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**Integration of traditional community norms into disaster risk management laws in Indonesia:
Learning in Aceh and practicing in Central Java**

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INTRODUCTION

1. Significance of a disaster risk management law

Once a large-scale disaster occurs, it usually takes a heavy toll of an extensive geographic area and various social elements. Thus disaster risk management is necessary to minimize that toll. Disaster risk management includes: preparedness and mitigation measures in pre-disaster phase, emergency responses at the occurrence of disaster, as well as rehabilitation and reconstruction measures in post-disaster phase. Each different stage requires different physical and non-physical measures. The purpose of a disaster risk management is to relieve the victims, and to recover the dysfunctional social life promptly, as well as to reduce the cost of damage or recovery. In order to implement an effective disaster risk management, disaster management law that covers extensive administrative activities and budget measures is necessary. Additionally, a large-scale disaster also causes a lot of legal dispute, for instance, a dispute about an inheritance, land border, tenant and so on. Accordingly, rapid dispute resolution is mandatory so that the process of rehabilitation and reconstruction can begin promptly¹.

In the United States, the importance of law in disaster risk management was strongly recognized after the Hurricane Katrina hit and damaged New Orleans in August 2005. Thus many researches about law and disaster were published then². In Indonesia, Aceh tsunami in December 2004, and Central Java earthquake in May 2006 became the turning point of the disaster risk management law in Indonesia.

¹ For the case study in Banda Aceh, Indonesia, see Shimada Yuzuru, "The Role of Law in the Reconstruction Process of the Aceh Tsunami Disaster", in Per Bergling et.al. eds., Rule of Law Promotion: Global Perspectives, Local Applications, Iustus, 2009.

² Farber, Daniel A. and Chen, Jim eds., Disasters and the Law: Katrina and Beyond, Aspen, 2006; Malloy, Robin Paul ed., Law and Recovery from Disaster: Hurricane Katrina, Ashgate, 2009; Baum, Marsha L., When Nature Strikes: Weather Disasters and the Law, Praeger, 2007; Miller, Ruth A., Law in Crisis: The Ecstatic Subject of Natural Disaster, Stanford University Press, 2009; Hunter, Nan D., The Law of Emergencies, Butterworth-Heinemann, 2009.

This paper, at first section, overviews the development of disaster risk management law in Indonesia. In the second section, I will discuss about measures taken by local and national governments in implementing reconstruction after Central Java earthquake disaster. When the earthquake occurred in 2006, there were not sufficient legal framework or procedure that could be applied to a large-scale disaster. Under that situation, government agencies both of local and central issued various regulations and official letters to address a pile of problems for reconstruction. There are two points that should be paid attention: 1. it was attempted to transfer the financial power from central government to local government (decentralization), and 2. the “grass-root” approach was employed to empower the village community. This paper will focus on these two points³.

2. Comparison of disasters in Aceh and Central Java

On one hand, the Aceh tsunami disaster and the Central Java earthquake disaster have some common features. On the other, while they are large-scale disaster caused by earthquake, characteristics of their damages, and social-political situations in affected areas are very different.

About common features, at first, both disasters caused severe damage in densely populated areas (Banda Aceh city and Yogyakarta city, both are capital cities of provinces). Therefore, the rebuilding of houses and social infrastructures have the foremost priority in the reconstruction process.

Secondly, both two areas have a special political importance. There has been a protracted armed conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM), a secessionist armed group, and Indonesian National Army in Aceh. Because the peace talks between the GAM and the government of Indonesia was going on at the time of

³ Regulations and other official document related to the Central Java earthquake disaster that this paper refers are cited from the report published by the government of Yogyakarta Special Province. (Pemerintah Provinsi Daerah Istimewa Yogyakarta, Rangkuman Kebijakan: Pelaksanaan Rehabilitasi Rekonstruksi Pasca Gempa Bumi di Daerah Istimewa Yogyakarta, 2008).

the tsunami disaster, a prompt reconstruction is crucial for the peace talk and security in Aceh. On the other hand, Central Java, especially Yogyakarta, is the center of Java culture that is predominantly influential to Indonesian society, and political situation in this area has a significant impact to Indonesian politics⁴. Because of this political importance, Indonesian government allocated a lot of resources to the reconstruction in Aceh and Central Java.

Thirdly, these two disasters occurred only within one and half years. Therefore, the reconstruction process in Aceh was still fresh in memory. Especially, people can learn a lesson from many problems that occurred during reconstruction in Aceh.

Whereas there are also some significant differences of characteristics and social background of damage between two disasters even though both are caused by major earthquakes.

First point is the extension of damage. In case of Aceh tsunami disaster, almost all buildings within 2 km of the coastline were completely destroyed, and an area of 2-4 km inland from the coastline was affected by the serious floods caused by the tsunami. There were the *de fact* decimation of the local communities due to the extremely high death rate in the tsunami affected area (particularly in the coastal area where the death rate exceeded 90%). Due to this devastating damage, administrative, security and economic function in Aceh, that are the key for reconstruction, had considerably decreased. Demographic shift after tsunami was large, too. As a result, rebuilding of local communities became a major issue of reconstruction process in Aceh. In contrast, in case of Central Java, damages in city center where administrative organs concentrate was relatively light, and administrative organs that are necessary to command reconstruction kept themselves function. Collapse of houses was major part of damages caused by earthquake in Java. Therefore, the function of local community remained, and local communities could play their roles in reconstruction.

