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Creating Legal Certainty for Victims: A Comparative Analysis of the Resolution of Past Gross Human Rights Violations Through Judicial and Non-Judicial Mechanisms

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Original Article

Abstract

Disputes in import-export businesses pose substantial challenges to the dynamics of global trade. This study examines the critical factors influencing dispute resolution methods, focusing on a comparative analysis of litigation and arbitration in the context of international trade. Employing a normative legal research methodology with a comparative approach, the study evaluates the strengths and weaknesses of each method. Key factors considered include the complexity of disputes, monetary value, confidentiality needs, the dynamics of the parties involved, and the potential impact on business relationships. The findings indicate that arbitration often provides a more flexible, efficient, and relationship-preserving solution than traditional litigation, though the optimal approach depends on the specific characteristics of each case. This study offers strategic insights for businesses navigating international trade disputes, underscoring the importance of adopting a tailored and measurable dispute resolution strategy.

Keywords: *Legal Certainty, Gross Human Rights Violations, Judicial Mechanism, Non-Judicial Mechanism*

Abstrak

Sengketa bisnis ekspor-impor menghadirkan tantangan signifikan dalam dinamika perdagangan global. Penelitian ini mengeksplorasi faktor-faktor krusial yang memengaruhi metode penyelesaian sengketa, khususnya dengan membandingkan litigasi dan arbitrase dalam konteks perdagangan internasional. Melalui metodologi penelitian hukum normatif dengan pendekatan komparatif, studi ini menganalisis keunggulan dan keterbatasan masing-masing metode. Pertimbangan utama mencakup kompleksitas sengketa, nilai moneter, kebutuhan kerahasiaan, dinamika pihak yang terlibat, serta potensi dampaknya terhadap hubungan bisnis. Temuan mengungkapkan bahwa arbitrase sering kali menawarkan penyelesaian yang lebih fleksibel, efisien, dan menjaga hubungan dibandingkan dengan litigasi tradisional, meskipun pendekatan optimal bergantung pada karakteristik kasus tertentu. Penelitian ini memberikan penjelasan strategis bagi bisnis yang menghadapi konflik perdagangan internasional, dengan menekankan pentingnya strategi penyelesaian sengketa secara terukur.

Kata kunci: *Kepastian Hukum, Pelanggaran HAM Berat, Mekanisme Peradilan, Mekanisme Non-Peradilan*

1. INTRODUCTION

The Unitary State of the Republic of Indonesia was established with the primary objective of protecting all its citizens, as outlined in the Preamble to the 1945 Constitution. In this context, the state assumes a crucial role in ensuring that every individual in Indonesia enjoys full human rights (HAM). The state's responsibility in this regard is mandated by Article 28I of the 1945 Constitution, which underscores the government's obligation to protect, advance, uphold, and fulfill the fundamental rights of every citizen.

Human rights (HAM) are inherent, God-given entitlements that every individual possesses from birth, without distinction of nationality, race, religion, or gender.¹ These rights are universal, non-negotiable, and inalienable without the consent of their bearer.² HAM is regarded as a divine gift.³ Similarly, Miriam Budiardjo asserts that human rights are indisputable and universally applicable.⁴

Karel Vasak categorizes human rights into three generations: the first includes civil and political rights, which safeguard individual freedoms from state oppression; the second encompasses economic, social, and cultural rights, which require state intervention to meet basic needs; and the third addresses solidarity rights, such as the rights to peace, development, and a sustainable environment.⁵

The government bears the responsibility of ensuring that all citizens can exercise their human rights while preventing violations. According to Law No. 39 of 1999, human rights violations are defined as actions by individuals, groups, or state officials that unlawfully infringe upon the rights of a person or group. Additionally, Law No. 26 of 2000 addresses gross human rights violations, such as genocide and crimes against humanity. The Rome Statute identifies four categories of gross violations: genocide, crimes against humanity, war crimes, and acts of aggression.

The National Human Rights Commission (Komnas HAM) has documented eighteen historical cases of gross human rights violations that have been investigated, involving acts of violence and violations of fundamental rights such as murder, enforced disappearances, and torture. However, the number of cases acknowledged by President Joko Widodo, based on recommendations from the Non-Judicial Team for

¹ Lukman Hakim and Nalom Kurniawan, "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia," *Jurnal Konstitusi* 18, no. 4 (2022): 869–97, <https://doi.org/10.31078/jk1847>.

² John Locke, *Two Treatises of Government* (New York: Everyman Paperbacks, 1993).

³ Nadia Alvin Hamidah et al., "Penegakan HAM Di Era Modernisasi," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 6 (2023): 459–63, <https://doi.org/10.58812/jhhws.v2i6.406>.

⁴ Ismail Marzuki and Faridy Faridy, "Relevansi Hukum Dan Hak Asasi Manusia Dengan Agenda Reformasi: Dimensi Nasional Dan Internasional," *Jurnal Cendekia Hukum* 5, no. 2 (2020): 350–59, <https://doi.org/10.33760/jch.v5i2.242>.

