



Government Legal Policy to Deal with Cases of Human Rights Violations in Indonesia

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Abstract: Cases of gross human rights violations are complex and sensitive issues in Indonesian legal politics. With a historical backdrop that includes authoritarian times and armed conflict, governments are faced with serious challenges. Transitional Theory of Justice offers a framework for addressing these issues through courts, reparations, truth and reconciliation, and institutional reform. However, policy implementation requires consideration of international pressure, victim protection, civil society participation, and human rights education. Governments are faced with a dilemma between accountability and reconciliation, with the need to maintain a balance between justice and peace. In addition, it is necessary to consider the political implications of government actions, while institutional reform and sustainable approaches are key in addressing gross human rights violations.

Keywords: Government, Legal Policy, Gross Human Rights Violations

Abstrak: Kasus pelanggaran Hak Asasi Manusia berat menjadi permasalahan kompleks dan sensitif dalam politik hukum Indonesia. Dengan latar belakang sejarah yang mencakup masa otoriter dan konflik bersenjata, pemerintah dihadapkan pada tantangan serius. Teori Kehakiman Transitional menawarkan kerangka kerja untuk mengatasi masalah ini melalui elemen-elemen seperti pengadilan, reparasi, kebenaran dan rekonsiliasi, serta reformasi institusi. Namun, implementasi kebijakan memerlukan pertimbangan terhadap tekanan internasional, perlindungan terhadap korban, partisipasi masyarakat sipil, dan pendidikan HAM. Pemerintah dihadapkan pada dilema antara akuntabilitas dan rekonsiliasi, dengan kebutuhan untuk menjaga keseimbangan antara keadilan dan perdamaian. Selain itu, perlu dipertimbangkan implikasi politik dari tindakan pemerintah, sementara reformasi institusi dan pendekatan berkelanjutan menjadi kunci dalam mengatasi pelanggaran HAM berat.

Kata Kunci: Pemerintah, Kebijakan Hukum, Pelanggaran HAM Berat

A. Introduction

Indonesia is a state of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945), which states that "The State of Indonesia is a state of law." State of law or *rechtstaat* and the rule of law are terms that look simple but contain a relatively long history of thought. Human rights are absolute rights. Where the right authorizes a person or individual to perform an act, which rights inherent in humans can be defended by anyone. Everyone must respect these rights. Thus, human rights are rights inherent in absolute individuals. Human rights are one of the characteristics of the rule of law that must be recognized and protected. Human rights are rights belonging to humans that are obtained and brought together with their presence in society. This right does not distinguish ethnicity, nation, race, religion, class, or gender. This is because human rights are universal. In Indonesia, in addition to the legal protection of human rights, the government seeks to build institutions that enforce and regulate human rights regulations, which we usually know as the National Human Rights Commission (Komnas HAM) and the Human Rights Court.¹

Gross human rights violations have become a complex and sensitive issue in legal politics. Gross human rights violations can stem from various factors, such as internal conflicts, armed conflicts, and repressive actions by the government.² In recent decades, Indonesia, like many other countries, has faced serious challenges related to cases of gross human rights violations. Therefore, the government must formulate comprehensive and effective policies for this issue. Indonesia's long history, which includes periods of authoritarian rule and armed conflict in some regions, has created a foundation for gross human rights violations. The authoritarian period under the New Order left deep traces in the form of gross human rights violations such as kidnapping, torture, and political killings. Armed conflicts in Aceh, Papua, and East Timor (now Timor Leste) also resulted in a large number of cases of gross human rights violations. All of these require a serious response from the government.³

The term gross violation of human rights is not explained in a definition that adequately contains the elements of the crime. The term gross violation of human rights appears to describe the enormity of the consequences of such criminal acts on the body,

¹Suparman Marzuki and Mahrus Ali, "The Settlement of Past Human Rights Violations in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023); Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society*, 2018.

²Mattia Pinto, "Awakening the Leviathan through Human Rights Law - How Human Rights Bodies Trigger the Application of Criminal Law," *Utrecht Journal of International and European Law* 34, no. 2 (2020); Thomas Kruessmann, "Criminal Law and Human Rights - Some Examples from the Emergence of European Criminal Law," *Russian Journal of Criminology* 14, no. 5 (2020); Mugambi Jouet, "Foucault, Prison, and Human Rights: A Dialectic of Theory and Criminal Justice Reform," *Theoretical Criminology* 26, no. 2 (2022).

³Junaedi Saibih et al., "The Analysis of Transitional Justice Initiatives and The Flaw of Prosecution on The Past Human Rights Violation In Indonesia (Tanjung Priok Case)," *Indonesian Journal of International Law* 20, no. 3 (2023).

soul, dignity, civilization, and resources of human life. These crimes are committed by the perpetrators with the clear intent and purpose of attacking and destroying certain people or groups of people to bring about widespread consequences or impacts. The history of the Indonesian nation to date records a variety of suffering, misery, and social disparities caused by unfair and discriminatory behavior based on race, ethnicity, skin color, culture, language, religion, gender, class, and other social status. Such unfair and discriminatory behavior violates human rights vertically (committed by state officials against citizens or vice versa) and horizontally (between citizens themselves). Not a few are included in the gross human rights violations category.

