THE IMPLEMENTATION OF REGULATIONS ON HUMAN RIGHTS VIOLATIONS IN LEGISLATION IN INDONESIA

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ABSTRACT

Objective: The enactment of Law Number 39 of 1999 in Indonesia regarding Human Rights was followed by Law Number 26 of 2000 concerning the Human Rights Court, aiming to address various issues of serious human rights violations. However, these regulations have not been effectively implemented.

Method: This study utilizes a qualitative methodology with an analytical descriptive specification, aiming to acquire a profound understanding of a specific phenomenon based on the interpretation and subjective experiences of participants. The data is collected from secondary sources, including primary legal sources such as regulations, laws, and court decisions, as well as secondary legal sources encompassing books, articles, and other relevant literature. The data collection techniques encompass literature review to comprehend the theoretical framework, observation for data authenticity, and interviews with relevant institutions to obtain additional information.

Results: The Law Number 26 of 2000 concerning the Human Rights Court is insufficient to address human rights violations in Indonesia, including legal weaknesses and ambiguities in implementing legislation, such as the incomplete “element of crimes” of regulated offenses. The resolution of serious human rights violations in the Indonesian criminal justice system based on Law Number 26 of 2000 has not been able to create legal certainty and justice for victims of serious human rights violations. The Law Number 13 of 2006 on Witness and Victim Protection has to some extent provided a normative foundation for the protection of witnesses and victims.

Conclusions: The Indonesian Law with number 26 of 2000 regarding the Human Rights Court is deemed inadequate in addressing serious human rights violations in Indonesia, due to weaknesses in legal certainty and justice. Meanwhile, the Indonesian Law with number 13 of 2006 provides a normative foundation for the protection of witnesses and victims.

Keywords: legislation, human rights violations, human rights, law, Indonesia.
A APLICAÇÃO DOS REGULAMENTOS RELATIVOS ÀS VIOLAÇÕES DOS DIREITOS HUMANOS NA LEGISLAÇÃO DA INDONÉSIA

RESUMO

Objetivo: A promulgação da Lei nº 39 de 1999 na Indonésia sobre Direitos Humanos foi seguida pela Lei nº 26 de 2000 relativa ao Tribunal de Direitos Humanos, com o objetivo de abordar várias questões de violações graves dos direitos humanos. No entanto, estes regulamentos não foram efetivamente implementados.

Método: Este estudo utiliza uma metodologia qualitativa com uma especificação analítica descritiva, com o objetivo de adquirir uma compreensão profunda de um fenômeno específico com base na interpretação e experiências subjetivas dos participantes. Os dados são coletados de fontes secundárias, incluindo fontes legais primárias, como regulamentos, leis e decisões judiciais, bem como fontes legais secundárias que abrangem livros, artigos e outra literatura relevante. As técnicas de coleta de dados abrangem revisão de literatura para compreender a estrutura teórica, observação da autenticidade dos dados e entrevistas com instituições relevantes para obter informações adicionais.

Resultados: A Lei número 26 de 2000 relativa ao Tribunal de Direitos Humanos é insuficiente para abordar as violações de direitos humanos na Indonésia, incluindo fragilidades legais e ambiguidades na implementação da legislação, tais como o “elemento de crimes” incompletos de infrações regulamentadas. A resolução de graves violações dos direitos humanos no sistema de justiça penal indonésio com base na Lei n.º 26 de 2000 não conseguiu criar segurança jurídica e justiça para as vítimas de graves violações dos direitos humanos. A Lei n.º 13 de 2006 relativa à proteção das testemunhas e das vítimas constitui, em certa medida, uma base normativa para a proteção das testemunhas e das vítimas.

Conclusões: A lei indonésia com o número 26 de 2000 relativo ao Tribunal dos Direitos Humanos é considerada inadequada para lidar com graves violações dos direitos humanos na Indonésia, devido a insuficiências na segurança jurídica e na justiça. Enquanto isso, a Lei da Indonésia com número 13 de 2006 fornece uma base normativa para a proteção de testemunhas e vítimas.

Palavras-chave: legislação, violações dos direitos humanos, direitos humanos, lei, Indonésia.

1 INTRODUCTION

The demand for resolving cases of human rights violations has led to the enactment of Law Number 39 of 1999 concerning Human Rights, followed by Law Number 26 of 2000 regarding the Human Rights Court, which aims to address various issues of human rights violations, particularly serious violations. Eighteen (18) cases have been brought before the human rights court, consisting of Twelve (12) cases of serious human rights violations in East Timor, four (4) cases of incidents in Tanjung Priok, and two (2) cases of serious human rights violations in Abepura (Papua), but they have not produced satisfactory decisions that uphold justice, especially for the victims of these serious human rights violations. The formation of the human rights court is inseparable from the political dynamics that occurred at that time, both at the national and international levels (Gofar, 2006). The political dynamics at that time necessitated the
resolution of serious human rights violations in Indonesia through a human rights court.

