

Women's rights protection in national disaster management law system

Kunthi Tridewiyanti¹, Nina Silvana¹, Didi Sunardi¹, Jazirra Ayesha Nadyaputri², and Endra Wijaya^{1*}

¹Faculty of Law, Universitas Pancasila, Jakarta, Indonesia

²Boston University, Boston, Massachusetts, United States of America

Abstract. This study discusses women's rights protection in the context of disaster management that occurred in Indonesia. This topic is important considering that Indonesia is a country that often experiences disasters, and women are a group that is vulnerable to becoming victims of these disasters. This study uses normative legal research method and relies on secondary data in the form of several legal materials. The analysis of this study uses qualitative method using statutory and conceptual approaches. This study concludes that there are still several weaknesses in the national disaster law system, especially in terms of practice and law enforcement. Therefore, women's rights as disaster victims still do not receive maximum protection.

1 Introduction

Indonesia is one of the countries that frequently experiences disasters, both natural and non-natural disasters. Data from the National Disaster Management Authority of the Republic of Indonesia (*Badan Nasional Penanggulangan Bencana* or BNPB) reveals that in the period of 2018-2023, every year there were more than 3,000 disasters in Indonesia with thousands of people dying or being injured, and also resulting in hundreds of thousands of refugees [1]. Most of these disasters were natural disasters. However, if we look closely at the previous years, the fact is that Indonesia also experienced several disasters in the form of social conflicts which caused many victims. In relation to social conflict, data from the Ministry of Home Affairs reveals that in 2023 there have been 218 cases of social conflict, while in 2024, in the period January to March, there have been 83 cases of social conflict [2].

To respond to the frequent disasters, several laws and regulations have been issued whose substance regulates aspects of handling disasters that occur in Indonesia. At the national level, Law Number 24 of 2007 concerning Disaster Management and Law Number 7 of 2012 concerning Social Conflict Settlement have been issued. In general, the aims of the issuance of such laws and regulations regarding disaster management are: *first*, to provide legal bases for the state to act in preventing, planning, handling, and evaluating disasters; *second*, to minimize the occurrence of victims and more severe damage due to disasters; and *third*, to provide detail steps or procedures for responding to disasters that occur. This is intended so that the handling of disaster events in Indonesia can be carried out in a more orderly or well-

coordinated manner, and the results can be more optimal in protecting human safety as well as their property and important public facilities [3].

In connection with the disaster management system, one aspect that is interesting to examine further is the aspect of protection for vulnerable groups, especially women [4]. A study from The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) revealed that women and children are 14 times more likely than men to die during disasters [5]. This indicates that women are more vulnerable to becoming victims compared to men when a disaster occurs. Due to the physical, biological, psychological conditions and the construction of existing social relations, this means that women need to receive serious attention in the context of human rights-based disaster management [6]. In a disaster, the physical condition of pregnant women certainly cannot be treated the same as people in general. Likewise with mothers who are breastfeeding, their handling in disaster situations requires certain special treatment.

Moreover, in a disaster in the form of social conflict, women can even become targets and experience sexual violence perpetrated by parties involved in the social conflict. This situation has been reminded by many scholars and activists, and one of them is Kuloglu through her research which reveals that when conflict is ongoing, women are very vulnerable to becoming victims and can experience several forms of suffering at once in one period of time. Physically, she can be injured; sexually, she can be exploited or abused; psychologically, she can experience trauma; her family can be destroyed; and economically, she can also lose her property or livelihood.

* Corresponding author: endrawijaya333@univpancasila.ac.id

Therefore, in conflict, women face two war zones at once, namely the “war front” and the “home front” [7].

Based on that background explanation, so it is necessary to conduct a study that focuses on the issue of how to protect women’s rights in the context of disaster management that occurred in Indonesia.

