

## **GOVERNMENT RESPONSIBILITY IN FULFILLMENT OF COMMUNITY RIGHTS AFFECTED BY FLOOD IN DISASTER MANAGEMENT IMPLEMENTATION**

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**Abstract:** *Law Number 24 of 2007 concerning Disaster Management stipulates that in the event of a disaster, the Government and Regional Governments are responsible for implementing disaster management. The community affected by the disaster is the party that must receive priority in handling, because this is a community right and is a constitutional right. The purpose of this study is to examine and analyze the form of responsibility of the Regional Government in fulfilling the rights of the people affected by the flood disaster in South Kalimantan Province. Through the socio-juridical research method (socio-legal) using an interdisciplinary or "hybrid" approach between aspects of normative legal research and a sociological approach using a qualitative analysis method, it will be possible to observe the suitability between *das sollen* and *das sein*, namely the integrity of detailed and thorough explanations of legal issues. between law in book and law in action. Based on decentralization, the delivery of government affairs by the central government to autonomous regions is based on the principle of autonomy, so that disaster management and management is not only the responsibility of the central government, but also the regional government plays a direct role together with the central government. The responsibilities and authorities of the Regional Government in disaster management cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect. The implementation of the Regional Government in fulfilling the rights of the people affected by the flood disaster includes 3 (three) stages, namely the pre-disaster stage, during emergency response and post-disaster. The fulfillment of community rights during emergency response is carried out through cooperation and coordination with related parties and the community. This pattern of fulfilling the rights of disaster-affected communities is carried out based on justice in line with regional development policies and regional autonomy.*

**Keywords:** *Responsibilities, Government, Community Rights.*

## **Introduction**

Natural disaster is one of the natural events that cannot be controlled by humans, nature is moved with all the problems in it and then has an impact on humans as creatures who live on it. Of the various kinds of disasters that often occur in Indonesia, one of which often occurs is the flood disaster which occurs during the rainy season. This flood occurs because during the rainy season water inundates an area within a certain period of time because the intensity of rainfall is very high and occurs continuously and as a result of the diminishing catchment area so that the carrying capacity and environmental capacity are no longer capable of being carried out exceed capacity. Humans in the context of managing the environment must be wise, because what humans do in the context of development continues to increase from year to year, but the development carried out in addition to having a positive impact also creates a negative impact, namely the risk of pollution and environmental destruction so that the basic structure and function ecosystems that support life ecosystems can be damaged as a result of development, one of the problems that often arises today is the problem of flooding which is repeated every year. This kind of thing will become a social burden, because in the end it is the community and the government who have to bear the burden of recovery.

However, regardless of the cause of this flood, the most important thing at this time is to take quick steps for handling and overcoming this flood disaster. So that people affected by this flood disaster immediately get help. Moreover, from the legal aspect, there is already a basis for local governments to act in dealing with disasters because through decentralization of government and the granting of power from this regional autonomy system, flood handling and mitigation is the responsibility of Articles 8 and 9 of Law no. 24 of 2007 concerning Disaster Management. Anyone would not want a disaster, but when a disaster comes no one is able to avoid it. Moreover, at the same time our country is still trying to cope with non-natural disasters due to the covid 19 pandemic. Which has resulted in the government and regional governments having to work extra hard to cope with both (covid 19 non-natural disasters and flood disasters). This of course must receive mutual attention, and is a separate issue whether the local government has fulfilled the rights of the people affected by the flood disaster. Because it is true that protection against disaster threats and flood disaster management for affected communities is the responsibility and authority of the Government and Regional Governments. For this reason, from the community side, it also needs to be examined to see what the responsibilities and authorities of the Government and especially local governments are in providing protection against disaster threats and flood disaster management for the community as well as fulfilling the rights of people affected by floods because this is a constitutional mandate.

