



International Disaster Response Law (IDRL) in Indonesia

An analysis of the impact and implementation of Indonesia's legal framework for international disaster assistance

Prepared by



International Federation
of Red Cross and Red Crescent Societies



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About this report

This report was commissioned by the International Federation of Red Cross and Red Crescent Societies (IFRC) and Palang Merah Indonesia (PMI), with support from Australian Red Cross and the Government of Australia. It assesses the impact and implementation of Indonesia's domestic legal framework relating to international disaster assistance, and is the first 'impact' report to be produced by the IFRC's Disaster Law Programme.

About the Disaster Law Programme

The Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. The Disaster Law Programme works in three key areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders in disaster law; and (3) dissemination, advocacy and research.

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Cover photo: PMI volunteers loading relief supplies into trucks from the PMI warehouse in Padang town. On 1 October 2009, the West coast of the Indonesian island of Sumatra was left reeling from 2 consecutive earthquakes that struck over a 48-hour period. IFRC, 9 October 2009.

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Acronyms and abbreviations

APBD	Regional House of Representatives budget
APBN	National House of Representatives budget
Badan POM	National Food and Drug Agency (Badan Pengawas Obat dan Makanan)
BNPB	National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana)
BPBD	Regional Disaster Management Agency (Badan Penanggulangan Bencana Daerah)
DRR	Disaster Risk Reduction
EOC	Emergency Operations Centre
IDRL	International Disaster Response Law, Rules and Principles
INGO	International Non-Governmental Organization
Menko Kesra	Coordinating Minister for Social Welfare
MFA	Ministry of Foreign Affairs
MOD	Ministry of Defence
MOF	Ministry of Finance
NGO	Non-Governmental Organization
NRF	National Response Framework
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PMI	Palang Merah Indonesia (Indonesia Red Cross)
POLRI	Indonesian National Police (Kepolisian Negara Republik Indonesia)
SAR	Search and Rescue
TNI	National Armed Forces (Tentara Nasional Indonesia)
UN	United Nations
WFP	United Nations World Food Programme
WHO	World Health Organization

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Executive Summary

Like the Krakatau Island volcanic eruption in May 1883, which caused immense waves to crash onto the shores of South Sumatra and West Java killing anyone in their path, the tsunami that ripped through Aceh on 26th December 2004 will be remembered for many years to come. What is less well known about the tsunami is how the monumental relief effort that followed revealed significant challenges for Indonesia's legal and institutional regime for disaster response, and precipitated the enactment of a new law in 2007 to regulate disaster relief and govern the entire disaster management system, from preparedness to response and recovery. As a result, Indonesia is now at the forefront of disaster-prone countries that have developed, and are continuing to develop, comprehensive legal regimes to support the entire disaster management spectrum.

This report reviews the key chapters of Indonesia's disaster management law of 2007 and its ancillary regulations relating to international assistance, discussing the new agencies that it established and the legal framework which spans from pre-disaster, to emergency response, to post-disaster management. More specifically, it focuses on the provisions contained in the legal framework regarding emergency response and, in particular, the regulation and participation of foreign countries, international institutions and foreign non-governmental organizations (NGOs) in disaster relief. A comprehensive set of rules now administers the major stages of emergency response, including needs assessments, institutional roles and responsibilities, registration and approval of international participation, initiation and termination of international assistance, 'easy access' legal facilities for the entry of personnel, logistics and equipment, as well as management of funding and donations.

This report also examines the legal framework in Indonesia in light of the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (also known as the 'IDRL Guidelines'). The IDRL Guidelines were developed by IFRC to establish a core set of principles and standards for facilitating international assistance. To illustrate the impact and implementation of the legal framework, observations from two recent case studies have been included: the West Sumatra earthquake in 2009 and the Yogyakarta (Mount Merapi) volcanic eruption in 2010. The analysis in this report highlights how the current legal framework in Indonesia has come a long way since the tsunami struck in 2004, and is now widely comprehensive in its scope. To ensure clarity on emergency response procedures and practices, this report finds that some aspects of the law and its regulations could be harmonized, and the role of and process for international participation and assistance could be further developed or expanded within the law itself.

The findings of the report highlight both the strengths and challenges that have emerged regarding the implementation of the legal framework during recent disaster response operations in Indonesia. They suggest that, in the case of some small scale disasters such as the Yogyakarta volcanic eruption in 2010, national and local capacity is building in such a way that international assistance is not always required. These

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developments fall in line with other objectives of Indonesia's disaster management framework, such as improving national capacity and encouraging local purchasing and hiring. The report suggests areas for improvement and general steps that can be taken to ensure that the framework is implemented effectively in the future, to meet the needs of disaster-affected populations.

There is no doubt that disaster response is an intense activity that requires speedy decision-making; while ensuring adequate understanding and implementation of a new law can be a complex process that needs sufficient time and dedicated attention. The reality is such that it can be difficult to fully test the provisions of the law relating to international assistance without the occurrence of a large-scale disaster that requires a commensurate international response. Based on the research and consultations that were undertaken for this report, a number of observations and recommendations are made to improve the overall impact and implementation of the legal framework and then reconsider the framework's existing content and provisions. It is hoped that these recommendations will be considered in any review of the legal framework for disaster management and response in Indonesia, or in any future exercises aimed to strengthen the execution of emergency response and early recovery operations.

The recommendations¹ refer specifically to:

- **Improving understanding and awareness of the legal framework:** The most significant point that has emerged from the two case studies and associated consultations undertaken for this report was the incomplete application of the legal framework, and linking the procedures that took place with the provisions stipulated in the law. In this respect, Indonesia could benefit from initiatives to promote a wider understanding of the law, regulations and guideline, and the roles, responsibilities and processes therein. This dissemination process is an important undertaking which should ensure that all actors involved, both national and international, have a comprehensive understanding of the procedures that should be carried out in a disaster response situation. Furthermore, it is essential for the actors involved to know which authorities have decision-making responsibilities, and how to carry out the necessary procedures to ensure that international assistance is provided quickly and effectively.
- **Eligibility and enforcement:** While the legal framework for disaster response in Indonesia incorporates the core humanitarian principles and responsibilities outlined in the IDRL Guidelines, there is no clear enforcement mechanism to ensure that these principles and responsibilities are upheld. The procedures that are in place to approve the participation of international assisting actors could be further developed to incorporate a set of requirements to make these actors eligible for participation, and to link their adherence to humanitarian principles with eligibility for legal facilities.

¹ A table of potential 'action points' to implement these recommendations is provided in Annex B of this report.

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- **Initiation and termination of assistance:** The processes required to initiate international assistance (e.g. damage and needs assessment, determination of the scale of disaster, declaration of emergency status etc.) are somewhat scattered throughout the law and regulations. These could be better consolidated and the processes made more consistent across the legal framework, or consolidated in one part of the law. Moreover, international institutions should be consulted before their operations are terminated, so that they are aware of the termination date and can plan their relief programmes and allocate funding appropriately and in accordance with the determined timeframe.
- **Legal facilities for entry and operations:** While the legal framework provides for many of the legal facilities contained in the IDRL Guidelines, there are still some omissions, as stipulated in chapter three of this report. The legal framework could benefit from a reflection on the current scope of its 'easy access' provisions and the period for which these apply, integrating all legal facilities as contained in the IDRL Guidelines.

At the time this report was finalized, plans were underway to review the legal framework for disaster management in Indonesia and develop a National Response Framework (NRF), in line with provisions of the legal framework that call for the development of 'national emergency management plans' or 'national response plans'. In addition to these developments, and given the significant improvements that have already been made to the legal framework in Indonesia after the 2004 tsunami, focusing on improved implementation and awareness of the existing framework will be critical. This is particularly pertinent for improving disaster management and response in the short-term, as the revision or creation of new laws and regulations is often a long-term process.

To enhance future implementation, small measures could be taken, such as preparing a clear summary of the law relating to emergency response and highlighting its legal interpretations, preparing simple tools for agencies/ministries to use during a disaster, such as a checklist for a quick and appropriate assessment and determination of disaster emergency status. Undertaking measures such as these can help to ensure a stronger understanding and implementation of what is already one of the most comprehensive legal frameworks for disaster management and response in South East Asia, and the world.

Introduction

The tsunami that struck the northern coast of Nanggroe Aceh Darussalam (Aceh) Province in Indonesia in late December 2004 caused tremendous loss of life and livelihoods, and enormous destruction of infrastructure and property. The massive local and international relief and recovery effort that ensued in the wake of the disaster exposed major legal gaps and institutional weaknesses in Indonesia's legal framework for disaster response. This tragic event, and the subsequent handling of the response, was a catalyst for the Indonesian government to rethink its approach to managing the range of disasters that afflict its islands on an almost weekly basis.

The International Federation of Red Cross and Red Crescent Societies (IFRC) conducted a series of studies in 2004 and 2006 to identify the various legal issues which had impacted international relief operations and to examine the development of relevant laws and policies in Indonesia both prior to and following the tsunami.² These studies highlight the complexities of getting relief across borders in the shortest time with maximum efficiency. Indonesia Red Cross (Palang Merah Indonesia or 'PMI') and IFRC worked together over the ensuing years to raise awareness around the importance of comprehensively addressing the facilitation and regulation of international assistance within the legal framework, and provided advice and support to the Indonesian government through various consultations and workshops.

In 2007 the government enacted a new Law ("Undang-Undang" or "UU") on disaster management, which heralded a shift in the overall disaster management paradigm from responding to disasters to managing all phases of the disaster management spectrum; i.e. before, during and after they strike. In the same year, the 30th International Conference of the Red Cross and Red Crescent adopted the '*Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*' (also referred to as the 'IDRL Guidelines'), to provide guidance to national governments on strengthening their legal frameworks for international participation in disaster response. The IDRL Guidelines provide a set of recommendations to help states avoid common legal and regulatory barriers often experienced in disaster response operations, many of which emerged during the response to the 2004 tsunami.

In 2008, three new government regulations ("Peraturan Pemerintah" or "PP") were developed in order to implement the new law, with aspects of the new regulations drawing upon the IDRL Guidelines. These regulations addressed the implementation of disaster management more broadly (Regulation 21/2008), the administration of disaster aid financing (Regulation 22/2008), and the participation of international institutions and foreign non-governmental organizations in disaster management (Regulation 23/2008). The law also established a new National Agency for Disaster Management ("Badan Nasional Penanggulangan Bencana" or "BNPB") to manage these new areas.

² These studies are available online at the IFRC Disaster Law Programme website at <http://www.ifrc.org/en/what-we-do/disaster-law/research-tools-and-publications/disaster-law-publications/> (last accessed on 28/05/2014).

Introduction

In 2009, PMI, BNPB, IFRC and the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), facilitated a workshop to discuss the implementation of Regulation No. 23/2008 and the extent to which it incorporates the IDRL Guidelines. The outcome of this workshop highlighted the need to develop a specific guideline on international assistance, as a means to help integrate and encourage implementation of the new and existing regulations. It was noted that the new guideline needed to provide detailed guidance on a range of issues including entry points, types of assistance, clearance procedures for personnel and goods and equipment, relief distribution, security monitoring and evaluation.

As a result of these discussions, BNPB released their own regulation or 'guideline' as it is referred to ("Peraturan Kepala BNPB" or "Perka") in 2010, on "The Role of the International Organizations and Foreign Non-government Organizations during Emergency Response" (Guideline No. 22/2010). This instrument became the key guideline for stakeholders on the management of international assistance during emergency response as required by articles 7 and 30 of the Law 24/2007. Following the adoption of the new law, regulations and BNPB guideline, Indonesia became one of the leading countries in the world that has undertaken significant legislative reform to implement the recommendations contained in the IDRL Guidelines.

This report examines the implementation of Indonesia's disaster management law since its adoption in 2007, as well as the accompanying regulations and guideline, with a specific emphasis on their impact on international participation in disaster response. It describes Indonesia's new disaster management system, concentrating on the legal framework for facilitating and regulating international assistance in disaster response, and considers the extent to which the IDRL Guidelines were incorporated into this legal framework. The impact of this framework on international participation is examined in relation to two recent disasters: the Padang earthquake in West Sumatera Province in 2009, and the Mount Merapi eruption, between Yogyakarta Special Region and Central Java Province, in 2010. In this regard, it seeks to identify challenges and best practices in the framework's implementation, and provides suggestions on how to move forward and improve the implementation, awareness and understanding of the legal framework for disaster management and response in Indonesia, reflecting on the IDRL Guidelines' core contents and the experiences of both disasters.

The legal reviews and analysis in the first three chapters of the report rely heavily on desk research. The content of the two case studies in the fourth chapter on legal implementation and impact draw strongly from semi-structured interviews with key stakeholders in Jakarta and elsewhere in Indonesia, conducted in August and September 2012. The findings of this report have been further supplemented during informal discussions and interviews at various disaster relief exercises in Indonesia, and feedback has been incorporated from a consultation workshop on the draft report held in Jakarta in 2013, in collaboration with PMI and BNPB.³

³ A full report of the 2013 IDRL consultation workshop is available online at <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf> (last accessed on 28/05/2014).

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Chapter 1

The 2004 Aceh tsunami's impact on disaster management

The 2004 Aceh tsunami's impact on disaster management

When the tsunami struck Aceh on 26 December 2004, Indonesia did not have a comprehensive national disaster management law in place, nor did it have a statutorily entrenched national disaster management agency.⁴ During the Suharto and Habibie administrations, Presidential Decrees from 1979 were utilized to establish and regulate the National Disaster Management Coordinating Board (BAKORNAS) and its provincial and district units.⁵ BAKORNAS was an inter-ministerial body that was responsible for coordinating the disaster responses of government agencies and international organizations. Its secretariat consisted of staff that were seconded from other government departments, thereby emphasizing the somewhat temporary nature of its existence (i.e. only during times of emergency response).

On the day of the 2004 tsunami, the Indonesian President, Susilo Bambang Yudhoyono, declared a national disaster and put BAKORNAS in charge of coordinating the response under the leadership of a senior military officer (situated in the Office of the Vice President) and the direction of the Vice President. At the provincial level, BAKORNAS' regional counterpart, SATKORLAK, supervised the response, while at the district level, its counterpart, SATLAK, distributed relief at the district and sub-district level. Two days later, in the absence of any law and regulation stipulating the rules for initiating and terminating international assistance, the President declared that the province was open to receiving assistance from international institutions to provide emergency relief. Within a week there were more than 50 international institutions in Aceh and some four years later, by mid-January 2008, there were over 200 international institutions still undertaking recovery and relief efforts on the ground.

The scale of the tsunami's destruction, and the flood of international assistance that arrived in its wake, overwhelmed Indonesian authorities and revealed significant gaps in the legal regime and institutional architecture relating to disaster management that existed at the time.⁶ More specifically, the Indonesian government and international institutions operating there encountered major challenges regarding the facilitation and regulation of emergency relief, including issues relating to the entry of personnel and goods, coordination and quality control. For example:

- Consignments were detained because of improper or inadequate documents, or clearance was delayed without explanation.
- Complex and sometimes contradictory practices existed regarding vehicle importation, registration and insurance.

⁴ This section is drawn from International Federation of Red Cross and Red Crescent Societies, Legal issues from the international response to the tsunami in Indonesia: An international disaster response laws, rules and principles (IDRL) programme case study, July 2006, and Barnaby Willitts-King, The role of the affected state in humanitarian action: A case study on Indonesia, Overseas Development Institute, February 2009.

⁵ See Presidential Decree 28/1979; Presidential Decree 43/1990; and Presidential Decrees 3/2001 and 111/2001.