Second point of difference is the social situation at the time of disaster. Security condition in Aceh extremely deteriorated due to prolonged conflict between the GAM and

⁴ Government of Indonesia declared Central Java earthquake as the “national disaster” immediately after its occurrence.

Indonesian army. While, in Central Java, the Sultan Hamengkubuwono X is the Governor of Yogyakarta Special Province, the main province of Central Java area. Sultan is the spiritual symbol of Javanese people, and has a charismatic leadership. Thus, Yogyakarta enjoys far better security stability than any other area in Indonesia.

Third point that make distinction between Aceh and Central Java is the strength of civil society. Because of a military operation against alleged GAM members by Indonesian army and a counter attack against government officers (they were considered as outsiders) by the GAM, serious human rights violation widely spread in Aceh. Under such situation, civil society remained weak in Aceh. Contrast to Aceh, there are many higher educational institutions, including prestigious Gadjah Mada University, in Yogyakarta. Civil society is very active there as students and scholars are the main component of it. This strong civil society played an important role in reconstruction by cooperating for as well as monitoring local government.

Thus, it can be envisaged that: at first, the central government employed highly centralized reconstruction policy in Aceh because the local government lacked sufficient capacity and accountability to cope with devastating damage; second, in contrast to the case of Aceh, the central government could transfer its administrative and financial resources to a relatively capable local governments in order to accomplish a decentralization in reconstruction process in central Java earthquake disaster.

In addition to reasons above mentioned, I will also argue that policy makers in Central Java learned negative aspect of Aceh reconstruction process, and they adopted a decentralized approach and grass-root approach for their reconstruction process.

I. DEVELOPMENT OF DISASTER RISK MANAGEMENT LAW IN INDONESIA

1. Legal development before 2007

There were no Parliamentary acts on comprehensive disaster risk management

until 2007 in Indonesia. The Act no. 2007/24 on disaster management (*Undang-undang nomor 24 tahun 2007 tentang Penanggulangan Bencana*, hereinafter referred to as “disaster management act”) is the first act on comprehensive disaster risk management in Indonesia. The disaster management act also provides the establishment of the National Disaster Management Agency (*Badan Nasional Penanggulangan Bencana*, hereinafter referred to as “BNPB”) as a permanent organ⁵. Before enactment of the disaster management act, “National Disaster Management Coordinating Agency” (*Badan Koordinasi Penanggulangan Bencana*, hereinafter referred to as “*Bakornas*”) was set up as an organization that took charge of a disaster risk management. However, the organic regulation on the *Bakornas* was not a parliamentary act but the President decision. The first Presidential decision that established the *Bakornas* was the Presidential decision no.28/1979, and there had been several amendments until 2005. This section overviews a development of the *Bakornas* through comparing amended points in each Presidential decisions.

(1) Presidential decision no.28/ 1979

The name of agency that this Presidential decision (hereinafter referred to as “Presidential decision 1979”) provided was the Natural Disaster Management National Coordination Agency (*Badan Koordinasi Nasional Penanggulangan Bencana Alam, Bakornas*). As shown its name, "disaster" was considered as a “natural disaster" in the Presidential decision 1979. The risk management provided in the decision was limited to a rescue of victims at the occurrence of a disaster, and to support for the affected people after disaster. Therefore, the disaster risk management under the Presidential decision 1979 was not the comprehensive disaster risk management system that addresses to various type of disasters, as well as contain both pre- and post-disaster management.

(2) Presidential decision no.43/ 1990

⁵ The organic regulation on the BNPB is the Presidential regulation no. 2008/8.

Presidential decision no.43/ 1990 (hereinafter referred to as “Presidential decision 1990”) changed the name of previous agency to the "Disaster Management National Coordination Agency (*Badan Koordinasi Nasional Penanggulangan Bencana*).” The main changes in this Presidential decision from previous one are: at first, this Presidential decision added the disaster caused by human activities to the definition of disaster; second, the decision provided that the disaster risk management should include a disaster management before occurrence as well as after occurrence of a disaster. Thus, the Presidential decision 1990 provides a disaster risk management as a process that include a preventive disaster management (preparedness and mitigation), emergency disaster management (rescue) and recovery disaster management (rehabilitation and reconstruction).

According to the Presidential decision 1990, the Coordinating Minister of people’s welfare (hereinafter referred to as “Coordinating Minister”) serves concurrently as the chairman of the *Bakornas*. Relevant Ministers (Minister of social affairs, Minister of internal affairs, Minister of health, Minister of public works, Minister of transportation, chief commander of national military, governors of affected provinces) also serve as committee members concurrently. Secretary General of the *Bakornas* is the director-general of the social support division in the Ministry of social affairs.

Actually, the *Bakornas* is the *ad hoc* organization that would not be convened until when the large-scale disaster occurs. That is why the all committee members of the agency were concurrent positions. *Bakornas* was not financially independent, too, and its operating budget comes from the budget of the secretariat of the Coordinating Ministry.

In summary, the *Bakornas* under the Presidential decision 1990 wa not permanent body even though the decision provided clearly the comprehensive disaster risk management, and the agency also lacked of either financial or organizational independence that were necessary to coordinate various government bodies in disaster risk management. Those problems are not changed even by the next Presidential decision.

