

**THE ACCEPTANCE OF INTERNATIONAL AID IN MANAGEMENT OF
NATURAL DISASTERS IN INDONESIA****Teguh Rudianto¹**¹Master of Law Study ProgramFaculty of Law, *Hang Tuah University, Surabaya, East Java, Indonesia*teguhrudianto04@gmail.comDOI: <https://doi.org/10.37875/asro.v14i03.526>Manuscript received 21st September 2023, Revised 22nd September 2023, Published 3rd October 2023**ABSTRACT**

The absence of clear budgeting regarding disaster management in the State Revenue and Expenditure Budget (APBN) is a condition that must be studied using the perspective of the government's fulfillment of human rights. Meanwhile, the involvement of charitable institutions, social communities and even other countries in the context of handling national disasters is a specific issue that will be discussed. The formulation of the problem raised in this research is (1) the obstacles faced in implementing the receipt of international aid in the process of handling natural disasters in Indonesia and (2) the regulation of international law on the receipt of international aid in managing natural disasters in Indonesia. This research resulted in the conclusion that there are still various countries which, although unable to provide humanitarian assistance to victims of natural disasters in their own countries, still have doubts about granting permits to enter humanitarian aid from abroad. The declining quality of the environment "has exacerbated the potential for natural disasters; in this case, we in Indonesia have seen examples of disasters caused by a lack of proper management of one of the landfills (TPA) in Bandung, which caused quite a lot of victims; while SARS is an example of the loss of a sense of security from the threat of infectious disease. Judging from the incident and its impact, the tsunami needs to be seen from the point of view of "comprehensive collective security," and its handling is more focused on arrangements that will be more effective in providing protection, preparedness, and assistance to those who "face the threat of natural disasters."

Keywords: *International Law, Acceptance of International Aid, Natural Disasters***1. INTRODUCTION**

In simple terms, Indonesia is a country whose territory has many active volcanoes and is located in a tectonic plate fault area. Such geographical conditions make Indonesia's territory have a high potential for disaster. This comprehensive study is supported by data released by the National Disaster Management Agency (BNPB), which shows an increase in Indonesia's disaster activities. The large potential for disasters that Indonesia has is, of course, a matter of concern for the government and society in general. Because the disaster is reviewed more comprehensively, it can be interpreted as a condition that requires the use of regional and state budgets outside the established plan.

Disaster management is not included in the budget that is taken into account explicitly in the Planned Revenue and Expenditure Budget (APBN). In Law Number 6 of 2021 concerning the 2022 State Revenue and Expenditure Budget, disaster management is only carried out by making changes to the state budget. As explained in Article 19 paragraph (1), letters (c) and (e) of Law Number 6 of

2021 concerning the 2022 State Revenue and Expenditure Budget, it is explained that the disaster management budget is taken from budget shifts between programs in one part of the budget and/or changes to the expenditure budget. The same juridical basis is also confirmed in Article 21 paragraph (1) letters (d) and (f) of Law Number 28 of 2022 concerning the Budget State Revenue and Expenditures in 2023. Apart from only being obtained from budget shifts between programs in one part of the budget and/or changes to the expenditure budget, budgets related to disaster management can also be obtained from new loans proposed by the Indonesian Government.

As explained in Article 19 paragraph (1) of Law Number 6 of 2021 concerning the 2022 State Revenue and Expenditure Budget and Article 21 paragraph (2) of Law Number 28 of 2022 concerning the 2023 State Revenue and Expenditure Budget. This is certainly very important to understand and observe together. Because of this juridical basis, it becomes clear that the disaster management budget is not concretely and specifically defined as separate from the State Revenue and Expenditure Budget

(APBN). This legal reality is, of course, an antithesis to the obligations that the government should fulfill. As has been emphasized in Article 6 paragraphs (e) and (f) of Law Number 24 of 2007 concerning Disaster Management, which states that the government must be responsible for the availability of the disaster management budget provided adequate and in the form of ready-to-use funds in the State Revenue and Expenditure Budget (APBN). So, it can be concluded that the existing budget is still very limited.

