

# The Palu Disaster and Indonesia's Obligation to Ensure the Right of Adequate Housing and Land Rights: Mission Accomplished?

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## Abstract

In guaranteeing the protection of human rights for disaster victims, a legal framework is needed to govern all humanitarian work related to natural disasters. International human rights principles should guide disaster risk management, including pre-disaster mitigation and preparedness measures, emergency assistance and rehabilitation as well as reconstruction efforts. This study aims to examine and analyse the existence of a human rights approach in various laws and disaster mitigation policies in Indonesia and the state's responsibility in implementing human rights in providing land rights and proper housing for disaster victims in particular after the Palu disaster. This study combines a positivist legal reading with empirical data on this particular disaster. The conclusion of this study is that the norms for protecting human rights must be integrated in every stage of disaster management, where the disaster mitigation stage becomes the basis for other measures. Human rights-based disaster management standards must become a measuring tool for evaluating the development of Indonesian laws and regulations, for implementing regulations for disaster management as well for accounting the successes or lack thereof of disaster management, post-disaster, reconstruction and rehabilitation.

## Keywords

Human rights – Disaster Management – State Responsibility – Land Rights – Housing

## 1 Introduction

The process of the earth's journey or the process of the earth's geology often poses a danger to human survival.<sup>1</sup> The emergence of natural change processes, such as natural disasters or geological disasters, climate change, plate movements, etc., usually marks earth or natural geological processes.<sup>2</sup> Natural disasters or geological disasters can enter into an earth's geological process because when natural disasters occur, they will form new life, namely by forming a new ecosystem due to the emergence of large and new land, widening the coast, and enriching the soil (due to volcanic eruptions).<sup>3</sup> Indonesia is a unique geological region starting from the area crossed by the path of fire or magma.<sup>4</sup> Therefore, Indonesia has earned the nickname of the Ring of Fire country.<sup>5</sup> The territory of Indonesia is located at the confluence of three major tectonic plates,<sup>6</sup> namely: first, the Indo-Australian plate that is moving relatively northward; second, the Eurasian plate that is moving relatively south; and, third, the Pacific plate that is moving relatively westward.<sup>7</sup> As a result of the confluence of these three tectonic plates that are actively moving, Indonesia is very prone to geological disasters such as earthquakes, tsunamis and other natural disasters caused by those plate movements.<sup>8</sup> Such natural disasters, in general, can cause material and immaterial losses. One of the natural forms of this loss is the loss of homes for people affected by the earthquake; with the loss of shelter as a basic need for the community.

This study examines the earthquake in Palu City, Central Sulawesi Province, on 28 September 2018 causing liquefaction that was responsible for the destruction of the livelihood and homes of its inhabitants. Liquefaction or sinking of the earth itself is a natural disaster that occurs due to the loss of

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1 BT Swimme and ME Tucker, *Journey of the Universe* (Yale University Press 2011) 59.

2 J Parikka, *A Geology of Media*, vol. 46 (University of Minnesota Press 2015) 47.

3 S Stein and M Wyss, *An Introduction to Seismology, Earthquakes, and Earth Structure* (John Wiley & Sons 2009) 60.

4 C Oppenheimer, 'Climatic, Environmental and Human Consequences of the Largest Known Historic Eruption: Tambora Volcano (Indonesia) 1815' (2003) 27 *Progress in Physical Geography* 230.

5 BDD Hinga, *Ring of Fire: An Encyclopedia of the Pacific Rim's Earthquakes, Tsunamis, and Volcanoes* (ABC-CLIO 2015).

6 M Fuady, R Munadi and MAK Fuady, 'Disaster Mitigation in Indonesia: Between Plans and Reality' in *IOP Conference Series: Materials Science and Engineering*, vol. 1087 (IOP Publishing 2021) 12011.

7 MR Amri, *RBI: Risiko Bencana Indonesia* (Badan Nasional Penanggulangan Bencana 2016) 14.

8 PR Cummins, *Geohazards in Indonesia: Earth Science for Disaster Risk Reduction – Introduction* (The Geological Society of London 2017) 1.

the carrying capacity or strength of soil related to changes in the subsoil structure resulting from powerful vibrations or shocks caused by an earthquake.<sup>9</sup> In short, such disaster phenomenon will occur if there is vibration or shock from an earthquake that is so strong that it can damage the structure of the soil layers into soft sediments in the form of sandy soil mixed with water, which will cause the soil to collapse downwards because it loses its carrying capacity.<sup>10</sup>

The management of the disaster in Palu showed proof of lack of implementation of existing regulations in place. On 25 October 2018, almost a month after the disaster, the Coordinating Minister for Politics, Law, and Security stated that thousands of tons of relief goods both from within and outside the country were still piling up at Halim Perdana Kusuma Airport (Jakarta), Sepinggan Airport (Balikpapan) and Mutiara (Palu), while on the other hand there are still many disaster victims who have not received proper assistance. This stockpiling and delay in the distribution of goods is very unfortunate, considering that the Government of Indonesia has issued Regulation of the Minister of Finance of the Republic of Indonesia Number 69/Pmk.04/2012 concerning Exemption from Import Duty and/or Excise on Imported Goods Sending Gifts/Grants for Natural Disaster Management. This regulation is one of the efforts to improve disaster management regulations due to the absence of previous arrangements when the Tsunami disaster occurred in Aceh. Months after the tsunami, hundreds of containers filled with tents, blankets, and body bags were still sitting at the airport, while the victims of the disaster no longer needed them.

Law Number 24 of 2007 concerning Disaster Management defines a disaster as processor of series of that threatens and disrupts people's lives and livelihoods caused, both by natural factors and/or non-natural factors as well as human factors, resulting in human casualties, environmental damage, loss of property, and psychological impact.<sup>11</sup> Since disasters can be caused by natural, non-natural and human factors, Law Number 24 of 2007 also defines natural disasters, non-natural disasters and social disasters separately.<sup>12</sup> Natural disasters are the consequences of events triggered by natural hazards that exceed

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9 F Thomas, R Chaney and R Tseng, 'Liquefaction' in F Thomas, R Chaney and R Tseng (eds.) *The Physics of Destructive Earthquakes* (Morgan & Claypool Publishers 2018) 24.

10 Ibid.

11 AT Tjitrawati and MK Romadhona, 'Affliction in the Post Palu Disaster: State Failure to Implement Human Rights Standard on Disaster Management' in *Cogent Social Sciences* (n.d.), <https://doi.org/10.1080/23311886.2023.2233255>.

12 NY Puspita, *Legal Analysis of Human Rights Protection in Times of Natural Disaster and Its Implementation in Indonesia* (Asian Law Institute, National University of Singapore 2010).

local response capacities and seriously affect the social and economic development of an area.<sup>13</sup> Traditionally, natural disasters are seen as situations that create challenges and problems, especially of a humanitarian nature.<sup>14</sup>

Besides the immediate humanitarian consequences of those large-scale disaster, attention to human rights protection has also informed disaster responses. In this regard, ever since the tsunamis, landslides and earthquakes that hit Indonesia from 2004 to 2018, increasingly attention has been to the respect, protection and fulfilment of human rights.<sup>15</sup> Often the human rights of disaster victims are not taken into account.<sup>16</sup> Unequal access to assistance, discrimination in the provision of assistance, forced relocation, loss of documentation, unsafe or accidental return or resettlement, and issues of compensation for damaged land and buildings are just a few of the problems that frequently encountered by those affected by natural disasters.<sup>17</sup> In guaranteeing the protection of human rights for disaster victims, a legal framework is needed which becomes the legal basis for all humanitarian work related to natural disasters.<sup>18</sup> If, however, humanitarian assistance is not based on a human rights framework, there is a risk that the focus will be too narrow and the basic needs of victims will not be integrated into the holistic planning process of disaster relief and management.<sup>19</sup> Without integration, there is a risk that factors that are important for recovery and reconstruction will be neglected. The Indonesian state's commitment to international human rights law<sup>20</sup> – reflected in both international agreements and other provisions, obliges it to protect the human rights of its citizens through the implementation of these human rights provisions in its national legislation. Conversely, ignoring the human rights of those affected by natural disasters shows proof of Indonesia's neglect of its

13 GA Tobin, *Natural Hazards: Explanation and Integration* (Guilford Press 1997).

14 A Pal, 'State Capacity in Humanitarian Supply Chains: Determining the Government's Role in Managing Natural Disasters' in *4th India Public Policy Network (IPPN) Annual Conference* (2022).

15 S P Naik et al., '28th September 2018 Mw 7.5 Sulawesi Supershear Earthquake, Indonesia: Ground Effects and Macroseismic Intensity Estimation Using ESI-2007 Scale' (2023) 317 *Engineering Geology* 107054.

16 Susan Marks, 'Human Rights and Root Causes' (2011) 74 *The Modern Law Review* 57–78.

17 E Ferris, 'Natural Disasters, Conflict, and Human Rights: Tracing the Connections' in *The Brookings Institution. Presented at Brookings-Bern Project on Internal Displacement* (Texas 2010).

18 JC Carmalt and CH Dale, 'Human Rights and Disaster' in *Handbook of Hazards and Disaster Risk Reduction* (Routledge 2012) 61–70.

19 KM Cahill, *A Framework for Survival: Health, Human Rights, and Humanitarian Assistance in Conflicts and Disasters* (Psychology Press 1999).

20 CHL Addison and H Koh, 'How Is International Human Rights Law Enforced?' in *International Law of Human Rights* (Routledge 2017) 241–62.

citizens' human rights.<sup>21</sup> Thus, guarantees for the protection of the human rights of victims of natural disasters need to be strengthened through laws, regulations and institutions that must protect their rights in their turn. This affirmation is necessary so that the implementation of protection for disaster victims and the implementation of disaster mitigation are in accordance with international human rights protection standards.<sup>22</sup>

The applicability of human rights standards to large-scale disaster – earthquake – in Palu City will be investigated here. International human rights principles should guide disaster risk management, including pre-disaster mitigation and preparedness measures, emergency assistance and rehabilitation as well as reconstruction efforts.<sup>23</sup> Those at risk need to be protected from violence and abuse. Those who are displaced must be provided with protection and assistance and must be able to return safely and with dignity to their original lands and property, or assisted to integrate locally into areas from which they have fled or settled elsewhere in the country. Adherence to international human rights standards will help ensure that the basic needs of victims or beneficiaries are met. The challenge is often how to apply these rules in an operational context.

Before addressing the latter operational context and measuring the accountability of the Indonesian government in respecting various human rights entitlements of the victims of the earthquake in Palu City – especially the right to housing and land (Section 4), this article firstly investigates after this introduction (Section 1) the international legal framework pertaining to disaster relief and management including the realisation of the human right to life, adequate housing and property (including land) (Section 2). Secondly, it examines the Indonesian legal framework with respect to the right to adequate housing and land (Section 3).

