

MECHANISM FOR SETTLEMENT OF CASES OF PAST HUMAN RIGHTS VIOLATIONS AFTER THE REPEAL OF THE TRUTH AND RECONCILIATION COMMISSION LAW

Anang Supratikno ^{a*)}, Soediro ^{a)}

^{a)} Universitas Muhammadiyah Purwokerto, Purwokerto, Indonesia

^{*)}Corresponding Author: anangsupratikno@gmail.com

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Abstract. In the dynamics of Indonesia's constitutional system, the number of human rights violations is still high which is not proportional to the number of cases that have been successfully handled, especially gross human rights violations in the past that have not been resolved until now, reflecting the low effectiveness of the implementation of human rights protection and enforcement in the country. The weak quality of the implementation of human rights protection and enforcement is not balanced with the optimal ability of institutions that have the authority to take preventive steps and remedial measures against these problems. In fact, Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia clearly states that the responsibility to protect, promote, and fulfill human rights is in the hands of the state. On the other hand, the Constitutional Court through Decision No. 006/PUU-IV/2016 has canceled the Law on the Truth and Reconciliation Commission (KKR), which has an impact on the dissolution of the institution in Indonesia. Based on these conditions, this study uses a normative approach with the aim of providing a comprehensive understanding of the concept of reconstruction of the Truth and Reconciliation Commission which has the authority to reveal the facts of human rights violations, provide policy recommendations to the government, and with the consent of the victims the report on the commission's work results can be used as a basis for the investigation process of cases of human rights violations in court..

Keywords: Human rights, Gross human rights violations, Truth and reconciliation Commission

I. INTRODUCTION

Pancasila, as the fundamental foundation of the Unitary State of the Republic of Indonesia, embodies moral values and the principle of equality for all citizens, regardless of race, ethnicity, or religion. Regulations regarding Human Rights (HAM) are closely related to the meaning of the fifth principle of Pancasila, namely social justice for all Indonesian people. This principle affirms the state's obligation to guarantee legal protection and provide equal justice for every citizen. In the context of past gross human rights violations, the state's responsibility is realized through the provision of justice and legal certainty for victims.

In the process of upholding human rights, the application of the values of justice and social peace can be carried out through the concept of Transitional Justice. This concept is understood as a comprehensive approach with four main elements: the fulfillment of the right to truth, the right to justice, the right to reparation, and guarantees to prevent similar violations from recurring [1]. In practice, in resolving past gross human rights violations, transitional justice mechanisms can be implemented through two channels: judicial and non-judicial processes. One form of implementing non-judicial channels is the establishment of

the Truth and Reconciliation Commission (TRC) as a means of realizing national reconciliation and reparation for victims [2].

The establishment of the Truth and Reconciliation Commission (TRC) represents a concrete manifestation of the state's responsibility to resolve past gross human rights violations. This institution was established under Law Number 27 of 2004 concerning the TRC (hereinafter referred to as the TRC Law). However, this provision was later annulled through Constitutional Court (MK) Decision Number 006/PUU-IV/2006. In its ruling, the Constitutional Court made several important observations regarding the validity of the TRC Law, particularly regarding the mechanism for providing compensation to victims linked to amnesty for perpetrators. This observation constituted the only request for annulment granted by the Constitutional Court.

However, the Constitutional Court considered that the annulled article constituted the core or main substance of the overall purpose of the TRC Law. Therefore, even though only one article was declared unconstitutional, the Constitutional Court decided to annul the entire TRC Law. This decision creates obstacles in the state's efforts to fulfill its

responsibilities to perpetrators and provide justice for victims of gross human rights violations. Furthermore, many cases of past human rights violations remain unresolved, and the difficulty of uncovering the truth ultimately delays the restoration of victims' rights. Based on this background, the author formulates four main issues as follows:

1. What are the implications of the revocation of the Truth and Reconciliation Commission Law for the mechanism for resolving past gross human rights violations in Indonesia?
2. What is the ideal concept and mechanism for re-establishing a Truth and Reconciliation Commission within the framework of transitional justice and the protection of victims' rights?