The involvement of foreign countries or institutions in handling natural disasters in Indonesia, of course, cannot be separated from various aspects related to international life. As we understand, the countries involved in natural disaster relief are friendly countries that diplomatically maintain relations with Indonesia. Such involvement is certainly concrete evidence of the diplomacy of state relations and of the friendship that has occurred so far. Involving many countries in dealing with natural disasters in Indonesia will make it easier for the country's performance to overcome the obstacles faced in resolving natural disaster problems in Indonesia.

Comprehensive accuracy in managing, collecting data and disseminating aid from abroad related to national disaster management is an important urgency to be understood as a form of affirmation of state sovereignty. This means that the assistance provided has the potential to become an important disturbance in state sovereignty. Moreover, the assistance provided does not necessarily mean free access for other countries to intervene in the Indonesian government. However, what is more important is that the assistance provided is not a political action that Indonesia must repay at a later date. Because, in essence, the assistance provided by foreign countries must be based on a sense of humanity.

Based on these problems, this research was carried out. The geographical condition of Indonesia, which is in a disaster-prone area, and the number of disasters that continue to increase significantly are concerns that need to be paid attention to and are broadly related to aspects of state sovereignty. There is no clear budgeting regarding disaster management in the State Revenue and Expenditure Budget (APBN), which is a condition that must be studied using the perspective of the government's fulfillment of human rights. Meanwhile, the involvement of charitable institutions, social communities and even other countries in the context of handling national disasters is a specific problem that will be discussed in this article. Providing opportunities for charitable institutions, social communities, and even other countries to be involved in handling national disasters means letting international law pass in Indonesia.

2. LITERATURE REVIEW

2.1 Natural disasters

Etymologically, natural disaster consists of the words disaster and nature. In the Big Indonesian Dictionary (KBBI), disaster is defined as anything that causes distress, loss, suffering, accident, danger and/or disruption⁷. Meanwhile, the definition of nature, according to the Big Indonesian Dictionary (KBBI), is everything that exists on the surface of the earth⁸. Thus, it can be understood that a natural disaster is a natural condition or situation on the earth's surface that has the potential to cause danger in the form of accidents, losses, troubles and suffering. In a simpler understanding, a natural phenomenon is only called a natural disaster if it has occurred and caused loss and damage that threatens human life.

Disaster is a severe disruption to a society that causes human casualties, property and environmental damage that is beyond human power to overcome only by relying on their own efforts. ¹¹ No matter how small an event that happens to someone, if it fulfills one of the points above, then it can be said disaster, for example, someone who loses their wallet if this makes the person who lost it feel very lost and distressed. It is a disaster for him; for example, if a falling tree hits someone's house, it suffers quite heavy damage because this causes loss and difficulty for the homeowner it is also called a disaster.

The definition of nature according to Article 1 paragraph (2) of Law Number 24 of 2007 concerning Disaster Management is a disaster that occurs due to natural activities such as floods, landslides, earthquakes, tsunamis, droughts, hurricanes, volcanic eruptions and drought. Natural disasters can also be understood as one or a series of events that threaten and/or disrupt people's lives caused by nature and have the potential to cause environmental damage, loss of property, psychological disorders, and even loss of life¹². In a more technical understanding, natural disasters are the result or consequence of ongoing geological activities on the earth that are both endogenic and exogenic. ¹³ As previously explained, Indonesia is one of the countries that has the potential to be the biggest disaster in the world.

Disasters are divided into three types, namely:

a. Natural disasters

A natural disaster is a disaster caused by an event or series of events caused by nature, including tsunamis, earthquakes, landslides, volcanic eruptions, hurricanes, droughts and floods.

b. Non-natural disasters

A non-natural disaster is a disaster caused by an event or series of events from non-natural activities, which can include technological failure, epidemics, failure in the modernization process, and disease outbreaks.

c. Social Disaster

A social disaster is a disaster caused by an event or several events caused by humans or living creatures and terror.

