

Settlement of Indonesian human rights violations in the past through restorative justice approaches

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Abstract

This paper aimed to identify and analyze the resolution of past gross human rights violations in Indonesia through a restorative justice approach. The type of research used is normative legal research, using a juridical approach, the type of data used is secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials, data analysis used is qualitative analysis. Based on the results of the research, it is concluded that so far the Attorney General has not been proactive in looking for various legal facts that can support the evidence previously presented by Komnas HAM. The Attorney General in cases of gross human rights violations tends to be passive, even though the law instructs him to carry out an investigation as soon as possible after he receives a file from Komnas HAM. So far, Komnas HAM has completed the investigation results files and submitted them to the Attorney General to be followed up in the investigation process. However, the current problem is that the Attorney General's authority in conducting investigations has never been optimal, because it is influenced by various factors, the role of legal instruments; laws and regulations with human resources capacity as well as supporting facilities and facilities, unable to resolve past cases of gross human rights violations, the restorative justice approach is a paradigm that can be used as a framework for resolving cases of past gross human rights violations that aim to address dissatisfaction with the operation of the current human rights justice system.

Keywords: settlement, gross violations of Indonesia's human rights, restorative justice

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1. Introduction

Human Rights (HAM) is a set of rights inherent in humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected. Therefore no power in this world can uproot that. However, it does not mean that with their rights they can do whatever they want. Human rights owned by a person are limited by the human rights of others, demands for justice, moral considerations, religious values, security, and public order. Although human rights are rights inherent in humans since their birth as God's creatures, the struggle to gain recognition and protection of human rights is a struggle throughout human history in the face of oppressive tendencies of power (MK-RI, 2007).

The idea of human rights that prevails today is a compound that was cooked in the scene of World War II. During the war, from any viewpoint it would appear that one dangerous aspect of Hitler's rule was a lack of concern for human life and liberty. Therefore, the war against the Axis powers was easily defended in terms of protecting

human rights and fundamental freedoms. The Allied States stated in the "Declaration by United Nations (Declaration by United Nations) issued on January 1, 1942, that victory is" essential to safeguarding life, liberty, independence and freedom of religion, as well as to defend human rights and justice. " In a subsequent message addressed to congress, President Franklin D (Nickel, 1996).

The killings and devastating damage caused by World War II generated a determination to do something to prevent war, to build an international organization capable of defusing international crises and providing a forum for discussion and mediation. This organization is the United Nations (UN), which has played a major role in the development of contemporary views on human rights.

The concept of human rights was born, grew and developed in line with the awareness of the international community about the importance of respecting the fundamental values contained in human rights. This conception was codified after the United Nations (UN) succeeded in declaring a general statement of human rights (Universal Declaration of Human Rights) on December 10, 1948 and followed by an international human rights convention, namely the Convention on Civil and Political Rights; Convention on Economic, Social and Cultural Rights and other conventions and the 1998 Rome Statute (Yusuf Putra, 2018).

In Indonesia, legal recognition and protection and enforcement of human rights has been guaranteed in various regulations both in the 1945 Constitution and in other laws which become the implementation of the 1945 Constitution as an embodiment of a state based on the law "Rechtstaat" not based on mere power "Machtstaat" (A.Tumpa, 2009).

