apply the concept of the human rights based-approach for all efforts on the NDMP by empowering communities as the subject not as the object. In its third paragraph of its preamble, this intention is supported by three following rationales. First of all, communities' involvement is the sustainability of community level initiatives for natural disaster risk reduction. Secondly, the role of vulnerable groups and persons is central in the NDMP since it is about their life. Lastly, nobody can understand local opportunities and constraints better than the local communities themselves. These rationales are believed to be deductively relevant with the changing patterns of natural disaster occurrence and loss resulting from natural hazards and from the application of the good governance principle in the political decentralization system in Indonesia. Impliedly, they have been inductively perceived as the key strategy for poverty alleviation in Act No. 24 of 2007. This strategy is based on the belief that the political decentralization as exercised by local governments can promote a participatory disaster resilience development in terms of creating and enabling environment to strengthen community actions as a vehicle for change for sustainable development in Indonesia.

Fourthly, the application of the theory of breakdown of natural resources management proposed by Jacqueline¹⁷ and Ribot¹⁸ is truly adopted as the main logical framework for making local spatial planning program. This theory opens the chance that "decentralized natural resources management system by smaller units (local governments and communities) will increase opportunity of participation from multi

¹⁷ A. Jacqueline, "Alternative Approaches to Managing Conflict in the Use of Natural Resources", *Paper*, Presentation Material on International Workshop on Natural resources Management, Washington D.C., May 1998.

¹⁸ J. C. Ribot, 1990, "Accountable Representation and Power Participation and Decentralized Environmental Management", *Unasyhva*, Vol. 50, No. 199, 1999.

stakeholders, increase roles of civil society, and open up intensive interaction among stakeholders for the natural resources management at local levels”.¹⁹ In simple terms, this theory reveals that those who have biggest interests will have the biggest access to management and to the enjoyment of natural resources viewed from the spatial planning program.²⁰ Arguably this concept plays its role as the ultimate condition to achieve the NDM program in Indonesia.

To sum up this section, there are two new cumulative requirements for conducting the NDMP in Indonesia based on the application of the community-based natural resources management system principle. The first paradigm relates to the system of management of natural resources referring to the application of the method on the spatial planning as a pre-requisite for conducting the phases of the CBDRM in the NDMP. After the completion of this paradigm, six phases of the NDMP cycle management can be implemented further based on appropriate considerations as the second requirements. Hopefully, the local capacities can be strengthened in terms of how to cope with natural hazards faced by local communities who play the role as the subject while their local governments play roles as the facilitator, enablers or resources providers.

2. Legal and Political Analysis of the Implementation of the Principle of NDMP in Indonesia

Black defines ‘principle’ as “a fundamental truth or doctrine, as of law; a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination”.²¹ The principle of community-based natural resources management system can be understood in this sense by giving more attribution

into its status as the core principle in Act No. 24 of 2007. This principle may be defined freely as “the binding law to all NDMP stakeholders that requires the true participation from communities toward disaster risk reduction efforts and guarantees for the full enjoyment of management of natural resources available there as a condition to reduce vulnerability toward natural hazards and to mitigate negative impacts of natural disaster through the application of the method of spatial planning and through the cumulative application of the NDMP cycle management”.

However, such definition seems relatively difficult to apply since it is related to a broad notion of natural resources. Natural resources are “term that everyone understands and no one is able to define it because it relates to the meaning of environment”,²² and it also “points to different contextual applications”.²³ Stemming from this difficulty, Act No. 5 of 1990 on Natural Resources Conservation may be referred to as an authoritative source of interpretation in the Indonesian legal system. According to Article 1 of this Act, ‘natural resources’ is defined as “all natural elements forming ecosystem differentiated between renewable and non-renewable resources, and living natural resources and non-living natural resources that human beings are responsible for their management”. Viewed from this definition, the legal rationale of the anthropocentric standing becomes the center of attention for its application to the principle in all NDMP. The 1972 Stockholm Conference and the 1992 Rio Declaration on Environment are two international instruments having this standing which inspires the above definition. Human beings are placed at the center (subject) of concerns for sustainable development and in particular for NDM programs while environment (natural resources) is placed as the object for all those initiatives.

¹⁹ Jacqueline, *Loc.cit.*

²⁰ Ribot, *Loc.cit.*

²¹ H. C. Black, 1990, *Black's Law Dictionary*, 6th ed., West Publishing Co., St. Paul, p. 1193.

²² L. K. Caldwell, 1980, *International Environmental Policy and Law*, 1st ed, Duke University Press, Durham, p. 170.

²³ P. Birnie and A. Boyle, 2002, *International Law and the Environment*, Oxford University Press, New York, pp. 5-7. R. Q. Grafton, *et al.*, 2004, *The Economics of the Environment and Natural Resources*, Blackwell Publishing, United Kingdom. A. Weintraub, *et al.* (Ed.), 2007, *Handbook of Operations Research in Natural Resources*, Springer Science Business Media.

In contrast, this stipulation neglects the currently-accepted standard for the environmental management under the holistic approach principle. This is due to the fact that this approach has not been construed in legal formulations especially on its clarity between legal rights and duties within the Indonesian legal system on environmental law.²⁴ Under this principle, the interdependency of humanity and the entire natural world are recognized and imposed firmly in accordance with the current international standard deriving from the 1992 Conventions on Biological Diversity and Climate Change spirit. Thus, factually the principle of community-based natural resources management system applied for the NDMP as regulated in Act No. 24 of 2007 and in Act No. 26 of 2007 does not move into this new paradigm. It is because all natural resources management is subjected to the anthropocentric requirements as regulated by Act No. 5 of 1990. Consequently, in principle community-based natural resources management system principle shall be applied in sense of this determination rather than in the sense of interdependency of management of natural resources between human beings and natural resources.

Pursuant to Article 1 of Act No. 26 of 2007 on Spatial Planning Program, the management of natural resources is required as compulsory efforts to map and to propose balance benefits of spatial planning programs gaining as much as possible human sustainability to the environment. Thus, it adopts the anthropocentric legal stand for the spatial planning method. It means that the anthropocentric spatial planning becomes a core principle for the management of natural resources within the meaning of the NDM initiatives. Consequently, the anthropocentric method of spatial planning determines the implementation of the NDMP, e.g. the adoption of phases of the NDMP cycle management.