Based on the United Nations-International Strategy for Disaster Reduction, potential disasters or hazards are divided into five groups, namely:

a. Hazards with a geological aspect include earthquakes, tsunamis, volcanoes, and land movements (mass movements), often known as landslides.

b. Hazards with a hydrometeorological aspect include floods, droughts, hurricanes, and tidal waves.

c. Biological aspects of danger include disease outbreaks, pests, and diseases of plants and animals/livestock.

d. Dangers with technological aspects include transportation accidents, industrial accidents, and technological failures.

e. Dangers with environmental aspects include forest fires, environmental damage, and waste pollution.

The impact of a disaster is the result that arises from a disaster event. The impact of a disaster can be in the form of casualties, injuries, displacement, damage to infrastructure or assets, the environment or ecosystem, politics, development results, and other impacts that can ultimately reduce the level of community welfare. The size of the impact of a disaster depends on the level of threat (hazard), vulnerability (vulnerability) and capacity or ability (capacity) to overcome the disaster. Disaster impacts, according to Benson and Clay in Nurjanah et. al, are divided into three parts, namely:

a. Direct impacts include financial losses from damage to economic assets, for example, damage to buildings such as residences and business premises

b. Indirect impacts include the cessation of the production process and loss of sources of income, which in economic terms is called flow value.

c. Secondary impacts or secondary impacts. For example, hampered economic growth, disruption of development plans that have been prepared, increasing poverty rates and so on.

2.2. International law

Law can be defined by choosing one of the 5 possibilities below, namely:

a. According to its basic, logical, religious or ethical characteristics.

b. According to the source, namely the Law.

c. According to its effect on people's lives.

d. According to the method of his formal statement or exercise of his authority.

e. According to the goals you want to achieve.

International law (International Law) is a term that was first introduced by Jeremy Bentham, a brilliant English jurist and utilitarian philosopher. The term international law is the same as the term law of nations (the law of nations, *droit des gens*).

In Article 38, Paragraph (1) of the ICJ Statute, sources of international law are listed as references as authoritative sources. The article implicitly mentions the sources of international law, namely:

a. International agreement (International Convention)

b. International customs (International Conventions)

c. General principles of law (the general principles of law)

d. Court decisions and teachings of scholars

However, apart from the sources of international law contained in Article 38 Paragraph (1) of the ICJ Statute, there are also other sources of international law. According to J.G. Starke, material sources of international law can be applied as actual materials used by international law experts in applying legal rules that apply to certain situations. There are 5 categories of legal materials included, namely:

a. Habit

b. Treaties

c. Court decisions or arbitration tribunals

d. Legal Works

e. Decisions or determinations of international institutional organs.

Subjects in international law are:

a. Sovereign state and its elements

b. International Organization

c. Individual

d. Other International Subjects

e. A country that is not yet sovereign

In the 1933 Montevideo Convention Article 1, a state that can be said to be a full state must have four constitutive elements that must be fulfilled, namely: 83

a. There must be residents (people, inhabitants, citizens), nationalen, staatsburgers or nations (staatsvolk) (a permanent population).

b. There must be a territory or sphere of power (a defined territory)

- c. There must be supreme power (sovereign ruler), and/or a sovereign government
- d. Ability to relate with other countries (a capacity to enter into relations with other states)
- e. Acknowledgment (declarative)

There are several functions of international law, namely:

- a. Respect justice and international obligations
- b. Respect common interests
- c. Respect the independence of the nation and the territorial integrity of the country
- d. Respect the right to self-determination and do not interfere in the internal affairs of other countries
- e. Respect the equal legal status of all nations as sovereign states; And
- f. Respect for human-personal dignity and values.

2.3. National Board for Disaster Management

The National Disaster Management Agency, hereinafter abbreviated as BNPB, is a non-departmental government institution in accordance with the provisions of statutory regulations. After that, the Presidential Regulation explains the duties of BPNB as follows:

- a. Providing guidance and direction for disaster management efforts, which include disaster prevention, emergency response, rehabilitation and reconstruction fairly and equitably;
- b. Determine standardization and needs for implementing disaster management based on statutory regulations;
- c. Conveying information on disaster management activities to the community;
- d. Reporting the implementation of disaster management to the President once a month under normal conditions and at any time during emergency disaster conditions;
- e. Use and account for national and international donations/aid;
- f. Accountable for the use of budget received from the State Revenue and Expenditure Budget;
- g. Carry out other obligations in accordance with statutory regulations; And
- h. Develop guidelines for the formation of a Regional Disaster Management Agency.

