

## LEGAL FRAMEWORK OF INTERNATIONAL ASSISTANCE IN DISASTER RESPONSE: IMPLEMENTATION AND EFFECTIVENESS\*

Daisy Kharisma Qisthi\*\*

### **Abstract**

*Natural disaster is inseparable in the existence of humankind. The tsunami in Indian Ocean and massive earthquake in 2004 resulted an unprecedented challenge for affected countries and international community. This is the 'awakening' of awareness of international community. Currently, international response towards disaster is increasing, especially on preparedness and assisting affected countries by seeing the fact that several countries even do not have minimum capacity in disaster response. Further in implementation, there are some problems in application standard of international assistance to be implemented, not only for inter-*

### **Abstrak**

*Bencana alam tidak dapat dipisahkan dari keberadaan manusia. Tsunami di Samudera Hindia dan gempa besar pada tahun 2004 menghasilkan sebuah tantangan yang belum pernah dihadapi sebelumnya, baik oleh negara-negara terdampak maupun oleh masyarakat internasional. Bencana ini menandai 'kebangkitan' kesadaran masyarakat internasional akan pentingnya tanggap bencana. Saat ini, tanggapan internasional terhadap bencana semakin meningkat, terutama dalam hal kesiapan dan pemberian bantuan kepada negara-negara terdampak, karena beberapa negara bahkan tidak memiliki standar minimum*

---

\* Preferred Citation Format: Qisthi, D. K. (2012). Legal Framework of International Assistance in Disaster Response: Implementation and Effectiveness. J.G.L.R., 1(1), 17-29.

\*\* 2010; -; Faculty of Law, Universitas Gadjah Mada; Yogyakarta, Indonesia.

*national organization, but also non-governmental organization, and the countries itself. This paper will analyze further on the international legal framework on international assistance of disaster response.*

*tanggap bencana. Dalam pelaksanaannya, ada beberapa masalah dalam penerapan standar bantuan internasional. Masalah ini terjadi tidak hanya dalam organisasi internasional, melainkan juga dalam organisasi non-pemerintah dan pemerintahan negara itu sendiri. Tulisan ini akan menganalisis lebih lanjut mengenai kerangka hukum internasional tentang bantuan internasional dan tanggap bencana.*

**Keywords:** *disaster response, international assistance, natural disaster.*

## **A. Introduction**

The growing awareness of disaster has brought improvement on precautionary action to minimize the impact of disaster. The relationship between international law and natural disasters (such as earthquakes, floods, tsunamis, typhoons, hurricanes, volcanoes and droughts) reveals that the relationship has historically been weak. (Fidler, 2005) A lot of international legal framework on disaster response has created international legal foundation, precisely to accommodate legal ground of international assistance. International assistance has played an important role to create quick

disaster response and management for post disaster action. These activities are vital in order to save life and human dignity. The strategic emergence action that shall be taken is to build disaster governance in-depth within countries; the Indian Ocean tsunami's impact has reinforced the need not only to respond effectively to disasters but also to prepare and protect the communities from disasters that occur. (*Hyogo Framework*, 2005) Most of cases of massive disaster, for instance tsunami and earthquake in Indian Ocean, occurred in developing countries that have minimum capacities of disaster response. In that

condition, international assistance from international organizations such as International Federation of Red Cross and Red Crescent (IFRC) and non-governmental organization (NGOs) are greatly needed in order to minimize such delays. It requires a good operational environment and systematic cooperation between national, regional and institutional units to ensure the assistance is in the actual situation, and to uphold humanitarian principles and standards. The best way to provide this is through the development of legal framework and policy in the international level.