The effective spatial planning method comprises of three basic interlinked phases of management of spatial planning, i.e. objective perceptions as main inputs, process of implementation as throughputs and results or objectively verified indicators as outputs.²⁵ These phases actually have similar application in the NDM program cycle management as mentioned in the previous paragraph because they have similar elements of availability, accessibility, adaptability and acceptability requirements for their application. Viewed from the legal analysis, they draw a clear connection between rights and duties among stakeholders, especially between local governments and their communities in terms of the application of the human rights-based approach perspective for implementation of all the NDM programs.

These three phases in the spatial planning method are not intended to be alternative requirements but they are framed as cumulative requirements for the performance and outcome indicators for judging the implementation of the community-based natural resources management system principle in Act No. 24 of 2007. In terms of management control, these phases can also be used as objectively verified indicators for management cycle of natural resources valued by the ratios of precision and recall²⁶ as outlined further. Firstly, the input element relies on the fact that the empowerment of local communities with their interaction to both instrumental and intrinsic values of the region as a living ecosystem plays as objective perceptions, i.e. the region as resources and assets, the region as future long-term prospect, and the region as a sustainable and a manageable benefits. To realize the objectives of natural resources management, the principle recognizes diversity of development depending on interests among stakeholders and strategic policies of the environmental governance in certain regions.

²⁴ M. Triatmodjo, "Anatomi Hukum Lingkungan Internasional, Sistem Generik Penyangga Kehidupan Umat Manusia", *Jurnal Mimbar Hukum*, No. 34/II/2000, pp. 140-141.

²⁵ Notohadikusumo, *Op.cit.*, p. 10.

²⁶ D. Otley, 1999, "Performance Management: a Framework for Management Control System Research", *Management Accounting Research*, Vol. 10, pp. 363-382.

Secondly, aspects of the principle are mainly framed to be applicative which rely on the human rights based approach for realization of the economic, social, and cultural rights, i.e. availability, accessibility, acceptability, and adaptability of the community towards the natural resources available there. Lastly, the outputs of the application of this principle can be examined by four aspects of typical development goals determined by central and local governments. They are appropriate habitability, sustainable productivity of goods and services, income producing capacity, and accessibility of economical, demographical, social and cultural institution for conservation, and equality of benefits in those certain regions where communities live.

It has been more than one decade since the political decentralization in Indonesia as one of constitutional amendment was implemented. It is a result from the second amendment of the 1945 Indonesian Constitution (UUD 1945) was finalised in October 2000. This amendment aims to decentralize extensive areas of the State organization and to renew Indonesia's regional administration under Articles 18A and 18B UUD 1945.²⁷ The amendment also introduces the presidential and legislative direct election as well as the creation of the Constitutional Court to oversee checks and balance of authorities between the executive and the legislative bodies.²⁸

Pursuant to Article 18A of the UUD 1945, the unitary State is structured into provinces which in turn are then subdivided into regencies or municipalities. These two local governments administer their own affairs governed by freely elected bodies (governor and regent or mayor). In contrast, actual political rights possessed by provinces and regencies are not identified in this Article. There are enumerative lists of the central

government's responsibilities which include having ultimate jurisdiction to regulate the relationship between the central government and the provinces, the provinces to each other, and between provinces and their subdivisions.²⁹ According to Article 18B, the establishment, dissolution, and alteration to the borders of the provinces and municipalities are subject to the central state government regulations. The regions themselves do not have any decision-power in this respective area. At the lowest level, only villages whom possesses the original State power indicated by attribution of "original privileges", and of "original traditions and customs" that should be acknowledged by the central government when regional ordinances of the municipalities are enacted.³⁰

According to Lustermann, the Indonesian political decentralization model strongly decentralizes many aspects of the State responsibilities but they continue to be derived from the central government residual responsibilities forming a fact that regional authorities do not have any original State powers as required in a real political decentralization.³¹ Mallarangeng agrees with Lustermann's argument that political decentralization only focuses on the administrative decentralization possessed by local governments.³² One rationale for the adoption of this structure is the existence of strong political consensus to keep Indonesia as a unitary State rather to be for example a federal one.

In accordance to the preamble of the UUD 1945, the spirit of political decentralization should also recognise the autonomy of local communities based on their active, free, and meaningful participation in development, and fair distribution of benefits. Strengthening community's self-resilience and self-independence within context of their availability, acceptability, accessibility

²⁷ H. Lustermann, "Indonesia: On the Way to Federal State?", *Jurnal Mimbar Hukum*, No. 42/X/2002, pp. 5-7.

²⁸ J. Asshiddiqie, 2000, "Otonomi Daerah dan Peluang Investasi", *Paper*, Presented on Government Conference on Peluang Investasi dan Otonomi Daerah, Jakarta, 30 September 2000.

²⁹ Lustermann, *Op.cit.*, p. 9.

³⁰ *Ibid.*, p. 11.

³¹ *Ibid.*, p. 12.

³² P. Susiloadi, "Konsep dan Isu Desentralisasi dalam Manajemen Pemerintahan di Indonesia", *Spirit Publik: Jurnal Ilmu Administrasi*, Vol. 3, No. 2, October 2007, pp. 1-7.

and adaptability toward its economic, social, political and cultural aspects are accepted as the main principle for achieving objectives of political decentralization.³³ Democracy, fairness, and participation have been used as slogans for the political decentralization accuracies embedded to local authorities strengthening good governance, accountability and legitimacy of local governments.