⁵ Zunnuraeni Zunnuraeni, Zaenal Asikin, and Kurniawan Kurniawan, "Hak-Hak Atas Lingkungan Dalam Hukum Nasional Indonesia," *Jurnal Risalah Kenotariatan* 3, no. 2 (2022): 238–47, <https://doi.org/10.29303/risalahkenotariatan.v3i2.69>.

the Resolution of Gross Human Rights Violations (PHAM Team), differs. The following provides a comparison.

Tabel 1.

Comparison of Human Rights Violation Events According to The National Human Rights Commission and the PPHAM Team

The National Human Rights Commission	PPHAM Team	Process
1965-1966 Events	Identified	Not yet completed
1982-1985 Mysterious Shooting Events	Identified	Not yet completed
1989 Talangsari Events	Identified	Not yet completed
1989-1998 Rumoh Geudong Events	Identified	Not yet completed
1998 May Riots Events	Identified	Not yet completed
1998 Trisakti, Semanggi I and II Events	Identified	Not yet completed
1998 Witch Doctor Murder Events	Identified	Finished
1999 KAA Junction Event	Identified	Not yet completed
2001-2002 Wasior Event	Identified	Not yet completed
2003 Wamena Event	Identified	Not yet completed
2003 Jambo Keupok Event	Identified	Not yet completed
1984 Tanjung Priok Event	Adjudicated by Ad Hoc Human Rights Court	-
1999 East Timor Event	Adjudicated by Ad Hoc Human Rights Court	-
1997-1998 Enforced Disappearances Event	Identified	Not yet completed
2000 Abepura Event	Adjudicated by Ad Hoc Human Rights Court	-

These past gross human rights violations have inflicted profound and enduring impacts on the victims. Many have suffered both physical and psychological trauma, which disrupts not only their personal well-being but also their social and economic stability. A profound sense of loss, social stigma, and uncertainty about legal outcomes often leave victims feeling isolated, powerless, and hopeless about achieving justice. Without adequate resolution, the pain and suffering experienced by victims can persist, potentially causing intergenerational effects as subsequent generations inherit the legacy of conflict and violations.⁶

Resolving cases of gross human rights violations is therefore both critical and urgent. A resolution process conducted with transparency and justice serves not only to deliver justice for the victims but also to facilitate social recovery and reconciliation within a fractured society. By acknowledging past violations and holding perpetrators accountable, society can rebuild trust in the legal system and state institutions. Such trust is essential to prevent similar violations in the future and to ensure that victims receive the support and rehabilitation needed to move forward with their lives.⁷

⁶ Ni Nyoman Putri Purnama Santhi and Fanny Priscyllia, "Aspek Yuridis Penyelesaian Pelanggaran HAM Berat Masa Lalu Di Indonesia," *Jurnal Hukum Dan HAM Wara Sains* 3, no. 2 (2024): 255–63, <https://doi.org/10.58812/jhhws.v3i02.1249>.

⁷ Mohammad Ali and Mohammad Abdul Rauf, "Problem Yuridis Penyelesaian Perkara HAM Berat Dalam Sistem Pidana Indonesia Dan Pidana Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 24, no. 2 (2021): 469–94, <https://doi.org/10.15642/alqanun.2021.24.2.469-494>.

In this context, legal certainty is a fundamental consideration, as it is closely tied not only to effective law enforcement but also to the restoration of victims' dignity. Mechanisms for addressing gross human rights violations can be categorized into two primary types: judicial and non-judicial mechanisms. Judicial mechanisms typically involve formal court proceedings, such as the establishment of ad-hoc human rights courts where perpetrators are tried and sanctioned. Conversely, non-judicial mechanisms, such as truth commissions, focus on uncovering the truth, fostering reconciliation, and restoring victims' rights by providing platforms for their voices to be heard and acknowledged.⁸

Both mechanisms have been employed in addressing past gross human rights violations in Indonesia. Therefore, a more comprehensive analysis is needed to evaluate the effectiveness of these approaches in delivering legal certainty for victims. This entails examining the strengths, limitations, and potential weaknesses of each mechanism to ensure that justice and legal certainty for victims of gross human rights violations are realized.

Based on the above discussion, the research problem can be formulated as follows: How does the resolution of past gross human rights violations through judicial and non-judicial mechanisms compare in achieving legal certainty for victims? This study aims to explore and analyze the comparative effectiveness of judicial and non-judicial mechanisms in resolving past gross human rights violations and in ensuring legal certainty for victims.