II. RESEARCH METHODS

This research uses a normative juridical method, an approach focused on processing and systematizing data sourced from written legal materials. Therefore, this research bases its analysis on legal norms contained in statutory regulations, court decisions, and prevailing legal provisions and customs within society [3]. The normative juridical approach encompasses the study of legal principles, legal systematics, the conformity and synchronization between regulations both vertically and horizontally, comparative law, and a review of legal history. Therefore, the research process is conducted through a review of various legal regulations and literature relevant to the subject matter of the study.

The type of data utilized in this research is secondary data, obtained through in-depth literature review [3]. This secondary data includes primary legal materials, such as Law Number 26 of 2000 concerning the Human Rights Court, the Law concerning the Truth and Reconciliation Commission (KKR Law), and Constitutional Court Decision Number 006/PUU-IV/2006. In addition, secondary legal materials used include various literature and books discussing law enforcement against past gross human rights violations and the role of the Truth and Reconciliation Commission. To complement this, this research is also supported by interviews with several experts competent in the field of law enforcement against past gross human rights violations.

III. RESULTS AND DISCUSSION

The state's responsibility towards victims of gross human rights violations is part of its efforts to achieve general welfare. In this context, the state has an obligation to respect, fulfill, and protect the rights of all its citizens. This obligation reflects the state's constitutional responsibility as mandated by the 1945 Constitution of the Republic of Indonesia. Article 28I paragraph (4) of the 1945 Constitution clearly states that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. Therefore, the government plays a crucial role in addressing various issues that could threaten security, safety, and human rights, whether past, present, or future.

To date, many cases of gross human rights violations remain unresolved. This is ironic considering that Indonesia

is a country based on the rule of law, where one of the main principles of the concept of a state based on the rule of law is the protection of the human rights of every citizen [4]. In the context of upholding justice for victims, the state has an obligation to provide compensation, restitution, and rehabilitation as a form of reparation for gross human rights violations.

Comprehensively, the right to reparation encompasses several aspects. First, restitution is granted to restore the victim's condition to the state it was in before the violation occurred. This can take the form of restoration of personal freedom, legal rights, social status, family relationships, citizenship, residence, employment, and the return of lost assets or property. Second, compensation is a form of reparation for quantifiable economic losses resulting from human rights violations, including physical and mental damage, psychological suffering, lost opportunities, educational costs, expenses for legal aid, medicine, and medical services. Third, rehabilitation is realized through the provision of legal services, psychological assistance, medical care, and other forms of recovery needed by the victim. Fourth, guarantees of non-repetition are also included, namely, the state's efforts to ensure that similar violations do not occur again in the future. These steps may include stopping ongoing violations, publicly revealing the truth, restoring the victim's good name and dignity, issuing an apology, publicly acknowledging responsibility, enforcing the law against the perpetrator, and organizing educational activities to prevent similar crimes from recurring [5].

Furthermore, the rights of victims of gross human rights violations are also regulated in Law Number 31 of 2014 concerning Witness and Victim Protection. Article 6 of this law explains that victims have the right to receive various forms of assistance, such as medical assistance and psychosocial rehabilitation. Medical assistance is intended to restore the victim's physical condition, including assistance with the funeral process in the event of death. Psychosocial rehabilitation assistance is provided with the aim of helping restore, protect, and improve the victim's physical, mental, social, and spiritual condition so they can return to normal functioning in society. Furthermore, victims also have the right to psychological rehabilitation, services provided by professional psychologists to help victims experiencing trauma or mental disorders recover their mental health [6].

The Witness and Victim Protection Agency (LPSK) provides these rights through two channels: one for cases that have received a decision from a human rights court, and another for cases that have not yet received a decision but have been recommended by the National Commission on Human Rights. The form of support provided by LPSK aims primarily to meet the recovery needs of witnesses and victims, and more broadly to help smooth the process of enforcing criminal law in cases of serious human rights violations in the country [7].