(3) Presidential Decision no. 106/ 1999

This Presidential decision no. 106/1999 (hereinafter referred as "Presidential decision 1999") decision added the "disaster caused as a result of social disturbance" to the definition of "disaster". It also extended the membership of committee of the *Bakornas*. So the Minister of industry and energy, the Minister of agriculture, the Minister of forest and plantation, the Minister of environment, the Minister of science and technology, the Minister of information, the Minister of national development were newly added to committee membership of the *Bakornas*. Still, however, all committee membership including the head of the agency and secretary-general was a concurrent position.

The background of this amendment was the recognition that the excessive development was causing disaster, and the perception that the frequent ethnic conflicts after the end of Soeharto's authoritarian regime should be also a kind of disaster.

Indeed, there were large-scale forest fires in Sumatra island and Kalimantan island, as well as lengthy drought in Irian Jaya (West part of New Guinea island) from 1997 till 1998. These natural disasters were caused by the over exploitation that exceeded recuperative power of natural environment, such as haphazard swiddens and excessive deforestation due to timber exploitation and mining. Because of this excessive development problem, Ministers related to environmental and development division joined to committee membership where only Ministers related to humanitarian and logistic division had had membership before.

About the ethnic conflicts, there was a large-scale refugee issue in East Timor in 1999⁶. Violence in Maluku islands and Sulawesi island due to ethnic or religious hostility

⁶ Exodus of refugees occurred immediately after the referendum on independence of East Timor from Indonesia. Militias who opposed to independence engaged in large scale subversive act in East Timor including murder and firing. In Ambon, Maluku islands, bloody armed conflict between Muslim residents (mainly immigrant) and Christian residents occurred. In Poso and other cities in Sulawesi, as a result of confrontation between immigrant residents (from Java and Madura, mainly Muslim) and Indigenous residents (mainly Christian), each residents groups attacked religious places and schools of opposite group.

also caused many cases of murder and a large number of internal displaced persons. In response to those social disturbance, the Presidential decision 1999 extended the definition of "disaster" so that disaster risk management could cover the issue of refugees and displaced persons.

(4) Presidential Decision no. 3/ 2001

Amended points of the Presidential decision no.3/2001 (hereinafter referred to as the "Presidential decision 2001") are as follows: 1. The name of authority was altered to "National Coordination Authority of Disaster Management and Response to Evacuees (*Badan Koordinasi Nasional Penanggulangan Bencana dan Penanganan Pengungsi*)"; 2. the Vice-President serves concurrently as the head of the agency, and the secretary of the Vice-President serves concurrently as the secretary general of the agency; 3. financial independence (the agency's budget is to be expended directly from a state budget).

New name of the agency corresponded to the extension of the definition of "disaster" in the Presidential decision 1999. In addition to this, the Presidential decision 2001 provided that the response to evacuees was "humanitarian service and protection for evacuees of certain place caused by social or political conflict, including preventive activity, emergency response, reception of evacuees, transportation of evacuees, as well as return and re-settlement of evacuees."

The chair of the *Bakornas* is changed because the Ministry of social affairs and the Coordinating Minister were abolished for administrative reform. As a result, however, the financial independence of the *Bakornas* was strengthened. Previously the budget of the *Bakornas* came from the budget of the secretariat of the Coordinating Minister. After the amendment, *Bakornas* had its own budget in the state budget. Other than financial reform, the Presidential decision 2001 provided a systematization of the secretariat of the *Bakornas*, too. Thus, the division of disaster management, the division of response to evacuees, the division of civil cooperation and participation, and the division of general administration were newly set up.

(5) Presidential Regulation no. 83/ 2005

The Presidential regulation no.83/ 2005 (hereinafter referred to as "Presidential regulation 2005") newly installed two vice-secretaries. The Minister of internal affairs and the Coordinating Minister of people's welfare (established again) were to be vice-secretaries. The Coordinating Minister was in charge of "the coordination of cross-sectional and international activities in disaster and emergency response". Whereas, the Minister of internal affairs was in charge of "the coordination among provinces, prefectures and cities in disaster management and emergency response." In general, the Coordinating Minister has a jurisdiction over some Ministries relevant to logistics in disaster response, that is, the Ministry of social affairs, the Ministry of health, the Ministry of environment and the Ministry of housing⁷. On the other hand, tasks of the Minister of internal affairs include the local autonomy and the coordination among local governments. Thus, by the Presidential regulation 2005, the *Bakornas* reinforced its coordinating capacity that was necessary for comprehensive disaster risk management.

2. Disaster management act in 2007 and the National Disaster Management Agency

(1) Disaster Management Act in 2007 (Act no. 24/ 2007)

The Act no.24/2007 (hereinafter referred to as "disaster management act") is the first parliament act that regulates a comprehensive disaster risk management in general in Indonesia⁸.

As discussed above, we can be summarize the development of disaster risk

⁷ Other than these Ministries, that the Coordinating Minister also has a jurisdiction over Ministries of national education, religious affairs, culture and tourism, women empowerment and child protection, empowerment of state agencies, administrative reform, as well as youth and sports.

⁸ Acts on the disaster risk management of specific areas are, for example, the Act on environment, and the Act on insular and coastal area.

management regulated by Presidential decisions as follows:

First point is the extension of the definition of "disaster." At the beginning, the definition of "disaster" was confined to only an unavoidable natural calamity. However, later, its definition has been extended to the calamity caused by human activities (e.g. excessive development, failure of technology, conflicts etc.).

Second point is the extension of the definition of the "disaster risk management." At the beginning, the disaster management was merely considered as a rescue of victims and a rehabilitation of damages after disaster occurred. After a series of amendments, however, disaster risk management became to mean the long process that includes preparedness and mitigation measures before disaster, emergency response upon the occurrence of disaster, as well as rehabilitation and reconstruction after disaster.