In Indonesia, in addition to the legal protection of human rights, protection has also been sought by several institutions tasked with upholding and regulating human rights laws. These institutions include the National Human Rights Commission (Komnas HAM) and the Human Rights Court. With the existence of these institutions, it is expected to increase the enforcement of human rights law in Indonesia. Thus, human rights in Indonesia have two normative bases: the Constitution, the National Human Rights Commission, and the Human Rights Court. Although Indonesia has constitutional guarantees and has established institutions to enforce them, it does not yet guarantee that human rights have been implemented properly in the life of the nation and state. In the field of law, for example, it is still seen that law enforcement agencies taking action against officials who commit violations are difficult to touch by the law. Still, when the violations are committed by the common people, they appear to have a strong grip on them. This is contrary to the current conditions, where there are still many clashes or conflicts about SARA in the community.⁴

Government policy in dealing with cases of gross human rights violations is also influenced by international pressure. The international community has been increasingly active in monitoring and assessing the performance of states in fulfilling their human rights obligations. As a UN member state, Indonesia and various regional organizations, such as ASEAN, must maintain their reputation and comply with international human rights norms. National laws and regulations governing human rights are also important to the government's policy background. These laws, such as Law No. 39/1999 on Human Rights, provide the legal framework for protecting human rights in Indonesia. However, implementing these laws is often inadequate, which is a major concern in formulating more effective policies.

⁴Maksim Regus, "Centering Acculturation as an Approach to Challenging the Fragility of Human Rights in Indonesia," *Journal of Southeast Asian Human Rights* 6, no. 2 (2022); Nurfaika Ishak and Romalina Ranaivo Mikea Manitra, "Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022); Faissal Malik et al., "Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia," *International Journal of Criminology and Sociology* 10 (2021); Nehaluddin Masum, Ahmad 7 Ahmad, "Freedom of Religion and Apostasy Under International Law: With Special Reference to Article 11 of the Malaysian Federal Constitution," *Journal of East Asia and International Law* 6, no. 2 (2013): 435–57.; Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022).

Improving law enforcement and the justice system should also be considered. Cases of gross human rights violations are often hampered by the inability of law enforcement officials to gather sufficient evidence and investigate cases thoroughly. In addition, victims often face pressure and threats, making the judicial process difficult and unfair. In the face of all these challenges, the government should consider a comprehensive approach. This includes strengthening law enforcement agencies, ensuring transparency and accountability in investigating cases of gross human rights violations, and protecting witnesses and victims. The government must also promote peace and sustainable conflict resolution as a preventive measure.

The importance of dialogue and civil society involvement must also be considered. Civil society monitors gross human rights violations and fights for justice. The government must open space for dialogue with civil society organizations and listen to their aspirations. Government policies facing cases of gross human rights violations in legal politics must reflect a commitment to fulfill its international obligations, protect the human rights of all citizens, and create a more just and just society. By understanding this complex background, the government can formulate policies that are more effective in addressing cases of gross human rights violations and realizing a better vision of the country.

The problem to be discussed in this context is gross human rights violations. These cases involve acts that seriously and systematically deprive or disregard individuals of fundamental rights, such as the right to life, liberty, and human dignity. Gross human rights violations can occur in a variety of contexts, including armed conflict, repressive measures by governments, and emergencies. One of the main problems is the increasing number of gross human rights violation cases in various parts of the world. Armed internal and international conflicts often lead to actions that violate international human rights norms. These cases of gross human rights violations include mass killings, torture, forced disappearances, and inhumane treatment of detainees.

In some countries, governments themselves are complicit in gross human rights violations. This can take the form of repressive measures against political opposition, repression of minority groups, or excessive use of force by security forces. Such cases create serious challenges in achieving justice and accountability. The inability of the justice system to handle cases of gross human rights violations is also a crucial problem. Some factors that influence law enforcement in these cases include lack of adequate evidence, threats to witnesses and victims, and political influence that affects the judicial system's independence.

The issue of inequality of access to justice is also a concern. Many victims of gross human rights violations come from vulnerable groups, such as ethnic minorities, women, and children. They often have limited access to the justice system and receive proper protection. The international community's role is also an important part of this problem. Countries around the world have a wide range of international obligations in terms of human rights, and there is pressure from the international community to

ensure that they meet these obligations. However, international responses to gross human rights violations are often inconsistent and limited by politics and national interests.

Lack of prevention efforts is also an important problem. The prevention of gross human rights violations through diplomacy, dialogue, and the promotion of peace is often overlooked, so the potential for conflict that can result in gross human rights violations remains high. In order to address these issues, comprehensive and collaborative action needs to be taken. This involves improvements in law enforcement, strengthening the justice system, protecting victims, and more serious prevention efforts. In addition, commitment to international human rights norms and stronger international cooperation are also needed to address this problem of gross human rights violations effectively. Various relevant theories can be used to understand and examine the problem of gross human rights violations more deeply. One very relevant theory is the Transitional Justice Theory.