In the context of social, economic, and political dynamics, the re-establishment of the Truth and Reconciliation Commission (TRC) in Indonesia still leaves numerous unresolved issues for the government, particularly

in efforts to resolve serious human rights violations. The author believes that re-establishing the TRC is no easy task, as it will have far-reaching impacts on national social, economic, and political stability. The responsibility for anticipating and managing these consequences rests entirely with the government, as the highest institution with a crucial role in institutional reform and the fulfillment of reparation rights for victims of gross human rights violations.

In fact, numerous gross human rights violations in Indonesia remain unresolved. First, the May 1998 tragedy, in which security forces repressed student demonstrations in front of Trisakti University. In that incident, four students died and hundreds more were injured by police gunfire. This tragedy was followed by the May 13–15, 1998, riots, which resulted in mass violence, including murder, assault, arson, property destruction, looting, enforced disappearances, and rape, with the majority of victims being ethnic Chinese.

Second, the Geudong House case in Aceh is an example of a gross human rights violation that remains unresolved. In this incident, a victim was arrested because of her family ties to members of the security disturbance movement in Aceh. Tragically, the victim suffered repeated torture and sexual violence, even to the point of mutilation. This case only came to light after the National Commission on Human Rights (Komnas HAM) conducted an investigation, but shortly thereafter, the Geudong House building burned down, preventing legal proceedings against the perpetrators of these human rights violations from being fully implemented.

These various realities demonstrate that the state has a responsibility to restore the status, dignity, and dignity of victims of gross human rights violations. This restoration is a concrete manifestation of the state's commitment to ensuring that similar violations do not recur in the future. This responsibility is closely related to the victim's position as the party directly suffering due to arbitrary actions, negligence, or the state's involvement in failing to protect its citizens [8]. One concrete example of reparation efforts undertaken by the Indonesian government was a meeting between the families of victims of gross human rights violations and President Joko Widodo to discuss further steps in resolving the case. However, after that meeting, there was no significant follow-up from the government. This condition is reflected in the ineffectiveness of the Ad Hoc Human Rights Court in delivering justice and providing reparation to victims [9]. Furthermore, the Attorney General's Office has not seriously followed up on the results of the National Human Rights Commission's investigation to move it to the investigation stage. As a result, the process of realizing reparations for victims has still not been implemented to date. Therefore, to ensure the protection of the rights of victims of gross human rights violations, the author believes that re-establishing the Truth and Reconciliation Commission (TRC) is an appropriate solution to this problem.

In the process of establishing a Truth and Reconciliation Commission (TRC) in Indonesia, a comparative study is needed with the experiences of other countries to understand the mechanisms for resolving human rights violations they implement. Based on this, the author

attempts to examine the implementation of the TRC in a number of countries as learning material and a reference in redesigning the TRC in Indonesia, which is expected to be the first step in resolving various cases of gross human rights violations in the country.

1. South Africa

The Truth and Reconciliation Commission (TRC) in South Africa is known as the Truth and Reconciliation Commission (TRC). This institution was established under the Promotion of National Unity and Reconciliation Act of 1995, which explicitly stipulates its objectives. These objectives include providing a comprehensive understanding of the causes, mechanisms, and consequences of human rights violations; facilitating amnesty for perpetrators who publicly confess; conducting investigations into violations; restoring the dignity of victims; and compiling a comprehensive report containing recommendations for preventative measures to prevent similar violations from occurring in the future. [10]

2. Taiwan

The establishment of the Truth and Reconciliation Commission (TRC) in Taiwan aligns with the principles of transitional justice, which is an effort to create authentic social reconciliation so that all Taiwanese citizens can understand and acknowledge the seriousness of past human rights violations. More specifically, the TRC in Taiwan aimed to uncover the truth, compensate victims, restore justice, promote social peace, prevent the recurrence of state violence, and hold officials and officials involved in these violations accountable. The TRC mechanism in Taiwan was designed to achieve the principle of transitional justice through several steps: (1) conducting legal proceedings and investigations to ensure that those involved in the persecution are held accountable for their actions; (2) sorting and opening important archives so that the state can recognize and acknowledge its past mistakes; (3) providing compensation and restoration of the reputations of victims and their families; and (4) establishing memorial facilities such as museums, monuments, and compiling history textbooks as a form of collective education and reminder for future generations [11].