However, disaster management system in Indonesia before 2007 has some important problems, yet.

At first, there should be a permanent body in order to implement the disaster management as a long process from pre-disaster to post-disaster. But, the all committee membership of the *Bakornas* are concurrently served by ministers, thus the committee works in *ad hoc* base. It means that the *Bakornas* can begin disaster management only after disaster occurs, even though some Presidential decisions provided a comprehensive disaster management that should cover both pre- and post-disaster phases.

Secondly, the *Bakornas* employs a centralized approach in disaster risk management. The Presidential decision 1999 provided the disaster management mechanism at local level. According to the Presidential decision 1999, there is an implementation coordination unit (*Satuan Koordinasi Pelaksana*, hereinafter referred to as "*Satkorlak*") headed by Governor at the province level. At the prefecture and city level⁹, there is an implementation unit (*Satuan Pelaksana*, hereinafter referred to as "*Satlak*") headed by a chief of prefecture or city. The Presidential decision 1999 provided that *Satkorlak* and

⁹ In Indonesian local administration system, there are provinces (*propinsi*) as first local administration entities. Under a province, there are cities (*kota*) and prefecture (*kabupaten*) as second local administration entities. Under a prefecture, there are wards (*kecamatan*) and village (*kelurahan* or *desa*).

Satlak were to coordinate and implement the disaster management in their jurisdiction according to a disaster management guideline made by the *Bakornas*. About the financial aspect, however, there were no provisions that allow transferring financial base from central government to local government, even though relevant Presidential decisions provided that each local governments should disburse the operation cost of *Satkorlak* and *Satlak* from their own local budget.

The disaster management act significantly changes these points. Thus, the disaster management act lays down the establishment of a permanent body for disaster risk management, and an increase of the competency of local governments in disaster risk management.

About the decentralization approach, article 5 of the Disaster Management Act provides that both “(central) government and local government” are responsible to the implementation of disaster risk management. According to article 9 of the Act, competences of local government are:

- a. to determine the disaster risk management policy for the area of its jurisdiction in accordance to the local development policy;
- b. to settle on a local development policy that includes elements of disaster risk management;
- c. to implement the cooperation policy with province or other prefectures or cities in disaster risk management;
- d. to settle on a local policy for an use of technology that has potential causing risk of disaster or danger of disaster;
- e. to settle on a local policy to prevent use or exploitation of natural resource that exceed recuperative power of natural environment;
- f. to manage of collection and distribution of money or goods within a province or prefecture/ city.

These competencies of local government are correspond to those of central

government, especially competencies of the National Agency of Disaster Management (*Badan Nasional Penanggulangan Nasional*, hereinafter referred to as the "BNPB"). Article 7 of the Act provides that functions of the BNPB are:

- a. to determine the disaster risk management policy in accordance to the national development policy;
- b. to settle on a development policy that includes elements of disaster risk management;
- c. to determine the disaster situation and the disaster level of a country and region;
- d. to settle on the cooperation policy with foreign government, agencies and international organizations in disaster risk management;
- e. to settle on a policy for an use of technology that has potential that causes risk of disaster or danger of disaster;
- f. to settle on a policy to prevent use or exploitation of natural resource that exceed recuperative power of natural environment;
- f. to manage of collection and distribution of money or goods on a national level.

It is clear from this relation that the competence of central government and competence of local government are clearly divided and decentralized except for the determination of disaster level and international relations. For example, disaster risk management policy for a region is to be determined in accordance to the local development plan that a local government itself settles on. Central government only coordinate inter-sectional disaster management with foreign governments, foreign agencies and international organizations, while provincial governments coordinates activities of prefectures and cities within its jurisdiction.

The disaster management act also lays down a permanent body for comprehensive disaster risk management. This is the BNPB as mentioned above.

The BNPB is composed of a supervising division and a implementation division of disaster management. Supervising division of disaster management is in charge of overall

policy making and command of disaster management, while the task of implementation division is the implementation of disaster management based on general policy made by supervising division. The membership of the supervising division is expert members and government members of relevant Ministries¹⁰. As the disaster management act clearly makes distinct the competence of central government from that of local government, the act also provides the establishment of Local Disaster Management Agency (Badan Daerah Penanggulangan Bencana, hereinafter “BDPB”) that would replace to *Satkorlak* of each province.

One of implementation regulation of the disaster management act is the Presidential regulation no.8/ 2008 on the BNPB (hereinafter referred to as the "Presidential regulation 2008 "). According to the Presidential regulation 2008, there are 9 expert members and 10 government members who represent each relevant Ministries in the supervising division of the BNPB. To select government members, each Ministries submit a proposal of candidates to the head of the BNPB, and the head of the BNPB recommends candidates to the President. Then the President appoints government members based on that recommendation. For the selection of expert members, the head of the BNPB recommends 18 candidates and those candidate are examined by the Parliament (a fit and proper test). Finally, the President appoints nine expert members. An important point is that the no members of supervising division are of concurrent position, thus the leadership of the BNPB is permanent body unlike that of the *Bakornas*.

The implementation division is also organized so that the BNPB can implement comprehensive disaster management as a process encompassing from pre-disaster phase until post-disaster phase. Indeed, the implementation division is composed of the prevention and preparedness section, emergency response section, rehabilitation and reconstruction section, and logistics and infrastructure section. Each of those sections specially address to certain phase of comprehensive disaster risk management process.