B. Transitional Justice Theory

Transitional justice is a new issue in legal and political studies that is discussed in various parts of the world. The subject of transitional justice is how to uphold justice when a country transitions from a regime/order that previously ruled in a totalitarian manner and violated human rights to a new regime.⁵ Transitional Justice Theory is a conceptual framework widely used in addressing gross human rights violations in transitioning from conflict or authoritarian regimes to times of peace and justice. This theory guides how society and the state can deal with the legacy of a past riddled with human rights violations.

Settlement of human rights violations through non-judicial means is common in transitional government conditions. A transition of government from an authoritarian or repressive system to a state system that develops democratic principles. The demand for justice for victims of past human rights violations to be achieved in a transitional government is commonly termed transitional justice. In simple terms, the concept of transitional justice was put forward by Ruti G. Teitel.

According to him, transitional justice issues arise in the context of transition or a change at the political level. So the problem of transitional justice arises in the period between two government systems. The general understanding of transition contains normative meaning, namely a regime shift from less democratic to more democratic.

⁵Paul Gready and Simon Robins, "Transitional Justice and Theories of Change: Towards Evaluation as Understanding," *International Journal of Transitional Justice* 14, no. 2 (2020); Paul Gready and Simon Robins, "Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and 'New' Civil Society," *International Journal of Human Rights* 21, no. 7 (2017); Felix E. Torres, "On Deserving Victims and the Undeserving Poor: Exploring the Scope of Distributive Justice in Transitional Justice Theory and Practice," *Human Rights Quarterly* 45, no. 2 (2023); Oliver Nikolić, "The Cairo Declaration on Human Rights in Islam," *Strani Pravni Zivot*, no. 3 (2020); Syafa'atun Almirzanah, "On Human Rights and The Qur'anic Perspective: Freedom of Religion and the Rule of Apostasy," *Al-Jami'ah: Journal of Islamic Studies* 45, no. 2 (2007): 367-88.

Teitel further states that the transition phenomenon leads to a close link in the normative shift in the understanding of justice and the role of law in the construction of transition.⁶

For more details, Ruti G. Teitel describes the meaning of transitional justice as Justice associated with this context and political conditions. Transition indicates a paradigm shift in the conception of justice, so the law has a paradoxical function. In its ordinary social function, the law creates order and stability, but in unusual times of political turmoil, the law creates order and, at the same time, enables transformation. Thus, in times of transition, traditional institutions and the usual predicates of law cannot apply. In dynamic political change, legal responses give rise to transformative legal paradigms that are sui generis, distinctive, and unique.

The meaning of justice here does not stand alone as the goal of law. However, the fulfillment of justice is related to the transition of a state government from an authoritarian government to a democratic government. Terre describes transitional phenomena as unusual or abnormal and offers new perspectives beyond classical theories about justice, democracy, the role and nature of law, the state, and society. A new meaning is found for the issue of justice in transition and the role of law in upholding justice in that transition. Teitel's view of transitional justice proposes a theory of transitional justice and a transitional legal theory called transitional jurisprudence. This must be done because the transitional atmosphere means being overshadowed by past violence and the desire to achieve hope for a just and peaceful social order in the future.

The hope of realizing transitional justice is so that the new government in the transition period can run well and not be burdened by problems or human rights cases that have occurred. Therefore, past cases must be resolved from the perspective of transitional justice. Regarding the concept or understanding of transitional justice, it is also stated by Todung Mulya Lubis as follows: The concept of transitional justice relates to the challenges faced by a transitional state moving out of a repressive authoritarian government to a more democratic government. The elaboration of transitional justice relates to the respect for civil, political, economic, social, and cultural rights previously systematically suppressed.

Todung Mulya Lubis further elaborated, from several experiences of other countries, such as South Africa, El Salvador, and Argentina, that transitional justice is carried out through truth finding on all forms of past human rights violations categorized as crimes against humanity. In addition to the perpetrators of these human rights violations being processed, tried, and punished, many have also been granted amnesty. Special justice for the victims is carried out through rehabilitation in various

⁶Ruti G. Teitel, *Transitional Justice, American Political Science Review* (New York: Oxford University Press, 2000); Hoko Horii, "Pluralistic Legal System, Pluralistic Human Rights?: Teenage Pregnancy, Child Marriage and Legal Institutions in Bali," *Journal of Legal Pluralism and Unofficial Law*, 2019; Yusif Mamedov, "Islamic Criminal Procedure Law: Human Rights Issues," *Grani* 23, no. 10 (2020).

ways as a healing process, such as the process through the Truth and Justice Commission. In essence, transitional justice wants to erase the chain of impunity through truth finding, healing process, and reconciliation by marrying the legal process, amnesty, rehabilitation, and democratic rehabilitation. The concept of resolving cases of human rights violations by not prioritizing the court process alone but combining it with the truth-seeking process was also put forward by Ifdal Kasim.