## **Research method**

This research method uses a socio-juridical approach (socio-legal) by using an interdisciplinary or "hybrid" approach between aspects of normative legal research and a sociological approach by using qualitative analysis, namely by analyzing data in depth, holistically, and evaluative-analytically by providing a comprehensive conceptual assessment to examine and analyze the legal aspects of the responsibilities and authorities of the Government and Regional Governments in the fulfillment of human rights at the

time of a disaster, so that in the end they can observe *das sollen* and *das sein*. This is to meet the need for a more detailed and thorough explanation of legal issues in a more meaningful way by making a comparison between law in book and law in action.

## **Results and discussion**

### *Government Responsibilities in Disaster Management*

Currently the Government is trying to implement sustainable development as a standard that is not only intended for environmental protection, but also for development policies, meaning: preservation of environmental functions, equality between generations, awareness of community rights and obligations, prevention of destructive development that is not responsible for the environment, and is obliged to participate in implementing sustainable development at every level of society (Hardjosoemantri, 1999). The environment is very important for human life and other living things. Obtaining a good and healthy living environment the embodiment of human rights, as stated in the 1945 Constitution of the Republic of Indonesia which states that a good and healthy environment is a human right and constitutional right for every Indonesian citizen. The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia mandates that the Government of the Republic of Indonesia protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice. The state must respect, fulfill and protect the right to a good and healthy environment. A good and healthy environment is a citizen's human right, the state is responsible for the fulfillment of this citizen's human rights. The state must be able to provide protection for human rights. The form of fulfillment of the protection of the rights of citizens to obtain a good and healthy air environment can be in the form of preventive protection, namely prevention from happening, or in the form of repressive protection.

The State Administrators of the Republic of Indonesia are the bearers of the mandate of the Preamble of the 1945 Constitution, namely to protect, promote, enforce and guarantee the fulfillment of the human rights of every citizen of the Republic of Indonesia. As regulated in Article 28 I paragraph (4) of the 1945 Constitution, "The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the Government". Then from the community side, there are also constitutional guarantees for the environment as stated in Article 1 28H paragraph (1) of the 1945 Constitution which states: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to health services." So it is proper for the community to be guaranteed the fulfillment of these rights in order to realize the welfare of the community, especially in getting a healthy and adequate environment as well as a guarantee of maintaining a sustainable environment for life support. Furthermore, this provision is implemented in Article 65 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, which states "everyone has the right to a good and healthy environment as part of human rights", as well as in Law No. Law Number 39 of 1999 concerning Human Rights (HAM), Article 3 states "the community has the right to a better and healthier environment". The meaning of this provision is that the state guarantees the right to a good and healthy environment as a constitutional right for every Indonesian citizen so that

everyone is protected from pollution that can endanger public health. Law Number 39 of 1999 concerning Human Rights (HAM), Article 8, "Protection, promotion, enforcement and fulfillment of human rights are primarily the responsibility of the Government".

South Kalimantan Province as one of the areas with high potential for disaster occurrence, arrangements related to the protection of community rights in the event of a disaster are contained in the South Kalimantan Provincial Regulation No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. Article 11 contains the rights of the community affected by the disaster, which reads:

Everyone has the right: get social protection and a sense of security, especially for disaster-prone community groups; receive education, training, and skills in disaster management; obtain written and/or verbal information on disaster management policies; participate in the planning, operation, and maintenance of programs for the provision of health care assistance, including psychosocial support; participate in decision-making on disaster management activities, especially those related to themselves and their communities; and carry out supervision in accordance with the mechanisms regulated for the implementation of disaster management. Every person affected by a disaster has the right to get assistance to fulfill basic needs. Everyone has the right to obtain compensation due to disasters caused by construction failures. In addition to the rights as referred to in paragraph (1), paragraph (2) and paragraph (3), the community gets protection and guarantees for the right to: religion and belief; culture;

economics and politics; education; healthy environment; profession; health; and sexual.

Provisions regarding the procedure for providing assistance and compensation as referred to in paragraphs (2) and (3) are regulated by governor regulations

The rights of the community in the event of a disaster in the perspective of justice must be fulfilled by the Central Government together with the Regional Government without any exceptions, because this has become the mandate of the Laws and Regional Regulations of the Kalimantan Province. The government's responsibility in fulfilling human rights in the event of a disaster, as stated in Article 24 of Law no. 24 of 2007 concerning Juncto Disaster Management Article 11 Regional Regulation of South Kalimantan Province No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province.