Although the recognition and protection and enforcement of human rights legally have been guaranteed in various regulations, the reality is that in Indonesia there are still serious violations of human rights, especially during the New Order era and until now most of them have not found a bright spot in their resolution. The gross violations of human rights such as; The events of 1965-1966; The massacres of alleged affiliation with the Indonesian Communist Party resulted in the deaths of between 500,000 and 3 million people, Mysterious Shootings (1982 - 1986); The victims of this incident reached 2,000 to 10,000 people whose perpetrators were suspected of having killed on orders from a position under the coordination of the Commander of the Indonesian Command for the Restoration of Security and Order, Talangsari Massacre, Lampung (1989); The massacre of Warsidi's group, which was accused of being a radical Islamic group in Talangsari, East Lampung. This incident left 130 people dead and 229 people tortured. The Rumoh Geudong Tragedy in Aceh (1989 - 1998); Ten years of military operations in Aceh left 781 people dead, 163 missing, 102 women raped, some of the victims were killed and raped at Rumoh Geudong, the Trisakti Student Shooting (1998); Four Trisakti University students were shot dead when the action overthrew President Soeharto on May 12, 1998, Kidnapping and Enforced Disappearances (1997-1998); About 23 pro-democracy activists were kidnapped and forcibly disappeared, the perpetrators included Team Mawar from the Army Special Forces Command, Semanggi I and II Tragedy (1998-1999); Demonstrations against the MPR special session in November 1998 (Semanggi I) and September 1999 (Semanggi II) resulted in the death of 29 people, the Aceh Kraft Paper Simpang Tragedy (KKA) in Aceh (1999); Military forces opened fire on people protesting the persecution of Acehnese at the PT Kertas Kraft Aceh crossroads, resulting in 46 deaths, Wasior

Incident, Manokwari, Papua (2001); This tragedy resulted in 4 deaths and 39 torture, Wamena Case, Papua (2003); This tragedy resulted in 9 people being killed, 38 people injured, and residents in 25 villages forcibly displaced. The Jambu Keupok Tragedy in South Aceh, Aceh (2003); This incident resulted in 16 people being killed by being shot and burned.

Various efforts have been made to fulfill the responsibility for implementing human rights, both in the form of respect, protection and promotion of human rights. These efforts include the making of various laws and regulations related to human rights, such as Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts. In addition, efforts have also been made to resolve cases of human rights violations, either through a human rights court or by establishing a Truth and Reconciliation Commission based on Law Number 27 of 2004 concerning the Truth and Reconciliation Commission. However, efforts to resolve cases of human rights violations still require hard work and awareness of all components of the nation about the importance of resolving cases of human rights violations (MK-RI, 2007).

Past gross human rights violations must be resolved to ensure legal certainty, the fulfillment of a sense of justice, and the disclosure of the truth. The hope is that in the future, similar events will not happen again. By resolving past gross human rights violations, it is hoped that the rights of victims can be fulfilled. Victims regain their rights, regain their dignity. For the state or the government, resolving cases of gross human rights violations will improve the image or good name of the state / government in international relations, will increase the authority of the state / government and the emergence of trust from the people to the government. For perpetrators, the resolution of past gross human rights violations can provide the perpetrator with legal certainty and not impunity. There is no impunity for anyone. In addition, it is also to show all parties that anyone who commits human rights violations can be tried anywhere and anytime as long as he is still alive. The perpetrator will also feel calm, because they are no longer overshadowed by guilt. Meanwhile for the people, the completion of cases of gross human rights violations will make them aware to continue to actively monitor the running of a government that is clean, honest and dignified. In addition, the people will have the courage to voice their rights and be active to help prevent cases of human rights violations in all sectors of life. The completion of cases of gross human rights violations will remind them to continue to actively monitor the running of a government that is clean, honest and dignified. In addition, the people will have the courage to voice their rights and be active to help prevent cases of human rights violations in all sectors of life. The completion of cases of gross human rights violations will remind them to continue to actively monitor the running of a government that is clean, honest and dignified. In addition, the people will have the courage to voice their rights and be active to help prevent cases of human rights violations in all sectors of life.

The progressive development of human rights instruments is very dynamic, but the problems and tendencies in resolving human rights have encountered obstacles, especially those carried out by government officials. The normal efforts of law enforcers to impose impunity or avoiding punishment of perpetrators have resulted in the national instrument not working properly. The existence of this action has an impact on injustice towards the victim or the victim's family, and even creates a prolonged issue of community demands for the resolution of cases of human rights violations to date.