According to Ifdal Kasim, these two processes are not mutually exclusive. Truth-telling essentially reaffirms the validity of norms that have been violated. In this context, it requires an admission of guilt from the perpetrator (state/military institution), followed by an official apology. This admission of guilt has far more important implications than punishing fifteen officers out of hundreds. Even if they are punished, they will be free again, but they do not want to admit their guilt, so punishment does not confirm the validity of the violated norm. In contrast, an admission of guilt and an apology must also be followed by restoring the victims by providing compensation, rehabilitation, or even guarantees for the non-repetition of the offense in the future. If this path of restoration of the victims is not taken, then the state's admission of guilt and apology lose their meaning. There are four main elements to the Transitional Justice Theory:

1. Court

One of the key elements in this theory is the trial of perpetrators of gross human rights violations. This includes national or international courts to ensure perpetrators' accountability. These courts can be international criminal courts, specialized national courts, or hybrid courts involving international and national jurisdictions.

2. Repair

This theory also emphasizes the importance of providing reparations to victims of gross human rights violations. Reparations may include financial compensation, restitution, medical or psychological rehabilitation, and efforts to restore the dignity of the torn victim.

3. Truth and Reconciliation

The transition to peace and justice also requires efforts to uncover the truth about what happened during conflict or human rights violations. It involves meticulous investigations, truth commissions, and reconciliation processes that can help communities face the past honestly and build trust.

4. Institutional Reform

This theory suggests the need for reform in institutions implicated in gross human rights violations. These include security sector reforms, changes in the justice system, and efforts to prevent future repetition of abuses.

Transitional Justice Theory becomes relevant in resolving cases of gross human rights violations because it recognizes the importance of facing the dark past fairly and justly. By applying these principles, governments and communities can work together to build a strong foundation for sustainable peace, justice, and reconciliation. Concrete actions based on Transitional Justice Theory may include the following steps:

1. Court

Governments may cooperate with the international community or national institutions to investigate and prosecute perpetrators of gross human rights violations. International courts such as the International Criminal Court (ICC) or specialized national courts can be used to ensure accountability. This will convey that gross human rights violations will not go unpunished.

2. Repair

Reparation programs should be established to assist victims of gross human rights violations. This includes financial compensation, access to mental and physical health services, and psychosocial support. It is important to recover the victim and help them return to normal life.

3. Truth and Reconciliation

Governments can support truth and reconciliation commissions that reveal the truth about gross human rights violations. This may include the collection of testimony, thorough investigation, and publication of reports. This process helps communities to understand past events better and promotes peace.

4. Institutional Reform

Reforms of the security sector and justice system are also crucial. The government must commit to eliminating corrupt elements and disregard for human rights in these institutions. This includes training and requalifying personnel involved in gross human rights violations.

5. Civil Society Participation

Involving civil society in reconciliation and justice processes is a key aspect of Transitional Justice Theory. Civil society can act as a watchdog and support for victims. They can also assist in promoting peace and encouraging the fulfillment of human rights obligations.

6. Education and Awareness

The government should strive to raise awareness about human rights and the importance of accountability in society. This can be done through school education, public information campaigns, and human rights-related training for law enforcement and military personnel.

7. International Collaboration

Collaboration with the international community is an integral part of efforts to resolve gross human rights violations. This can include cooperation with

organizations such as the United Nations, the ICC, or regional organizations with experience handling cases of gross human rights violations.

By following the principles of Transitional Justice Theory, governments and communities can work together to address past traumas, creating stronger foundations for peace and justice and preventing a repeat of future gross human rights violations. In addition, this approach also gives hope to victims to get the justice they need.

C. Human Rights and Government Policy

Government Policy to Face Cases of Gross Human Rights Violations in Politics Law is a deep and complex issue that has been in the international spotlight in recent decades. Indonesia, like many other countries, faces serious challenges related to gross human rights violations involving cases such as armed conflict, repressive measures by the government, and emergency situations that trigger violations of basic individual rights. The background and impact of government policies in dealing with this problem is very important to understand.⁷

First of all, the background of this problem can be traced to the long history of Indonesia. The authoritarian past under the New Order was a period that made a deep mark in the form of gross human rights violations such as kidnappings, torture, and political assassinations. Armed conflicts in Aceh, Papua, and East Timor (now Timor Leste) also triggered gross human rights violations to varying degrees. All this requires a serious response from the government. Furthermore, international pressure also affects government policies related to cases of gross human rights violations. Indonesia is a member of the United Nations and various regional organizations such as ASEAN. Therefore, the country must abide by international human rights norms. The international community is increasingly active in monitoring countries' performance on human rights, and this pressure affects government attitudes and measures in dealing with the problem of gross human rights violations. In addition, national laws governing human rights are also an important part of the background of government policy. Laws such as Law Number 39 of 1999 concerning Human Rights provide a legal framework for protecting human rights in Indonesia. However, implementation of such laws is often inadequate, and government policy in dealing with cases of gross human rights violations must consider these constraints.⁸

The judicial system is also an important aspect in the background of this problem. Cases of gross human rights violations are often hampered by the inability of law enforcement officials to gather sufficient evidence and investigate cases thoroughly. In addition, victims often face pressure and threats, making the judicial process difficult

⁷S Marzuki, "Politik Hukum Hak Asasi Manusia (HAM) Di Indonesia Pada Era Reformasi Studi Tentang Penegakan Hukum HAM Dalam Penyelesaian Pelanggaran HAM Masa," 2010.

