

Legal Protection for Parties Affected by Floods and Landslides in the Perspective of Civil Law

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Article Info	Abstract
<i>Received:</i> 2023-01-12 <i>Revised:</i> 2023-03-21 <i>Accepted:</i> 2023-06-10 Keywords: legal protection, civil law, floods and landslides, property insurance	<i>This research aims to analyze the legal protection provided to individuals affected by floods and landslides from the perspective of civil law using a normative juridical method with a qualitative approach. Legal protection for those affected by natural disasters has become increasingly crucial considering the frequency and damage caused by floods and landslides in various regions. Through a qualitative approach, this study explores the civil law principles involving the responsibilities of landowners or users in relation to preventing hazards and damages. The analysis also encompasses the principle of legal responsibility in cases of negligence, where affected parties can seek accountability from others if it is proven that the losses occurred due to negligence. Furthermore, the research highlights the role of private agreements and property insurance as essential tools in protecting affected parties. Private agreements can help regulate obligations and responsibilities related to property damage or loss, while property insurance reduces the financial risk arising from property damage. Additionally, consumer protection is a focal point of the study, emphasizing protection against detrimental practices, such as the sale of disaster-prone properties without providing adequate information to buyers. The research also includes dispute resolution procedures in civil law as a means to resolve conflicts among affected parties. The findings of this research provide a deeper understanding of how civil law offers legal protection to those affected by floods and landslides and serve as a foundation for improvements and enhancements in the legal protection system when dealing with natural disasters.</i>

I. Introduction

The Disaster Management Law defines a disaster as an event or a series of events with the potential to threaten and disrupt the lives and livelihoods of the community. These disasters can be caused by natural factors, non-natural factors, or human actions and have the potential to result in loss of life, environmental damage, property loss, and psychological impacts.

Natural disasters are those triggered by natural events, such as earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides. On the other hand, non-natural disasters are caused by events not originating from nature, such as technological failures, modernization failures, epidemics, and disease outbreaks. Additionally, there are social disasters triggered by human actions, such as social conflicts between groups or communities and acts of terrorism.

Several regions in Indonesia are currently facing serious flooding issues. Floods not only lead to the evacuation of residents, damage to household assets and public infrastructure, but also result in loss of life and significant financial losses. Some areas, like South Kalimantan, experience severe flooding due to heavy rainfall and damage to the natural ecosystem caused by deforestation and forest degradation. Volunteers and officials are working to rescue those affected by floods and landslides.

However, Daddy Fakhmanadie has pointed out that the protection of flood victims, including legal protection, has not been maximized. He believes that flood victims have rights guaranteed by the law. They not only have the right to be safe from disaster threats but also the right to accurate information about shelter locations and their legal rights when in evacuation centers.

Aliyth Prakarsa emphasizes the importance of protecting children who are victims of disasters. Besides meeting basic needs such as food and shelter, children also need psychosocial support. Disaster management and child protection laws include the provision of psychosocial services. Therefore, the government has an obligation to provide protection to children in emergency situations. Furthermore, floods have the potential to damage legal documents owned by residents, such as civil registration documents, land documents, and educational records. Victims who lose such documents due to flooding need to receive proper public services.

If these services are inadequate and the rights of victims are ignored, they can take legal action by involving class action lawsuits. Such legal action can be taken if local governments fail in disaster management, handling, and meeting the rights of flood victims. Although such legal actions have been taken, as seen in Jakarta, where residents have filed lawsuits due to flooding, courts in some cases may consider themselves not authorized to adjudicate class action lawsuits from residents regarding the impact of floods. This step can be taken as long as it meets the requirements specified in Supreme Court Regulation No. 1 of 2002 on Class Action Lawsuit Procedures.

Not only floods, but natural disasters like landslides, which occur when masses of soil or rock move from their original location, can also have significant consequences. Soil movement can be triggered by various factors, such as gravity, water flow, or external loads. Soil movement occurs due to an imbalance between the resisting force (shear strength) and the driving force (shear stress) on a slope. The damage caused by landslides is not only due to the intensity of the disaster itself but also due to the lack of public knowledge about the disaster potential in their area. Therefore, information related to the potential of soil movement in an area is crucial, as it can serve as the

basis for educating the public in facing disasters. Because soil movement can only be identified through the characteristics of soil layers beneath the surface, such as the soil's shear strength value.