In fact, the contribution of justice to cases of human rights violations is the responsibility of the government. However, the reality is that the settlement mechanism through the courts has not been able to have a big influence so that it is possible to have non-court mechanisms (Andi Natsif, 2016). Therefore, the issue of human rights through a restorative justice approach is an interesting formula in upholding human rights in Indonesia. Japan and Korea according to JO Halley (Syahrin, 2018) are two countries that have succeeded in reducing the crime rate, namely by taking approaches through restorative justice instruments. Other developed countries such as the United States, United Kingdom, and the Netherlands, also have legal instruments through restorative justice. In many criminal cases, the stigma resulting from the imposition of crimes can basically be removed through restorative measures, because apart from compensation in restitution, restoration and reconciliation play an important role in healing the social wounds caused by crime.

Restorative justice is a the concept of punishment, but as a concept of punishment is not only limited to the provisions of criminal law (formal and material). Restorative justice must also be observed in terms of criminology and the penal system (Syahrin, 2018). From the existing reality, the applicable criminal system has not fully guaranteed integrated justice, namely justice for the perpetrators, justice for victims, and justice for the community. This is what drives the concept of restorative justice in the future which can be used as an alternative in resolving past gross human rights violations in Indonesia, which until now has not yet received a clear light in its resolution.

2. Methodology

Methodology has a very important role in the research and development of science because it has several functions, among others, is to increase the ability of scientists to conduct or carry out research better, or more fully and provide greater possibilities, to examine the unknown. Research is essentially an activity that seeks the truth of science, where the research is born from the existence of doubt or curiosity to a problem (Amiruddin & Asikin, 2004). The study of the problem with the research path is based on scientific activities related to analysis and construction, which is carried out methodologically, systematically, and consistently, by conducting an in-depth study to work on solving existing problems. Therefore, in accordance with the function of methodology as guidance in the process of research object assessment, this research refers to the standard and general methodology, especially in the field of law research.

3. Problem Formulation

Based on the background description above, the formulation of the problems in this paper are :

1. What is the dilemma of resolving past human rights violations in Indonesia ?
2. How is restorative justice as an alternative in solving serious crimes against human rights in Indonesia in the past ?

3.1. The Dilemma of Resolving Past Human Rights Violations

The term gross human rights violations in legislative policies can be found in the fifth paragraph of the general explanation of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. The term gross violation of human rights is not defined in detail, but it is expressly stated in a foreign equivalent as gross violation of human rights (Sularso, 2018).

The Sub-Commission for the Prevention of Discrimination and Protection of Minority Groups of the United Nations Human Rights Commission provides an explanation of the term gross violation of human rights by stating:

"United Nations practice is to consider gross and large-scale human rights violations, whether they are just isolated incidents or perpetrated systematically, as violations of the principle of respect for human rights, i.e. as being unquestionably an international problem which needs to be addressed internationally." (Sularso, 2018)

The official document of the Sub Commission on the Prevention of Discrimination and Protection of Minority Groups of the UN Human Rights Commission further outlines the forms of human rights violations that fall within the scope of international crimes by stating:

"... that those grave and widespread human rights violations which can be considered as international crimes will include not only slavery, genocide and apartheid, but also other human rights violations of comparable gravity".

Conceptually, an act known as a gross human rights violation qualifies as an international crime. Antonio Cassese explains that this international crime shows the following cumulative criteria;

1. Violation of international customary rules;
2. These rules aim to protect values that are considered important by the entire international community and are binding on all countries and individuals;
3. The universal interest in overcoming these crimes regardless of the territory or nationality of the perpetrator or victim;
4. There is a certain capacity inherent in the perpetrator. (Sularso, 2018)

Meanwhile, M. Cherif Bassiouni, in the introduction of his book entitled *International Criminal Law*, briefly explains that this international crime is an act based on a certain value view, namely the level of seriousness that threatens and injures human values that can result from an act which is forbidden.

Basically, the determination of an act that qualifies as an international crime to be a gross human rights violation is the result of construction by the community. The development of time and place greatly influences the determination of an act as a serious human rights violation. This construction is also greatly influenced by the political conditions of a society, as Katarina Tomasevski said:

".... What is defined as human rights violation itself is a construct, a perception that varies in time and place and is not shared by all relevant actors. Perception produces its reality; varying perception generates different realities. Political preferences are elevated to the status of axioms by the expedient of labeling them as violation. There is a controlled human rights vocabulary in international law but its effect on international human rights politics has been minuscule" (Sularso, 2018).