## 2 Disasters and International Law

### 2.1 *Obstacles to Disaster Relief and Management*

While major disaster affects the lives and livelihoods of many victims who need assistance, laws and regulations are not the first thing that are generally thought of. On the one hand, laws and regulations are often seen as obstacles

21 M Vanhullebusch, *The Law of International Humanitarian Relief in Non-International Armed Conflicts*, vol. 59 (Brill 2021).

22 P Macalister-Smith, *International Humanitarian Assistance: Disaster Relief Actions in International Law and Organizations* (Martinus Nijhoff Publishers 1985).

23 J Donnelly and DJ Whelan, *International Human Rights* (Routledge 2020).

to the smoothness and effectiveness of disaster management. When it comes to handling international disasters, the law of the country where the disaster occurred often becomes an obstacle to the smooth entry of aid from the international community and the entry of international humanitarian workers. On the other hand, the absence of disaster management regulations often results in uncoordinated, imprecise, and wasteful contributions and responses. As a result, disaster victims have the potential not to receive timely, targeted, and effective assistance. The magnitude of the humanitarian response from the international community is often not maximized due to the inaccuracy of the response from international donors due to ignorance of what the local population needs and a lack of understanding regarding the applicable local legal provisions.<sup>24</sup> This lack of understanding and ignorance has led to the emergence of complex problems in the international distribution of disaster relief<sup>25</sup> and this is exacerbated by the frequent changes in local laws and regulations and the number of ministries related to permits for the import of goods for disaster management. The problem will get worse if the aid goods have to go through a third country which also applies less flexible customs regulations.<sup>26</sup>

Customs regulations are not the only barrier to effective international distribution. The United States government's 2006 response to Hurricane Katrina found that a lack of legal guidelines and ad hoc procedures had hindered the use of direct cash assistance donated by foreign governments to the US government and disaster victims.<sup>27</sup> The \$126 million foreign cash donations received, almost half had not been distributed to victims or channelled to specific agencies as of April 2006, and that amount was held in interest-free accounts. Obstacles to disaster response also occur for disaster volunteers. Volunteers are often hindered in their attempts to obtain formal authorization to carry out humanitarian operations and to gain legal recognition for themselves, both as

24 D Guha-Sapir, D Hargitt, and P Hoyois, *Thirty Years of Natural Disasters 1974–2003: The Numbers* (Presses Univ. de Louvain 2004).

25 RW Perry and MK Lindell, 'Preparedness for Emergency Response: Guidelines for the Emergency Planning Process' (2003) 27 *Disasters* 336–350.

26 For example, in August 2006, after strong winds in Swaziland left 13,000 people homeless and exposed to ongoing torrential rains, the Delegation Federation of International Red Cross and Red Crescent Societies in Harare, Zimbabwe delivered a shipment of tarpaulins and tents. However, the shipment was delayed at the border with South Africa for five days before it could proceed to its destination due to problems with customs. See D Fisher, 'The Law of International Disaster Response: Overview and Ramifications for Military Actors' in *Israel Yearbook on Human Rights*, vol. 38 (Brill Nijhoff 2008) 115–143.

27 Executive Office of the President, United States, Assistant to the President for Homeland Security, and Counterterrorism, *The Federal Response to Hurricane Katrina: Lessons Learned* (Government Printing Office 2006).

organizations and personnel. After the 2004 tsunami hit Thailand, for example, international and local NGOs alike found registration processes so impenetrable that only few were successful. The lack of protection and legal standing for international disaster volunteers can make it difficult for them to obtain work permits, open bank accounts, and obtain tax exemptions. As a result, in many disaster operations, volunteers and international relief staff operate on tourist visas, the organization's bank accounts are opened in the personal names of staff members and funds intended for relief are reduced due to taxation.

The ability of affected countries to facilitate and coordinate international volunteers is also a problem in itself. The high number of reports on disaster victims has encouraged volunteers from foreign countries to come to assist, in addition to traditional actors in disaster management such as foreign civil and military defence, UN agencies, the International Red Cross, and well-established NGOs. However, humanitarian movements driven by social media have led to an increase in the number of completely new actors, such as NGOs specially formed for certain disasters, private companies, and individuals.<sup>28</sup> Often these new actors lack experience, provide poor service, provide goods that are of poor quality and do not match local needs and do not coordinate effectively. In the aftermath of the 2004–2005 Tsunami, countries that experienced the disaster were faced with large numbers of unneeded people and inappropriate assistance, including large quantities of used clothes that did not fit, expired medicines, as well as unneeded field hospitals, unsanitary food and culturally unacceptable and other inappropriate items. This inappropriate assistance is not only worthless to the recipient but also causes other losses. These items occupy storage space and use means of transportation that could have been used for more appropriate and needed transportation and storage of relief items. Then these items also require special handling for disposal which is an additional unnecessary burden.

Some aid actors have rendered services incompetently, including providing health assistance without providing records to victims.<sup>29</sup> Several faith-based NGOs have also taken inappropriate actions by encouraging disaster victims to convert to their religion. Even though they only represent a small proportion of those who provide international assistance, the behaviour of these actors significantly influences people's perceptions of the implementation of

28 SF Schulz, *Disaster Relief Logistics: Benefits of and Impediments to Cooperation between Humanitarian Organizations*, vol. 15 (Haupt Verlag AG 2009).

29 AT Tjitrawati, M Tavip and MK Romadhona, 'Integrative Social-Health Security for Indonesian Migrant Workers: Does Fully Covered And Protected?' (2023) *Malaysian Journal of Medicine and Health Sciences*.

international disaster assistance in general. National laws and institutions are generally not ready to deal with these specific problems so disaster-affected countries need assistance in arranging the receipt of international assistance in disaster management and recovery. Moreover, not all countries have disaster laws and/or disaster mitigation plans.

Thus, there is a need for concepts that can balance the authority of the local government with meeting the needs of disaster victims that can be met by the international community, bearing in mind that usually the need for disaster management arrangements is felt necessary when a disaster occurs in an atmosphere full of chaos. While in more peaceful times this is usually not a top priority. As a result, provisions made for disaster management are usually ad-hoc in nature, can only be used for handling immediately after a disaster and are made in a state of complete confusion. A crisis is the wrong time to build new institutions, build new policies and legal frameworks, and recruit new staff because all of this takes time. The ambiguity of responsibilities between new and existing institutions can be a major bottleneck and delay, not to mention the uncertainty between international partners who have to deal with national, provincial, and local officials.

The globalization of information through media and social media since the early 2000s has increased the international community's concern for disaster issues. This concern increases the number of NGOs working in the field of disaster and involving themselves in disaster management in the world. The number of NGOs that focus on post-disaster recovery has increased rapidly in the early era of this millennium. The enormity of the Tsunami disaster in Aceh and several areas in Southeast Asia has further increased the number of these NGOs. The involvement of military personnel from other countries in disaster management has been a good practice in relations between countries so far. An excellent coordination system and trained personnel in dealing with emergencies are the advantages of military personnel to participate in disaster management. But the inherent military characteristics certainly require different treatment compared to other personnel. Concern for victims also encourages individuals and multinational companies to get involved in disaster management. On the one hand, this concern will greatly assist victims and victim countries in recovering from the situation, but on the other hand, the many parties involved in disaster management require good coordination, so that a lot of energy and assistance is not wasted and not on target. Understanding of NGOs and individuals regarding the principles and standards of disaster management is very much needed. Operational Guidelines on Protecting Persons

in Natural Disasters 2006 can be used as a guide for them in carrying out their humanitarian duties.<sup>30</sup>

## 2.2 *Towards the Regulation of Disaster Relief and Management*

### 2.2.1 Sources of International Law

International legal aspects of disaster management can arise from state obligations, protection of human rights, state jurisdiction and international cooperation in disaster management.<sup>31</sup> Given that disaster events usually occur within the jurisdiction of a country, it will also be necessary to implement these international obligations in national law.<sup>32</sup> The provisions of international law in disaster management are generally characterized by soft law norms<sup>33</sup> whose use depends on the awareness of states themselves. These provisions are scattered in various multilateral agreements, bilateral agreements, various resolutions, declarations, guidelines and models issued by authorized international agencies. The distribution of these provisions makes it difficult to determine the scope and enforcement of the law. Even though it's still soft law, these provisions will be the forerunner to the existence of more authoritative provisions of international law regarding disaster management.

In international human rights law, there are almost no provisions that directly and specifically mention the protection of human rights for disaster victims. With the exception of the 2006 Convention on the Rights of Persons with Disabilities which emphasizes the obligation of state parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters, the protection of human rights for disaster victims could be read in the general human rights covenants, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). These human rights include the right to life, the right to food and water, the right to

30 Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters* (Inter-Agency Standing Committee (IASC) 2006).

31 Macalister-Smith, *supra* note 22.

32 J Raikes et al., 'The Influence of International Agreements on Disaster Risk Reduction' (2022) 76 *International Journal of Disaster Risk Reduction* 102999.

33 G Venturini, 'International Disaster Response Law in Relation to Other Branches of International Law' (2012) *International Disaster Response Law* 45–64.

housing, the right to clothing, the right to health, the right to livelihood, and the right to be free from discrimination.<sup>34</sup>

Even in an emergency situation, the state must still respect the fundamental rights of disaster victims. The state must refrain from actions that violate the human rights of victims, even if it is done on an emergency basis. The state must also continue to protect the fundamental rights of victims from threats of human rights violations by third parties. In the chaotic situation after a disaster, there are often violations of victims' rights by third parties, either by fellow disaster victims or by other parties who take advantage of the chaotic situation. In such circumstances, the state must stand as an institution that firmly provides shelter and protection for society in a fair manner, without discrimination. The state must also take affirmative action to strengthen disaster victims' access to their rights. In a disaster situation, women, children, people with disabilities, people with HIV, indigenous people and minorities are often those who are marginalized from accessing assistance. Ethnic, racial and religious sentiments and affiliation/membership also often come to the fore when determining who gets assistance first when the amount of assistance is insufficient. In such circumstances, the state is obliged to ensure that the implementation of disaster management is carried out fairly, by providing equal access for every community group that is a victim.

Especially regarding the fulfilment of the right to food, the state is obliged to prevent disaster victims from starving. Accordingly, the state should take positive steps to reduce the death rate due to disasters through efforts to prevent malnutrition and epidemics in disaster areas. If the disaster state does not have the resources to meet the needs of the victims, then the state is obliged to open access for other countries, international organizations, NGOs and individuals to provide the assistance needed by the community. The problem is often not whether or not food can be distributed, but often the national laws and policies of the affected country are not flexible enough to deal with an emergency situation resulting from a disaster. Foodstuffs sent by donor agencies often pile up at ports due to the customs system not adapting to emergency situations because the customs officials feel compelled to continue to apply customs regulations to incoming goods. In situations like this the state can be considered as violating the right to food for disaster victims.

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34 MG Wiratama, BSA Subagyo and MK Romadhona, 'Implementation of Legal Efforts Consumer Protection and Dispute Settlement of Social – Health Insurance Participants for Indonesian Migrant Workers' (2023) 19 *Malaysian Journal of Medicine and Health Sciences*.

