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STUDY ON LEGAL PROTECTION AND SOCIAL SECURITY FOR FIRE VICTIMS IN THE CITY OF BALIKPAPAN

By

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Abstract

Natural disasters or non-natural disasters greatly affect people's lives and livelihoods because they can cause human casualties, environmental damage, disaster property losses, and psychological impacts. Therefore, the state should be present to anticipate, handle, and rehabilitate every aspect of disasters that occur. The aim of the research is the research aims to examine legal protection and social security for fire victims in Balikpapan City. The research was carried out from January to March 2023 in Balikpapan City, East Kalimantan Province, Indonesia using normative legal research methods (legal research). The research results show that there are differences in classifying types of disasters based on Minister of Social Affairs Regulation 04/2015 juncto 10/2020, Regional Regulation 02/2018 and Deputy Mayor Regulation 30/2012. These differences in disaster categorization can have implications for guarantees of assisting disaster victims. Implementatively, the City of Balikpapan refers to Mayor Regulation 30/2012 to assist fire victims even though fire is not included in the disasters for which assistance can be provided based on Regional Regulation 02/2018. In other words, Mayor Regulation 30/2012 is more implementable in providing legal certainty and guarantees to fire victims in Balikpapan City.

Keywords:

Legal Protection and Social Security for Fire Victims.



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1. INTRODUCTION

A disaster is an event or series of events that threatens and disrupts people's lives and livelihoods caused by natural factors and/or non-natural factors or human factors, resulting in human casualties, environmental damage, disaster property losses, and psychological impacts (Law Number 24 of 2007). Seeing the impact that disasters have on humans or the environment, the state should be present to anticipate, handle, and rehabilitate every aspect of the disaster that occurs.

Based on the above, the Ministry of Social Affairs of the Republic of Indonesia issued Minister of Social Affairs Regulation Number 04 of 2015 concerning Direct Assistance in the Form of Cash for Disaster Victims in conjunction with the Minister of Social Affairs Regulation Number 10 of 2020 concerning Amendments to Minister of Social Affairs Regulation Number 04 of 2015 concerning Direct Assistance in the Form of Cash for Disaster Victims.

This regulation was formed by considering that as a social protection effort to reduce the risk of social shocks and vulnerabilities for individuals, families, groups, and/or communities affected by disasters, direct assistance in the form of cash is needed.

In Article 1 paragraph (3) of Minister of Social Affairs Regulation 04/2015, it is stated that natural disasters are disasters caused by an event or series of events caused by nature, including earthquakes, tsunamis, mount erupts; flood, drought, typhoon; and landslide.

Furthermore, in paragraph (4), still, in the same article, it is stated that a non-natural disaster is a disaster caused by an event or series of non-natural events, which include: technology failure, failed modernization, epidemic; and disease outbreak.

In both paragraph (3) and paragraph (4) of the Article, it is not stated that fires, whether occurring on land, forests, or settlements, are not included in the disaster category. However, an interesting thing is in Chapter II related to the Implementation of Direct Assistance in Minister of Social Affairs Regulation 04/2015, it is stated in Article 5 that direct assistance in the form of cash for disaster victims is provided, one of which is to be used to finance house building materials. Furthermore, Article 9 explains that "Requests for assistance with house building materials for disasters are submitted by the applicant to the Minister through echelon II who is in charge of disaster affairs with a copy to echelon I in the form of a report from the district/city social service/agency after receiving a recommendation from the government social service/agency province".

Finally, some requirements must be met to carry out the selection and assessment of needs to apply for direct cash assistance as stated in Article 10 paragraph (2) letter i, which states that "there are efforts to divide district/city and provincial governments in financial support for aid to victims of social disasters. And residential fires through regional revenue and expenditure budgets."

Furthermore, if we refer to Minister of Social Affairs Regulation 10/2020 as a regulatory amendment to Minister of Social Affairs Regulation 04/2015, there is not a single word that mentions fire. Even the provision that direct assistance can be provided for victims of residential fires as regulated in Minister of Social Affairs Decree 04/2015, in this latest regulation this provision has been removed.

