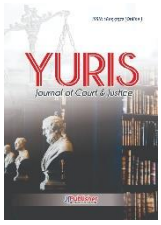

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Legal Framework for Corporate and Government Paradigm to Disaster Victims

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ABSTRACT

The environmental law enforcement paradigm has not implimented well. This can be known through the government's inability to stop several acts of environmental destruction committed by several corporations. On the other hand, based on the principles of environmental law, it is stated that the government must be responsible for environmental management. The objective of this research is to determine the circumstances surrounding any regulatory infractions committed by corporations. This research used normative legal research which conducted out by taking a detailed look at and analyzing theories, concepts, literary works, laws, and regulations relevant to the legal framework for corporate and government paradigm to disaster victims. The results of the research indicated that the paradigm of enforcing environmental law is contained in Law No. 32/2009 concerning Environmental Protection and Management; Law No. 24/2007 concerning Disaster Protection; Law No. 30/1999 concerning AAPS (Arbitration and Alternative Dispute Resolution) and Law No. 4/2009 concerning Mining is still a normative paradigm which causes the weakening of environmental law enforcement.

Keywords: *Disaster Victims, Legal Framework, Government Paradigm*

INTRODUCTION

In order to construct a person's subjective perception of reality and eventually decide how a person responds to that reality, a person's paradigm is the basis for his or her perspectives. According to Thomas Khun statement, paradigm is the basis of a concept or the point of reference for the reality that supports a belief.[1] Meanwhile, Patton stated that paradigm is a world view, a general perspective, a way of breaking down of the complexity of the real world.[2] It means that the paradigm describes about the corporate and government responsibility to disaster victims.

In terms of substance, the government has demonstrated significant concern by offering a variety of legislative mechanisms to stop and manage the appearance of harmful environmental effects brought on by development. However, in reality, less desirable outcomes have been obtained, such as pollution or environmental deterioration. Seven types of pollution or environmental harm, including river pollution (41.0%), air pollution (23.5%), groundwater (18.0%), damage to the natural landscape (8.5%), seawater pollution (6.5%), soil pollution (2.5%), and noise as much as 1.7%, these are primarily committed by industrial sectors in Indonesia.[3]

As can be observed from the percentage description, environmental issues such as air pollution, river water pollution, and forest destruction are quite prevalent in Indonesia. Forest destruction is the environmental degradation that occurs most frequently. Forest fires in the provinces of North Sumatra, South Sumatra, Jambi, Riau, West Kalimantan, East Kalimantan, Central Kalimantan, and South Kalimantan, which were allegedly started by 176 companies and mentioned by the Minister of Forestry on September 15, 1997, are not included in this environmental pollution and destruction.[4] Although it is feasible that potential land removal for crops or forest fire transmigration will still occur. This occurs because it is thought to be the most effective and efficient technique.[5]

The destruction of forests as a consequence of this practice has reached worrisome levels. According to the Indonesian Ministry of Forestry, 3.8 million Hectare of forest were lost annually between 1998 and 2000. The rate of forest degradation between 2001 and 2003 reached 4.1 million ha/year, in accordance with a report from Forest Watch Indonesia (FWI). After stated in terms of simply 2 million hectares each year, it means that the destruction of the forest has reached 3

[1] Thomas S. Kuhn, "The Structure of Scientific Revolutions," in *Foundations of The Unity of Science*, ed. Otto Neurath, 2nd ed., vol. 2 (United States of America: The University of Chicago Press, 1970), 222, https://www.lri.fr/~mbl/Stanford/CS477/papers/Kuhn-SSR-2ndEd.pdf.
[2] Michael Quinn Patton, *Alternative Evaluation Research Paradigm* (Grand Forks: University of North Dakota Publisher, 1975).
[3] Gatot Supramono, *Penyelesaian Sengketa Lingkungan Hidup Di Indonesia*, 1st ed. (Jakarta: Rineka Cipta, 2013).
[4] Ibid.
[5] Miswardi Miswardi, "Kajian Ekonomis Penyelesaian Sengketa Bisnis Melalui ADR (Alternative Despute Resolution)," *EKONOMIKA SYARIAH : Journal of Economic Studies* 4, no. 1 (July 10, 2020): 74, https://ejournal.uinbukittinggi.ac.id/index.php/febi/article/view/3281.

hectares per minute, which is equivalent to 6 football fields. Disasters, such as the haze caused on by forest fires, are brought on by these damages to the forest.