Apart from that, BNPB also has the function of formulating and establishing disaster management policies and handling refugees by acting quickly, precisely, effectively, and efficiently, as well as coordinating the implementation of disaster

management activities in a planned, integrated, and comprehensive manner.

The role played by the National Disaster Management Agency (BNPB), as explained in Article 12 of Law Number 24 of 2007 concerning Disaster Management and Article 3 of Presidential Regulation Number 1 of 2019 on the National Disaster Management Agency is as follows:

- a. Provide guidance and direction for disaster management efforts which include disaster prevention, emergency response, rehabilitation and reconstruction in a fair and equitable manner
- b. Determine standardization and requirements for implementing disaster management based on statutory regulations
- c. Convey information on disaster management activities to the community
- d. Report the implementation of disaster management to the President once a month under normal conditions and at any time during emergency disaster conditions
- e. Use and account for national and international donations/aid
- f. Be accountable for the use of the budget received from the State Revenue and Expenditure Budget
- g. Carry out other obligations in accordance with statutory regulations and
- h. Prepare guidelines for the formation of regional disaster management bodies.

2.4. Legal Basis for Receiving International Aid

Aid providers are international institutions and foreign non-governmental organizations that provide humanitarian assistance to the Indonesian Government during emergency response. Meanwhile, in terms of receiving aid, it is divided into two, namely, receiving direct and indirect aid. Direct aid recipients are people or groups who receive aid directly from international institutions and/or foreign non-governmental organizations to meet their needs during the emergency response period. Meanwhile, the recipient of indirect aid is the Indonesian Government through the National Disaster Management Agency.

In the context of receiving international assistance to deal with disasters in Indonesia, this is, of course, related to national legal grounds and international legal grounds. There are several laws and regulations related to this, including the following:

- a. Article 11 paragraphs (1), (2), and (3) of the 1945 Constitution of the Republic of Indonesia.
- b. Law Number 24 of 2000 concerning International Agreements.

- c. Law Number 6 of 2011 concerning Immigration
- d. Government Regulation Number 23 of 2008 concerning the Participation of International Institutions and Foreign Non-Governmental Institutions in Disaster Management
- e. Law Number 37 of 1999 concerning Foreign Relations
- f. Law Number 24 of 2007 concerning Disaster Management
- g. Presidential Regulation Number 1 of 2019 concerning the National Disaster Management Agency (BNPB).
- h. Presidential Regulation Number 32 of 2008 concerning the Ratification of the ASEAN Agreement on Disaster Management and Emergency Response (ASEAN Agreement on Disaster Management and Emergency Management).
- i. Presidential Regulation Number 21 of 2016 concerning Free Visitor Visas

International Assistance is assistance originating from abroad provided by friendly countries, international institutions, foreign non-governmental organizations, foreign business institutions, and individuals in Disaster Emergency Situations based on an official statement from the Indonesian Government.

2.5 International Treaty Law

International agreements are one of the sources of international law that are given recognition by the international community, so international agreements are included as one of the sources of international law as outlined in Article 38, paragraph 1 of the Charter International Court of Justice. International agreements also recognize the principle of *pacta sunt servanda* which explains that the agreement formed by the parties will be binding and must be obeyed. The definition of an international agreement is not only in the Vienna Convention but is also regulated in Article 1 paragraph (1) of Law Number 24 of 2000 concerning International Agreements.