Violations of the human rights of disaster victims can also potentially be committed by individuals, international organizations or NGOs who are participating in providing assistance. The lack of coordination and oversight by the state in emergency situations, causes their actions to sometimes go beyond the standards of disaster management in accordance with human rights provisions. The distribution of assistance by certain religious groups that do not provide assistance to victims of other religions, for example, is a discriminatory act that is contrary to human values. The existence of practices that are contrary to international human rights law, especially those that occurred during the 2005 Tsunami disaster, is what prompted the birth of Operational Guidelines on Protecting Persons in Natural Disasters in 2006.

Large numbers of people become displaced when volcanic eruptions, tsunamis, floods, droughts, landslides, or earthquakes destroy homes and dwellings, forcing the affected population to flee their homes or places of residence. Experience shows that the longer displacement lasts, the greater the risk of human rights violations, in particular, discrimination and violations of economic, social and cultural rights tend to become more systemic over time. Often human rights violations are not intended or premeditated. Sometimes they result from insufficient resources and capacity to prepare for and respond to the consequences of a disaster. More often, they are the consequence of inappropriate policies, neglect or weak oversight by local governments.

These violations could have been avoided if disaster management actors including the government and other institutions, both national and international, paid attention to the protection of relevant human rights from the start. The Representative of the UN Secretary-General (RSG) on the human rights of internally displaced persons concluded in his evaluation that it is not only national authorities who are often unaware of the relevance of human rights norms in the context of natural disasters. International agencies and NGOs are also still at a loss as to how to incorporate a human rights-based approach to relief and emergency response, even though many laws and codes of conduct that apply in natural disaster situations include such guarantees. Human rights must be the legal basis for all humanitarian work related to natural disasters. There is no other legal framework to guide such activities, especially in areas where there is no armed conflict. If humanitarian assistance is not grounded in a human rights framework, there is a risk that the focus will be too narrow and the basic needs of victims will not be integrated into the holistic planning process. The integration of risk factors is important in disaster recovery and reconstruction planning.

Ignoring the human rights of those affected by natural disasters ignores the fact that such people do not live in a legal vacuum, but rather they live in

countries with laws, regulations and institutions that are obliged to provide protection for them. International human rights principles should guide disaster risk management, including pre-disaster mitigation and preparedness, emergency relief and rehabilitation as well as reconstruction efforts. Those at risk need to be protected from violence and abuse. Those who are displaced must be provided with protection and assistance, and must be able to return to their original land and property in safety and dignity. If they run away or settle elsewhere, assistance must be provided to integrate with the local community in the region or in the country concerned. Compliance with international human rights standards will help to ensure that the basic needs of victims or beneficiaries of assistance are met. The challenge is often how to apply these rules in an operational context.

In this respect, in June 2006, the UN Inter-Agency Standing Committee (IASC) adopted the Operational Guidelines on Human Rights and Natural Disasters. This guideline is necessary because there are already guidelines on humanitarian action in emergencies as well as standards for protecting human rights in armed conflict; but they are not dealing specifically with human rights concerns stemming from natural disasters. The guidelines are aimed at inter-governmental and non-governmental humanitarian actors, and focus on what humanitarian actors must do to implement a human rights-based approach to humanitarian action in the context of natural disasters.

In 2005, countries had also adopted the Hyogo Framework for Actions (HFA) as a statement of commitment and priority to disaster risk reduction, including through “policy, legislative and institutional frameworks”.<sup>35</sup> Countries seek to ensure that disaster risk reduction is a national and local priority with a strong institutional basis to implement this framework. In order to achieve this goal, countries, among other things, are trying to identify, assess and monitor disaster risks and strengthen early warning systems. The existence of the HFA has led to the enactment of a large number of legislations in many countries aimed at increasing attention to disaster risk reduction,<sup>36</sup> However, it turns out that there are quite sharp disparities among countries regarding the achievement of implementing HFA into disaster management

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35 A Aitsi-Selmi et al., ‘The Sendai Framework for Disaster Risk Reduction: Renewing the Global Commitment to People’s Resilience, Health, and Well-Being’ (2015) 6 *International Journal of Disaster Risk Science* 164–176.

36 R Djalante and F Thomalla, ‘Disaster Risk Reduction and Climate Change Adaptation in Indonesia: Institutional Challenges and Opportunities for Integration’ (2012) 3 *International Journal of Disaster Resilience in the Built Environment* 166–80.

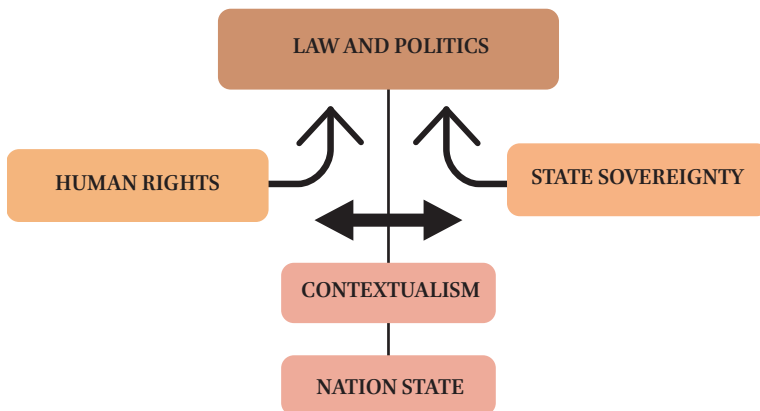


FIGURE 10.1 The relationship between Human Rights and Disaster Risk Reduction

especially in disaster-prone countries;<sup>37</sup> thus, contributing to different levels of vulnerability to disasters among these latter countries. Studies conducted by International Federation of Red Cross and Red Crescent Societies in 2013 concluded that individual vulnerability to disasters could be reduced if laws and policies incorporated a human rights-based approach.<sup>38</sup> Often human rights are confronted with state sovereignty, considering that human rights are universal rights that are given equally and cannot be separated by all individuals who should be able to intersect with the interests of the state's highest authority. However, it is law and politics that have actually made human rights and rendering them fully compatible with state sovereignty.<sup>39</sup>

In the so-called opposition between human rights protection and state sovereignty, law becomes an integrative factor for both. The law formats the phenomena around it and adapts it to the context of the country. Thus, the universal character of human rights protection will be acceptable if it has been adapted to the context of the state with regard to actions, events and circumstances regulated by the national law of the local country. Doctrines born from the science of law regarding the integration of universal human rights provisions with state sovereignty embodied in the rule of law (regarding actions,

37 R Djalante and M Garschagen, 'A Review of Disaster Trend and Disaster Risk Governance in Indonesia: 1900–2015' in R Djalante, M Garschagen, F Thomalla and R Shaw (eds.) *Disaster Risk Reduction in Indonesia: Progress, Challenges, and Issues* (Springer 2017) 21–56.

38 *International Federation of Red Cross and Red Crescent Societies* (Geneva 2013).

39 P Pospieszna and K da Costa, 'The Relationship between Human Rights and Disaster Risk Reduction Revisited: Bringing the Legal Perspective into the Discussion' (2015) 6 *Journal of International Humanitarian Legal Studies* 64–86.

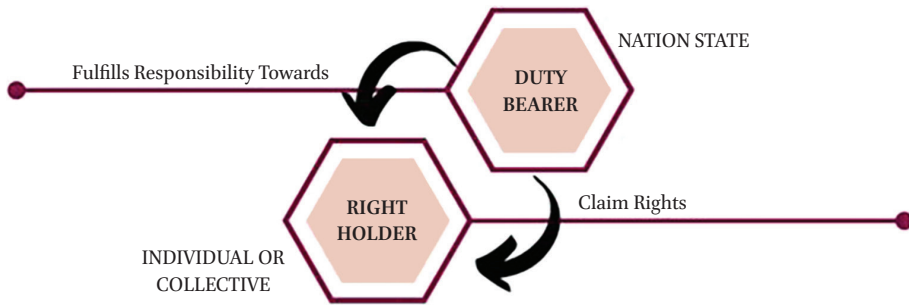


FIGURE 10.2 Universal Doctrine of Human Rights

events and circumstances)<sup>40</sup> can be used to assess, on the one hand, the implementation of state obligations as duty bearers in protecting the human rights of citizens as stipulated in these universal provisions, and on the other hand, can be used by individuals as right holders to file a claim for non-fulfilment of rights that should have been granted.

The Universal Declaration on Human Rights (1948),<sup>41</sup> the International Human Rights Covenants (1966)<sup>42</sup> and several agreements and declarations regarding human rights form an impressive body of international legal obligations for states. These instruments regularly use the language of universal rights: “No one will ...,” “Everyone has the right ...”<sup>43</sup> However, even universal human rights have meaning only if they can be implemented in the national legal system. The international human rights obligations of states are solely for their own nationals and/or others under their jurisdiction.<sup>44</sup> The state has the right nor the responsibility to implement or enforce the human rights of foreigners in a foreign territory<sup>45</sup> – with the exception of extraterritorial human rights obligations.

40 RH Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge University Press 1990).

41 UN General Assembly, *Universal Declaration of Human Rights* (1948).

42 WM Cole, ‘Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966–1999’ (2005) 70 *American Sociological Review* 472–495.

43 K De Feyter, ‘Leaving No One behind in Human Rights Research’ (2018) 2 *Peace Human Rights Governance/Università Degli Studi Di Padova* 9–19.

44 H King, ‘The Extraterritorial Human Rights Obligations of States’ (2009) 9 *Human Rights Law Review* 521–556.

45 J Donnelly, ‘State Sovereignty and Human Rights’ (2004) 4 *Human Rights & Human Welfare* 38.

Countries are expected to be able to implement and uphold human rights in their own territory. The construction of respect for state sovereignty in implementing international human rights is based on the reality that the international community is still largely a society of sovereign states, and most international laws are implemented and enforced nationally. However, how states treat their own citizens in their own territory can become an increasingly regular and important regulatory object in international law, be it bilateral, multilateral or transnational. With such a construction, international monitoring of national human rights practices is very limited, even though there is an international monitoring mechanism which is quite respected for its existence and implementation. Many human rights treaties require regular reporting to international committee of experts. With six main international human rights treaties with an average of 161 parties,<sup>46</sup> there will be many reports on the implementation of human rights by participating countries that must be considered by these formal international oversight institutions. Apart from that, the UN Human Rights Council must also examine the human rights conditions in the countries concerned and the implementation of certain rights. National and transnational NGOs ensure the free flow of information about human rights practices in various countries. Several countries have also made monitoring of human rights an integral part of their foreign policy.<sup>47</sup>

Those affected by natural disasters, including those displaced by disasters, are entitled to protection under international human rights law as well as applicable customary international laws regarding the protection of human rights. The transfer of individuals from one area to another due to a disaster does not eliminate individual rights and their rights as the population in general. At the same time, they have special needs that prompt the implementation of special protection and assistance measures that are different from those required by individuals who are not affected by the disaster. The primary duty and responsibility for providing protection and assistance rests with the national authorities of the affected countries. Those affected by natural disasters have the right to request and receive protection and assistance from their governments. Thus, the main task bearers of carrying out the obligation to provide protection are the national and local authorities of the country concerned. Protection is not limited to guaranteeing the survival and physical security of those affected by natural disasters, but includes all relevant guarantees. In this regard, the Universal Declaration of Human Rights in Article 25 confirms that:

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46 E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?', (2005) 49 *Journal of Conflict Resolution* 925–953.