The formation of the legislation is a manifestation of Indonesia’s responsibility as a member of the United Nations, as well as its moral and legal obligations in implementing the Universal Declaration of Human Rights established by the United Nations, and other legal instruments governing human rights that have been ratified and accepted by the Republic of Indonesia (Indonesia, 1989). The stages of investigation in human rights violations fall under the authority of the National Commission on Human Rights based on Law Number 39 of 1999, which always results in the recommendation of human rights violations. The National Commission on Human Rights, in carrying out its role, conducts investigations into cases of human rights violations, as evidenced by the recommendations of the National Commission on Human Rights in specific cases of human rights violations, particularly in the cases of East Timor, Tanjung Priok, and Abepura, which consistently declare serious human rights violations in these cases.

The prosecution process in cases of serious human rights violations always accuses the defendants of committing grave violations of human rights in the form of crimes against humanity in cases of serious human rights violations such as those in Timor-Timur, Tanjung Priok, and Abepura. This implies that the public prosecutor's office recognizes the existence of serious human rights violations. However, in the case of Adam Damiri, the public prosecutor demanded his acquittal, which can be interpreted as the prosecutor not seeing any serious human rights violations committed by Adam Damiri in the Timor-Timur case. Despite being demanded to be acquitted by the prosecutor, the judge in the first instance court sentenced him to 3 years in prison. However, this decision was overturned in the appeal process at the High Court, and Adam Damiri was declared innocent of all charges. The Human Rights Court itself, at various levels, subsequently acquitted all defendants tried in the ad hoc Human Rights Court, declaring them all not guilty and free from all charges.

It is crucial to conduct an investigation into the allegations of serious human rights violations in the final report of the Truth and Friendship Commission. However, the responsibility for these serious violations is being transferred to the state. How can we hold the state criminally accountable, for example, in cases of murder mentioned in the Final Report of the Indonesia-Timor-Leste Truth and Friendship Commission, titled "Per Memoar ad Spem," meaning "Through Memory Towards Hope"? It acknowledges the occurrence of murders committed in the context of crimes against humanity, as stated in...
the four documents reviewed by the Truth and Friendship Commission, including the Report of the Commission of Inquiry into Human Rights Violations in East Timor (KPP HAM). The individuals appointed by the National Commission on Human Rights; the trial documents of the Jakarta Ad Hoc Human Rights Court, including the Prosecution Interrogation Reports of the Republic of Indonesia Attorney General's Office; the Report of the Timor Leste Commission for Reception, Truth, and Reconciliation (CAVR/Comissao De Acolhimento, Verdade e Reconciliacao); and the trial and investigation documents conducted by the Special Panel for Serious Crimes at the Dili District Court (SPSC/Special Panel for Serious Crimes) and the Serious Crimes Unit (SCU) in Dili, have all found that grave violations of human rights occurred in East Timor (Leste, 2008).

With the outcome of the Indonesia-Timor Leste Truth and Friendship Commission not placing criminal responsibility on individuals, the Indonesian government has committed impunity in addressing human rights violations in Timor-Timur. They have disregarded the right to obtain remedies for victims of human rights violations. Several provisions in international law can explain that the Indonesian government should not absolve individual criminal responsibility for perpetrators of grave human rights violations in Timor-Timur.

2 THEORETICAL FRAMEWORK
2.1 HUMAN RIGHTS

Human rights are basic rights inherent in every individual as a human being, regardless of race, color, gender, language, religion, or social status (Aurora, 2021; Ojilere & Saleh, 2019; Rhodes & Mandalaywala, 2017). The concept of Human Rights is a universal and inherent right, meaning that it is possessed by every individual from birth and cannot be revoked by anyone. These rights include, among others, the right to life, the right to be free from torture, the right to freedom of thought and religion, the right to education, and the right to justice. The principles of equality and non-discrimination serve as the fundamental foundation for the implementation of Human Rights, where every individual is entitled to equal treatment under the law and equal protection of the law, regardless of any differences (Duraj, 2022; Fukuda-Parr & Gibbons, 2021; Pálmadóttr & Kalenikova, 2018).

Violations of Human Rights often occur when authorities ignore or suppress the
basic rights of individuals, whether by the government or other entities. To address this issue, various international legal instruments have been established, such as the Universal Declaration of Human Rights by the United Nations, adopted in 1948. This Declaration, along with other instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, serve as a foundation for countries around the world to protect and guarantee the fundamental rights of every individual. Therefore, a deep understanding of Human Rights and a commitment to respect and protect them are crucial in the efforts to build a just and civilized society.

