

DISASTER MANAGEMENT OF HUMAN CORPSE: TRANSFORMATION OF INTERNATIONAL LAW INTO MUNICIPAL LAW

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Abstract: *The frequency of mass disaster is increasing in Malaysia which demanding a clear guideline and management to secure human interests. An undeniable and inevitable reality of any mass disaster is the massive number of fatalities, which will give rise to a further chain of events ranging from the recovery of the deceased, to their transport, storage, identification and, finally disposal. Past experience has shown that traditional human disposal methods should be redesigned according to the requisites of mass fatality scenarios, and it has been proven that a proper mass burial is by far the most appropriate and standard method for disposal of the dead due to mass disaster as it takes all practical issues into consideration. In the present context, it is an utmost necessity that we develop uniform detailed guidelines under international law for the proper conduct of mass burials that provide that deceased with all due respect to human dignity, as this will enable these guidelines to be incorporated into future national mass disaster management law as an integral component. However, there is still no specific acceptance of any treaties on human corpse management after disaster in the international level. For this reason, this paper will be focused on the Geneva Convention 1962. The current Malaysia law related to the disaster management (if any) will also be analyzed to identify the lacuna of law in Malaysia in governing the management of human corpses. The writers have conducted this research by using qualitative methodology. From the critical analysis which has been done by the writers, the writers concluded that there is no specific law in Malaysia to regulate the human corpses after disaster. Therefore, the writers will propose a new law to specifically regulate the human corpses after the disaster in Malaysia.*

Keywords: *disaster, management, human, corpse, Geneva Convention 1962.*

I. INTRODUCTION

“Why dead body management matters?” asked by many. According to Morris Tidball-Binz, the proper management of dead body is a core component of disaster response, together with the rescue and care of survivors and the provision of essential services.” As a forensic adviser at the International Committee of the

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Red Cross (ICRC) in Geneva, he further comment in International Review of the Red Cross 2007 that the proper management of the dead from catastrophes is an essential component of humanitarian response, together with the rescue and care of survivors and the provision and rehabilitation of essential services [1]. According to Adi Fahrudin, Mohd Dahlan Hj Abdul Malek, Beddu Salam Baco and Mohammad Haji-Yusuf, literature review from the experiences of various countries throughout the world supported the idea of post-disaster management and even suggested a range of helping roles and tasks for the social worker to help in the disaster management [2]. Another author was of the opinion that good planning and coordination for response to disaster events is essential to minimize disruption [3]. An author of the article "We Do Need A Disaster Management Policy" pointed out the problem of lack of integrated and coordinated approach that relies on *ad hoc* measures to handle unexpected disasters [4]. This can be concluded that not only a disaster management is needed in a country for preparation of disaster, it must also be planned and organized properly for better efficiency with less costs.

In the aftermath of the 2010 earthquake in Haiti, which killed more than 200,000 people, lack of coordination resulted in human corpses being piled up outside morgues and hospitals, while thousands were buried unidentified in mass graves [5]. Even though Malaysia has yet to encounter any mass disaster, early preparation is needed to ensure the management of the dead body is in control and manageable. During the recent workshop namely Natural Disaster Seminar: How to Solve and Prevent which was held at Judicial and Legal Training Institute (ILKAP) on 29th September 2016, the writer (loh Ing Hoe) has conducted a short interview with Dr. Nazira Abdul Rahman from National Security Department regarding the need for a new law to govern the management of human corpse. It was confirmed by Dr. Nazira that Malaysia is still in lack of law governing the management of human corpse. At the same workshop, Mr. Muhamad Azren bin Abdul Aziz from National Disaster Management Agency (NADMA) during his speech had confirmed that Malaysia is still in the very early stage pertaining to disaster management and new law governing the disaster management is necessary to be implemented. Therefore, the writers will propose a new law in Malaysia to govern the management of human corpse after disaster.