⁶ In April 2005, after the emergency response stage, the Indonesian government established the Board in Charge of Rehabilitation and Reconstruction of the Region and Life in Nanggroe Aceh Darussalam Province and Nias Islands in North Sumatera Province (BRR). BRR was tasked with coordinating and facilitating the reconstruction effort, particularly in immigration, customs, employment and taxation. While it was an independent body that reported to the President, BRR was not authorized to make decisions independently of ministries responsible for administering its tasks. Reactions to the establishment of BRR were mixed: some welcomed its attempts to coordinate and facilitate and thought that they were successful; others criticized its reactive approach and its failure to diminish the confusion of so many stakeholders.

The 2004 Aceh tsunami's impact on disaster management

- Large and earmarked donations undermined the United Nations' attempts to coordinate international institutions. This lack of coordination encouraged competitive rather than cooperative planning.
- Some international institutions, particularly those new to disaster response, sent expired medicines, disrespected local culture and religion, and ignored the economic impacts of their work on local economies, etc.⁷

Like many countries in the region, Indonesia's approach to disaster management has focused historically on disaster response. However due to the exposure of legal gaps and institutional weaknesses after the tsunami,⁸ and the impact of this on the relief effort, the Indonesian government changed its approach and acknowledged the need for a broader concept of disaster management.

Important new insights and perceptions can be identified underlying this change in approach: first, that disaster management needs to be a comprehensive form of risk management and, in particular, it needs to focus on prevention where possible. Second, that the government has a duty to protect, respect and fulfil human rights in disaster areas and; third, that society also has a responsibility for disaster management, not just the government.⁹ This shift in thinking culminated in the enactment of Law Number 24 of 2007 on Disaster Management (Law 24/2007), the creation of the National Disaster Management Agency (BNPB) in 2008 by President Yudhoyono, and the issuance of a new National Disaster Management Plan by BNPB covering the period of 2010-14. Furthermore, the adoption of Regulations 21, 22 and 23 of 2008, and Guideline 22 of 2010 saw Indonesia become one the first countries worldwide to adopt a new legal framework with elements relating specifically to the role of international assisting actors in disaster management and response.

⁷ International Federation of Red Cross and Red Crescent Societies, Legal issues from the international response to the tsunami in Indonesia: An international disaster response laws, rules and principles (IDRL) programme case study, July 2006, pp12-34.

⁸ International Federation of Red Cross and Red Crescent Societies, Legal issues from the international response to the tsunami in Indonesia: An international disaster response laws, rules and principles (IDRL) programme case study, July 2006, p40. The legal gaps and weaknesses identified here include a lack of regulation for quality and coordination and against exploitation; challenges relating to the imposition of taxes and duties, procedures for customs clearance, and issuance of visas and permits; and the determination of issues on a case-by-case basis.

⁹ Barnaby Willitts-King, The role of the affected state in humanitarian action: A case study on Indonesia, Overseas Development Institute, February 2009.

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Chapter 2

National framework for disaster management and response

National framework for disaster management and response

The “**Law of the Republic of Indonesia, Number 24 of 2007 Concerning Disaster Management**” (**Law 24/2007**) forms the foundation of the legal framework for disaster management in Indonesia. It contains a comprehensive set of provisions delegating national and regional government responsibilities, outlining community rights and obligations, the roles of businesses and international institutions, the different disaster management stages and their requirements, as well as disaster aid finance and management.

According to Law 24/2007, a disaster is defined quite widely to incorporate natural, ‘non-natural’ and ‘social’ disasters. This reflects Indonesia’s propensity to be subject to many types of natural disasters, as well as the potential for non-natural disasters and the possibility of social tensions.¹⁰ Furthermore, it defines ‘disaster management’ broadly as “a series of efforts encompassing policies on development with disaster risk, disaster prevention, emergency response, and rehabilitation”.

The law is supported by various regulations and guidelines pertaining to different phases of the disaster management cycle. Of particular relevance for this study are the following regulations and guideline which, in addition to Law 24/2007, will be considered in terms of their impact and implementation, and will be further described in the proceeding pages:

- **Regulation Number 21 (2008) Concerning Disaster Management:** A presidential regulation which refers to disaster management and the associated activities in a broad sense, but also refers to international assistance provided by states, international institutions and foreign non-governmental organizations;
- **Regulation Number 23 (2008) on the Participation of International Institutions and Foreign Non-Governmental Institutions in Disaster Management:** A presidential regulation which specifically outlines the role of international actors (namely international institutions and foreign NGOs, as the title states) in disaster management and response;
- **Guideline Number 22 (2010) on the Role of International Organizations and Foreign Non-Governmental Organizations during Emergency Response:** A Guideline developed by the National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana or ‘BNPB’) which goes into further detail about the role of international assisting actors, namely international organizations and foreign NGOs, in disaster response.

When it comes to roles and responsibilities, Law 24/2007 clearly stipulates that the national government (hereinafter referred to as the ‘government’) and regional governments are responsible for disaster management.¹¹ It requires the government to establish a National Disaster Management Agency,¹² which it did through Presidential Regulation Number 8 of 2008 on National Disaster Management Agency (Regulation 8/2008) which established the BNPB, a non-departmental government institution on a level equal to that of national ministries. BNPB’s key tasks include to provide guidelines and directions on disaster management and emergency response, to report to the

¹⁰ Article 1, Law 24/2007. Article 1 of Regulation 21/2008 expands this definition: “an event or a series of events threatening and disturbing the community life and livelihood, caused by natural and/or non-natural as well as human factors resulting in human fatalities, environmental damage, loss of materials possessions, and psychological impact.”

¹¹ Article 5, Law 24/2007.

¹² Article 10, Law 24/2007.

President once a month in non-disaster situations and 'at any time' during an emergency, and to provide accounts for international and national financial contributions.¹³ Regulation 8/2008 elaborates on BNPB's position, tasks and functions; organization, procedures, appointments and dismissals; and their coordination with Regional Disaster Management Agencies (Badan Penanggulangan Bencana Daerah or BPBD), which are to be established in accordance with Law 24/2007. The head of BNPB operates under and is accountable to the President.¹⁴

The regional BPBDs are to be comprised of provincial and district/city level agencies.¹⁵ The structures, tasks and functions of these regional agencies largely parallel those of the central system, i.e. BNPB.¹⁶ Regulation 8/2008 provides that BPBDs are to be established in coordination with BNPB, and they will hold coordination meetings with BNPB at least twice per year.¹⁷

In a disaster situation, the government has the authority, amongst other things, to decide on the status and level of national and regional disasters, and its decision must contain indicators based on the number of victims, loss of material possessions, damage to facilities and infrastructure, coverage of disaster-affected area, and socio-economic impacts.¹⁸ The president will make a decision on the 'disaster emergency status' on a national scale, a governor for a provincial scale emergency, and a mayor for a district/city scale emergency.¹⁹

Law 24/2007 provides for certain privileges to be accorded to the BNPB to facilitate its operations. According to the law, once the relevant level of government has decided the disaster emergency status for its jurisdiction based on the scale of the disaster, BNPB/BPBD has 'easy access'²⁰ to:

- Mobilization of human resources, equipment and logistics
- Immigration, excise and quarantine
- Licensing
- Procurement of goods/services
- Management of and accountability for money and/or goods
- Rescue
- Command of sectors/institutions.²¹

¹³ Article 12, Law 24/2007. BNPB is delegated with other tasks for disaster management, such as providing guidelines and directions on disaster prevention, rehabilitation and reconstruction, setting disaster management standardization and requirements, reporting to the President once a month in 'normal' conditions, and preparing guidelines on establishment of the regional disaster management agencies. Further, Article 13 prescribes BNPB's functions as to formulate and stipulate disaster management policy and handle of refugees through quick, appropriate, effective and efficient actions; and to coordinate disaster management activities in a well-planned, integrated and comprehensive manner.

¹⁴ Article 1, Regulation 8/2008.

¹⁵ Article 18, Law 24/2007.

¹⁶ Articles 19-24, Law 24/2007.

¹⁷ Article 63, Regulation 8/2008.

¹⁸ Articles 7(1)(c) and (2), Law 24/2007.

¹⁹ Articles 51, Law 24/2007, and Article 23, Regulation 21/2008.

²⁰ Article 24, Regulation 21/2008.

²¹ Article 50, Law 24/2007, and Article 24, Regulation 21/2008.

National framework for disaster management and response

While no definition of ‘easy access’ is provided in the law, this term and the processes associated with it suggest that BNPB will have certain privileges and priority access in the subject areas listed above i.e. access to legal facilities to expedite their disaster relief operations. By having this ‘easy access’, BNPB will be in a better position to rescue and evacuate, fulfil basic necessities, and recover functions of essential facilities and infrastructure.²² Regulation 21/2008 authorizes the heads of BNPB/BPBD to mobilize human resources, equipment and logistics from agencies/ministries and the community²³ and to dispatch human resources, equipment and logistics. The agencies and ministries in question must do so immediately and designate an official to be their “authorized representative for decision-making”.²⁴

The mobilization of equipment includes equipment for land, air and sea transportation, evacuation, health, water supply, sanitation and heavy equipment, emergency bridges, tents and temporary dwelling places. The mobilization of logistics includes foodstuff, clothing, medicines, water support and sanitation.²⁵

International participation

Law 24/2007 and Regulation 21/2008 on Disaster Management

Article 30 of Law 24/2007 is the statutory foundation for the participation of international institutions and foreign non-governmental organizations. This article states that international institutions can participate in disaster management activities and receive government protection for their employees.²⁶ Furthermore, Regulation 21/2008 provides that international institutions can carry out the task of fulfilling ‘basic necessities’ in emergency response.²⁷ It also stipulates that the head of BNPB controls the mobilization of equipment and logistics to the disaster area, which means “the use or operation of aid equipment coming from outside Indonesia ... for disaster emergency response in the forms of motor vehicles, aircrafts and communications equipment.”²⁸

Regulation 21/2008 provides that ‘foreign aid, whether in the form of foreign personnel, equipment or logistics’ shall have ‘easy access’ to immigration, excise and quarantine.²⁹

²² Article 26, Regulation 21/2008.

²³ Article 25, Regulation 21/2008. The elucidation to this article identifies that the agencies/institutions include National SAR Agencies, TNI, POLRI, Department of Public Works, Department of Health, and Department of Social Affairs, while “the community” includes “volunteers and non-governmental organizations” but it does not specify if they are national or international or both.

²⁴ Article 27, Regulation 21/2008.

²⁵ Elucidation, Article 24, Regulation 21/2008.

²⁶ See also Article 11, Regulation 23/2008.

²⁷ Article 52, Regulation 21/2008. The term ‘basic necessities’ includes aid for supply of water supply and sanitation, food, clothing, healthcare, psychosocial services; and accommodation and dwelling place.

²⁸ Article 31, Regulation 21/2008 and its elucidation.

²⁹ Article 32, Regulation 21/2008. Further, Article 13, Regulation 23/2008 and its elucidation provides that international institutions participating ‘jointly, severally or in conjunction with Indonesian institutions’ may be provided with ‘facilitation’ for disaster management measures in accordance with national legislation. This legislation includes Law 10/1995 on Customs as amended by Law 17/2006 on Amendment to Law 10/1995 on Customs, Government Regulation 19/1955 on Regulation of Exemption from General Import Duty and Export Duty for Need of Certain Foreign Official and Expert Groups, Government Regulation 8/1957 on Exemption from Import Duty on the Basis of International Relations, and Government Regulation 6/1969 on Exemption from Import Duty.

For disaster relief personnel, this means granting their visas, entry permits, limited stay permits and exit permits.³⁰ International personnel must work by assignment from and on recommendation of their international institution (or government) and must report to the immigration agency. The head of BNPB must recommend granting their visa and permits. Limited stay permits must not be granted later than the emergency response stage. Additionally, foreign personnel may have access to the disaster area and the heads of BNPB/BPBD must determine this area according to disaster location and level.³¹ For logistics and equipment, 'easy access' means not only exemption from import duties and import taxes, but also from other fees associated with entry permits and re-fuelling, for example.³² Further, this access must comply with the law³³ and must be recommended by the head of BNPB.³⁴ Quarantine procedures are generally exempted unless there is "potential danger".³⁵

Additionally, the regulation provides for BNPB to obtain 'easy access' licensing to bring "certain equipment and/or personnel" into Indonesian territory, including foreign personnel and equipment, to assist with disaster management during emergency response.³⁶ Foreign personnel includes foreign military personnel or foreign personnel from a country with no diplomatic relations with Indonesia, and/or foreign military transportation equipment. The responsible agency/ministry in defence and/or security must grant the particular license.³⁷ The relevant heads of agency/ministry must provide 'easy access' to the head of BNPB in order to obtain the required license. In this instance, 'easy access' means that "a particular license can be obtained any time, any place, and through easy communication facilities."³⁸

Regulation 23/2008: Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management

Government Regulation Number 23 of 2008 on the Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management (Regulation 23/2008) contains three chapters governing procedures, implementation, supervision, and reporting of international participation. It states that the aim of international participation is to support the empowerment of national disaster management, reduce disaster threats, risks and suffering, and accelerate community life recovery.³⁹

According to Regulation 23/2008, the head of BNPB has the authority to determine the level of international participation after a disaster.⁴⁰ International institutions that wish

³⁰ Article 33, Regulation 21/2008

³¹ Article 34, Regulation 21/2008.

³² Elucidation, Article 32, Regulation 21/2008 and Article 36, Regulation 21/2008.

³³ Elucidation, Article 36, Regulation 21/2008 mentions Law 10/1995 on Customs as amended by Law 17/2006 on Amendment to Law 10/1995 on Customs, Government Regulation 19/1955 on Regulation of Exemption from General Import Duty and Export Duty for Need of Certain Foreign Official and Expert Groups, Government Regulation 8/1957 on Exemption from Import Duty on the Basis of International Relations, and Government Regulation 6/1969 on Exemption from Import Duty.

³⁴ Elucidation, Article 36, Regulation 21/2008 says that the recommendation will attach letter of estimated goods value, bill of lading/air waybill, and donation certificate.

³⁵ Article 37, Regulation 21/2008.

³⁶ Article 38, Regulation 21/2008.

³⁷ Elucidation, Article 38, Regulation 21/2008.

³⁸ Elucidation, Article 38, Regulation 21/2008.

³⁹ Article 2, Regulation 23/2008.

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to participate in disaster management in Indonesia must prepare a proposal, MoU, and work plan.⁴¹ They should prepare the proposal in consultation with Indonesian Embassy staff, and the MoU jointly with BNPB (or related agencies/ministries under BNPB's coordination) and involve the Ministry of Foreign Affairs (MFA). They should prepare the work plan jointly with BNPB and involve related agencies/ministries (or related agencies/ministries under BNPB's coordination).⁴² BNPB is responsible for coordinating the MoU and work plan applications.⁴³

During emergency response, however, international institutions can provide disaster emergency aid without undertaking the aforementioned procedures.⁴⁴ Yet they must submit a list of personnel, logistics, equipment and the location of activities for any on-the-ground operations.⁴⁵ They can do so before, on, or immediately after, arrival.⁴⁶ BNPB grants approval based on the list and according to the needs of emergency response, in coordination with related agencies/institutions. Where an international institution provides 'disaster emergency aid' in the form of funds to the government, without any on-the-ground operations, it must deliver or send it directly to BNPB.⁴⁷ If disaster management aid in the form of funds is provided by a foreign country, the head of BNPB must consult and coordinate with the MFA.⁴⁸

During the emergency response phase, BNPB 'commands' international participation,⁴⁹ and international institutions can participate "severally, jointly, and/or in conjunction with an Indonesian working partner".⁵⁰ The organizations that provide 'inclusive aid' in emergency response may participate 'severally', and those that provide 'non-inclusive aid' may participate 'jointly' to complement other international institutions.⁵¹ It should be noted here that the term 'inclusive' is not defined in the law, however international actors may participate in conjunction with Indonesian partners (meaning agencies/ministries and NGOs) as long as they have "similar vision and mission".