¹⁰ Secretariat of the Coordinating Minister, Ministry of internal affairs, Ministry of social, Ministry of public works, Ministry of health, Ministry of finance, Ministry of transportation, Ministry of mineral and energy, National police and Military.

II. PRACTICE OF THE RECONSTRUCTION AFTER CENTRAL JAVA EARTHQUAKE

The Central Java earthquake occurred on 27th May 2006, and severely damaged Yogyakarta, a main city of Central Java region, and its suburb. It was one and a half years after Aceh tsunami disaster. Even though there were broad recognition about the necessity of comprehensive disaster risk management system when the Central Java earthquake occurred, there was not an act on disaster management (that act was enacted in 2007 at last as mentioned above). Therefore, although people learned from reconstruction process of Aceh tsunami disaster, there was not a clear legal framework to apply new approach to reconstruction. In that situation, local governments whose regions were affected and central government issued many regulations as well as official letters to guide reconstruction efforts.

1. Learning of Aceh

In the reconstruction process after Aceh tsunami disaster, the central government established the Rehabilitation and Reconstruction Agency ("*Badan Rehabilitasi dan Rekonstruksi*", hereinafter referred to as "BRR") under the direct control of the central government, and government concentrated all reconstruction budget and management of assistance fund to the BRR. This scheme was partly due to the size of damage and particular social-political situation in Aceh. On the other hand, however, there are many criticism against that highly centralized scheme. For example, to say, it failed to facilitate citizens' participation to rehabilitation and reconstruction activities, most of reconstruction projects were dominated by third parties and excluding local people, as well as, many of reconstruction activities were not a well-designed sustainable program but short time and spontaneous projects¹¹.

¹¹ Bakri Beck, a presentation on 18-19th November 2008 at work shop "*Kegiatan Apresiasi Manajemen Bencana Melalui Pelatihan Penanganan Rahabilitasi dan*

Especially, the exclusion of local communities from reconstruction of society, and a huge amount of aid money come from outside made Aceh people dependent to aid. This situation cause the inefficient use of aid money come from both international and domestic society, as well as serious corruption in reconstruction project¹².

An example of inefficient use of aid is house reconstruction. In the house reconstruction of Aceh tsunami disaster, the BRR or other aid organizations built houses and provided those houses to victims. Though the house supply was enough, there were even over supply in some area (thus houses remained empty), as well as there were some cases that residents rejected receiving house because those houses did not meet quality standard. In other case, an aid agency rejected to pay for constructors, and residents could not received houses. Further, In principle, only landowners of destroyed house could receive reconstructed houses in Aceh, thus the landless or tenants were forced to move to remote newly developed residential area. Those displaced people often met difficulty in accessing clean water and public transportation.

In addition, some NGOs did the "Cash for Work" program in Aceh as an income generation program, in which NGOs paid people for their participation to reconstruction work. But this program is also criticized for it was harmful for mutual cooperation tradition in local communities. Indeed, government of Yogyakarta asked some NGOs not to do "Cash for work" program in Java¹³.

2. Legal measures in each phase of disaster management

As mentioned above, the comprehensive disaster risk management is the process that is composed of various activities from pre-disaster phase to post-disaster phase.

Rekonstruksi Rumah Paska Bencana Berbasis Pemberdayaan Masyarakat di Propinsi DIY dan Jawa Tengah" in Yogyakarta.

¹² See Asian Development Bank et.al. eds., Curbing Corruption in Tsunami Relief Operations, Asian Development Bank, 2005.

¹³ Interview to Dr. Abdur Rofi, lecturer of the Faculty of Geography, Gadjah Mada University, on 10th August 2009.

(1) Pre-disaster phase (preparedness)

When the earthquake attacked Central Java in 2004, there was not a legal framework preparing to such large-scale disaster. Even though there were two regulations on disaster management then, namely the Presidential regulation no. 83/ 2005 above mentioned, and the Governor decision no. 151/ 2004 on the appointment of the disaster management coordination unit (*Satkorlak*), these two regulations did not provide legal measures before disaster. As mentioned in previous section, the Presidential regulation 2005 provided only *post facto* measures for disaster. The Governor decision no. 151/ 2004 was as well. Indeed, the Governor decision assumed a geographically limited scale disaster, that is, the eruption of Merapi Volcano lying north of Yogyakarta City (disaster of a pyroclastic flow and volcanic ash). Accordingly, those existing regulations were insufficient to cope with such large-scale disaster as Central Java earthquake.

(2) Emergency response phase

On 27th May in 2006, an earthquake measuring 5.9 on the Richter Scale struck Central Java. Immediately after that, the Governor of Yogyakarta Special Province (hereinafter referred to as "the Governor") declared the occurrence of an earthquake disaster. On that declaration, the Governor ordered to implement a disaster risk management measures under the coordination of *Satkorlak*, and to rescue victims.

Two days after, the Governor decision no. 68/ 2006 provided the establishment of the earthquake disaster management team (hereinafter referred to as "disaster management team"). The disaster management team is to implement disaster risk management according to policies settled by the BNPB and *Satkorlak*. Surveying detailed data about damage caused by the quake is also the team's task.

On 31st May, some regulations that facilitate field rescue activities were made as the Governor Instructions. Those regulations are concerning to the appointment of disaster management implementation units (*Satuan Pelaksana, Satlak*) at prefecture/ city level and

volunteer activities (*e.g.* mobilization of boy scout and civil servants to undertake a rescue, and issuance of ID cards for international and domestic volunteers).