2.2 THE LAW OF JUSTICE

In society, justice is often regarded as the primary pillar that supports the structure of law and morality (Al Rahahleh et al., 2019; Sloane, 2019; Zhang et al., 2015). Justice refers to the equitable allocation of rights and responsibilities to each individual, ensuring that every individual receives a fair share regardless of their background, status, or identity (Makateng, 2022; Pellegrini-Masini et al., 2020; Pottier et al., 2017). The concept of justice is based on the principles of equality, where every individual should be treated equally under the law, and proportionality, where the sanctions or punishments given should be commensurate with the level of wrongdoing committed. However, it is important to understand that justice is not just about absolute equality, but also about providing what is due to each individual based on their needs, contributions, and specific circumstances.

Meanwhile, in the context of law, justice becomes the ultimate goal of the implementation of norms and regulations. An equitable legal system will strive diligently to avoid discrimination, inequality, or abuse of power. In the pursuit of justice, the law must constantly evolve and adapt to the social, cultural, and values changes within society. Criticism and introspection are essential to ensure that the law remains relevant and fulfills its primary function of achieving justice. Therefore, dialogue between the community, authorities, and legal experts is crucial in creating a truly fair legal order for all parties involved.
3 METHODS

Penelitian ini menggunakan metode kualitatif dengan spesifikasi deskriptif analisis dengan tujuan mendapatkan pemahaman mendalam tentang fenomena tertentu berdasarkan interpretasi dan pengalaman subjektif partisipan. Data dikumpulkan dari sumber data sekunder, yang mencakup sumber hukum primer seperti peraturan, undang-undang, dan keputusan pengadilan, serta sumber hukum sekunder yang mencakup buku, artikel, dan literatur lainnya yang relevan. Teknik pengumpulan data meliputi studi kepustakaan untuk memahami kerangka teoritis, observasi untuk otentisitas data, dan wawancara dengan instansi terkait untuk mendapatkan informasi tambahan.

Setelah data terkumpul, penting untuk memverifikasi keakuratannya dengan membandingkan informasi dari berbagai sumber dan memastikan keberlanjutannya. Data yang telah diverifikasi kemudian disusun dan disajikan dalam bentuk narasi deskriptif, tabel, atau ilustrasi yang relevan. Dalam analisis data, pendekatan analisis konten digunakan untuk melakukan pemeriksaan sistematis dan interpretasi informasi, mengidentifikasi pola atau tema, dan membandingkannya dengan teori relevan serta hasil penelitian lapangan. Kesimpulan ditarik berdasarkan temuan dan interpretasi, memberikan jawaban atas permasalahan yang diajukan dan potensi rekomendasi untuk penelitian berikutnya atau implementasi praktis.

4 RESULTS

4.1 IMPLEMENTATION OF HUMAN RIGHTS VIOLATION REGULATIONS IN INDONESIA

The Law No. 26 of 2000 unequivocally declares that grave violations of human rights are extraordinary crimes and have far-reaching implications both at the national and international levels, and are not offenses regulated within the Criminal Code (Anudiwanti & Ahmad, 2022; Nasution, 2018; Sumigar, 2020). The definition itself demonstrates that genocide and crimes against humanity are distinct from the formulation of crimes in the Criminal Code and therefore require special measures. Due to the highly specific characteristics of these crimes, which differ from "ordinary" crimes, the Human Rights Court is a special court. This specificity necessitates special investigation, prosecution, and examination procedures as well.

Its uniqueness also lies in its different principles and regulations. The principles that are regulated differently from ordinary crimes as applied in ordinary crimes are:
firstly, the non-applicability of provisions regarding expiration in grave violations of human rights. Secondly, the use of non-retroactive principles for crimes against humanity and genocide. Thirdly, attempts, conspiracy, and aiding and abetting in genocide and crimes against humanity are punished with the same criminal penalties as the direct perpetrators (Indonesia, 2000).

Although not its specialty, Law No. 26 of 2000 also emphasizes certain provisions such as protection for witnesses and victims and the obligation for compensation, restitution, and rehabilitation for victims of grave violations of human rights (Ali & Wibowo, 2018; Indonesia, 2000; Rahmi, 2019). Then, to complete the regulations regarding the operation of the provisions regarding witness protection and the rights of compensation, restitution and rehabilitation to victims, the government issued 2 (two) government regulations.

The Law No. 26 of 2000 states that the formulation of genocide and crimes against humanity is derived from international standard formulations. This can be read in the explanation of Article 7, which states: Genocide and crimes against humanity in these provisions are in accordance with the Rome Statute of the International Criminal Court (Article 6 and Article 7).

