

# CHAPTER ONE

## INTRODUCTION

### A. Background of Research

During the past decade, natural and man-made disasters at various scales continue to increase by the year in Indonesia. Experiences have shown that local governments and stakeholders with their capacity have proved their ability to handle small and medium scale emergency response, but for some circumstance the affected state sometimes cannot deal with this issue. For example, the large and mega scale natural disaster mitigation beyond the capacity of the local stakeholders are the 2004 tsunami in Aceh, the 2009 earthquake West Sumatera and the 2010 Mount Merapi volcanic eruption in Yogyakarta.<sup>1</sup> In these cases, the local governments and other stakeholders, including the local community, so far needed the support and assistance of international organizations and foreign non-government organizations during disaster response.

The occurrence of disasters in Indonesia as well as in other countries has drawn the attention as well as support and assistance from the international community. As part of commitment towards partnership with local and global cooperation, especially if the disaster involves the loss of many lives and is

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<sup>1</sup> Syamsul Maarif, "Guideline On the Role of the International Organizations and Foreign Non-Government Organizations During Emergency Response", *National Agency for Disaster Management (BNPB)*, (December, 2010). p. 2.

beyond the capacity of the affected state, no state refuses to accept the international assistance during emergency response without any due reason.<sup>2</sup>

The international community has put this issue as one of the crucial issues. Therefore, some treaties have agreed to deal with this issue. Recently, the International Federation of Red Cross and Red Crescent Societies<sup>3</sup> initiated the International Disaster Response Law (IDRL) Project with the aim of reducing the vulnerability and suffering of people affected by disasters.<sup>4</sup>

The IDRL has resulted in some importance conclusions and fundamental principles in order to guide the State or other international entities that recognized under international law in giving the humanitarian assistance (disaster relief) to the host state. Furthermore, there is one of the most importance principles, which has been agreed among states on this issue, that is the sovereignty of host state must be respected in giving humanitarian assistance during the disaster response. Regardless of the severity of a disaster

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<sup>2</sup> *Ibid.*

<sup>3</sup> The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 in Paris in the aftermath of World War I. The war had shown a need for close cooperation between Red Cross Societies, which, through their humanitarian activities on behalf of prisoners of war and combatants, had attracted millions of volunteers and built a large body of expertise. A devastated Europe could not afford to lose such a resource. It was Henry Davison, president of the American Red Cross War Committee, who proposed forming a federation of these National Societies. An international medical conference initiated by Davison resulted in the birth of the League of Red Cross Societies, which was renamed in October 1983 to the League of Red Cross and Red Crescent Societies, and then in November 1991 to become the International Federation of Red Cross and Red Crescent Societies. See more at <http://www.ifrc.org/en/who-we-are/history/#sthash.ENK4lqpp.dpuf> accessed on February 26, 2016 at 08:15 PM.

<sup>4</sup> Vishnu Konoorayar, "Disasters: Global Response to the Challenges", *AALCO Quarterly Bulletin*, Forthcoming, 2006. p. 25.

or the number of victims waiting to be rescued, state sovereignty cannot be superseded due to that reason.<sup>5</sup>

Indonesian Government tries to deal with those barriers through the enactment of Law No 24 of 2007 on Disaster Management and some other Laws<sup>6</sup>. In addition, during that established a new National Agency for Disaster Management (BNPB)<sup>7</sup> to manage these new areas. Through those Laws also, the government regulates the role and mechanism of international organization and non-governmental organization in giving the humanitarian assistance during disaster response situation. Yet, these laws still face a basic weakness, by giving the international organizations and non-governmental organizations a chance to violate the Indonesian sovereignty.

Evidence shows some international organization and non-governmental organization might be violating the Indonesian sovereignty when giving humanitarian assistance as disaster relief during disaster response situation.

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<sup>5</sup> Allen Yuhung Lai, et al., "A Proposed ASEAN Disaster Response, Training and Logistic Centre Enhancing Regional Governance in Disaster Management" *Springer-Verlag*, Volume XVI, (March, 2009), p. 4.

<sup>6</sup> Government Regulation No. 21 on Disaster Management, Government Regulation No. 22 of 2008 on Disaster Aid Financing and Management, Government Regulation No. 23 of 2008 on Participation of International Organizations and Foreign non-government Organizations in Disaster Management and Head of BNPB Regulation No. 22 of 2010 on Guideline on the Role of International Organization and Foreign Non-Governmental Organization During Emergency Response.

<sup>7</sup> In response to the current disaster management system, the Indonesian government was highly serious about building legalization, institutionalization, and budgeting. After the issuance of Act Number 24 of 2007 on Disaster Management, the government issued Presidential Decree Number 8 of 2008 on the National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana-BNPB). BNPB consists of head, steering element of disaster management, and executing element of disaster management. BNPB has the coordination function of the implementation of disaster management activities in a planned, integrated, and comprehensive manner. BNPB is directly responsible to the president and the chairman is directly appointed by the president. See more at <http://www.bnpb.go.id/profil> accessed on March 29, 2016 at 08:20 AM.