From the explanation of the provisions above it can be stated that:

1. Fires are not included in the disaster category, whether natural or non-natural based on Article 1 paragraph (3) and (4) of Minister of Social Affairs Regulation 04/2015;
2. Victims of residential fires are said to be one of the parties who can be provided with assistance as long as there is an effort from the district/city and provincial government through the regional revenue and expenditure budget based on Article 10 paragraph (2) letter i of Minister of Social Affairs 04/2015.
3. Minister of Social Affairs Decree 10/2020 removed provisions for providing direct cash assistance to residential fire victims.

Referring to disaster data released by the Management Agency Balikpapan City Regional Disaster, it is stated that throughout 2023 there will be at least 27 types of fire incidents occurring in Balikpapan City [1]. This data shows that in Balikpapan City, throughout 2023 there have been fires predominantly in houses/residential areas. One of them even resulted in the death of a person with a disability [2].

Based on the description of this background, the problem can be formulated, namely: What is Legal Protection and Social Security for Fire Victims in Balikpapan City?

The research aims to examine legal protection and social security for fire victims in Balikpapan City.

2. RESEARCH METHODS

2.1. Type, Time and Location

This research uses normative legal research methods (legal research), which is based on an analysis of applicable laws and regulations that are relevant to existing problems. The research was conducted from January to March 2023 in Balikpapan City, East Kalimantan Province, Indonesia.

2.2. Data Collection

Data collection techniques are carried out by (a) field research, intended to obtain data by conducting interviews (in-depth interviews) in the field. Interviews are conducted directly. In the interview method, the materials to be questioned have been prepared first by researchers as a guide, this method is used so that resource persons and respondents can easily provide answers in the form of descriptions; and (b) library study activities, document study and note study, are intended to obtain secondary data with a series of literature and documentation search activities by reading, reviewing, summarizing data, citing books, reviewing laws and regulations, documents and other information related to the problem which will be discussed by conducting a literature study [3].

2.3. Data Analysis

Data analysis is the process of organizing and sorting data into patterns, categories, and basic descriptions so that themes can be found and working hypotheses can be formulated as suggested by the data. The analytical method that will be used in this research is the qualitative analysis method. This method combines field data obtained such as interviews, data obtained from respondents, sources, and observations with data from literature studies in the form of primary and secondary legal materials and then selected according to their quality and truth based on whether they are important or not related to the problem.

3. RESULTS AND DISCUSSION

3.1. Disaster Management Regulations in Balikpapan City

In terms of regional disaster management, Balikpapan City has Regional Regulation Number 2 of 2018 concerning the Implementation of Regional Disaster Management as its legal basis. The regional regulations that underlie regional disaster management have different classified types of disasters when compared with Minister of Social Affairs Regulation 04/2015 or Minister of Social Affairs Regulation 10/2020.

In Article 18 paragraph (1) of Regional Regulation 02/2018, forest/land fires are one type of disaster that is included in the natural disaster category. Meanwhile, regarding the types of non-natural disasters, Regional Regulation 02/2018 adds HIV/aids and water accidents as additional types of disasters which were not found in Permensos 04/2015 junto 10/2020 (See Comparison Table 1).

In general, Regional Regulation 02/2018 contains many provisions regarding disaster management, including regulations regarding the management of disaster aid, which in the Minister of Social Affairs Regulation is stated as direct assistance in the form of cash for disaster victims. As Article 83 paragraph (1) states: "Regional Government provides and provides disaster assistance to disaster victims"

Furthermore, paragraph (2) explains: "Disaster Assistance as referred to in paragraph (1) consists of condolence compensation, disability compensation, soft loans for productive businesses; and assistance in meeting basic needs. It is confirmed that all disaster assistance will be provided to disaster victims.

To find out about the disasters referred to in Regional Regulation 02/2018, it is explained in Chapter 1 concerning General Provisions or Chapter V concerning Types of Disasters (see table comparing types of disasters). Either in general provisions or in chapters. Separately for the type of disaster, Regional Regulation 02/2018 does not classify residential or building fires as disasters.

