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## Rediscovery of The Living Law in Natural Disaster Mitigation in Majene Regency, West Sulawesi Province, Indonesia

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# REDISCOVERY OF THE LIVING LAW IN NATURAL DISASTER MITIGATION IN MAJENE REGENCY, WEST SULAWESI PROVINCE, INDONESIA

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### Abstract

*The living law is a law that is constructed and embedded in the life tradition of a society. The living law and state law are two schools of law that are always dialectical in the development of law in a country. If the two can be synergized properly, then the legal function will run effectively and the legal objectives will be achieved. In the context of natural disaster mitigation in Indonesia, the synergy between the living law and state law can be proposed as a solution to streamline the various existing laws. This study aims to reidentify natural disaster mitigation models as a previous result of the collective creativity of the people of Totolisi Sendana Village, Majene Regency, West Sulawesi Province in responding to the 1969 earthquake and tsunami. The next generation did not inherit the local wisdom in its entirety. Thus, it was the duty of the state to stipulate the social institutions that had been formed sociologically into positive laws with juridical power. As a living law, mitigation models that have been institutionalized can remain relevant in the face of similar events in the future as long as they are adapted to the dynamics of community development and integrated with various positive laws established by the state.*

**Keywords:** *the living law; state law; local wisdom; natural disaster; disaster mitigation.*

### Abstrak

*The living law merupakan hukum yang dikonstruksi dan melekat dalam tradisi kehidupan suatu masyarakat. The living law dan state law merupakan dua aliran hukum yang senantiasa berdialektika dalam pembangunan hukum di suatu negara. Bila keduanya dapat disinergikan secara tepat, maka fungsi hukum akan berjalan efektif dan tujuan hukum akan tercapai. Dalam konteks mitigasi bencana alam di Indonesia, sinergitas the living law dan state law dapat diajukan sebagai solusi untuk mengaktifkan berbagai aturan hukum yang ada. Penelitian ini berupaya mengidentifikasi kembali model-model mitigasi bencana alam sebagai hasil kreativitas kolektif masyarakat Desa Totolisi Sendana, Kabupaten Majene, Provinsi Sulawesi Barat dalam merespons terjadinya gempa bumi dan tsunami tahun 1969. Generasi berikutnya tidak mewarisi secara utuh kearifan lokal tersebut. Dengan demikian, menjadi tugas negara untuk menetapkan pranata sosial yang pernah terbentuk secara sosiologis itu menjadi hukum positif yang berkekuatan yuridis. Sebagai suatu the living law, model-model mitigasi yang pernah terlembagakan itu dapat tetap relevan dalam menghadapi peristiwa serupa di masa depan sepanjang diadaptasikan dengan dinamika perkembangan masyarakat dan diintegrasikan dengan berbagai hukum positif yang ditetapkan oleh negara.*

**Kata Kunci:** *the living law; state law; kearifan lokal; bencana alam; mitigasi bencana.*

## I. INTRODUCTION

Every community-based society always has a set of values and a set of norms that guide behavior in collective life.<sup>1</sup> Values and norms are born and formed from the experience of collectively resolving problems that arise between individuals in ways that sustain social ties. Obedience to existing values and norms is believed to produce harmony in life, both in relation to social life and connectedness with the universe.

Disharmony in social life has the potential to trigger social disaster.<sup>2</sup> Bad behavior towards the environment can lead to a natural disaster.<sup>3</sup> In order to ward off fears of social and natural disasters and to realize expectations for the sustainability of collective life in the long term, every individual in society is required to behave ethically according to the commonly held values and norms. These shared values and norms are known as the living law (the law that lives in society).

The living law is part of legal pluralism, in which the notion in legal thought and practice that more than one legal order exists, is jointly found and applied in the same society. Legal pluralism is a sign of the co-existence of more than one legal order in a social arena. The legal order defined within legal pluralism typically refers to state law and the (living) law of society which latter includes customary law, religious law, customs, or other social conventions that are seen as law.<sup>4</sup> The presence of state law does not necessarily shift the applicability of the living law.<sup>5</sup>

However, the study of contemporary legal pluralism shows a tendency that is not singular as mentioned above. Competition and adaptation between legal systems may occur. Our latest study on the existence of the living law in mangrove conservation in Majene Regency, West Sulawesi Province and Parigi Moutong Regency, Central Sulawesi Province, confirmed this.

In Parigi Moutong Regency, residents who destroy mangroves will be subject to customary sanctions to plant a number of new mangrove trees to replace damaged mangroves. If this customary sanction is not implemented, it will be reported to law enforcement officials for processing based on positive law. The application of customary sanctions precedes the enforcement of positive law.