2. RESEARCH METHODOLOGY

This study adopts a normative legal approach, which involves examining laws and regulations as the foundation for analysis. This approach was selected to understand the legal framework relevant to the issue under investigation. The primary focus is on evaluating the applicable legal provisions and their relevance to practical implementation. The research employs the statute approach, enabling a detailed analysis of legal provisions contained in laws, government regulations, and other related legislative instruments. This method is deemed suitable for addressing research questions grounded in legal norms. Data collection was conducted through a literature review utilizing secondary data. This includes primary legal materials, such as statutes and regulations; secondary legal materials, such as legal literature and expert opinions; and tertiary legal materials, such as legal dictionaries and legislative indexes. This method establishes a robust foundation for conducting legal analysis in this study.

3. RESEARCH RESULT AND DISCUSSION

⁸ Alifiyah Fitrah Rahmadhani and Dodi Jaya Wardana, "Penyelesaian Pelanggaran HAM Berat Di Indonesia," *UNES Law Review* 6, no. 1 (2023): 2799–2807, <https://doi.org/10.31933/unesrev.v6i1.1056>.

3.1. Legal Certainty in Resolving Gross Human Rights Violations: A Review of the Concept of Legal Certainty

Legal certainty is a fundamental objective of the law, intrinsically linked to the pursuit of justice. It is manifested through fair and non-discriminatory law enforcement, ensuring that individuals can predict the legal consequences of their actions.⁹ Legal certainty is essential for upholding the principle of equality before the law, which aligns with the principle of truth. It ensures that individuals act in accordance with established legal provisions while the law itself enforces those provisions. In the absence of legal certainty, individuals lose the framework necessary for guiding their actions. Gustav Radbruch emphasized that legal certainty represents the primary goal of law.¹⁰

According to Gustav Radbruch, legal certainty is rooted in legislation, with positive law playing a crucial role in regulating societal interests. Positive law must be respected, even when it is perceived as unjust.¹¹ Legal certainty embodies a state of clarity and stability, with well-defined and enforceable provisions that maintain societal order.¹² The law must balance certainty and justice. Certainty provides a behavioral framework, while justice fosters a reasonable and equitable social order. When both elements are present, the law can function effectively and fulfill its objectives.¹³

Jan Michiel Otto asserts that legal certainty requires clear, transparent, consistent, and accessible rules issued by state authorities.¹⁴ Additionally, these rules must be consistently enforced by governing bodies, which are obligated to adhere to legal provisions. To achieve legal certainty, Otto outlines five key principles:

- 1) Rules must be clear and understandable to the public.
- 2) Governing bodies must apply the rules consistently.
- 3) The majority of citizens must accept the legitimacy of the rules.
- 4) Judges must be impartial and consistently apply legal rules in adjudicating cases.
- 5) Court decisions must be enforceable in practice.

Otto further argues that legal certainty is achieved when the substance of the law aligns with societal needs and reflects cultural values. His theory of “real legal certainty”

⁹ Mario Julyano and Aditya Yuli Sulistyawan, “Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum,” *Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 1, no. 1 (2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

¹⁰ Heather Leawoods, “Gustav Radbruch: An Extraordinary Legal Philosopher,” *Journal of Law and Policy* 2 (2000): 489–515, https://openscholarship.wustl.edu/law_journal_law_policy/vol2/iss1/16.

¹¹ Leawoods.

¹² Ardian Kurniawan, Rafikah Rafikah, and Nuraida Fitrihabib, “Kepastian Hukum, Kemanfaatan Dan Keadilan Pidanaan Kejahatan Asal Usul Perkawinan: Analisis Putusan No. 387/Pid.B/2021/PN.Jmb,” *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021): 485–509, <https://doi.org/10.15642/aj.2022.8.1.1-13>.

¹³ Dino Rizka Afdhali and Taufiqurrohman Syahuri, “Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum,” *Collegium Studiosum Journal* 6, no. 2 (2023): 555–61, <https://doi.org/10.56301/cs.v6i2.1078>.

¹⁴ Jan Michiel Otto, *Kepastian Hukum Di Negara Berkembang*, trans. Tristan Moeliono (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2003).

emphasizes the harmony between the state and its citizens, where both understand and orient themselves toward the legal system. Legal certainty, while grounded in law, must be supported by effective enforcement to ensure order and justice in society.

In contrast, Sudikno Mertokusumo views legal certainty as a guarantee that the law operates effectively. Legal certainty ensures that rights are upheld through valid decisions.¹⁵ While law and justice are interconnected, they remain distinct: the law is general, binding, and equitable, while justice is subjective, individual, and not always equal. This distinction highlights the separation between law and justice.

Legal certainty can be understood as the consistent application of law in accordance with established provisions, fostering public confidence that written laws will be implemented effectively. Understanding the values of legal certainty requires consideration of the relationship between positive legal instruments and the state's role in ensuring the practical realization of the law in everyday life.