The individual accountability is formulated in Law No. 26 of 2000, in Article 1 paragraph 4: Every person, whether an individual or a group of individuals, whether civilian, military, or police, is individually responsible. There is no further explanation provided in this article. In contrast to Law No. 26 of 2000, the limitations on individual accountability are detailed in the Rome Statute Article 33, which provides exemptions in certain circumstances, namely when a person is bound by a legal obligation to obey an order, and they did not know that the order was actually illegal or that it clearly violated the law.

In the case of East Timor, the crime of destruction of buildings, houses, and public facilities, estimated to have reached 80% as reported in the investigation by the National Commission on Human Rights, was not prosecuted by the Public Prosecutor (Attorney General) on the grounds that such crimes are not covered by the formulation in Article 9 of Law No. 26 of 2000. This extraordinary crime should automatically be prosecuted if persecution is not translated as persecution or if paragraph 1k of Article 7 of the Rome Statute is included in Article 9 of Law No. 26 of 2000 (Groome, 2023; Imoedemhe et al., 2017; Nababan, 2004).
The outcome of the Human Rights Court falls far short of expectations, as almost all defendants brought to trial are acquitted. Similarly, none of the victims have received any form of restorative reparations, such as compensation, restitution, and rehabilitation, as stipulated in Law No. 26 of 2000. Throughout the trial process, the protection afforded to witnesses and victims is also woefully insufficient, with many victims fearing to testify in court and witnesses experiencing intimidation while giving their testimonies (Chakan & Millenio, 2023; Melaku, 2018; Walker et al., 2023).

Various analyses and studies regarding the failure of the human rights court have been conducted, revealing numerous factors that have rendered the court unable to convict perpetrators and provide justice to the victims (Cohen, 2004; Newell & Henry, 2016; Wantu et al., 2021). This court has failed to uphold two fundamental principles of justice in the judiciary, namely the failure to establish clear command responsibility at an institutional level, rather than just individual culpability, and the failure to fulfill the "truth-seeking function" mandated by the Human Rights Court. In addition to the role of the prosecutor enabling prosecutorial failures, the court is also designed to lack independence. Furthermore, the legal framework of the court under Law No. 26 of 2000 requires revision, particularly in relation to evidence and procedural law.

The outcome of the Human Rights Court, based on monitoring, reveals three major weaknesses, namely: 1) the failure to establish grave violations of human rights; 2) the acquittal of the defendants; and 3) the lack of compensation received by the victims (Eddyono & Abidin, 2016; Hasim, 2015; Le et al., 2023). The inadequacy of this regulation has resulted in the Human Rights Court being deemed incompatible with international standards, as international courts adjudicate international crimes, such as crimes against humanity.

The analysis of the failure to effectively prosecute has long been recognized that in order to adjudicate serious crimes such as genocide and crimes against humanity, a specific regulation is necessary. This special regulation not only pertains to the substantive law, but also encompasses the criminal procedural law, which differs from the regulation in general criminal offenses as stipulated in the Criminal Code. From the perspective of substantive law, there are still many provisions that create confusion and incompleteness, making it difficult to ascertain their certainty and prone to multiple interpretations. From the perspective of procedural law, although there are exceptions, it still refers to the ordinary criminal procedural law (Criminal Procedure Code) that is
inadequate and hampers the proof of cases falling under the category of "extraordinary" crimes. These weaknesses in both formal and substantive law result in an unfair judicial process in its implementation.

The enactment of Law No. 26 of 2000 was in response to demands for the resolution of alleged human rights violations that occurred in the past by establishing the Human Rights Court. With the foundation of Law No. 26 of 2000, two ad hoc Human Rights Courts were established for serious human rights violations in Timor-Leste and Tanjung Priok, and a Human Rights Court was held for human rights violations in Abepura. However, these courts failed to deliver optimal results as almost all defendants brought before the Human Rights Court were acquitted. Furthermore, victims of these grave human rights violations did not receive the reparations they were entitled to under Law No. 26 of 2000, which include compensation, restitution, and rehabilitation.

One of the factors that contributes to the failure of the Human Rights Court is the inadequate regulation in Law No. 26 of 2000, including its procedural law weaknesses. The deficiencies in Law No. 26 of 2000 lead to ambiguity in the implementation of legislative regulations, such as the lack of completeness in defining the "element of crimes" for the offenses under scrutiny. The application of procedural law, despite the existence of specific rules, still generally refers to the Criminal Procedure Code (KUHAP), which complicates the process of proving the cases.

A provision in criminal law, at the very least, always governs three essential parts, namely the regulation of general principles to be applied, the offenses to be regulated, and the penalties for such offenses. The formulation of legal principles governs the jurisdiction and limitations of the application of a criminal act, including the reference for determining the punishment for the perpetrator and the responsibility of the perpetrator. The regulated criminal acts must be formulated clearly and avoid generating multiple interpretations (the principle of lex certa). Meanwhile, the criminal penalties must also be proportionate to the severity of the offense (the criminal act).