In general framework, the Indonesian political decentralization policy has its rationales for the implementation of the NDM program relevance because its substantial concerns relate to the empowerment of local communities for management of their natural resources in following basic concepts. First, it gives local governments the role of providing better service, and of ensuring the wellbeing and empowerment of the people through providing better opportunities in the development process. Second, local governments are expected to play a significant role in formulating necessary policies, plans and legal instruments, providing financial and technical resources, coordination and linkage development, building community capacity on early warning, preparedness, relief, rescue, shelter management. Last, the concept of mainstreaming the NDM program into the poverty reduction strategies of the government is emerging as a pre-requisite of development planning. However, the adoption of this state structure has placed that central government plays as the only authoritative body to exercise the original state power placing residual powers the local governments to administer and to empower their community. It means that community empowerment or community development under the Indonesian political decentralization espe-

cially for conducting the NDM program is mainly subject to central government decisions, policies or discretion viewed by a political point of view.³⁴

Pursuant to Article 33 of UUD 1945, economic acceleration is “the main rationale to manage and to exploit available natural resources directed to give benefits to national wealth of the Nation by delegating this authority to local governments”. To obtain this constitutional mandate, the political decentralization scheme is opted with a belief that the management of natural resources by smaller units will boost the achievement of the national wealth of the Nation.³⁵ The promulgation of Act No. 32 of 2004 on Local Government Autonomy as amended by Act No. 8 of 2005 on Local Government is directed to accelerate this achievement. However, the political transition from the previous centralized government to local autonomous governments and the existence of legal bias for its commencement has shaped into negative stereotypes in its practical ways. Those negative stereotypes are marked by the over-exploitation of natural resources as their main source of domestic incomes,³⁶ horizontal and vertical conflicts among Jakarta and local governments,³⁷ conflicts of identities,³⁸ and reluctance of the political devolution to share natural resources management.³⁹ This economic-driven motives guides local governments to this matter. Consequently, they perceive natural resources as their ultimate source of domestic incomes rather than perceiving them as imminent natural hazards of typical natural disaster in Indonesia.

The adoption of this economic-driven motive is best explained by the greed theory for management of natural resources proposed by

³³ Assidhiqie, *Loc.cit.*

³⁴ Lustermann, *Op.cit.*, p. 15.

³⁵ Assidhiqie, *Loc.cit.*

³⁶ Susiloadi, *Op.cit.*, pp. 117-124.

³⁷ Samadhi, *Op.cit.*

³⁸ M. Sakai, 2002, “Konflik Sekitar Devolusi Kekuasaan Ekonomi dan Politik: Suatu Pengantar”, *Antropologi Indonesia*, Vol. 26, No. 68, 2002.

³⁹ M. Baiquni and R. Rijanta, *Loc.cit.*

Billon,⁴⁰ Porto,⁴¹ and Ballentine and Nitzschke.⁴² It reveals that “inappropriate management of natural resources driven by economic motives will result to the scarcities of them in a very short period of time, benefiting only for few who have the biggest access, causing a systemic environmental deterioration that contributes to the increasing community’s vulnerability toward natural hazards and lessens communities’ capacities as their coping mechanisms”. Within the Indonesian political decentralization perspective, this theory has worsened since it has been amalgamated with the deprivation and scarcity theory proposed by Ohlsson⁴³ and by Homer Dixon, causing a firm identity of this motive. As a fact, for example, local governments have initiated extensive exploitation of their natural resources by inviting foreign capitals. This policy has indeed contributed to quick investment in their territories. In relation to coordination for the management of natural resources among local governments, this economic motive has been assimilated with the “not in my back yard syndrome” and the “profit-taking policy” enacted by local governments causing administrative defects for management of the common pool resources in Indonesia (CPR).⁴⁴

The above theories, syndrome, and policies help explain why discrimination and inequality for the enjoyment of natural resources by communities still exist and tend to be increasing recently. Applying them as the political framework of analysis, they reveal the roots of communities’ vulnerabilities and contribute for reasons why local capacities toward natural hazards have

been so difficult to be developed in this political decentralization. Moreover, they can propose answers to the facts that the principle of active, free, and meaningful participation in the development process and fair distribution of benefits have not been able to be taken as the core principles for management of natural resources by communities in the NDMP as required by the existing laws. Two primary examples are taken to support this stance as follow obtained from studies and reports.⁴⁵

3. The Principle and its Application to the Series of Disaster Events between 2007 and 2013

The effectiveness of a state’s compliance to international norms is difficult to be measured or determined. As such, this article does not intend to observe whether the Act has been effective in the sense of changing conduct or behavior of the state in accordance to the international norms on disaster response. It will instead seek factual practices in the field after the Act was issued. For that purpose, this article will look closer to recent natural disaster events between 2007 and 2011 and examine them from both a political and legal point of views.

The political point of view relies on two common considerations in shaping government policies on disaster management.⁴⁶ Firstly, natural resources are commonly perceived as potential sources of domestic incomes in the development process. Consequently, governments often neglects the fact that its exploitation also contributes as potential natural hazards to the community vulnerability.⁴⁷ Secondly, the management of natural

⁴⁰ P. L. Billon, 2000, “The Political Ecology of War: Natural Resources and Armed Conflicts”, *Political Geography*, Vol. 20, No. 5, 2001, pp. 561-584.

⁴¹ J. G. Porto, “Contemporary Conflict Analysis in Perspective”, in J. Lind and K. Sturman (Eds.), 2002, *Scarcity and Survive: The Ecology of Africa’s Conflict*, Institute for Security Studies, South Africa.

⁴² K. Ballentine and H. Nitzschke (Eds.), 2005, *Profiting from Peace: Managing Resource Dimension of Civil Wars*, Lynne Rienner Publisher, Boulder.

⁴³ L. Ohlsson, “Water Conflict and Social Resource Scarcity”, *Physical and Chemistry of the Earth, Part B: Hydrology, Oceans, and Atmosphere*, Vol. 25, No. 3, pp. 213-220.

⁴⁴ Baiquni and Riyanta, *Loc.cit.*

⁴⁵ R. Permana, 2007, *Loc.cit.* See also: Christanto, J., 2007, *Loc.cit.*

⁴⁶ W. S. Adisubrata, 2008, *Otonomi Daerah di Era Reformasi*, UPP AMP YKPN, Yogyakarta. See also: R. Eman, “Sosialisasi Peraturan Pemerintah tentang Pelaksanaan Penataan Ruang”, *Paper*, Workshop on Dissemination of Spatial Planning, Universitas Gadjah Mada, 17 September 2008.