In Majene Regency, in 2018, a village head was named a suspect for clearing mangroves for a crab cultivation project in his village. It can be seen that positive law enforcement precedes customary law which was commonly used in the past. The practice in Parigi Moutong Regency shows that there is an adaptation between two different legal systems. On the other hand, in the case in Majene Regency, it seems that one legal system (the living law) has lost its validity before state law.

Before Indonesia's independence, the people who inhabited the archipelago had their own living laws that [may or may not continue to] apply sociologically.<sup>6</sup> Theoretically

<sup>1</sup> Philip Selznick, Philippe Nonet, and Howard M Vollmer, *Law, Society, and Industrial Justice* (New York: Russel Sage Foundation, 1969), 3–8.

<sup>2</sup> Matthew S. Carroll et.al., "Community Wildfire Events as a Source of Social Conflict," *Rural Sociology* 71, no. 2 (2006): 261, <https://doi.org/10.1526/003601106777789701>.

<sup>3</sup> Triarko Nurlambang, "Analisis dan Evaluasi Hukum Terkait Kebencanaan," Laporan Kerja (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2019), 2–3, [https://www.bphn.go.id/data/documents/laporan\\_akhir\\_pokja\\_kebencanaan.pdf](https://www.bphn.go.id/data/documents/laporan_akhir_pokja_kebencanaan.pdf).

<sup>4</sup> Sulistyowati Irianto, "Sejarah dan Perkembangan Pemikiran Pluralisme Hukum dan Konsekuensi Metodologisnya," *Jurnal Hukum & Pembangunan* 33, no.4 (22 Juni 2017): 491, <https://doi.org/10.21143/jhp.vol33.no4.1425>.

<sup>5</sup> Syofyan Hadi, "Hukum Positif dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat)," *DiH Jurnal Ilmu Hukum* 13, no. 26 (2017): 264–65.

<sup>6</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010), 97.

living law fulfills the ideal requirements of a complete legal system, which test consists of substance, structure, and legal culture. As for state law as positive law, it must apply to a community, although in substance it may be more comprehensive and supported by a more sophisticated law enforcement structure but is often not compatible with the legal culture.

Since 2007, Indonesia has had a natural disaster management law enacted as part of its state law. However, objective facts show that since the enactment of the disaster management law, along with the regulations that become its derivatives, it has not been able to fully meet the empirical needs in dealing with various natural disasters that have occurred since the law was passed. Such observed needs include addressing overlapping authority between the central government and the local government entities, as well as difficulties in coordinating disaster management activities.<sup>7</sup> There are still deficiencies in the aspect of legal substance, in the form of contradicting norms with other laws and regulations, and weaknesses in the structural aspect, in the form of overlapping institutions in disaster management. Consequently, the law is not yet fully functional as a tool for social reconstruction and transformation.

Moreover, in the aspect of legal culture, natural disaster management laws that are national have not fully accommodated and adapted to the variety of local wisdom and potential that are unique in various regions in Indonesia.<sup>8</sup> This kind of situation is not specific to natural disaster management laws but is a general problem contained in various laws and regulations. In this line of thinking, the living law as an order of values and a set of norms that are immanent in every community must be seen as still relevant to answer legal problems in society that are missed and unreachable by national law with its characteristics that tend to be uniform.

The state's village law enacted in 2004 still tends to adopt the spirit of uniformity that was previously practiced during the New Order government. This trend of uniformity can be seen from the status of the village which has been reaffirmed as an inseparable part of the organizational structure of local government and village regulations are emphasized as part of the understanding of legislation so that the village becomes the lowest arm from the function of the official state government. In fact, villages and villagers need to be empowered and strengthened to become civil societies supported by systems and institutional structures that guarantee the autonomy of their societies to be creative and innovate.<sup>9</sup>

This study aims to rediscover the order of village-based values and behavioral guidelines that have existed and those that are still applied by the community in Majene Regency, West Sulawesi Province in responding to natural disaster events that have occurred in the region. Furthermore, the relevance/ opportunities and challenges to integrating the living law in national law and government policies will also be studied, particularly in disaster management. Because no matter how simple the legal system that applies in a community, the legal system is relatively more responsive and adaptive in responding to legal needs with a local (living law) dimension. The rediscovery of the living law is not intended to replace state law, but both must complement each other in achieving universal legal goals, namely justice,

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<sup>7</sup> Simon Butt, "Disaster Management Law in Indonesia: From Response to Preparedness?," in *Asia-Pacific Disaster Management*, ed. by Simon Butt, Hitoshi Nasu, and Luke Nottage (Berlin, Heidelberg: Springer Berlin Heidelberg, 2014), 184–85, [https://doi.org/10.1007/978-3-642-39768-4\\_9](https://doi.org/10.1007/978-3-642-39768-4_9).