II. DEFINITION AND CONCEPT

(A) Disaster

A number of definitions of 'disaster' have been proposed over time, many of them focusing on the actual hazard or event and its cost in terms of loss of life or damage to property. In 1961, Frits, for example, defined disasters as event that are concentrated in time and space, in which a society, or a relatively self-sufficient subdivision of a society, undergoes severe danger and incurs such losses to its

members and physical appurtenances that the social structure is disrupted and the fulfillment of all or some of the essential functions of society is prevented [6]. Pearce in 2000 stated that, a disaster is a non-routine event that exceeds the capacity of the affected area to respond to it in such a way as to save lives; to preserve property; and to maintain the social, ecological, economic and political stability of the affected region [7]."

More recently, however, the focus of disaster has moved towards consideration of the situation created by such events rather than simply of the origin, nature, size, speed of onset and other physical attributes of the hazard or event. In 1992 the United Nations recognized that for an event to be a disaster it must overwhelm the response capability of a community. An international disaster was defined as a serious disruption of the functioning of society, causing widespread human, material, or environmental losses which exceed the ability of the affected society to cope using only its own resources [8]. Another defining aspect of disaster is that while disaster may impact upon individual victims, they do not happen to individual per se. Disasters more accurately represent collective stress situations occurring at a community level as a result of major unwanted consequences [9]. As Gist and Lubin explain, a disaster is inherently defined by its relationship to community – a cataclysm qualifies as a disaster only to the extent that it overwhelms the capacity of a community to contain and control its consequences. It is not at all, then, a collection of individual experiences, though these certainly merit address [9].

Disaster has been defined in the Emergency Management Australia Glossary as a serious disruption to community life which threatens or causes death or injury in that community and/or damage to property which is beyond the day to day capacity of the prescribed statutory authorities and which requires special mobilization and organization of resources other than those normally available to those authorities [10]. Regardless the terminology used and the types of event of wither natural or human, generally there is consensus that a disaster is an event that involves the destruction of property, injury, and/or loss of life; has an identifiable beginning and end; adversely affects a relatively large group of people; is 'public' and shared by members of more than one family; is out of the realm of ordinary experience; and psychologically, is traumatic enough to induce distress in almost anyone [11].

(B) Disaster Management

Disaster management can be defined as the range of activities designed to maintain control over and emergency situations and provide a framework for helping at-risk person to avoid or recover from the impact of the disaster [12]. Disaster management means arrangements about managing the potential adverse effects of an event, including, for example, arrangements for mitigating, preventing,

preparing for, responding to and recovering from a disaster [13]. Disaster management deals with situations that occur prior to, during and after the disaster. Disaster management includes administrative decisions and operational activities that involve prevention, mitigation, preparedness, response, recovery and rehabilitation [14].

(C) Corpse

According to Duhaime's Law Dictionary, corpse means a dead human body. A corpse is usually described as a human corpse, to distinguish it from animals, and includes any portion of a human corpse [15]. The human remain brings the meaning of the body of a deceased person, in whole or in parts, regardless of its stage of decomposition [15]. Meanwhile, Oxford Dictionary defines corpse as a dead body, especially of a human being rather than an animal [16]. The Black Law Dictionary defines corpse as the dead body of a human being [17]. According to Longman Dictionary of Contemporary English, corpse is typically known as a dead body, especially the dead body of a human rather than an animal [18]. Therefore, it can be concluded that corpse refers to human dead body.

(D) Transformation of International Law to Municipal Law

Article 13 of The Declaration on Rights and Duties of States, which was prepared by the International Law Commission and approved by the UN General Assembly in 1949 states that every State has a duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke its provision in its constitutions or its laws as an excuse for failure to perform this duty. The *pacta sunt servanda* principle is one principal expectation that international law has to municipal law. Where a State is uncertain about how to implement international law, then that State must act in good faith. Therefore, a state must thus bring its internal law into conformity with its international obligations, so as to avoid such conflicts [19].