In the official letter of the head of the BNPB on 2nd June, the central government showed the general guideline on emergency support measures that included an emergency support plan for local governments. This general guideline provides payment of condolence money for victims, food and tent support, free medical service and so on. Among others, this letter said that the central government would support rebuilding of destroyed houses, and ordered to local government to complete a survey necessary for this house rebuilding support by 10th June.

(3) Rehabilitation and reconstruction phase

By the enactment of the Presidential decision no. 9/ 2006 on the installation of the rehabilitation and reconstruction coordinating team (hereinafter referred to as “coordinating team”) on 3rd July, the disaster risk management in Java proceeded from emergency response phase to rehabilitation and reconstruction phase. The coordinating team is composed of a supervising division and a implementation division. The membership of the supervising team is relevant Ministers¹⁴ and Governors of affected provinces (Yogyakarta Special Province and Central Java Province). Whereas, governors of affected area become leadership of the implementing division. The term of the coordinating team is two years. As enactment of the Presidential decision, the Governor of Yogyakarta appointed the implementation team for rehabilitation and reconstruction post-earthquake (hereinafter referred to as "implementation team") (Governor decision no. 20/ TIM/ 2006). Measures taken in the rehabilitation and reconstruction phase can be divided roughly into house reconstruction and non-house reconstruction. According to the Governor decision no. 125/ 2006, provincial government is to be responsible for the budget of Non-house

¹⁴ Coordinating Ministers of economic affairs, and people’s health, and Ministers of internal affairs, finance, national education, commerce, industry, agriculture, national economy planning, state company, cooperation and small and medium company, and housing.

reconstruction¹⁵. On the other hand, as above mentioned, at the early stage, the central government had already expressed to support house reconstruction in affected region. Then the memory of understanding (MoU) between the Minister of public works and the Governor on 15th December 2006 (no. 11/ PKS/ DC/ 2006) reaffirmed that the central government should complete the house reconstruction by the state budget.

3. House reconstruction

(1) regulatory framework for house reconstruction

Collapse of houses was the most major damage of the Central Java earthquake. Because the structural strength of houses was insufficient, thus the damage of collapse was extremely large compared with the scale of the earthquake. As a result, many of the rehabilitation and reconstruction projects were for rebuilding houses.

As I mentioned above, the central government expressed its plan to support rebuilding houses very soon after the quake. This section will review the budget allocation for rebuilding houses.

The Coordinating Minister of People's Health (*Menteri Koordinator Kesehatan Rakyat*, hereinafter referred to as "Coordinating Minister"), in his official letter to Governors of Yogyakarta and Central Java on 2nd June 2006, said that the central government will supply subsidy for rebuilding houses as well as emergency support. This letter indicated several schemes that became the basic legal framework of later reconstruction program. At first, the data survey on house damages should be completed by 10th June, so that houses that were eligible to government subsidy would be identified rapidly. Second, the period of rehabilitation and reconstruction phase should be twelve months. Third, Javanese communal tradition known as *gotong-royong* (mutual cooperation)

¹⁵ Non-house reconstruction includes infrastructure, social and culture (e.g. school building), economy (e.g. support for small and medium size company), and government (e.g. government building). Provincial government estimates necessary budget in 2006 for non-house reconstruction as 174,756,740,127 rupiah.

should be utilized in the process of house rebuilding, while each house rebuilding should be regulated by a technical evaluation system guided by government (the ministry of public works) and village. Forth, amount of subsidy for each affected house is based on level of its damage. Damage level category and amount of subsidy is: (a) 30 millions rupiah for collapse or heavily damaged house, (b) 20 millions rupiah for medium damaged house and (c) 2.5 millions rupiah for lightly damaged house¹⁶.

On 6th July 2006, the meeting of the Coordinating Minister made the reconstruction support plan. According to this early plan, housing subsidy would be released in three steps (at the first step, 30% of the total amount in July 2006; at second, 40% of the total amount in October 2006; and at the third step, the rest of subsidy would be released in January 2007).

However, in that meeting, the total amount of subsidy for each house were reduced to 15 millions rupiah for collapsed or heavily damaged house, 5 millions rupiah for medium damaged ones, and 1 million for lightly damaged ones.

In practice, the implementation of subsidy was not so smooth as expected. Indeed, in the letter on 30th March 2007 addressed to the Minister of Finance, the Governor pointed out that the provision of subsidy was not sufficient in 2006, and demanded speedy provision of the subsidy in 2007. In the same letter, the Governor explained that each collapsed or heavily damaged houses received only 10 millions rupiah in 2006 in Bantul prefecture which is the most severely damaged area, and also asked central government to implement subsidy for medium damaged houses as soon as possible in order to avoid uneasiness in society. Then, the Governor's letter to the director-general of the budget bureau of the Ministry of finance estimated the total amount of house rebuilding expenditures necessary for 2007 at 1,700,790,559,000 rupiahs.

There was significant difference between the amount of subsidy that government declared at beginning and that of actually paid. And the payment of subsidy was divided to three steps. These two policies made victims doubtful whether government would give

¹⁶ "Collapse or heavily damaged" means that the structure of house is broken and it is impossible to live; "medium damaged" means that wall and structure still remain; and "lightly damaged" means that wall, structure and roof remain even though damaged some.

them a subsidy for their house rebuilding as promised. Indeed, this doubt became the one of causes for which subsidy was not appropriately used as regulated in reconstruction policy.