<sup>8</sup> Idaman Alwi, Rizal Mustansyir, dan Protasius Hardono Hadi, "Natural Disasters Management in Indonesia: Perspective of Local Wisdom and Heidegger Hermeneutics," *Al-Albab* 6, no. 1 (1 Juni 2017): 79, <https://doi.org/10.24260/alalbab.v6i1.730>.

<sup>9</sup> Jimly Asshiddiqie, "Konstitusi Masyarakat Desa: Piagam Tanggung Jawab dan Hak Asasi Warga Desa," (Jakarta: 2014), 8.

certainty, and benefit.

## II. RESEARCH METHOD

This study employed empirical legal research methods that try to rediscover the living law legal order that once existed and was institutionalized in a community group. Primary data collection was carried out by observing at the research site and conducting in-depth interviews with parties who were considered to know the problems that became the substance of the research. To sharpen the analysis and give scientific weight to this study, the primary data obtained in the field was combined with secondary data obtained through document studies on the opinions of legal experts in various scientific journals as well as reviews of various relevant laws and regulations.

## III. COMMUNITY-BASED DISASTER MITIGATION AND LOCAL WISDOM AS THE LIVING LAW IN MAJENE REGENCY

Although Indonesia is a country with a high potential for natural disasters, people's attitudes towards natural disasters still tend to be reactive. The people of Majene Regency inhabit the coast of the western part of Sulawesi Island. Likewise, the public in this research site, including local governments, was reminded of the need to pay attention to natural disasters after the occurrence of two earthquakes in mid-January 2021.

First, the earthquake on January 14, 2021, with a magnitude of 5.9 M at 14.35 Central Indonesian Time Zone with the epicenter of the earthquake at coordinates 2.99 South Latitude and 118.89 East Longitude, 4 kilometers northwest of Majene with a depth of 10 kilometers. Second, the earthquake on January 15, 2015, with a magnitude of 6.2 M at coordinates 2.98 South Latitude and 118.94 East Longitude, located on land at a distance of 6 kilometers to the Northeast of Majene with a depth of 10 kilometers.<sup>10</sup> and <sup>11</sup> This natural disaster affected three regencies in West Sulawesi Province, namely Majene Regency, Mamuju Regency, and Mamasa Regency which resulted in deaths, injuries, damage to public facilities and residents' houses, landslides, and thousands of refugees.

The unpreparedness of the government and local governments in responding to the impact of the earthquake in Majene Regency, such as handling refugees, should not have happened if the existing disaster management laws were effective. The rules and mobilization of state apparatus should be operationalized and deployed based on the regulations regulated in the law on natural disaster management. In the sociological dimension, communities and individuals who experienced or were affected by natural disasters at that time did not yet have an adequate response to minimize the risks and factors of post-disaster social vulnerability. The unpreparedness of the government and local government at the state level and the unpreparedness of the community and individuals at the community level reflect the ineffectiveness of national law and the

<sup>10</sup> Dedy Hartono, Rio Khoirudin Apriyadi, and Tri Winugroho, "Analisis Sejarah, Dampak, dan Penanggulangan Bencana Gempa Bumi pada Saat Pandemi Covid-19 di Sulawesi Barat," *PendIPA Journal of Science Education*, 5, no. 2 (2021): 218–19, <https://doi.org/10.33369/pendipa.5.2.218-2>.

<sup>11</sup> Pepen Supendi et.al., "Foreshock–Mainshock–Aftershock Sequence Analysis of the 14 January 2021 (Mw 6.2) Mamuju–Majene (West Sulawesi, Indonesia) Earthquake," *Earth, Planets and Space* 73, no. 1 (Desember 2021): 1, <https://doi.org/10.1186/s40623-021-01436-x.no.1> (Desember 2021)

ineffectiveness of the living law which can be a guide in dealing with crises. The living law is related to the legal culture that is owned by each community and local wisdom as a way and practice developed by a group of people in interacting with various problems of life from generation to generation. The living law that is maintained as a legal awareness of the community is an important social capital for the existence of a community.

The earthquake, tsunami, and liquefaction events that occurred in Palu, Central Sulawesi Province, two years before the 2021 Majene earthquake, should have been an early warning that a similar disaster could occur in Majene Regency given its history and geology. The Majene earthquake in 2021 is not the first earthquake to have rocked the area on the West Coast of Sulawesi Island. On February 23, 1969, an earthquake with a magnitude of 6.9 on the Richter scale accompanied by a tsunami wave with a height of up to 10 meters occurred off the coast of Majene. This incident killed at least 63 people, 97 people were injured, and 1,287 houses were damaged.<sup>12</sup> The tsunami reached a height of 4 meters in Pelattoang, Tammerodo Subdistrict, Sendana, and 1.5 meters in Palipi and Parrassangan, Sendana Subdistrict.<sup>13</sup> The community was reminded of the potential for further disasters after the earthquake occurred again. Especially those who still have memories of the 1969 tsunami. In the local language, people know the tsunami as "*lombong tallu*." *Lombong* means waves and *tallu* means three. *Lombong tallu* means three waves or waves up to three times the height of normal waves. This is what triggers the evacuation to stay away from the coastline which is very close to community settlements along with Majene Regency.