In order to ensure the punishment for grave human rights violations, particularly crimes against humanity, a comprehensive and adequate regulation is necessary. This regulation should address the sufficiency of accepting legal principles to ensure the effective enforcement of the law. The handling and resolution of these extraordinary crimes should be placed within a broader context, not only focusing on punishing the perpetrators but also providing opportunities for the victims to obtain reparations. The
failure to provide effective remedies for the victims has resulted in an incomplete resolution of these crimes, which cannot be deemed fair.

The Law No. 39 of 1999 on Human Rights, in the explanation of Article 104, states that serious human rights violations refer to mass killings (genocide), arbitrary or extrajudicial killings, torture, enforced disappearances, slavery, or systematic discrimination. This comprehensive and detailed formulation should serve as a reference for defining grave human rights violations to be used in human rights courts.

The formulation in Article 7 of Law No. 26 of 2000 on Human Rights Courts has resulted in a narrow definition of grave human rights violations, which includes genocide and crimes against humanity. This excludes various human rights violations as formulated in Law No. 39 of 1999, such as systematic discrimination and torture outside of genocide or other serious crimes.

Some additional information about this element is the agreement to have a broader understanding by adding two other elements, namely:

1. The target is the civilian population and
2. The number of victims who are targeted is significant. Although it is acknowledged that the demarcation line between combatants and civilian population is very thin.

This article implies that the court is forced to emphasize its focus on the process, namely whether the actions taken were appropriate or not, whether they were necessary or not. This automatically disregards the fact of whether the actions taken by the commanding officer were successful in preventing and stopping the crimes or not, whether they were necessary or not. However, in addition to being held accountable, if they are direct perpetrators, instigators, or accomplices, a superior should also be criminally responsible for negligence in carrying out their duties and negligence. The international customary law standards for negligence and negligence in a broad sense state that a superior is criminally responsible if: (1) they should have known that a legal violation has occurred or is occurring, or will occur, by their subordinates; (2) they have the opportunity to take action; and (3) they fail to take corrective action that should be taken according to the circumstances at that time. Article 7 paragraph 3 of the Rome Statute imperatively reflects these international customary law standards.

Although it appears similar and relevant, it is not balanced with provisions regarding superiors or officials. This provision should also regulate the irrelevance of
official positions in eliminating criminal charges and reducing sentences. Similarly, immunity and special procedural rules should not hinder the jurisdiction of the court over such individuals (Almoussa, 2018; Ashri, 2023; Kopsidi & Vlachos, 2021). Without regulations, as seen in the experience of the ad hoc Human Rights Court for the East Timor Case, judges can easily decide that convicted defendants should not immediately be sent to prison because their services are still needed by their unit.

Ne bis in idem is a principle of criminal law that can be applied in various criminal cases, including severe human rights violations. The concept of ne bis in idem is understood as the absence of another trial for the same case, based on the event (temporal and locational aspects) and the identity of the perpetrator, which has been previously adjudicated and has a final legal force. The emphasis of the ne bis in idem principle is that the events and the perpetrators are the same, and they have been adjudicated with a final legal decision. The definition of ne bis in idem can be found in the provisions of Law No. 39/1999 (Mcguire, 2016; Putra, 2021; Wagianto & Firdawati, 2020). This definition is in line with the provisions stipulated in Article 18 paragraph 5 of Law No. 39/1999 on Human Rights.

Crimes of genocide and crimes against humanity, which have occurred in various countries around the world, often involve state officials. Therefore, it is extremely challenging to be tried in a fair and genuine court. In the context of Indonesia, difficulties in prosecution can be experienced and have been experienced. With the implementation of various judicial processes such as general courts and military courts alongside the Human Rights Court, perpetrators may be tried in general or military courts to avoid being prosecuted in the Human Rights Court. Thus, when a special Human Rights Court is held, the principle of ne bis in idem is invoked by perpetrators to reject being brought to trial (Kayitana, 2018; Supriyanto, 2016; Van Den Wyngaert & Stessens, 1999).

Such exceptions have indeed been regulated in the provisions of the Rome Statute, which stipulate that the International Court can re-try perpetrators of serious human rights violations if the ongoing judicial process is deemed to be biased and aimed at protecting the perpetrators from criminal responsibility (Manacorda & Vanacore, 2014; Marzuki & Riyadi, 2008; Sumilat, 2021). Long before, this has also been regulated in the UN Convention on the Non Applicability of Statutory Limitation to Ear Crimes and Crimes Against Humanity 1968.