Other regulations governing disasters in Balikpapan City can be found in Balikpapan Mayor Regulation Number 30 of 2012 concerning Permanent Procedures for Implementing Disaster Management in Balikpapan City (Balikpapan Mayor Regulation Number 30 of 2012). As a derivative regulation, Major Regulation 30/2012 has implementation and more detailed provisions related to disaster management. However, many of these regulations refer to Balikpapan City Regional Regulation Number 21 of the Year 2008 concerning the Organization and Work Procedures of the Disaster and Fire Management Agency (Regional Regulation 21/2008) which was later replaced by Regional Regulation Number 3 of 2013 concerning the Organization and Work Procedures of the Balikpapan City Regional Disaster Management Agency. So it is natural that Major Regulation 30/2012 includes elements of building and residential fires as part of the types and potential disasters that can occur in Balikpapan City. This is certainly different from Regional Regulation 02/2018 which no longer includes the element of building and residential fires as part of a disaster.

An example of Major Regulation 30/2012 which provides specific provisions for dealing with disasters can be seen in Articles 21 to Article 26, all of which regulate how to organize disaster management according to each type of disaster. Apart from that, Major Regulation 30/2012 also regulates standards for providing disaster assistance, all of which are sourced from the Balikpapan City Regional Revenue and Expenditure Budget.

3.2. Differences in Disaster Categories in Balikpapan City Legislation Regarding Disaster Management

A comparison of the types of disasters in several provisions stated in the Minister of Social Affairs Regulations, Mayor Regulations, and Balikpapan City Regional Regulations is presented in Table 1.

Table 1. Comparison of Disaster Types in Several Regulations

Types of Disasters	Minister of Social Affairs Regulations 04/2015	Minister of Social Affairs Regulations 10/2020	Mayor Regulation 30/2012	Regional Regulation 02/2018
Natural disasters	1. Earthquake; 2. Tsunamis; 3. Mount Erupts; 4. Flood; 5. Drought; 6. Typhoon; 7. Landslide	1. Earthquake 2. Tsunamis 3. Mount Erupts 4. Flood 5. Drought 6. Hurricane 7. Landslide	1. Earthquake 2. Tsunamis 3. Flood 4. Landslide 5. Volcanic Eruption 6. Extreme Waves and Abrasion 7. Extreme weather 8. Drought 9. Forest and land fires 10. Building and Residential Fires 11. Epidemics and Disease Outbreaks 12. Technology Fail 13. Social Conflict	1. Earthquake 2. Tsunamis 3. Flood 4. Drought 5. Tornado 6. Abrasion 7. Landslide 8. Forest and Land Fires
Non Natural disasters	1. Technology Failure 2. Failed Modernization 3. Epidemic 4. Disease Outbreak	1. Technology Failure 2. Failed Modernization 3. Epidemic 4. Disease Outbreak		1. Technology Failure 2. Failed Modernization 3. Epidemic 4. Disease Outbreak 5. HIV/AIDS 6. Water Accidents

Article 99 of Regional Regulation 02/2018 which regulates transitional provisions, states that: "When this Regional Regulation comes into force, all provisions governing Disaster Management in the Region are declared to remain in effect as long as they do not conflict with the provisions in this Regional Regulation or are not specifically regulated in this regulation."

The non-inclusion of building and residential fires as a type of disaster in Regional Regulation 02/2018 as stated in Mayor's Regulation 30/2012 raises the question of whether this constitutes a

conflict with statutory regulations? If this is said to be a conflict then based on the transitional provisions as stated above, Mayor Regulation 30/2012 is declared no longer valid.

In principle, Regional Head Regulations can be formed based on two methods (Regional Government Law) [4]:

1. Based on orders from higher laws and regulations;

It is not uncommon to find in the system of statutory regulations that a higher statutory regulation explicitly orders further regulations to be regulated in the underneath.

This order can come from a law, government regulation, or other regulations that are above it, including regional regulations ("Regional Regulation") which order regional heads (governors, regents, or mayors) to enact regional head regulations ("perkada") to further regulate the regulation.

2. Based on authority

The explanation of Article 8 paragraph (2) of Law 12/2011 explains that what is meant by "based on authority" is the implementation of certain government affairs by the provisions of statutory regulations. The term "authority" in the explanation above, of course, does not mean the authority to form regulations, but rather the authority to manage its area of authority in carrying out its main duties and functions. The preparation of these regulations is tailored to the needs of the institution or agency in carrying out its authority.