Regarding principles and standards, international institutions are prohibited from engaging in activities with "political or national security background", and they must "consider and respect the local community social, cultural and religious backgrounds".⁵² In terms of accountability, BNPB supervises international institutions in disaster management,⁵³ and they must submit a report of their activities to BNPB periodically, at "the end of its term of service", or at any time upon its request.⁵⁴

⁴⁰ Article 4, Regulation 23/2008.

⁴¹ Article 5, Regulation 23/2008.

⁴² Article 6, Regulation 23/2008.

⁴³ Article 7, Regulation 23/2008.

⁴⁴ Article 8, Regulation 23/2008.

⁴⁵ Article 8, Regulation 23/2008.

⁴⁶ Article 8(3), Regulation 23/2008.

⁴⁷ Article 8(6), Regulation 23/2008.

⁴⁸ Article 17(1), Regulation 23/2008.

⁴⁹ Article 10, Regulation 23/2008. In implementing their participation, international institutions are required to adapt to Indonesia's disaster management policy at pre-disaster and post-disaster stages. BNPB 'coordinates' their participation in these two stages.

⁵⁰ See, also, Article 12, Regulation 23/2008.

⁵¹ Article 12, Regulation 23/2008.

⁵² Article 14, Regulation 23/2008.

⁵³ Article 15, Regulation 23/2008.

⁵⁴ Article 16, Regulation 23/2008.

Guideline 22/2010: the Role of International Organizations and Foreign Non-Government Organizations during Emergency Response

In order to build upon the provisions for international participation outlined in Regulation 23/2008, particularly in relation to the initiation and termination of international assistance, BNPB prepared Guideline Number 22 of 2010 on the Role of International Organizations and Foreign Non-Government Organizations during Emergency Response (Guideline 22/2010). This was developed to provide more detailed guidance for BNPB and the relevant stakeholders on the facilitation and management of international assistance in emergency response in Indonesia, building upon what already exists in Law 24/2007 and Regulation 23/2008.⁵⁵

Guideline 22/2010 covers three phases of international assistance in emergency response: initiation, management, and termination. Moreover, it defines a number of important terms that Law 24/2007 and the two regulations had not yet explained, including transport, goods, grants and donations; initiation and termination; emergency response personnel and the Emergency Response Command Post.⁵⁶

In its chapter on initiation, Guideline 22/2010 provides for the initiation and management of international assistance, and the distribution of goods. According to the Guideline, international humanitarian assistance is 'triggered' by the magnitude of the disaster and whether it exceeds the government's ability to cope. Initiation is also dependent on the government's issuing of a statement to accept or 'welcome'⁵⁷ offers of international assistance in compliance with the needs of the disaster-affected area. Once these 'triggers' have occurred, the mechanism for entry of international assistance includes the following four steps:

1. The government issues a statement on acceptance of international assistance. The type and amount of assistance is based on a BNPB/BPBD rapid assessment;
2. BNPB sends a circular letter for the initiation of international assistance to international institutions containing a summary situation report of the disaster, length of the emergency response period, information on the logistics and equipment urgently needed, and information of the professional personnel needed;
3. To handle emergency response in a certain area, BNPB in cooperation with the relevant government institutions/ministries and provincial/district/city government offices, will establish the Emergency Response Command Post;
4. To facilitate the entry of international assistance, BNPB in cooperation with relevant ministries/agencies and provincial/district/city government, will determine the entry points – that is, military base, airport or seaport - for international assistance and establish a Supporting Post at each entry point.

The establishment of a Supporting Post plays a pivotal role in receiving, registering and processing international assistance, and is made up of representatives from BNPB,

⁵⁵ Article 1, Part C, Chapter I, Guideline 22/2010.

⁵⁶ Part E, Chapter I, Guideline 22/2010. In addition to the principles in Article 3 of Law 24/2007, Part F of the guidelines requires aid providers/recipients to agree to 17 principles including respect for the sovereignty of Indonesia, respect for the dignity and rights of affected persons, coordination and cooperation, and accountability and transparency.

⁵⁷ Note the use of the term 'accept'. The Guideline does not specify procedures for 'requesting' international assistance. This is in line with the Indonesian government's approach to 'welcome' rather than specifically 'request' international assistance.

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Ministry of Defence (MoD), Ministry of Health, Ministry of Agriculture (Quarantine Division), Ministry of Law and Human Rights (Directorate General of Immigration), Ministry of Finance (Directorate General of Duties and Excises), MFA, POLRI, Ministry of Trade (Director General of Foreign Trade), Ministry of Transportation, National Intelligence Agency (BIN), Food and Drugs Surveillance Agency, and local governments and local agencies for disaster management.

The functions of the Supporting Post include registration of international agencies and foreign non-government organizations; registration for exit of foreign personnel and goods to be re-exported to the assisting country; handling and issuing of permits, and monitoring, immigration, excise, security clearance of personnel and equipment, and quarantine. Supporting Posts are also responsible for issuing identity cards; and storage of logistics and equipment prior to distribution to disaster-affected people.⁵⁸

In terms of managing international assistance, relief providers should help with rapid assessments, rescue and evacuation, meeting basic needs, protecting vulnerable groups, and providing an immediate rehabilitation of vital facilities and infrastructure.⁵⁹ This is wider in scope than Regulation 21/2008, which provides that international institutions can fulfil only basic necessities in emergency response. However, Law 24/2007 allows international institutions to participate in 'disaster management activities', which, presumably, covers all emergency response activities. International institutions should also take note of BNPB and local government assessments and information before deciding to conduct their own i.e. they must coordinate their assessments with the BNPB/BPBD Rapid Assessment Team, and report their results to BNPB/BPBD.

In terms of the type of assistance international institutions may provide, there are three main types: funding and grant assistance, goods, and experts.⁶⁰ Funding may be donated directly to BNPB, and it must be recorded in accordance with the regulations. Grants must be managed through BNPB's grant mechanism and recorded pursuant to Ministry of Finance Grant Accounting System (SIKUBAH). International institutions are not allowed to conduct fundraising activities in Indonesia. Goods must be packed, categorized and addresses clearly marked for distribution. When selecting beneficiaries with certain criteria, such selection should be coordinated with local government.⁶¹ Where possible, communities should also be involved in determining criteria and distribution of in-kind assistance, and distribution of in-kind assistance should not provoke or heighten any existing conflict. Foreign professionals or 'experts' as they are referred to in the Guideline, must meet the required qualifications set by technical ministries in order to operate in country.⁶²

To provide international assistance, foreign actors must obtain government permission.⁶³ Guideline 22/2010 sets out general provisions and specific processes for permits to be supplied by Supporting Posts, setting out the process of providing entry permits, limited stay permits and exit permits as referred to in regulation 21 of 2008.⁶⁴ However,

⁵⁸ Part A(2)(e)(2), Chapter II, Guideline 22/2010.

⁵⁹ Part B, Chapter II, Guideline 22/2010.

⁶⁰ Part C, Chapter II, Guideline 22/2010.

⁶¹ Paragraph 2(b), Part C, Chapter II, Guideline 22/2010.

⁶² Chapter 2, part C(3), Guideline 22/2010.

⁶³ Part D, Chapter II, Guideline 22/2010.

⁶⁴ Article 12, Law 24/2007.

neither the law or nor Regulation 23 refer to this permit process. To address this, the Guideline notes that the permit process must be undertaken “in accordance with applicable rules and regulations”.⁶⁵

Some provisions of the Guideline confirm specific exemptions and legal facilities already mentioned in the law and regulations, while other provisions offer further guidance on important entry and operation issues not covered in the law or its regulations. For example:

- Foreign personnel/international institutions may carry foreign/rupiah currency to/from Indonesia under monetary regulations and obtain legal exchange value
- Embassy coordination should be confirmed if foreign personnel need to open personal bank accounts for operational needs in international assistance
- Relevant government ministries/institutions may provide services beyond normal working hours to facilitate provision of international assistance
- ‘Legal domestic facility’ may be granted to international institutions (though no further explanation is provided as to what this may entail)
- States wishing to use military assistance must obtain security clearance from Indonesian Military Forces Headquarters (Mabes TNI)
- State equipment in the form of planes or ships must obtain security clearance from Indonesian Military Forces Headquarters (Mabes TNI)
- Personnel from countries having no diplomatic relations may not carry out humanitarian assistance in Indonesia.⁶⁶ This can be confusing, however, because the elucidation for Regulation 21/2008 allows ‘easy access’ for licensing to be provided to foreign military personnel and foreign personnel from a country with no diplomatic relations with Indonesia, as long as they have a ‘particular license from the responsible agency/institution in defence, the security sector or foreign relations’.⁶⁷

It is worth noting here that the permission to carry foreign currency and the granting of domestic legal facilities would be strengthened if they were expressly linked to the relevant central bank and legal organization laws that provide a legal basis for such permission and granting.

Guideline 22/2010 also elaborates on some specific processes for the facilitation of personnel and goods, and some specific processes seem to offer new legal facilities to those contained in Regulation 23/2008, such as the facilities for import restrictions and import/export procedures, and permission to re-export for relief goods. However much of the content is drawn either from the law or the regulations. Some other processes appear to create additional work for international institutions which might work against them in terms of obtaining ‘easy access’, including the requirements to provide passport copies and colour photographs for personnel to enter, for example. Other specific processes appear inconsistent with the ‘easy access’ provisions, like reintroducing the normal-time procedures regarding inspection and quarantine.

In terms of costs, international institutions must bear the costs of providing international assistance (including handling, logistics, equipment and personnel, packaging,

⁶⁵ Part D, Chapter II, Guideline 22/2010.

⁶⁶ Part D(1)(d), Chapter II, Guideline 22/2010.

⁶⁷ Article 38(1), Elucidation of Regulation 21/2008.

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labelling and distribution, and destruction/removal of unused goods), and the government is not responsible for any loss that international institutions suffer as a result of acts of violation or neglect while providing assistance.⁶⁸

The Guideline also provides for ‘government and community monitoring’ of international assistance, and requires that international institutions submit regular written implementation reports to BNPB and local government in coordination meetings to evaluate their progress.⁶⁹ Nothing is stipulated however as to how communities might undertake monitoring tasks. The reports that international institutions must submit include periodic reports, final reports, as well as incidental reports requested by BNPB. Once this is all complete, BNPB will report to the public.

Finally, the termination of international assistance occurs when the government issues a statement on termination of emergency response or, where the deadline for termination has already been set (usually at the initiation of international assistance).⁷⁰ On completing the emergency response, BNPB will issue a circulation letter terminating international assistance that, *inter alia*, stipulates a date for termination. It is worth noting here that there is also no requirement to consult with international institutions before terminating international assistance. This may cause difficulties insofar as international assisting actors are not necessarily aware of the date at which their assistance will no longer be required, and when a recovery period might begin, which can impact disaster relief funding and programming.

⁶⁸ Parts C and D, Chapter III, Guideline 22/2010.

⁶⁹ Part E, Chapter III, Guideline 22/2010.

⁷⁰ Chapter V, Guideline 22/2010.

International Disaster Response Law (IDRL) in Indonesia
An analysis of the impact and implementation of Indonesia's legal
framework for international disaster assistance

Chapter 3

The IDRL Guidelines and the legal framework in Indonesia

The IDRL Guidelines and the legal framework in Indonesia

This section briefly considers Indonesia's legal framework for emergency response and international participation against the IDRL Guidelines, and refers to other relevant international law as appropriate in this context, and upon which the provisions in the IDRL Guidelines have drawn from. A table summarizing the comparisons between the legal framework and the IDRL Guidelines can be found in Annex C. During the interviews conducted for this report, several key stakeholders pointed to the importance of the IDRL Guidelines in shaping Indonesia's legal framework for disaster response since the enactment of Law 24/2007, and especially in drafting Government Regulation 23/2008 and Guideline 22/2010.⁷¹ As mentioned in the introduction to this report, PMI and the IFRC, along with other partners such as UN OCHA, played an active role in ensuring the legal framework for disaster response in Indonesia was developed to reflect the core ideas contained in the IDRL Guidelines, so that international assistance could be provided to Indonesia in as swift and efficient a manner as possible.

The IDRL Guidelines cover both disaster relief and initial recovery assistance. According to the Guidelines, 'disaster relief' means "goods and services provided to meet the immediate needs of disaster-affected communities", while initial recovery assistance is defined as "goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met".⁷²

The IDRL Guidelines contain five main parts: core responsibilities; early warning and preparedness; initiation and termination of international disaster relief and initial recovery assistance; eligibility for legal facilities and; legal facilities for entry and operations. The following pages consider the existing legal framework for disaster management and response in Indonesia, as outlined in the previous chapter, in light of these five main parts. Specific focus will be placed on the provisions of the framework relating to disaster response and the facilitation of international assistance, to form a basis on which the implementation and impact of the law, and its accompanying regulations and guideline, are considered in the case studies contained in chapter four.

It is worth noting that the scope of the IDRL Guidelines is wider than the emergency response stage outlined in the legal framework in Indonesia. One effect of this is that the IDRL Guidelines recommend that the granting of some legal facilities be extended to the initial recovery assistance phase, whereas the current Indonesian legal framework restricts 'easy access' to emergency response periods only. Since many of the problems that international institutions encounter in providing assistance can continue into or arise during the initial recovery period, the national legal framework as it stands can only ensure that international institutions keep receiving and/or start to receive easy access by extending the emergency response stage - presumably by changing the end date for the disaster emergency period.

⁷¹ For example, during the interview with UN OCHA, 24 August 2012.

⁷² Paragraph 2, IDRL Guidelines. See also UN GA Resolution 46/182 (1991).

I. Core responsibilities

The IDRL Guidelines recognize that the affected state holds primary responsibility for disaster response.⁷³ However, if the state determines that the effects of a disaster exceed national capacities to respond effectively, it should seek regional/international assistance.⁷⁴ Moreover, the IDRL Guidelines recognize that the state has the sovereign right to coordinate, regulate and monitor disaster relief and initial recovery assistance provided on its territory, consistent with international law.⁷⁵

The IDRL Guidelines state that international responders should comply with applicable national and international law, coordinate with government, and respect the dignity of affected persons.⁷⁶ They also encourage states to ensure that disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, as well as on a non-discriminative, non-political, non-prose-lytizing, non-commercial, and independent basis.⁷⁷ Assistance should also seek to meet minimum standards in quality and accountability (e.g. address the special needs of vulnerable groups, ensure coordination among actors, respect local culture and custom, reinforce resilience, be conducted in an open and transparent manner, etc.).⁷⁸

Considering this, the current legal framework in Indonesia is explicit in making the national government and regional governments responsible for disaster management, depending on the scale of the disaster. It provides that international institutions can participate in disaster management, including emergency response, and sets out individual procedures for doing so. During emergency response situations, BNPB is to grant approval to international institutions to participate according to need, determined by a quick and appropriate study and disaster emergency status decision. Either the national or regional level government is also responsible for coordinating disaster management (depending on the scale of the disaster, as mentioned above) and the 'command post' for emergency response coordinates, controls, monitors and evaluates the various operations.

The principles and objectives of Law 24/2007 indicate the government's intention to ensure that disaster management complies with the relevant principles and standards, as contained in the IDRL Guidelines. For example, these principles include appropriateness, coordination, transparency, non-discrimination and non-proselytism, while the objectives include respect for local culture.⁷⁹ Moreover, Chapter V of the law sets out 'rights of the community; including to participate in decision-making on disaster

⁷³ Paragraph 3, IDRL Guidelines. See also UN GA Resolution 46/182 (1991), UN GA Resolution 57/150 (2002), and Hyogo Framework of Action (2005) (hereinafter referred to as the 'Hyogo Framework').

⁷⁴ See UN GA Resolution 46/182 (1991), and Hyogo Framework.

⁷⁵ See UN GA Resolution 46/182 (1991).

⁷⁶ Paragraph 4, IDRL Guidelines. See also UN GA Resolution 46/182 (1991), Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, updated 2006 (Oslo Guidelines), and Sphere Humanitarian Charter and Minimum Standards in Disaster Response (Sphere Handbook).