The obligations and responsibilities of the state in the framework of a right-based approach can be seen in three forms (Khairunnisa, 2018):

Respect: it is the obligation of the state not to interfere in regulating its citizens when exercising their rights. In this case, the state has an obligation not to take actions that will hinder the fulfillment of all human rights.

Protecting: it is the duty of the state to act actively for its citizens. The state is expected to act actively in guaranteeing the protection of the human rights of its citizens and the state is obliged to take measures to prevent violations of all human rights by third parties.

Fulfilling: it is the obligation and responsibility of the state to act actively so that the rights of its citizens are fulfilled. The state is obliged to take legislative, administrative, legal, budgetary and other measures for the full realization of human rights.

The three forms of state obligations and responsibilities, each of which contains an obligation to conduct, which requires the state to take certain steps to fulfill a right, and an

obligation to result, which requires the state to achieve certain goals. certain goals to meet measurable substantive standards. In addition to the three main obligations in the implementation of human rights, the state also has an obligation to take steps, to guarantee, to ensure, to recognize, to try to (to undertake), and to improve/promote (to promote) human rights. So that in the end, even when a disaster occurs, people's rights can still be fulfilled.

The Central Government together with the Regional Government are the servants needed by the community in dealing with various disasters, including floods. Through the decentralization of government and the granting of power to regional autonomy, the direct role of the Central Government as well as regional governments in disaster management and management is not only the responsibility and authority of the central government but jointly with regional governments, as stated in Law No. 24 of 2007 concerning Disaster Management Article 5, namely "The government and local governments are responsible for the implementation of disaster management". Furthermore, it is regulated in Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management. The government together must take an appropriate policy to overcome it. The Government and Regional Governments are responsible for protecting the entire community with the aim of providing protection for life and livelihoods, including from disasters in the context of realizing community welfare. The responsibility of the government together with the regional government has been regulated from a legal aspect so that it becomes the basis for the Government and Regional Government to act in dealing with disasters because through decentralization of government and the granting of power from this regional autonomy system. The responsibilities and authorities of the Regional Government in the disaster management system cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect (Heryati, 2020), then the handling and mitigation of flooding becomes the responsibility and authority of the local government as stated in Articles 8 and 9 of Law no. 24 of 2007 concerning Disaster Management.

As for Article 8 which states: Responsibilities of local governments in disaster management include: guaranteeing the fulfillment of the rights of communities and refugees affected by disasters in accordance with minimum service standards; protection of the community from the impact of disasters; disaster risk reduction and integration of disaster risk reduction with development programs; and allocation of disaster management funds in adequate regional revenue budgets.

Article 9 The authority of the regional government in the implementation of disaster management includes:

stipulation of disaster management policies in the region in line with regional development policies;

making development plans that include elements of disaster management policies;

implementation of cooperation policies in disaster management with other provinces and/or districts/cities;

regulation of the use of technology that has the potential as a source of threat or disaster hazard in its territory;

formulating policies to prevent the control and depletion of natural resources that exceed the natural capacity of the territory; and

controlling the collection and distribution of money or goods in its territory.

Further, regarding the responsibilities and authorities of local governments in handling and controlling floods, it is regulated in Article 11 of Regional Regulation no. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. In the concept of a welfare state, this refers to the role played by the state in providing various services and benefits to its citizens, especially in the maintenance of income and health as well as housing, education and social activities, including in terms of disaster management. because this is indeed in line with the goals of the state to be realized as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia which states that the purpose of the state is to "protect the entire Indonesian nation and the entire homeland of Indonesia and to promote general welfare, educate the nation's life and participate in implementing world order based on freedom, lasting peace and social justice". Therefore, the protection of the entire nation and the improvement of general welfare are the important responsibilities of the state.