Based on the reasons above, it seems that the formation of Mayor Regulation 30/2012 is an establishment based on Regional Regulation 21/2008 because the regional regulation specifically mentions fire which was later revealed as a type of disaster in Mayor Regulation 30/2012.

Apart from that, if you refer to the instructions number 127 of the attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, it is stated that the transitional provisions contain adjustments to the legal action arrangements or legal relations that already exist based on the old Legislative Regulations to the Legislative Regulations. New one, which aims to: (a) avoid legal vacuum; (b) guarantee legal certainty; (c) provide legal protection for parties affected by changes to the provisions of the Legislative Regulations; and (d) regulate matters of a transitional or temporary nature.

So it can be stated that the difference in types of disasters based on Mayor Regulation 30/2012 and Regional Regulation 02/2018 is not a conflict to avoid a legal vacuum and ensure legal certainty. However, the difference in disaster categorization between the two regulations is still something that needs to be harmonized, especially by Regional Regulation 02/2018 which is newer than Mayor Regulation 30/2012.

The disharmony in the legislative regulations in Balikpapan City regarding disaster classification is reasonable considering that Law Number 24 of 2007 concerning Disaster Management does not include building or residential fire disasters as part of disasters. This is also the reason why several implementing regulations in Balikpapan City are not very strict about including building and residential fires as part of disasters so that normatively the reference for providing social assistance for these incidents becomes biased.

Firmness in categorizing building and residential fires as a disaster in Balikpapan City is necessary considering the prevalence of these disasters every year. If in the end this disaster is firmly included in the disaster category in the Balikpapan City legislation then there will be legal certainty of

a guarantee of the presence of the state (Balikpapan City Government) to assist victims of building and residential fires.

4. CONCLUSIONS AND SUGGESTIONS

4.1. Conclusion

Based on the results of the research and discussion, it can be concluded as follows: there are differences in classifying types of disasters based on Minister of Social Affairs Regulation 04/2015, Regional Regulation 02/2018, and Mayor Regulation 30/2012. These differences in disaster categorization can have implications for guarantees of assisting disaster victims. Implementatively, the City of Balikpapan refers to Mayor Regulation 30/2012 to assist fire victims even though fire is not included in the disasters for which assistance can be provided based on Regional Regulation 02/2018. In other words, Mayor Regulation 30/2012 is more implementable in providing legal certainty and guarantees to fire victims in Balikpapan City.

4.2. Suggestion

1. There needs to be firmness in determining the type of disaster as stated in Regional Regulations and the Mayor of Balikpapan;
2. The need for a process of harmonization of statutory regulations, between Regional Regulations and Mayor Regulations which specifically regulate disaster management in the City of Balikpapan for the sake of legal certainty;
3. There is a need for community involvement, including academic elements, in the process of drafting legal regulations so that in the future there will be no more conflicting norms in legal regulations;
4. It is necessary to propose to amend Law Number 24/2007 concerning Disaster Management which includes elements of building and residential fires as disasters. Or at least provide provisions for regions to be able to determine other disasters (which have not been accommodated in the provisions of the law) as disasters that need to be provided with assistance by the local regional government. Like the building and residential fires that occurred quite intensely in Balikpapan City.

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Regulation

Law Number 12 of 2011 concerning the Formation of Legislative Regulations

Regulation of the Minister of Social Affairs Number 4 of 2015 concerning Direct Assistance in the Form of Cash for Disaster Victims junto Regulation of the Minister of Social Affairs Number 10 of 2020 concerning Amendments to Regulation of the Minister of Social Affairs Number 4 of 2015 concerning Direct Assistance in the Form of Cash

Balikpapan City Regional Regulation Number 02 of 2018 concerning Implementation Regional Disaster Management

Balikpapan City Regional Regulation Number 21 of 2008 concerning Organization and Work Procedures Disaster and Fire Management

Balikpapan Mayor Regulation Number 30 of 2012 concerning Fixed Procedures Implementation of Disaster Management in Balikpapan City