⁷⁷ See also UN GA Resolution 46/182 (1991), Principles and Practice of Good Humanitarian Donorship (2003), Code of Conduct for the Red Cross/Red Crescent Movement and NGOs in Disaster Relief (1994) (RC/NGO Code of Conduct), Food Aid Convention of 1999, Sphere Handbook, and United Nations Charter.

⁷⁸ See Sphere Handbook, Food Aid Convention of 1999, RC/NGO Code of Conduct, and Principles and Practice of Good Humanitarian Donorship (2003).

⁷⁹ Articles 3 and 4, Law 24/2007.

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management activities.⁸⁰ Under the law, disaster management during emergency response includes the fulfilment of basic necessities and protection for vulnerable groups. Under Regulation 21/2008, international institutions can work alongside government to fulfil these basic necessities for the disaster-affected population. This is supported by Guideline 22/2010, which provides for international institutions to participate in the broader scope of emergency response including rapid assessment, rescue and evacuation, provision of basic needs, protecting vulnerable groups and immediate rehabilitation of vital facilities and infrastructure.⁸¹

During an emergency response, Regulation 23/2008 states that international institutions can provide disaster relief if they submit a list of personnel, relief goods, etc. for approval by BNPB. This can help ensure that the type of relief provided will be responsive and appropriate to the needs of the disaster-affected population, coordinated with the relevant domestic authorities (e.g. BNPB) and provided in a transparent manner, in addition to other core principles and standards as contained in the IDRL Guidelines. International institutions are prohibited from engaging in politics or security matters under the law, and they must consider and respect different social, cultural and religious backgrounds. Furthermore, Guideline 22/2010 requires aid providers to agree to and comply with 17 principles – including a respect for sovereignty, ensuring a positive impact, providing qualified assistance, and providing assistance on a needs basis.

While the legal framework clearly takes into consideration the core responsibilities as outlined in the IDRL Guidelines, it does not provide a clear mechanism for enforcement or to ensure that such principles are upheld - other than the procedures for approving the participation of international actors either in disaster management or emergency response. In providing international assistance in the form of relief goods, international institutions should involve communities in distribution; and in providing it in the form of experts, such experts must meet the required qualifications set by technical ministries. While there are clear references to the IDRL Guidelines, the framework does not link adherence to humanitarian principles with eligibility for legal facilities, which is, in effect, a mechanism for approving participation in emergency response.

II. Early warning and preparedness

According to the IDRL Guidelines, states should put in place procedures to facilitate the expeditious sharing of information about disasters, in order to minimize trans-boundary impacts and maximize the effectiveness of international assistance. It also encourages them to adopt comprehensive legal, policy and institutional frameworks and planning for disaster management, and devote adequate resources to ensure their effectiveness, with support from international and regional organizations as appropriate.⁸² The frameworks should adequately address the initiation, facilitation, transit and regulation of disaster relief and initial recovery assistance; allow for effective coordination taking into account the UN Emergency Relief Coordinator; and clearly designate government entities with responsibility and authority in these areas. Consideration should be given to establishing a focal point between international and government actors. Where necessary and appropriate, the government should encourage other domestic actors with relevant authority to implement the Guidelines.

⁸⁰ Article 26(1)(e), Law 24/2007.

⁸¹ Part B, chapter II, Guideline 22/2010.

⁸² Paragraph 8, IDRL Guidelines. See Priorities 1 and 5, Hyogo Framework (2005).

Early warning provisions are incorporated throughout Law 24/2007,⁸³ including the dissemination of disaster warning information and community action. In terms of planning, Law 24/2007 requires the national government to prepare different disaster management planning documents. Furthermore, Regulation 21/2008 stipulates that the national government and regional governments should develop five-year disaster management plans.⁸⁴ Provisions for funding and the allocation of adequate resources for disaster management at the domestic level are stipulated in a separate regulation 'concerning disaster aid financing and management' (Regulation 22/2008), which includes provisions for a national disaster management budget, a disaster contingency fund, and a disaster 'ready' fund, allocated in the BNPB budget for emergency response activities.⁸⁵

In terms of funding from international assisting actors, according to article 8 of Regulation 23/2008, international institutions can deliver or send 'disaster emergency aid' in the form of funds directly to BNPB. Guideline 22/2010 elaborates on international institutions donating funds, by confirming that they may be donated to BNPB directly "in accordance with the regulations".

III. Initiation and termination

The IDRL Guidelines recommend that disaster relief or initial recovery assistance should be initiated only with the state's consent and, in principle, on the basis of an appeal.⁸⁶ The state should decide in a timely manner whether to request for disaster relief or initial recovery assistance by assessing its needs and communicating its decision promptly. Consideration should be given to undertaking joint needs assessments with the UN and other international participants, and requests and offers for assistance should be as specific as possible regarding the types and amounts of goods, services and expertise that are available or required.⁸⁷ Moreover, the state might wish to indicate particular types of goods and services that it will not need. The state should inform international participants of the laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

Under Law 24/2007, emergency response involves the quick and appropriate study of location, damages and resources, and a decision on disaster emergency status. Decisions about emergency status are dependent on the severity of the disaster. For example, the President decides on a national scale, a governor on a provincial scale, and a regent/mayor on a district/city scale. In the absence of a presidential regulation, which should provide guidance in deciding the disaster level and status (as stipulated in article 7 of Law 24/2007), how this plays out in practice is not that clear, and the level of government that determines the scale of the disaster, in order to declare emergency status, tends to change in practice. Once a decision has been made on emergency status – which presumably means that the emergency response stage has started – BNPB has 'easy access' to legal facilities to expedite its response. In Regulation 23/2008,

⁸³ See articles 44, 45 and 46, Law 24/2007.

⁸⁴ Article 6, Regulation 21/2008.

⁸⁵ See articles 5 and 6, Regulation 22/2008

⁸⁶ Paragraph 10, IDRL Guidelines. See also UN GA 46/182 (1991) and ASEAN Agreement on Disaster Management and Emergency Response, 2005 (AADMER).

⁸⁷ See the AADMER and the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, 1998 (also known as the 'Tampere Convention' – note that Indonesia is not a party to this convention).

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international institutions can provide disaster emergency aid by submitting a list of personnel, logistics and equipment, before, during or after the disaster, which BNPB can approve and therefore take into account the list and disaster needs.

Guideline 22/2010 administers the initiation and termination of international assistance more specifically, setting out how international assistance may be ‘triggered’ and the mechanism for accepting it. This mechanism requires the government to send a circular letter that contains, amongst other things, the length of the emergency response stage, and information on personnel, logistics and equipment needed.

Regarding the use of military assets, the IDRL Guidelines state that these should be deployed for disaster relief or initial recovery assistance only at the state’s request or with its express consent, after considering civilian alternatives.⁸⁸ Terms and conditions of such deployment are to be agreed beforehand. According to the elucidation of article 38, Regulation 21/2008, it is necessary to obtain a particular license from the responsible agency/institution in the defence or security sector in order to receive ‘easy access’ facilities for military assets. Guideline 22/2010 also contains directions for states wanting to use military assets, which requires them to obtain security clearance from the National Armed Forces (Tentara Nasional Indonesia or TNI), and to write a request to MoD and TNI in coordination with BNPB to obtain MoD’s approval.

According to the IDRL Guidelines, when the affected state wishes to terminate disaster relief or initial recovery assistance it should provide appropriate notification, then consult with international assistance providers.⁸⁹ Guideline 22/2010 provides the government with two methods for terminating international assistance: either issue a termination statement; or, terminate international assistance before the deadline set at the initiation of international assistance e.g. through the issuance of a circulation letter stating that international assistance will be terminated.⁹⁰ If a date for termination was decided at the time of initiating international assistance, this can be extended to a later date, or terminated earlier, depending on the needs and scale of the disaster response.⁹¹

Once the emergency response phase ends, BNPB is required to issue a circulation letter terminating international assistance for that phase (as mentioned above), which included the ‘fixed date’ on which the emergency response period is declared to be over. The Guideline does not specify any procedures for the provision of international assistance during the initial recovery phase.

The processes for initiation and termination of international assistance are somewhat scattered across the law, regulations and guideline. While Guideline 22/2010 establishes procedures for determining the initiation and termination of international assistance, these procedures should be consolidated in the law in order to have greater enforceability. Participants at the consultation workshop for this report also highlighted the importance of distinguishing more clearly in the legal framework between emergency and initial recovery periods, including for the initiation and termination of each period. This is in order to avoid confusion for international responders handling different phases of a disaster response, and to make sure that the needs for each phase are

⁸⁸ Paragraph 11, IDRL Guidelines. See also Oslo Guidelines and AADMER.

⁸⁹ Paragraph 12, IDRL Guidelines. See also Tampere Convention.

⁹⁰ Chapter V, Guideline 22/2010.

⁹¹ Chapter V, Guideline 22/2010.

widely understood. It was also noted that international organizations should be consulted before international assistance is terminated, so they are aware of the termination date and can wind down their operations accordingly.⁹²

IV. Eligibility for legal facilities

The IDRL Guidelines recommend that the state grants, at a minimum, a set of legal facilities to foreign countries regarding disaster relief or initial recovery assistance.⁹³ Additionally, they note that, subject to international law, it is the prerogative of the state to determine which international institutions will be eligible to receive these facilities.⁹⁴ It is recommended that the state establish criteria for international institutions seeking eligibility that include willingness and capacity to act in accordance with humanitarian principles and standards. Any additional requirements imposed on international participants should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.

Ideally, determination of eligibility for legal facilities should be possible before a disaster, or as soon as possible after it. Applicable procedures should be as simple and expeditious as possible and should be clearly described with information about them made freely available. This might be through the use of a national roster, bilateral agreements, or regional/international accreditation systems, or a registration system as set out in the IFRC's *Model Act for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*.⁹⁵ Retention of legal facilities should be made dependent on ongoing compliance with the principles and standards discussed above. However, the IDRL Guidelines also stipulate that entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.⁹⁶

In the case of Indonesia, once the decision on emergency status is made, BNPB has 'easy access' and an increased degree of control over necessary response functions and legal facilities. For 'easy access' legal facilities that benefit international assisting actors, especially immigration processes, quarantine and licensing, Regulation 21/2008 stipulates that these will be available for foreign personnel, equipment or logistics.⁹⁷ As per Guideline 22/2010, initiation of international assistance can be triggered by the magnitude of the disaster, thereby requiring the assistance of international organizations, or if a statement is made by the government to accept offers of international assistance.⁹⁸

As previously noted, approval by BNPB of international participation in disaster management in the general sense is not linked to adherence of humanitarian principles and standards; rather it involves the international institution putting forward a proposal,

⁹² See page 6, IFRC IDRL consultation workshop report (2013) available online at <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf> (last accessed on 28/05/2014).

⁹³ For these legal facilities see paragraph 13, IDRL Guidelines.

⁹⁴ Paragraph 14, IDRL Guidelines.

⁹⁵ See IFRC, *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2013) available online at <http://www.ifrc.org/en/what-we-do/idrl/model-act-on-idrl/> (last accessed on 28/05/2014).

⁹⁶ See Paragraph 14(5), IDRL Guidelines.

⁹⁷ Article 32, Regulation 21/2008.

⁹⁸ Chapter II, A(1), Guideline 22/2012.

The IDRL Guidelines and the legal framework in Indonesia

memorandum of understanding and a work plan, in accordance with article 5 of Regulation 23/2008. In an emergency period, however, international institutions and foreign NGOs can provide assistance directly without going through these administrative procedures, as long as they provide a list of personnel, logistics, equipment and location of activities.⁹⁹

The emergency response method seems to be relatively straightforward, which can help to expedite the provision of international assistance during a disaster. This method does not, however, provide a mechanism for assessing whether an organization meets certain eligibility criteria as set out in the IDRL Guidelines and the Model Act for International Assistance. Although the general disaster management method of developing a proposal, MoU or work plan could prove to be a more lengthy procedure¹⁰⁰, at the same time this can allow BNPB to prevent the participation of international institutions that are unable or unwilling to provide assistance in line with core humanitarian principles and standards by identifying this early on in their application or proposal. This is elaborated further in the elucidation of Regulation 23/2008, which stipulates that international institutions shall put humanitarian principles as their only objectives, and that aid shall be provided without differentiating between ethnic, religious, cultural, social, economic or political backgrounds. Furthermore, it states that their assistance shall be carried out in accordance with the prevailing international and national laws, including human rights law.¹⁰¹

While this is certainly a welcome inclusion in the elucidation, there is scope for this to be strengthened by including a set of more explicit eligibility requirements in the law or regulation itself, so that any international assistance provided is carried out in accordance with the laws of the affected state and any applicable international law, as well as in accordance with the principles of humanity, neutrality and impartiality.¹⁰²

V. Legal facilities for entry and operations

Lastly, the IDRL Guidelines recommend that states provide a set of legal facilities to foreign countries and other international assisting actors, subject to the interests of national security, public order, public and environmental health and public morals.¹⁰³ Where specific facilities are within the competence of authorities other than the government, those authorities should be encouraged to provide them. As noted above, some facilities apply to disaster relief periods only, while others are available during the disaster relief and initial recovery assistance phases (note that these have not been distinguished here).

⁹⁹ Article 8, Regulation 23/2008.

¹⁰⁰ Some participants at the consultation workshop held in July 2013 expressed concerns that having to develop a MoU was a cumbersome bureaucratic requirement and that a more streamlined mechanism should be developed. See page 5, IFRC IDRL consultation workshop report (2013), available online at <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf> (last accessed on 28/05/2014).

¹⁰¹ Elucidation, Regulation 23/2008, part I.

¹⁰² See Part IV: Eligibility for Legal Facilities, and Guideline 4, IDRL Guidelines.

¹⁰³ Chapeau, Chapter V, IDRL Guidelines.

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The legal facilities that should be provided according to the IDRL Guidelines, and as based on existing international norms, are as follows:

- Personnel:¹⁰⁴ waive or expedite granting visas and work permits, and allow renewal in-country;¹⁰⁵ expedite temporary recognition of certain professional qualifications, drivers licenses and other licenses that have been certified genuine;¹⁰⁶ and facilitate freedom of access to and movement in the area.¹⁰⁷
- Goods and equipment:¹⁰⁸ exemption from customs duties, taxes, tariffs and fees;¹⁰⁹ exemption from import restrictions;¹¹⁰ simplify and minimize import documents;¹¹¹ permit re-exportation;¹¹² waive or reduce inspection requirements including pre-clearance and outside business hours/location;¹¹³ pack, classify and mark goods and equipment and include detailed manifests; remove or dispose unwanted and unused goods.¹¹⁴
- Special goods and equipment:¹¹⁵ grant temporary recognition for foreign vehicle registration/plates;¹¹⁶ waive or expedite granting licenses and removing barriers to information and communications technology (ICT) equipment, and grant priority access to bandwidth, frequencies and satellite;¹¹⁷ reduce legal and administrative barriers to medications and medical equipment import and re-export, and ensure quality, appropriateness and safety;¹¹⁸ imported medications should be approved for use, used medications should be transported and maintained in appropriate conditions, and guarded against misappropriation and abuse, and donated medications should be at least 12 months from expiry, transported and maintained in appropriate conditions, and appropriately labelled;¹¹⁹ consider modifying or reducing normal fumigation, and prohibitions and restrictions on food imports.

104 Paragraph 16, IDRL Guidelines.

105 See Paragraph 3, UN GA Resolution 57/150 (2001); Paragraph 60, Oslo Guidelines; Article 14(b), AADMER.

106 See Paragraph 60, Oslo Guidelines.

107 See Paragraph 60, Oslo Guidelines.

108 Paragraph 17, IDRL Guidelines.

109 See Recommended Practice 6, Specific Annex J.5, Kyoto Convention on the Harmonization and Simplification of Customs Procedures, revised 1999 (Revised Kyoto Convention) (Indonesia is not a party); Annex B.9, Convention on Temporary Admission (Istanbul Convention) (1990) (Indonesia is not a party); Article 5, Tampere Convention (1998); Article 14, AADMER.