The constitutional guarantee for the fulfillment of community rights in disasters is contained in Law no. 24 of 2007 concerning Disaster Management, Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management. South Kalimantan Province is contained in Regional Regulation No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. Constitutionally there is protection of the community's rights to the fulfillment of rights if affected by a disaster, then the community should be guaranteed the fulfillment of these rights, because this is indeed in line with the goals of the state to be realized as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia which states that statehood is "to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice". Therefore, the protection of the entire nation and the improvement of general welfare are the important responsibilities of the state.

### **Fulfillment of the Rights of Communities Affected by Floods in the Implementation of Disaster Management**

The purpose of the Indonesian state is contained in the preamble to the Constitution of the Republic of Indonesia, one of which is to protect the entire nation. Protection of the entire nation can be interpreted as an effort by the state to protect all levels of society as mandated by human rights. In line with that, every development with a human rights perspective always applies the values and principles of Human Rights (HAM) in every step and process. With this step, it is believed that the state still has an obligation to respect, protect and maintain the stability of its people through human rights. This is done with the aim of upholding justice and realizing equal protection in every society in Indonesia (Rahayu, 2012). Human rights protection in terms of environmental protection and management, is that people have the right to a clean and healthy environment. It also aims to prevent disasters from occurring and to create a balance of environmental harmony. Therefore, environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or

damage which includes planning, utilization, control, maintenance, supervision, and law enforcement (Syahrul, 2012).

Environmental management plays an important role in preventing and reducing the impact of disasters through environmental management. President Joko Widodo has stated that disaster prevention and prevention is not enough just to build infrastructure physically. because of environmental management, this is no less important to pay attention to (Ministry Of State Secretariat Republic Of Indonesia, 2020). A good and healthy environment is a human right and a constitutional right for every Indonesian citizen. The ability of a harmonious and balanced environment should be preserved, so that any changes made need to be accompanied by efforts to achieve environmental harmony and balance at a new level. The preservation of a harmonious and balanced environmental capability leads to harmony between development and the environment, so that the two cannot be contradicted with each other (Bethan, 2008). The 1945 Constitution and Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) has stated that a good and healthy environment is a human right of every Indonesian citizen, which means that on the other hand it is the authority of the government. Based on UUPPLH and also the existence of regional autonomy, the authority in the environmental sector can be delegated to the regions to be implemented by the regions. Law No. 23 of 2009 concerning Environmental Protection and Management is the legal umbrella that forms the basis for making policies regarding environmental issues in Indonesia. Therefore, all further regulations related to the environment both at the level of laws, government regulations and other implementing regulations which are instruments of policy (Instrumenten Van Beleid) must be in line with Law no. 23 of 2009.

Human rights are actually a generalization of basic human rights which in a functional framework are referred to as human rights principles. These principles are the alienable principle, the equality principle, the non-discrimination principle, the universal principle, the eternal principle and the interconnectedness, dependence and undivided principle (Gunakaya, 2017). Thus, in all circumstances the rights of the community must of course be a serious concern, especially when it comes to disasters, as a form of responsibility of the Government and Regional Governments, on the other hand, people who are affected by disasters such as floods must also get priority in handling floods, because this is a right. society which is their constitutional right because it has been guaranteed in Article 26 of Law no. 24 of 2007 concerning Disaster Management. The rules contained in the regulation read as follows:

Everyone has the right:

get social protection and a sense of security, especially for disaster-prone community groups;

obtain education, training, and skills in disaster management.

obtain written and/or verbal information regarding disaster management policies.

participate in the planning, operation, and maintenance of programs for the provision of health care assistance, including psychosocial support;

participate in decision-making on disaster management activities, especially those related to themselves and their communities; and

carry out supervision in accordance with the mechanisms regulated for the implementation of disaster management.

Every person affected by a disaster has the right to get assistance to fulfill basic needs.

Everyone has the right to obtain compensation due to disasters caused by construction failures.