The decision to stay away from the coast after the earthquake was the right response. The problem is that the unpreparedness of individuals and society to move suddenly at the same time can pose another danger. There are no evacuation routes and gathering points, either those determined by the government or those initiated and mutually agreed upon within the community. This situation is quite worrying because unprepared people can be trapped in places that endanger their safety. After all, landslides are also a potential disaster in the Majene Regency area.

Earthquakes' occurrences cannot be predicted. However, an area that has experienced these natural events is likely to experience them again in a certain time or cycle.<sup>14</sup> This is the importance of caring for the collective memory of a community. Thus, local wisdom as part of the living law in responding to natural disasters that have occurred will always be a guide in the future. Every human being has the instinct to survive. Therefore, instinctively, people who survive a catastrophic natural disaster will give birth to various creations and initiatives in anticipation of avoiding or reducing risk if (when) the event repeats itself.

Totolisi Sendana Village, Sendana Subdistrict, Majene Regency, as an area that experienced the 1969 tsunami, had previously developed community-based disaster mitigation norms. The natural disaster mitigation models included:

A. Opening an evacuation route from the village to a higher location and away from

<sup>12</sup> Ignatius Ryan Pranantyo et al., "Source Reconstruction of the 1969 Sulawesi, Indonesia Earthquake and Tsunami," *EGU General Assembly 2021* (3 Maret 2021), 1, <https://doi.org/10.5194/egusphere-egu21-4582>.

<sup>13</sup> Achmad Yasir Baeda and Nurhidayani Namiruddin, "Mitigation Schemes for Banggae Future Tsunami, West Sulawesi Province, Indonesia," *EPI International Journal of Engineering* 2, no. 2 (31 Agustus 2019): 97, <https://doi.org/10.25042/epi-ije.082019.02>.

<sup>14</sup> Sumanta Pasari et al., "Nowcasting Earthquakes in Sulawesi Island, Indonesia," *Geoscience Letters* (2021), <https://doi.org/10.21203/rs.3.rs-128975/v1>. we implement a new method of nowcasting (Rundle et al. 2016



the coastline. This evacuation route is designed in such a way as to minimize the risk of landslide threats when people seek safe places when a tsunami occurs.

- B. Determination of the refuge gathering point called *panyingkirang* (place to escape/refuge). The location is in the form of a field above the hills around which there are water points/shallow wells whose water can be consumed. This location has existed and was used by the community as a place of refuge during the upheaval in the region, before and after the independence of the Republic of Indonesia in 1945.
- C. In general, villagers who work as farmers have huts/garden houses that are used as a place to rest during the day after work and at night as a place to guard against wild boars that often enter the garden. This small hut/house can be used as a place of refuge at any time in case of an emergency. Not only during an earthquake, but when an outbreak of infectious disease occurs in the village, residents use the cottage/garden house as a place of isolation.
- D. Post-earthquake and tsunami in 1969, the pattern of settlements for residents has begun to be designed to stay away from the coastline and follow linear roads to gardens or evacuation routes.
- E. There is a prohibition on taking coral reefs to build construction as well as a prohibition on destroying coral reefs by using fish combs or using potash/fish poison.
- F. Maintenance of *parappe*, a type of mangrove plant that grows along the coast with the function of resisting abrasion. Although this type of plant can be used as fodder for goats, for its main function is to overcome abrasion, the local community takes good care of it.

The dynamics of community development and government policy interventions have caused the mitigation models described above to be no longer effective. Generations born since the 2000s, generally have no knowledge of the various initiatives that have been carried out by their ancestors as an effort to survive in the face of natural events. Neglect in maintaining and preserving traditions or best practices extracted from shared experiences in the past means lessons have not remained relevant to be applied when a similar event is repeated. Currently, the evacuation route that was built around the 1980s is no longer functioning. The evacuation route has been unilaterally converted by the community into a garden and the village government has no initiative to return it to its original function. The need for a new evacuation route was felt again in the 2021 earthquake when unprepared people sought options, running around ineffectively trying to stay away from the beach.