⁴⁷ Grafton, *et al.*, *Loc.cit.* See also: A. H. Dharmawan, *et al.*, 2004, *Desentralisasi Pengelolaan dan Sistem Tata Pemerintahan Sumberdaya Alam (Decentralized Natural Resources Management and Governance System, Citanduy Watershed Management): Daerah Aliran Sungai Citanduy*, Project Working Paper Series No. 01, Pusat Studi Pembangunan Institut Pertanian Bogor and Partnership for Governance Reform in Indonesia UNDP.

resources forms the daily political discussions. In fact, it shapes the day-to-day political discussions at a very tactical level in the affected communities. Consequently, this political analysis is placed to review strength and/or weakness patterns of the Act's compliance toward the international norms on disaster response in Indonesia.⁴⁸ Its importance lies on a belief that local governments (province and districts) can promote participatory disaster resilience by creating a good living environment and strengthening community actions as means for reducing vulnerability towards imminent natural hazards that would disrupt their living conditions.⁴⁹ At the end, local capacities can be initiated and improved in terms of increasing their ability to cope with natural hazards.⁵⁰

The breakdown theory of natural resources management proposed by Jacqueline and Ribot helps to explain the aforementioned considerations.⁵¹ This theory opens an opportunity that "decentralized natural resources management system by smaller units (local governments and communities) will increase opportunity of multi stakeholder participation, contextualize roles of civil society, and balance interaction among stakeholders for the natural resources management at the local level".⁵² In simple terms, it is intended that those who have biggest interests will have the biggest access to the management and enjoyment of natural resources, and by the end this condition will strengthen their ability to cope with natural

hazard which are extensively determined in Articles 10, 27 and 33.⁵³

The legal examination is directed to the Act's application based on the rights-based approach for full realization of economic, social and cultural rights of individuals who are potentially affected by negative impacts of natural disaster.⁵⁴ The examination focuses on how the Act contributes towards the increase of accessibility, availability, acceptability, and adaptability to the management of natural resources in order to strengthen the communities' resilience toward their vulnerability on natural hazards.⁵⁵ In the preamble of the Act, this intention is established by three following rationales, i.e. communities' involvement determines sustainability of their level of initiatives for natural disaster risk reduction; role of vulnerable groups and individuals is central in disaster response as it concerns their life and existence; and nobody can understand local opportunities and constraints better than themselves.

The human rights-based approach is firmly endorsed by imposing strict penal provisions to those who intentionally or unintentionally neglect international norms on disaster response fulfilling elements of criminality of *mens rea*, *actus reus*, and sanction as set in chapter IX (Articles 75-79).⁵⁶ Penal sanctions are imposed strictly as a repressive tool for ensuring obedience to those norms, such as accountability, sustainability,⁵⁷ and true participation.⁵⁸ In simple terms, the Act

⁴⁸ H. J. Triyana, 2008, *The Implementation of the Community Based Natural Resources Management System Principle in the Political Decentralization in the Natural Disaster Management Program in Indonesia: Case Studies in the Kapuk Village, Cengkareng West Jakarta Regency, the Special Province of Jakarta and in the Kalabahi Capital City of Alor Regency, the East Nusa Tenggara Province*, Thesis, Faculty of Arts Rijkuniversiteit Groningen, pp. 25-30.

⁴⁹ Article 4 elaborates that in disaster response, the community shall be empowered to increase their protection, reduce their vulnerability, respect local customs and wisdoms, and create comprehensive communal security; Article 5 stipulates that the central and local governments must play the role of leaders in disaster response. Furthermore, Article 6 (c) states "[...] minimum standards for internally displaced persons shall be fulfilled in order to sustain community's ability to cope with disaster events that disrupt their life".

⁵⁰ Article 7 (1) requires the formation of central and local policy on disaster response to be in accordance with international and regional norms upholding local needs, local culture and customs.

⁵¹ Jacqueline, *Loc.cit.*

⁵² *Ibid.*

⁵³ Otley, *Loc.cit.*

⁵⁴ UNHCR defines it as "a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promote and protect human rights", United Nations High Commissioner for Human Rights, 2006, *Frequently Asked Questions on a Human Rights Based Approach to Development Cooperation*, United Nations Publications.

⁵⁵ *Ibid.*, p. 36.

⁵⁶ R. Permana, *Loc.cit.*

⁵⁷ Article 75 (1) prescribes that everyone who initiates a development plan or strategy, unintentionally neglecting risk analysis in the development process, shall be criminally liable and may be sentenced with up to 6 years life imprisonment and fined by an amount between 300.000.000 IDR and 2.000.000.000 IDR.

⁵⁸ Article 76 (1) stipulates that everyone who initiates development plan or strategy intentionally neglecting risk analysis and participation of the communities in the development process shall be criminally liable and may be sentenced with up to 6 years life imprisonment and fined by an amount of between 2.000.000.000 IDR and 4.000.000.000 IDR.

has its own legal public determination taking into account that disaster response is part of the public domain in upholding law and order. This penal characteristic distinguishes the Act from disaster response norms as practiced by other South East Asian countries such as Thailand, Laos, Timor Leste, and the Philippines, while all of them also incorporate the AADMER into their laws.⁵⁹

The assessments on factual practices can be justified to determine individual criminal responsibility in that sense. It is imperative for the local governments to select the correct communities, make rapport building and understanding in disaster preparedness, initiate participatory natural disaster risk assessment, impose community-based natural disaster risk management planning, involve community-managed implementation, and enact monitoring and evaluation, which are all preventive steps. The failure to implement such steps will make those local government officials face criminal prosecutions under the Act.⁶⁰ The aforementioned failures have never been grounds for any criminal proceedings yet, but they have been grounds for class actions. Such class actions have been done by local NGOs such as Yakkum Emergency Unit (YEU) in Yogyakarta and Yayasan Kincir in Jakarta.

Since 2007, numerous disasters such as tsunamis, earthquakes, floods, droughts, landslides, and volcanic eruptions have disrupted life of individuals, social interaction within society and living environments throughout Indonesia.⁶¹ For example, on 30 September 2009, earthquake with

a 7.6 Richter scale magnitude devastated the West Sumatera Province and killed more than 1.100 people.⁶² Between 2 and 3 October 2010, the flood in the Wasior District, Wondoma Bay, West Papua Province destroyed all infrastructure, such as roads, hospitals, churches, and schools, killing more than 158 people.⁶³ Lastly, on 26 October 2010, Mount Merapi erupted, killing 158 peoples and displaced more than 30.000 villagers including the author of this article.⁶⁴ The government, NGOs and local communities are trying to recover and rehabilitate the impacts.⁶⁵ In Cangkringan Village, Sleman, rehabilitation of the irrigation system and rice field paths has been conducted in order to sustain food production which was severely affected by the eruption.