The provisions of Article 26 paragraph (2) of Law no. 24 of 2007 concerning Disaster Management above, it can be interpreted that every person affected by a disaster does not exist unless they will receive assistance to fulfill basic needs. Although normatively there is a government responsibility in fulfilling human rights in the event of a disaster, it must still be instilled that humans must be responsible for the surrounding environment, humans in order to manage this environment must be wise, because what humans do in the context of the development of the environment. year by year continues to increase, but the development carried out in addition to having a positive impact also has a negative impact, namely the risk of pollution and environmental destruction so that the basic structure and function of the ecosystem that supports the ecosystem of life can be damaged as a result of development.

However, of course, it is also necessary to pay attention to the obligations of the community. Article 27 of Law no. 24 of 2007 concerning Disaster Management states that everyone is obliged to: a. maintain a harmonious social life of the community, maintain balance, harmony, harmony, and the preservation of environmental functions; b. carry out disaster management activities; and c. provide correct information to the public about disaster management. Realizing that national development activities on the one hand will contribute to improving the quality of the welfare of the community, but on the other hand, the community also has an obligation to maintain a harmonious social life, maintain balance, harmony and environmental sustainability so as not to cause concern for permanent environmental degradation. in the long run. Therefore, prudence is also needed in formulating a development agenda, especially towards the environment from the threats and negative impacts of development itself. So that disasters such as floods do not happen again in the future.

The implementation of disaster management according to Law Number 24 of 2007 which includes 3 stages, namely pre-disaster, during emergency response, and post-disaster. Disaster mitigation is also part of efforts to reduce the impact of disaster risk, both through physical development as well as awareness and capacity building in dealing with disaster threats. A series of efforts in disaster mitigation aims to increase awareness and increase the community's ability to deal with disaster threats. This disaster mitigation activity acts as an action to reduce victims during a disaster (Saandhyvitri, 2015). The disaster mitigation carried out includes disaster management, disaster mitigation policies and strategies and in the form of disaster mitigation actions (Fadhli, 2019).

The implementation of disaster management at the pre-disaster stage includes situations where a disaster does not occur, and situations where there is a potential for a disaster to occur. When a flood disaster occurs, it is an emergency response activity. The implementation of disaster management during emergency response includes:

- a. rapid and precise assessment of the location, damage, and resources;
- b. determination of the status of a disaster emergency;
- c. rescue and evacuation of disaster-affected communities
- d. fulfillment of basic needs;
- e. protection of vulnerable groups; and
- f. immediate recovery of vital infrastructure and facilities



The pattern of fulfilling the rights of disaster-affected communities is carried out on a justice-based basis in line with regional development policies and regional autonomy. Implementation of the implementation of the fulfillment of community rights when affected by floods is firstly by conducting a quick and accurate assessment of the location of damage, and resources, determining the status of a disaster emergency, then by collaborating and coordinating with related parties and the community for rescue and evacuation of disaster-affected communities, fulfillment of basic needs, and fulfillment of the needs of vulnerable groups, as well as with the immediate restoration of vital infrastructure and facilities for the community. Assistance is provided according to needs and in line with what is needed by the community when a disaster occurs.

## **Conclusion**

Based on decentralization, the delivery of government affairs by the central government to autonomous regions is based on the principle of autonomy, so that disaster management and management is not only the responsibility of the central government, but the regional government also plays a direct role together with the central government. The responsibilities and authorities of the Regional Government in disaster management cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect. Constitutionally, the fulfillment of the rights of disaster-affected communities has been protected as stated in the legislation. The implementation of the responsibility of the Regional Government in fulfilling the rights of the people affected by the flood disaster includes 3 (three) stages, namely pre-disaster, during emergency response and post-disaster. Disaster mitigation is an integral part of efforts to reduce the impact of disaster risk on the community. Emergency response when a disaster occurs is carried out through cooperation and coordination with related parties and the community. The pattern of fulfilling the rights of disaster-affected communities is carried out on a justice-based basis in line with regional development policies and regional autonomy. In order for the fulfillment of the rights of flood-affected communities to be more optimal and targeted at being given to the community, it is necessary to have coordination in the field regarding the distribution of assistance provided, especially assistance provided directly by the community to disaster areas.

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