### **B. Legal Framework for International Assistance Overview**

The International Federation of Red Cross and Red Crescent Societies ('International Federation') studies found over 300 international instruments has developed specifically for situations that required international disaster response, from treaty to resolutions and declarations to guidelines and codes of conduct covering a range of different aspects relating to international assistance (IFRC & RCS, 2003) The 20th century witnessed the creation of two multilateral

treaties directly on disaster response, the adoption dates of one of those treaties took 71 years and while the other one has completely failed.<sup>1</sup> Unlike in the situations of armed conflict, there is no comprehensive multilateral treaty developed specifically to address international response to natural disasters. (Hoffman, 2000) In the history of disaster response, one of the most significant draft frameworks was the *Draft Convention Expediting the Delivery of Emergency Relief*. This draft covered international assistance process, ensuring quality and appropriate assistance, liability risk and claims in the receiving state. (Secretary General, 1984) Although the ideas of a convention on disaster relief had been made, none of them ever legally come into force because it was not universally accepted. Regional treaty in the scope of ASEAN (Association of

<sup>1</sup> The two treaties are the *Convention and Statute Establishing an International Relief Union*, opened for signature 12 July 1927, 135LNTS 247 (entered into force 27 December 1932) ('*JRU Treaty*') and the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998 (entered into force 8 January 2005)

South East Asia) concluded an ASEAN Agreement on Disaster Management and Emergency Response (AADMER) specifically for the facilitation of cross-border assistance in the event of disaster. (ASEAN, 2005) This agreement entered into force in 2009. However, this scope of international assistance only applies in several states, not universal standard for international assistance disaster response.

International effort in making such proper legal ground was also conducted through the United Nation resolution. There are over 50 UN resolutions concerning international disaster response situations, either generally or in relation to disaster in specific countries, dating back to 1965. (Katoch, 2003) Between 1965 and 1971 the UN General Assembly adopted a series of resolutions on Assistance in Cases of Natural Disaster on almost annual basis which sought to identify ways to coordinate international disaster relief among various actors and to provide assistance as quickly as possible.

In humanitarian sector, the development of rules of international disaster response and assis-

tance in particular, are developed by the International Red Cross and Red Crescent Movement. A significant resolution was done by the adoption of the *Principles and Rules for Red Cross and Red Crescent Disaster Relief*. (IFRC & RCS, 1977) In addition, in the 20<sup>th</sup> century, the role and importance of international assistance for both IGOs and NGOs in response to natural disasters have grown significantly through non-binding actions and activities – which what the international lawyers sometimes called it as ‘soft law’. However, as a policy matter, the absence of multilateral treaties - ‘hard law’ –still cannot bridge the absence of capabilities within IGOs and NGOs. (Fidler, 2005) Meanwhile in current condition, International Red Cross and Red Crescent Movement created *Principles of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programs*, which concerns to the series of principles in delivering humanitarian assistance. (IFRC, et al., 1995) This code of conduct is the standard of giving humanitarian assistance which also includes for NGOs to comply with it, yet the

application of its organization itself is conducted voluntarily.

The current issue in disaster response also included such intensive series of technical assistance and building the capacity of preparedness disaster system. Such international assistance is not only applied in the case of disaster yet also covers the situation of post-disaster and even before the disaster occurs.

Since 2001, the International Federation's International Disaster Response Laws, Rules and Principles (IDRL) program has been investigating the legal issues and regulatory frameworks of disaster response focusing on international relief operations. The management of such operations has become increasingly complex, not only due to the rise of number and ferocity of disasters but also to the sharp inclination of the number and diversity of international actors that ready to intervene in highly publicized events.

In November 2007, the state parties to the Geneva Conventions and the components of the Red Cross and Red Crescent Movement unanimously adopted a new

set of "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (the "IDRL Guidelines") at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent. The adoption of such resolution shall encourage the governments to use the Guidelines in order to strengthen their domestic laws and bilateral and regional agreements on disaster management and invited the International Federation and National Societies to disseminate and promote their use. Furthermore, they invited the International Federation and National Societies to continue their pioneer research on legal issues in the case of disaster management and to develop further tools and models for the improvement of legal preparedness for disasters.