As for past gross human rights violations in Indonesia, they were intended as a series of violations of human rights prior to the promulgation of Law No. 39 of 1999 concerning Human Rights (A.Tumpa, 2009). In Indonesia's long history as an independent nation, human rights issues have always been a terrible story. From one regime to another, the issue of human rights is an issue that needs to be appreciated.

During the New Order era, which was in power for 32 years with an almost perfect dictatorship, human rights violations have become the collective sin of the state apparatus in that era. The "haunted" country under the control of the regime at that time committed a series of acts of crimes against humanity systematically, and these actions have claimed hundreds of thousands and even millions of innocent victims.

The following are serious violations of Indonesia's human rights that occurred before the promulgation of the Human Rights Law, Law no. 39 of 1999, both those who have been touched by the legal process and those who have not;

Table 1. Cases of past gross human rights violations that have not been touched by the legal process (Kontras, 2018)

No.	Case Name	Yrs	Number of Victims	Information
1.	1965 massacre	1965-1970	1,500,000	Most of the victims were members of the PKI, or mass organizations deemed affiliated with it, such as SOBSI, BTI, Gerwani, PR, Lekra, etc. Most of these are carried out outside of legal proceedings
2.	The mysterious shooting of "Peter"	1982-1985	1,678	The victims were mostly criminals, recidivists, or former criminals. This military operation is illegal in nature and carried out without a clear institutional identity
3.	The case in East Timor pre-referendum	1974-1999	Hundreds of thousands	Starting from the military aggression of the TNI (Operasi Seroja) against the legitimate Fretilin government in East Timor. Since then the Team Team has always been an area of routine military operations that is prone to acts of violence by the Indonesian authorities
4.	Pre-DOM cases	Aceh 1976-1989	Thousand	Since the declaration of GAM by Hasan Di Tiro, Aceh has always been an area of military operations with a high intensity of violence.

5.	Cases in Papua	1966-... ..	Thousand	Intensive military operations were carried out by the TNI to confront the OPM. Part of it is related to issues of control of natural resources, between international mining companies, state officials, and local residents
6.	The case of the Banyuwangi Santet Shaman	1998	dozens	There was a massacre of community leaders who were accused of being shamans.
7.	Talangsari Lampung	1989	803	Repression against a group of Muslim communities in Central Lampung who were accused of being the far-right GPK
8.	May 1998	1998	1,308	The social unrest in Jakarta became a momentum for the transfer of power
9.	Semanggi I	1998	473	TNI repression of students who rejected the MPR Special Session
10.	Clover II	1999	231	TNI repression of students who reject the State Law in a State of Danger
11.	The Shooting of Trisakti Students	1998	31	The security forces fired at Trisakti students who were demonstrating. It is the starting point for the transfer of political power and triggers social unrest in Jakarta and other big cities in Indonesia.

Table 2. Cases of past gross human rights violations brought to court (Kontras, 2018)

No	Case Name	Yrs	Jlh Victim	Context	Settlement	Problem
1.	East Timor after the Popular	1999	97	The aggression by the TNI and militias	Ad hoc Human Rights Court in	The main perpetrators were left untouched, the

	Consultation			after the referendum showed that the majority of the East Timorese population wanted independence	Jakarta, 2002-2003.	court process was incompetent, the number of acquittals for military officers, the sentences were too light, and there was no reparation for the victims. The governments of Timor Leste and the Republic of Indonesia are currently conducting reconciliation and do not question further This case is being highlighted at the international level (UN) with the possibility of holding an international human rights court.
2.	27 July 1996	1996	1,317	The raid on the PDI office was a form of state intervention against the PDI under Megawati's leadership	Connectivity court, 2002	The verdicts were only civilians, no military officials were convicted, did not touch the main perpetrators, and there was no reparation for the victims.
3.	Activist Kidnapping 1998	1998	23	The abduction and enforced disappearance of pro	Military courts for field actors (Tim Mawar) and Officer	The verdict was low, the court was exclusive, did not touch the main perpetrators,