110 See Specific Annex J.5, Revised Kyoto Convention; Article 9(2), Tampere Convention.

111 See Standard 3, Specific Annex J.5, Revised Kyoto Convention; Annex B.9, Istanbul Convention; Article 9(3)(d), Tampere Convention.

112 See Annex B.9, Istanbul Convention; Article 9(2)(d), Tampere Convention; Article 14(b), AADMER.

113 See Standard 3, Annex J.5, Revised Kyoto Convention.

114 See Paragraph 8, RCRC NGO Code of Conduct.

115 Paragraph 18, IDRL Guidelines.

116 See Article 15(3), AADMER.

117 See Articles 5 and 9, Tampere Convention; Article 14(a), AADMER.

118 See Istanbul Convention; WHO Model List of Essential Medicines (updated 2007); WHO Emergency Health Kit (1998).

119 WHO Guidelines for Drug Donations (1999).

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- Transport:¹²⁰ grant permission for land, marine and air vehicles; particularly grant permission for over-flight, landing and departure of aircraft and authorize operation in country;¹²¹ and entry and exit of personnel operating vehicles.¹²²
- Temporary domestic legal status:¹²³ grant temporary authorization to enjoy rights (open bank accounts, enter into contracts and leases, acquire and dispose of property, and instigate legal proceedings);¹²⁴ grant the right to bringing in and out of the country necessary funds/currencies freely and lawfully and to obtain legal exchange rates; hire and terminate local personnel contractually.
- Taxation:¹²⁵ exemptions on VAT and other taxes and duties.¹²⁶
- Safety and security: address safety and security of personnel, and premises, facilities, vehicles, equipment and goods.¹²⁷
- Extended hours of government offices and services.¹²⁸
- Costs: consider providing certain services at reduced or no cost if within power, such as domestic transport, use of buildings and land for office and warehouse space, and use of cargo handling equipment and logistic support.¹²⁹

The legal framework in Indonesia allows ‘easy access’ for BNPB to disaster functions and some legal facilities to facilitate the entry and operation of international assistance. These include:

- The mobilization of equipment from outside Indonesia, including transport, evacuation and health-related equipment; water supply and sanitation equipment; and, tents and temporary dwelling.
- For personnel, easy access in immigration covers entry, access and movement, and consists of processing and serving visas and permits.
- For logistics and equipment, easy access encompasses exemptions from import duties and taxes, and other barriers such as entry permits for personnel operating transport vehicles.
- For quarantine, items can be exempted except if they involve potential danger, although Guideline 22/2010 seems to reverse it by requiring quarantine.
- Licensing covers particular licenses not covered by immigration or customs, such as for military personnel and equipment from a relevant agency/institution.¹³⁰

¹²⁰ Paragraph 19, IDRL Guidelines.

¹²¹ See Annex 9, Convention on International Civil Aviation (Chicago Convention) (1944) (Indonesia is a party); Paragraph 60, Oslo Guidelines.

¹²² See Article 5.11, Annex 1, Convention on the Facilitation of International Maritime Traffic (1965) (Indonesia is a party).

¹²³ Paragraph 20, IDRL Guidelines

¹²⁴ For UN, see Article 1, Convention on Privileges and Immunities of the United Nations; Article 2, Convention on Privileges and Immunities of Specialized Agencies (Indonesia is a party). For IFRC and NGOs this is usually outlined in a country-specific status agreement.

¹²⁵ Paragraph 21, IDRL Guidelines.

¹²⁶ See Article 5, Tampere Convention.

¹²⁷ Paragraph 22, IDRL Guidelines. See Article 2, Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (2005) (Indonesia is not a party); Article 5(2), Tampere Convention; Paragraph 4, UN GA 57/150 (2001).

¹²⁸ Paragraph 23, IDRL Guidelines.

¹²⁹ Paragraph 23, IDRL Guidelines. See Articles 5(2) and 7, Tampere Convention; Article 12(2), AADMER.

¹³⁰ As contained in Regulation 21/2008, and outlined in Chapter two of this report.

Furthermore, Guideline 22/2010 provides that:

- Permits can be provided for temporary use of road, sea and air transport.
- International institutions can re-export (as long as declared, and re-exported within a certain period of time).
- International institutions can be granted domestic legal facilities, international institutions/foreign personnel can carry local/foreign currency, and embassies can coordinate opening bank accounts.
- Government office opening hours can be extended.¹³¹

On the whole, it is clear that the legal framework in Indonesia has drawn substantially from the IDRL Guidelines and has made significant progress to date. The legal framework offers many of the legal facilities contained in the IDRL Guidelines. There are some differences, such as not expediting inspection process on all goods for quality and compatibility, not relaxing the requirements for recognizing qualifications, and not addressing special goods and equipment such as vehicles and ICT. Indonesia's legal framework is also much stricter regarding the expiry of medicines (two years rather one year), and requiring a minimum use-by-date of six months for foodstuffs. Additionally, it does not fully address the granting of temporary domestic legal status nor does it provide facilities for exempting other forms of taxation. Lastly, it does not provide for government assistance for reducing or meeting essential costs like transport/storage. It may be that these facilities are nevertheless provided in practice, but if not, consideration should be given to see if the legal framework might be amended to include these facilities.

Aspects of the legal framework could also be further enhanced by reorganizing and streamlining some of its approaches, especially in terms of extending the scope of legal facilities to the recovery period and consolidating or streamlining initiation and termination procedures into the law. Furthermore, it would be worthwhile reflecting on the current scope of 'easy access' facilities to integrate all legal facilities as contained in the IDRL Guidelines, and to condition the eligibility of international actors on compliance with key humanitarian principles and standards.

¹³¹ Paragraph 1, Part D, Chapter II, Guideline 22/2010.

International Disaster Response Law (IDRL) in Indonesia
An analysis of the impact and implementation of Indonesia's legal
framework for international disaster assistance

Chapter 4

Legal implementation and impact¹³²

¹³² The facts and analysis in this section have been drawn from the research consultant's interviews and desk research, and supplemented with information from subsequent consultations, unless otherwise indicated. A list of the organizations interviewed for this research is provided in Annex A, but no attribution to specific individuals has been included in the text.

This chapter considers two case studies of recent disasters in Indonesia, in order to assess how the existing legal framework, as outlined in chapters two and three, has been implemented. Through examining the application of the existing laws (or their lack of application) during these disaster response operations, the report seeks to highlight how Law 24/2007 and the associated regulations and guideline for international assistance have had an impact, or where there may still be gaps or room for improvement. The two case studies examined here are the West Sumatera earthquake in 2009, and the Yogyakarta volcanic eruption in 2010. In examining these two disasters, and considering the implementation and impact of the law, it is important to note the following overarching points:

- The scale of and response to the 2004 Aceh tsunami was unprecedented, with an overwhelming number of international institutions operating in the affected areas. While the disasters considered below were considerable in terms of their damage to property and loss of lives, they did not create the same level of destruction nor require the same level of international assistance as the Aceh tsunami.
- Foreign assisting states, rather than international institutions, provided the majority of external assistance in the two disasters considered in this report. Though Regulation 23/2008 and Guideline 22/2010 do not apply to foreign governments, the states that did provide assistance were able to benefit from 'easy access' legal facilities, particularly in West Sumatera.
- Several of the international institutions that assisted during these disasters were already based in Indonesia, and generally procured goods and equipment locally rather than importing them.
- Guideline 22/2010 was prepared in response to disasters that struck after the passing of law 24/2007, such as the West Sumatera earthquake. However, it was not issued in time to be applied during that earthquake response or after the Yogyakarta volcanic eruption, and therefore did not influence those relief operations.

Case Study 1: West Sumatera Earthquake 2009

In the late afternoon of 30 September 2009, two powerful earthquakes struck off the coast of Padang, the largest city of West Sumatera province, within 30 minutes of each other. The earthquakes killed over 1,000 people and damaged over 200,000 buildings and houses both in the coastal province and further inland.

The emergency response

With the President abroad at the time of disaster, the Vice President Jusuf Kalla led a coordination meeting of seven ministries, including BNPB, to analyze at least six assessment reports. BNPB confirmed that foreign Search and Rescue (SAR) teams were welcome as long as they were required. Following a Cabinet meeting the next day, the President declared a state of emergency¹³³ for a period of two months, on the basis of the various assessment reports. He also welcomed international assistance in coordination with national relief efforts. On the 1st of October 2009, the President visited West Sumatera, together with the Coordinating Minister for Social Welfare, Minister of

¹³³ Note that the term 'state of emergency' is not actually stipulated in the law, but referred to as the 'emergency response stage'.

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Home Affairs, Minister of Transport, Minister of Public Works, the Indonesian National Police Chief (Kepolisian Negara Republik Indonesia or POLRI), and the TNI Commander. This delegation met with the West Sumatera Governor and gave directions that SAR activities, the treatment of injuries, and the burials of victims would continue.

Following a Cabinet meeting two weeks later, the President categorized the earthquake as a provincial level emergency, after considering new assessment reports that limited the scale of its effects to one province. According to interviews conducted for this report, it was unclear whether the national government formally announced the end of the emergency response stage, but it was generally accepted that the phase finished in Padang on 21 October 2009, and in all other areas by 30 October, except for the two worst-hit districts.

In terms of the command of the relief effort and the establishment of command posts, the President ordered a coordination post at the Governor's residence following a Cabinet meeting on 1 October 2009, in order to facilitate incoming assistance. A smaller post was established at the airport, which functioned as a Supporting Post for personnel arriving in Padang. He determined that the Mayor of Padang was to be in command of emergency response at the city level, and the Governor at the provincial level. At the same time, however, the national level government was said to be leading the relief effort, with BNPB in the coordination role. The provincial level BPBD West Sumatera had only been established shortly before the earthquake on 2 September 2009, and was therefore not fully functioning at the time. Accordingly, its predecessor, SATKORLAK West Sumatera, covered for BPBD in this instance, and BNPB provided coordination support.¹³⁴

The support provided by BNPB included sending a Rapid Response Team, making available disaster relief 'ready funds', and providing logistics and equipment. Additionally, the Coordinating Minister for Social Welfare (Menko Kesra) supported BNPB by coordinating the involvement of the relevant agencies/ministries under a 'one-roof service' at Padang airport and seaport to facilitate the entry of international assistance. As outlined in the paragraphs on international assistance below, the 'one-roof service' was later codified through the creation of the Supporting Post in Guideline 22/2010. As previously outlined in chapter two of this report, the Supporting Post is the command post to be established in future disaster response operations, and is designed to support the entry of personnel, logistics and equipment and acts as a coordination venue for the relevant institutions and ministries coordinated by BNPB.¹³⁵

Meanwhile SATKORLAK appointed staff to help with the provision of 'easy access' under the 'one-roof service'. Whilst in Jakarta, BNPB appointed officers at Jakarta's second airport and its seaport, and urged international institutions to contact these two posts if they experienced facilitation issues, since these posts had the authority and resources to expedite the deliver logistics and equipment that was needed urgently.¹³⁶

When considering the information above, it is unclear whether the initial phases of the response directly followed the procedures stipulated in the law. For example, the law calls for the disaster emergency status to be determined by a 'quick and appropriate

¹³⁴ See UN OCHA, Indonesia Earthquake Situation Report #4, 3 October 2009, pages 3 and 4, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/9037A1B8CF8158F8852576440058FEAF-Full_Report.pdf (last accessed on 28/05/2014).

¹³⁵ See Article E (21), Guideline 22/2010.

¹³⁶ In accordance with Article 50(1) of Law 24/2007.

study' undertaken by the government. Instead, a number of different assessments of the situation, some undertaken by other actors, were considered. While the President indicated that the emergency response stage had started by declaring a state of emergency, he did not decide the official disaster status until two weeks later. Furthermore, while it is likely that the decision to categorize the disaster as a provincial level emergency rather than a national emergency took into account the scope and reach of the destruction, it is not clear whether this decision was made based on a BNPB recommendation or if it contained the necessary indicators as set out in the law.¹³⁷

One of the interesting points from some of the interviews conducted with INGO stakeholders for this report is that they continued to conduct their own assessments following the passing of the law without cooperation with the government. Moreover, some expressed a desire to continue doing so based on this past practice. In reality, SATKORLAK and BNPB appear to have played a coordination rather than command role, with SATKORLAK coordinating the provincial level efforts and BNPB the national level. While the government did not make the decision on disaster management status for two weeks after the disaster, it appeared as though the response was carried out as if the disaster was of national rather than provincial status.

In accordance with the legal framework, BNPB should have appointed a commander once the emergency response stage commenced, in order to establish the various command posts and field posts and manage the coordination of relief efforts. However, according to stakeholder interviews, this did not happen until a later stage. Furthermore, some interviews suggest that the government did not identify and/or adequately disseminate information regarding a date for the end of the emergency response stage, whereas, according to the definition outlined in Law 24/2007, disaster emergency status should be determined for a certain period of time.¹³⁸

International assistance

In terms of international assistance, many states were willing to assist and were generous in their response to the West Sumatera earthquake. Two countries sent air and sea transport vehicles, while others sent SAR and medical teams (including search dogs) equipment, shelter and medicines. On top of this, some countries transferred substantial funds to the government and international institutions already based in Indonesia to implement the response. INGOs based in Indonesia, and their local partners, were very active in providing relief, both as a specific response to this disaster and through existing development programs.¹³⁹ While this cannot be considered 'incoming' international assistance as such, due to the fact that these organization were already based in Indonesia, some of them did import equipment for the response, including Oxfam International which imported shelter equipment.¹⁴⁰

According to the interviews conducted for this research, international assistance was provided largely in the form of transport, personnel, goods and equipment, which entered Indonesia at Padang and Jakarta airports and seaports. The relevant entry processes were undertaken and legal facilities were granted under the 'one-roof service'.

¹³⁷ These indicators are outlined in Article 7(2), Law 24/2007.

¹³⁸ Article 1, Law 24/2007.

¹³⁹ Interviews with Mercy Corps – 29 August 2012, Oxfam International – 29 August 2012, PLAN – 4 September 2012, and WVI – 29 August 2012.

¹⁴⁰ Interview with Oxfam International – 29 August 2012.

Legal implementation and impact

Generally, assisting states and international institutions asked BNPB for recommendation letters for 'easy access' in facilitating immigration and customs procedures, and presented these letters to the relevant agencies/ministries to receive visas and various exemptions from regular procedures. For example, WFP imported specialized ICT equipment, and was permitted entry.¹⁴¹

The stakeholder interviews also suggest that specific actions were taken to provide certain facilities to expedite relief efforts. These include the declaration of a special decree by the Ministry of Finance to regulate tax and customs procedures; a Circular Letter issued by the Directorate General of Customs (MoF) on the import handling of goods and equipment, and adding additional officers at Padang airport and seaport to facilitate this process; a special team sent by the MFA to facilitate assistance (including the issuance of 60 flight clearances) and; the sending of around 100 officers by the Ministry of Transport to Padang airport and seaport to provide extra support. Provisions were later developed and incorporated in Guideline 22/2010 (which was not yet developed and therefore not applicable to the Padang earthquake response) to outline some of these procedures, such as the entry and handling of goods and equipment under the Supporting Post.

In relation to the provision of foreign military assistance, Menko Kesra was responsible for receiving and approving the use of foreign aircraft, vessels and personnel. Relevant embassy staff accompanied its officers, and had prepared the necessary documentation in cooperation with the MoD and MFA in advance of any arrivals of military equipment and assistance. This documentation included names, ranks and passports of incoming military personnel, their reason for arriving and duration of staying, and the logistics and equipment accompanying them. Based on this information, TNI issued a command to allow entry and movement of these goods and personnel.