2 Methods

This study uses normative legal research method and relies on secondary data in the form of several primary and secondary legal materials. The primary legal materials refer to several laws and regulations which substance is relevant to the issue of disaster management in Indonesia and the protection of women's rights. Such acts and regulations mentioned which are examined later, among others Law Number 24 of 2007 concerning Disaster Management, and Regulation of the Head of the National Disaster Management Authority Number 13 of 2014 concerning Gender Mainstreaming in the Field of Disaster Management. The secondary legal materials will refer to several studies that have been conducted by several scholars or researchers. The data are analyzed qualitatively using statutory and conceptual approaches [8]. The conceptual approach, in the context of this study, refers to the concept of legal protection for citizen’s rights and the concept of gender justice and its protection.

3 Results and discussion

3.1 Disaster management in Indonesian law

From the perspective of constitution, state through its government has several main duties and functions related to the establishment of social welfare. Those government’s duties and functions stated in preamble section of the 1945 Constitution of the Republic of Indonesia that, “Then, to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia’s blood and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice, Indonesian national independence was formulated in The Constitution of the State of Indonesia, ...” Furthermore, such key concept of Indonesian government’s duties and functions is explained more by several articles within the Indonesian Constitution.

From the legal perspective, several legal bases have been issued to serve as guidelines for disaster management in Indonesia. The 1945 Constitution of the Republic of Indonesia provides a constitutional basis for efforts to protect disaster victims, including women, through Article 28A, Article 28D paragraph (1), Article 28G, Article 28H, Article 28I paragraph (2) and paragraph (4), Article 28J, and Article 34 paragraph (2) and paragraph (3).

In Indonesian Constitution, Article 28A emphasizes that everyone has the right to live and the right to maintain a decent life. To guarantee it as a part of law enforcement,

then Article 28A is supported by Article 28I paragraph (4) which confirms that “Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.” So, the series of several articles of the Indonesian Constitution has simultaneously provided an illustration that protecting the rights of disaster victims, on the one hand, is a right for the victims, and on the other hand, is an obligation or duty for the state to guarantee and fulfill them to the maximum. The two are closely related to each other.

In the form of act as a written law in Indonesia, there are Law Number 24 of 2007 concerning Disaster Management and Law Number 7 of 2012 concerning Social Conflict Settlement. These two laws essentially regulate mechanisms for handling natural and non-natural disasters, such as social conflicts, including handling their victims. At the government regulatory level, several disaster management regulations have been issued at both the national and regional levels. These regulations, among others: Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management; Minister of Social Affairs Regulation Number 01 of 2013 concerning Social Assistance for Disaster Victims, and its amendments, namely Minister of Social Affairs Regulation Number 07 of 2013; Regulation of the Head of the National Disaster Management Authority Number 7 of 2008 concerning Procedures Guidelines for Providing Assistance to Fulfill Basic Needs; and Regulation of the Head of the National Disaster Management Authority Number 13 of 2014 concerning Gender Mainstreaming in the Field of Disaster Management.

If we look closely at several of these laws and regulations, it can be seen that the stakeholders involved in the disaster management system in Indonesia consist of the government, state-owned (public) and private enterprises, individuals, community organizations or associations, indigenous communities, international institutions and foreign non-governmental organizations. From the institutional perspective, the Indonesian legal system has also established and given authority to the National Disaster Management Authority (*Badan Nasional Penanggulangan Bencana* or BNPB) as a formal institution which has the main function and authority to determine policies, respond to and handle disasters problems in Indonesia [9].

A study from Eburn explains that in the modern perspective of disaster management there must be many parties involve in taking responsibility for preparing for, responding to, and recovering from the impact of natural and other hazards. Each of them conducts the responsibility sharing. And in such sharing, to share responsibility does not mean equal responsibility, and there are some areas in which the state or government should assume greater responsibility than the community or the others. So, it is important for governments, communities, individuals, and the nongovernment sector to negotiate how responsibility is to be shared, who is to be responsible for what, and who owns the risk that comes with natural hazards [10].

