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ARTICLE

# HUMAN RIGHTS AND INTERNATIONAL ACCOUNTABILITY OF STATES IN THE CLIMATE CRISIS (RECONSTRUCTION OF THE LOSS AND DAMAGE PRINCIPLE FOLLOWING THE LATEST DEVELOPMENTS OF THE COP)

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## Abstract

The global climate crisis has transformed from an environmental issue into a fundamental human rights issue, directly impacting the rights to life, health, food, water, and a good and healthy environment. These impacts are disproportionately felt by developing countries, including the ASEAN region, despite their relatively small historical contribution to global emissions. In this context, the strengthening of the principle of loss and damage following the latest developments at the Conference of the Parties (COP) marks an effort by the international community to affirm the dimension of state international responsibility for loss and damage caused by climate change. However, this principle still faces conceptual, normative, and implementative problems within the international legal regime. This study aims to analyze the climate crisis as a human rights issue and reconstruct the principle of loss and damage within the framework of state international responsibility, by reviewing the comparative national legal arrangements of ASEAN countries and international law. The research method used is normative juridical with conceptual, legislative, and comparative approaches, through an analysis of international legal instruments, the latest COP policies, and national regulations in the ASEAN region. The results show that the strengthening of loss and damage after the latest COP reflects a paradigm shift in climate law from a voluntary commitment-based approach to a human rights-oriented climate justice approach. However, the absence of binding legal instruments weakens state accountability mechanisms. This research emphasizes the philosophical novelty of integrating human rights as the legitimate basis for state international accountability in the climate crisis. This research recommends strengthening binding international legal norms and harmonizing ASEAN national policies based on climate justice and human rights.

**Keywords**: Climate Crisis, Human Rights, Loss and Damage, State International Accountability.

## A. INTRODUCTION

Climate change is one of the greatest global challenges confronting humanity in the twenty-first century. This phenomenon not only alters physical environmental conditions but also generates highly complex social, economic, political, and legal consequences. Rising global temperatures, sea-level rise, shifting rainfall patterns, and the increasing frequency and intensity of natural disasters are clear evidence that climate change has created serious threats to human survival and the stability of global life.

In its early development, climate change was predominantly understood as a scientific and environmental problem linked to human activities in exploiting natural resources. The

legal approach adopted was therefore largely technocratic, focusing on controlling greenhouse gas emissions and managing the environment. However, as the impacts of climate change on human life have become broader and deeper, global awareness has emerged that the climate crisis cannot be separated from human rights concerns.

The climate crisis has been shown to threaten the fulfilment of basic human rights, including the right to life, the right to health, the right to food, the right to clean water, the right to adequate housing, and the right to a good and healthy environment. These impacts are experienced unevenly: poor communities, Indigenous peoples, women, children, and developing countries are among the most vulnerable and most severely affected, even though their contributions to greenhouse gas emissions are relatively small. This condition reflects structural injustice within the global climate system (IPCC, 2022).

In the context of international law, growing recognition of the link between climate change and human rights has encouraged the development of a human rights–based approach in global climate policy. Climate change is no longer viewed merely as an environmental issue, but also as an issue of justice and human dignity. States are seen as having not only an obligation to protect the environment, but also a legal obligation to protect and fulfil human rights against the adverse impacts of climate change.

One important concept that has developed within the international climate change legal regime is the principle of loss and damage. This principle emerged in response to the reality that not all climate change impacts can be prevented through mitigation or addressed through adaptation (Mechler & Deubelli, 2021). Loss and damage refers to the economic and non-economic harms experienced by states and communities as a result of climate change, including permanent and irreversible losses such as the loss of territory, culture, and livelihoods.

The strengthening of the loss and damage principle after the Conference of the Parties (COP) indicates an important development in the international climate change regime. Nevertheless, such strengthening remains largely within the framework of soft law and has not yet fully formed a binding regime of international legal responsibility. This has generated academic debate regarding the extent to which the loss and damage principle can serve as a basis for legal claims and how it should be positioned within the framework of state responsibility (Toussaint, 2021).

At the regional level, ASEAN countries constitute one of the regions most vulnerable to climate change impacts. Geographic conditions, archipelagic characteristics, and reliance on natural resources make the region highly exposed to sea-level rise, floods, droughts, and other climate-related disasters. However, the legal responses of ASEAN states to climate change generally remain focused on mitigation and adaptation, as well as disaster management, without internalizing the loss and damage principle as a right and as a legal claim grounded in climate justice and human rights.

