

## Book Review

# Regulating Disasters, Climate Change, and Environmental Harm: A Comparative and Interdisciplinary Approach

by Meredith Hankins\*

Michael Faure and Andri Wibinisana's collection of academic papers on REGULATING DISASTERS, CLIMATE CHANGE, AND ENVIRONMENTAL HARM: LESSONS FROM THE INDONESIAN EXPERIENCE<sup>1</sup> delivers an interesting comparative law perspective on issues relevant to environmental professionals and academics alike. The collection uses Indonesia as a case study to investigate legal remedies addressing environmental degradation, climate change, and disasters. Viewed through the lens of a developing country such as Indonesia, the book provides a thought-provoking study into legal successes and failures in these areas, as well as suggestions for alternative approaches and ideas for additional research. While the book suffers at times from a disjointed narrative, the overall product is a worthwhile addition to environmental study.

The book was the result of a collaboration between environmental academics from the Netherlands and Indonesia culminating in a 2011 conference in Bali from which the papers published in this book were drawn. The authors of the papers selected for publication include faculty from Maastricht University in the Netherlands, faculty from Indonesian universities, and attorneys and environmental professionals from Indonesia. A total of 14 papers are divided into five subject areas: Globalization, Climate Change, Compensation for Disasters, Decision-Making, and Local Wisdom. Methodology used in the book varies from chapter to chapter, but a primarily legal interdisciplinary approach is

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<sup>1</sup> REGULATING DISASTERS, CLIMATE CHANGE, AND ENVIRONMENTAL HARM: LESSONS FROM THE INDONESIAN EXPERIENCE (Michael Faure & Andri Wibinisana eds., Edward Elgar Publ'g 2013).

used throughout, along with legal comparative analysis and a larger multidisciplinary approach in recognition of the many factors impacting the subject areas addressed.

After an introduction outlining the focus area and organization of the book, the opening section (Part I) focuses on globalization and its potential environmental impacts on a developing country such as Indonesia. The first paper, *Impacts of globalization to environment, health and safety in developing countries: the case of Indonesia*, presents a general overview of major positive and negative impacts of globalization on Indonesia in general, concluding with several substantive suggestions for further research. This chapter, along with the following paper *Promoting food safety through legal measures in developing countries: experiences from EU food safety regulation*, both focus primarily on the impacts to human health. With only minimal discussion of environmental impacts, both chapters seem to some extent misplaced among the rest of the collection. However, the first chapter does provide a helpful framework for thinking about how international environmental regulations can influence regulations in developing nations, as well as a cautionary note regarding the socio-economically disparate impacts of globalization in developing countries. The final chapter in the Globalization section, *Corporate liability for human rights violations. The Exxon Mobil case in Indonesia*, provides the most engaging paper of the section. A fascinating introduction to corporate accountability in international human rights cases, the chapter previews many of the issues discussed in more depth in the later section addressing disaster compensation and remedies (Part III). The chapter also provides background on Indonesia's historically intertwined natural resources and political spheres.

The next section (Part II) focuses on climate change. Wibisana, one of the collection's editors, authored the first chapter in this section, *A critical view on Indonesia's legal responses to climate change*. This chapter, among the longest in the book at eighty two pages, is a comprehensive overview of the regulatory structure in Indonesia relating to climate change. Tracing Indonesia's international commitments from the Copenhagen Accord through the country's own internal efforts at limiting emissions from the forestry sector, the chapter suffers from an overuse of acronyms that necessitated frequent references to the abbreviation index while reading. However, once obscure acronyms were elucidated, the chapter presents a well-organized and comprehensive discussion of Indonesia's regulatory structure, including helpful historical perspective. The chapter also provides concrete implementation suggestions for future regulatory efforts in other developing countries based on lessons learned from Indonesia.

Unfortunately, the first three chapters of Part II suffer from repetitive sections and overlapping topic areas. The next two chapters, *REDD+<sup>2</sup> in Indonesia. Law*

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<sup>2</sup> REDD = Reducing Emissions from Deforestation and Forest Degradation.

and governance perspectives and *Local elections and deforestation in local areas: another challenge for Indonesia in the fight against climate change*, respectively, would have benefitted from editorial oversight ensuring that the reader was not subjected to repeated passages on the regulatory framework and background of the forestry sector in Indonesia.<sup>3</sup> While each paper read individually functions well as a stand-alone piece, some editorial harmonization would have strengthened the section overall when read as a collection. However, in light of the overarching impacts of land use and the forestry sector on climate change globally and in Indonesia in particular, some repetition was probably unavoidable.