3.2 Women's rights in the context of disaster management and its challenges

Even though from the legal, regulatory, and institutional perspective there is already a disaster management system in Indonesia, the system and its practices still face problems related to handling disaster victims from vulnerable groups, especially women and children. The starting point for disaster management should also refer to the principles of protecting women's rights. In practice, the disaster management system in Indonesia still tends to equate women and men in handling disaster victims. In fact, the needs for handling disaster victims between women and men are very different. Moreover, in some cases, discrimination, violations, or neglect of women's rights occur when they become victims of disasters.

Several scholars or researchers have revealed the reasons why in cases of disasters women become very vulnerable and even experience several sufferings at once. These reasons are related to due to physical vulnerability, excessive workload carried out by women, dependence on men in household decision making, and the lack of representation of women in the decision or policy making process, especially those related to disaster management issues [11]. Why are women more vulnerable to becoming victims than men, and can even experience serious conditions when a disaster occurs? In detail, the studies by Neumayer and Plümper, and Ramailis and Sakir reveal and provide the answer to that question:[12]

First, physiologically men can be better prepared to face the impact of disasters on their physical being as humans. For example, if a woman is not as strong as a man, she will be more easily swept away by flood waters. This disadvantage is especially severe for pregnant women, whose ability to move or mobility is reduced or limited. In addition, women can also run more slowly and cannot be as deft at climbing poles or trees, so that when a tsunami occurs it will be more difficult for women to escape to higher ground or spot.

The concrete examples can be seen when the tsunami hit Sri Lanka, where it was proven that men were actually better able to survive when facing tsunami waves because men had more skills in swimming or climbing high places. And also in Indonesia, when the big earthquake and tsunami disasters occurred in Aceh in 2004, 55%-70% of the victims were women. This indicates that women are one of the most vulnerable groups when a disaster occurs [13].

Second, men and women have different tendencies to die from various diseases. Some diseases that arise after a disaster are actually more deadly for women who are disaster victims.

Third, large-scale natural disasters can have severe adverse impacts on social infrastructure in affected countries or regions, reducing access to food, hygiene, health services, and clean water. When health service infrastructure is badly damaged, this can have a negative impact, especially on women who are pregnant or having a baby.

In the case of mudflows from the natural gas exploration processed by PT. Lapindo Brantas in Porong, Sidoarjo, East Java, which started in 2006, several

women's rights have been violated, including in the form of compensation paid or given only to men or husbands whose property was damaged by mud. In fact, some of the damaged property was actually owned by the woman or a wife. As a result, the rights or interests of women who were victims of the Lapindo mudflow were ignored and these women did not receive compensation [14]. Even in several cases, husbands who had received compensation money as victims of the Lapindo mudflow actually used the money for their own "personal satisfaction" [15].

Furthermore, in many cases of disasters, in fact many women become the victims who also experience several sufferings at once. This means that in the case of a disaster, women can experience and become victims many times at once, for example experiencing suffering as a disaster victim and at the same time experiencing eviction from their place of residence, losing their husband or family, losing their livelihood and even becoming victims of sexual violence, such as rape or slavery [16]. In the Indonesian context, facts about women experiencing the condition of being victims' multiple times at one time can be found, among others in the armed conflict in Aceh between the Free Aceh Movement and the Indonesian Government in 1976-2005; [17] and the attacks on Shia Muslim groups in Sampang, Madura, in 2004-2012.

A study by Putri and Permatasari, with citing various sources, has revealed many examples of women who experienced being "multiple victims" during the armed conflict in Aceh. They explained that during the Aceh conflict, women experienced multiple levels of violence, including physical, psychological and economic violence, including rape, sexual harassment, torture, arrest, theft and looting [18].

There were victims who were raped and their husbands were also tortured, and there were also those who were raped even though they were pregnant, causing the baby in their womb to die. The female victims also experienced trauma, being ostracized from their families and social circles. They were also forced to remain silent so that their families would not feel embarrassed. In fact, several women victims of sexual torture during the conflict in Aceh also experienced infertility, disability, damage or non-functioning of their sexual and reproductive organs. The horrific experiences experienced by female victims of the social and armed conflict in Aceh are further exacerbated by the fact that efforts to fulfill the right to reparation for female victims of the Aceh conflict have not been optimal and complete.