The exploitation described previously demonstrates that currently there is a risk to human life from environmental destruction. because the environment has a significant role in human existence. The purpose of environmental management, which is conducted out in accordance with the principles of state responsibility, sustainability, and benefit, is to achieve sustainable development from an environmental perspective within the context of the development of Indonesian society, which is devoted to and dedicated to God Almighty.[6]

According to Law No. 24/2007, which was the subject of research by Jesicha, Ollij, and Marthin, the government is responsible for managing natural disasters. This responsibility includes ensuring that the rights of communities and refugees affected by disasters are upheld, reducing disaster risk and providing guidance on doing so with development programs, and allocating funds for managing natural disasters at various stages of implementation, such as the pre-disaster stage. The government budgets for contingency funds to prepare for the need for additional emergency finances while giving humanitarian funds for victims of natural disasters.[7]

According to Ronald Mamangkey's research, a company may be subject to sanctions if it irresponsibly constructs infrastructure or intentionally restricts the National Disaster Management Agency's ability to respond to disasters. The sanction for this crime has been outlined in Law No. 24/2007's disaster management Articles 75‑78, which explains that corporations can lead to a fine that are three times as much as the initial fine, as well as additional punishments like having their business licenses or legal entity status revoked.[8]

The objective of this research is to determine the circumstances surrounding any regulatory infractions committed by corporations. The living environment influences life as a whole and determines the meaning of the law and order of dynamics or growth, the law of energy or thermodynamics and the law of adaptation or survival which basically applies to both human beings (biota) and physical beings (a biota). Therefore environmental management is a human responsibility that cannot be ignored. Environmental management is an individualistic obligation that results in each individual bearing the moral burden to protect and manage the

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[6] Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup* (Jakarta, 1997).

[7] Jesicha Irma Dianty, Ollij Aneke Kereh, and Marthin Lambonan, "Tanggung Jawab Pemerintah Dalam Menyediakan Dana Penanggulangan Bencana Alam Menurut Undang-Undang No. 24 Tahun 2007," *e-journal Unsrat* (2022), https://ejournal.unsrat.ac.id/index.php/administratum/article/download/42560/37554.

[8] Ronald Mamangkey, "Ketentuan Pidana Terhadap Korporasi Akibat Melakukan Tindak Pidana Menurut Undang-Undang Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana," *Lex Crimen* 8, no. 12 (2019): 13–19, https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/download/27586/27105.

environment. Thus, in the perspective of Islamic teachings, responsibility for the environment is important and needs to be the concern of mankind.

RESEARCH METHODOLOGY

Based on the variety of data or legal materials analyzed, the research was classified as qualitative normative research. Normative legal research is a method that observes for legal doctrines, norms, and principles in order to find the answers to the current legal questions. In addition, according to Idah Faridah, normative legal research that confines itself to the study of the law as an object and excludes any non-legal information from discussed problem.[9] As stated in the preceding definition, this research was conducted out by taking a detailed look at and analyzing theories, concepts, literary works, laws, and regulations relevant to the legal framework for corporate and government paradigm to disaster victims.

RESULT AND DISCUSSION

The Responsibility Paradigm in Law No. 32/2009

Discussing environmental liability legal instruments and the general components of errors and omissions, including how to resolve them. However, the fundamental principles or overarching principles must first be stated. It can argue that a legal regulation has a comprehensive paradigm in its early phases, particularly with the publication of the 1982 Environmental Protection and Management Act, the 1997 Environmental Protection and Management Act, and the 2009 Environmental Protection and Management Act. Three principles that are applicable at the federal level are the only restrictions on the legal instruments of the state and other legal subjects. **First**, there is the idea of state responsibility, according to which the highest authority in a territory has the ability to regulate and manage a community's environment in addition to ensuring its prosperity. The government is obligated to safeguard its citizens. The public interest must be protected, according to this principle, which states that while making decisions, the interests of citizens must come first. The right to take acts deemed necessary to manage and safeguard the environment belongs to everyone, including the state.[10]