3.2. Understanding Victims and Witnesses of Gross Human Rights Violations

The protection of witnesses and victims is vital, particularly in cases of gross human rights violations, which have profound and far-reaching impacts. These violations result not only in significant material and immaterial losses but also in creating a pervasive sense of insecurity within society. Such damages disrupt the lives of victims and their families, while the perpetrators, often individuals with substantial power, execute these actions in deliberate and systematic patterns.

Perpetrators, frequently state officials, wield influence to pressure witnesses and victims, tamper with or destroy evidence, manipulate law enforcement, and intimidate economically and socially disadvantaged individuals. This power dynamic leaves witnesses and victims highly vulnerable to threats and harassment, which can hinder their ability to provide truthful testimony during legal proceedings.

In the context of gross human rights violations, witnesses are defined as individuals who provide information based on their direct experiences, as outlined in the Criminal Procedure Code and related legal frameworks. Their testimony plays a critical role throughout the investigation and trial phases.

Ensuring the physical and psychological protection of witnesses from threats is essential, as their accounts are central to uncovering the facts surrounding severe human rights abuses. The United Nations General Assembly Resolution No. 40/34 of 1985 defines victims as individuals or groups who suffer harm due to acts or omissions that violate criminal law, including breaches of international human rights norms. This harm encompasses physical, mental, emotional, and economic losses, as well as violations of

¹⁵ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Universitas Atma Jaya, 2010).

fundamental rights.¹⁶ The resolution recognizes victims irrespective of the status of the perpetrator and extends this acknowledgment to their families and dependents. Victims include those who have endured harm caused by deliberate actions or failures to prevent gross human rights violations.

3.3. Rights of Victims and Witnesses of Gross Human Rights Violations and Their Protection Mechanisms

The protection of witnesses and victims of gross human rights violations is unequivocally guaranteed by law. Article 34 of Law No. 26 of 2000 underscores the assurance of physical and psychological security from threats throughout the legal process, as stipulated in Government Regulation (PP) No. 2 of 2002. Furthermore, Article 29 of Law No. 13 of 2006 provides witnesses and victims with the right to apply for direct protection to the LPSK (Lembaga Perlindungan Saksi dan Korban) or the Agency for the Protection of Witnesses and Victims, which is mandated to respond within seven days. Their rights, including personal security, active participation in the legal process, freedom from coercion, and financial assistance for basic needs, form the foundation for justice and the courage to disclose the truth.

The process for obtaining assistance is detailed in Articles 33–36 of Law No. 13 of 2006, which requires witnesses or victims to submit a written application to the LPSK. Decisions regarding assistance are issued within a maximum of seven days after the application is received. The LPSK may collaborate with relevant agencies to implement protection and assistance measures in accordance with its legal authority.

Article 35 of Law No. 26 of 2000 further guarantees the rights of victims of gross human rights violations and their heirs to receive compensation, restitution, and rehabilitation, which must be included in the Human Rights Court's verdict. These provisions are elaborated through government regulations to ensure substantive justice for affected individuals.

Compensation is defined as the state's responsibility to address losses when the perpetrator is unable to do so. Restitution refers to compensation provided by the perpetrator or a third party, including the restoration of rights and reimbursement of losses. Rehabilitation entails restoring the victim's dignity, reputation, and rights to their original state.

The legal foundation for implementing compensation, restitution, and rehabilitation is provided by PP No. 3 of 2002. However, this regulation limits implementation to post-verdict decisions of the Human Rights Court and lacks specific mechanisms for submitting claims. Meanwhile, international recognition of witness and victim protection is evident in Article 68 of the Rome Statute of 1998, which mandates

¹⁶ Farid Wajdi and Imran Imran, "Pelanggaran Hak Asasi Manusia Dan Tanggung Jawab Negara Terhadap Korban," *Jurnal Yudisial* 14, no. 2 (2022): 229–246, <https://doi.org/10.29123/jy.v14i2.445>.

comprehensive safeguards. These measures include ensuring the physical and psychological well-being, dignity, and privacy of victims and witnesses during investigations and prosecutions, while balancing the accused's right to a fair trial.

This provision also allows victims to present their views during judicial proceedings. In cases where evidence or information poses significant risks to the safety of witnesses or their families, prosecutors may withhold sensitive details, presenting only a relevant summary. Additionally, states can request further protective measures for individuals involved, including maintaining confidentiality for sensitive information. These measures aim to balance the protection needs of victims with the requirements of a fair and transparent judicial process.

3.4. Judicial Mechanism in Resolving Serious Human Rights Violations: Concept of Judicial Mechanism

Serious human rights violations in the past were addressed through the Ad Hoc Human Rights Court, as outlined in Article 43 of the Human Rights Court Law. This court was established by Presidential Decree, following a proposal from the People's Representative Council (DPR), to try specific cases before the law came into effect, ensuring accountability for these historical events. Four cases of serious human rights violations were resolved through the Ad Hoc Human Rights Court: the Tanjung Priok 1984 case (2003), the East Timor 1999 case (2002), the Abepura 2000 case (2005), and the Paniai 2014 case (2022). This court was established in response to public pressure to address cases that had long been ignored.