The provision of amnesty and abolition provides an opportunity for the non-
imposition of punishment for acts of genocide and crimes against humanity due to the existence of amnesty and abolition. This is in direct contradiction to international law, which obligates every country to prosecute the perpetrators of such crimes (Bachmann & Eda, 2018; Killander & Nyathi, 2015; Maviş, 2016). In addition to the granting of amnesty, there is also the possibility of resolution outside the legal process as a reason for the dismissal of prosecution. However, there is no adequate explanation of what is meant by resolution outside the legal process, which creates the possibility that crimes against humanity and genocide may be resolved outside the legal process. There should be exceptions, namely for acts of genocide and crimes against humanity, where amnesty and resolution outside the court should not apply.

Currently, with the enactment of Law No. 13 of 2006 regarding the Protection of Witnesses and Victims, to some extent, it has provided a normative basis for the protection of witnesses and victims. This law grants a number of rights to victims and witnesses for their protection, and establishes a specialized institution for the protection of witnesses and victims. Victims of genocide and crimes against humanity also receive compensation, restitution, and rehabilitation, which were previously regulated in Article 35 of Law No. 26 of 2000 regarding the Human Rights Court.

The provision of compensation for victims' losses is actually a state obligation that should be provided regardless of the perpetrator's willingness to provide compensation or not (Killander & Nyathi, 2015; Nababan, 2004; Van Boven, 2018). The context of reparations should not solely be placed on the concept of monetary compensation, but also on other forms such as non-recurrence and satisfaction (Gallen & Moffett, 2022; Guarnizo Peralta, 2016). The definition of persecution can encompass a broader understanding, referring to discriminatory treatment that results in mental, physical, and non-physical harm. As a result, various non-physical acts of terror and intimidation are not covered within the definition of persecution (Crawley, 2016; Haar et al., 2021; Nababan, 2004).

The misunderstanding regarding the crime of persecution should be rectified according to the provisions in the Rome Statute of 1998 to avoid confusion in its meaning. The form of this crime, known as persecution, should be replaced with the crime of persecution against a particular group or collectivity based on political, racial, national, ethnic, cultural, religious, or gender-related grounds, which is universally recognized as prohibited under international law. The explanation of the term persecution is the severe
deprivation of basic rights and contrary to international law based on the identity of a group or collectivity.

Generally, Law No. 26 of 2000 has several weaknesses. First, similar to the weakness of the crime of genocide, the main weakness of crimes against humanity is the absence of an explanation of the elements of the crime of crimes. As a result, the concept of crimes against humanity in Law No. 26 of 2000 has several fundamental weaknesses, namely the systematic or widespread term adopted from the words widespread or systematic is not explained in this law. However, both of these aspects are important to demonstrate the specific nature of crimes against humanity, which further implicates the involvement of policies and authorities holding power in the commission of violations. The same conditions also apply to the element of knowledge intention. The lack of clarity in the definition of these three elements opens up various interpretations in court.

In the case where the perpetrator is a military commander or a superior police officer or a civilian superior, it needs to be clearly established that these perpetrators are prosecuted in the context of committing acts of abetment, conspiracy, or in their capacity as commanders, thereby being subject to the provisions regarding command responsibility. Theoretically, participation and abetment, often equated with the concept of joint criminal enterprises, have different meanings from command responsibility. The implication of this distinction is that in proving their guilt, a commander can be found guilty for not taking appropriate action against subordinates who commit crimes against humanity. However, if the commander is charged with abetment, it means that from the outset, the commander was aware of and participated in the commission of the crimes against humanity.

4.2 RESOLUTION OF SERIOUS HUMAN RIGHTS VIOLATIONS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

The approach and process of handling various cases of gross human rights violations has so far only revolved around the prosecution of perpetrators. This is certainly not something to be opposed. However, what is often overlooked in addition to the prosecution of perpetrators is the fulfillment of victims' rights. Often the fulfillment of victims' rights is understood as something that will happen after the legal process is finalized. While we know that only a few cases of gross human rights violations can be
included in the judicial process (East Timor, Tanjung Priok, Abepura cases). Even those that do exist ultimately do not satisfy the sense of justice because the perpetrators are free. As a result, the fulfillment of victims’ rights to reparations is not considered. This shows that victims are not yet an important part of the law enforcement process in Indonesia. In fact, the development of the universal human rights approach has led to the attitude that victims’ rights must be fulfilled regardless of the legal process of the case. This means that when a person or group of people become victims, they should receive their rights to reparation.