⁸Stephen Young, "Contesting Subjects: International Legal Discourses on Terrorism and Indigenous Peoples' Human Rights," *Asian Journal of International Law* 13, no. 2 (2023).

and unfair. In dealing with this problem, the government needs to formulate a comprehensive policy. This includes strengthening law enforcement agencies, ensuring transparency and accountability in investigating cases of gross human rights violations, and protecting witnesses and victims. The government must also promote peace and sustainable conflict resolution as preventive measures.⁹

The importance of dialogue and civil society involvement must also be considered. Civil society is key in monitoring gross human rights violations and fighting for justice. The government must open space for dialogue with civil society organizations and listen to their aspirations.¹⁰ To address these issues, comprehensive and collaborative action needs to be taken. This involves improvements in law enforcement, strengthening the justice system, protecting victims, and more serious prevention efforts. In addition, commitment to international human rights norms and stronger international cooperation are also needed to confront the problem of gross human rights violations effectively. By understanding this complex background, the government can formulate policies that are more effective in addressing cases of gross human rights violations and realizing a better vision of the country. In continuing the discussion on government policies to deal with cases of gross human rights violations in legal politics, it is necessary to highlight several relevant aspects and challenges. The government faces various dilemmas and complicated considerations in handling such cases.

First, accountability is one of the main focuses. The government must determine how to deal with perpetrators of gross human rights violations through national or international courts. International courts, such as the ICC, are often an option for very serious cases, but this can also fuel tensions with the international community. Second, the protection of victims and witnesses is a priority. Gross human rights violations often involve highly vulnerable individuals, and they can face serious threats to their lives and security. Therefore, governments must ensure that they get adequate protection during the legal process and afterward.¹¹ Third, the importance of national reconciliation should not be overlooked. While accountability is important in addressing gross human rights violations, reconciliation efforts are also needed to remedy societal tensions and conflicts. This process must be done carefully and involve various parties involved. Fourth, there needs to be international support. Cases of gross human rights violations often involve perpetrators from multiple countries, and the efforts of international

⁹Alifiyah Fitrah Rahmadhani and Dodi Jaya Wardana, "Penyelesaian Pelanggaran HAM Berat Di Indonesia," *UNES Law Review* 6, no. 1 (2023).; Mohammed R.M. Elshobake, "Human Rights Violations during the COVID-19 Pandemic," *International Journal of Human Rights in Healthcare* 15, no. 4 (2022).

¹⁰Yulianto Achmad, Nanik Prasetyoningsih, and M. Reformis Al Fath, "ASEAN Non-Intervention Principles: An Alternative Settlement towards Human Rights Violation in Rohingya," *Jurnal Media Hukum* 28, no. 1 (2021).

¹¹Marloes Van Noorloos, "A Critical Reflection on the Right to the Truth about Gross Human Rights Violations," *Human Rights Law Review* 21, no. 4 (2021); Gilang Firman Nugraha, "Law Enforcement Cases of Human Rights Violations in Indonesia," *Scientia* 2, no. 1 (2023); Virdatul Anif and Galuh Mustika Dewi, "Arah Politik Hukum Kebijakan Perlindungan HAM Di Indonesia," *Lex Scientia Law Review* 1, no. 1 (2017): 5–18.

courts or regional cooperation can strengthen accountability processes. However, governments must also consider these measures' political and diplomatic implications. Fifth, education and awareness about human rights must be increased in the community.¹² By increasing understanding of human rights, communities will better support efforts to confront gross human rights violations and encourage governments to act. Finally, comprehensive and sustainable policymaking is key. Government policies should include both short- and long-term measures to ensure that gross human rights violations are prevented and accountability is upheld. It includes reform of law enforcement agencies, improvements in the justice system, and efforts to build sustainable peace.¹³

In the face of cases of gross human rights violations in legal politics, the government is faced with a complex task. However, governments can move towards a fair and sustainable settlement by following the Transitional Theory of Justice framework and considering all relevant aspects. This will fulfill their international obligations and help build a more just and just society. The government must involve various parties, including civil society, non-governmental organizations, and vulnerable minority groups, in policy formulation and implementation. Active participation from different elements of society will help ensure that proposed solutions are more inclusive and reflect diverse perspectives.¹⁴