There are many theories surrounding the process through which international law becomes part of the municipal law. The most-considered doctrines through which municipal law receives international law are called 'transformation' and 'incorporation'. According to Article 74(1) of the Malaysia Federal Constitution, Parliament may make laws with respect to any of the matters enumerated in the 'Federal List' or the 'Concurrent List'. The 'Federal List' in the Ninth Schedule includes:-

1. External Affairs, including -
 - (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with other countries;

Implementation of treaties, agreements and conventions with other countries....From the wording of Articles 74, read together with the Federal List, it can be concluded that the Federal Parliament has the exclusive power to make laws relating to external affairs (including treaties, agreements and conventions) and that it has the power to implement international treaties and make them operative domestically. Even though the Government (Executive) has ratified and the treaty binds the Government under international law, it has no legal effect domestically unless the Legislature passes a law to give legal effect to that treaty.

III. CURRENT MALAYSIA LAW GOVERNING DISASTER MANAGEMENT

National Security Council (NSC) Directive No.20 is the main guideline for disaster management in Malaysia. It is complemented by other sectoral legislations and guidelines that form a disaster mitigation framework. The Directive prescribes the management mechanisms according to the level and complexity of disaster and determines the roles and responsibilities of various agencies to ensure effective coordination and mobilization of resources when handling disasters. The policy statement for disaster relief operations in Directive No.20 was purposely put in place to (1) mitigate the effects of various hazards, (2) prepare for measures that will preserve life and minimize damage to the environment, (3) respond during emergencies and provide assistance, (4) establish a recovery system to ensure the affected community's return to normalcy [20]. In the NSC Directive No.20, a disaster is defined as "an incident that occurs suddenly, is difficult in nature, destructive of property or environment and may cause loss of life and disrupt the daily activity of the local community. This definition includes natural disasters like flood and landslide and technological disaster like factory explosion and fire [21]. Though this directive, disaster management is controlled in accordance with the scale of disasters as follows:

A. Level 1 Disaster

Local incidents which are in control and do not have the potential to spread. Disasters at this level are not complex and could cause only small damage to life and property. This form of disaster would not jeopardize local daily activity on a large scale. The District Level Authority is capable of controlling such incidents through district level agencies without or with limited assistance from outside.

B. Level 2 Disaster

It indicates more serious incidents, covering a wide area or exceeding two districts with a potential to spread. Disaster at this level possibly would cause death and damage to a large number of properties. These kinds of incidents also affect public daily activities. Being more complex than Level 1, these disasters are difficult in

terms of search and rescue. The State Level Authority is capable of controlling such incidents with or without limited help from outside.

C. Level 3 Disaster

Any incident caused by a Level III Disaster is more complex in nature and affects a wide area of more than two states. Such incidents could be handled by the Central Authority with or without foreign help. The classification on assessment relies on the district level authority or state level authority or central authority depending on the scale of the disaster and also determines if helps from higher authorities is needed. The Malaysia National Security Council Directive No.20 details the mechanism on the management of natural and technological disasters including the responsibilities and functions of the various agencies under integrated emergency management system. The Directive states that when a disaster occurs, the Disaster Management and Relief Committee (DMRC) must be established at three different levels depending on the severity of the disaster, i.e. at the federal, state and district. Representatives from various private and government agencies fill up the place in this committee such as local authorities, army, police, the civil defense department and other relevant organizations [22]. Under the National Security Council Directive 20, National Security Council will establish Disaster Operation Control Centre (DOCC) to coordinate all forms of disaster relief as well as monitoring the progress and development of these efforts. The DOCC is responsible for forming:

- District Disaster Management and Relief Committee (JPBBD) for Level I Disaster is headed by the District Officer and should be mobilized to ensure all preparation activities for search and rescue operations, preparation of facilities and machinery, and other emergency aid (i.e. food and treatment) and managed in good order and fully coordinated. On receiving a disaster report, the District Chief Police Officer and District Fire Brigade Chief should take appropriate steps assisted by main rescue agencies and supporting agencies and other organization and voluntary bodies responsible in giving aid and rehabilitation to disaster victims. District Chief Police and District Fire Brigade Chief would be commander and deputy commander of disaster operations respectively.
- State Disaster Management and Relief Committee (JPBBN) for Level II Disaster is headed by State Secretary should be mobilized to ascertain that disaster management is carried out smoothly and is well coordinated. The State Police Chief and Director of State Fire Brigade will be a commander and deputy commander of disaster operations respectively at this stage.
- Central Disaster Management and Relief Committee (JPBBP) for Level III Disaster is headed by a minister appointed by the Prime Minister should

be mobilized to ensure that all aspects concerning policy and decision making in search and rescue operation is carried out in a professional and effective manner. 'Control Post on Scene' (PKTK) and Disaster Operation Controlling Centre (PKOB) should be established at the scene of a disaster. Assistance required may be delivered to the district or state level in terms of expertise and equipment if it is found to be necessary [23]. Officials must comply with the National Security Council Directive No.20 alongside other national legal framework which include Land Conservation Act, Environmental Quality Act 1974, Local Government Act 1976, Road, Drainage and Building Act, Occupational Safety and Health Act, Uniform Building By-Laws, Town and Country Planning Act 1976, Infectious Disease Act, Road Transportation Act, Internal Security Act, Police Act, Criminal Procedure Act, and Fire and Safety Act [24].

However, there is no specific legislation in regard to the disaster management of human corpse in Malaysia. Therefore, the writers will refer to the international law in order to propose a new law to govern the management of human corpse after disaster in Malaysia.

IV. INTERNATIONAL LAW GOVERNING THE HUMAN CORPSE

There is still no specific acceptance of any treaties on human corpse management after disaster but also there is non-existence of such treaties ever made in the international level. However, in Geneva Convention 1962 Chapter V, Treatment of Civilians and Persons Hors de Combat, Article 35 and 36 have provided numbers of rules regarding management of dead bodies during war. Even though these rules are clearly made in circumstances of war, it can still be used to fit the situation of disaster. The reason for such acceptance is because both situations will have the same end result which is a total chaos.

Malaysia has become a member of Geneva Convention 1962 in year 1962. As a member of the Convention 1962, Malaysia is bound by the rules listed under Geneva Convention 1962. Therefore, in order to propose Malaysia Disaster Management of Human Corpse Act, the rules listed under the Geneva Convention 1962 in regard to the management of human corpse can be transformed into the propose Malaysia Disaster Management of Human Corpse Act.

A. Rule 112: Search for and collection of the dead

Rule 112 provides "whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction." This rule applies to all the death without prejudice. Therefore, the parties involved must take care of the dead regardless which parties they belong of. The convention also put the responsibility to the parties involve to search for and collect the dead.

In doing this, the parties to the conflict must take all possible measure in order to search and collect the death. This rule requires the return of remains, decent burial and identification of the dead. In a first phase after combat, the dead will be searched for and collected together with the wounded and sick. However, in extreme emergency, the dead are usually left behind for collection at the later time as the most important for the parties are to care the wounded person [25].

B. Rule 113: Treatment of the Dead

Rule 113 provides “each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.” In a commentary report made by International Committee of Red Cross, the obligation to take all possible measures to prevent the dead from being despoiled or the prohibition of the despoliation of the dead is set forth in numerous military manuals. In this rule, the principle can be divided into two, which are the respect for the death and protection of the dead against despoliation. In non-international armed conflict, it is stated in the report that this practice not only applies for in armed conflict situation as it has become a general rule in order to respect the rights of the dead and their family [26].

C. Rule 114: Return of the remain and personal effect of the dead

Rule 114 provides “parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personnel effects to them.” This rule contains two governing limbs. The first would be in regard of returning of the remaining of the death and the second would be the returning of the personal effects of the dead. In a resolution adopted in 1974, the UN General Assembly called upon parties to armed conflicts, regardless of their character, “to take such action as may be within their power ... to facilitate the disinterment and the return of remains, if requested by their families [27].”