*Panyingkirang* as a refugee location that was previously in the form of a field has not changed its function into fenced community gardens. There was a shift from public space to private property. Although in the future it will be returned to its original function, the supporting infrastructure, namely the springs around the location are dry/not functioning. The large trees that once grew in the area have been cut down along with the introduction of the hybrid coconut planting program for the people around 1962 by the New Order government. The program turned out to be a failure but local coconuts and large trees that grow and function to maintain a stable water supply have already been cut down because the land is being used to plant hybrid coconuts by the government program. The number of cottages/gardens owned by the community is decreasing in number along with the increasing number of people who

change their livelihood from farmers to laborers or looking for work in other areas. The settlement pattern which began to adapt to the potential tsunami by building houses away from the shoreline was canceled again by the village government in the late 1980s. Residents' houses that have been built away from the beach were moved to follow the coastline linearly for reasons of settlement arrangement.

Although there is a ban on taking and destroying coral reefs that function to prevent coastal erosion, this prohibition has been violated over time. The concern of several community leaders to preserve coral reefs which are not accompanied by law enforcement policies from the government has made the ban even more ineffective. Finally, the coral reefs that function to ward off erosion begin to be destroyed or damaged by human activities that do not care about the environment.

The only heritage that is still sustainable nowadays is *parappe* which is currently planted together with mangroves at the initiative of the government and local non-governmental organizations that are concerned in the field of environmental conservation. Currently, along with Totolisi Sendana Village and other villages in Majene Regency, they are promoting mangrove planting which functions to prevent coastal erosion as one of the potential disasters in the Majene Regency. In 2018, one of the village heads in Sendana Subdistrict, Majene Regency was named a suspect in the criminal case of clearing a quarter hectare of mangrove forest in the village to be used as a location for crab cultivation.

The non-maintenance of disaster mitigation models that have been developed by the Totolisi Village community shows that the development of the legal system is a shared responsibility between individuals, communities, and the government. Humans (individuals) as legal subjects have a central role in legal development based on legal awareness. However, humans, apart from being individuals holding rights and obligations, are also social creatures who live and interact with other humans in a community. The government has a role to serve human interests, both as individuals and as members of society, as well as to regulate and maintain order in living together. Theoretically, there are at least three interrelated legal functions. First, the law functions as a curative dispute resolution instrument. Second, the law functions as a preventive controller of community behavior. Third, the law functions as a facilitative community engineer.<sup>15</sup> The ability of a community group over time to create disaster mitigation models is actually a manifestation of legal functions in carrying out social engineering. At this point, the law is no longer just an instrument of dispute resolution and a means of controlling behavior.

However, to ensure that what has been achieved by utilizing the law as a means of social engineering can be properly maintained, it must be followed by other legal functions, namely law as a behavior controller and law as an instrument of dispute resolution. The failure of the Totolisi Sendana Village community to preserve disaster mitigation models as an achievement in utilizing the legal function as a means of social engineering seems to have occurred because it was not followed by other legal functions.

The change in the function of evacuation routes and gathering points in community gardens confirms the failure to operationalize the legal function of behavior control. Destruction of coral reefs that function as a deterrent to erosion without taking action through positive legal instruments and social sanctions shows the barrenness of the law in its function as an instrument of dispute resolution that has curative power to

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<sup>15</sup> Anthony Allott, "The Effectiveness of Laws," *Valparaiso University Law Review* 15, no. 2 (1981): 234.



straighten out deviant behavior of individuals and society.

The Totolisi Sendana Village community had previously succeeded in producing disaster mitigation models as a social institution and aspect of culture. Currently, there has been degradation as described above, the cause is not because the social institutions are no longer relevant to the development of society. The problem is that natural disasters, such as earthquakes and tsunamis, are not events that can be predicted or repeated over a relatively short time. As a result, a generation that has never directly experienced a disaster event often ignores what the previous generation has experienced in responding to disasters and then tries to formulate a safety and resilience system against potential disasters in the future. Therefore, the state has the duty to accommodate the social institutions that have been formed sociologically into positive laws with juridical power.

One of the social institutions referred to is local wisdom in the preservation of mangrove ecosystems in Totolisi Sendana Village. A well-maintained mangrove ecosystem will be a safe and comfortable place to live for various types of birds, such as bats. In the past, the people of Totolisi Sendana used the behavior of various species of birds that live in the “*parappe*” (a type of mangrove) area as a guide for reading natural signs, such as seasons, waves, and others.

Currently, various positive legal instruments are available, such as the law on the environment and the law on the management of coastal areas, which can preserve the mangrove ecosystem in an area. It is at this point that the two legal systems intertwine. State law provides adequate instruments for the protection and preservation of mangroves. A well-maintained mangrove ecosystem allows the community to maintain the traditions of daily life struggles as coastal communities. The existence of mangroves can also be a natural antidote to ocean waves when a tsunami occurs.