Second, Article 3 of the Law on Environmental Protection and Management, which stipulates that environmental management be sustainable, connects to the concept of sustainability. It means that the state is required to consider development without disregarding the lives of future generations, and as a result, the state is

[9] Idah Faridah and Kunarso, "The Judge Considerations in Making Decision Against Narcotics in Children," *YURIS (Journal of Court and Justice)* 1, no. 4 (2022): 22–33, https://journal.jfpublisher.com/index.php/jcj/article/view/208.
[10] Prasetijo Rijadi dan Sri Priyati, *Pengantar Hukum Lingkungan Hidup* (Sidoarjo: Al Maktabah, 2020).

strictly required to forbid activities of excessive exploitation and exploration that cause ecological damage.

Third, the principle of benefit aims to realize sustainable development from an environmental perspective. A sustainable development process must pay attention to the environment by seeking integration between development and environmental management so that development does not have detrimental effects on the environment.

On the other hand, in Law No. 32/2009 concerning Management and Protection of the Environment from the previous regulation. In addition to legal and substance principles, it also appears to have a more holistic scientific paradigm. There are 13 principles of environmental management such as state responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, fairness, ecoregion, biodiversity, paying polluters, participation, local wisdom, good governance and regional autonomy.[11]

Furthermore, the Law on the Protection and Management of the Environment clearly shows that the state is responsible for all matters related to environmental management. This is because one of the fundamental principles of the Environmental Protection and Management Law is a rule relating to state responsibility where it is said that the state, as the highest entity in a region, has the authority to regulate and manage the environment. The function of the state is to provide prosperity for society. The state must protect its citizens. The public interest, namely the interests of citizens, must take precedence in making decisions by the state. The state has the right to take necessary actions to protect and manage the environment.

The Law on Environmental Protection and Management No. 32/2009 outlines the concept of governmental accountability in Article 2 Letter a. According to the explanation, the following is meant by the "principle of state responsibility":

1. The state guarantees that the utilization of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the present and future generations;
2. The state guarantees the rights of citizens to a good and healthy environment;
3. The state prevents activities from exploiting natural resources that cause environmental pollution and/or damage.[12]

Meanwhile, corporate responsibility is stated in Article 13 Paragraph 3 of the Environmental Protection and Management Law No. 32/2009 such as “The government, regional governments, and individuals in control of businesses and/or

[11] Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup* (Jakarta, 2009), https://jdih.esdm.go.id/storage/document/UU 32 Tahun 2009 (PPLH).pdf.
[12] Ibid.

activities each have their own set of authority, functions, and obligations when it comes to controlling environmental pollution and/or damage as mentioned in Paragraph (1)."

Furthermore, environmental audits are required of corporations in order to enhance environmental performance. Articles 48 to 52 of Law No. 32/2009 on Environmental Protection and Management provide the following explanations:

Article 48

Environmental audits are encouraged by the government to be conducted by people in charge of organizations, corporations, and/or activities in order to enhance environmental performance.

Article 49

1. An environmental audit is required by the minister to:
    a. Certain businesses and/or activities that represent a substantial environmental risk; and/or
    b. The individual responsible of a business or other activity that violates rules and regulations.
2. An environmental audit must be conducted by the individual responsible of a firm or activity.
3. Environmental audits are implemented for some high-risk operations on a regular basis.

Article 50

1. The Minister may conduct an environmental audit at the expense of the person in responsibility for the company and/or activity in question if the person in charge of a business and/or activity fails to fulfill the duties mentioned in Article 49 Paragraph (1).
2. The Minister released the audit's environmental findings.