The political and legal assessments help reveal factual patterns of ignorance, skepticism, and denial to the international norms on disaster response, particularly to the non-binding international norms stipulated by the Act to the aforementioned disaster events.⁶⁶ Furthermore, there are no legal proceedings brought to the court even though there are many life casualties due to acts of omission or commission committed by incumbent local authorities.⁶⁷ There are five indicators that reveal patterns of ignorance, skepticism and denial to the application of the Act. First, the Act stimulates deep legal gaps between the norms and its factual application and mechanisms on disaster responses applicable to those events in its practical application.⁶⁸ Second, the Act contributes a legal bias between rights and obligations exercised by stakeholders who are responsible for disaster

⁵⁹ Imelda Abarquez and Murshed, *Op.cit.*, p. 23.

⁶⁰ R. Permana, *Op.cit.*, p. 7.

⁶¹ S. H. Hoffman and A. Oliver-Smith, *Loc.cit.*

⁶² Kompas, "Pakar Gempa: Pusat Gempa Padang Bukan di Zona Subduksi", www.kompas.com/read/2009/10/01/09081256/pakar.gempa.pusat.gempa.padang.bukan.di.zona.subduksi, accessed on 19 September 2011.

⁶³ Kompas, "Banjir Wasior: Bagaikan Tsunami Menyapu Rumah Warga", <http://regional.kompas.com/read/2010/10/06/06583142/Bagaikan.Tsunami.Menyapu.Rumah.Warga>, accessed on 6 October 2010.

⁶⁴ Vivanews, "Kronologi Letusan Gunung Merapi", <http://nasional.news.viva.co.id/news/read/185183-ini-kronologi-letusan-gunung-merapi>, accessed on 27 October 2010.

⁶⁵ H. J. Triyana and R. A. Wibowo, 2011, *The Implementation of Article 28 of Law Number 24 of 2007 on Disaster Management during the 2010 Eruption of Mount Merapi*, Research Report, Center for Community Services and Research, Faculty of Law Universitas Gadjah Mada.

⁶⁶ *Ibid.*, p. 88.

⁶⁷ *Ibid.*, p. 89.

⁶⁸ L. Verburg, 2007, *Donor or Partnership, Does the Concept of A Real Partnership Represent the Relief and Rehabilitation Operations during Post Natural Disaster Situation, Case Studies: Aceh Tsunami 2004 and Yogyakarta Earthquake 2006*, Thesis, Faculty of Arts Rijkuniversiteit Groningen.

responses particularly during emergency and rehabilitation phases.⁶⁹ Third, the Act tends to widen legal overlapping in terms of institutionalization of bureaucratic coordination between central and local governments (province and district levels). This overlapping in coordination weakens the grand strategy for restoring the negative impacts of disasters to the society and environment in the long term.⁷⁰ Fourth, the Act creates possible legal vacuums for criminal proceedings especially on how to fulfill element of criminality to those who shall be criminally liable under existing criminal law procedure.⁷¹ Fifth, the Act causes legal conflicts among the government (central and locals), the victims, NGOs, and other entities who claim that they are responsible to oversee disaster response program in their specific authorities.⁷² Further elaboration on the five indicators is as follows.

a. A Deep Legal Gap between Normative and Factual Applications

It is a general understanding that the economic-driven motive of the management of natural resources causes deep legal gaps to the application of international norms on disaster response in Indonesia.⁷³ Since the initiation of political decentralization in 2000,⁷⁴ local governments have exploited natural resources as their primary source of domestic income rather than perceiving them as potential natural hazards, which increases community's vulnerability and risks.⁷⁵ In the purpose of increasing capacity building, this motive has reduced the true participation

from local communities as required by Article 3 of the Act.⁷⁶ As a result, the affected communities have less access to manage natural resources as part of their daily coping mechanisms toward natural hazards and risks.⁷⁷ Targeting huge income has become an ultimate goal in the development process.⁷⁸ Central and local governments have been neglecting the norms of true participation, accountability, sustainability, relevance, effectiveness, impact, and transparency as the main principles for disaster response that shall be applied in their regional development process after the issuance of the Act.⁷⁹

In the Wasior flood case, the aforementioned problem has become an undeniable fact when the local communities had been denied participation in the management of rainforests where they live in.⁸⁰ Limited access to information on the establishment of policies as per local needs, no identification and prioritization of the most vulnerable communities in the area of deforestation, reluctance in conducting local risk assessment, inexistence of documents on local coping mechanisms and expertise, no facilitation to the affected communities of timber production, no issuance of Early Warning System (EWS) on massive timber production, no upgrading in disaster preparedness, and mitigation of possible forest degradation, are examples of undeniable legal gaps between the normative and factual application of international norms on disaster response in a

⁶⁹ V. Bannon, R. Ahadijat, Rarasworo, and O. Farah, 2005, *Indonesia: Laws, Policies, Planning and Practices on International Disaster Response*, Report, International Federation of Red Cross and Red Crescent Societies.

⁷⁰ Baiquni and Riyanta, *Loc.cit.*

⁷¹ H. J. Triyana, *Op.cit.*, p. 99.

⁷² Y. T. Keban, "Kerjasama Antar Pemerintah Daerah Dalam Era Otonomi", www.bappenas.go.id/get-file-server/node/8504/, accessed in 2011.

⁷³ A. Jacqueline, *Loc.cit.*

⁷⁴ H. Lustermann, *Loc.cit.*

⁷⁵ B. Steni, 2004, "Desentralisasi, Koordinasi dan Partisipasi Masyarakat Dalam Pengelolaan Sumberdaya Alam Pasca Otonomi Daerah", *Paper* (unpublished).

⁷⁶ *Ibid*, p. 30.

⁷⁷ H. J. Triyana, *Op.cit.*, p. 101.