47 Donnelly, *supra* note 45.

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood *in circumstances beyond his control*.

The development of international law regarding disaster management cannot be separated from humanitarian law.<sup>48</sup> The ICRC's efforts to deal with war victims since before the First World War inspired several individuals to try to expand the scope of "relief" so that it does not only concern war victims, but also victims of natural disasters. One of them is Giovanni Ciraolo in 1921 the President of the Italian Red Cross Society<sup>49</sup> who expressed his thoughts on the need for an intergovernmental organization working in the field of handling victims of natural disasters. This thought received considerable attention in the International Red Cross Conference, even though the conference did not succeed in forming the international organization as he wanted. This idea was later realized by the League of Nations through Convention and Statutes Establishing an International Relief Union (IRU) in 1927 which was adopted by 43 participating countries.<sup>50</sup>

The existence of IRU is intended to:<sup>51</sup> (a) form a centralized disaster management operational institution; (b) regulate international funding channels; (c) support disaster management efforts; (d) coordinate other stakeholders involved in disaster management; and (e) encouraging studies and research on disaster management. However, the lack of funding commitment from member countries caused IRU to not develop and die. Furthermore, the international community regulates disaster management mechanisms in various sectoral instruments scattered in various agreements that do not focus on regulating disaster management, both multilateral and bilateral in nature, such as in conventions on shipping and customs.

From the demise of the IRU until the 1980s the discourse and growth of international disaster management provisions was not very significant.<sup>52</sup> In

48 Macalister-Smith, *supra* note 22.

49 JF Hutchinson, 'Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project' (2000) 22 *The International History Review* 1–36.

50 P Macalister-Smith, 'The International Relief Union-Reflections on the Convention Establishing an International Relief Union of July 12, 1927' (1986) 54 *Tijdschrift Voor Rechtsge-schiedenis* 363.

51 Ibid.

52 Y Beigbeder, *The Role and Statuts of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance*, vol. 12 (Martinus Nijhoff Publishers 1991).

1976 the Office of the United Nations Disaster Relief Coordinator (UNDRO) and League of Red Cross Societies conducted studies on legal issues in (international) disaster management operations.<sup>53</sup> In 1977 this study became the subject of discussion in meetings at UNDRO as well as League of Red Cross Societies,<sup>54</sup> and, in 1982, UNDRO submitted a draft “Convention on Expediting the Delivery of Emergency Assistance”.<sup>55</sup> Learning from the failure of IRU, UNDRO sought to avoid a centralized mechanism and instead used a cooperative approach between countries to remove obstacles imposed by national law in disaster management. Even so, the draft convention still did not immediately turn into a convention that binds States to this day. The void of multi-lateral agreements in the field of disaster management by the international community is filled with agreements that are less formal and binding in nature as was done by the Inter-Governmental Group of Experts to establish the International Search and Rescue Advisory Group (INSARAG). Agreements that are less binding are also made by countries through resolutions and declarations under the UN forum.

The failure of countries to form international agreements regarding disaster management has not dampened the steps of international organizations and NGOs to move to create international mechanisms for disaster management, such as the United Nations Relief and Rehabilitation Administration (UNRRA), the United Nations High Commissioner for Refugees (UNHCR), Food and Agriculture Organization (FAO) and the United Nations Children's Fund (UNICEF). Their steps were then followed by the United Nations Development Program (UNDP), the World Food Program (WFP), the predecessor entities to OCHA and other UN organs related to disaster management. IRC and RCM also play a role in developing the international disaster management order by creating disaster management movements in various countries. This concern also encourages the birth of NGOs that are also active in disaster management. Even though the international community failed to make conventions regarding disaster management, movements encouraged by international organizations and NGOs have moved people in various countries to care about disaster issues. Countries have responded to this concern by establishing national disaster management agencies.

53 BJ Brown, *Disaster Preparedness and the United Nations: Advance Planning for Disaster Relief*, vol. 34 (Elsevier 2013).

54 LH Stephens and SJ Green, ‘Conclusion: Progress, Problems and Predictions’ in *Disaster Assistance: Appraisal, Reform and New Approaches* (Springer 1979) 293–311.

55 P Macalister-Smith, ‘Protection of the Civilian Population and the Prohibition of Starvation as a Method of Warfare: Draft Texts on International Humanitarian Assistance’ (1991) 31 *International Review of the Red Cross* (1961–1997) 440–59.

### 2.2.2 Principles of Disaster Relief and Management

According to human rights law, disaster-affected people have the right to be protected from all forms of discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other important status. Discrimination includes intentional discrimination, as well as policies or activities that have a discriminatory effect.<sup>56</sup> Protection is also intended to avoid and prevent injustice and discrimination between people who are directly affected by the disaster and those who are indirectly affected, as well as between various groups among the victims. This is one of the most complex challenges in disaster relief. People displaced internally as a result of the disaster, women and girls, and other vulnerable groups such as persons with disabilities or HIV/AIDS, single parents, parents without family support, or members of ethnic or religious minorities and indigenous peoples are in a particular vulnerable position.

The principles of equality and non-discrimination contained in various human rights instruments are the main principles of international human rights law.<sup>57</sup> They must support all disaster relief, recovery and reconstruction efforts. Access to humanitarian assistance and reconstruction assistance must be provided without discrimination. Assistance must be carried out in accordance with the principles of humanity, impartiality and neutrality. Disaster relief and recovery efforts must not discriminate against different groups of displaced and affected people. For example, there should be no discrimination between people displaced in camps and those living with host families. Disaster recovery and response efforts must not create inequalities between the standard of services available to disaster-affected populations and to non-affected communities in surrounding areas. All members of affected communities should have equal access to information regarding disaster relief and recovery strategies. They should be provided with full advisory services and be able to participate in all stages of the disaster response.

In order to identify properly targeted beneficiaries of assistance, it is recommended that, in the early stages of an emergency, a rapid survey be conducted to identify the gender, demographic, social, economic and political profile of the affected people. Assessments of vulnerabilities, livelihoods, assets, skills and capacities should also be carried out. Such a community profile should

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<sup>56</sup> Carmalt and Dale, *supra* note 18.

<sup>57</sup> L Weiwei, *Equality and Non-Discrimination under International Human Rights Law* (SMR 2004).

be used as a planning tool at every stage of the disaster response to ensure that the response is fair and meets the needs of all sectors of society. Another aspect that is no less important is the need to provide information and education on equality and non-discrimination to all affected communities to convey their rights and encourage them to convey their concerns to local authorities and humanitarian agencies. Local and national authorities should continue to strive to implement and enforce anti-discrimination laws in the aftermath of natural disasters, and if the country does not already have them, should try to develop the law so that it can be realized.

Nonetheless, calibrating the provision of assistance to the needs of disaster-affected people is not a violation of the principle of non-discrimination. Calibration is needed to ensure the accuracy of the provision of assistance based on the needs of each group in society which can be different. This precision reflects a human rights-based approach to the delivery of humanitarian assistance. The principle of non-discrimination allows for distinctions based on serious and objective reasons and requires those responsible for identifying beneficiaries according to the level and character of their needs. Humanitarian aid recipients should not automatically include all people affected by a disaster. Some people may have a second home or extended family to provide temporary accommodation or they may have the financial means to continue self-support. To be able to implement assistance delivery and protection activities in a non-discriminatory manner, it is important to know who the potential beneficiaries are and what their specific needs are. Initially, any assistance program should start with a well-thought-out beneficiary profile. Without this profile, programs run the risk of failing to fulfil beneficiary rights and even being unwittingly discriminatory.

### 2.3 *Beneficiaries of Disaster Relief*

The obligation of the state to assist its own citizens affected by disasters was born from the constitutional obligations of the state towards its citizens. In the Preamble of the 1945 Constitution of the Republic of Indonesia, it is clearly stated that the Government of the State of Indonesia is obliged to protect the entire Indonesian nation and all of Indonesia's bloodshed. In the past this obligation was seen as a form of charity. From this perspective, the handling of victims is only based on compassion, not on legal obligations. Victims are considered not to have the right to demand proper treatment from the government. Such views are no longer acceptable. The state was born through a social contract between people, which is through a contractual agreement

and is based on trust.<sup>58</sup> In this context, the community surrenders some of its power to the state, and vice versa, the state is obliged to protect and make its people prosper. As a form of legal relationship, the fulfilment of people's rights to safety and welfare is a legal obligation of the State that the community can demand for its fulfilment.<sup>59</sup> Human rights law provides reinforcement of this concept by elaborating what rights citizens can claim against their own country.<sup>60</sup> With regard to the presence of foreign nationals, both individuals and personnel of international organizations and NGOs who are operating in their territory, the state is obliged to provide protection for their safety in accordance with the standards of treatment for foreigners who are in the state's territory.

Third states too may owe obligations to foreigners caught in disaster situations.<sup>61</sup> In this regard, disaster incidents in a country's territory often generate empathy from the international community so that they come to provide assistance to victims and provide assistance in the form of goods or services.<sup>62</sup> State jurisdiction is often an obstacle to the speed of entry of people and goods that are urgently needed by disaster victims. The country where the disaster occurs often does not have a legal framework adequate in dealing with emergency situations resulting from disasters, so that laws and regulations regarding the entry of people and goods that apply in normal situations are often also applied when the state is dealing with disasters that occur in its territory. This inflexibility in applying the rule of law is an obstacle to disaster management and often triggers tensions between disaster-affected countries and humanitarian organizations involved in disaster management.

The existence of these various problems has encouraged the birth of various agreements between countries and international organizations working in the humanitarian field, such as IRC and RCM so that the implementation of disaster management can be carried out by these humanitarian organizations to the fullest but still taking into account the sovereignty and jurisdiction of the state where the disasters occur. The involvement of individuals and NGOs called upon to assist in disaster management is also a separate juridical

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58 Stephen Kidd et al., 'The Social Contract and the Role of Universal Social Security in Building Trust in Government' (2020) *Development Pathways*.

59 H Dean, *Social Rights and Human Welfare* (Routledge 2015).

60 M Freeman, *Human Rights* (John Wiley & Sons 2022).

61 JRC Field, 'Bridging the Gap between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context' (2010) 22 *International Journal of Refugee Law* 512–557.