That weakness, according to Putri and Permatasari's study, was caused, among other things, by the lack of women's participation in formal peace processes and in decision-making institutions that determine reparation rights programs for female victims. Furthermore, the government still does not have serious commitment or political will to resolve cases of serious human rights violations in Aceh.

In regard to the women's participation point, the scholars like Hemachandra, Amaratunga and Haigh had reached conclusion in their study about the urgency of women participation in planning, discussing, making decision and executing programs or policies concerning

how to response and answer the needs of women as victims in disasters. The major argument for increasing the role of women in public administration and decision making is due to its ability of enhancing the government responsiveness and effectiveness. That action helps in achieving inclusive development and democratic governance that helps in improving trust and confidence in government institutions and increasing sustainability and responsiveness of public policies. Furthermore, women leadership also ensures inclusiveness of their interests and properly address their issues, especially in the context of disaster management [19].

In the case of disasters in the form of social conflicts that befell Shia Muslim in Sampang, examples can be found where female victims from Shia Muslim experienced several instances of neglect or violation of their rights as disaster victims and as women. Several Shia Muslim women had to give birth in refugee camps without any assistance from health workers or midwives. Some of these women also experienced ridicule from health workers when they wanted to seek treatment, and then because of that, they no longer wanted or reluctant to seek treatment at health centers or clinics [20].

To respond to those situations, the disaster law system in Indonesia is still inadequate because: *First*, in several laws and regulations governing disasters, such as in Law Number 24 of 2007 concerning Disaster Management, it is still could be seen that the treatment or handling given to disaster victims is still generalized between male and female victims, whereas the conditions of life necessities for them are clearly different. *Second*, the Indonesian legal system still does not provide adequate mechanisms that can be used to complain or file a lawsuit if women's rights are ignored or violated in a disaster circumstance.

Likewise, if we look at the regulations in the form of Regulation of the Head of the National Disaster Management Authority Number 13 of 2014 concerning Gender Mainstreaming in the Field of Disaster Management, which is substantially intended as a guideline for central and local governments as well as non-government parties who care or have an interest in protect and fulfill women's rights in disaster management. Regulation of the Head of the National Disaster Management Authority Number 13 of 2014 does not yet regulate the mechanism for law enforcement and legal accountability for the protection of women as disaster victims. Even though the regulation already contains several quite detailed steps in protecting women in disaster situations, namely starting from the pre-disaster, emergency response and post-disaster stages, and which also includes planning, budgeting, funding, implementation, monitoring, evaluation and reporting. In fact, what has not been regulated in detail is the matter of law enforcement mechanism and legal accountability for the protection of women as victims in disaster management.

To overcome or respond to some of these shortcomings, the concept of the Indonesian rule of law can be used as a reference for formulating alternative solutions. According to Asshiddiqie, the rule of law contains twelve principles consisting of supremacy of law; equality before the law; legality or due process of

law; limitation of power, and checks and balances; independent executive organs; independent and impartial judiciary; Administrative Court; Constitutional Court; human rights protection; democracy; state as a tool to establish the welfare state; and transparency, accountability, public participation and social control [21].

By referring to and emphasizing especially the elements or principles of justice regarding government actions, the protection of human rights, the ideals of the welfare state and social control, it is worth initiating in Indonesia that there is an institution that can help represent women as disaster victims to demand legal accountability if their rights as victims are ignored in the disaster management process.

In the future, it is necessary to consider revisions to the law of disaster management system in Indonesia so that it can provide more firm guarantees for the protection of women's rights as victims in disasters. Moreover, it is also necessary to consider expanding or strengthening the authority of the National Commission on Violence against Women (Komnas Perempuan) so that it can become an institution that represents women whose rights are ignored or violated when they become victims of disasters. Therefore, in the future, Komnas Perempuan can also be equipped with the authority to file lawsuits against certain parties who have ignored or violated the rights of women as disaster victims.