Despite the judicial process, victims and their families continue to question the fairness of the verdicts. Criticism has been directed at the leniency of sentences, acquittals of defendants, and the failure to hold the principal perpetrators accountable. These concerns suggest that the judicial system has not been successful in eliminating impunity, nor has it fulfilled the expectations of justice for the victims.

3.5. Practice of Resolving Human Rights Violations through the Judicial Mechanism in the East Timor Incident Court

On September 23, 1999, the Indonesian government established the East Timor Human Rights Commission, which in 2000 presented alarming findings: mass killings, torture, enforced disappearances, sexual violence against women and children, forced displacement, and the destruction of property. Evidence indicated the involvement of civil and military authorities, as well as the militias they trained, financed, and armed, creating the conditions for these horrific crimes against humanity.

The Human Rights Commission identified 157 suspects, including 22 individuals who acted as controllers and coordinators of the field operations. The Commission concluded that these crimes against humanity occurred, both directly and indirectly, due

to the failure of the TNI (Tentara Nasional Indonesia) or Indonesia National Armed Forces Commander in the security sector after the government presented two options to the public. Based on these findings, General Wiranto, the TNI Commander at the time, was held responsible.

In February 2000, the National Human Rights Commission transferred the investigation into the East Timor violations to the Attorney General's Office. The Joint Team for the Investigation of Human Rights Violations in East Timor identified 19 "potential" suspects, which differed from the list provided by the KPP HAM (Komisi Penyelesaian Pelanggaran Hak Asasi Manusia) or Commission for the Resolution of Human Rights Violations. The exclusion of several names in the East Timor case raised concerns of possible manipulation of the investigation, attempting to obscure the chain of command within the policies of the civil and military authorities at the time.

In November 2000, the Indonesian government passed Law No. 26 of 2000, establishing the Human Rights Court. However, the establishment of the court was delayed due to legal and political challenges, particularly regarding the East Timor investigation. In April 2001, the President issued Presidential Decree No. 96 of 2001, which replaced Presidential Decree No. 53 of 2001, authorizing the Ad Hoc Human Rights Court to try gross human rights violations in Tanjung Priok and East Timor based on the time and location of the incidents. The East Timor case covered areas such as Dili, Liquisa, and Suai, with incidents that occurred in April 1999.

The implementation of the Ad Hoc Human Rights Court faced delays due to slow appointments of the Ad Hoc prosecutor and public prosecutor, along with a lack of transparency in the selection of the Ad Hoc judges. This reflected ongoing tensions and competing interests regarding the enforcement of human rights and democracy in Indonesia, with suspicions that the court was intended to preempt an international tribunal.

After nearly a year of delays, the trial for the East Timor case finally began at the Jakarta Ad Hoc Human Rights Court on March 14, 2002. This court marked a significant milestone as it was the first of its kind in Indonesia, with the government finally prosecuting human rights violators, including government and military officials who were in power during the post-referendum violations in East Timor. The court was also influenced by international pressure, which threatened to take the case to the International Court if the government failed or refused to pursue a domestic human rights trial.

In May 2002, the Attorney General's Office submitted three case files. Most of the defendants were low-ranking officials who had acted as field implementers, including Timbul Silaen (former East Timor Police Chief), Abilio Jose Soares (former Governor), Herman Sedyono (former Covalima Regent), Liliek Koeshadianto (former Suai Military Commander), Gatot Subiyaktoro (former Suai Police Chief), Ahmad

Syamsudin (former Deputy Commander of Suai 1635 Military District Command), and Sugito (former Covalima Military Rayon Commander). Covalima was a former district in East Timor province with its capital in Suai during the occupation period from 1976 to 1999.

The prosecutors charged Timbul Silaen and Abilio Jose Soares with crimes against humanity, including murder and persecution under command responsibility, carrying sentences of 10 to 25 years in prison. Herman Sedyono and the other defendants faced similar charges, which could result in the death penalty, life imprisonment, or 10 to 25 years in prison. However, despite the severe charges, most of the defendants received lighter sentences on appeal, and only two were found guilty, with their sentences reduced by the Supreme Court. Some defendants, including Abilio J.O. Soares, sought judicial review and were ultimately acquitted.

3.6. Ad Hoc Human Rights Court for the Tanjung Priok Incident

While the East Timor case was ongoing, domestic pressure increased to investigate the perpetrators of the 1984 Tanjung Priok massacre. Given that most of the victims in the Tanjung Priok case were Muslims, while the East Timor victims were predominantly Christians, this demand was often influenced by religious sentiment. Islamic groups, including mass organizations and Islamic-based political parties, actively advocated for the immediate prosecution of the Tanjung Priok case.¹⁷

Tanjung Priok, the largest port center in North Jakarta, became a focal point of political tension in the late 1970s. After the New Order regime suppressed leftist groups, Islamic groups emerged as a significant opposition force. The government responded by enacting Law No. 8 of 1985, concerning Community Organizations, which mandated Pancasila as the sole ideological foundation for organizations. This law faced strong resistance from Islamic leaders who argued that Islam should serve as the foundation for religious-based organizations, which significantly impacted the political dynamics at that time.