3. Argentina

After the military officially relinquished power in Argentina, President Raul Alfonsín faced significant pressure from human rights activists to immediately investigate the various human rights violations that occurred during the military junta's rule. In response to these demands, Alfonsín directly issued a presidential decree establishing the National Commission for Disappeared Persons (CONADEP), or in Indonesian, the National Commission for Disappeared Persons. This commission comprised ten members selected based on their track record in championing human rights and representation from various segments of society, plus three representatives from Congress. This institution's primary mandate was to uncover the truth (truth-seeking) regarding cases of enforced disappearance and to compile supporting documentation for prosecution in court. [12]

In this discussion, the author attempts to outline the new concept and mechanisms for the Truth and Reconciliation Commission (TRC). The concept was based on the provisions of Law Number 27 of 2004 concerning the

Truth and Reconciliation Commission, the validity of which expired after Constitutional Court Decision Number 006/PUU-IV/2006 declared that the TRC's implementation was in conflict with the 1945 Constitution. Based on this law, the TRC's implementation was deemed to have failed to fully deliver justice in uncovering and protecting victims of past gross human rights violations.

One issue that arises relates to the mechanism for providing compensation and/or rehabilitation to victims. According to the provisions, perpetrators of gross human rights violations can receive amnesty from the President if they admit their guilt, acknowledge the truth of the facts, demonstrate remorse, and are willing to apologize to the victim or their heirs. If the amnesty request is deemed worthy, the President can grant it, and as a consequence, the victim is entitled to compensation and rehabilitation. Conversely, if amnesty is not granted, the victim will not be granted compensation and rehabilitation, and the case will proceed to the judicial process in accordance with the Law on Human Rights Courts.

Furthermore, amnesty can only be granted if the perpetrator has been successfully located and identified. This provision essentially places victims of gross human rights violations in an unequal position, because to obtain their rights to compensation and/or rehabilitation, victims must still await recognition and amnesty for the perpetrators who caused their suffering. Therefore, this mechanism is deemed not to reflect the principle of restorative justice that favors victims [13].

The reform mechanism for the KKR essentially emerged in response to the state's need to reinstate this institution's role in uncovering historical facts and events related to gross human rights violations. This situation emphasizes the importance of revitalizing the KKR as an effort to renew its function and existence. The direction of this reform focuses on two main issues: seeking the truth about gross human rights violations and providing a stronger space for victims' recovery. In the author's concept, the KKR is positioned as a state auxiliary organ located in the nation's capital to coordinate more effectively with the Human Rights Court. This idea is seen as a progressive step that is expected to encourage better governance, particularly in resolving various disputes related to gross human rights violations.

The reform of the TRC stems from a reinterpretation of the concept of truth. Jürgen Habermas, a German philosopher and sociologist, proposed that truth can be understood through three dimensions. First, factual truth, which refers to something that actually occurred or whose existence can be concretely proven. Second, normative truth, which relates to judgments about justice or injustice. Third, a truth only has meaning if conveyed through appropriate procedures and methods. In the context of the TRC reform, these three types of truth are combined to ensure the fulfillment of the right to truth, namely the right of victims and their families to obtain information about the events that actually happened to them. In addition to being an individual right of victims, the right to know the truth also has a public dimension because it concerns the public's need to understand

the facts of an event and the historical record that is important to the nation [14].

In practice, the truth commission within the TRC was established with three main objectives: compiling an objective and accountable record of human rights violations, meeting the needs and expectations of victims in accordance with the principle of restoring the rights of victims of gross human rights violations, and ensuring that similar violations are not repeated in the future. First, accurate and impartial records are compiled by placing the interests of both victims and perpetrators within a balanced framework of justice. This goal includes efforts to explore the causes of the violations, the conditions before and after the incident, the socio-political context, the nature of the violations, and their overall impact [15].