Article 51

1. Environmental auditor conducts the environmental audits that are mentioned in Articles 48 and 49.
2. An environmental auditor competency certificate is required for the environmental auditor referred to in Paragraph (1).
3. The requirements for acquiring an environmental auditor competency certificate are specified in paragraph (2) and contain the following variety of abilities:
    a. Understand the guiding principles, methodology, and procedures involved in environmental audits;
    b. Performing out environmental audits that involve the planning, execution, conclusion-making, and reporting phases; and

c. Create recommendations for corrective action as a result of the environmental audit.

4. An environmental auditor competency certification organization, in compliance with statutory requirements, issues the environmental auditor competency certificate referred to in Paragraph (2).

Article 52

Ministerial Regulation governs additional provisions relating to environmental audits life as mentioned in Articles 48 to 51.

According to the previous descriptions of Article 48-52, it can conclude that this law is a guarantee of legal certainty that protects everyone's right to a good environment as part of preserving the entire ecosystem. The article expressly states that environmental control and management is the responsibility of the government and corporations. For environmental damage, the corporation is also required to be absolutely responsible for dealing with damage and carrying out restoration. This is stated in Articles 67-68 of the 2009 Environmental Protection and Management Law.

The Responsibility Paradigm in Law No. 4/2009 Concerning of Mining

Another important aspect related to accountability is mining practices, both mining such as minerals and coal or oil and natural gas mining. The importance of responsibility in mining is carried out to prevent negative impacts on the environment, as well as prevent disasters from occurring, as for example in the case of the explosion at Unit 4 of the Chernobyl Nuclear Power Plant on April 26, 1986.[13]

There are at least two legislation related to mining operations that are considered as mistakes or acts of negligence and are the basis of catastrophes, which makes it difficult to inflict losses both material and immaterial, including human casualties. This legal document also defines the significance of associated parties, the government, corporations, and also taking environmental considerations and impact analysis under consideration.

The first instrument in Law No. 4/2009 concerning Mineral and Coal Mining. This becomes very relevant when the central government delegates its authority to regional governments. In Article 15 of Law No. 4/2009 clearly states that the central government can delegate some of its authority in determining WIUP (Mining Business Permit Areas) as referred to in Article 14 Paragraph (1) of Law No. 4/2009 to the provincial government in accordance with statutory provisions. The authority that can be delegated cannot be given without considering certain conditions. In

[13] Zubaidah Alatas, "Konsekuensi Kecelakaan Reaktor Chernobyl Terhadap Kesehatan Dan Lingkungan," *IPTEK Ilmiah Populer* 7, no. 3 (2006): 79–87, https://media.neliti.com/media/publications/241655-konsekuensi-kecelakaan-reaktor-chernobyl-2f32371b.pdf.

Article 18 of Law No. 4/2009 states that the criteria for establishing one (1) or several WIUPs are as follows:

1. Geographical Location;
2. Conservation Norms;
3. Environmental Carrying Capacity;
4. Resource Optimization for Coal and/or Minerals;
5. The Level of Population Density.[14]

The implementation of a mining business must require licensing mechanisms and procedures. Because the element of legal responsibility will be very closely related to how far the corporation complies with the licensing procedure, as for example in Article 36 of Law No. 4/2009 stated:

1. Obtaining a Mining Business License (IUP) involves two steps:
   a. An exploration mining business permit activities including general research, exploration, and feasibility studies.
   b. A production operation mining business permit including construction, mining, processing and refining, transporting fiber, and sales activities.
2. The holders of a production operation mining business permit and an exploration mining business permit may operate in all or some of the activities mentioned in Paragraph (1).

According to Article 37 of Law No. 4/2009, the Mayor or Regent may provide the mining business permit. Meanwhile, in according to Article 38 of Law No. 4/2009, Business Entities, Cooperatives, and Individuals may receive the permit.

However, what is even more important is that each IUP holder is required to contain the provisions stipulated in Article 39 of Law No. 4/2009 Paragraph (1) as follows:

1. Firms Identity;
2. Location and Territorial Extent;
3. General Spatial Plan;
4. Absolute Guarantee;
5. Investment Capital;
6. Extended Time of Activity Phases;
7. Rights and Obligations of IUP Holders;
8. Time Length of Activity Phases;
9. Type of Business Provided;
10. Community Development and Empowerment Plans around Mining Areas;

[14] Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara* (Jakarta, 2009), https://www.bpkp.go.id/public/upload/uu/2/26/04-09.pdf.