Overall, there were no significant reports of problems relating to transport, immigration, customs, tax, and security – no aircraft were refused landing, and no SAR equipment and search dogs were refused entry.¹⁴² The Quarantine Department reported that search dogs were accompanied by the necessary documentation and entered the country through the designated entry points.¹⁴³ Some international institutions apparently created delays for themselves by not completing the required documentation.¹⁴⁴ Furthermore, because certain goods were not labelled in Bahasa Indonesia or English, including food and medicines, they still needed to be inspected by the Quarantine Department and Food and Drugs Surveillance Agency.

According to the National Food and Drug Agency (Badan Pengawas Obat dan Makanan or BADAN POM), when large food volumes arrive it can normally take days to inspect these products to ensure that they are halal and have not passed their expiry date.¹⁴⁵ Although this can create delays in the clearance and delivery of goods¹⁴⁶, it is important that these procedures are undertaken to ensure a quality standard of relief items. The key is to find a balance between undertaking thorough quality control procedures, and expediting these procedures to the fastest extent possible.

¹⁴¹ Interview with WFP – 27 August 2012.

¹⁴² Interviews with USAID – 11 September 2012 and WFP - 27 August 2012.

¹⁴³ Interview with Quarantine Department, Ministry of Agriculture – 5 September 2012.

¹⁴⁴ Interview with UNOCHA – 24 August 2012.

¹⁴⁵ Interview with Food and Drugs Surveillance Agency (Badan POM) – 17 September 2012.

¹⁴⁶ Interviews with Quarantine Department, Ministry of Agriculture – 5 September 2012 and Food and Drugs Surveillance Agency (Badan POM) – 17 September 2012.

According to one of the interviews with BNPB, some government officials thought that the entry of assisting states and international institutions into the country for the West Sumatera earthquake response was 'too easy' and lacked quantity and quality control methods, such as allowing too many SAR teams to enter and failing to check the professional qualifications of medical staff.¹⁴⁷ However, Guideline 22/2010, which was drafted a year or so later, links the entry of SAR and medical personnel to certain standards, so it can be anticipated that these procedures may be strengthened in future operations.

A notable feature of the international assistance provided after the earthquake was the large sum of funds transferred by foreign countries to the government and to international organizations and INGOs already based in Indonesia, rather than 'in-kind' assistance. The MoF opened four currency accounts – euro, dollar, rupiah and yen – to receive the funds from assisting states, which were restricted for use only in the earthquake response.¹⁴⁸ For the recovery phase, the national government established a multi-donor fund, known as the 'Indonesian Multi-Donor Fund Facility for Disaster Recovery' or the 'IMDFF-DR'. According to the legal framework, international institutions must deliver or send funding to BNPB, if they wish to provide assistance in the form of monetary contributions to the government. Furthermore, where foreign assisting states provide funding, BNPB should usually consult with the MFA. During this disaster, it is likely that foreign countries transferred funds to one of the four purpose-opened MoF foreign currency accounts, but research did not reveal if or how thoroughly BNPB consulted with the MFA during this process.

The government seems to now be encouraging international assisting actors to 'Buy Indonesian'; that is, to procure goods and recruit staff locally in order to expedite relief and build local capacity. International organizations are also being encouraged to establish offices or have staff based in Indonesia in order to facilitate their response efforts quickly and more effectively. In the case of the West Sumatera earthquake, it is likely that most if not all international institutions that assisted in the emergency response were already based in Indonesia and were using domestic legal facilities. Therefore, they did not need to submit a list of personnel and equipment to BNPB for approval as required by the law. However the research for this report does not reveal if they completed the disaster management participation approval process before the disaster, as outlined in chapter two.

According to the findings of this research, there were no issues regarding landing and unloading of planes and ships, many of which were military aircraft from Australia, the United States, Malaysia and Singapore. The provision of legal facilities to ensure 'easy access' under the 'one-roof service' seems to have worked effectively in the case of this disaster. Foreign countries and international institutions requested special consideration from BNPB for their personnel for immigration purposes and for their goods and equipment for customs processing, which BNPB and the relevant agencies/ministries provided. While the search dogs appear to have passed through quarantine efficiently, there is a suggestion that the Quarantine Department and BADAN POM still wanted to apply their protection and inspection in accordance with normal procedures, rather than in an expedited manner.

¹⁴⁷ Interview with BNPB – 3 September 2012.

¹⁴⁸ See Bappenas, Rencana Aksi Rehabilitasi Rekonstruksi Wilayah Pasca Bencana Gempa Bumi di Propinsi Sumatera Barat tahun 2009-2011, available online at <http://www.scribd.com/doc/51209604/Renaksi-RR-Sumbar-2009-2011> (last accessed on 28/05/2014).

Legal implementation and impact

There do not appear to have been any licensing issues except perhaps for foreign militaries. Here, Menko Kesra was responsible for these processes, whereas the law seems to delegate responsibility to BNPB for 'easy access' for licensing military personnel and equipment. While TNI was the ultimate arbiter of military entry and movement, the required paperwork was organized with MoD and MFA, and Menko Kesra approved military personnel, although it is not known if it authorized the use of military equipment as well.

Despite the sheer volume of assistance that arrived, and the logistical challenges this presented,¹⁴⁹ the 'one-roof service' was believed to have been successful in facilitating the entry of relief goods and personnel during the response on the whole. There were some challenges related to the speed at which goods were processed and the suggested lack of supervision regarding the recognition of foreign professional qualifications, which is a concern in light of the crucial role that such expertise plays in emergency response, SAR and medicine. Nevertheless, it can be seen from the preceding paragraphs that the facilitation of the response was carried out well, with the success of the 'one-roof service' later codified through the creation of the Supporting Post in Guideline 22/2010.

In terms of the challenges, what can be implied here is that certain procedures did not follow the letter of the law exactly, and perhaps what is needed now is further explanation, dissemination and awareness-raising of the procedures, roles and responsibilities as outlined in the legal framework. This can be done to build upon good practice, such as the establishment of the 'one-roof service', so that disaster response procedures continue to be carried out as quickly and efficiently as possible.

Some of the consultations undertaken for this research revealed that there was confusion regarding the responsibilities for coordinating international assistance and whether this was being undertaken at the national or provincial level. The need to improve coordination between national (BNPB) and provincial (BPBD) authorities was highlighted as a challenge in general with regard to disaster management and response, with inconsistencies in the implementation of the command structure.¹⁵⁰ At the time of finalizing this report, discussions were underway to further clarify roles and responsibilities between national and provincial disaster management authorities, in order to eliminate any gaps, overlap or confusion.

Case Study 2: Yogyakarta (Mount Merapi) volcanic eruption 2010

The emergency response

On 26 October 2010, the most active volcano in Indonesia, Mount Merapi, erupted. Located near the country's traditional Javanese seat-of-power, Yogyakarta, the eruption continued over several days, killing more than 350 villagers and forcing thousands to evacuate.¹⁵¹

¹⁴⁹ Interviews with USAID 11 September 2012 and WFP 27 August 2012.

¹⁵⁰ See pages 6 and 8, IFRC IDRL consultation workshop report (2013), available online at <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf> (last accessed on 28/05/2014).

¹⁵¹ Relief web, Indonesia, Mount Merapi Volcano October 2010, available online at <http://reliefweb.int/disaster/vo-2010-000214-idn> (last accessed on 28/05/2014); Asian Disaster Reduction Centre, Disaster Information: Indonesia Volcanic Eruption 26/10/2010, available online at http://www.adrc.asia/nationframe.php?URL=./view_disaster_en.php?NationCode=&lang=en&KEY=1461 (last accessed on 28/05/2014).

In the beginning, the government response came from the district and provincial levels, with the government of Sleman, Yogyakarta declaring a district-level emergency, and Central Java BPBD moving its operational function to the city of Magelang by establishing a provincial command post. With the largest eruption taking place on 5 November 2010, the President declared a national emergency, and decided that BNPB was responsible for disaster management, supported by the Yogyakarta Governor, Central Java Governor, Central Java and Yogyakarta Military Commander, Police Chief of Central Java, and Police Chief of Yogyakarta; and that the government would be represented by Menko Kesra. Then BNPB formally established a command post at the French Red Cross supported Emergency Operations Centre (EOC) in Yogyakarta, and BNPB was designated control of one military brigade and a police taskforce. Before the disaster, Central Java Province had established its provincial level disaster management authority (the BPBD), but Yogyakarta had not, and SATKORLAK Yogyakarta still carried out its responsibilities and tasks in this instance.

International assistance

After the Mount Merapi volcanic eruption, the government of Indonesia did not issue a formal request for international assistance.¹⁵² The only import of note was the replacement of destroyed volcanic monitoring equipment by the United States Geological Survey.¹⁵³ Ordinarily, according to an interview with the United States Agency for International Development (USAID), it would have been difficult to import the equipment but in the midst of a crisis, the customs procedures were relatively smooth. Notwithstanding the lack of a request for international assistance, Yogyakarta airport and Jakarta airport and seaport were deemed to be entry points if necessary. Similar to the response to the West Sumatera earthquake, foreign assistance was largely provided in the form of fund transfers to the government and Indonesia-based INGOs to provide disaster relief. INGOs already based in Indonesia, such as Oxfam and UNICEF, were involved in the relief effort and cooperated extensively with the government, including in the sourcing relief items from already existing stocks.

Since assisting states transferred funds but did not send personnel to operate in-country after the disaster, (nor did any international institutions that were not already based in Indonesia), the 'easy access' provisions relating to the mobilization of equipment, immigration, quarantine and licensing were not applicable. There were no major challenges identified in relation to the facilitation and regulation of international assistance after the Mount Merapi eruption, largely because the relief operation was handled by national and local authorities, and international assistance was not requested. Indeed, the local handling of the disaster relief operation indicates the increasing capacity and experience of national, provincial and district authorities, civil society organizations and communities themselves to prepare for and respond to relatively small-scale disasters.

¹⁵² World Health Organization, Mt. Merapi Volcano Eruption, Central Java Province, Indonesia, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/0F972F5A3489A853C12577D5003EB636-Full_report.pdf (last accessed on 28/05/2014).

¹⁵³ Interview with USAID – 11 September 2009.

¹⁵⁴ Interview with Oxfam International – 29 August 2012.

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The legal framework that has been developed in Indonesia since the 2004 tsunami is comprehensive and wide in its scope, and Indonesia can be commended for these significant improvements. Furthermore, the framework reflects key aspects of the IDRL Guidelines, particularly in Guideline 22/2010, which have been designed to ensure that future responses are carried out in the quickest and most efficient way possible to meet the needs of disaster-affected people.

By and large, it can be said that the legal framework has been implemented with the passing of Regulations 21/2008 and 23/2008, and with the development of Guideline 22/2010. It has also been implemented on an institutional basis with the creation of BNPB and the provincial BPBDs that have been established thus far. Furthermore, the soon-to-be-developed National Response Framework stems from the requirements of articles 35 and 36 of Law 24/2007 and article 17(1) of Regulation 21/2008, which call for the development of a 'disaster emergency management plan' or 'disaster response plan' as a framework to implement emergency operations.

Good practice has been identified during the response operations considered for the report, however one could argue that the implementation of the legal framework during a large-scale disaster relief operation is yet to be fully tested and its impact truly felt. There is no doubt that disaster response is an intense activity that requires speedy decision-making; while ensuring a strong understanding and implementation of a new law can be a complex process that needs sufficient time and dedicated attention. These thoughts were highlighted by a representative from the Indonesian MFA at a consultation workshop for this report in 2013, who emphasized the importance of ensuring a wide understanding and implementation of the existing framework. Such sentiments were further echoed by international stakeholders at the consultation workshop, who stressed how crucial it is for both national and international actors on the ground to be aware of the relevant regulations, guidelines and other mechanisms to facilitate access to disaster affected areas.¹⁵⁵

The reality is that it can be difficult to fully test the provisions of the legal framework relating to international assistance without the occurrence of a large-scale disaster that requires a commensurate international response. But this does not mean that nothing can be done in the meantime. Field-level and table-top simulation exercises can serve as a very useful means to test the application of the legal framework, or at least to ensure that all relevant actors are aware of the processes and procedures involved, and how it should be followed. Such exercises have already been undertaken, including a table-top exercise in Padang in April 2013, where a number of issues around the facilitation of international disaster relief were highlighted.¹⁵⁶

More recently, the 'Mentawai Megathrust' Disaster Relief Exercise was held in Padang in March 2014, which involved a scenario-based command post and field training exercise. This included the cooperation of both civil and military authorities from Indonesia, ASEAN member states, Australia, the United States, and various international organizations including UN OCHA and IFRC. Academic sessions held prior to

¹⁵⁵ See page 6, IFRC IDRL consultation workshop report (2013), available online at <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf> (last accessed on 28/05/2014).

¹⁵⁶ See Cipullo, Lucia, 'IDRL issues featured in international table top exercise in West Sumatera', April 2013, available online at <http://ifrc.org/en/what-we-do/idrl/latest-news/current-disaster-law-programme-news/idrl-issues-featured-in-international-table-top-exercise-in-west-sumatra-61323/?print=true> (last accessed on 28/05/2014).

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this exercise outlined the relevant components of the legal framework (namely Law 24/2007 and Guideline 22/2010), but there was little mention of these frameworks in the undertaking of the exercise itself. Key elements associated with the facilitation of international assistance could have been better tested, including the establishment of a Supporting Post or provision of easy access facilities. This exercise was certainly a useful method for testing coordination, roles and decision-making responsibilities in disaster response, however future exercises could place more emphasis on making sure these roles and responsibilities are understood and carried out in accordance with the legal framework.

This study has raised some key examples of situations where the law, regulations and guideline have been implemented, or had the potential to be implemented, in two of the biggest disasters in Indonesia since the passing of Law 24/2007. What the research, consultation workshops and disaster relief exercises have largely demonstrated is that progress still needs to be made in terms of ensuring a widespread understanding of the legal framework among all stakeholders, and therefore an efficient and effective implementation of these rules and procedures.

Based on the research and consultations that were undertaken for this report, a number of observations and both short-term and long-term recommendations can be made to improve the overall impact and implementation of the legal framework, and then reconsider the existing content and provisions. It is hoped that these recommendations will be considered in any review of the legal framework for disaster management and response in Indonesia, or in any future exercises aimed to strengthen the execution of emergency response and early recovery operations. IFRC and PMI are willing to provide technical support in the adoption or further discussion of these recommendations.

These observations and recommendations are outlined as follows, and a table of potential 'action points' to implement these recommendations is provided in Annex B of this report:

1. **Improving understanding and awareness of the legal framework:** As a first step, focusing on improved implementation and awareness of the existing framework will be critical. This is particularly pertinent for improving disaster management and response in the short-term, as the revision or creation of new laws and regulations is often a long-term process. The most significant point that emerged from the two case studies and associated consultations was the overall lack of application of the legal framework, and linking the procedures that took place with the provisions stipulated in the law.

In this respect, Indonesia could benefit from initiatives to promote a wider understanding of the law, regulations and guideline, and the roles, responsibilities and processes therein. This dissemination process is an important undertaking which should ensure that all actors involved have a comprehensive understanding of how these procedures should be carried out in a disaster response situation. Furthermore, it is essential for the actors involved to know which authorities have decision-making responsibilities, and how to carry out the necessary procedures to ensure that international assistance is provided quickly and effectively.

A broad spectrum of actors will need to be involved in the dissemination process, including high-level government actors and ministries, and all relevant government departments. This process should also involve those actors who would be operating on the ground in a disaster response (e.g. provincial and district level

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authorities, communities and civil society organizations) to ensure that the framework is understood comprehensively and applied correctly. Any such process should also be extended to assisting states and international institutions to ensure that they fully comply with the permit and access requirements. Such undertakings can be done in the form of simulation exercises, which could focus more specifically on following the rule of the law.