#### IV. INTEGRATION OF THE LIVING LAW AND STATE LAW IN DISASTER MITIGATION

Natural disasters cause damages and losses across all aspects of human life, inflicting physical, psychological, economic, and cultural impacts. Physical impacts are in the form of death and injury, as well as environmental damage and destruction of buildings and infrastructure. Psychological impacts are in the form of trauma, which is suffered by many survivors.<sup>16</sup> This situation can be exacerbated by the quality of the government's response to mitigation, both during the emergency response, post-emergency response, as well as in the rehabilitation and reconstruction phase. Good and bad actions/services provided by the government and local governments to disaster survivors are closely related to the availability of law/regulation (legal substance), availability of institutions/apparatus (legal structure), and awareness (legal culture).

However, positive/written law will always be left behind by the dynamic development of society.<sup>17</sup> and <sup>18</sup> Therefore, one way to overcome this is to use the living law to fill the

<sup>16</sup> Natalia Yeti Puspita, “Legal Analysis Of Human Rights Protection In Times Of Natural Disaster And Its Implementation In Indonesia,” in *Asian Law Institute*, vol. ASLI Working Paper 013 (Singapore: National University of Singapore, 2010), 4.

<sup>17</sup> Karl Llewellyn, “Some Realism about Realism: Responding to Dean Pound,” *Harvard Law Review* 44, no. 8 (1931), <https://www.degruyter.com/document/doi/10.1515/9780691186429-007/html>.

<sup>18</sup> Shidarta Shidarta, *Penerapan Hukum Progresif di Tengah Perubahan Masyarakat* (Jakarta: Komisi Yudisial Republik Indonesia, 2019), 180.

space for the legal needs of the community that develops from time to time. The living law which contains local wisdom has a function in a broad dimension.<sup>19</sup> Its existence is needed not only to prevent chaos and overcome conflicts that occur in society but can be realized into an established pattern of human behavior in responding to and solving various problems of life together. One of them is to institutionalize the living law as a community-based natural disaster mitigation model and the local potential possessed by a community.

The living law has a strong sociological basis because it was born from and shaped by the community itself. The living law also has a solid philosophical basis because it is an ethical reflection of the idealized values of a community. The living law will always exist or at least can be rediscovered from the existing social system. The presence of national law as positive law cannot completely shift left let alone negate the existence of the living law. Even positive law that fails to transform the values contained in the living law will slowly lose its sociological legitimacy. This is because a law exists, develops, weakens, or strengthens according to the conditions of society.

On the other hand, every effort to strengthen or rediscover the living law in every community group is not intended to degrade the validity of positive law. The two schools of law must be brought together to create legal effectiveness. The weak characteristics of positive law in the aspect of social legitimacy can be covered by the power of legitimacy contained in the living law. Meanwhile, the weakness of the living law on juridical legality can be supported by positive law. Positive law is strong in legal substance and structure, while the living law is in harmony with legal culture. The synergy of the two will realize legal objectives which include justice, certainty, and proportional benefit. In the context of natural disaster management, the concept of a combination of these two legal schools is highly relevant and applicable. Thus, the existing disaster management law, with all its shortcomings, arguably does not need to be updated with the new law. The existing weaknesses may be sufficiently addressed through integration with the living law in each community.

This kind of concept enables a legal system to be more established as well as flexible in responding to contemporary locally diverse legal needs. It is more stable because not all problems that arise from the lack of a statutory regulation must be answered by revising or replacing new laws and regulations that require a fairly complicated political process. It stays flexible because the void of positive legal rules can be filled by the implementation of the existing living law or can be found in every society.

Currently, the legal policy framework for disaster management in Indonesia refers to several applicable laws and regulations:<sup>20</sup>

- A. Law Number 3 of 2002 concerning National Defense which describes the role of the Indonesian National Armed Forces in military operations other than war and Law Number 34 of 2004 concerning the National Army which also regulates the main task of the Indonesian National Armed Forces in military operations other than war, including supporting response disasters through the facilitation of humanitarian aid, and refugee management.
- B. Law Number 24 of 2007 concerning Disaster Management. This law is a guideline for the main legal document for disaster management strategies in Indonesia.

<sup>19</sup> Roscoe Pound dan Marshall L. DeRosa, *An Introduction to the Philosophy of Law* (New York: Routledge, 2017), <https://doi.org/10.4324/9781351288880>.

<sup>20</sup> CFE-DM, "Indonesia Disaster Management Referensi Handbook" (Hawaii, USA: United States (U.S.) Department of Defense (DOD), Juni 2018), 30, <https://reliefweb.int/report/indonesia/indonesia-disaster-management-reference-handbook-june-2018>.