The definition and scope of victims according to UN General Assembly Resolution No. 40/34 of 1985 are persons, both individually and collectively, who suffer losses due to regulatory acts that violate the criminal law in force in a country, including regulations prohibiting abuse of power (Kovačević, 2021; Muda et al., 2022; Redo, 2021). While Government Regulation No. 2 of 2002 concerning Procedures for Witness and Victim Protection in Gross Human Rights Violations states that victims are individuals or groups of people who have suffered as a result of gross human rights violations who need physical and mental protection from threats, disturbances, terror and violence from any party.

The fulfillment of victims' rights in the form of reparations is interpreted by the United Nations Human Rights Commission as an effort to restore the victims' condition to the state before the violation of their human rights occurred, encompassing their physical, psychological, material, and socio-political status that have been damaged and deprived. The government's efforts to provide reparations are already regulated in Article 35 of Law No. 26 of 2000, stating that victims of serious human rights violations and their heirs are entitled to compensation, restitution, and rehabilitation. Paragraph 2 states that the aforementioned compensation, restitution, and rehabilitation as referred to in paragraph 1 shall be included in the verdict of the Human Rights Court. Paragraph 3 states that provisions regarding compensation, restitution, and rehabilitation shall be further regulated by government regulations.

In the explanation of the article, compensation is defined as the reparation provided by the state, as the perpetrator is unable to fully compensate for the damages, which is their responsibility. Restitution is defined as the reparation given to the victim or their family by the perpetrator or a third party, which may include the return of property, payment for loss or suffering, or reimbursement of costs for specific actions.
Meanwhile, rehabilitation refers to the restoration of the original position, such as honour, reputation, position, or other rights.

Although the government has enacted laws regarding compensation, restitution, and rehabilitation for victims of human rights violations, the process of obtaining reparations still faces various obstacles. Firstly, the perpetrator must be found guilty of committing crimes against humanity or genocide. Secondly, in order to establish ad hoc Human Rights Courts for cases that occurred before 2000, support from the Parliament and the President is required. Thirdly, the prosecutor must file a request for reparations for the victims as part of their indictment. If the perpetrator is found guilty, they must pay restitution. If the perpetrator fails to pay restitution, the victim must report it to the Attorney General, who will then request the Ministry of Finance to compensate them.

For female victims of sexual crimes, the first obstacle is practically insurmountable. The Human Rights Court follows the same procedural law as regular crimes (Criminal Procedure Code). In proving rape, a woman must have two witnesses, in addition to a medical examination report based on a police letter within 24 hours after the crime. Naturally, not a single rape case, in any conflict area, can meet these requirements, making it impossible to be tried in the Human Rights Court.

In the Criminal Law System of Indonesia, these principles are recognized in various applicable legislations, but when it comes to the implementation of these regulations, the Indonesian Criminal Law System faces issues that may contradict international human rights standards. The absence of perpetrators being punished in cases of serious human rights violations in Indonesia indicates a suspicion of violation against the principle of admissibility, and the state's assumption of responsibility demonstrates a violation against the principle of non-impunity.

The principle of human rights violators must be punished has been widely accepted as one of the principles in international human rights law. States cannot simply ignore this obligation. If a state disregards this obligation, then the international community can assume this responsibility. In this context, we are discussing the relationship between national and international courts in the prosecution of serious crimes.

The existence of Law No. 26/2000 on Human Rights Courts in Indonesia can be seen as an endeavor to fulfill the aforementioned international obligations. By providing an effective remedial mechanism at the national level, such as establishing specialized
human rights courts, the state can be regarded as demonstrating its seriousness in addressing human rights violations within its borders. International law recognizes the principle of "exhaustion of domestic remedies," which requires the maximum utilization of all available legal remedies at the national level before resorting to international and regional remedial mechanisms. Therefore, international remedial mechanisms are only necessary when national remedial mechanisms do not work effectively, leaving victims feeling a lack of justice. In such cases, victims are entitled to resort to international remedial mechanisms. Hence, it becomes the responsibility of every country to provide an effective remedial mechanism at the national level.

The term "exhaustion of domestic remedies" is actually intended to keep international remedies from functioning as a substitute for remedies at the national level. As it is said that “The law, politics, and institutions of international human rights, then, do not replace national laws and institutions; they provide additional international protections for rights under national law. The international law of human rights is implemented largely by national law and institutions; it is satisfied when national laws and institutions are sufficient” (Henkin, 1995). It becomes apparent that national courts are the first gateway to be traversed in the quest for accountability for serious human rights violations. International courts cannot immediately replace the role of national courts without going through the national courts of a country. Therefore, the role of international courts (whether permanent or ad hoc) is only complementary, meaning they complement the accountability process at the national level. If the domestic process has been satisfactorily carried out, then the role of international courts is no longer necessary. However, if the process within the national court is aimed at protecting the suspect (or conducted dishonestly), it is open for the international court to assume its role. This principle is also reinforced in the Rome Statute regarding the International Criminal Court.