62 I Kelman, *Disaster Diplomacy: How Disasters Affect Peace and Conflict* (Routledge 2011).

problem.<sup>63</sup> They come to help disaster victims and recovery efforts based on their own humanitarian vocation. But that doesn't mean they can do whatever they want without coordinating with the local government, especially the local disaster management agency. They must also carry out relief efforts in the context of protecting the human rights of victims. Therefore, the Inter-Agency Standing Committee (IASC) in June 2006 issued Operational Guidelines on Protecting Persons in Natural Disasters.<sup>64</sup>

## 2.4 *Beneficiaries' Rights under International Disaster Law*

### 2.4.1 Right to Life, Freedom of Movement and Right to a Family Life

According to Article 3 of the Universal Declaration of Human Rights, every human being has the inherent right to life, which must be protected by law.<sup>65</sup> This means that no one, including the government, can try to end the life of an individual. This also means that the government must take appropriate steps to protect life with legal provisions to protect the individual and, in some circumstances, by taking steps to provide protection if the individual's life is at risk. The occurrence of natural disasters poses a risk of death for individuals or groups. Thus, in their status as duty bearers, states are obliged to protect the lives of individuals and groups through the establishment of disaster risk reduction instruments.<sup>66</sup> States must also consider the right to life when the lives of individuals or groups are at risk as a result of a disaster, including when the state must make a decision that will place individuals or groups in danger or that will affect their lives, even if the action must be taken in relation to handling disaster victims.

With regard to this right to life, every individual affected by a disaster is also entitled to a decent life by fulfilling the need for food, clothing and clean water, considering that these three are basic needs for everyone to survive. In a disaster situation, these three elements of life's necessities are often difficult to obtain due to the difficulty of the terrain destroyed by the disaster. The state is obliged to guarantee that the distribution system can take place in an even and non-discriminatory manner. The reliability of the disaster mitigation system implemented by the State will ensure affordability and equitable distribution

63 R Shaw and K Goda, 'From Disaster to Sustainable Civil Society: The Kobe Experience' (2004) 28 *Disasters* 16–40.

64 Inter-Agency Standing Committee, *supra* note 30.

65 E Wicks, 'The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties' (2012) 12 *Human Rights Law Review* 199–219.

66 D Coppola, *Introduction to International Disaster Management* (Elsevier 2006).

of aid. The state must also guarantee the accessibility of vulnerable groups such as women, children, the elderly, disabled, indigenous people, HIV sufferers, etc. will find it easy to get help.

Regarding respect for the right to life of the individual, Article 5 of the UDHR declares that every individual has the right to dignity and physical, mental and moral integrity.<sup>67</sup> Everyone must be protected, in particular, against torture, cruel and inhuman or degrading treatment or punishment. In extraordinary and uncontrollable situations after a disaster, disaster victims are usually vulnerable to becoming victims of inhumane treatment by state officials and fellow disaster victims, including rape and other acts that are gender-based and gender-specific violence or indecent assaults and violence in the home.<sup>68</sup> Women are vulnerable to becoming victims in situations chaotic after the disaster, including when they had to fight and compete for relief goods to sustain their families' lives. Therefore, the State must create a protection mechanism for its citizens after a disaster by paying attention to disaster management standards with a human rights perspective as contained in the 2005 HFA.<sup>69</sup>

The destruction of homes and the dangers that are still threatening due to disasters often cause victims of disasters to have to leave their original homes. They have to find a new place to live, either in the area around their place, within the country or even have to move to another country. Rejection by residents in a new place is a threat to the right to freedom of movement and the freedom to choose where to live.<sup>70</sup> The state must guarantee that those who are affected by the disaster and have lost their homes are given proper shelter to be able to carry out their lives in a dignified manner.

Disasters often destroy the foundations of normal family life, or cause families to fall apart.<sup>71</sup> Children may lose their parents or caregivers, causing them to lose a place on which they depend. This situation has the potential to be abused by irresponsible people who take advantage of their powerlessness for economic purposes, for example making child labour, child soldiers, sexual exploitation, prostitution or human trafficking. Therefore, after a disaster that

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67 O Schachter, 'Human Dignity as a Normative Concept' (1983) 77 *American Journal of International Law* 848–854.

68 H Hannum, 'The UDHR in National and International Law' (1998) *Health and Human Rights* 144–158.

69 Pospieszna and da Costa, *supra* note 39.

70 Hannum, *supra* note 68.

71 K Kaniasty and F Norris, 'The Experience of Disaster: Individuals and Communities Sharing Trauma' in *Response to Disaster* (Routledge 2013) 25–61.

has an important impact, the state must implement a disaster mitigation system that is able to protect children from exploitation.<sup>72</sup>

#### 2.4.2 Right to Adequate Housing

The ICESCR came into force on 3 January 1976.<sup>73</sup> This convention recognizes the Right to Settlement as one of the social rights described in Article 11 Paragraph 1.<sup>74</sup> This article states that every individual has the right to an adequate standard of living for himself and his family, including adequate food, clothing and shelter. Article 11 Paragraph 1 includes very broad rights.<sup>75</sup> These provisions provide for the right to an adequate standard of living, sustainable advancement of living conditions, and the right to adequate food, clothing and shelter.<sup>76</sup>

The scope of the “right to settlement” can be interpreted in the following way:<sup>77</sup>

1. The right to housing is integrated with other human rights which are included in economic and cultural rights. The term “settlement” is defined by considering various factors, the important one of which is that the right to housing must be available to all people regardless of their income or access to economic resources.
2. Based on the references in Article 11 Paragraph 1, proper settlement involves legal aspects of ownership, availability of services (facilities and infrastructure), affordability, accessibility, habitability, location, and taking into account social, economic, cultural, climate and ecological factors.

The legal provisions governing the right to adequate housing for citizens as a basic human right refer to the UDHR.<sup>78</sup> The UDHR adopts the principles of human rights and fundamental human freedoms as a common guide to

72 YNoguchi, ‘ILO Convention No. 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child’ (2002) 10 *International Journal of Children’s Rights* 355.

73 BG Ramcharan, ‘Implementation of the International Covenant on Economic, Social and Cultural Rights’ (1976) 23 *Netherlands International Law Review* 23 151–161.

74 B Saul, D Kinley, and J Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP Oxford 2014).

75 F Coomans, ‘The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights’ (2011) 11 *Human Rights Law Review* 1–35.

76 AHM Kabir, ‘Development and Human Rights: Litigating the Right to Adequate Housing’ (2002) 3 *Asia-Pacific Journal on Human Rights and the Law* 97.”

77 Coomans, *supra* note 75.

78 WHardi, A Anita, and RP Ika, *Indonesia Government Sets Back: The Rule of Law, Collaborative Governance and Human Right, Challenges During Covid-19* (Universitas Diponegoro n.d.).

achieving these goals for all the world's people.<sup>79</sup> General comments on the UDHR state that the state has an obligation to fully realize human rights, so that the state must comply with its obligations in fulfilling human rights.<sup>80</sup> This legal obligation includes the respect, protection and fulfilment of economic, social and cultural rights.<sup>81</sup> The ICESCR and the ICCPR are two instruments that are interrelated and depend on one another.<sup>82</sup> The United Nations General Assembly affirmed that all human rights and fundamental freedoms are inseparable and interdependent.<sup>83</sup> Respect, protection and fulfilment of these two groups of human rights must be treated with the same level of attention. Therefore, the fulfilment of rights in the economic, social and cultural fields cannot be fully achieved without the recognition and implementation of civil and political rights.

Legal security of tenancy is one of the key components of the right to sufficient housing, according to the Committee on Economic, Social, and Cultural Rights' General Comment No. 4 (1991) on the subject. The Committee claims that there are many different ways in which tenure can exist, including "rental (public and private) accommodation,<sup>84</sup> cooperative housing,<sup>85</sup> lease, owner-occupation, emergency housing,<sup>86</sup> and informal settlements,<sup>87</sup> including occupation of land or property."<sup>88</sup> Without regard to tenure, "all people should. Possess a level of tenure security that ensures legal protection from eviction by force, harassment, and other threats. It is crucial to understand that security of tenure is not associated with ownership or a certain type of tenancy."<sup>89</sup>

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79 J Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 1999).

80 Donnelly and Whelan, *supra* note 23.

81 Coomans, *supra* note 75.

82 TO Ojienda, 'An Inventory of Kenya's Compliance with International Human Rights Obligations: A Case Study of the International Covenant on Civil and Political Rights' (2003) 1 *East African Journal of Human Rights and Democracy* 91.

83 BG Ramcharan, 'Resolution 34/175 of the UN General Assembly' in *Humanitarian Good Offices in International Law* (Brill Nijhoff 1983) 166–167.

84 T Crook and PA Kemp, *Private Rental Housing: Comparative Perspectives* (Edward Elgar Publishing 2014).

85 J Kemeny, 'Corporatism and Housing Regimes' (2006) 23 *Housing, Theory and Society* 1–18.

86 SM Maass, 'Rental Housing as Adequate Housing' (2011) 22 *Stellenbosch Law Review* 22, no. 3 (2011): 759–74.

87 M Huchzermeyer and A Karam, *Informal Settlements: A Perpetual Challenge?* (Juta and Company Ltd 2006).

88 A Reale and J Handmer, 'Land Tenure, Disasters and Vulnerability' (2011) 35 *Disasters* 160–182.

89 B Thiele, 'Security of Tenure: Legal and Judicial Aspects' research paper prepared for an Expert Group Meeting convened by the Special Rapporteur, 22–23 October 2012.

The Committee adds that States “should therefore immediately take measures aimed at granting legal security of tenure to those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”<sup>90</sup>

Many additional aspects of the entitlement to appropriate housing are influenced by land. It is an important factor in determining how affordable housing is. Due to its location near hazardous regions, polluting locations, or other undesirable characteristics, the poor sometimes choose to live on land that is less valuable on the market. Land is essential to urban and spatial planning, which influences where housing is located in relation to access to essential services like hospitals and schools. In its General Comment No. 4 (1991), the Committee makes the following statements regarding housing accessibility: “In many States parties, increasing access to land by landless or impoverished segments of the society should constitute a central policy goal”;<sup>91</sup> “discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement”;<sup>92</sup> and “discernible governmental obligations need to be developed.”<sup>93</sup>

In respect of the right to appropriate housing, standards on the proscription of forcible eviction have been formulated. The right to appropriate housing, in particular, is grossly violated by the practice of forced eviction, according to the Commission on Human Rights.<sup>94</sup> In its General Comment No. 7 from 1997, the Committee on Economic, Social, and Cultural Rights<sup>95</sup> states that while “some evictions may be justified, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all legal recourses and remedies are available.” When an eviction is inevitable,

90 D Palmer et al., ‘Towards Improved Land Governance’ (2009) *Food and Agriculture Organization of the United Nations* 781.

91 KW Deininger, *Land Policies for Growth and Poverty Reduction* (World Bank Publications 2003).

92 M Özden and Centre Europe-Tiers-Monde (Genève), *The Right to Land* (CETIM 2014).

93 R Lemarchand and K Legg, ‘Political Clientelism and Development: A Preliminary Analysis’ in *Analyzing the Third World* (Routledge 2017) 120–149.