Based on this discussion, this research is important to examine how the climate crisis is constructed as a human rights issue in international law, how the loss and damage principle is positioned within the international legal framework in the post-COP period, and how ASEAN countries' national legal responses address this principle. This study is expected to make an academic contribution to the development of a more just climate change law regime that is grounded in the protection of human rights.

## B. LITERATURE REVIEW

### Human Rights Based Approach (HRBA) in Climate Policy

HRBA places climate policy within the legal framework of the state's obligations to respect, protect, and fulfil human rights, so climate change is understood as an issue of

human dignity, not merely a technocratic emissions-control project (OHCHR, 2015). From this perspective, affected communities are treated as rights-holders, while the state is positioned as a duty-bearer; analytically, this shifts attention toward substantive rights such as the rights to life, health, food, water, and a clean, healthy environment. However, HRBA does not stop at normative statements. It requires operational, testable parameters, especially concerning meaningful participation, non-discrimination, accountability, transparency, and access to remedies throughout the climate policy cycle (OHCHR, 2015). Importantly, the legitimacy of this approach is reinforced because the Paris Agreement emphasizes that climate action should be undertaken with respect for and consideration of human rights obligations (UNFCCC, 2015). Accordingly, HRBA provides an evaluative toolkit to assess whether international instruments and ASEAN states' responses are adequate in protecting vulnerable groups from climate impacts that, under certain conditions, can amount to human rights violations (IPCC, 2022).

Indicators:

- Presence/absence of explicit human rights references in the preamble/articles of climate policies
- Protection of vulnerable groups (the poor, women, children, Indigenous peoples, persons with disabilities)
- Meaningful public participation mechanisms (not merely formalistic)
- Access to information (data transparency, MRV systems, risk/vulnerability reporting)
- Access to justice and remedies (complaints mechanisms, compensation/rehabilitation)
- Non-discrimination principle and equity-impact assessment of policies

**International State Responsibility (State Responsibility/ARSIWA)**

International state responsibility essentially affirms that any internationally wrongful act attributable to a state entails international responsibility (International Law Commission, 2001). Two core elements must be tested: attribution (whether the act/omission is conduct of a state organ) and breach of an international obligation (whether a binding obligation exists and has been violated). If both elements are satisfied, the legal consequences are significant: the state is required to cease the wrongful act, provide assurances and guarantees of non-repetition, and offer reparation through restitution, compensation, and/or satisfaction (International Law Commission, 2001). In the context of the climate crisis, this framework provides a relatively strict "test tool" to evaluate whether failures in mitigation/adaptation—including failures to protect human rights from climate risks—can be constructed as a breach triggering reparative consequences, although issues of causation, shared contribution, and standards of proof are often the most contested points. For this reason, ARSIWA serves as a relevant analytical bridge when assessing whether loss and damage can move from the domain of *soft law* toward a more operational conception of responsibility (Toussaint, 2021). Indicators:

- Attribution: conduct/omissions of state organs (policies, regulations, tolerated inaction)
- Breached obligations: treaty/customary duties, human-rights obligations, due diligence standards
- Foreseeability and material contribution tests (bases for causal argumentation)
- Forms of reparation: restitution, compensation, satisfaction (and their assessment)
- Cessation and guarantees of non-repetition (policy reform, targets, enforcement)
- Enforcement forums: international/domestic litigation, treaty bodies, arbitration

**Loss and Damage (L&D) Framework in the International Climate Legal Regime**

The loss and damage framework directs attention to economic and non-economic harms from climate impacts that cannot be fully prevented through mitigation or addressed through

adaptation; it therefore operates in the domain of "residual risk," which is often the most normatively difficult from a justice perspective (Mechler & Deubelli, 2021). Institutionally, the concept is reinforced within the UNFCCC regime through the establishment of the Warsaw International Mechanism (WIM), which emphasizes knowledge-building, coordination, and action and support related to loss and damage (UNFCCC, 2013). The Paris Agreement subsequently recognizes the urgency of "averting, minimizing and addressing" loss and damage in Article 8; notably, however, its normative design foregrounds cooperation and facilitation and does not explicitly establish compensation as a hard legal obligation (UNFCCC, 2015). Developments from COP27–COP28 strengthened the implementation side through decisions on funding arrangements and steps toward operationalizing finance for loss and damage responses, although limiting language remains that keeps the liability/compensation debate unresolved (UNFCCC, 2022, 2023). In your study, this framework is useful for classifying the spectrum of harms including permanent losses such as culture and livelihoods and for evaluating whether ASEAN states genuinely internalize loss and damage as an issue of justice and human rights, rather than treating it as a purely technical disaster-management matter (Toussaint, 2021).Indicators:

- L&D categories: economic vs non-economic (culture, identity, mental health, biodiversity)
- Event types: extreme events vs slow-onset events (sea-level rise, salinization)
- Limits to adaptation and irreversibility (permanent/non-recoverable losses)
- Institutional architecture: roles of WIM/ExCom, coordination, technical support
- Finance: funding arrangements/fund, access modalities, eligibility criteria, governance
- Linkages with human rights and climate justice in national/regional policy design

## C. RESEARCH METHODOLOGY

This study is a normative legal research project, meaning it treats law as a set of norms or rules applicable within society. Normative legal research is conducted by examining and analyzing legislation and regulations, legal principles, legal doctrines, and court decisions that are relevant to the object of the study. This approach is selected because the study focuses on a conceptual and normative analysis of the climate crisis as a human rights issue, the *loss and damage* principle in international law, and the national legal responses of ASEAN countries.

The approaches applied in this research include the statutory approach, the conceptual approach, and the comparative approach. The statutory approach is used to examine international and national legal instruments governing climate change and human rights. The conceptual approach is employed to analyze the climate crisis as a human rights issue and the *loss and damage* principle based on legal doctrine. Meanwhile, the comparative approach is used to compare ASEAN countries' legal responses to the *loss and damage* principle.

The collection of legal materials in this research is carried out through library research. This involves tracing, compiling, and reviewing primary, secondary, and tertiary legal materials relevant to the research topic. The search for legal materials is conducted through university libraries, scientific journal databases, and official sources from international institutions and governments.

Legal materials are analyzed qualitatively using a descriptive-analytical method. This method aims to describe systematically and comprehensively the applicable legal provisions and to analyze them critically within the framework of legal theory and doctrine. The analysis is conducted by interpreting legal norms, examining consistency across regulations, and evaluating their conformity with human rights principles and climate justice.

In analyzing the *loss and damage* principle, this study applies an argumentative approach to assess its standing in international law, particularly in relation to the concept of state responsibility and the development of international legal norms. Meanwhile, the analysis of ASEAN countries' responses is carried out by comparing each country's policies and national legal frameworks to identify similarities, differences, and broader trends.

## D. RESULT AND DISCUSSION

### Climate Crisis as a Human Rights Issue

Climate change in the development of contemporary international law has undergone a profoundly fundamental conceptual shift. Whereas in its early stages climate change was understood as a purely scientific and environmental problem, over the past two decades it has evolved into a legal, social, and economic issue and, above all, a human rights issue. The climate crisis is now viewed as a multidimensional phenomenon that threatens human survival and the global social order as a whole. In this context, international law no longer draws a strict boundary between environmental protection and human rights protection; instead, it treats both as interrelated and inseparable legal regimes (Sands, 2018).

The framing of the climate crisis as a human rights issue begins with the recognition that environmental quality is a primary prerequisite for the fulfillment of fundamental human rights. Without an environment that is safe, clean, healthy, and sustainable, the rights to life, health, food, water, and housing cannot be effectively realized. Environmental degradation driven by climate change therefore cannot be treated as merely a technical matter; rather, it constitutes a systemic threat to the realization of human rights.

Within Indonesian legal scholarship, Jimly Asshiddiqie argues that modern constitutionalism has produced the concept of a *green constitution* a constitution that not only regulates relations between the state and citizens, but also imposes state obligations to protect the environment as part of citizens' constitutional rights (Asshidiqie, 2019). This concept strengthens the normative legitimacy for positioning the climate crisis as a human rights issue in both international and national law.

### Climate Crisis as a Threat to the Right to Life and Human Dignity

The right to life is the most fundamental human right and is non-derogable. In the context of the climate crisis, the right to life is threatened in concrete ways through increasing disaster intensity, food insecurity, scarcity of clean water, and the spread of disease caused by changing climate patterns. These impacts are not merely potential; they are already occurring and are being experienced directly by millions of people, particularly in developing countries and coastal areas (Carlarne, 2021).