D. Rule 115: Disposal of the dead

Rule 115 provides “the dead must be disposed of in a respectful manner and their graves respected and properly maintained.” In this rule, the interpretation by Geneva Convention 1962 is that the dead must be buried, if possible, according to the rites of the religion to which they belonged and that they may only be cremated in exceptional circumstances, namely because of the imperative reasons of hygiene, on account of the religion of the deceased or in accordance with the express wish of the deceased. The Geneva Conventions 1962 furthermore require that, in principle, burial should be in individual graves. Collective graves may only be used when circumstances do not permit the use of individual graves or, in case of burial of prisoners of war or civilian internees, because unavoidable circumstances

require the use of collective graves. Lastly, the Geneva Conventions require that graves be grouped according to nationality if possible.

The rule 115 has been adopted by international agreements. Article 8 of the 1977 Additional Protocol II provides that “whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to ... decently dispose of the dead.” Article 4(9) of the 1998 Comprehensive Agreement on Respect for Human Rights provides that “every possible measure shall be taken, without delay ... to dispose of the dead with respect.” Meanwhile, Article 11 of the 1999 NATO Standardization Agreement provides that an appropriate religious marker high enough to be seen readily is to be erected. Article 6 of the same Agreement provides the meaning of emergency burial and group burial. Emergency burial is usually on the battlefield when conditions do not permit evacuation for burial in a cemetery and group burial is a burial in a common grave of two or more individually unidentified remains. Article 12 of NATO Agreement states that in the case of trench and group burials a marker and list in a suitable container endorsed accordingly is to be placed at each end of the grave and the distance of the remains from the marker is to be shown against the relevant entry in the list. In group burials, the number of bodies buried must be recorded, with the names of the known but unidentifiable dead listed [28].

In relation to the disaster management of human corpse, even though this rule generally established to cover in the situation of war, however, it can also be applicable in the circumstances of disaster especially for any unclaimed bodies.

E. Rule 116: Accounting for the death

Rule 116 provides “with a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.”

According to the practice collected, the measures envisaged include one half of the identify disk, autopsies, the recording of autopsies, the establishment of death certificates, the recording of the disposal of the dead, burial in individual graves, prohibition of collective graves without prior identification, and the proper marking of graves. Practice also suggests that exhumation combined with the application of forensic methods, including DNA testing, may be an appropriate method of identifying the dead after burial. In general, this obligation also requires effective cooperation between all parties concerned. This rule is giving an obligation for the party to the conflict to record all available information prior to disposal and mark the location of the grave. In this rule, the maker has divided it in several categories namely (1) identification of the dead, (2) recording of the location of graves, (3) marking of graves and access the gravesites, (4) identification of the dead after disposal, and (5) information concerning the dead [29].

V. SUGGESTION AND CONCLUSION

In order to manage the human corpse systematically after the disaster, Malaysia needs to have its own Disaster Management of Human Corpse Act. As pointed out by Dr. Nazira Abdul Rahman and Mr. Muhamad Azren bin Abdul Aziz, Malaysia is still in the very beginning stage in dealing with the issue of disaster management and we are lacking of law in dealing with the management of human corpse after disaster. Therefore, the propose Disaster Management of Human Corpse Act is crucial and rather important to ensure that dead body to be treated respectfully. Even though Malaysia has its own guidelines and other Acts which indirectly may be referred to when dealing with the management of human corpse after disaster, but a clear, comprehensive and binding Act is necessary in order to create a standard procedure when dealing with the human corpse. Malaysia as a state party to the Geneva Convention 1962 may directly transform Article 113 to Article 116 of the Geneva Convention 1962 into the propose Malaysia Disaster Management of Human Corpse Act with necessary amendment to the existing rules. A further study is needed in order to cover all relevant aspects of disaster management of human.

Acknowledgment

The writers would like to express our gratitude to Dr. Nazira Abdul Rahman for the short interview yet full with important information and knowledge. This research will not able to be completed without the funding from Ministry of Higher Education Malaysia. It is hope that this article will contribute to the development of disaster management of human corpse in Malaysia.

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