- C. Government Regulation Number 21 of 2008 concerning the Implementation of the Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management.
- D. Strategic Policy for Disaster Management (2015-2019). This policy focuses on natural disaster mitigation, with one of the seven focus areas being natural disaster management. The three strategic objectives are disaster risk reduction, disaster vulnerability reduction, and disaster management capacity building.
- E. National Disaster Management Plan (2010-2014). This document outlines the key priorities and activities of disaster management planning, including guidelines for developing plans for government agencies and ministers.
- F. Decree of the Minister of Home Affairs of the Republic of Indonesia No. 131 of 2003 concerning Guidelines for Disaster Management and Handling of Refugees in the Regions.
- G. Presidential Regulation Number 17 of 2018 concerning The Implementation of Disaster Management in Particular Circumstances;
- H. National Disaster Management Plan 2020 -2024.

In terms of legal substance, Indonesia already has legal rules and various implementing regulations related to natural disaster management. Likewise, from the aspect of the legal structure, various institutions have been established that have duties and functions related to natural disaster management, such as National Agency for Disaster Management (BNPB) and Regional Agency for Disaster Management (BPBD). The existence of those agencies is also supported by other institutions/agencies that have functions related to disaster management or at least can function when a disaster occurs, such as the Ministry of Social Affairs, National Search and Rescue Agency, Indonesian national Armed Forces, Indonesian National Police, Indonesian Red Cross Society, and Non-Governmental Organization.

Although the available legal framework is adequate with the support of various state institutions as implementers, the handling of natural disasters in Indonesia is deemed to still face several obstacles. Starting from the need for synchronization of rules and distribution of authority, limited resources, and technical capabilities, to the low participation of the community and law enforcement related to disaster prevention which has not been effective.<sup>21</sup> These things are classic issues that commonly occur in positive law.

The central government and local governments are responsible for implementing disaster management as regulated in Article 6 and Article 8 of Law Number 24 of

<sup>21</sup> Shanti Dwi Kartika, "Politik Hukum Penanggulangan Bencana," *Kajian* 20, no. 4 (2015): 330, <http://dx.doi.org/10.22212/kajian.v20i4.633>. welfare, and state politics, so that people urge the government to pay better attention to disaster management by providing adequate legal instruments. This situation has further led to the making of Law No. 24/2007 on Disaster Management. Nevertheless, there several problems remain regarding basic legal politics of the Law No. 24/2007 and substance of the legal politics in disaster management. Both kinds of the problems should be, according the writer, properly addressed by using legal approaches. This essay argues that legal politics of natural disaster handling is the construction law and the legal establishment on disaster management. In substance, this legal politics provide a paradigm shift in disaster management. There are also problems regarding contradiction among related existing laws, authority, and institutions in disaster management. Therefore, it is necessary to review the legal policy of disaster management and revision of the Law No. 24/2007." container-title: "Kajian", DOI: "http://dx.doi.org/10.22212/kajian.v20i4.633", ISSN: "http://u.lipi.go.id/1516002307", issue: "4", page: "329-342", title: "Politik Hukum Penanggulangan Bencana", volume: "20", author: [{"family": "Kartika", given: "Shanti Dwi"}], issued: {"date-parts": [{"2015"}]}, locator: "330", schema: "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"

2007. The core of these responsibilities is related to the protection and fulfillment of the rights of people affected by disasters through disaster management and allocation of state/regional budgets. However, the law does not explicitly regulate the obligation to allocate the budget, so many government regions do not feel obliged to allocate a budget for disaster management preparedness in their regions. As a further consequence, disaster management does not run at all levels of government in an appropriate, effective, and efficient manner coordinated.<sup>22</sup>

The aspects of coordination and command in various conditions according to the stages of disaster management and institutional aspects of disaster management between the central government and local governments have not run optimally.<sup>23</sup> In fact, to carry out responsibilities in disaster management, both the central government and local governments have been given the authority as stipulated in Article 7 and Article 9 of Law Number 24 of 2007. The authority of the central government and local governments is adjusted to the scope of affairs based on the level of government.

The following is the division of responsibilities and authorities of the central government and local governments as regulated in Articles 6 to 9 of Law Number 24 of 2007:

Government Level	Responsibilities	Authorities
Central Government	<ul style="list-style-type: none"> <li>a. disaster risk reduction and integration of disaster risk reduction with development programs;</li> <li>b. protection of the community from the impact of disasters;</li> <li>c. guaranteeing the fulfillment of the rights of communities and refugees affected by disasters fairly and following minimum service standards;</li> <li>d. recovery of conditions from the impact of disasters;</li> <li>e. adequate allocation of the disaster management budget in the State Revenue and Expenditure Budget;</li> <li>f. budget allocation for disaster management in the form of ready-to-use funds; and</li> <li>g. maintenance of authentic and credible archives/documents from the threat and impact of disasters.</li> </ul>	<ul style="list-style-type: none"> <li>a. determination of disaster management policies in line with national development policies;</li> <li>b. making development plans that include elements of disaster management policies;</li> <li>c. determination of the status and level of national and regional disasters;</li> <li>d. determining the policy of cooperation in disaster management with other countries, agencies, or other international parties;</li> <li>e. formulation of policies regarding the use of technology that has the potential as a source of threat or disaster hazard;</li> <li>f. the formulation of policies to prevent the control and exploitation of natural resources that exceed the ability of nature to carry out restoration; and</li> <li>g. controlling the collection and distribution of money or goods on a national scale.</li> </ul>