From early 2017 to 2020, the National Disaster Management Agency (BNPB) recorded "1,636 disaster events in Indonesia. The number of disaster events in Indonesia is increasing from year to year. 95% are hydrometeorological disasters, which are disasters influenced by weather, such as landslides, floods, earthquakes, forest and land fires, and eruptions of Mount Merapi. From these events, the number of deaths or disappearances reached 60 people, 35 people were injured, and 545,329 people were displaced and suffered. Meanwhile, the damage caused by these disasters includes 9,107 damaged houses, 55,266 submerged units, and thousands of damaged health, education, and worship facilities. On the other hand, millions of people live in disaster-prone areas. The number of people living in flood-prone areas, from yellow to red zones, reaches 63.7 million."

Natural disasters often cause the most significant loss of life. It is noted that in 2020, various natural disasters such as floods, tornadoes, landslides, forest and land fires, tidal waves and abrasion, droughts, earthquakes, and volcanic eruptions occurred 4,650 times. The impact of these natural disasters includes damage to 42,762 houses and 1,542 public facilities, ranging from mild to severe damage (BNPB, 2021). This damage not only affects buildings and public facilities used for human protection but also has an impact on changes in land surfaces (Reza Nur Amri, 2022). Law Number 24 of 2007 on Disaster Management defines a disaster as follows:

"A disaster is an event or a series of events that disrupt the lives and livelihoods of the community, caused by natural factors and/or non-natural factors as well as human factors, environmental damage, property loss, and psychological impacts."

In facing unforeseen natural phenomena such as floods and landslides, legal protection for those affected becomes a crucial issue that requires a deep understanding, particularly in the realm of civil law. These two natural disasters not only damage property but also involve the rights and obligations of the parties involved. This research aims to detail and analyze the legal protection mechanisms that can be applied from the perspective of civil law to parties affected by floods and landslides.

The sustainability and legal resilience in addressing the impacts of natural disasters are the primary focus of this research. Using a qualitative approach, this research seeks to delve into the concrete cases involving individuals or groups affected by these natural disasters. A profound understanding of the dynamics of civil legal protection is expected to make a tangible contribution to enhancing the effectiveness and fairness of the legal system in addressing the complex challenges arising from floods and landslides.

2. Research Method

The research method employed in this study is a normative juridical method, which is based on literary sources such as books and journals, as well as legal regulations and literature reviews. A legal science approach is used to address land-related issues and the status of land rights impacted by disasters. The legal regulations initially studied include the Republic of Indonesia Law Number 5 of 1960 on the Basic Agrarian Principles as the foundational rule that mentions one of the causes for the extinguishment of land rights is the destruction of the land.

Subsequently, the subsidiary regulations and previous research are examined to conduct an analysis related to the conditions of damage caused by disasters concerning the status of land rights, to determine whether a land right should be considered as extinguished or not. The scope of natural disasters chosen in this research includes abrasion and earthquakes (including tsunamis and liquefaction) because these disasters frequently occur in Indonesia.

The data collected is analyzed using a qualitative analysis approach. This approach involves observing the acquired data and connecting each data point with legal principles and relevant regulations related to the research issue. This analysis process is carried out with inductive logic, meaning the researcher starts with specific data and then seeks patterns or general rules. To do this, the researcher employs normative tools such as interpretation and legal construction (Moleong, L. J. 2002).

Furthermore, the results of this analysis are evaluated using a qualitative method, which allows for drawing conclusions that align with qualitative findings. These conclusions are made with a deductive approach, resulting in conclusions that are generally applicable to the research issue and objectives that have been set.

3. Results and Discussion

The principle of legal responsibility for parties affected by floods and landslides:

The status of land affected by a landslide is not considered as extinguished. Although there may be changes in the position and boundaries of the land above the ground surface, land rights holders still maintain their rights to the land and can use them. Efforts to protect the legal status of land rights in the aftermath of earthquakes and liquefaction include steps such as inventorying the subjects and objects of land ownership affected, reconstructing land boundaries in accordance with Technical Guidelines PMNA 3/1997, and implementing land acquisition for the construction of permanent housing for liquefaction, earthquakes, and tsunami victims. In addition, changes in the spatial planning of Palu City with disaster mitigation patterns need to be carried out. (Ellisa (2019), Lestari, and Ratode et al. (2021)).

Natural disasters that occur in certain regions can affect land boundaries and even some buildings located on that land. According to experts in agrarian law, this does not mean that disaster victims have lost ownership rights to the land they previously possessed. In Law Number 5 of 1960, there are no provisions allowing for the extinguishment of land ownership rights due to natural disasters. Even though the land may have suffered damage, there are other measures that can be taken (Bagus Rahmanda, 2019).