94 Commission on Human Rights, *Resolution 1993/77*, para. 1. (1997).

95 AR Chapman and B Carbonetti, ‘Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights’ (2011) 33 *Human Rights Quarterly* 682.

the Basic Principles and Guidelines on Development-Based Evictions and Displacement detail states' duties before, during, and following the occurrence.

However, it should be recognized that forced evictions have an impact on a variety of human rights in addition to the right to appropriate housing. The Committee on Economic, Social, and Cultural Rights said in its General Comment No. 7 (1997) that "due to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights".<sup>96</sup> Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions".<sup>97</sup> It also states that people shall not be made homeless or susceptible to the violation of other human rights as a result of evictions.

#### 2.4.3 Right to Land Property

Under the human right to land, states have an immediate obligation to ensure that the right to land and other natural resources is exercised without discrimination.<sup>98</sup> Therefore, states have to remove and prohibit all forms of discrimination related to the tenure, use and management systems of land and natural resources. States must also give special attention to groups, which have been traditionally discriminated against, such as women,<sup>99</sup> indigenous peoples,<sup>100</sup> Dalits,<sup>101</sup> nomadic pastoralists, landless peasants and workers,<sup>102</sup> people using and managing natural resources in customary systems, and to marginalised groups within rural communities, amongst others.<sup>103</sup> States must also refrain from taking measures that would cause the enjoyment of the right to land and

96 EE Davis, 'Housing as a Human Right within an Era of International Exceptionalism' (2021) 7 *Constitutional Review* 241.

97 Ibid.

98 O De Schutter, 'The Emerging Human Right to Land' (2010) 12 *International Community Law Review* 303–334.

99 RJ Cook, *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 2012).

100 J Franco, 'Making Land Rights Accessible: Potentials and Challenges of a Human Rights Approach to Land Issues' in ME Brother and JA Solberg (eds.) *Legal Empowerment – A Way Out of Poverty* (Norwegian Ministry of Foreign Affairs 2006) 35–56.

101 PK Shinde, *Dalit And Human Rights* (Isha Books 2005).

102 R Stavenhagen, *Peasants, Culture and Indigenous Peoples: Critical Issues*, vol. 4 (Springer Science & Business Media 2012).

103 Congruent Entitlements, *The Human Right to Adequate Housing and the New Human Right to Land* (n.d.).

natural resources to regress.<sup>104</sup> States have the obligation to respect, protect and fulfil the human right to land.<sup>105</sup> Regarding their obligation to respect, states must refrain from interfering directly or indirectly with the enjoyment of this right. This obligation includes:<sup>106</sup>

1. Refraining from forced evictions or any practice or activity that destroys or arbitrarily impairs existing access to, use of and control of land and natural resources by people and communities (including in the context of land deals, climate change mitigation schemes, land and agrarian policies and laws, infrastructure projects, mining etc.);
2. Clearly defining the concept of public purpose in law; and
3. Recognizing and respecting customary rights and tenure systems, and the natural commons – which might require a revision of civil codes and domestic property law (including those relating to international investment and investor protection), in order to overcome legal doctrines that justify dispossession of people. Moreover, states have the obligation to protect people's access, use and control over land by preventing third parties from interfering in any way with the enjoyment of this right. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority.

The concept of the right to property encompasses both economic and social dimensions.<sup>107</sup> It serves to safeguard an individual's economic interests. However, historically, this safeguarding has predominantly taken on a negative role—highlighting the prevention of interference by governing bodies—rather than an affirmative role, which would underscore proactive state actions to ensure effective access to property rights for all. This dual nature of the right to property is also evident in the formulation of global human rights frameworks. For instance, discussions around the right to property emerged within the draft of the ICESCR. Despite this, the drafters underscored that the immediate enforcement of the right to property should mirror the rights outlined in the ICCPR. As seen during the creation of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR) and its 1952 Protocol No. 1, there were dissenting voices regarding the inclusion of the right to property. Some argued that unless the

104 C Krause, 'The Right to Property' in *Economic, Social and Cultural Rights* (Brill Nijhoff 2001) 191–209.

105 C Golay and I Biglino, 'Human Rights Responses to Land Grabbing: A Right to Food Perspective' (2013) 34 *Third World Quarterly* 1630–1650.

106 United Nations Human Rights, *Land and Human Rights: Standards and Application* (2015).

107 ZFK Arat, 'Human Rights Ideology and Dimensions of Power: A Radical Approach to the State, Property, and Discrimination' (2008) 30 *Human Rights Quarterly* 906.

Convention guaranteed other social rights outlined in the UDHR, such as the right to work and an adequate standard of living, the guarantee of the right to property should not stand alone. The reasoning behind this was that solely incorporating the right to property within the Convention, without encompassing other economic and social rights, might give the Convention a regressive appearance. Within the inter-American human rights system, the right to property finds a place in the American Convention on Human Rights (ACHR). However, the ACHR primarily focuses on safeguarding civil and political rights, with Article 26 being the exception as it encourages the gradual development of economic, social, and cultural rights. The argument here is parallel to the prior discussions—unless the Convention upholds the principles of the UDHR, including the right to work and an acceptable standard of living, the protection of the right to property alone might be seen as regressive. In summary, the right to property carries a multifaceted significance, protecting economic interests. Historically, its protection has leaned towards non-interference, but there's a growing call for proactive state measures to ensure universal property rights. This dichotomy is mirrored in international human rights frameworks, where debates persist about its inclusion without simultaneous consideration of broader economic and social rights. This dynamic is evident in both the European and inter-American human rights systems.

### 3.3 *Disasters and Indonesian Law*

#### 3.3.1 Right to Adequate Housing

On 28 October 2005, the Government of Indonesia officially ratified the ICESCR through Law no. 11 of 2005<sup>108</sup> as well as the ICCPR through Law no. 12 of 2005.<sup>109</sup> This action led to the integration of the two international agreements into the national legal system. Through this ratification, it is hoped that these two international agreements will have a positive impact on society, especially in relation to the aspects of justice, legal certainty and protection of human rights in terms of obtaining the right to adequate housing and housing, as rights arising from human dignity. Indonesia's consideration for joining as a party to the ICESCR is because Indonesia as a rule of law nation committed to human rights protection since its inception in 1945. This is reflected in the fact that even though the Indonesian Constitution (UUD 1945) existed before

108 I Hadiprayitno, 'The Negotiation of Economic, Social and Cultural Rights in Indonesia' [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1672614](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1672614) (accessed 3 January 2024).

109 A Purwanto, 'Death Penalty and Human Rights in Indonesia' (2020) 9 *International Journal of Criminology and Sociology* 1356–1362.

the UDHR the constitution already contains important provisions regarding respect for human rights. Several rights that have been recognized include the right to clothing, food, and shelter fulfilling basic human needs. Thus, the constitutional juridical basis for fulfilling the right to proper housing and settlement by the state is reflected in a series of international laws and instruments that encourage the development of adequate housing for all citizens. The implementation of housing and residential areas is carried out with the following objectives:

- a. Providing guarantees of legal certainty in the implementation of housing and development of residential areas.
- b. Supporting efforts to organize and grow areas as well as a balanced population distribution through the development of residential neighbourhoods and residential areas in accordance with the spatial plan, to achieve a balance of interests, especially for low-income people.
- c. Improving the efficiency and yield of utilization of natural resources in housing development, while paying attention to the preservation of environmental functions in both urban and rural areas.
- d. Empower various parties who have a role in housing development and development of residential areas.
- e. Support development in economic, social and cultural aspects.
- f. Ensure the availability of affordable livable housing in an environment that meets the criteria of health, safety, harmony, order, orderly planning, integration and sustainability.

In accordance with the UDHR's appeal and the mandate of Article 28H paragraph (1) of the 1945 Constitution<sup>110</sup> as well as the implementation of the law resulting from the ratification of the ICESCR and ICCPR into the national legal system, Indonesia already has a legal basis for state intervention in administering and regulating all aspects of the lives of its citizens with the aim of achieving national goals as expressed in the preamble of the 1945 Constitution, paragraph 4, which outlines the vision of the state as a welfare state. The concept of the welfare state formulates that the role of the state as a service provider, regulator, entrepreneur and watchdog.<sup>111</sup> The state in its role as a regulator has regulated various aspects of citizens' lives within the constitutional framework which is further elaborated in statutory regulations. The state's

110 Y Mardhani, 'Implications of Article 28 H Verse (1) UUD 1945 Related To State Responsibilities In The Pandemic of Covid-19' (2020) 16 *YURISDIKSI: Jurnal Wacana Hukum Dan Sains* 166–172.

111 A Briggs, 'The Welfare State in Historical Perspective' (1961) 2 *European Journal of Sociology/Archives Europeennes de Sociologie* 221–258.

legal obligations related to meeting basic needs for housing and settlements as an inherent right have been spelled out in national statutory policies. The constitutional legal basis for fulfilling the right to proper housing and settlements by the state includes several aspects, as listed below:

1. Law No. 32 of 2004 concerning Regional Government has stipulated that the construction of housing and settlements is a regional obligatory matter.
2. Law No. 11 of 2005 concerning Ratification of the ICESCR recognizes the right of every individual to have a decent standard of living, including food, clothing and housing, as well as the right to continue to improve their living conditions.
3. Law No. 12 of 2005 concerning Ratification of the ICCPR emphasizes the right of every individual to move, change places, and choose their place of residence in that country, and prohibits taking this right arbitrarily.
4. Law No. 1 of 2011 concerning Housing and Residential Areas emphasizes the state's responsibility to protect all Indonesian citizens through the implementation of housing and residential areas that are healthy, safe, harmonious and sustainable throughout Indonesia.
5. Law No. 5 of 1960 concerning Principles of Agrarian Affairs provides the basis for guaranteed housing security for households who live in the house they own or rent. This guarantee is supported by evidence in the form of certificates of ownership, certificates of ownership of units in multi-storey buildings, or certificates of ownership of multi-storey buildings (SKBG).
6. Government Regulation No. 38 of 2007 concerning the Distribution of Government Affairs between the Central Government, Provincial Governments, and Regency/City Regional Governments explains further about the provisions contained in Law no. 1 of 2011 and Law no. 20 of 2011. Based on this regulation, development authority is divided between the government, provincial governments, and district/city governments in terms of financing, formal housing development and self-help housing development. In addition, this regulation also regulates the formulation of policies, strategies and programmes at the national, provincial and district/city levels for the construction of new housing, renovation, expansion, maintenance and utilization of both self-help housing and formal housing.

Based on the explanation of the regulations above, it appears that in an effort to fulfil basic rights related to proper housing and environment, as mandated by Article 28H paragraph (1) in the 1945 Constitution, the government has prepared a legal framework for its implementation. The government gives

authority to stakeholders in the housing and urban sectors at the national, provincial and district/city levels by carrying out coordination, synchronization and socialization actions regarding legal regulations, as well as policies and strategies in the administration of housing and settlement areas at the provincial and district/city level. All of these steps aim to ensure legal certainty and legal protection for those who live and do activities in the area.