The determination of damage level was also problematic. Because the subsidy for lightly damaged houses did not realized at the early stage, thus victims whose houses were evaluated as lightly damaged complained about the method of data survey and grading criteria¹⁷.

(2) Decentralized approach

In the course of reconstruction in Aceh tsunami disaster, highly centralized approach (by the BBR) was employed. This approach is criticized for the exclusion of local people, dependence on aid money, as well as inefficiency and corruption. Reflecting these problems in Aceh reconstruction, decentralization and grass-root approach became the keyword in the reconstruction process in Java.

This section will review how the decentralized reconstruction scheme was formulated after the Central Java earthquake through the communication between the central government and local governments focusing house reconstruction.

The Presidential decision no.9/2006 stipulated the establishment of the coordinating team that was headed by the Coordinating Minister. Then, the Governor of Yogyakarta appointed the implementation team to execute the state budget for rehabilitation and reconstruction activities (Governor decision no.20/ 2006 on 8th July 2006).

Each local institutions and prefectures/cities should submit draft proposal of reconstruction budget to the Governor, and the local auditor institution (*Badan Pengawasan Keuangan Daerah*, BPKD) should check the execution of that budget (the Governor's

¹⁷ The letter of the Governor addressed to the Minister of public works on 30th March 2007 said that even though the subsidy for lightly damaged houses would not be released from state budget, it is difficult for local government to expend this subsidy. And the Governor ask the Minister to allow to divert a part of subsidy from state budget to support for lightly damaged houses in order to avoid social uneasiness.

official letter no.361/ 03262 on 30th August 2006 addressed to heads of prefectures and city, and local government institutions).

Thus, the mechanism in which local government executes the reconstruction budget from the state budget was formulated through those process. In addition to this, taking several occasion, the governor of Yogyakarta demanded the central government to transfer the reconstruction budget into the jurisdiction of local government.

For example, the Governor regulation no.38/2006 (19th December 2006) points out that reconstruction project agreed by the MoU between the Minister of public works and the governor of Yogyakarta was not completed, thus there were remaining money yet. Then, that regulation provided that the local government would not return the remaining money to the central government but deposit it in the bank account of the local government. The official letter of the Governor on 13th April 2007 to the Ministry of finance requested that the subsidy from state budget could be executed by governor's regulation without waiting for the enactment of the regulation of the director-general of accounting of the Ministry of Finance, in order to execute subsidy in 2007 as soon as possible. In the official letter on 19th April 2007, the Governor of Yogyakarta instructed the heads of prefectures and city, in case of subsidy remained, not to return the money to the central government, but to deposit it at the bank account of prefectures/ cities and utilize for other activities of reconstruction¹⁸.

In response to those requests of the province, the Minister of public works affirmed that "according to the Presidential decision no. 9/ 2006, the implementation team of the province have the jurisdiction over house reconstruction by paying attention to necessity and situation of each area."

(3) Grass-root approach

¹⁸ For example, support for affected houses on the land where house construction is legally prohibited (such as houses on the zoned area for other purpose, Sultanate domain, land owned by the railway company, river terrace, and land owned by village), improvement of housing environment surrounding affected area, improvement of sanitary condition and infrastructure.

In Aceh, house reconstruction was predominantly done by the BRR and other aid agencies (either international or domestic).

In contrast, the government emphasized the importance of initiative from village level community in house reconstruction in Java. The government explained this approach as the utilization of "local wisdom (*kearifan lokal*)". The reasons why the grass-root approach was employed for house reconstruction in Central Java were: (a) village communities still remained in affected area (because of the size of damage, relatively low death rate compare to Aceh, and small scale of population mobility after disaster); (b) rich resource of civil society and educational institution that make the grass-root approach effective. In addition to these, and more importantly, this grass-root approach learned from negative aspect of the heavily centralized reconstruction scheme in Aceh.

The process of grass-root approach in Java includes: (a) data survey about the damage level of each houses (collapse or heavily damaged, medium damaged, and lightly damaged) by local government institution in order to calculate the amount of subsidy, (b) making residents groups that are to receive subsidy as an unit, (c) phased release of subsidy, (d) making decision by each residents groups about the process of house reconstruction, (e) supervising whether construction meets structure standard (earthquake resistance).

As mentioned above, the Coordinating Minister instructed to utilize tradition of mutual cooperation in Javanese village community known as *gotong-royong* for house reconstruction in his official letter soon after the earthquake (2nd June 2006). Thus, Residents groups (*Kelompok Masyarakat, Pokmas*) were established as an implementation group of reconstruction based on *gotong-royong* tradition.

Head of each prefectures or city regulates about the residents group. For example, the decision made by the Head of Sleman prefecture on 11th September 2006 provided on the role of heads of wards and villages in Sleman prefecture as follows:

The tasks of a head of ward are: (a) recommending candidates of subsidy recipient in each villages over which that head has jurisdiction, (b) facilitating officers in forming residents groups, and (c) coordinating the implementation of house reconstruction within its

jurisdiction.

Whereas, **the tasks of a head of village** are: (a) formulating residents groups in each villages in coordination with the heads of *dukuh*, *RW* and *RT* as well as other public figures, (b) supervising activities of a residents group, and (c) verification of the proposal on activity, report, and proposal on the use of subsidy made by each resident groups.