- 2. Eligibility and enforcement:** As stated in chapter three, while the legal framework for disaster response in Indonesia incorporates the core humanitarian principles and responsibilities outlined in the IDRL Guidelines, there is no clear enforcement mechanism to ensure that these principles and responsibilities are upheld. While there are procedures in place to approve the participation of international assisting actors, this could be further developed to incorporate a set of requirements to make them eligible for participation, and to link adherence to humanitarian principles with eligibility for legal facilities.

The response to the West Sumatera earthquake demonstrated concerns over the recognition (or lack thereof) of foreign professional qualifications, and how this could have adverse impacts on the relief that was provided. Ensuring that international assisting actors meet certain eligibility requirements could help alleviate these concerns, and, in a way, act as an enforcement mechanism.

Consideration might also be given to including the principles in Guideline 22/2010 in the law or regulations, and setting up a vetting and supervising mechanism so that only international institutions that can demonstrate compliance with these principles can register to participate in disaster management and enter/operate in emergency response.

- 3. Initiation and termination of assistance:** Guideline 22/2010 provides for the initiation and termination of international assistance, however the processes required to initiate international assistance (e.g. damage and needs assessment, determination of scale of disaster, declaration of emergency status etc.) are somewhat scattered throughout the law and regulations. These could be better consolidated and the processes made more consistent across the legal framework, or consolidated in one part of the law. The processes for the use of foreign military assets could also be better streamlined.

Moreover, international institutions should be consulted before their assistance is terminated, so that they are aware of the termination date and can plan their relief programmes and allocate funding appropriately and in accordance with the determined timeframe.

- 4. Legal facilities for entry and operations:** While the legal framework provides for many of the legal facilities contained in the IDRL Guidelines, there are notable omissions, as stipulated in chapter three of this report. The legal framework could benefit from a reflection on the current scope of its 'easy access' provisions, and integrate all legal facilities as contained in the IDRL Guidelines.

Similar to the provisions regarding 'easy access' for customs procedures, the provisions regarding 'easy access' for personnel and quarantine should be expressly linked to the relevant law, and BNPB could discuss with the relevant agencies/ministries whether they need to amend their laws to give effect to these provisions. Specific attention should be paid to informing assisting actors about the quarantine and food/medicine processes in particular, so that the actors involved understand the procedures.

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In addition, the scope of the IDRL Guidelines covers the both the emergency and the initial recovery periods, and recommends the granting of some legal facilities to be extended to both phases. The existing legal framework in Indonesia restricts 'easy access' facilities to emergency response periods only. Since many problems which international institutions encounter in the emergency phase can continue into recovery periods, it is recommended that the legal framework should allow for an extension of 'easy access' legal facilities into this period as well.

In moving forward, the growing capacity of national authorities and local responders should also be considered. Furthermore, given the already significant developments that have been made, focus could be placed first on improving the dissemination and implementation of the existing framework and then, following on from that, considering the revision or amendment of the existing laws and procedures. To enhance future implementation, small measures could be taken, such as preparing a clear summary of the law relating to emergency response and highlighting its legal interpretations, and preparing simple tools for agencies/ministries to use during a disaster, like a checklist for a quick and appropriate assessment and determination of disaster emergency status. Such steps can allow for a stronger awareness and understanding of what is already one of the most comprehensive legal frameworks for disaster management and response in South East Asia, and the world.

References

Articles

Barnaby Willitts-King, 'The role of the affected state in humanitarian action: A case study on Indonesia', February 2009, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4006.pdf>

Lucia Cipullo, 'IDRL issues featured in international table-top exercise in West Sumatera', April 2013, <http://ifrc.org/en/what-we-do/idrl/latest-news/current-disaster-law-programme-news/idrl-issues-featured-in-international-table-top-exercise-in-west-sumatera-61323/?print=true>

Peter Walker, Colin Rasmussen and Sebastian Molano, 'International Dialogue on Strengthening Partnership in Disaster Response: Bridging national and international support', September 2011, <http://www.ifrc.org/PageFiles/93533/Background%20paper%203.pdf>

National Laws

BNPB Head Regulation Number 22 of 2010 concerning Guideline on the Role of International Organizations and Foreign Non-Government Organizations during Emergency Response, <http://www.bnpb.go.id/website/file/publikasi/437.pdf>

Government Regulation of the Republic of Indonesia Number 21 of 2008 concerning Disaster Management, <http://www.ifrc.org/Docs/idrl/N722EN.pdf>

Government Regulation of the Republic of Indonesia Number 22 of 2008 concerning Disaster Aid Financing and Management, <http://www.ifrc.org/Docs/idrl/N722EN.pdf>

Government Regulation of the Republic of Indonesia Number 23 of 2008 concerning Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management, <http://www.ifrc.org/Docs/idrl/N722EN.pdf>

Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management, <http://www.ifrc.org/Docs/idrl/N722EN.pdf>

Presidential Regulation of the Republic of Indonesia Number 8 of 2008 concerning National Agency Disaster Management, <http://www.ifrc.org/Docs/idrl/N722EN.pdf>

Regional Laws

ASEAN Agreement on Disaster Management and Emergency Response (AADMER), Vientiane, 26 July 2005, <http://www.asean.org/communities/asean-socio-cultural-community/item/asean-agreement-on-disaster-management-and-emergency-response-vientiane-26-july-2005-3>

References

International treaties, conventions and frameworks

Convention on International Civil Aviation (Chicago Convention) (1944), <http://www.mcgill.ca/files/iasl/chicago1944a.pdf>

Convention on the Facilitation of International Maritime Traffic (1965) (Revised 2006), <http://www.tc.gc.ca/media/documents/marinesafety/fal-34-4-e.pdf>

Convention on Temporary Admission (Istanbul Convention), Annex B.9 (1990), <http://www.wcoomd.org/en/about-us/legal-instruments/~media/2D53E23AA1A64EF68B9AC708C6281DC8.ashx>

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998), <http://www.ifrc.org/Docs/idrl/I271EN.pdf>

Food Aid Convention (1999), <http://www.foodaidconvention.org/Pdf/convention/iga1995.pdf>

Convention on the Harmonization and Simplification of Customs Procedures, (Kyoto Convention), Specific Annex J.5 (revised 1999), <http://www.ifrc.org/Docs/idrl/I273EN.pdf>

Hyogo Framework for Action 2005-2015 (2005), <http://www.unisdr.org/2005/wcdr/inter-gover/official-doc/L-docs/Hyogo-framework-for-action-english.pdf>

Resolutions

United Nations General Assembly Resolution 46/182 (1991), <http://www.un.org/documents/ga/res/46/a46r182.htm>

United Nations General Assembly Resolution 57/150 (2002), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/57/150&Lang=E

Plans, Guidelines and Standards

BAPPENAS and BAKORNAS, National Action Plan for Disaster Reduction 2006-2009, <http://www.undp.or.id/pubs/docs/RAN%20PRB%20EN.pdf>

BAPPENAS and BNPB, National Action Plan for Disaster Risk Reduction 2010-2012

BNPB, National Disaster Management Plan 2010-2014, <http://www.bnpb.go.id/website/file/pubnew/99.pdf>

International Red Cross Red Crescent Movement, Code of Conduct for Red Cross Red Crescent Movement and NGOs in Disaster Relief (1994), <http://www.ifrc.org/Global/Publications/disasters/code-of-conduct/code-english.pdf>

International Federation of Red Cross and Red Crescent Societies, 'Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance', 2007 (2011 edition), <http://www.ifrc.org/PageFiles/41203/introduction-guidelines-en.pdf>

International Federation of Red Cross and Red Crescent Societies, 'Annotations to the Draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance', October 2007, <http://www.ifrc.org/PageFiles/41203/annotations.pdf>

References

International Federation of Red Cross and Red Crescent Societies and United Nations Office for the Coordination of Humanitarian Affairs, Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, November 2011, [http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20\(English\).pdf](http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20(English).pdf)

Principles and Practice of Good Humanitarian Donorship (2003), http://www.goodhumanitarianandonorship.org/Libraries/Ireland_Doc_Manager/EN-23-Principles-and-Good-Practice-of-Humanitarian-Donorship.sflb.ashx

Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief (2006), <http://www.ifrc.org/docs/idrl/1634EN.pdf>

Sphere Humanitarian Charter and Minimum Standards in Disaster Response (2011), <http://www.ifrc.org/PageFiles/95530/The-Sphere-Project-Handbook-20111.pdf>

World Health Organization Guidelines for Drug Donations (1999), http://www.who.int/hac/techguidance/guidelines_for_drug_donations.pdf

Reports

International Federation of Red Cross and Red Crescent Societies, 'International Disaster Response Law (IDRL) in Indonesia: The Impact and Implementation of Indonesia's Legal Framework for International Disaster Assistance. Consultation Workshop Report', 2013, <http://www.ifrc.org/PageFiles/124509/IDRL%20in%20Indonesia%20-%20Workshop%20Report%20-%20Final.pdf>

International Federation of Red Cross and Red Crescent Societies, 'Disasters in Asia: the Case for Legal Preparedness', 2010, http://www.ifrc.org/Global/Publications/disasters/idrl/IFRC_IDRL_Report_EN.pdf

International Federation of Red Cross and Red Crescent Societies, 'Law and legal issues in international disaster response: a desk study', 2007, <http://www.ifrc.org/PageFiles/41194/113600-idrl-deskstudy-en.pdf>

International Federation of Red Cross and Red Crescent Societies, 'Legal issues from the international response to the tsunami in Indonesia', July 2006, <http://www.ifrc.org/Global/Publications/IDRL/country%20studies/indonesia-cs.pdf>

International Federation of Red Cross and Red Crescent Societies, 'Indonesia – Laws, Policies, Planning and Practices on International Disaster Response', July 2005, <http://www.ifrc.org/Global/Publications/IDRL/country%20studies/idrl-indonesia.pdf>

Annex A

List of organizations consulted for research

Government:

1. Badan Nasional Penanggulangan Bencana (BNPB)
2. Badan Penanggulangan Bencana Daerah (BPBD) West Sumatera
3. Directorate General of Tax
4. BP POM (Food and Drugs Surveillance Agency)
5. Immigration Directorate General & Ministry of Manpower
6. Basarnas (National SAR Agency)
7. Ministry of Social Affairs
8. Ministry of Transportation
9. Quarantine Department
10. Armed Forces (Army, Navy, Police)
11. Customs Department, Ministry of Finance
12. Ministry of Foreign Affairs
13. Parliament of the Republic Indonesia (Commission VIII)
14. The President's Special Staff for Disaster Management

International assisting actors:

A. NGOs

1. OXFAM
2. World Vision
3. Mercy Corps
4. Plan International

B. Donors

1. United States Agency for International Development (USAID)
2. Australian Agency for International Development (AUSAID – now under the Department of Foreign Affairs and Trade DFAT)
3. Australian-Indonesia Facility for Disaster Reduction (AIFDR)

C. The United Nations

1. United Nations Office for the Coordination of Humanitarian Assistance (UN OCHA)
2. United Nations World Food Programme (UN WFP)
3. United Nations Development Programme (UNDP)
4. International Organization for Migration (IOM)

National Organizations:

1. Palang Merah Indonesia (PMI)
2. Masyarakat Penanggulangan Bencana Indonesia (MPBI)

Annex B

Suggested action points for improving the impact and implementation of the legal framework for international disaster assistance in Indonesia.

Short-term: Focus on implementation and dissemination of existing legal framework	
Action: Conduct field and table-top exercises with a focus on the implementation of the legal framework.	Key areas to test regarding the facilitation of international assistance include: <ul style="list-style-type: none">• Initiation of international assistance and process for requesting or 'welcoming' international assistance.• triggers for international assistance.• Process for ensuring the necessary quality and type of assistance.• Establishment of Supporting Post and provision of easy access facilities.• Coordination.• Roles and responsibilities of assisting actors.• Decision-making responsibilities.
Action: Prepare a clear summary of the legal framework relating to international assistance in emergency response.	Develop a simple handbook outlining the key provisions, roles and responsibilities with regard to facilitation and regulation of international assistance that can be easily used by international assisting actors or domestic actors.
Action: Prepare simple tools for national and provincial level agencies to use during a disaster in order to identify the triggers and need for international assistance.	Such tools could include: <ul style="list-style-type: none">• A checklist for a 'quick and appropriate' study as stipulated in the law.• A checklist for determination of a disaster emergency status.

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Long-term: Revise the existing legal framework for international assistance*

**Note that the points below are not exhaustive. These are an indication of particular aspects of the legal framework that could be further strengthened, as identified in this report.*

Action:**Address the following key areas within the legal framework:**

- **Improved eligibility requirements and enforcement mechanisms:**
 - Include an enforcement mechanism within the legal framework to ensure that core humanitarian principles and responsibilities, as outlined in the IDRL Guidelines, are upheld. This could be done by linking adherence to humanitarian principles to eligibility for legal facilities. Ensuring that international assisting actors meet certain eligibility requirements in order to receive legal facilities can also serve as an enforcement mechanism.
 - Further develop procedures for approving the participation of international assisting actors to incorporate a set of requirements to make them eligible for participation.
 - Establish a vetting and/or supervising mechanism so that only international institutions that can demonstrate compliance with humanitarian principles such as impartiality can register to participate in disaster management and operate in emergency response.
- **Initiation and termination of international assistance:**
 - Consolidate the processes for initiation and termination of international assistance (e.g. damage and needs assessment, determination of scale of disaster, declaration of emergency status etc.) into one part of the legal framework (e.g. revise Law 24/2007, Regulation 23/2008 or Guideline 22/2010 to include sufficient detail on these processes).
 - Include a provision in the legal framework which stipulates that international institutions are to be consulted before their assistance is terminated, so that they are aware of the termination date and can plan their relief programmes and allocate funding appropriately, and in accordance with the determined timeframe.
- **Improve legal facilities ('easy access') for entry and operations:**
 - Revise the current scope of 'easy access' provisions within the legal framework, and include all legal facilities contained in the IDRL Guidelines.
 - Allow for an extension of 'easy access' legal facilities for both emergency response and early recovery periods.

Annex C

Summary Table: Comparison between the IDRL Guidelines and the legal framework for international disaster assistance in Indonesia¹⁵⁷

IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
<p>Part I Core Responsibilities</p>				
<p>3 Responsibilities of Affected States</p>				
3.1	Primary responsibility for DRR, relief and recovery assistance. Addresses role of National Red Cross Society (NS) as auxiliaries and domestic civil society actors	Law 24/2007: Art 5-6; Elucidation, I (1); II Art 5 Reg 21/2008: Art 9 (4); 57 (1); 76 (1) Reg 22/2008: Art 4 (1) Reg 23/2008: Elucidation, I Para 4 (1) Gde 22/2010: Ch 1 (A)		Guideline 22 is the only instrument within the legal framework for international assistance to directly address the role of the NS in disaster management and response.
3.2	If disaster exceeds national coping capacities, affected State should seek international and/or regional assistance to address needs of affected persons	Reg 23/2008: Elucidation, I Para 4 (6) Gde 22/2010: Ch 1 (A); Ch 2 (A) 1a		
3.3	Have sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance, consistent with international law	Reg 23/2008: Elucidation, I Para 1 (1); Para 2; Para 4 (2) Gde 22/2010: Ch 1 (F)1		
<p>4 Responsibilities of Assisting Actors</p>				
4.1	Must abide by the laws of affected State and applicable international law, coordinate with domestic authorities, and respect human dignity	Reg 21/2008: Art 52 (2) Reg 23/2008: Art 10; 12; Elucidation, I Para 1 (5); Para 2 Gde 22/2010: Ch 1 (F)11		This has largely been addressed in the Regulations and Guideline 22/2010, particularly with regard to adherence to domestic and international law, and coordination with local authorities. Eligibility requirements could be more explicitly included in Law 24 or the Regulations.