### 3.2 *Right to Land Property*

#### 3.2.1 The Concept of Right to Land in Indonesia

Land rights, as viewed through the lens of agrarian law, have evolved with legislative changes.<sup>112</sup> Before the Omnibus Law, particularly referencing Presidential Decree No. 24 of 1997, land referred to are plots that were duly registered or certified in accordance with the provisions outlined in Article 16 of the fundamental principles of Indonesia's Agrarian Law.<sup>113</sup> With regard to Presidential Decree No. 18 of the year 2021, coupled with Ministerial Regulation ATR/BPN No. 18 of the same year, the perspective on land rights has been redefined. Post Omnibus Law the land rights encompass rights acquired through lawful associations between the rights holder and the land itself.<sup>114</sup> This extends to the airspace above the land and even the subterranean space below it. The purpose of these rights is to exercise control, ownership, utilization, and preservation over the land, its aerial expanse, and/or the subterranean domain. The inclusive nature of the definition of land rights, as established by these legislative measures, introduces the term "including". This term signifies that holders of land rights also encompass landlords, those governing the airspace and those overseeing the subterranean realm. However, misinterpretation may arise connecting the term "include" with both land and space. In reality, the intention is to differentiate between the holder of rights pertaining to land and the holder of rights concerning the space above and below the land's surface. These distinctions are integral to understanding the complex landscape of land rights as delineated by these legislative constructs.

112 A McWilliam, 'Historical Reflections on Customary Land Rights in Indonesia' (2006) 7 *The Asia Pacific Journal of Anthropology* 45–64.

113 MD Fachriza, SS Dajaan, and B Rubiati, 'Kekuatan SKT Sebagai Bukti Kepemilikan Sebidang Tanah Dalam Perjanjian Sewa-Menyewa Berdasarkan UUPA Dan PP No. 24 Tahun 1997 Tentang Pendaftaran Tanah' (2020) 3 *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 321–338.

114 A Sekarmadji and O Moechthar, *SERI HUKUM AGRARIA-Alternatif Penyelesaian Sengketa Pemanfaatan Ruang* (Airlangga University Press 2023).

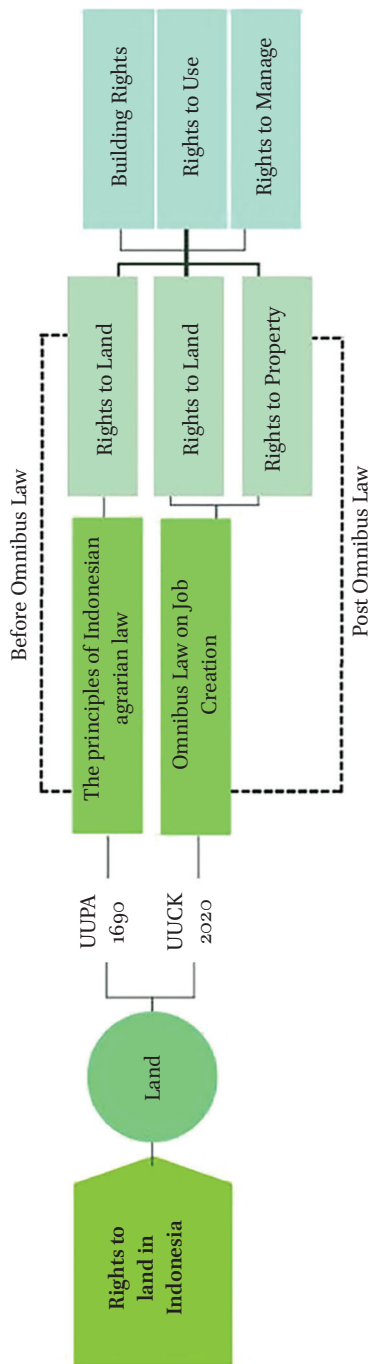


FIGURE 10.3 Concept of Rights to Land in Indonesia

The state policy concerning the all-encompassing legislation, referred to as the Omnibus Law, has brought about a fundamental reimagining of the previously established principles governing land rights in Indonesia's Agrarian Law. This re-evaluation extends to the incorporation of the concept of space within the definition of land as outlined in the Indonesian Agrarian Law. This recalibration in the Omnibus Law goes beyond a mere reinterpretation of land and spatial rights; it also encompasses a revision of the regulations concerning the ownership rights of foreign individuals over apartment units. Prior to the Omnibus Law, regulations stipulated that foreign individuals could only possess ownership rights for apartment units if said units were constructed on land that possessed usufructuary status stemming from state-owned land. However, in the post-Omnibus Law era, foreigners are now permitted to hold ownership rights for Apartment Unit Ownership, even if the apartments are built on land with statuses such as Building Rights, Rights to Use, and Rights to Manage. This profound shift in perspective is evident in Article 144, paragraph (1) of the Omnibus Law.

The Omnibus Law not only revises previous provisions and alters established legal principles, but also openly departs from the concept of uniformly applying the law within the same jurisdiction. For instance, across various regions in Indonesia, there's a general prohibition on foreigners being granted ownership of land with building usage rights on state-owned land, (Right to Build), or private land. However, within specific zones such as special economic zones, free trade zones, free ports, industrial zones, and analogous economic regions, foreigners are permitted to own such land with building usage rights. Implementing regulations or policies that enforce distinct laws in specific areas essentially revive the practice of legal pluralism and dualism, which contradicts the core principles of Indonesia's Agrarian Law. Theoretically, the lands situated in these specific zones still fall under Indonesia's jurisdiction, thus the prohibition on foreigners' land ownership rights that applies generally should also be upheld for lands within these specific zones. Consequently, exceptions made for foreigners' land and apartment ownership rights within these zones run counter to the fundamental ideals of national land law, disregarding the essential prohibition on land alienation.

### 3.2.2 Legal Status of Land Rights Following Disasters

Everyone needs a place to live for shelter, to settle down in a place. However, the human need for a place to live today is increasingly difficult to fulfil due to various factors, including the high cost of buying land/soil and establishing/building a residence (house) on increasingly limited land. On the other hand, if the community can buy the desired land, then the holder of land rights needs to

provide protection and legal certainty for the land that has been purchased by obtaining a certificate of land rights as proof that the land is legally owned.<sup>115</sup>

Natural disasters, on the other hand, such as the earthquake, tsunami, and liquefaction incident in Palu City, Central Sulawesi on 28 September 2018, compromise people's shelter. The soil in that area does not have the strength to support the load on it, which is called liquefaction. Liquefaction is the loss of soil strength due to pore water pressure arising from cyclic (repetitive) loading. So that the pore water pressure almost entirely replaces the total soil stress. The vibrations in question can be vibrations originating from earthquakes. When experiencing this vibration, the properties of the soil layer change to become almost liquid so that it cannot support the weight of the buildings inside or above it. Liquefaction usually occurs in water-saturated soils, where all the voids in the soil are filled with water. When experiencing vibration, this water exerts pressure on the soil particles, thereby affecting the density of the soil. Before an earthquake occurs, the water pressure on the ground is relatively low. However, after receiving the vibration, the water pressure in the soil increases so it can move the particles quickly. Liquefaction calculations are generally carried out on poorly graded soils, such as sandy poor or so-called loose sand, because these soils have more potential to store water than well-graded soils.<sup>116</sup>

In addition to causing many casualties, damage to infrastructure, even the civilization of society has also become paralyzed. The natural disaster also made the people of Palu City lose their homes and all their possessions on the ground. An earthquake preceded the disaster, and then a land liquefaction event occurred, erasing land boundaries and ownership. Technically, the post-tsunami land reconstruction program faced at least two main problems first, related to the land identification process, namely the difficulty in mapping and measuring land boundaries that have lost their physical signs caused by the accumulation of waste from natural disasters. In the case of the liquefaction earthquake that occurred in the Petobo, Jono Oge, and Balaroa areas, the whereabouts of the land cannot be known anymore; it shifted for kilometres and collapsed, making it impossible to rebuild.

According to the rules in the legal provisions in Indonesia, the destruction of land can cause the elimination of land rights. Thus, the legal subject and the

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115 AV Panginja, AN Halim and ZZ Noor, 'Kedudukan Hukum Tanah Likuifaksi Yang Dijadikan Jaminan Hutang Dalam Akta Perjanjian Pinjam Meminjam' (2018) 4 *Jurnal Nuansa Kenotariatan Volume*.

116 M Hutagalung and SD Tarigan, 'Analisis Potensi Likuifaksi Akibat Gempa (Studi Kasus: Reklamasi Pelabuhan Kontainer Belawan Fase-2)' (2019) 2 *Jurnal Rekayasa Konstruksi Mekanika Sipil* 15–34.

legal object in the form of land are also deleted. When looking at the legal and physical status of the land, several land problems occurred after the natural earthquake disaster in Palu City, Central Sulawesi Province. This is a problem in itself, where the position of land becomes legally unclear. The legal position of the land becomes difficult to prove because the physical evidence has been destroyed. In theory and law, land rights will disappear if the land is destroyed. However, in Palu City, the land has not been destroyed; it is just that it has completely changed. Because of this, it is necessary to re-map the Law of the Republic of Indonesia No. 5 of 1960 so that the erasure of land rights can be carried out where the land is considered to be destroyed or its location can no longer be found. However, the definition of destroyed land in the law needs to be interpreted more comprehensively. This is because, physically, the liquefaction land can still be found through reconstruction of the location of the land, according to the certificate. Therefore, as long as the coordinates can be found, the residents still legally own the land. Legally, damage caused by a natural disaster is a force majeure event.

If an area is affected by a natural disaster, it does not mean that the affected citizens have lost their homes to ask the Government for compensation. However, the Government can still take legal action. For example, the incident in Palu in 2018 hit the area due to a tsunami wave and was followed by liquefaction.<sup>117</sup> Regarding the legal status of the liquefaction land, the regional Government relocated residents affected by the liquefaction as stated in the Decree of the Governor of Central Sulawesi No. 369/516/DIS.BMPR-G.ST/2018. Relocation means a new location and a new certificate of land rights (using the land consolidation method). The Minister of Agrarian Affairs and Spatial Planning of the Republic of Indonesia stated that the areas to be changed, especially those with a shift or liquefaction, the shifted land can no longer be occupied as a residence. This is because there is a risk of land shifts occurring again. Relocation for victims can be placed in abandoned land. Abandoned land is land that has been granted rights by the state in the form of Property Rights, Cultivation Rights, Building Use Rights, Use Rights, and Management Rights, or on the basis of control over land that is not cultivated, not used, or not utilized by the circumstances or given the nature and purpose of the granting of rights or basis of control the status of the land becomes state land again.