Governments should also consider the political implications of their actions in handling cases of gross human rights violations. Such decisions often have significant political repercussions at the national and international levels. Therefore, policies must be applied wisely, considering national interests and international diplomacy. Supporting an independent and professional justice system should also not be overlooked. A strong judicial system is a key element in ensuring accountability. Governments should invest in the training and development of judges, prosecutors, and law enforcement to ensure that they can address cases of gross human rights violations objectively and fairly.¹⁵ Another challenge is maintaining a balance between justice and reconciliation. While prosecuting perpetrators of gross human rights violations is important, so are efforts to build peace and reconciliation in conflict-torn societies. Governments need to formulate policies that punish perpetrators and support a reconciliation process that allows victims and perpetrators to reconcile. Finally, it is important to remember that confronting cases of gross human rights violations is a long-term endeavor. Significant changes in society and the justice system take time. Therefore, governments must protect human rights and implement sustainable policies. Dealing with gross human rights violations cases is a complicated and sensitive task. However, with a comprehensive approach, collaboration with various parties, and a

¹²Rahmadhani and Wardana, "Penyelesaian Pelanggaran HAM Berat Di Indonesia."

¹³Marzuki, "Politik Hukum Hak Asasi Manusia (HAM) Di Indonesia Pada Era Reformasi Studi Tentang Penegakan Hukum HAM Dalam Penyelesaian Pelanggaran HAM Masa."

¹⁴Rahmadhani and Wardana, "Penyelesaian Pelanggaran HAM Berat Di Indonesia."

¹⁵Anif and Dewi, "Arah Politik Hukum Kebijakan Perlindungan HAM Di Indonesia."

commitment to international human rights norms, governments can ensure justice, accountability, and sustainable peace in society.¹⁶

Law enforcement efforts to resolve gross human rights violations are one of the objectives of the Indonesian nation, as stated in Article 1, paragraph (3) of the 1945 NRI Constitution. In law enforcement, it is necessary to understand human rights as values, concepts, and norms that live and develop in society. Law enforcement aims to protect and guarantee victims' rights, so various efforts are needed, ranging from mediation, compensation, and victim recovery to criminal acts for serious human rights violators. Therefore, several forms of heavy human rights protection efforts have been held to protect victims' rights as stipulated in the constitution and philosophy of the Indonesian state.

a. Protection of victims of gross human rights violations in Law Number 27 of 2004 concerning the Truth and Reconciliation Commission (TRC).

The settlement of cases of gross human rights violations other than through the mechanism of the criminal justice system can also be resolved through the mechanism of the Truth and Reconciliation Commission (TRC), namely the settlement of cases of gross human rights violations that occurred before the enactment of Law Number 26 of 2000 concerning Human Rights Courts. This settlement is referred to by many as the settlement of cases of gross human rights violations outside the court system. However, the TRC is not purely an out-of-court settlement because cases of gross human rights violations that are not resolved through the TRC mechanism can still be submitted to the court through the Ad Hoc Human Rights Court mechanism. This means that they are still related to the criminal justice system. The TRC mechanism aims to realize national peace and unity, straighten history, realize reconciliation, and straighten history by giving amnesty to the perpetrator when describing gross human rights violations and admitting guilt by providing restitution to victims, and victims are asked to forgive. In this case, it can be seen that the TRC is a means of reuniting between the two parties.

The rights of victims of gross human rights violations in the TRC mechanism will be conveyed a little because the TRC is one of the means to reunite the parties; the rights possessed by victims of gross human rights violations include the rights of victims to obtain compensation, restitution and or rehabilitation. However, during its implementation, the TRC was submitted for judicial review to the Constitutional Court and then approved, so the TRC is no longer valid in Indonesia. This is because the Constitutional Court considers that all these facts and circumstances cause the absence of legal certainty, both in the formulation of the norm and the possibility of implementing the norm in the field to achieve the expected reconciliation goals. Considering the considerations outlined above, the Court thinks that the principles and objectives of the TRC are unlikely to be realized due to the absence of legal

¹⁶Kumbul Kusdwidjanto Sudjadi and Yusuf Setyadi, "Problematika Proses Peradilan Perkara Pelanggaran Ham Di Indonesia," *Journal of Islamic and Law Studies* 6, no. 1 (2021).

certainty. Therefore, the Court considers that the TRC Law is contrary to the 1945 Constitution, so it must be declared to have no binding legal force. By declaring that the TRC Law does not have binding legal force, it does not mean that the Court has closed efforts to resolve past gross human rights violations through reconciliation efforts. There are many ways to do this, including by realizing reconciliation through legal policies (laws) that are in harmony with the 1945 Constitution and universally applicable human rights instruments or by carrying out reconciliation through political policies in the context of rehabilitation and amnesty.

b. Law enforcement for gross human rights violations through Komnas HAM.

Komnas HAM, as mentioned in Article 1 point 7 of Law No. 39/1999, is an independent institution, which is at the same level as other state institutions, whose function is to develop conditions conducive to the implementation of human rights and to improve the protection and enforcement of human rights to develop the Indonesian human person as a whole and the ability to participate in various fields of life. In handling cases of gross human rights violations, based on Law No. 26 of 2000 concerning Human Rights Courts.