<sup>22</sup> DPR RI, "Naskah Akademik Rancangan Undang-Undang Penanggulangan Bencana" (DPR RI, 2019), 19, <https://www.dpr.go.id/dokakd/dokumen/RJ1-20191017-032742-1149.pdf>.

<sup>23</sup> DPR RI, 27.

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Local Government	<ul style="list-style-type: none"> <li>a. guaranteeing the fulfillment of the rights of communities and refugees affected by disasters following minimum service standards;</li> <li>b. protection of the community from the impact of disasters;</li> <li>c. disaster risk reduction and integration of disaster risk reduction with development programs; and</li> <li>d. adequate allocation of disaster management funds in the Regional Revenue and Expenditure Budget.</li> </ul>	<ul style="list-style-type: none"> <li>a. stipulation of disaster management policies in the region in line with regional development policies;</li> <li>b. making development plans that include elements of disaster management policies;</li> <li>c. implementation of cooperation policies in disaster management with other provinces and/or districts/cities;</li> <li>d. regulation of the use of technology that has the potential as a source of threat or disaster hazard in its territory;</li> <li>e. formulating policies to prevent the control and depletion of natural resources that exceed the natural capacity of the territory; and</li> <li>f. controlling the collection and distribution of money or goods on a provincial, regency/municipal scale.</li> </ul>
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During approximately a decade of implementation of Law Number 24 of 2007 and its derivative regulation, there are still many problems in the field related to disaster management, including the lack of coordination, miscommunication, sectoral and fragmented handling, and the views of disaster management actors. which is still oriented towards emergency response efforts and the provision of physical assistance. These things have become a concern in the academic text of the amendment to Law Number 24 of 2007.<sup>24</sup>

However, one thing that has escaped attention is the importance of explicitly listing local wisdom in natural disaster mitigation. Because according to Abdullah,<sup>25</sup> every phenomenon of natural disaster can be known through the structure of human understanding and experience in the disaster area. Since a long time ago, the local communities in Indonesia had a profound knowledge of the symptoms associated with natural disasters that will happen. This knowledge, which is inherited from generation to generation, also developed throughout the experience of dealing with natural disasters.

The tradition of building garden huts within farming communities in Majene Regency and specifically the determination of evacuation locations in Totolisi Sendana Village is a real form of community participation in disaster mitigation. The garden hut can be a place of refuge when a natural disaster occurs such as a tsunami or function as a place of self-isolation during the COVID-19 pandemic as it is now. It turns out that the community’s tradition has developed a model of participation that positive law cannot grow. However, to ensure the preservation of this kind of tradition as the living law which is always maintained, positive legal support is needed.

Government institutions need law as a basis for action, but too many legal bases can bind the flexibility of government action. Whereas in disaster management, there

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<sup>24</sup> DPR RI, 8.

<sup>25</sup> Irwan Abdullah, *Konstruksi dan Reproduksi Sosial Atas Bencana Alam* (Yogyakarta: Sekolah Pascasarjana UGM, 2008), 2.

is always an element of emergency that requires flexibility of legal norms. This factor causes the occurrence of asynchronous rules and overlapping authority arrangements in disaster management legal policies in Indonesia. On the other hand, the living law has a simpler legal substance with a very functional implementing structure. The disaster mitigation models that have been practiced by the Totolisi Sendana Village community show this functional simplicity can be effective and sustainable with the right supportive legal culture.

## V. CONCLUSION

Every human being has the instinct to survive. Thus, instinctively, people who survive a catastrophic natural disaster will give birth to various creations and initiatives in anticipation of avoiding or reducing the risk if (when) the event repeats itself. The people of Totolisi Sendana Village, Majene Regency have developed mitigation models in response to natural disaster events that have occurred. However, the next generation did not inherit the local wisdom in its entirety. Thus, it was the duty of the state to stipulate the social institutions that had been formed sociologically into positive laws with juridical power.

Returning to the living law, it does not pretend to degrade the validity of state law as a legal policy framework for disaster management established by the state, but the living law can function to address the local shortcomings contained in state law. Notably, the living law can only exist in a society in an area if it is given a living space and is enforced by state law. Consequently, the integration of these two schools of law will complement and strengthen each other in the context of achieving disaster management-related legal objectives.



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