⁷⁸ P. Susiloadi, *Loc.cit.*

⁷⁹ B. Steni, *Loc.cit.*

⁸⁰ Kompas, "Banjir Wasior [...]", *Loc.cit.*

very practical manifestation of the Act. The District Government of Wondama pushed its timber production for sustaining its domestic income with less attention to the imminent and possible natural hazards to local communities.⁸¹ Thus, deforestation for timber production had reduced the community's ability to cope with those norms. In this event, only in one day, the destruction was so extensive in terms of life casualty, infrastructure damage, and environmental degradation. The Major of the Wondama District is now under inquiry for possible criminal prosecution even though there has been no legal investigation under the application of Article 75 of the Act.⁸²

It can be concluded that the application of international norms on disaster response defects when it coincides with local development policy is guided mostly by economic-driven motives.⁸³ This reality could be best explained by the greed theory in the management of natural resources proposed by Billon,⁸⁴ Porto,⁸⁵ and Ballentine and Nitzschke.⁸⁶ This theory states that the inappropriate management of natural resource driven by an economic motive will cause resource scarcity and environmental degradation in very short period of time, benefiting only for few who have the biggest access into it (for instance, the local leaders and private companies). In the end, it causes a systemic environmental deterioration which increases the communities' vulnerability towards natural hazards and lessens their capacity and ability to cope. The disparity

between normative and factual application is undeniably a dark legacy in the implementation of international norms on disaster response in the Law.

b. Legal Bias between Rights and Obligation in Emergency and Rehabilitation Phases

The issuance of the relocation policy has always caused legal bias in the exercise of rights and obligations between the government and affected community especially at the emergency, rehabilitation, and reconstruction phases. Legal bias always ends in a protracted tension.⁸⁷ In all the three natural disaster events discussed in this article, such tension has not been resolved yet until this date since the local governments initiated the said policy without proper consultation and appropriate considerations, such as the economic and historical values of the affected communities.⁸⁸ In this policy, the non-binding international norms such as community true, active, and meaningful participation in decision making process, as set in Article 1 (5 and 6) of the Act, has been denied by campaigning safety and security reasons to the victims or the affected communities.⁸⁹ In the end, linking the relief and rehabilitation phases have been difficult to fit with the basic communities' needs and rights in the sense of continuing future local developments. This tension is happening in the Central Java and Yogyakarta Special Provinces after the Mount Merapi eruption.⁹⁰

As generally understood, Article 1 of the Act determines the role and function among

⁸¹ *Ibid.*

⁸² Kompas, "2.501 Pengungsi Tinggalkan Pengungsian", <http://regional.kompas.com/read/2010/10/20/16184191/2.581.Pengungsi.Tinggalkan.Pengungsian>, accessed on 22 September 2011.

⁸³ R. Eman, *Loc.cit.*

⁸⁴ P. L. Billon, *Loc.cit.*

⁸⁵ J. G. Porto, *Loc.cit.*

⁸⁶ K. Ballentine and H. Nitzschke (Eds.), *Loc.cit.*

⁸⁷ R.L.P. Hodgson, "Community Participation in Emergency Technical Assistance Programmes, Technical Support for Refugees", *Proceedings*, Proceedings of the 1991 Conference. See also: M. Sakai, *Loc.cit.*; W. P. Samadhi, *Loc.cit.*; and H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 74.

⁸⁸ Krisanto, "Relokasi Korban Bencana: Legalistik v Kulturistik Historis Lereng Merapi Terhadap Rencana Relokasi", <http://hukum.kompasiana.com/2011/07/10/relokasi-korban-bencana-legalistik-vs-kultural-historis-kajian-penolakan-warga-lereng-merapi-terhadap-kebijakan-relokasi/>, accessed on 10 June 2010.

⁸⁹ *Ibid.*, p. 2.

⁹⁰ The author of this article was involved as one of the local community's legal advisor, see: H. J. Triyana & R. A., *Loc.cit.*

stakeholders in a very systematic attribution fulfilling rights, obligations, responsibilities, and authorities. The community is placed as the subject; governments are placed as facilitator, while NGOs play a role as partners in all disaster responses. These enumerative attribution shall be implemented into six interrelated natural disaster risk reduction response known as “the natural disaster management program or the NDMP-cycle management” in Article 3. As HIVOS proposes, it consists of six interrelated responses, i.e. selecting the community, rapport building and understanding, participatory natural disaster risk assessment, community-based natural disaster risk management planning, community managed implementation, and monitoring with evaluation.⁹¹

Article 3 redefines the government’s functions in a very specific orientation which relies on three main rationales. First, local governments shall be able to give better service delivery and empowerment of people through providing better opportunities in disaster response. Second, local governments are given a significant role in formulating necessary policies, plans and legal instruments, providing financial and technical resources, coordination and linkage development, building community capacity on early warning, preparedness, relief, rescue, and shelter management. Lastly, local governments shall mainstream disaster response into the poverty reduction strategies as a pre-requisite of development planning process.⁹²

Although they are clearly defined, most people do not have clear understanding on their substantial and practical uses. In the Mount Merapi eruption case, local governments of the Central Java and Special Province of Yogyakarta have put

themselves as the most active and effective single institution on disaster response, in comparison to the communities’ and NGO’s role and function. In this case, the affected communities are ignored by means of limited accessibilities to the said legal construction. In Cangkringan and Umbulharjo sub district of Sleman regency, only chief of villages are involved in the emergency and rehabilitation initiatives without giving proper access to the affected communities to play their roles in the Mount Merapi eruption. Limited access of the affected communities contributes to their low acceptability and adaptability regarding to the initiation of new policies on relocation, compensation, and temporary shelter management. Based on this event, it can be concluded that elements of active, free, and meaningful participation and the fair distribution of benefits from the affected communities to natural disaster event have been substantially less taken into account. It causes legal bias in terms of fair distribution of responsibility among the local government, the affected communities and NGO especially when local governments initiate and make policies, programs, and projects, after the natural disaster occurred. This is the Mount Merapi Eruption legacy in the application of the Act.

c. Legal Overlapping in Disaster Response amongst Institutions

Denial of responsibilities is an undeniable fact which reveals the legal overlapping in disaster response initiative between the central and local institutions after the Act was issued particularly on how to determine the status of natural disaster event under Article 7 (1.e).⁹³ In the Padang, Wasior and Merapi cases, the central and local government blamed each other when victims, destruction, and losses were extensive and undeniably due

⁹¹ *Ibid.*

⁹² Permana, *Op.cit.*, p. 5.