Terms in international agreements include:

- a. Treaty
- b. Convention
- c. Agreement and arrangement
- d. The memory of understanding
- e. Declaration
- f. Protocol or adjustment
- g. Statutes and charters
- h. *Modus vivendi*

The stages of international agreements have been regulated in the 1969 Vienna Convention on the Law of International Treaties. The stages of making an international agreement include:

- a. Negotiations

- b. Signature
- c. Ratification

2.6 Receiving International Aid

Receiving aid from abroad to deal with national natural disaster problems has been explicitly regulated specifically in Law Number 24 of 2007 concerning Disaster Management. In Article 1 paragraph (26) of Law Number 24 of 2007 concerning Disaster Management, it is explained that what is meant by international institutions are organizations that are under the auspices of the United Nations (UN) or that carry out duties on behalf of the United Nations (UN). and/or other international organizations and non-governmental institutions from other countries outside the United Nations (UN). In this case, the authority to decide on receiving assistance is the central government. Regarding disaster management, the components that are certainly needed are assistance in the form of funds, ready-to-use goods, and volunteers. These three components are important components and must be fulfilled immediately, especially in handling large-scale disasters.

In terms of the involvement of foreign personnel in handling domestic disasters, the Indonesian government provides easy access in the immigration sector. Ease of access, in this case, is the process and services of visas, entry permits, limited stay permits, and exit permits. However, in this case, the foreign personnel in question must be in accordance with the assignment or recommendation of the international institution or foreign country that assigned them. All foreign personnel who enter Indonesia to assist in handling natural disasters are required to report to an agency whose scope of duties includes the immigration sector. After reporting and receiving recommendations from the Head of the National Disaster Management Agency (BNPB), the foreign personnel received visas, entry permits, limited stay permits and exit permits.

2.7 Protection of Human Rights

A comprehensive discussion of human rights is a constitutional part in the context of the Indonesian government and state system. As explained by Prof. Jimly Asshiddiqie, Indonesia must have a democratic constitution and supremacy of human rights and citizens' rights as a consequence of the implementation of a democratic rule of law system and a democratic state based on the supremacy of law. In a more comprehensive view, Padmo Wahjono emphasized that the Pancasila legal state, which is based on kinship, negates respect for the nature and dignity of the people at large is an important requirement to be implemented. Human rights can be literally understood as a gift from God Almighty and inherent in nature to humans,

without which humans would not be able to live their lives as responsible human beings. In Article 1, paragraph (1) of Law Number 39 of 1999 concerning Human Rights, it is explained that what is meant by human rights is a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His obligatory gifts. respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.

So in simple terms, human rights (HAM) is a paradigm that views humans as God's creatures with the same high degree of honor. Regarding the aspect of freedom, John Locke divided freedom into the following two perspectives:

- a. Natural liberty (natural liberty)
- b. Community freedom (civil liberty)

Protection of human rights, in this case, is a concrete key to the role of the state in ensuring that none of its citizens will experience a discriminatory act.

3. RESEARCH METHODS

The research method used in this research is normative legal research. In some literature, normative legal research is also called normative legal research, normative juridic onderzoek (Dutch), and dogmatic legal research. Normative legal research is legal research carried out by examining legal regulations, principles or legal doctrines that are believed by the researcher and aims to produce new arguments or paradigms in order to solve a problem.

This research uses a conceptual approach. The conceptual approach, also known as the conceptual approach, is an approach to problems that is carried out by analyzing legal principles, theories and doctrines explained by experts. The sources of this research are statutory regulations, principles, theories, and legal doctrines in the form of documents that are relevant to the receipt of foreign aid in the context of handling natural disasters in Indonesia.

The primary data sources used are various laws and regulations relating to the main duties and functions of the Indonesian National Army (TNI). Secondary data sources related to receipt of foreign aid in the context of handling natural disasters in Indonesia. As normative legal research, this research uses qualitative methods as its analytical method

4. DISCUSSION AND RESULTS

4.1. Obstacles Faced In The Implementation Of Receiving International Aid To The Process Of Managing Natural Disasters In Indonesia

The international legal issue that emerged after the tsunami in the Indian Ocean was the need to review the concept of "security" or "security" in a more comprehensive manner, not limited only to its meaning from a military perspective but in a non-military form, especially in dealing with threats to prosperity. mankind. As is known, the UN Secretary-General's High-Level Panel on Threats, Challenges, and Change has given birth to what is called "comprehensive collective security," where security must be interpreted as not only safe from the threat of war but also safe from the threat of "poverty, infectious diseases, and the decline of environmental quality.