				democracy activists by the TNI	Honorary Council for several generals	and some activists were still unknown
4.	The Shooting of Trisakti Students	1998	31	The security forces fired at Trisakti students who were demonstrating. It is the starting point for the transfer of political power and triggers social unrest in Jakarta and other big cities in Indonesia.	Military courts for field actors	The verdict was too light, the defendant was only a lowly apparatus in the field, did not touch the main perpetrator. Komnas HAM has created KPP (TSS) and it has been submitted to the Attorney General's Office (2003), but until now it has not progressed. The DPR stated that there were no serious human rights violations.
5.	Aberpura, Papua	2000	63	The indiscriminate sweeping was carried out on the grounds of chasing the group that attacked the Abepura Police Headquarters on December 6, 2000.	Until now, the Human Rights Court in Makassar is still being held.	The defendant was only a field officer and the victim's claim for reparations was rejected.
6.	Tanjung Priok incident	1984	74	Repression against the masses who demonstrated against the single principle of Pancasila in	Ad hoc Human Rights Court in Jakarta, 2003-2004	The verdict was too light, there was an acquittal, did not touch the main perpetrator, intimidation

 Jakarta.

 during the trial
and inadequate
reparations for
the victim.

Human rights have become one of the most important public discourses after the collapse of General Soeharto's government in May 1998. During the heyday of the New Order regime, there were not many choices which consistently (*istiqamah*) deal with human rights issues (HAM). Human rights and democracy were very sensitive issues during the New Order era, and very risky for those who were involved in them. Not many non-governmental organizations (NGOs) have dared to be involved in this issue. LPHAM (Human Rights Defenders Institute) or LBH (Indonesian Legal Aid Institute, YLBH), where idealist activists and lawyers join forces, are two of the few NGOs that have struggled with various human rights violations by the government for the past three decades and the New Order apparatus (Nadj & Mardiniah, 2000).

Although there are not many human rights NGOs, what deserves thumbs up is their persistent willingness to uphold human rights, whether through developing public discourse, litigation, or advocacy with the victims. Various documentation, especially in the form of monitoring reports or investigations of cases of human rights violations and books of notes on human rights violations as compiled annually by LBH since the late 70s, experience in conducting investigations and trials, as well as experiences in conducting investigations and advocacy in field, is a valuable lesson material, which can be used as a reference for fighting for human rights in the Indonesian homeland.

3.2. Restorative Justice as an Alternative to Settle Past Serious Violations of Indonesia's Human Rights

In essence, efforts and policies to make criminal law regulations cannot be separated from the goal of overcoming crime. Crime prevention policies with criminal law are essentially related to the application of criminal sanctions. Discussion about crime usually includes the nature, basis and purpose of crime. Sudarto said that in criminalization, the objectives to be achieved traditionally are special prevention and general prevention. The purpose of punishment which is compared by Sudarto from the opinions of other scholars is the opinion of LHC Hulsman which says that the purpose of crime is the resolution of conflicts, and the opinion of GP Hoefnagels which explains that the purpose of crime is to bring peace. Based on the opinions of several scholars, it is clear that the effort to tackle crime is an attempt to provide justice. Basically, justice is a condition that is universal. However, the problem becomes different if the manifestation of justice involves a form of action that qualifies as a serious human rights violation (Sularso, 2018).

As M. Cherif Bassiouni has said that international crimes are an act based on a certain view of value, namely the level of seriousness that threatens and harms humanity that can result from a prohibited act, and with the opinion of Katarina Tomasevski who said that the development of time and place greatly influences the determination of an act as a gross violation of human rights, then the issue of achievement of justice related to gross human rights violations is very related to the situation and conditions that have changed. This changing situation and conditions resulted in the justice to be achieved is justice in the transitional justice (Sularso, 2018).

Transitional justice objectives can be achieved through or based on two ways, namely retribution known through the achievement of retributive justice, and restoration known as the achievement of restorative justice. A restorative manner is required for consideration :

1. to hold the perpetrator accountable for his/her past actions;
2. prevent future crimes from occurrence;
3. ward off budata impunity;
4. creating an atmosphere of life for perpetrators and victims can realistically coexist with others.