In 2008 and 2009, the UN Economic and Social Council and General Assembly also adopted such resolutions in order to encourage the governments to use of the IDRL Guidelines. In the current condition, from 2010-2011, the International Federation's International Disaster Response Laws, Rules and Principles (IDRL) program will con-

tinue to fulfill its mandate from the 30th International Conference of the Red Cross and Red Crescent to disseminate and promote the use of the Guidelines for the domestic facilitation and regulation on international disaster relief and initial recovery assistance (“IDRL Guidelines”), aiming to reduce unnecessary restrictions, delays and expenses in international disaster relief operations and to increase their quality, coordination and complementarily with domestic efforts. Building on its work in 2008-09, the program’s intention is to complete an intensive series of technical assistance and training projects designed to ensure a momentum among States and National Societies with regard to the use of the IDRL Guidelines, which will be self-sustained after 2011. (IFRC & RCS, 2009)

The agenda of IDRL is to minimize the casualties as maximum as possible and to address the assistance is depending on the vulnerabilities of its area. Nowadays, Southeast Asia is having collaboration with World Health Organization as the country-level projects and also making staff program

as the resources for “Preparedness Missions” by the UN Disaster Assessment and Coordination (UN-DAC) system.

### **C. International Assistance Challenges in Disaster Response**

International assistance in disaster response is really important to minimize casualties, and give assistance to countries that have lack of capacities in disaster response. The International Federation of Red Cross and Red Crescent Societies (‘International Federation’), the mission that provide assistance to the populations affected by peacetime disasters, has called the disaster response as a ‘long-neglected facet of international law’ and argued that ‘it is unlikely that any other challenge looming so large in world affairs has received so little attention in the legal realm’. (World Disaster Report, 2000)

Such concerns and controversies about advocacy for the right of humanitarian intervention based on the ‘responsibility to protect’ and reinforce the reticence of many states to bind themselves to rules concerning disaster relief. (ICISS, 2001) Lack of binding legal ground caused several countries considered

that particular international assistance itself as an intervention from international community. Moreover, despite the fact that various legal instrument are relevant to challenges in international assistance there are many limitation on the ability to enforce the legal instrument itself.

Attempts to create a multilateral treaty as a way of providing a comprehensive legal framework for international disaster response have been wholly unsuccessful on how conventions have not been widely accepted by states such as Tampere Convention and Framework Convention. Similarly, regional treaties have not existed in many regions. When we refer to the binding international law, states prefer to have bilateral agreement between states or international organization. International instruments in this regard fall into the category of "soft law" such as resolutions or treaties. The nature of particular international instruments tends to limit the ability to bind into governments into their provision.

International assistance is also dealing with many aspect of limitation in regard of administration such as visa, tax and duties. There

are no specific stipulations under international law on facilitation in regards to disaster response. The framework of convention for example, simply states the privilege, immunity and facilities in carrying out such international assistance (Hyogo Framework, 2005) without any further details on the protection itself. This protection is needed to minimize the barrier that the benefactor should comply.

International instruments should be incorporated with national law to be implemented. Such process is certainly needed in order to put the governments and disaster relief provider in the same understanding. Meanwhile, the International Federation conducted a global research, which, revealed that treaty provisions, resolution, and declaration are rarely taken into account in national level. (IFRC & RCS, 2004) Thus, binding or non-binding instruments do not necessarily improve the access and facilitation to provide maximum international assistance. Another challenge is on the exclusion of non-state actors and on the issue if the states only enforce bilateral treaty of disaster response, which

consequently, it only applies for both states. Hence, any organizations inside a state may only offer their assistance if there is specific stipulation. International disaster response will keep on facing difficulties in providing assistance towards affected state. Referring to the tsunami operation, once again highlights the complexities of getting relief across borders in the shortest time and with the maximum efficiency. Humanitarian organizations are not only having to cope with damaged infrastructure, they are also dealing with 12 different governments and 12 different sets of customs regulations. The kind of bureaucracy certainly caused such severe delay and the delay in getting aid to those who need would cost lives. For instances, even in the scope of ASEAN, the implementation of AADMER still has difficulties fulfilling its role effectively because each country has its own system for emergency response.