The commission's duties include uncovering the facts behind the violations, dispelling various forms of misleading information, and debunking circulating myths and rumors. To achieve this, the commission needs to provide space for victims to share their experiences and perspectives, while encouraging perpetrators to explain the background and motives behind their actions. All findings obtained through field investigations, document searches, and interviews with various parties must be presented transparently, fairly, and honestly. Thus, the truth revealed not only presents the facts about a violation based on respect for human dignity, but also serves as historical clarification to prevent distorted understanding of past events. This effort also helps reduce the circulation of false information regarding gross human rights violations that cannot be accounted for in the public sphere.

Second, efforts to meet the needs and expectations of survivors must be carried out while adhering to the principle of protecting the rights of victims of gross human rights violations. Broadly speaking, this step aims to restore victims' dignity by creating a safe and supportive environment so they can share their experiences, gain recognition for their suffering, and receive recommendations for action appropriate to their needs. Furthermore, special attention must be paid to gender-based human rights violations through comprehensive investigations into each case. This must be realized by granting victims their rights without any additional conditions, as the state is obligated to provide them with full protection. Furthermore, if a past event has been legally and convincingly uncovered, the state, through the TRC, is obligated to provide compensation and/or rehabilitation to the victims, regardless of whether or not the perpetrators have submitted an amnesty request to the president, or whether the amnesty request was approved or rejected.

Third, efforts to prevent the recurrence of human rights violations can be undertaken through various measures, including disseminating public awareness of the importance of respecting the human rights of every individual. Furthermore, the commission can also make recommendations regarding changes or improvements within public institutions. Beyond investigating individual perpetrators' involvement, the Truth Commission (KKR) plays a crucial role in assessing institutional responsibility for systemic violations and identifying weaknesses in

institutional structures and regulations that need to be addressed to prevent similar incidents from recurring. These functions are typically realized through the development of recommendations that examine the roots of the conflict, address practices of impunity, and strengthen compliance with legal principles. Each activity must also be designed to promote reconciliation and the restoration of relationships between individuals, communities, and societal groups. Specifically, truth commissions are obligated to educate the public and raise public awareness of historical facts that may have previously been hidden.

To strengthen the effectiveness of addressing past gross human rights violations, one important reform is that the KKR no longer stipulates specific rules regarding the granting of amnesty to perpetrators. Applications for amnesty are still possible, but the process is carried out directly with the President and is not part of the KKR mechanism itself. The removal of the provision regarding the obligation to grant amnesty is often seen as contradicting the principle of reconciliation within the KKR, although it does not fundamentally diminish its essence. According to Daan Bronkhorst of Amnesty International, true reconciliation rests on the recognition of violations that occurred as part of a shift from a violent past to a more stable condition, while still taking into account the country's traditions and political dynamics, both nationally and internationally. Meanwhile, Priscilla B. Hayner of the International Center for Transitional Justice explains that in the context of conflict or political violence, reconciliation is understood as a peaceful process of acceptance. Thus, reconciliation is closely related to efforts to restore social, political, and psychological relations between citizens, both as individuals and groups, and the state. This process has implications for the re-establishment of relationships free from the shadow of conflict and hostility that occurred in the past [15].

Overall, reconciliation within the framework of the TRC reform is understood as an effort to restore social, political, and psychological relations between the state and the victims through a peaceful process of acceptance. In this stage, the state acknowledges that violations against victims have occurred and acknowledges its past failures to prevent such incidents and to guarantee the protection of the human rights of all its citizens. This form of state reconciliation is then realized through fulfilling the rights of victims of gross human rights violations, for example, by providing compensation and/or rehabilitation as a measure of recovery and protection, by issuing a public apology as a sign of acknowledgement of wrongdoing, and by disseminating the truth about past events to the public. The erection of monuments or commemorative signs in the wake of the tragedy also serves as a symbol that the state has not erased the memory of the gross violations that occurred and serves as a reminder to prevent similar incidents from recurring in the future. Therefore, in the TRC reform, the concepts of truth and reconciliation remain understood as an inseparable whole, as the process of reconnecting the perpetrators and victims requires a complete disclosure of the facts regarding the entire series of events that occurred.