The obstacles faced regarding the budget are only based on the limited existing budgeting related to receiving international assistance in dealing with natural disasters in Indonesia. The limited budget has factors such as the existence of limited domestic funds, uncertainty in the source of funds, imbalance in the distribution of funds, inability to manage finances, and difficulties in coordinating between one institution and another, so efforts are needed to increase the existing budget to deal with natural disasters in Indonesia.

The decline in environmental quality has "worsened the potential for natural disasters. In this case, we in Indonesia have seen examples including disasters caused by a lack of good management of one of the final waste disposal sites (TPA) in Bandung, which resulted in quite a lot of victims; while SARS is an example of the loss of a sense of security from the threat of infectious diseases. Judging from its occurrence and impact, the tsunami needs to be seen from the perspective of "comprehensive collective security", and its handling should be focused more on arrangements that will more effectively provide protection, preparedness and assistance to those facing the threat of natural disasters.

4.2 International Legal Arrangements on Receipt of International Aid in Natural Disaster Management In Indonesia

Natural disasters in Indonesia trigger various damages in several elements such as physical, social and economic elements. In an effort to increase the damage to some of these elements, it is necessary to carry out a stage of reducing damage and loss. This can be done by utilizing technology, human resources, knowledge and information. Intensive efforts have been made in disaster management and emergency response management an important component to minimize the level of damage and loss as a result of natural disasters. Especially when considering the impact of this very large natural disaster, assistance obtained from natural disasters should be carried out in the right way and treatment of natural disasters should

be carried out in the same way. What is meant is that actions must be taken both before a disaster occurs and rehabilitation and construction after a disaster. This is done so that natural disasters do not cause worse damage and even cause loss of life.

Disaster management is an effort made to defend and strengthen economic, social and physical stability in order to build and protect the lives of communities with dense populations, unorganized land use, and urbanization that often occurs in disaster-prone locations. One implementation of disaster management is humanitarian assistance. This humanitarian assistance can be classified into three stages, namely pre-disaster, emergency response and post-disaster stages. The implementation of humanitarian assistance is an effort from the government with the birth of the Red Cross and Red Crescent.

The first person who must be prioritized in any natural disaster emergency is the person directly affected by the disaster. The government can send requests for assistance to international humanitarian aid. In this case, the national legal system in Indonesia has provided a basic cooperation framework that can be used as a benchmark for ensuring the protection of disaster victims. More than that, the regulation of humanitarian actions themselves is also regulated in international humanitarian law and binding and non-binding human rights law, which consists of the principles of humanity, neutrality, independence, and impartiality. One of the main elements of the international federation's work is providing and coordinating aid for victims of natural disasters and epidemics. The main aim of international humanitarian action is to provide support for national efforts to protect life, livelihoods and dignity for those who need it.

The Indonesian government issued a decree regarding disaster management in the form of a Government Regulation (PP). This decree is PP No. 21 concerning the Implementation of Disaster Management, PP No. 22 concerning Funding and Management of Disaster Assistance, and PP No. 23 concerning the Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management. This regulation has been published since 2008 and has been in effect for the last two months. The umbrella for this provision is Law no. 24 of 2007 concerning Disaster Management.

To evaluate if there is a disaster in Indonesia in the future, the organization of aid must be structured or not carelessly in the process of distributing aid from both foreign NGOs and Indonesian NGOs. The aid providers must also fulfill the main tasks and functions that have been determined because there are obligations in accordance with the policies regarding the implementation of disaster management that the government has established. This is confirmed by

Government Regulation Number 23 which reads "In the event that international institutions or foreign non-governmental organizations assist in the form of funds, they must be conveyed or sent directly via BNPB." BNPB itself is an abbreviation of the non-departmental National Disaster Management Agency. From Amunuddin Kirom's point of view as Project Officer for the Indonesian Disaster Management Society (MPBI), the provisions mentioned are in line with the one-stop policy implemented to deal with disasters. This provision is intended to avoid assistance that is uncontrolled and has the potential for misuse.