By looking at those facts, it is interesting to evaluate on the implementation of International Disaster Response Laws in Indonesia and to investigate whether it violates the Indonesian sovereignty during the disaster response situation.

## **B. Research Problem**

Does the implementation of International Disaster Response Laws upon Indonesia give the opportunity to an international organization and foreign non-governmental organization during disaster emergency response violated the sovereignty of Indonesia?

## **C. Objective of Research**

The objective of this research is to know whether the implementation of International Disaster Response Laws of Indonesia gives the opportunity to an international organization and foreign non-governmental organization to violate the sovereignty of Indonesia based on sovereignty principles.

## **D. Benefits of Research**

### **1. Theoretical Advantages**

The research would give theoretical understanding on how the International Disaster Response Laws Guide and other international instrument are implemented with regard to the Indonesian sovereignty based on sovereignty principles in responding the international assistance

and foreign non-governmental organization during disaster response. Furthermore, it would also analyze to what extent state sovereignty, in this case the Indonesian sovereignty, still remains at the international level during the emergency response situation, since according to some scholar the sovereignty principle is one of the basics of International Laws.

## 2. Practical Advantages

The research would describe the gap between the state sovereignty and humanitarian assistance during emergency response and try to solve any existing barriers in giving international assistance during emergency response which is included as a humanitarian mission. This research would also give a better understanding on how the International Disaster Response Law Guideline and some other international legal framework on disaster management particularly international assistance at disaster response implemented in Indonesia. In addition, it would also answer the question on how to preventing the violation that might be conducted by the international organization and foreign non-governmental organization in giving humanitarian assistance during emergency response situation.

## **E. Systematic of Writing**

The research consists of five chapters, namely: Chapter One Introduction, Chapter Two Literature Review, Chapter Three Research Methods, Chapter Four Finding and Analysis, Chapter V Conclusion and Recommendation.

The research aims to analyze the implementation of International Disaster Response Laws of Indonesia during emergency response. The research also analyze that by accepting the international assistance it would give a chance the foreign non-governmental organizations and international organizations reduces or even violate the sovereignty of Indonesia under the circumstance of giving the humanitarian assistance during disaster emergency response situation.

In Chapter One, the researcher elaborates the main reasons why International Disaster Response Laws of Indonesia might give a chance to an international organizations and foreign non-governmental organizations to violate the sovereignty of Indonesia while giving the humanitarian assistance during disaster emergency response situation.

Furthermore, this chapter introduces several facts on the severe impacts of natural or man-made disasters towards the host state and the incapability of host state in responding its impact. Therefore, the international community trough International Federation of Red Cross and Red Crescent Societies initiated the International Disaster Response Law (IDRL) Project to reduce

the vulnerability and suffering of people affected by the disasters. They do this by giving fundamental principles on how the other State, international organizations and foreign non-governmental organizations may give humanitarian assistance in form of disaster relief to the host state.

One of the most importance principles in the International Disaster Response Laws already agreed by sovereign state is respected the sovereignty of the host State. However, when the circumstances of the affected area of natural or man-made disaster that needs a proper and fast emergency response, sometimes the sovereignty of host state has a potential to be violated by other states or other international entities recognized under international laws. In this introduction, the researcher also delivers the research problem which will be discussed in the next chapter. The research objective, advantages of research, and systematic of the writing of research also explained in this chapter.

Chapter two will explain the general theory and the legal aspects related to the international law on the International Disaster Response Laws and sovereignty principles. It also provides disaster potential threats to Indonesia, the meaning of International Disaster Response Laws, and sovereignty principles especially the sovereignty of Indonesia.

In Chapter three, the researcher will discuss the research methods used on the research. This research method consists of the type of research, type of approaches, legal materials, method of collecting data and data analysis. The

type of this research is normative legal research. The research use statute approach and case approach. Also, this research will use research material taken from some literature consist of primary legal material, secondary legal material, and tertiary legal material. Then, the methods of collecting data in this research will be conducted through library research, and will be analyzed systematically through qualitative and descriptive methods.

In Chapter four, the researcher will analyze whether the implementation of International Disaster Response Laws of Indonesia does not reduce the sovereignty of Indonesia or even give a chance to the international organizations and foreign non-governmental organizations to violate the sovereignty of Indonesia during emergency response. To answer that question, this chapter would analyze the international assistance in giving disaster relief during disaster response on two disaster events: the earthquake 2009 in West Sumatra and the Mount Merapi volcano eruption 2010 in Yogyakarta.

Finally, Chapter five covers the conclusion and suggestions on this research. In this chapter, the researcher will conclude what has been discovered in the previous chapter about the implementation of International Disaster Response Laws towards the sovereignty of Indonesia and also will give the suggestions on how the Indonesian government should regulate the international humanitarian assistance from international organizations and non-government organizations during emergency response.