And actually, such kind of the lawsuit already facilitated by Indonesian law system, among others, through Law Number 5 of 1986 concerning Administrative Court which was revised several times and the last revised by Law Number 51 of 2009 concerning Second Amendment of Law Number 5 of 1986 concerning Administrative Court, and also through Law Number 30 of 2014 concerning Governance Administration [22]. Those laws give the right to file the lawsuit against government body or official who have conducted action actively or passively as well as a kind of abandonment causing loss to the citizen or other parties [23].

The proposal to appoint the National Commission on Violence Against Women will create more independent and fair women's rights protection function rather than if the authority to represent and file lawsuits on behalf of women victims of disasters is handed over to the Ministry of Women's Empowerment and Child Protection. If the Ministry of Women's Empowerment and Child Protection has such authority, then it would face a conflict of interest if the defendant alleged for violating the rights of women as disaster victims is from another government institution.

The mechanism for demanding government accountable for not fulfilling the rights of women as disaster victims as explained above, if placed in the context of legal protection for citizens' rights, can be categorized as a form of repressive legal protection. Which will only emerge if preventive legal protection fails to be implemented completely.

In connection with the concept of legal protection, Hadjon's study is interesting to observe. He believes that the protection of the people is actually based on the principle of mutual cooperation or kinship ("gotong

royong” or “kekeluargaan”), and this is what is referred to as legal protection in the context of “the Pancasila State of Law.” Legal protection in the Pancasila State of Law actually contains 3 (three) objectives, namely: *first*, preventing or avoiding disputes between the people and the government; *second*, if a dispute persists, efforts will be made to resolve the dispute through deliberation or mutually respectful dialogue; and *third*, if the dispute still cannot be resolved through deliberation, then the court becomes the final settlement mechanism so that the dispute can be resolved completely, and social welfare can be achieved and maintained as well [24].

4 Conclusion

Formally, the Indonesian disaster management law system is already regulated in several acts and regulations. However, from the aspect of protecting women's rights, there are still some improvements that need to be made in the disaster law. In practice, cases still occur which show that women's rights as disaster victims are violated. Guarantees for the protection of women's rights in disaster situations need to be strengthened and attached with law enforcement mechanisms for parties who violate or ignore the rights of women as disaster victims.