Komnas HAM can investigate gross human rights violations by forming an ad hoc team of the Human Rights Commission and community elements. This fact has led to the high expectations of the community towards Komnas HAM, which considers that Komnas HAM is a super body institution, which means that Komnas HAM is the final hope of the community, which is considered to be able to solve all community problems, this has become a very heavy burden for Komnas HAM in carrying out this mandate. The high expectations of the community, especially the victims, are not matched by the existing authority or given to Komnas HAM. Hence, the community is not satisfied with Komnas HAM's performance because Komnas HAM cannot meet the community's expectations. This is because Komnas HAM's recommendations are only morally binding, so there is no legal obligation for parties who receive Komnas HAM's recommendations to follow up. This has resulted in many complaints to Komnas HAM not being handled properly. For this reason, Komnas HAM needs to be given more authority through changes to existing laws so that it can carry out its mandate better to the community's expectations.

c. Law enforcement for gross human rights violations through Human Rights Courts.

The Human Rights Court was established pursuant to No. 26/2000 on Human Rights Courts to protect victims of gross human rights violations in Indonesia. The Human Rights Court is a specialized court within the general judicial system. The position of the human rights court follows that of the general court or district court, including its administrative support. This has the consequence that the human rights court will be highly dependent on the support of the district court. The categories of gross human rights violations that can be examined and decided by human rights courts are crimes of genocide and crimes against humanity. Furthermore, the human

rights court uses criminal procedural law so that the entire examination process in the human rights court is by the Criminal Code (KUHAP).

However, the current problem with the Human Rights Court Law provisions is identifying problems. This problem relates to the formulation of crimes against humanity, defined as one of the acts committed as part of a widespread or systematic attack directed against a civilian population (Article 9 of the Human Rights Court Law). This is certainly confusing if the law does not define what is meant by widespread or systematic, which results in judges having to interpret. Another problem with the Human Rights Court Law is that there are no provisions for investigation, prosecution, and investigation, so the law must use KUHAP. In addition, this law does not regulate the procedure for proposing an ad hoc court to handle cases of gross human rights violations in the past. This implies that the Human Rights Court cannot stand independently but requires other state institutions, especially political institutions such as the DPR. This is certainly a concern, especially with the revocation of the Truth and Reconciliation Commission (TRC) Law. It is possible that cases of gross human rights violations cannot be resolved at the Human Rights Court because the Truth and Reconciliation Commission (TRC) is a mechanism for resolving gross human rights complementary to the Human Rights Court.

D. Factors that Become Obstacles in Resolving Gross Human Rights Violations

According to Moh. Mahfud, the technical procedural difficulties in proving if the settlement takes legal channels are because the crime is not an ordinary crime but a political crime or a politically motivated crime committed by a regime that is certain to be carried out in a designed, hidden and organized manner, including eliminating traces of the crime. Then, the time period between the occurrence of the event and the investigation caused difficulties in finding evidence, damage, loss, and memory of witnesses reduced or even eliminated or died. Political obstacles, supporters of the previous regime, especially the military, in Mahfud's concept are called political obstacles, such as pressure, intimidation, influence, and threats originating from the political power of the old regime, are problems that generally greatly affect the new regime. The obstacle for some community groups, as well as victims or families of victims, is that they are reluctant to revisit past issues because they are just reliving old stories. They call for looking to the future rather than to the past.

In resolving gross human rights violations in Indonesia, it will continue to be bound by law. However, in this case, there are several obstacles in the legal field, especially related to law enforcement in Indonesia. Many of us find that law enforcers have not carried out their duties by the procedures mandated in the applicable regulations. Law enforcers strongly influence determining the success of resolving gross human rights violations in Indonesia. Of course, because every step of the settlement will continue to require competent law enforcers, the quality of law enforcers will

facilitate implementation in the law enforcement system. The important role of law enforcers in successfully resolving gross human rights violations in Indonesia must also be accompanied by good regulations. Good regulations by competent law enforcers will minimize the possibility of unsuccessful resolution of gross human rights violations in Indonesia. Fulfilling a sense of justice in society also requires good law enforcement and regulations. In addition, the community is aware of complying with the laws and regulations to be obeyed. If a law has been passed, then juridically, the law applies. Then, the assumption arises that every citizen is considered to be aware of the existence of the law. However, this assumption is not the case.

Public knowledge about human rights is very low because the public cannot easily understand human rights. So that only curious people can understand human rights. Inhumane acts are most likely due to a lack of understanding of human rights. The nature of the existence of human rights that is not felt by the community is also a result of the lack of understanding of human rights. In addition, human rights cannot be easily understood by ordinary people because human rights often use standardized language and legal vocabulary that are rarely heard by the public. This also causes obstacles to delivering knowledge and understanding related to human rights. Whereas the community is one of the factors that is quite influential in the effectiveness of human rights, in this case, the government should pay more attention to the influence and impact of public knowledge.