The next chapter in Part II, *'Clean development mechanism' or 'community doesn't matter'? The role of public consultation to achieve sustainable development through CDM in Indonesia*, takes a critical look at public consultation in so-called "clean" project development in Indonesia with some suggestions for standardizing best practices to be implemented in future projects. While the paper individually is a well-organized and pragmatic look at the importance of public consultation in developing countries, it represents an abrupt transition from the land use and forestry issues discussed in the first three chapters. The final chapter in Part II, *The need for breaking new ground in the realm of climate change*, is authored by a member of Netherland's Supreme Court, Jaap Spier. Briefly discussing potential legal remedies in international law, the paper is a thought-provoking call to arms to reduce emissions and take responsibility for historical impacts on the global climate. Spier's final thoughts in Chapter 8 provide a reminder of the uphill battle in the fight against climate change, but argues that it is not a battle which should be abandoned: "I am very much afraid that there is not much basis for hope. But the stakes are so high, that we should not easily give up."<sup>4</sup> The chapter is a fitting conclusion to the section on climate change, and one of the stronger papers in the book.

The next section of the book (Part III) focuses on disaster compensation. The two chapters in this section, *Towards effective compensation for victims of natural catastrophes in developing countries* and *The myths of environmental compensation in Indonesia: lessons from the Sidoarjo mudflow*, are authored by the book's editors Faure and Wibisana, respectively. Both are excellent papers that really stood out among the entire collection, each exceedingly well researched and logically presented. Wibisana's comparative law analysis of U.S. liability jurisprudence with regards to the 'act of God' defense contrasted with the Indonesian courts' decisions on liability for the Sidoarjo mudflow<sup>5</sup> is particularly noteworthy. Part III also flows nicely from the climate change

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<sup>3</sup> See, e.g., *supra* note 1, at 133-36, 178-82 & 197-200 (all discussing the problems of corruption in the forestry sector in Indonesia).

<sup>4</sup> *Id.* at 238.

<sup>5</sup> *Id.* at 310-39.

discussion in Part II, as compensation for natural disasters caused by climate change is sure to be an increasingly important topic. Although they do not address it directly, both chapters in Part III beg the question of how to apportion liability for natural disasters caused or worsened by climate change, when causation for climate change can only be assessed on a global scale. While a topic probably deserving of its own collection of papers, the lack of discussion regarding compensation for victims of climate change in this collection was disappointing.

The next section (Part IV) discusses decision-making processes from a regulatory perspective. The first chapter, *The precautionary principle in wildlife law – theoretical disputes and practical solutions*, describes theoretical approaches and practical applications of the precautionary principle in the Netherlands, with some discussion of its application in developing countries as well. The second chapter in Part IV, *Law and politics of nuclear power plant development in Indonesia: technocracy, democracy, and internationalization in decision making*, provides a historical and analytical overview of nuclear development in Indonesia, with a particular focus on democratic and technocratic decision making. Returning to the issues of public consultation discussed in Part II, both of these chapters emphasize the importance of engaging public participation in regulatory and policy decision-making to arrive at solutions that are in the best public interest.

The final section (Part V) is a fascinating review of how local wisdom in Indonesia and other developing countries can influence environmental policy. The first chapter of Part V, *The responsibility of the customary village concerning the sustainable city forest*, demonstrates the power of customary law communities (i.e. indigenous peoples), to affect sustainable urban development by discussing the preservation of urban forests within Indonesia. Taking an interesting interdisciplinary approach, the paper evaluates the philosophical, sociological, and legal bases for the role of the customary village unit. The second chapter, *Revitalization of the kewang institute in the sustainable management of marine and coastal natural resources in the Maluku Province*, flows nicely from the previous chapter and discusses the role of customary law in preserving natural resources along coastal Indonesia. Each of the chapters in Part V are approachable and well-organized, clearly showing the benefits of respecting local wisdom and integrating the customary village communities as important bastions in a sustainable regulatory scheme.

From a law student's perspective, Faure and Wibisana's book is an eye-opening introduction to interdisciplinary environmental policy and comparative environmental law. Using Indonesia as a case study provided an interesting perspective for assessing successes and failures in regulatory implementation in developing countries. While the collection suffered at times from a pedantic tone and occasionally abrupt transitions between topics, Faure and Wibisana do an

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excellent job synthesizing the material and providing their own commentary in their concluding remarks in the final section of the book. In addition, the numerous stand-out papers such as the editors' own contributions regarding disaster compensation in Part III, Spier's call to action in Part II, and both papers on customary law in Part V all provide an engaging and approachable discussion that is a welcome addition to scholarly work in this field.