About the structure of residents group, for example, the decision of the Mayor of Yogyakarta city (No. 455/ KEP/ 2006) provided:

- Eligibility for subsidy

- a. owner of house that was collapsed or heavily damaged by the earthquake based on the survey conducted during 9-10th June 2006¹⁹.
- b. the member of a residents group as well as the owner of collapse or heavily damaged house

- Organization of residents group

- a. A residents group is composed of owners whose house are collapse or heavily damaged and who are also eligible to subsidy. Each residents groups chose a coordinator, a secretary, and an accountant.
- b. Each residents group have 8-15 members.

- The entitlement and responsibility of a residents group

- a. to determine the mechanism for allocating subsidy within the group and the order of priority for receiving subsidy in cooperation with a facilitator;
- b. to prepare necessary documents for applying subsidy with help of facilitator;
- c. to make routine report for city management consultant (*konsultan manajemen kota*), responsible officer (*pejabat pembuat komitmen*) and program officer (*penanggung jawab program*) with help of facilitator in order to ensure transparency and to avoid abuse in using subsidy.

¹⁹ According to this regulation, owners who had already received house reconstruction subsidy from other institutions (*e.g.* City Poverty Eradication Program, P2KP) are not eligible for subsidy from government. While the house owner who had already renovate damaged house by own private money are eligible for it as far as renovated house meets the damage criteria and quality standard.

d. to keep records and evidences about expenditure related to reconstruction program for 5 years.

In grass-root approach, it is important to support house reconstruction initiative of residents group and affirm whether rebuilt houses fulfill a condition of subsidy (*e.g.* earthquake resistance quality). Facilitators are to play those roles, and facilitators are to be appointed by the head of prefectures and cities (for example, the decision of the head of Sleman prefecture no. 326/ Kep. KDH/ A/ 2006 on 24th September 2006).

(4) Problems of grass-root approach

In grass root approach, the initiative of traditional village community has a top priority in reconstruction program, and the will of village community is to be expressed through each residents groups. On the other hand, the task of government is just to support and authorize it. But a traditionally embedded social gap or unequal power relation within a village community might have a negative effect on reconstruction activities.

On the official letter of on 30th May 2007, the governor of Yogyakarta cautioned that there were indications of abuse of subsidy that use “local wisdom” as an excuse, and instruct the heads of prefectures and city to correct such abuse. The letter said:

- (a) the “local wisdom” is a competence given to the member of residents group to determine the priority for using state subsidy, because the subsidy of state budget is released in phases;
- (b) Any decision on the priority of use of subsidy must be based on the consensus among members of a residents group with due attention to principles of fairness, appropriateness and fittingness;
- (c) Every members of a residents group are entitled to receive subsidy for their house reconstruction of which government determine the amount;
- (d) The subsidy for a residents group must not be paid for any person who are not in members list of that group;

(e) The subsidy must not be paid for city consultant managers, facilitators, program officers and government workers concerned, because they have already received pay from the government.

Other than this caution, there is conditional clause of the suspension on the contract form (attached to the decision of the head of Sleman prefecture no. 422/ Kep.KDH/ A/ 2006) which each residents groups have to make before receiving subsidy. According to this clause, city consultant manager and program officer reserve their right to suspend subsidy if they consider that recipients of subsidy do not comply with the rule of subsidy. The criteria of this judgment is: (a) the principle of participation is not respected for when establishing the group, (b) the principle of participation is not respected for when making house reconstruction plan, and (c) there is abuse of subsidy.

Indeed, the Ombudsman committee reported cases of misuse of subsidy and corruption related to reconstruction program.

The author conducted interview research in a village (village Pleret, Prefecture Bantul) heavily affected by the quake. 15 residents groups were made in Pleret, and the release of state subsidy started early 2007 then completed by the end of 2007. This process is faster than other places, because, according to village head, mutual cooperation custom in the village is stronger than others. Each residents groups decided their own reconstruction plan. Some of them allocated subsidy of each phases equally to all members, others spend subsidy of first phase to complete rebuilding a few houses because of economic difficulty of some members²⁰. The reason why some groups divided subsidy equally, the village head said, is their mistrust toward government.

As mentioned above, government reduced the amount of subsidy from that promised at earlier stage (30 millions rupiah to 15 millions rupiah for collapsed or heavily damaged houses). Thus people wondered whether subsidy of next phase would be released

²⁰ In other village (village Wonorero), each residents groups composed of 10 houses. Interviewed residents group received subsidy in 2 phases. The group spent first release of subsidy for rebuilding 3 houses which owners were economically difficult. And then rebuild rest of houses using second release of subsidy.

as scheduled.

Other complaint from residents on subsidy is about evaluation of damage. The Ombudsman committee of Yogyakarta reported several cases where subsidy was abused or misused²¹. Those cases include diversion of subsidy for other purposes, pooling subsidy without due reason, taking a rake-off from subsidy by *e.g.* village head, and so on. According to the Ombudsman committee, some villagers considers those misuse of subsidy could be justified for the interest of community as a whole. This consideration relate to the evaluation of damage. Owners whose houses were evaluated as either lightly or medium damaged complained to that evaluation, even though they can apply re-evaluation. The fact that government did not release subsidy for lightly damaged houses in early stage worsened this feel of jealous. Those situation is considered disturbing a harmonious relation in village community, thus village head appropriated certain part of subsidy for other house owners.

²¹ Interview in the Ombudsman committee in Yogyakarta on 13th August 2009.