⁹³ It states “...authority of the determination of disaster status belongs to central and local government”.

to the failure to determine the disaster status, whether those events were local, national, or international. This determination plays an important role in which response that had to be taken. Among the considerations was the reluctance and fear from foreign interference which may jeopardize national integrity and sovereignty.⁹⁴ Consequently, the coordination led by the central and local board of disaster responses became weak and ineffective in providing immediate and prompt fulfillment of basic needs.⁹⁵ Those institutions claim that their overlapping authority with central and local and communities as an excuse to justify their due delay, and less quantitative needs of the victims and the affected communities in that particular situations.⁹⁶

Policy adjustment in accordance with international norms on disaster response has not been introduced among departmental institutions, local governments, NGOs, communities, the House of Representatives, and the Local House of Representatives.⁹⁷ Unclear distribution of tasks and responsibilities has made it hard to assign and distribute their jobs description particularly during the preventive response. For example, the Ministry of Forestry has the primary rights to manage forest resources without giving appropriate coordination on mining and on land usages located in local governmental authorities and affected communities according to the Forestry Act No. 41 of 1999. In this regard, it causes overlapping rights and obligations among Ministry of Energy and Mineral Resources, Ministry of Home Affairs, and local governments. Natural hazards systematically increase as what is currently happening in Bangka Belitung and

in West Papua Provinces (nickel and copper exploitation).⁹⁸ Furthermore, the overlapping authorities among those institutions cause vertical conflicts between governments and local communities that practice custom or *adat* law in preserving and cultivating lands surrounding the Mount Merapi crater.⁹⁹ Such overlapping casts substantial doubts and overlapping claims of disaster response or initiatives during effective coordination when they issue policies, programs, and activities, for disaster response in local level. In the three disaster events discussed in this article, legitimacy sinks since the norm of accountability has never been taken into account by the incumbent disaster response institutions in Indonesia.¹⁰⁰

d. Legal Vacuum of Criminal Proceeding in Disaster Response Criminalization

Legal vacuum in the application of the Act means that there have never been any criminal prosecutions against those who were allegedly responsible for life casualties due to ignorance of Article 75 of the Act. Article 75 (1) determines that “everyone is responsible for criminal prosecution and three years’ imprisonment when they neglect disaster response norms in conducting development plan initiatives”. This article is written in a very broad legal determination imposing certain obligations of policymakers at the local levels. Consequently, head of local government is placed as the most responsible person.¹⁰¹ In this Article, the adoption of the non-binding international norms on disaster response such as accountability, responsibility, carefulness, and good environmental governance, is paramount to determine obedience to the Act.

⁹⁴ Triyana and Wibowo, p. 57.

⁹⁵ *Ibid.*, p. 58.

⁹⁶ *Ibid.*, p.60.

⁹⁷ Triyana, *Op.cit.*, p. 67.

⁹⁸ Steni, *Op.cit.*, p. 10.

⁹⁹ *Ibid.*, p. 5.

¹⁰⁰ H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 45.

¹⁰¹ Lustermann, *Op.cit.*, p. 16.

In fact, the Wasior, Padang, and Merapi cases clearly display the aforementioned tendency since the Act has become ineffective because the Indonesian criminal proceedings are subject to the Indonesian Criminal Procedural Code encapsulated in Act No. 8 of 1981 (KUHAP, hereinafter will be referred to as the Code). In the Code, natural disaster event is legally construed as one possible legal excuse to exempt individual criminal responsibility in all criminal matter either by acts of commission or omission. Viewed from the perspective of criminal law proceedings, the formulation of Article 75 (1) adopts the accusatorial criminal proceedings determining material truth of violations while the Code applies the inquisitorial system.¹⁰² Consequently, there is a disparity in the application of law, causing an inevitable legal vacuum towards the implementation of the Act on disaster response.

Statements that “Indonesia has failed to bring accountability for those who are responsible for life casualty and to bring justice and/or remedy for the victims of natural disaster” are still fresh in our mind and it has become hot issues since there has been no legal criminal prosecution brought before the court.¹⁰³ Indeed, on a separate matter, there have been criminal prosecutions directed to those who committed crimes in the situation of natural disasters, such as thievery, corruption, and false television news in the Padang earthquake and the Mount Merapi eruption cases.¹⁰⁴ In simple terms, due to the legal vacuum above, there won’t be criminal prosecutions for those who are responsible for

life casualty and loss and collateral damages in natural disaster events in Indonesia in the future although the Act requires so. Deterrence effect will therefore fail to be achieved as a manifestation of the non-binding international norms on disaster response in the Act.¹⁰⁵

e. Legal Conflicts of the among Disaster Response Stakeholders

There two forms of legal conflicts in disaster response after the issuance of the Law, i.e. horizontal conflicts between local governments, and vertical conflicts between local governments and their communities as can be best illustrated by the Padang, Wasior and Merapi cases. The former is the most imminent threat for when those local governments integrate their local development policies separately from the local and national development.¹⁰⁶ The “not in my back yard” syndrome as reiterated by Baiquni and Riyanta helps explaining why conflicts exist between local governments in management of their natural resources since they hardly take into account sustainability and interrelatedness of natural resources available in their territories.¹⁰⁷ Spatial and partial concepts in land use planning have increased their inward looking for designing their own development strategies.¹⁰⁸ For example, in the case of Mount Merapi eruption, the conflict between Central Java and Yogyakarta Special Provinces exists in terms of financial and logistical supports given by the central government.¹⁰⁹ This conflict also emerged between the West Sumatera and the Bengkulu Provinces when the earthquake devastated the west coast of Sumatera.

¹⁰² Komnas HAM, 1999, *Report of the Human Rights Commission in 1999*, Komnas HAM, compared with Dunn, “Crimes against Humanity in East Timor, January to October 1999: Their Nature and Causes”, <http://www.etan.org/news/2001a/dunn1.htm>, accessed on 26 September 2011, pp. 10-15.

¹⁰³ H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 81.

¹⁰⁴ Vivanews, “Kasus Infotainment Silet akan di SP3”, <http://us.nasional.vivanews.com/news/read/210861-kpi--kasus-infotainment--silet--akan-di-sp3>, accessed on 26 October 2011.

¹⁰⁵ H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 36.