Meanwhile, restorative justice is based on considerations for the achievement of objectives that include:

1. rediscover conflict resolution;
2. unite all affected parties;
3. recover the wounds of the victim through forgiveness and in lieu of loss;
4. prevent the recurrence of future mistakes through means of community empowerment.

As John Braithwaite points out, restorative justice is a new direction between "justice" and the "welfare model" then between "retribution" and "rehabilitation". Basically restorative justice prioritizes the meaning of meetings between interested parties in crime and the period thereafter, as stated by Achmad Ali who cites the opinion of Howard Zher a pioneer of restorative justice in the United States, interpreting restorative justice is a process that involves interested parties from a specific violation and jointly identifies losses and meets obligations and needs and places change as an acceptable right (Ali, 2009).

Based on this opinion, efforts to resolve conflicts and at the same time healing between perpetrators and victims the way is to bring together or introduce the perpetrators in a forum with the victim or his family to foster empathy on both sides. Thus, in the resolution of the conflict highlighted not to assert the offender's mistake then impose criminal sanctions, but the active role of the conflicting parties through mediation or compensatement for material and imateriil losses in the form of restitution or compensatement and restoration of honorary humanitarian relations between the parties (humanization).

In praktinya settlement of human rights violations is resolved by the Human Rights Court as a special judiciary (deference / specialization). The specificity of the Human Rights Court lies in its duty and authority to examine and decide cases of gross violations of human rights only. Article 1 paragraph 3 of Law Number 20 Year 2000 concerning Human Rights Court is a special court for gross violations of human rights (Fauzan, 2005).

The restorative justice approach in resolving cases of human rights violations is referred to as a non-court mechanism by exposing the truth and apology of the perpetrator, as well as the recovery of the victim. In contrast to the way justice is achieved outside the criminal process that characterizes retaliation.

Strictly, the restorative perspective still looks at crime, although the crimes committed also violate criminal law. However, the more important aspect is not the

violation but the process of loss or viktimization to the victims of crime, society and the interests of the offenders themselves. Historically, restorative justice has been inspired by commity justice that is still used in some non-Western cultures, especially indigenous populations. In its development, the concept of restorative justice is influenced by thoughts on equality and public relations. Although the inspiration does not come from indonesian culture, restorative justice patterns are embedded in some traditional traditions in Indonesia. The balance approach is used by restorative justice to produce a limiting disposition by focusing on the responsibility of the perpetrator and providing assistance to the victim.

Restorative justice puts the parties not individually but together working to forge a bond that is harmonious and unbreakable. The process of restorative justice contributes to addressing issues of civil interactions between parties rather than discussing the offenders with government authorities. As a consequence, the convergence, on the one hand, of offenders and on the other hand, of victims and community as a collective to find remedies and good ties in society.

In order to be able to apply the idea of restorative justice in Indonesia's legal process, it aims to liberate itself from the rules or standards of national criminal law that are wrapped up in inevitability. That is, restorative procedures with interpretations that are in keeping with the adoption of the idea of restorative justice will also underlie standards or values that are not shackled. Thus, as a result of freedom from the shackles to attain human wellbeing and happiness or in the sense of ensuring peace in the life of community, country and state, the creation of laws for the restorative criminal justice process is available.

4. Conclusion

To date, the Attorney General has not been pro-active in finding different legal information that would justify the evidence previously offered by Komnas HAM. In cases of gross human rights abuses, the Attorney General appears to be inactive. Whereas as soon as possible after obtaining the file from Komnas HAM, the law required him to conduct an investigation. The investigation files have so far been finished by Komnas HAM and turned over to the Attorney General for follow-up in the investigation process. The current problem of the power of the Attorney General in performing proceedings, though, is never ideal since it is complicated by multiple variables covering it. The approach to restorative justice is a paradigm that can be used as a basis for the policy to address cases of serious human rights abuses in the past to respond to frustration with the work of the existing human rights justice system.

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