To be effective, international assistance needs the same standard of operation, most importantly for the non-state actors, to specifically have its legal position under international law in providing interna-

tional assistance. It is included in UN General Assembly Resolution 46/182, which refers to "Intergovernmental and non-governmental organization working impartially and with strictly humanitarian motives". Moreover, it also needs the encouragement from the State Members and regional organizations to strengthen the operations and legal frameworks in the international disaster relief by taking into account the IDRL Guidelines." (UNGA, 2008) Currently, most states figure that they will sort out their mechanisms for dealing with international assistance when the time has come. Unfortunately, this ad hoc approach is increasingly inadequate to deal with the real complications of international assistance.<sup>2</sup>

#### **D. Effectiveness of International Assistance Legal Framework in Disaster Response**

The United Nations Secretary-General praised the international humanitarian response system because it was able to pro-

---

<sup>2</sup> Remarks of IFRC Secretary-General Bekele Geleta, to the Overseas Development Association at Westminster, London, March 2009.



vide massive relief to all tsunami-affected communities in the Indian Ocean, against all odds, in the course of a few weeks'.<sup>3</sup> Disaster response is included in the **Disaster Rehabilitation**, yet, the provision of life saving disaster relief frequently fails to meet the affected community's need for return and resuming productive development; while the **Disaster Reconstruction** is included in the disaster assistance in returning the affected community to their pre-disaster state; **Disaster Prevention, Mitigation and Preparedness** is aiming to build the community's capacity to mitigate disaster. In giving international assistance international organization or non-governmental organization implement these three steps of disaster response.

The coordination between government and international assistance from state, or NGO may fasten the reconstruction and development in time of disaster, post disaster, and preparedness for

possibility of disaster. In the case of Aceh, the concept that introduced is called BRR, "build back better;" maintained by the World Bank, which referred to its mandate for poverty eradication and development; combine with the Red Cross movement through its main mandate of saving lives and preventing further loss of life in the recovery phase. It is also recognized that in all assistance environments these linkages are problematic and multi-layered; they may not be universally appropriate, and may depends on the agency's mandate. In Aceh, most of the actors' main mandates were for reconstruction, with some longer-term development in later years. (Masyrafah and McKean, 2008)

In disaster of Indian Ocean in 2004, the disaster triggered an unprecedented response and generosity from domestic and international communities in those countries that affected by the tsunami. It is estimated that about US\$7.7 billion was given as the amalgamation funds from the Government of Indonesia, bilateral and multilateral donors, international NGOs, and communities both from inside

<sup>3</sup> *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General, 59th session, agenda items 45 and 55, [2003], UN Doc A/59/2005 (21 March 2005) ('In Larger Freedom')*

and outside of Indonesia towards the reconstruction program. One of the surprising aspects of the composition of aid in Aceh was to the extent where the NGOs came forward with substantial sums of their own money. It shows that the international assistance for disaster relief is really important, specifically on the lack of area's capacity. Continuous and collaborative disaster assistance also fastened and increased the disaster relief within the community. The implementation of collaborative assistance from internal and external assistance need strong legal foundation while, in the case of Indonesia, government cut the bureaucracy and made such emergency law.

Such international direct legal foundation is still needed to empower, to have specific position and also to set a proper standard when it gives international assistance. Current effort in build International Disaster Response Law research is also important. The encouragement of international standard is aiming to build capacity on disaster mitigation and to maintain the vulnerabilities of state that will attach more to scope of states.

## **E. Conclusion**

Theoretically there are a lot of approaches on international standard on international assistance, but most of the legal instruments is only legally binding to several states or cannot enter into force. The development research on International Disaster Response Law (IDRL) quite holistic in nature, but again it is hard in its implementation.

Considering the need of fast assistance for all states in the situation of natural disaster, IDRL program should relief more barrier of international matter in the case preference of humanity in the situation of international assistance. In the matter of operation, it takes all of the aspect of international disaster response instruments to discuss and facilitate more the implementation of disaster response in every stage (in time of disaster, reconstruction, preemptive/ mitigation stage).