Talking about the former homes of residents affected by the liquefaction phenomenon, the Government of Palu City, Central Sulawesi, promised not to revoke the community's civil rights over private land ownership in the former

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117 MK Romadhona, BSA Subagyo, and DAustin, 'Examining Sustainability Dimension in Corporate Social Responsibility of ExxonMobil Cepu: An Overview of Socio-Cultural and Economic Aspects' (2022) 3 *Journal of Social Development Studies* 130.

liquefaction lands. Until now, there are no regulations governing this matter, so the community still has civil rights over their land. There is no concept of the Government replacing land or financing compensation for the land of communities affected by the disaster, both former tsunami and liquefaction, since peoples are considered to have retained their rights. Regarding the legal status of liquefaction land, relocating residents affected by liquefaction must be preceded by a study of geology, spatial zoning, and disaster mitigation.<sup>118</sup> Relocation means a new location and a new certificate. Because the liquefaction area is in the Red Zone, which is unfit for habitation, even though it has been determined to be included in the designation of a disaster-prone zone, the land affected by liquefaction legally still belongs to residents.<sup>119</sup>

#### 4 Indonesia's Responsibility to Ensure Adequate Housing and Land Rights in Palu City

The need for housing is a fundamental right stated in the Indonesian Constitution. Therefore, the re-granting of a land right that has been lost due to a natural disaster can be re-submitted to the state to obtain a new land right. Efforts that the Government can make are providing temporary housing for affected communities by looking at the state's financial capacity, both for landed houses and apartments. This action, even though it is stated in the Indonesian Constitution that the state must provide proper housing, does not mean that the Government relinquishes its responsibilities as a state administrator. The actions taken by the state are a social-humanitarian obligation towards its citizens affected by natural disasters. The people affected by the Palu City disaster were given assistance with two choices, namely getting permanent housing or getting Stimulant Funds which were divided into 3 types of damage based on several criteria determined by the Government: slightly damaged houses got 10 million rupiah stimulants; medium damaged houses got 25 million rupiahs; heavily damaged houses got 50 million rupiahs.

Whereas those who get permanent housing can live in a permanent place or shelter built by the Government (in this case, the **Ministry** of Public Works and Public Housing) or foundations such as the Indonesian Buddhist Tzu Chi Foundation. Residential development is entirely the responsibility of the

118 I Ismeti et al., 'Regional Government Responsibility Related to Disaster Mitigation through Human Rights-Based Spatial Policies in Palu City' (2023) 5 *International Journal of Disaster Management* 213–226.

119 A Suhariono et al., 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)' (2022) 5 *Notaire* 17–30.



FIGURE 10.4 The current condition of the areas affected by the disaster in Palu

Ministry of PUPR, while the Regional Government acts as an intermediary in acquiring land owned by the community. As for several points of permanent residential construction in Tondo, Tondo 1 and 2 permanent residences are in the completion stage of construction and are already occupied by some of the affected communities. For the Talise permanent residence, this is still under construction; likewise, for Petobo permanent residence where the land is still under dispute. For Duyu permanent residence this has already been completed, although several facilities have not been provided evenly such as with trash cans. Regarding the Balaroa permanent residence, this has been finished and occupied.

Conversely, affected communities without permanent housing are currently living in temporary shelters. Some of the temporary shelters that have not yet been demolished and there are still affected communities, namely, the Mamboro, Petobo, and Talise temporary shelters, while there are still several Duyu temporary shelters because they do not have a place to live, so they are temporarily occupying Duyu's temporary shelter which is currently in the process of demolition because the loan period has ended. The duration of borrowing land for temporary housing is two years, but some of the lands belong to the Government. As a result, the temporary housing has not been demolished because it is still waiting for housing construction. At the same time, the temporary shelters that use community land have been demolished. There are no levies/payments for people who are still occupying temporary shelters to date.

The results of the interviews in one of the temporary shelters, namely in Petobo, indicated that several people did not want to move to permanent shelters because they wanted the Government to replace their housing and land



FIGURE 10.5 Interviews with disaster-affected communities in Petobo, Palu

with the certificates of their houses before the disaster. As for the requirements for obtaining permanent or stimulant housing, namely ID Card, Family Card, and Land Ownership Certificate, if the certificate is lost due to liquefaction or the tsunami, residents are asked to make a Land Ownership Certificate to the Kelurahan. Affected communities who have received permanent housing have now received property rights certificates from the Government with several regulations, such as being prohibited from selling or renting permanent housing for ten years. However, certificates are given in stages to the community.

The permanent housing distributed to affected communities has the exact size of 6x6 square meters, with the addition of different front and back land, right and left sides. For the permanent residences built by the Indonesian Tzu Chi Buddhist Foundation in the Tondo area, in addition to water, electricity, and indoor toilet facilities, there are also dining tables and mattresses provided to the community in each permanent residence. Whereas for permanent residences built by the Government, such as the Duyu permanent residence, there are trash cans in each permanent residence, but they have not been distributed evenly; likewise, for the Balaroa satellite permanent residence, which is facilitated by small reservoirs and trash cans as well as green open garden facilities.

Permanent residences built by the Government or Foundations are in the Safe Zone or Green Zone. However, some people are reluctant to leave their area, which is the Red Zone, because they are far from their source of income, such as fishermen and farmers who have gardens or livestock near their previous residence. The earthquake and liquefaction natural disasters in Palu, Sigi, and Donggala have destroyed buildings and property belonging to residents. In fact, in areas such as Palu and its surroundings, government agency buildings

were almost levelled to the ground and destroyed essential documents. Victims currently survivors of natural disasters generally have lost their homes or residential buildings. Those who became victims and their families had to leave their assets and possessions.

The Palu City Government is responsible for relocating its residents affected by the liquefaction natural disaster to a safer place to obtain permanent housing/dwelling facilities for earthquakes, tsunamis, and liquefaction natural disaster victims. The Regional Government of Palu City, in this case, represented by the National Land Agency (BPN), gave the status of land rights to the status of ownership rights victims of the liquefaction disaster who had been relocated to permanent residential relocation sites.<sup>120</sup> Thus, it can be concluded that the people in the affected area (Petobo Village, South Palu District, Palu City, Central Sulawesi Province), according to Governor Regulation Number 10 of 2019, can no longer claim their land in the affected area because it is evident in Pergub No. 10 of 2019 that the affected area (Petobo Village) is included in the Red Zone where the transfer of disaster victims from the affected area to a safer location (re-location) is warranted. Because of such relocation steps, the community will no longer be able to claim their land rights in the affected area.

In the aftermath of the disaster, institutional development for regional spatial planning needs to be tried. This is not only controlling the functions of regional Government in terms of spatial planning but also justifying the institutional instruments for regional spatial planning by considering disaster risk in the planning, utilization, and control of spatial use in the future. As explained above, the disaster in Central Sulawesi Province destroyed several areas of Palu City, Donggala Regency, Sigi Regency, and Parigi Moutong Regency. The damage included the destruction of settlements, infrastructure (roads, bridges, et cetera.), and other supporting facilities. The destruction that has occurred indicates that there has been a change in pattern and spatial structure in the four affected districts. Based on the Regulation of the Governor of Central Sulawesi No. 10 of 2019 concerning Post-Disaster Rehabilitation and Reconstruction Plans, spatial planning become more and more necessary to avoid overlapping of regional spatial arrangements with disaster-prone areas in order to be resilient to future disasters. The arrangement of new

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<sup>120</sup> Pergub Number 10 of 2019 concerning Post-disaster Rehabilitation and Reconstruction Plans in number 5.3.3 Post-earthquake massive liquefaction zones (such as the Petobo, Balaroa, Jono Oge Lolu, and Sibalaya areas), including the provisions for post-disaster space utilization concerning the prohibited redevelopment and new development, residential units in this zone and prioritization of the use of space for the function of protected areas, green open spaces (RTH) and monuments.

spatial use directions will be accepted by residents. Yet, in areas unaffected by the disaster, the old spatial utilization guidelines will experience minimal or even no changes at all. As one of the Provinces with various disaster capacities, controlling spatial use in Central Sulawesi Province is very meaningful. Space utilization based on the Disaster Effect Study ([KRB](#)) data is a must. Apart from that, enforcement of the spatial plan through directives on spatial use control is expected to avoid the emergence of many casualties in the event of a disaster in the future.

Therefore, reviewing the Regional Spatial Plan ([RTRW](#)) for Central Sulawesi Province and the affected Regencies/Cities is necessary. Based on Article 82 PP 15 of 2010 concerning Spatial Arrangement, a spatial planning review can be attempted: (i) only once in 5 years; or (ii) more than one time in 5 years if there is a change in strategic area due to a large-scale disaster, change in state territorial boundaries, or change in area boundaries. The Regional Regulations on the RTRW of Central Sulawesi Province as well as the Regional Regulations on the RTRW of the affected Regencies and Cities are currently undergoing review so that efforts to revise the RTRW in these areas will be effective. This not only concerns the revision of the Provincial/Regency/City Regional Spatial Plans but also the Regional Regulations for Detailed Spatial Plans. The Regional Regulation will become an operational instrument for Regency/City Regional Spatial Plans on a larger scale, namely the scale of 1:5000, and becomes the basis for granting permits for spatial use. The zoning regulations, which are also regulated in the Regional Regulations of the Detailed Spatial Plan, are beneficial for assisting regional governments in regulating the use of space (development). Regional Regulations on Detailed Spatial Plans can also act as a liaison between spatial plans and building layout requirements. The regulations to be used under the arrangement of [RTRW](#) and [RDTR](#) include Law 26/2007 concerning Spatial Arrangement and PP 15/2010 concerning the Implementation of Spatial Arrangement. The RTRW arrangement will be guided by [Permen ATR 16/2018](#) concerning Guidelines for Structuring Detailed Spatial Plans and District/City Zoning Regulations.

## 5 Conclusion

Every process in the stages of disaster management must use a human rights approach because disasters can cause threats or disruption to people's lives and livelihoods resulting in human casualties, environmental damage, loss of property, and psychological impacts. This situation can also cause further impacts in the form of inequality and imbalance, both in life and in society. However,

the problem is that human rights and disaster norms in international law are derived from provisions that are universal, or that are based more on ethical foundations (code of conduct, framework, guiding principles), so they are still vague and weak. The international community has failed to establish strong and centralized international legal provisions regarding disasters, and there are almost no international human rights provisions that directly regulate the protection of human rights in disasters. Natural disasters are God's will that no one can avoid. Legally, damage caused by a natural disaster is a force majeure event or an overmatch. If an area is affected by a natural disaster, it does not mean that the affected citizens have lost their homes to ask the Government for compensation. This goes back to remembering that natural disasters are not the Government's will but God's. Therefore, the re-granting of a land right that has been lost due to a natural disaster can be re-submitted to the state to obtain a new land right. Efforts that the Government can make are providing temporary housing for affected communities by looking at the state's financial capacity, both for landed houses and apartments. This action, even though it is stated in the Indonesian Constitution that the state must provide proper housing, does not mean that the Government relinquishes its responsibilities as a state administrator. The actions taken by the state are a social-humanitarian obligation towards its citizens affected by natural disasters. Apart from the state, the Indonesian people, who have a cooperative spirit, can also assist affected citizens to ease the burdens of life they are suffering.

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