John Knox emphasizes that the state's obligation to protect the right to life is not limited to prohibiting arbitrary deprivation of life; it also includes positive duties to prevent foreseeable risks, including those arising from environmental harm and climate change (Knox, 2019). Accordingly, a state's failure to adopt adequate climate policies may be classified as a human rights violation.

Beyond threatening life, the climate crisis also undermines human dignity. Loss of housing due to sea-level rise, the disappearance of traditional livelihoods, and the erosion of Indigenous cultural identity constitute forms of dignity degradation that cannot be ignored. Cinnamon Carlarne describes this condition as *structural climate injustice*, where communities that contribute least to emissions bear the greatest burdens.

In Indonesian legal discourse, Takdir Rahmadi stresses that environmental protection is an integral part of human rights protection, meaning that the state bears a legal obligation to prevent environmental damage that threatens human safety and dignity (Rahmadi, 2019).

This view is reinforced by Absori, who positions the right to a good and healthy environment as part of citizens' constitutional rights (Absori, 2019).

**The Principle of Loss and Damage in International Law**

The principle of *loss and damage* emerged from the awareness that not all climate impacts can be prevented through mitigation or addressed through adaptation. In international law, *loss and damage* refers to permanent or irreparable harms, whether economic or non-economic such as the loss of territory, culture, and a community's collective identity (Mayer, 2023b).

Philippe Sands explains that this principle reflects the evolution of international environmental law from a prevention-oriented approach toward a justice-oriented approach. Nonetheless, *loss and damage* has not yet been fully integrated into the framework of state responsibility as formulated in the law of international responsibility. From an Indonesian legal perspective, Mas Achmad Santosa views *loss and damage* as an expression of global environmental justice, demanding greater responsibility from countries with high historical emissions toward developing countries that are disproportionately affected by climate change (Santosa, 2018). Thus, *loss and damage* is not merely a technical funding issue, but a normative issue tied to justice and equality among states.

**Strengthening Loss and Damage after COP and the Limits of Soft-Law Regimes**

The strengthening of *loss and damage* following Conferences of the Parties (COP) marks an important development in the international climate-change legal regime. The establishment of a *loss and damage* funding mechanism signals political recognition of the needs of developing countries that are disproportionately affected. However, this strengthening remains largely within the framework of *soft law*, which is not directly legally binding (Rajamani, 2020). Lavanya Rajamani explains that the soft-law character of the climate regime results from political compromise between developed and developing states: it enables broad participation, yet limits the binding force of the resulting legal norms (Rajamani, 2020). Benoit Mayer adds that although *loss and damage* is not yet hard law, it has the potential to develop into a binding norm of international law through state practice and *opinio juris* (Mayer, 2023a).

In Indonesian legal literature, Gatot Supramono emphasizes that international soft law nonetheless exerts significant influence on the formation of national law and public policy, particularly in environmental governance (Supramono, 2019). Therefore, the post-COP strengthening of *loss and damage* still carries important normative implications for developing countries.

**Comparing Approaches among ASEAN Countries**

ASEAN countries generally adopt a pragmatic approach in responding to the climate crisis, with primary emphasis on mitigation and adaptation. This approach is shaped by the region's geographic vulnerability to disasters as well as constraints in economic and technological capacity (Carlarne, 2021).

However, from the perspective of international law, ASEAN's approach tends to avoid questions of responsibility and cross-border legal claims. Philippe Sands describes this tendency as a *risk management* approach, which prioritizes stability and cooperation over the enforcement of climate justice (Sands, 2018). Maria S. W. Sumardjono notes that environmental law in developing states, including ASEAN, remains oriented toward resource management and impact control rather than toward rights-based remedies (Supramono, 2019).

**ASEAN Adaptation and Mitigation without Internalizing Loss and Damage**

In general, ASEAN states have not internalized the principle of *loss and damage* as a right or a legal claim that can be demanded. Climate-related losses are still positioned as

disaster-management issues rather than as consequences of structural injustice within the global climate system (Rahmadi, 2019). Absori argues that this approach results in climate-affected communities being treated merely as aid recipients rather than as rights-holders entitled to recovery and justice (Absori, 2019). Andi Hamzah likewise highlights the weakness of environmental law enforcement mechanisms in providing fair and effective compensation for victims of environmental damage (Hamzah, 2018).