Moreover, apart from having to have a process for sending financial aid directly to an account in the name of BNPB, international institutions and foreign NGOs still have to follow their main duties in the form of other obligations. Some examples are preparing a proposal, creating and signing a memorandum of understanding, and a work plan. In the process of preparing proposals, foreign institutions must consult with Indonesian representatives abroad. Regarding the memorandum of understanding, it can be done but must be coordinated with BNPB with involvement from the DEPLU. Meanwhile, regarding work plans can be prepared jointly with BNPB and international institutions or foreign NGOs. These requirements can actually be put aside if there is an emergency situation. If conditions are in such a situation, international institutions or foreign NGOs submit a list of the number of personnel, logistics, equipment and locations of activities. Ultimately, approval or rejection of foreign institutions is left to the Head of BNPB.

According to Article 38 of the ICJ Statute, the sources of international law can primarily be found in international treaties, international customs and general legal principles. As has been mentioned, to date, there has not been a single international agreement that regulates the rights of victims of natural disasters to obtain humanitarian assistance. In practice, the ICJ rarely uses or makes references to general legal principles, so it is not easy to establish new human rights based on general legal principles.

According to customary international law, in order for this right to be binding on states, it must be preceded by continuous and similar practice by a number of states to demonstrate its recognition as "law". According to Article 4 of the General Assembly Resolution on Setting International Standards in the Field of Human Rights, the conditions for new human rights that can be proposed are:

- a. Be consistent with the existing body of international human rights law;
- b. Be of fundamental character and derive from the inherent dignity and worth of the human person;
- c. Be sufficiently precise to give rise to identifiable and practicable rights and obligations;

- d. Provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and
- e. Attract broad international support.

The right to obtain humanitarian assistance must not only be in accordance with existing human rights law but what must also be emphasized is that the rights to obtain food, clothing, and shelter can be implemented. Later, these rights become customary international law and can be considered jus cogens.

There is not a single provision of international law that can provide effective guarantees for obtaining international humanitarian assistance when a disaster hits a country. For this reason, the International Federation of the Red Cross and Red Crescent Societies in 2000 started a project to study the International Disaster Response Law (IDRL) through various existing international agreements. According to David Fidler, the results of the study showed several shortcomings. Regionally, several international agreements specifically relating to disasters can be found, including the Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters, 1987²¹ and the Inter-American Convention to Facilitate Disaster Assistance, 1991.

This project study "has not reached the point of recommending the drafting of an international convention, but tries to find ways so that both national legislation and international law can be adjusted so that the provision of humanitarian assistance for disaster management can be implemented better. Considering the nature of natural disasters that impact many countries, international legal provisions regarding disaster management are needed.

5. CONCLUSION AND SUGGESTIONS

5.1 Conclusions

- a. Although it can be said that the right to obtain humanitarian aid is part of the structure of international cultural law, uncertainty regarding what are the rights and obligations when a natural disaster occurs has resulted in obstacles or obstacles in the process of delivering this aid. As previously demonstrated, there are still various countries that, although they are unable to provide humanitarian assistance to victims of natural disasters in their own country, still have doubts about granting entry permits for humanitarian aid from abroad.
- b. The decline in environmental quality "has exacerbated the potential for natural disasters. In this case, we in Indonesia have seen examples, including disasters caused by a lack of good management of one of the final waste disposal sites (TPA) in Bandung which resulted in quite a lot of

victims; while SARS is an example of the loss of a sense of security from the threat of infectious disease. Judging from the incident and its impact, the tsunami needs to be seen from the perspective of "comprehensive collective security" and handled better focused on more detailed settings effectively will be able to provide protection, preparedness, and assistance to those who are facing the threat of natural disasters.

5.2 Suggestions

To overcome existing problems, it seems that an international agreement is needed. To respect the implementation of the right to humanitarian assistance, neutral non-governmental organizations can be given the right to obtain access to assistance when the country where the victim is located is unable to do so themselves. Provisions regarding the right to access are very necessary because nowadays, more and more developing countries are affected by natural disasters. Limiting this right to neutral non-governmental organizations will eliminate the problem of refusing assistance from outside on the grounds of state sovereignty. Once states can accept that there is no threat to their sovereignty, then with encouragement from the international community and neutral non-governmental organizations such as the ICRC, they are willing to become a participant in international conventions or agreements on humanitarian assistance.

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