When a natural disaster occurs and causes changes in land boundaries, it will impact the legal status of land rights. Land rights grant an individual the authority to use and benefit from the land that has been recognized as theirs. Essentially, land rights enable an individual to possess the surface of the earth and grant the holder the right to utilize the land along with all the elements above it, including the airspace and the space above it (Maria SW Sumardjono, 2018).

In Article 53, paragraph (1) of the Basic Agrarian Law (UUPA), the characteristics of land rights are described, including temporary land rights and the classification of land rights as either absolute or indefinite. To maintain the possibility of changing land ownership status due to various events, the government regulates land rights holders through the land registration process. Land Registration Regulations are not only based on UUPA but also provide a legal basis governing agrarian aspects.

Government Regulation Number 24 of 1997 concerning Land Registration details the implementation of land registration. Every citizen has the right and obligation to register the land they own. Active participation of the community in the land registration process is strong evidence of their ownership of the land, and this is recorded in official documents such as land surveys and books. The result of land registration is embodied in documents that include physical and legal data about the land. These documents can be used as evidence of land rights in any transaction.

When land boundaries change due to a natural disaster, it can result in losses for certain parties. The legal certainty desired from land registration covers both the subject and object aspects of land rights. Legal certainty related to the object pertains to the physical condition of the land, including its location, boundaries, length, and width, especially when unexpected changes occur due to a natural disaster. Legal certainty regarding the subject is related to the legal consequences experienced by individuals who have land rights. Land registration is considered mandatory, especially in cases of land rights transfer, encumbrance of land rights, and extinguishment of land rights, in accordance with Article 23 of UUPA.

Civil law establishes the fundamental principle that landowners or occupants are responsible for maintaining the security of their land or property. This principle of responsibility includes the obligation to prevent hazards and maintain the land in a reasonable manner. If these parties fail to fulfill their obligations and damage or injury occurs to others, they may be held accountable.

Negligence Responsibility

According to Garrath Williams (2020:113-114), negligence underscores a fundamental element of human actions: we do and cause things unintentionally. Sometimes, we fail to monitor the world around us, sometimes in a manner inconsistent with the capabilities of adults to act and influence others. There is a view that even the worst forms of negligence should not be considered as criminal acts; we can only be blamed for what we control intentionally, and for behavior that is harmful, such as damaging forests, indiscriminate littering, and causing blocked drains, resulting in flooding.

However, it has been suggested that the collective aspects of non-negligent actions provide useful guidance. The requirement to "exercise care" does not only stem from individual reasoning or goodwill or explicit instructions. We need to collectively take responsibility for assessing these issues. Before blaming someone, we should consider how our collective contributions play a role in adverse or near-miss events. In every situation, it has been implied that we associate the concept of 'fault' with the responsibility in our personal lives, as in the world we protect from natural disasters such as floods and landslides.

From the perspective of civil law, parties affected by floods and landslides can seek legal responsibility from other parties if they can prove that the damages occurred due to negligence on the part of the latter. This includes situations where land or property owners did not take reasonable actions to prevent hazards or did not provide sufficient warnings.

Private Agreements and Insurance

The execution of an insurance agreement does not imply that the insurer must immediately fulfill its commitment, which is to pay compensation to the insured. This action will only be carried out if an event specified in the agreement occurs, resulting in a loss to the insured. The conditions that must be met for the insurer to fulfill their commitment are as follows:

1. The insured event must be uncertain.
2. There must be a causal relationship between the insured event and the loss suffered by the insured.
3. Damage or deterioration must occur to the insured property.
4. There must be no negligence on the part of the insured that caused the loss.

5. The principle of indemnity must be applied, meaning the insurer only pays compensation equal to the actual loss.
6. The value of the insured property must be accurately stated.
7. Factors increasing the risk must be disclosed honestly.
8. Subrogation, which is the insurer's right to stand in the insured's place in legal claims.
9. The possibility of insurance agreements being collective, involving more than two parties.
10. Restitution, which is the sharing of profits obtained by the insurer with the insured.

In Indonesia, the concept of insurance is regulated in the Commercial Code (KUHD) and is further detailed in Law Number 2 of 1992 concerning Insurance Business. Article 246 of the KUHD defines insurance as an agreement in which the insurer promises to provide compensation to the insured for potential losses due to uncertain events.

of the Civil Code provides a definition of an "agreement" as an act in which one or more individuals make themselves bound to one or more individuals. However, this definition is considered incomplete and broad as it only refers to one-directional agreements, which are insufficient to describe all aspects of agreements.