The nature of international assistance is to create a fast and effective in disaster response. In the case of natural disaster, it is really essential to have collective effort not only from national assistance

but also from international assistance and decrease the barrier. Therefore it will result to the comprehensive action to maintain the disaster in all states.

To achieve fast relief for natural disaster also requires the cooperation from states. States have such jurisdictional power to allow the intervention of international assistance. Then, if the international standard in international assistance

comes into force, again, states have most powerful power. For non-states assistance, the role of NGO has also significant to achieve effective disaster response. Consequently, it needs certainty of position within the international law. There is no doubt about the effectiveness of international assistance, but the enforcement of the legal framework on disaster response itself is certainly needed.

## BIBLIOGRAPHY

### A. Journal

Fidler, D. P. (2005). Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law? *Melbourne Journal of International*.

Harry Masyarafah, J. M. M. (2008). Post-Tsunami Aid Effectiveness in Aceh Proliferation and Coordinatin in Reconstruction. *Wolfensohn Center for Development Working Paper 6*.

Hoffman, M. (2000). Towards an International Disaster Re-

sponse Law in International Federation of Red Cross and Red Crescent Societies.

Katoch, A. (2003). International Disaster Response Laws, Principles, and Practice: Reflection, Prospect, and Challenge.

### B. Conventions and Conference

Association of South East Asia, *Agreement on Disaster Management and Emergency Response*, (2005).

U.N. GA Res. 63/139, para. 8 (2008).

UN World Conference on Disaster Reduction, *Building the Resilience of Nations and Communities to Disasters: Hyogo Framework for Action 2005-2015*, [4], UN Doc A/CONF.206/L.2/Rev.1 (2 February 2005) ('Hyogo Framework').

*Proposed Draft Convention Expediting the Delivery of Emergency Relief*, office of United Nations Disaster Relief Coordinator, Report of the Secretary-General, UN ESCOR, 39<sup>th</sup> Session (1984).

*Principles and Rules for Red Cross and Red Crescent Disaster Relief*, adopted by the 26<sup>th</sup> International Conference of Red Cross and Red Crescent, Bucharest (1977).

### C. Reports

International Federation of Red Cross and Red Crescent Societies Report, *International Disaster Response Law Project Report 2002-2003*, (2003).

International Federation of Red Cross and Red Crescent Societies report, *International*

*Disaster Response Law Plan 2010 – 2011*, (2009).

International Federation, *World Disasters Report 2000* (2000) 157 ('World Disasters Report 2000').

International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (2001).

*In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, 59<sup>th</sup> session, agenda items 45 and 55, [203], UN Doc A/59/2005 (21 March 2005).

*World Disasters Report 2000*, The two treaties are the *Convention and Statute Establishing an International Relief Union*, opened for signature 12 July 1927, 135LNTS 247 (entered into force 27 December 1932) ('JRU Treaty') and the *Tampere Convention on the Provision of Telecommunication Resources*

for *Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998 (entered into force 8 January 2005).

*Building the Resilience of Nations and Communities to Disaster: Hyogo Framework*. (2005). Paper presented at the UN World Conference on Disaster Reduction.

Fidler, D. P. (2005). Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law? *Melbourne Journal of International*.

Hoffman, M. (2000). Towards an International Disaster Response Law in International Federation of Red Cross and Red Crescent Societies.

Katoch, A. (2003). International Disaster Response Laws, Principles, and Practice: Reflection, Prospect, and Challenge.

AADMER Series: Implementation in Indonesia (2011) <http://www.humanitarianforum.org/pages/en/aadmer-series-implementation-in-indonesia.html>

International Federation of Red Cross and Red Crescent Societies, *International Disaster Response Law Project Report 2002-2003* (2004).

Remarks of IFRC Secretary-General BekeleGeleta, to the Overseas Development Association at Westminster, London, March 2009.

*The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, Prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC, Annex VI to the resolutions of the 26th International Conference of the Red Cross and Red Crescent.