¹⁰⁶ Hari Triyana, 2011, *Investasi dan Pengelolaan Ruang untuk Investasi di Daerah*, Thesis, Sekolah Pascasarjana, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, p. 6.

¹⁰⁷ Baiquni and Riyanta, *Op.cit.*, p. 23.

¹⁰⁸ Notohadikusumo, *Loc.cit.*

¹⁰⁹ H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 99.

The vertical conflict deals with the ignorance and skepticism of the community's involvement in the disaster response. It causes systemic conflict between local governments and their communities. Less attention to potential natural hazards and how to cope with them, such as individual perception, knowledge of natural disaster signs, locally safe and vulnerable areas as judged from past experience, appropriate methods of survival, and social interaction as community coping strategies, are roots of causes of this vertical conflict.¹¹⁰ Tools and techniques in terms of correct methodologies for intervention in conducting the community risk assessment of risk identification, risk analysis and risk evaluation conducted by local governments are less developed unless they fit with local regional development plan driven by the short goal of economic benefits.¹¹¹ The Mount Merapi case shows that this vertical conflict occurs when the sand (as remnants of the eruption) are being exploited by private companies in all mainstream rivers of Mount Merapi. It contributes very little to the domestic retributions, while at the same time this activity have destroyed emergency routes for evacuation and deteriorates river flow capacities to halt possible flood of cold lava.¹¹² Private mining companies have earned huge profits while the affected communities have been ignored and earned nothing from such activity. Jealousy and fragile mentality is the root of social conflicts such as in the Muntilan District in the Central Jawa Province. This district suffers severely from cold lava that displaced more than 10.000 people while sand mining activities have continued to operate. Undeniably, imminent threat of vertical conflict between community and its local government has become imminent due environmental deterioration, jealousy, and

discrimination in the accessibility to sand mining activities.¹¹³

C. Conclusion

Based on the previous chapter, this article proposes two recommendations to reduce the aforementioned problems of ineffectiveness in the implementation of the Act in the Indonesian legal system in the future; i.e. short and long terms recommendations. They are developed from in-depth examination of both legal and political influences for the implementation of the non-binding international norms to be equal with and to be more enforceable with the binding international norm on disaster response. As a short term proposal, an amendment of the Act is necessary to be taken to focus on three specific elements causing legal bias, legal overlapping, legal vacuum, and legal conflict of implementation at the local level. This amendment shall be advocated in conformity with equal and proportional attribution to the non-binding international norms on disaster response construed specifically in Articles 1, 8, 9 and 75.

First, the Act shall be amended by focusing on the vanishing spirit of project-based policies at the prevention, mitigation, and in rehabilitation phases, led by effective control of bureaucracy at the lowest level of implementation. Local authorities shall be enlarged and given robust responsibility for interpreting and complying to those non-binding international norms when they design and initiate their local development policy, program, and activity of disaster management. The empowerment of the local environmental governance structure, inspired by non-binding international norms of true and meaningful participation and accountability, will be more fruitful to be advocated to select correct communities and their capacities to cope with them as determined by Article 1 of the Act entirely. Indeed, this article is more inspired by the legal rationale of the anthropocentric approach in the

¹¹⁰ H. J. Triyana, *Op.cit.*, p.23.

¹¹¹ *Ibid.*, p. 11.

¹¹² H. J. Triyana and R. A. Wibowo, *Op.cit.*, p. 23.

¹¹³ *Ibid.*, p. 25.

management of natural resources rather than the holistic approach of disaster response as required by the AADMER. Consequently in the Act, human beings are placed as the center (subject) for sustainable development process while natural resource is placed as the object for all disaster response initiatives. It means that natural hazards and risks are mitigated by imposing certain roles and functions of human beings and governments. Advocacy shall be directed to change this existence based on the legal rationale of the holistic approach as the main principle for the management of natural resources in disaster response.

Secondly, Articles 8 and 9 of the Act should be revised especially in making rapport building and understanding for initiating disaster response plans and strategies at the local and/or lowest level. In those articles, local governments are given duties to take indirect interaction to their communities. Indirect approach creates distance for effective communication and socialization of disaster risk mitigation, particularly for natural hazards and natural risks. The application of those articles will be more practical and functional if they are conducted directly with special attribution to local customs and peculiarities.

Thirdly, Article 75 of the Act shall be broadened in terms of its scope, area and its objective application to avoid legal vacuum in its elements of criminality and criminal proceedings. This article defects in the application of fair trial standards on the existing criminal proceedings in the Indonesian criminal law system. The adoption of clear criteria of ignorance to determine guilt beyond reasonable doubt to those who are responsible for life casualties and loss should be explicitly set to enable substantive criminalization in natural disaster situations. Other than this attribution, a special legal phrase shall be formulated and initiated to change existing legal excuse in the Indonesian Criminal Code that natural disaster revokes any individual criminal responsibility.

As a long term proposal, the empowerment of local governments shall be advocated by contextualizing the relevance of the political decentralization aims and functions to the community empowerment and participation in the local development process. According to Lustermann, the Indonesian political decentralization model strongly decentralizes many aspects of the State responsibilities. In its implementation, regional authorities have less original State powers as required in a real political decentralization to exercise their power to their own communities particularly in increasing local capability and coping mechanism towards natural hazards and risks. Hence, it will be more practical and fruitful if the national campaign on disaster response is raised up by taking local issues on community vulnerability, natural hazards, and available coping mechanisms as a national as well as local public awareness to determine local development strategy and plan to minimize the disparities between normative and factual application.

In this proposal, the existence of policies as per local needs, identification and prioritization of the most vulnerable communities, conduct of local risk assessment, existence of documents of local coping mechanism end expertise, community facilitation, establishment of early warning systems, capacity enhancement, upgrading disaster preparedness and mitigation plans, and support for resources must at least be raised up as local development strategy. At the community level, mapping correct individual perception, knowledge of natural disaster signs, locally safe and vulnerable areas from the experience of past disasters, methods of survival, and social interaction as community coping strategies shall be developed at the village level rather than at the district or province levels. As a start, village leadership and its own local wisdoms shall be listed and empowered as the local coping mechanisms for disaster response at the prevention stage. This policy shall be enlarged in terms giving increasing access to community direct participation.

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