On September 7, 1984, an incident in which security personnel harassed a mosque prompted a reaction from residents who subsequently burned vehicles and staged protests. Several people were arrested, and tensions escalated when efforts to free the detainees failed. Repressive military action followed, resulting in hundreds of deaths and injuries. The government accused the perpetrators of subversion, with more than a hundred people detained on political charges. Additionally, an estimated 400 to 700 people were declared missing.

¹⁷ Sri Lestari Wahyuningroem, "Towards Post-Transitional Justice: The Failures of Transitional Justice and the Roles of Civil Society in Indonesia," *Journal of Southeast Asian Human Rights* 3, no. 1 (2019): 124–54, <https://doi.org/10.19184/jseahr.v3i1.11497>.

The enactment of the Human Rights Court Law in 2000 and the trial of the East Timor case led Islamic groups, such as the United Development Party (PPP), to demand a legal and political investigation into the Tanjung Priok case.¹⁸ This push was also driven by growing awareness of human rights violations during the authoritarian regime, the rise of political Islam, and the release of political prisoners. The case was eventually brought before the Human Rights Court after a lengthy investigation by Komnas HAM (Komisi Nasional Hak Asasi Manusia) or National Commission on Human Rights, which revealed indications of serious human rights violations and recommended accountability for 23 individuals.

During the investigation, the Attorney General's Office charged 14 defendants in four separate case files. This number was lower than the 23 individuals recommended by Komnas HAM. The trial process began in September 2003. Unlike the East Timor case, the Tanjung Priok trial proceeded more swiftly, partly due to pressure from Islamic political parties and religious organizations, as well as lower political complexity.

However, the prosecutor's indictment was considered weak, as it failed to establish the widespread and systematic nature of the crimes as key elements of crimes against humanity. Additionally, the indictment was hampered by the lack of evidence to prove the widespread and systematic nature and command responsibility of the defendants. Legal procedures were also violated, such as the prohibition of witnesses, the withdrawal of testimony, and interference from security forces through the reconciliation process. This process, which involved offering financial compensation and assistance to victims, complicated the prosecution's efforts to prove human rights violations, as some witnesses withdrew their testimony.

The first-instance verdict in this case showed a lack of consistency. Defendant RA Butar-butar was found guilty of gross human rights violations resulting in 23 deaths and 53 injuries, and was sentenced to 10 years in prison. In contrast, defendant Sriyanto was acquitted due to insufficient evidence of gross human rights violations, and defendant Pranowo was also acquitted. The verdict against Sutrisno Mascung indicated that a gross human rights violation had occurred, based on a majority vote.

The first-instance court ruling included compensation for the victims, but the amount and recipients varied between defendants. In RA Butar-butar's case, compensation was mentioned without specifying the amount, while in Sutrisno Mascung's case, the recipient and amount of compensation were detailed. At the appellate level, all defendants were acquitted, and the compensation for the victims was revoked. The cassation verdict also rejected the prosecutor's appeal, despite differing opinions among the judges in several cases, such as in the case of defendant Pranowo.

¹⁸ Wahyuningroem.

3.7. Analysis of the Strengths and Weaknesses of Judicial Resolution in Ensuring Legal Certainty for Victims of Human Rights Violations

Criticism and evaluation of the judicial resolution in cases of gross human rights violations, specifically those in East Timor and Tanjung Priok, highlight several significant challenges related to the realization of legal certainty for victims. While the Indonesian government took steps to establish an Ad Hoc Human Rights Court and prosecute various officials and perpetrators, the outcomes have largely fallen short of expectations. The following factors outline the strengths and weaknesses of the judicial approach in these cases.

First, there are inherent weaknesses in the charges and evidence presented in court. One major issue is the prosecution's inability to establish key elements of crimes against humanity, particularly the "widespread" and "systematic" nature of the actions. For instance, in the Tanjung Priok case, these elements could not be convincingly proven, leading to the court's failure to hold high-ranking officials accountable for their command responsibility. This shortcoming resulted in many defendants receiving acquittals or lighter sentences on appeal, ultimately undermining legal certainty for victims. Ideally, the judicial process in cases of gross human rights violations should provide compelling evidence to demonstrate the scale and systematic nature of the violence, thereby ensuring justice for the victims. In this context, legal certainty is difficult to achieve, as the perpetrators are not punished in accordance with their actions.