At the end of its term, the TRC is required to submit a final report to the President and/or the House of Representatives, which is then simultaneously published to the public. Following publication, the report will be discussed in a House of Representatives (DPR) session within a specified timeframe. Upon receiving this final report, the government assumes a specific obligation to follow up. Within six months of receiving the report, the government must enact a regulation detailing the recommendations to be implemented and those that cannot be implemented, along with the rationale behind them. The regulation must also include a planned implementation strategy. Furthermore, the DPR is required to issue a separate decision within a specified timeframe after the government has submitted its response. At this stage, the DPR reviews the government's response to the KKR recommendations to determine the next steps. With the reformed KKR mechanism, it is hoped that the truth-seeking process for gross human rights violations will be more equitable and will also strengthen protection for victims.

The policy to reactivate the Truth and Reconciliation Commission (KKR) as part of efforts to achieve transitional justice is seen as a strategic step for the nation's future. The redesigned KKR is expected to function as an independent institution tasked with developing a more comprehensive understanding of past human rights violations, identifying victims and perpetrators, and formulating steps to resolve cases of gross human rights violations through legal and political mechanisms. Furthermore, this institution is also directed to provide forms of reparation for victims and facilitate the state's reconciliation process. In the concept of establishing the new KKR, the author believes that the institution's output or recommendations will serve as an important reference in determining reform policies in Indonesia. Its work is expected to be used to submit a request to the House of Representatives (DPR) for the establishment of an Ad Hoc Human Rights Court, and to serve as a basis for the Prosecutor's Office and the Police in uncovering the truth about unresolved cases of gross human rights violations from the past.

Furthermore, efforts to revive the KKR are intended to demonstrate the state's responsibility to victims of past gross human rights violations, particularly by ensuring a clearer historical disclosure process. Regarding compensation provided by the state, the new KKR concept no longer links compensation to the perpetrator's ability to pay. This is done to avoid delays in compensation, which typically await a final court decision. [16] Furthermore, the restitution mechanism for victims is not based on a court decision determining the perpetrator's guilt or innocence. Restitution is granted solely because a gross human rights violation has occurred. This regulation emphasizes that when a gross human rights violation is proven to have occurred, a claim for compensation can still be filed against the perpetrator even before a final court decision.

The implementation of reconciliation by the state is essentially aimed at meeting the needs of victims, especially by restoring their dignity and honor. This effort is carried out through acknowledging the suffering experienced and providing recommendations that can support the recovery

process. In this context, the existence of the new KKR is expected to be a means of implementing the principles of restorative justice as part of the transitional justice mechanism in Indonesia [17]. Furthermore, in terms of case handling, the new KKR has the potential to handle a far greater number of cases than criminal justice, especially if gross human rights violations occurred widely and systematically during the previous administration. Therefore, the author views the re-establishment of the KKR as an urgent need to ensure legal certainty, particularly regarding the fulfillment of victims' rights and the resolution of various cases of gross human rights violations.

IV. CONCLUSIONS

Based on the previous explanation, the author concludes that state accountability for serious human rights violations can be realized through various forms of restitution for victims, such as restitution, compensation for quantifiable economic losses, and rehabilitation through legal aid, psychological support, medical services, and other necessary forms of treatment, accompanied by guarantees that similar violations will not be repeated in the future. On the other hand, efforts to revive the Truth and Reconciliation Commission (TRC) in Indonesia have had a broad impact on social, economic, and political aspects, so the government is obliged to address it as part of institutional reform and fulfill the rights of victims of serious human rights violations. The revitalized TRC functions as a supporting state organ based in the capital to facilitate coordination with the Human Rights Court, with three main objectives: producing objective and accountable records of human rights violations, meeting the needs and rights of victims, and preventing the recurrence of similar crimes. In its new format, the TRC no longer contains provisions regarding amnesty for perpetrators, and the final report on the implementation of its duties will be submitted to the President and/or the House of Representatives for public announcement. Overall, the reconciliation provided by the state is interpreted as an effort to restore the dignity of the victims, and the re-establishment of the KKR is an important means of implementing the principles of restorative justice within the framework of transitional justice in Indonesia.

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