11. Taxation;
12. Dispute resolution;
13. Fixed Fee and Exploration Fee; and
14. Environmental Impact Analysis.

Regarding further steps detailed in Paragraphs (2) and (3). According to Law No. 04/2009, the concept of responsibility seems to concentrate more focus on the regulations that each mining business and investor must comply too. Sanctions are also included in this regulation for businesses or corporations who disregard the terms. Articles 151 to 157 of Law No. 4/2009, which contain administrative sanctions, and Articles 158 to 165 of Law No. 4/2009, which contain criminal provisions, both control this.

The Responsibility Paradigm in Law No. 24/2007 Concerning of Disaster Preparedness

The existence of Law No. 24/2007 is a sign of a change in the country's paradigm towards disaster issues. Initially, the state's attitude towards disasters was a non-binding moral obligation. However, the state's responsibility for a disaster event has become very firm and certain since 2007. In Law No. 24/2007 explained that the state is obliged to take optimal action in implementing relief, emergency measures, evacuation, compensation and rehabilitation.

In Law No. 24/2007 concerning Disaster Management defines that a disaster is an event or series of events that threatens and disrupts people's lives and livelihoods caused 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.

Natural disasters are causative phenomena. Natural disasters are defined as catastrophes brought on by a single or a succession of natural occurrences, such as earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides, according to copy in Law No. 24/2007. While non-natural catastrophes are those that are brought on by one or more non-natural occurrences, such as technical glitches, modernization failures, epidemics, or disease outbreaks.

The most fundamental problem in Law No. 24/2007 is the lack of a definition or area for catastrophe causality that incorporates interactions or connections between man-made and natural disasters. This contradicts itself empirically because there is a phenomenon called the "intermediate disaster." According to theory, human factors can also be involved in the causes of humanitarian disasters.

One of the characteristics of this paradigm of accountability regulation is the availability of a change from moral obligations towards legal obligationsboth the government and corporations have the same responsibility when there are problems that result in natural disasters and cause victims. Therefore, in Article 3 stated that disaster management as referred to in Article 2 is based on:

1. Humanitarian Principles;
2. Justice;
3. Equal Rights under the Law and Government;
4. Balance and Stability;
5. Order and Legal Certainty;
6. Mutuality;
7. Environmental Sustainability;
8. Science and Technology.

These principles must be implemented either by the state or corporations as the principles are regulated in Law No. 32/2009. In addition, there are important principles in disaster management as a form of accountability that must be implemented by the parties involved. For example, in Article 3 Paragraph (2) several principles are stated as follows:

1. Quick and Precise;
2. Priority;
3. Coordination and Integration;
4. Efficient and Effective;
5. Transparency and Accountability;
6. Partnership;
7. Empowerment;
8. Non-Discriminatory; and
9. Non-Proleticism.

Chapter III of the Law explicitly and definitively controls, among other things, the responsibility and authority of the government, as specified in Articles 5 and 9. In order to implement disaster management, the government must conduct several activities:

1. Disaster Risk Reduction and Integration of Disaster Risk Reduction with Development Programs;
2. Safeguarding Society against The Consequences of Disasters;
3. Ensuring that disaster-affected communities and refugees have their rights upheld equitably and in compliance with minimal service requirements;
4. Overcoming The Impacts of Disasters;
5. Budget for disaster management included in a sufficient state revenue and expenditure budget;
6. Allocation of Disaster Management Budget in Ready-to-Use Form; and
7. Maintenance of Authentic and Credible Archives/Documents from Disaster Threats and Impacts.

Because disasters have different nature and scope as stipulated in Article 7 Paragraph (2), it is also required to emphasize the responsibilities of regional governments both at the provincial level and at the regency or city level. There are regional government responsibilities and authorities in natural disaster management as follows:

In Article 8, it has been emphasized that the responsibilities of the Regional Government in implementing disaster management include several points such following below:

1. Ensuring that disaster-affected communities' and refugees' rights are protected in accordance with minimal service requirements;
2. Protecting the community against the effects of disaster;
3. Guidelines for disaster risk reduction with development initiatives;
4. The distribution of disaster relief funds within a sustainable regional revenue and expense budget.