In the context of international norms, we must consider the presence of the Human Rights Court in Indonesia. Its presence does not automatically preclude the possibility for International Courts (whether permanent or ad hoc) to exercise jurisdiction over serious crimes or human rights violations that occur in Indonesia. By examining the relationship between National and International Human Rights Courts, it becomes apparent that the accountability process for serious crimes is not solely the responsibility of one country, but also the collective responsibility of the international community as a whole. This
means that the jurisdiction of international courts remains open to Indonesia (despite the existence of the National Human Rights Court), as long as the National Human Rights Court merely serves as a shield to protect the perpetrators. The criteria often used to indicate a state's failure to fulfill its obligations are the unwillingness to prosecute and the inability to do so.

However, it must also be added here that it is not politically easy to establish an international human rights court. That is why currently the international community, the United Nations, prefers to establish hybrid courts that include elements of both domestic and international jurisdictions, as seen in Timor Leste, Kosovo, and Sierra Leone. International courts such as Rwanda and the former Yugoslavia are considered too expensive and so on.

From a standard-setting perspective, the past decade has shown significant progress in the protection and promotion of human rights. Textual improvements can be seen in the amendments to the Constitution, as well as in the rules and ratification of human rights conventions. Mechanisms have also been established to review various policies and legislative instruments. Various perennial human rights issues, such as the concept of universality, justiciability, and the agenda to break impunity, are starting to find solutions. However, the capacity and speed of states in responding to the legal resolution of various cases of human rights violations are still very low.

Since the reform era, the assurance of protection and promotion of human rights, particularly civil and political rights, has made significant progress at the normative and institutional levels. There are various legal instruments intended to uphold and safeguard these rights. The general norms of human rights can be found not only in the amendments to the 1945 Constitution, but also in the People's Consultative Assembly Decree on Human Rights, which includes the Law on Human Rights and the Human Rights Court, as well as the ratification of key international human rights instruments.

The just and fair rule of law still remains weak, with a wide gap between its normative principles and enforcement. The practice of torture persists not only in places of detention or punishment, but also in other locations. Moreover, for almost the past decade, the legal system and state apparatus have been unable to respond to various cases of murder in horizontal and vertical conflicts, as well as serious violations of past human rights. The culture of impunity continues to infect our legal system.

It is believed that the various gaps that exist are due, among other things, to the
fact that firstly, efforts to enforce human rights laws place greater emphasis on legal formalism than on restructuring human rights politics. Secondly, because of the monopoly of access to public resources by capital and bureaucracy, which in turn hinders the political process and law enforcement for the fulfilment of human rights. Thirdly, because of the lack of associational autonomy for the presence of substantive democracy; namely, the opportunity for the people (especially the lower classes) to organize themselves to defend their own interests and identities without fear of interference or disturbance by the government. The resolution of past serious human rights violations is being done by:

1) Strengthening the authority of the National Human Rights Commission in investigating human rights violations and granting immunity to National Human Rights Commission investigators.
2) Civil society vigilantly monitors every effort to protect the victims.

The application of the concept of universality in Indonesia's national legal system cannot be maintained in its implementation, especially in the resolution of the Timor Timur case through a truth and friendship commission. This is evident in the agreement to halt legal proceedings regarding all matters related to past human rights violations and to hold the state accountable. The rights of the victims to obtain the justice they deserve, having lost their human rights that should have been protected by the state, have been lost due to the state's agreement to forget without revealing the undiscovered truth.

5 CONCLUSION

The regulations regarding serious human rights violations in Law Number 26 of 2000 are not sufficiently adequate to address the occurring human rights violations, including the weaknesses in its procedural law and the ambiguity in the application of legislation, such as the incompleteness of the "element of crimes" of the regulated offences. The implementation of procedural law, despite the presence of specific rules, still generally refers to the Criminal Procedure Code (KUHAP) which complicates the process of proof, thus requiring provisions that can provide effectiveness in prosecuting these serious crimes.

The resolution of grave human rights violations in the criminal justice system of Indonesia, based on Law Number 26 of 2000, has not been able to create legal certainty and justice for the victims of human rights violations. Law Number 13 of 2006 on Witness
and Victim Protection has provided some normative basis for the protection of witnesses and victims. This law grants a number of rights to victims and witnesses for their protection and establishes specialized institutions for their protection. Victims of genocide and crimes against humanity are also entitled to compensation, restitution, and rehabilitation, which were previously regulated in Article 35 of Law Number 26 of 2000 on Human Rights Courts.
REFERENCES


Sloane, M. (2019). Inequality is the name of the game: thoughts on the emerging field of technology, ethics and social justice. Weizenbaum Conference, 9. DEU.