Second, the Ad Hoc Human Rights Court process in Indonesia faces significant challenges in terms of independence and transparency. The appointment of judges and prosecutors in this court occurred without public involvement, raising concerns about the judiciary's independence. In the Tanjung Priok case, there are strong indications that security forces interfered with the judicial process. Perpetrators offered financial and material incentives to victims and witnesses, causing many to withdraw their testimonies. This interference highlights that justice cannot be upheld when influenced by perpetrators or other interest groups. Judicial independence is crucial for achieving legal certainty, as only a neutral judiciary can ensure justice for victims. The lack of independence exacerbates legal uncertainty, as court decisions become more susceptible to political influence than to objective law enforcement.

Third, political interests interfere with the judicial process, hindering substantive justice for victims. In both cases, political influence was apparent in the court proceedings, leading to inconsistent and unsatisfactory outcomes. For example, the East Timor case was expedited under international pressure, while in the Tanjung Priok case, significant pressure came from domestic Islamic parties. The dependence of the judicial process on political influence indicates that the legal system in Indonesia is not yet fully independent and remains vulnerable to manipulation by vested interests. As a

result, legal certainty is difficult to attain, as court decisions are more often driven by the interests of specific parties rather than by the principles of justice for victims.

Fourth, ambiguity in court rulings, particularly concerning compensation, further undermines victims' sense of justice. In the Tanjung Priok case, while the first-instance court ruled in favor of compensation for victims, the amount and recipients were unclear. When the case reached the appeal stage, compensation for victims was even rescinded. This situation illustrates that although the government attempts to address victims' needs through compensation, the implementation process damages victims' sense of justice, as they do not receive appropriate restitution. In terms of legal certainty, compensation is a critical form of recovery for victims, and the lack of clarity in its provision undermines the legal certainty that victims are entitled to.

However, despite these shortcomings, there are positive aspects to the judicial resolution of these cases, though their achievements remain limited. The establishment of the Ad Hoc Human Rights Court, despite numerous obstacles, demonstrates the government's commitment to upholding justice for human rights violations. The existence of this court provides victims with a platform to seek justice and establishes a precedent for handling future cases of gross human rights violations. While the implementation of this process has been far from ideal, the court's establishment marks an important first step in addressing such violations.

3.8. Non-Judicial Mechanisms for Addressing Gross Human Rights Violations: An Overview of Non-Judicial Approaches

During the second term of President Jokowi's administration, efforts to address past gross human rights violations were pursued through a non-judicial approach. In 2022, the President established the PPHAM Team via Presidential Decree No. 17/2022, with the goal of uncovering and analyzing cases of gross human rights violations based on data from Komnas HAM up to that year. The team conducted its work for three months, completing its task in December 2022.¹⁹

The findings of the PPHAM Team revealed 12 cases of gross human rights violations and led to the formulation of 11 non-judicial recommendations. These recommendations included acknowledging and expressing regret for the violations, reconstructing history with a balanced narrative, and restoring the rights of victims that had been neglected. Additional recommendations included re-registering victims and reinstating their constitutional and civic rights.

The PPHAM Team also recommended enhancing the state's responsibility in supporting victim recovery, strengthening social relations, and preventing future human rights violations. The team encouraged the creation of historical memorabilia, the

¹⁹ Ahmad Hambali, "Kebijakan Penyelesaian Pelanggaran Berat Ham Masa Lalu Oleh Pemerintahan Jokowi," *Collegium Studiosum Journal* 6, no. 1 (2023): 46–57, <https://doi.org/10.56301/csj.v6i1.810>.

ratification of international human rights instruments, legal reforms, and the establishment of mechanisms to monitor the implementation of the submitted recommendations.

In response, President Jokowi issued Presidential Instruction No. 2 of 2023 to implement these recommendations for the non-judicial resolution of past gross human rights violations, directing relevant ministries and institutions to take action. Additionally, Presidential Decree No. 4 of 2023 was issued to form a Monitoring Team tasked with overseeing the implementation of these recommendations.

However, the non-judicial resolution of gross human rights violations through this mechanism has faced criticism from various quarters. The main concern has been the slow progress in implementing the recommendations, with little significant progress after one year. Victims and their families have expressed frustration, feeling that they have not been adequately involved in the recovery process, despite being the parties most affected. The assistance provided, including compensation, basic necessities, agricultural tools, house renovations, duck farming, and coffee processing machines, is viewed as inadequate relative to the suffering victims endured due to human rights violations.

The Monitoring Team, established to oversee the implementation of the recommendations, is set to function only until December 2023, leaving the process stalled without substantial progress. This raises concerns about the government's commitment to resolving gross human rights violations through non-judicial means. Many fear that this mechanism will become a pretext for forcing victims to accept inadequate forms of "justice," while allowing perpetrators to avoid accountability through insufficient compensation.