The most important factor that impacts the successful resolution of gross human rights violations in Indonesia is the provision of facilities and facilities needed to resolve human rights violations. Unfortunately, the facilities provided by the state for human rights settlement are currently relatively insufficient; this can be proven by the fact that human rights courts in Indonesia are currently uneven. The government should realize that providing facilities is quite influential in accelerating the process of resolving gross human rights violations in Indonesia. Now, the public is faced with the difficulty of gaining access to human rights courts; facilities are one of the determinants of legal effectiveness. Besides that, adequate supporting facilities will make it easier for law enforcers to accelerate the process of resolving gross human rights violations in Indonesia because law enforcers certainly need adequate facilities to continue the legal process. None of the factors of evidence, law enforcement, public knowledge, and facilities can be ignored. All of these factors must be considered by the government and evaluated to improve the effectiveness of the law.

E. Effective Models for Resolving Gross Human Rights Violations

As for international mechanisms, another new mechanism that aims to protect justice in human crimes cases is the hybrid tribunal, also known as the Hybrid Tribunal. This model of justice emerged as a critique of the weaknesses of the International Criminal Tribunal for the Yugoslav States and the International Criminal Court. Initially implemented in East Timor and now in Cambodia and Sierra Leone, the hybrid model

combines the strengths of international ad hoc tribunals with national or domestic courts. The assessment of hybrid human rights courts is positive as they are perceived to have greater legal value as a fair mechanism to hold perpetrators accountable for their actions. In the case of national courts, implementing this hybrid model is easier than ad hoc trials.

They are considered less politically controversial, more meaningful to victim communities, and more effective in rebuilding local justice systems. However, the hybrid court still raises concerns about the possibility that it will bring out its worst instead of embracing the best of the national or international justice system. The aforementioned concerns were seen in East Timor's mixed courts, which were, in fact, inefficient at reducing local involvement, as well as an inability to practice proper due process standards. Although the mixed justice mechanism first implemented in East Timor, now known as Timor Leste, had its weaknesses, many groups, including the UN, began to believe that mixed justice mechanisms were better than ad hoc mechanisms because they allowed for direct involvement and became part of the judicial process and thus eliminated both the political and legal shortcomings of national (domestic) mechanisms. As described above, the difficulty of the formal legal process in dealing with serious human rights crimes in Indonesia has strongly encouraged the need for another mechanism or alternative resolution model, commonly known as the Truth and Reconciliation Commission (TRC). Another mission of the Commission is reconciliation.

This mission is based on the belief that reconciliation between perpetrators and victims of human rights violations requires recognizing the full truth behind each incident. Therefore, it is important to allow victims to speak out and have important events related to gross human rights violations in Indonesia explained to them. Reconciliation in post-authoritarian societies is very important because transitional justice is more than just dealing with human rights violations on a case-by-case basis. It is also the moral basis of transitional governments to respect human dignity through democratic, non-violent means and by the principle of the rule of law, all to prevent the same mistakes from happening again. Reconciliation is an important point in the TRC formulation, clearly related to psychological efforts and social and political relations between citizens as individuals or groups and the state due to discrimination by the state. This reconciliation is aimed at creating a democratic nation and state based on forgiveness or forgetting and not based on criminal charges.

The reconciliation in question is national political reconciliation, not individual reconciliation. The success of a truth commission is partly measured by its ability and success in creating reconciliation. When the truth has been revealed, further action can be taken by admitting mistakes, making peace, apologizing, abolishing, enforcing the law, restoring, or other useful options for maintaining national unity and integrity while fully considering the sense of justice in society. Four years after the enactment of Law No. 26 of 2000, Law No. 27 of 2004 on the Truth and Reconciliation Commission was enacted through MPR decree No. V/MPR/2000 and Law No. 26 of 2000. However, before

TRC members could be formed, on December 7, 2006, or two years after its enactment, the TRC Law was annulled by the Constitutional Court in Decision No.006/PUU-IV/2006. By canceling the formation of TRC members whose selection process had reached the Presidential level, it also eliminated the alternatives provided by Law No.26 of 2000.

F. Conclusion

Dealing with cases of gross human rights violations in legal politics is a complex challenge that requires a comprehensive and sustainable approach. In the Indonesian context, the conflict-ridden historical background and authoritarian past have created a legacy of gross human rights violations that require decisive action. The government's efforts to address this issue are also influenced by international pressure and international human rights norms that must be followed. Transitional Justice Theory provides a relevant framework for addressing this issue, focusing on accountability, reparations to victims, truth-telling, institutional reform, and national reconciliation. The government must consider victim and witness protection, civil society participation, and community human rights education and awareness during policy implementation. The challenges faced are complex. Governments must balance justice and reconciliation, consider the political implications of their actions, and ensure an independent and professional justice system. Policies must also be sustainable and take into account long-term impacts. By following the principles of Transitional Justice Theory and listening to the various parties involved, the government can address gross human rights violations more effectively. Accountability and justice must be top priorities, but reconciliation and peace efforts are essential to building a just and equitable society. In this endeavor, Indonesia and other countries facing similar challenges can form a stronger foundation for a better future.

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