Law Number 2 of 1992 concerning Insurance Business provides a more detailed definition of insurance as an agreement between two or more parties in which the insurer promises to provide compensation to the insured for losses, damage, loss of expected profits, or legal liability to third parties that may be suffered by the insured due to uncertain events or for payments based on the life or death of an insured person.

In conclusion, the execution of an insurance agreement can only be carried out after a risk occurs to the insured, i.e., when an event causes a loss to the insured. Therefore, the execution of an insurance agreement depends on the provisions set forth in Article 1320 of the Civil Code. This article states that an insurance agreement can only be made if the parties have reached an agreement, met the general requirements for making agreements, the object of the agreement is specific, and it does not violate applicable regulations.

Parties affected can take steps to protect themselves through private agreements and insurance. Private agreements can include arrangements between involved parties to regulate obligations and responsibilities related to property damage or loss. Property insurance is an essential tool in reducing financial risks arising from property damage in situations such as floods and landslides.

Consumer Protection

Consumer protection in civil law involves aspects of information and transparency. In the case of property sales that are vulnerable to natural disasters, the party selling the property has an obligation to provide clear and honest information to the buyer about the risks of floods and landslides. This provides protection to buyers who may not have full knowledge of these risks.

Dispute Resolution

According to Philipus M. Hadjon, there are two types of legal protection mechanisms that are cumulative. The first is preventive legal protection, where legal subjects are given the opportunity to express their objections or opinions before a government decision is made. The aim is to prevent disputes from occurring. In this context, the administrative process is essential because

through this process, all parties have authentic evidence from the administration regarding the boundaries of their land. Thus, when unexpected events such as natural disasters occur, preventive legal protection can be a useful guide (Philipus M. Hadjon, 2019).

Repressive Legal Protection mechanisms are used in resolving disputes that arise due to shifting land boundaries as a result of natural disasters. In Indonesia, the handling of legal protection in this context includes the roles of General Courts and Administrative Courts. The fundamental principle in legal protection against government actions is based on the concept of recognizing and safeguarding human rights. This concept originates from Western history and focuses on limiting government actions and enforcing the government's and society's obligations.

The second principle that forms the basis for legal protection against government actions is the rule of law. In the context of recognizing and safeguarding human rights, these principles play a crucial role and are consistent with the concept of the rule of law. Details related to these principles can be found in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020, which regulates the procedures for handling and resolving land cases.

Civil law provides dispute resolution procedures involving negotiation, mediation, or litigation. Dispute resolution is crucial in ensuring that the affected parties can achieve legal fairness. Legal protection in the perspective of civil law for parties affected by floods and landslides is an essential aspect to safeguard their rights. Legal responsibility principles, including the responsibilities of landowners or users, as well as negligence liability, form the basis for legal protection. Additionally, private agreements and property insurance provide tools to protect the affected parties from financial losses.

Consumer protection also becomes a focus in this legal protection, emphasizing transparency and information provided to property buyers vulnerable to natural disasters. Finally, dispute resolution is a crucial element in ensuring that disputes between affected parties are resolved fairly and effectively. However, legal protection in the context of floods and landslides can vary depending on the jurisdiction of the country, and consulting with competent legal experts in civil law is essential to understand the applicable rights and obligations in specific cases. This legal protection is a key element in supporting those affected by natural disasters.

4. Conclusion

In facing natural disasters such as floods and landslides, legal protection for the affected parties becomes crucial. Natural disasters can result in losses involving physical damage, loss of property, and psychological impacts. This research has revealed various aspects of legal protection that are relevant from a civil law perspective, involving the responsibilities of landowners or users, legal responsibilities in negligence cases, the roles of private agreements and property insurance, as well as consumer protection.

Legal protection includes the fundamental principle that landowners or property occupants are responsible for maintaining the safety of their land or property. This includes the obligation to prevent hazards and maintain the land reasonably. If these parties fail to fulfill their responsibilities, and damage or injury occurs to others, they can be held responsible.

In cases of negligence, the affected parties can seek legal liability from other parties if they can prove that the losses occurred due to negligence on the part of those parties. This includes

situations where landowners or property owners fail to take reasonable actions to prevent hazards or do not provide sufficient warnings.

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