3.9. General Challenges in Addressing Human Rights Violations through Non-Judicial Mechanisms

One year after the implementation of the recommendations from the Past Human Rights Violations Resolution Team (PPHAM) began on June 27, 2023, an official "kick-off" event marked the commencement of the execution of 11 recommendations outlined in Presidential Decree No. 17 of 2022. The event included a symbolic handover, the signing of an inscription, and the laying of the first stone for the construction of a living park and mosque at the Rumoh Geudong site in Pidie Regency, Aceh. This event represents the initial step in a long-term effort to address past gross human rights violations.

Rumoh Geudong, which had served as a Sattis Post during the Military Operations in Aceh (DOM Aceh) from 1989 to 1998, has become a symbol of military brutality against the people of Aceh. At this location, various forms of violence occurred, including torture, enforced disappearances, sexual violence, and extrajudicial killings.

The National Commission on Human Rights (Komnas HAM) uncovered evidence of these human rights violations through a pro-justitia approach, which included victim testimonies, documentation, and the reconstruction of events, revealing a system of collusion involving state and military officials in the violence.

Addressing gross human rights violations in Indonesia faces significant challenges. Despite investigations by Komnas HAM and the PPHAM Team, a comprehensive disclosure of the truth is still needed. Furthermore, existing mechanisms often overlook the crucial involvement of victims in the recovery process, which is a central element of transitional justice. Victims often receive socio-economic assistance such as basic necessities and agricultural tools but are not given adequate attention to their psychological and social recovery.

Recovery programs should encompass physical, spiritual, and symbolic aspects of recovery, with victims being involved in every stage of planning and implementation. However, in practice, victim involvement is often limited to a formality, with decisions being made without consulting their aspirations. This lack of inclusion fosters distrust in the process and exacerbates the sense of injustice. Victims, who should be the central focus of recovery efforts, are often marginalized.

Another challenge stems from the limited scope of the PPHAM Team's recommendations, which primarily focus on material assistance while neglecting immaterial aspects crucial to victim recovery, such as truth-telling and official apologies. President Joko Widodo's 2023 acknowledgment of past gross human rights violations, without offering an official apology, has led to doubts about the government's commitment to these efforts. The failure to prioritize truth disclosure further undermines the process, despite its importance in ensuring state accountability and preventing future violations.

A concrete example of the lack of transparency is the Rumoh Geudong memorialization project managed by the Ministry of Public Works and Public Housing (PUPR). The government decided to demolish the remaining historic buildings and replace them with a Memorial Living Park and a mosque, without involving victims or the local community in the decision-making process. This approach has led to a sense of alienation among victims, who feel unappreciated in this effort.

The recommendations from the PPHAM Team are also criticized as narrow and insufficient. While physical, social, and educational assistance are important, ideal recovery must address various dimensions, including comprehensive truth disclosure. Without truth disclosure, this process risks becoming a mere formality that does not provide meaningful justice for the victims. Additionally, the involvement of team members with ties to past human rights violations raises doubts about the government's commitment to addressing these cases transparently.

The success of transitional justice relies heavily on the government's commitment to involving victims, revealing the truth, and holding perpetrators of gross human rights violations accountable. Indonesia can learn from the experiences of countries like Argentina and El Salvador, which have successfully implemented truth commissions as part of a broader transitional justice process.

Without a clear mechanism and a firm government commitment, the resolution of gross human rights violations will remain a difficult and unresolved issue. The government must design more transparent and just policies that ensure victims' rights are not only recognized but also respected through tangible actions. The handling of gross human rights violation cases in Indonesia must be rooted in the principle of restorative justice, which not only provides material compensation but also offers victims recognition, mental recovery, and the right to seek the truth.

CONCLUSION

Achieving legal certainty for victims of past gross human rights violations requires a comprehensive approach that combines both judicial and non-judicial mechanisms. Judicial mechanisms offer legal certainty by holding perpetrators accountable through the judicial process, ensuring that human rights violations are acknowledged and that perpetrators face legal sanctions. However, this process is often hindered by various challenges, such as the inability of the legal system to fully uncover the truth or the limitations of the existing laws. Without strict law enforcement, legal certainty for victims remains uncertain.

In contrast, non-judicial mechanisms focus primarily on restoring victims' rights, including compensation, rehabilitation, and social reconciliation. These mechanisms are crucial for addressing the psychological and social impacts experienced by victims. While non-judicial approaches do not impose direct sanctions on perpetrators, they provide victims with assurance that their human rights are acknowledged and respected, while also helping to prevent future occurrences of violence.

To achieve comprehensive legal certainty for victims, both mechanisms must operate concurrently and complement each other. Judicial mechanisms must ensure a fair and transparent legal process that holds perpetrators accountable, while non-judicial mechanisms must offer a framework for the holistic recovery of victims. Legal certainty for victims of gross human rights violations will be realized when the state demonstrates a commitment to fully uncover the truth, offer just reparations, and implement preventive measures through appropriate institutional and policy reforms.

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