References

1. National Disaster Management Authority of the Republic of Indonesia, Indonesian Disaster Information Data : Statistics on Disasters, Casualties and Damage According to Time [Data Informasi Bencana Indonesia: Statistik Bencana, Korban dan Kerusakan Menurut Waktu], https://dibi.bnpb.go.id/statistik_menurut_waktu, accessed: 27 July 2024.
2. Ministry of Home Affairs of the Republic of Indonesia, Conflict Incidence Rate [Angka Kejadian Konflik], <https://e-database.kemendagri.go.id/dataset/1162/tabel-data?page=1>, accessed: 1 August 2024.
3. Article 4 and General Elucidation of Law Number 24 of 2007 concerning Disaster Management, and Article 3 and General Elucidation of Law Number 7 of 2012 concerning Social Conflict Settlement.
4. D. Alexander, Political responses to emergencies, in A.E. Collins, eds., Hazards, risks, and disasters in society, (Elsevier, Amsterdam, 2015). <https://doi.org/10.1016/B978-0-12-396451-9.00013-5>
5. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Women's resilience to disasters concept note, <https://wrd.unwomen.org/practice/resources/womens-resilience-disasters-concept-note>, accessed: 27 July 2024.
6. C. Abao, et al., Women in natural disasters: indicative findings in unraveling gender in institutional responses (An ASEAN Intergovernmental Commission on Human Rights (AICHR) Thematic Study), (ASEAN Intergovernmental Commission on Human Rights (AICHR) & The Department of Political Science, Ateneo de Manila University, 2018).
7. C. Kuloglu, Violence against women in conflict zones, in H. Carreiras & G. Kümmel, eds., Women in the military and in armed conflict, (VS Verlag für Sozialwissenschaften, Wiesbaden, 2008). https://doi.org/10.1007/978-3-531-90935-6_10
8. S. Soekanto, Pengantar penelitian hukum (UI Press, Jakarta, 1986).
9. Regulation of President Number 1 of 2019 concerning National Disaster Management Authority.
10. M. Eburn, Disaster risk reduction in the shadow of the law, in A.E. Collins, eds., Hazards, risks, and disasters in society (Elsevier, Amsterdam, 2015). <https://doi.org/10.1016/B978-0-12-396451-9.00015-9>
11. K. Hemachandra, D. Amaratunga and R. Haigh, Factors affecting the women's empowerment in disaster risk governance structure in Sri Lanka, Int. Jou. of Disaster Risk Reduction, **51**, (2020). <https://doi.org/10.1016/j.ijdr.2020.101779>
12. E. Neumayer & T. Plümper, The gendered nature of natural disasters: The impact of catastrophic events on the gender gap in life expectancy, 1981–2002, Annals of the Assoc. Of American Geog., **97**, (2007). <https://doi.org/10.1111/j.1467-8306.2007.00563.x>
13. N. Ramailis & Sakir, Increasing women's resilience to disasters: An analysis of gender mainstreaming in natural disaster management in Bantul, Indonesia, Jurnal Ilmu Sosial dan Ilmu Politik, **13** (2023). <https://doi.org/10.15575/jispo.v13i2.29003>
14. A. Mustafainah, et al., Pencerabutan sumber-sumber kehidupan: Pemetaan perempuan dan pemiskinan dalam kerangka HAM (Komnas Perempuan, Jakarta, 2012).
15. A. Heroepoetri, Pengabaian dari mula : Laporan pemetaan pelanggaran hak asasi perempuan dalam bencana luapan lumpur di Kecamatan Porong, Kabupaten Sidoarjo, Jawa Timur (Komnas Perempuan, Jakarta, 2011).
16. A. Rushton, et al., The gendered body politic in disaster policy and practice, Int. Jou. of Dis. Risk Red., **47** (2020). <https://doi.org/10.1016/j.ijdr.2020.101648>
17. A. Uzia, et al., catatan dua tahun terakhir (2011-2012) kekerasan terhadap perempuan di aceh, menjelujur pengalaman kekerasan perempuan di Aceh: Perjuangan tiada henti meniti keadilan (Komnas Perempuan dan Jaringan Pemantau, Jakarta, 2013).
18. L.H. Putri and M. Permatasari, Implementasi pemenuhan hak atas reparasi bagi perempuan korban konflik Aceh ditinjau dari hukum internasional, Syiah Kuala Law Journal, **2**, (2018). <https://doi.org/10.24815/sklj.v2i3.12400>

19. K. Hemachandra, et al., Role of women in disaster risk governance, *Procedia Engineering*, **212**, (2018). <https://doi.org/10.1016/j.proeng.2018.01.153>
20. A.H. Semendawai, et al., Laporan tim temuan dan rekomendasi (TTR) tentang penyerangan terhadap penganut syiah di Sampang, Madura (Komnas Perempuan, Komnas HAM, KPAI & LPSK, Jakarta, 2013).
21. I. Subechi, Mewujudkan negara hukum indonesia, *Jurnal Hukum dan Peradilan*, **1**, (2012). <http://doi.org/10.25216/jhp.1.3.2012.339-358>
22. D. Riza, Keputusan tata usaha negara menurut undang-undang peradilan tata usaha negara dan undang-undang administrasi pemerintahan, *Jurnal Bina Mulia Hukum* **3**, (2018). <https://doi.org/10.23920/jbmh.v3n1.7>
23. M.A. Bimasakti, *onrechtmatig overheidsdaad* oleh pemerintah dari sudut pandang undang-undang administrasi pemerintahan, *Jurnal Hukum Peratun*, **1**, (2018). <https://doi.org/10.25216/peratun.122018.265-286>
24. P.M. Hadjon, *Perlindungan hukum bagi rakyat di indonesia: Sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara* (PT Bina Ilmu, Surabaya, 1987).