Accordingly, the central challenge for ASEAN is to transform its climate-policy approach toward a human-rights-based and climate-justice legal framework, including recognition of *loss and damage* as part of the *right to remedy*.

## E. CONCLUSION

Based on the foregoing discussion of the climate crisis, human rights, the principle of loss and damage, and the responses of ASEAN states, it can be affirmed that climate change within contemporary international law has developed into an issue that extends far beyond the environmental domain alone. The complexity of its impacts and the power relations embedded in global climate governance require conclusions that are not merely descriptive but also normative particularly regarding the direction of legal development, the legitimacy of claims for remedy, and ASEAN's position within the architecture of climate justice.

First, the climate crisis demonstrates a significant paradigm shift: from an environmental issue to a human rights issue. The impacts of climate change evidently threaten the fulfillment of fundamental rights, including the right to life, the right to health, the right to food, the right to clean water, and the right to a good and healthy environment. Because environmental degradation directly diminishes human dignity and quality of life, the climate crisis cannot be separated from the human rights protection regime. Consequently, states individually and collectively bear legal obligations to ensure that climate policies are implemented in a manner consistent with their duties to protect and fulfill human rights.

Second, the climate crisis generates losses that are not only material but also non-material and permanent, such as the loss of territory, cultural identity, and livelihoods. This situation reveals the limitations of mitigation and adaptation approaches when they stand alone, because certain harms and losses can no longer be prevented or fully restored. It is from this point that the principle of loss and damage gains normative relevance as a concept demanding recognition and response to climate-related losses that have already occurred and those that are unavoidable in the future, while simultaneously reflecting claims for global climate justice, especially for developing countries that are most affected yet have relatively small historical contributions to emissions.

Third, the strengthening of loss and damage after the Conference of the Parties (COP) processes can be understood as a normative transition toward a more justice-oriented approach within the international climate regime. However, such strengthening remains predominantly situated within the framework of soft law that lacks binding legal force, meaning that state responsibility cannot yet be enforced firmly and consistently. Accordingly, loss and damage is more appropriately positioned at present as an emerging norm, one that still requires reinforcement through repeated and consistent state practice and the formation of opinio juris in order to move toward a more binding normative status.

Fourth, ASEAN states' responses generally emphasize mitigation and adaptation policies integrated into development planning and disaster management. This approach reflects ASEAN's pragmatic character, which prioritizes stability and regional cooperation, but at the same time has not fully internalized loss and damage as a rights-based claim that affected communities can demand. Climate losses are still frequently framed as matters of disaster response and social assistance, rather than as consequences of structural injustice within the

global climate system. The absence of a rights-based legal framework also signals a gap between developments in international law and national-level implementation, such that fair and effective remedy mechanisms for victims of climate change have not yet been adequately formed.

On the basis of these findings, the climate crisis demands a transformation of legal approaches from a technocratic paradigm toward a human-rights-based and climate-justice paradigm. The principle of loss and damage becomes a crucial normative instrument to bridge global justice claims particularly in the context of remedy, compensation, and recognition of irreparable losses even though its strengthening and institutionalization still face constraints within the current international legal regime.

In line with this, several strategic recommendations can be emphasized. At the international level, states especially developed countries with significant historical emissions should push loss and damage beyond the soft-law framework through funding mechanisms that are clear, transparent, and sustainable, while also explicitly recognizing the human rights dimension in global climate policy so that the regime's orientation is not solely efficiency-driven but also grounded in justice and the protection of human dignity. At the national level, ASEAN countries should integrate a human-rights-based approach into climate policy by recognizing victims' rights to protection, remedy, and appropriate compensation, and by beginning to internalize loss and damage as part of the right to remedy rather than treating it merely as a disaster-management issue. At the regional level, ASEAN could develop more progressive cooperation guidelines or frameworks (for example, regional guidelines or other non-binding instruments) that recognize loss and damage and climate justice as shared values without negating the principle of non-interference. Finally, law enforcement institutions and judiciaries should advance more progressive interpretations in environmental and climate cases by recognizing the interlinkages among environmental harm, climate change, and human rights violations, so that courts can serve as an essential channel of legal protection when administrative policies have not provided adequate remedies.

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