¹⁵⁷ The 'Legal Framework' refers to Law 24/2007, Regulations 21/2008, 22/2008 and 23/2008 and their elucidations, and Guideline 22/2010.

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
4.2	Act in accordance with principles of humanity, neutrality and impartiality; assistance is calculated on basis of need alone; make no adverse distinction (race, ethnicity, religion, class, gender, disability, age, etc.); provided without any political, religious, economic or military standpoint or agenda	Law 24/2007: Art 3 (1), (2); Elucidation, II Art 3 (1), (2) Reg 23/2008: Art 14 (1), (2); Elucidation, I Para 2; Para 3 Gde 22/2010: Ch 1 (F)13, 15; Ch 3 (B)3		
4.3	Responsive to needs of vulnerable groups (children, the elderly, displaced, disabled, etc); coordinated with domestic actors; sensitive to social, cultural and religious practices; ensure adequate community involvement; strengthen local capacities and reduce future vulnerabilities; minimize negative impacts; transparent manner	Law 24/2007: Art 3 (2); 4; 48e; 55; 59; Elucidation, II Art 3 (2) Reg 21/2008: Art 1 (15); 21 (1)e; 51 (4); 53; 75; 85-88; Elucidation, II Art 75d, e Reg 22/2008: Art 16a; 28 (2) Reg 23/2008: Art 14 (3); Elucidation, I Para 3 Gde 22/2010: Ch 1 (F)3, 4, 7, 12, 14, 16, 17; Ch 2 (B)4; (C)2b, 3; (D)2b13; Ch 3 (A); (B)5		These aspects are comprehensively covered throughout the entire legal framework, with strong emphasis on prioritising the needs of vulnerable groups.
5	Additional Responsibilities of All States			
5.2	Actively encourage interested members of the public to contribute financial donations or relief goods requested by affected State	Law 24/2007: Art 60 (2) Reg 22/2008: Art 7-8		
6	Responsibilities Concerning Diversion and the Intended Use of Resources			
6.1	Assisting actors should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief	Law 24/2007: Art 7 (1)g; 9f; 21g; 72-73; Elucidation, I (7); II Art 7 (1)g; 9f; 21g Reg 21/2008: Art 44-45 Reg 22/2008: Art 31-36 Reg 23/2008: Art 16 Gde 22/2010: Ch 1 (F)10; Ch 3 (E)		
6.2	Affected States should use funds and relief goods donated to them, and which they have accepted, in a manner consistent with the expressed intent	Law 24/2007: Art 12e; 65-68 Reg 21/2008: Art 41-43 Reg 23/2008: Art 8 (6), (7) Gde 22/2010: Ch 2 (C)1		
Part II	Early Warning and Preparedness			
7	Early Warning			
7.1	Have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause disasters, with assisting actors, including the UN Emergency Relief Coordinator	Law 24/2007: Art 1 (8); 12 (c); 21 (c); 44-46 Reg 21/2008: Art 1 (5); 15b; 16; 19 Reg 22/2008: Art 14 (1)b Reg 23/2008: Elucidation, I Para 4 (3)		

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
8 Legal, Policy and Institutional Frameworks				
8.1	Adopt comprehensive legal, policy, and institutional frameworks and planning for disaster management, which recognize the auxiliary role of NS, include domestic civil society, and empower communities. States, with support of regional and international organizations, should devote adequate resources to the effectiveness of these frameworks	Law 24/2007: Art 1 (5); 6e, f; 7; 8d; 9; 12-14; 20-21; 26-27; 35-37; 39-40; 42; 60-64; Elucidation, I (3), (6) Reg 21/2008: Art 1 (2); 6; 8; 10; 17 Reg 22/2008: Art 1 (4), (8); 5-6 Reg 23/2008: Art 1 (3)		There is a strong focus on policies and planning in relation to disaster management, community participation and rights, and disaster funds. The role of the NS or civil society is not mentioned.
8.2	Frameworks should address disaster relief and recovery consistent with the IDRL Guidelines; take into account role of UN Emergency Relief Coordinator; designate responsibility and authority to domestic governmental entities; establish national focal point as liaison between international and government actors at all levels	Law 24/2007: Art 10-25; Elucidation, I (2) Reg 21/2008: Art 1 (18)-(19); 6 (4); 47-50; 95; Elucidation II Art 47 (4) Reg 23/2008: Art 15; 17 Gde 22/2010: Ch 2 (A)2d, e		These provisions outline the roles and responsibilities of different levels of government and establish BNPB as the national focal point (including for coordination with international assisting actors). However, they do not (explicitly) take into account the role of UN Emergency Relief Coordinator.
8.3	Governments should encourage domestic actors with authority over areas of disaster management law or policy to take necessary steps to implement the IDRL Guidelines			
9 Regional and International Support for Domestic Capacity				
9.1	International community should support developing States, domestic civil society actors and NS to build capacities in disaster management	Law 24/2007: Art 30 Reg 23/2008: Art 2; Elucidation, I Para 1 (2) Gde 22/2010: Ch 1 (A)		Reference is made in Guideline 22 to the role of NS and domestic NGOs in disaster management and capacity-building activities but this could be further expanded upon, and also included in Law 24/2007 and the Regulations.
9.2	International community should support developing States to build capacity to adequately implement legal, policy and institutional frameworks			
Part III Initiation and Termination of International Disaster Relief and Initial Recovery Assistance				
10 Initiation				
10.1	Initiated only with consent of affected State, on the basis of an appeal. The affected State should promptly assess needs, and consider undertaking joint assessments with the UN and other humanitarian organizations	Law 24/2007: Art 1 (19); 7 (1)c, (2), (3); 48a, b; 49; 51 Reg 21/2008: Art 21 (1)a, b; 22; 23; Elucidation, II Art 21 (1)a, b; 23 (1) Reg 22/2008: Art 16a Gde 22/2010: Ch 1 (E)6; Ch 2 (A)1, 2a, b; (B)1; Ch 3 (A)1		Rapid needs assessment and a study of the disaster area is covered quite comprehensively in the legal framework. However, the procedures for initiation while outlined clearly in Guideline 22, could be further consolidated in Law 24 to ensure greater enforceability.

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
10.2	Requests and offers should be as specific as possible as to the types and amounts of goods, services and expertise required	Reg 21/2008: Elucidation, II Art 36 (3) Reg 23/2008: Art 8 (1)-(5) Gde 22/2010: Ch 2 (A)2b, c; (D)2a2, 3, 7; b1-3		Although not covered in Law 24, the Regulations and Guideline 22 explicitly address the need for specific requests for and offers of assistance.
10.3	Affected States should make available to assisting actors adequate information about domestic laws and regulations relevant to the entry and operation of relief	Reg 23/2008: Elucidation, I Para 4 (4)		More provisions could be included requiring governments of affected states to disseminate information related to domestic legislation to international assisting actors.
11	Initiation of Military Relief			
11.1	Military assets should be deployed only at request or with expressed consent of affected State, after having considered comparable civilian alternatives	Reg 21/2008: Elucidation, II Art 38 (1) Gde 22/2010: Ch 2 (D)1i, j; 2a6, b4		These provisions address the use of military assets (e.g. clearance and licensing of equipment), but do not state that comparable civilian alternatives should be considered first.
12	Termination			
12.1	Affected State or assisting actor should provide appropriate notification for the termination of disaster relief and recovery, and consult with each other	Law 24/2007: Art 1 (19) Gde 22/2010: Ch 1 (E)22, 23; Ch 2 (B)2b; Ch 5		Procedures for termination of international assistance are outlined in Guideline 22. However, additional provisions should be put in place which provide for consultation with assisting actors prior to the termination of international assistance. These procedures could also be outlined in a revision of Law 24 or Regulation 23, to give them more legal weight.
Part IV	Eligibility for Legal Facilities			
13	Facilities for Assisting States			
13.1	Transit and affected States should grant the legal facilities in Part V to assisting States			
14	Facilities for Assisting Humanitarian Organizations			
14.1	It is the prerogative of originating, transit or affected States to determine which organizations will be eligible to receive legal facilities	Reg 23/2008: Art 4; 13 Gde 22/2010: Ch 2 (D)1c; 2a4		
14.2	States should establish criteria for organizations seeking eligibility, which should include the organization's willingness and capacity to act in accordance with the responsibilities in Guideline 4	Reg 23/2008: Art 5-7		Regulation 23 requires international assisting organizations to submit a proposal, MoU and work plan prior to commencing any response activities. More emphasis could be placed on the establishment of certain criteria by the affected state and the need for organizations to adhere to humanitarian principles to be eligible for legal facilities.

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
14.3	Additional requirements imposed on organizations should not unduly burden the provision of disaster relief and recovery			
14.4	Determination of eligibility for facilities should be done by States in advance of a disaster, or as soon as possible after its onset. Procedures and mechanisms should be as simple and expeditious as possible.	Gde 22/2010: Ch 2 (D)1a, 2a1		Guideline 22 contains provisions allowing foreign actors to assist in emergency operations without having to submit a proposal, MoU and work plan as stipulated in Regulation 23. Instead, they are only required to submit a list of relief items to be provided before or just after arrival. More reference could be made to determining the eligibility for legal facilities prior to a disaster.
14.5	Retention of legal facilities in Part V should be dependent on compliance with the provisions in Guideline 4. However, entitlement should not be changed arbitrarily without appropriate notice			
15	Facilities for Other Assisting Actors			
15.1	Affected States may extend, upon request, legal facilities to private companies providing charitable relief, who should be required to abide by the provisions in Guideline 4	Law 24/2007: Art 1 (25); 28-29; Elucidation, I (4)		The role of business institutions in disaster management is partially addressed and they are obliged to 'consider' the principle of humanity in carrying out their disaster management functions. However, the legal framework does not mention extending legal facilities to private companies or "business institutions".
Part V	Legal Facilities for Entry and Operations			
16	Personnel			
16.1	Grant visas and work permits, without cost and renewable; waive or expedite provision of visas and work permits; establish expedited procedures for temporary recognition of professional qualifications, licenses or certificates; facilitate freedom of access to and movement in and from affected areas	Reg 21/2008: Art 32-35; 38; Elucidation, II Art 32 (1); 33 (1); 38 Gde 22/2010: Ch 2 (A)2e ii; (D)1b; 2a5, 8-11; b5		Easy access with regard to the entry, movement and exit of relief personnel, goods and equipment is comprehensively addressed in Regulation 21 and Guideline 22. Similar provisions could be included in Law 24 for stronger enforcement and to expand the scope of legal facilities.
16.3	Consider to what degree objectives can be met through hiring local staff	Gde 22/2010: Ch 1 (F)6		Guideline 22 calls for the use of local relief goods and equipment, where possible, but does not address the hiring of local staff.

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
17	Goods and Equipment			
17.1	Exempt from customs duties, taxes, tariffs or fees; exempt from export, transit and import restrictions; simplify and minimize documentation requirements; permit re-exportation of unused goods	Reg 21/2008: Art 32; 36; Elucidation, II Art 31 (2); 32 (1), 33 (1) Gde 22/2010: Ch 2 (A)2e iii; (D)1b; 2b6-8, 10, 15		
17.2	Waive or reduce inspection requirements, or clear relief items rapidly through "preclearance" process; arrange for inspection and release outside business hours and/or at a place other than customs office	Gde 22/2010: Ch 2 (D)1g		Guideline 22 states that government ministries and institutions may provide services beyond the normal working hours. Reference could be made to establishing "preclearance" procedures as well.
17.3	Assisting actors should appropriately pack, classify and mark relief items, and inspect to ensure they conform with international quality standards	Gde 22/2010: Ch 2 (C)2a; (D) 2b9		
17.4	Assisting actors should assume responsibility for removing or disposing of unwanted or unused relief items			
18	Special Goods and Equipment			
18.1	Grant temporary recognition to foreign relief vehicle registration and plates	Gde 22/2010: Ch 1 (F)6; Ch 2 (D) 2b11		Guideline 22 acknowledges the use of (foreign) motor vehicles as part of international assistance, but encourages the use of Indonesian products (which can be interpreted as Indonesian-made vehicles) unless unavailable. The Guideline also provides for the granting of permits for the use of 'road transportation' during emergency response, but does not provide specifically for the granting of temporary registration of foreign relief vehicles and plates.
18.2	Waive or expedite the granting of licenses, or reduce barriers to telecommunications and IT equipment. Grant priority access to bandwidth, frequencies and satellite use	Reg 21/2008: Art 38 Gde 22/2010: Ch 1 (E) 4b4		Regulation 21 makes general reference to the granting of licenses for "certain equipment/personnel". Guideline 22 mentions communications equipment under its definitions but does not provide any further detail.
18	Special Goods and Equipment			
18.3	Reduce legal and administrative barriers for the import/transit/export of medications and medical equipment. Assisting actors should ensure the quality, appropriateness and safety of medicines and medical equipment.	Gde 22/2010: Ch 1 (E) 4a, b; Ch 2 (D)2b12		

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18.4	Consider whether requirements for fumigation, prohibition and restrictions on food imports and exports can be modified or reduced	Reg 21/2008: Art 37; Elucidation, II Art 37 Gde 22/2010: Ch 2 (D)2b14		Regulation 21 refers to easy access for goods with regard to quarantine. Guideline 22 outlines quarantine criteria and requirements. Neither of these specifically refer to modifying or reducing these procedures.
19	Transport			
19.1	Grant permission for speedy passage of land, marine and air vehicles, and waive applicable fees	Gde 22/2010: Ch 1 (E) 1, 4b3; 2 (D) 2b11		
19.2	Grant permission for overflight, landing and departure of aircraft			
19.3	Promptly issue exit, transit and entry visas for operating personnel of transport vehicles			This IDRL Guideline is not addressed specifically, but could fall under the 'easy access' provisions, depending on interpretation.
20	Temporary Domestic Legal Status			
20.1	Grant temporary authorization to legally operate and enjoy rights to open bank accounts, enter into contracts or leases, acquire and dispose of property and instigate legal proceedings	Gde 22/2010: Ch 2 (D)1f, h		Guideline 22 requires foreign personnel opening personal bank accounts to coordinate with their respective embassies in the country. It does not mention anything specifically about acquiring/disposing of property or instigating legal proceedings.
20.2	Grant the right to freely bring in necessary funds and currencies and obtain legal exchange rates	Gde 22/2010: Ch 2 (D)1e		
20.3	Allow legal hiring and termination of contracts of local personnel			
21	Taxation			
21.1	Provide exemptions from VAT and other taxes	Reg 21/2008: Art 36 Gde 22/2010: Ch 2 D2b(6b)		Regulation 21 provides for exemptions from import duties and import taxes. Guideline 22 also allows for the exemption of import tax in accordance with prevailing national tax laws and for exemptions or waivers on import duties, but neither of them refer specifically to VAT.
22	Security			
22.1	Take appropriate measures to ensure the safety and security of relief personnel, premises, facilities, means of transport, equipment and goods	Reg 23/2008: Art 11; Elucidation, I Para 4 (7) Gde 22/2010: Ch 3 (B)1, 2		
23	Extended hours			
23.1	Ensure that essential State-operated offices and services function outside of normal business hours	Gde 22/2010: Ch 2 (D)1g		

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IDRL Guideline No	Core aspects	Relevant Provisions of Indonesian law / regulation (Reg) / guideline (Gde)	Degree of coverage	Comments
24	Cost			
24.1	Costs of providing international assistance should normally be borne by assisting actors. However, they may agree in advance for the reimbursement of certain costs and fees, or temporary loan of equipment	Gde 22/2010: Ch 3 (C)		Guideline 22 states that costs should be borne by the aid provider, but does not mention the possibility of making advance agreements for reimbursement or temporary loans of equipment.
24.2	Consider providing certain services at reduced or no cost, including in-country transport, buildings and land for office and warehouse space, and cargo handling equipment and logistics support			

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service / It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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