The Regional Government has the following authorities to conduct out disaster management:

1. Regional development guides the formulation of disaster management strategies in each region;
2. Establishment of plans for development that incorporate disaster management strategies;
3. Implementation of disaster management cooperation strategies with other provinces, districts, and/or cities;
4. Regulating the use of technology that might provide a harm to its jurisdiction or increase risks for disaster;
5. Making strategies to prevent the exploitation and extraction of natural resources in their region at a rate that exceeds whether is naturally possible; and
6. Control of the collection and distribution of money or goods on a provincial, district/city scale.

It is also evident from attempting to compare the responsibility provisions in Law No. 32/2009 that the government's accountability for disaster management always includes significant environmental difficulties. The issue of responsibility by either the government or corporations, mainly related to the incidence of victims, implies that natural disasters are sometimes caused by natural or environmental factors.

Based on the law that has been explained about the state accountability, even in the law consideration which contains that in accordance with the 1945 Constitution of the Republic of Indonesia, it is the duty of the Unitary State of the Republic Indonesia to protect the entire Indonesian population and all acts of

bloodshed with the aim of ensuring protection for life and livelihoods, including protection against disasters.

In Articles 5 through 9 of the Law on Disaster Management, the duties and authorities of the government are more explicitly described as follows: Disaster management is managed by the federal government and regional governments.

Article 6: The government accountability in implementation of disaster management which contain such following below:

1. Disaster Risk Reduction and Integration of Disaster Risk Reduction with Development Programs;
2. Safeguarding Society against The Consequences of Disasters;
3. Ensuring that disaster-affected communities and refugees have their rights upheld equitably and in compliance with minimal service requirements;
4. Overcoming The Impacts of Disasters;
5. Budget for disaster management included in a sufficient state revenue and expenditure budget;
6. Allocation of Disaster Management Budget in Ready-to-Use Form; and
7. Maintenance of Authentic and Credible Archives/Documents from Disaster Threats and Impacts.

Article 7: The authority of the government in administering disaster management which contain such following below:

1. Disaster management strategies are selected in accordance with national development objectives;
2. Establishment of development plans with included disaster management policies;
3. Assessing the severity and condition of regional and national disasters;
4. Deciding on policies for disaster management collaboration with other nations, organizations, or other multilateral institutions;
5. Establishment of regulations for the utilization of technology that could be a risk or danger from disasters;
6. The establishment of regulations to stop the control and exploitation of natural resources that exceed what Natural World is capable of recovering over; and
7. The regulation of the collecting of commodities or currency.

Meanwhile, corporate responsibility in disaster management is regulated in Articles 28-29 of the Law on Disaster Management as follows:

In Article 28 states that business institutions can actually participate in disaster management either independently or in collaboration with other parties. On the other hand, in Article 29 states several points such following below:

1. Organizational structures adapt their operations to disaster management policies.
2. Business institutions are required to provide reports to the government and/or agencies responsible with managing disasters, as well as to transparently notify the public.
3. Business institutions must maintain humanitarian principles when implementing their financial duties in disaster management.

Legal uncertainty precedes the Law No. 24/2007 disaster management regulations, which makes it difficult to manage disasters from the level of emergency measures to evacuation as well as rehabilitation and integration. Government assistance is more clearly acting as voluntary assistance at the central and regional operational levels.

CONCLUSION

The normative paradigm is still present in legislation and regulations relating to the responsibilities of the government and corporations regarding disaster victims, starting with Law No. 32/2009, Law No. 30/2009, Law No. 24/2007, and Law No. 04/2009. The paradigm established in this case is that the responsibility of the government and corporations is restricted to the creation and enactment of laws and has no significant impact on their implementation and enforcement. This responsibility is only limited to what is stated in the text and cannot be implemented or even enforced.

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