



Resolution on Handling Gross Human Rights in Indonesia

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Abstract

Human rights are the rights possessed by everyone regardless of race, colour, gender, ethnicity, religion, language, gender, religion and politics. Human rights are legally guaranteed by human rights law which protects the individual or groups from acts that violate the freedom and the dignity of humanity. One of the human rights law instruments which has been used as a reference in implementing the human rights norms is the Universal Declaration of Human Rights in 1948 which has been formulated by the United Nations and adhered to as an international norm by countries around the world. To uphold human rights, the Indonesian government has passed the Undang-Undang No. 26 Tahun 2000 tentang Pengadilan HAM. One of the problems that still hamper for years is the legal settlements of human rights cases in Indonesia. Along with the development of democracy in Indonesia, one of the urgent issues in the Government is the legal settlement and the law enforcement efforts to solve various cases of gross violation of human rights which have been neglected for years due to the government's insufficiency in resolving the cases. The efforts in human rights protection and human rights law enforcement became a State's obligation to all of the Indonesian people to ensure the implementation of their fundamental rights.

Keywords: *Gross Violation of Human Rights; National Courts; International Courts*

Introduction

Human Rights (HAM) are essentially natural rights that inherently attach to every human being from birth. This understanding implies that human rights are a gift from God Almighty to His servants. Given that human rights are divine gifts,¹ No institution or individual is permitted to seize them, and no authority has the right to suppress them.²

Human rights were first proposed by John Locke, who explained that human rights are rights granted directly by God the Creator as something natural. Because of this nature, no power in the world can revoke the human rights of any individual. Human rights are the fundamental rights of every person

¹ Syahril, M. A. F. (2023). Cyber Crime in terms of the Human Rights Perspective. *International Journal of Multicultural and Multireligious Understanding*, 10(5), 119-130.

² Putra, M. F. M., Judijanto, L., Yulianingrum, A. V., Handayani, F., Angrayni, L., Maudina, D., & Thesia, E. H. (2024). *Hak Asasi Manusia: Landasan, Perkembangan dan Tantangan*. PT. Green Pustaka Indonesia.

that are inherent from birth as a gift from the One Almighty God; they are not granted by humans or institutions of power.³

From the late 14th century to the early 17th century, a new idea emerged from John Locke that humans possess inalienable rights, namely: life, liberty, and property. As *homo sapiens*, humans have three types of human rights, which are the right to live, the right to freedom/liberty, and the right to own something. It is further emphasized that the right to own property (property rights) not only includes owned goods (estates) but also life (lives) and freedom (liberties). Moreover, there are five types of rights within property rights, namely life, body, freedom, honour, and possessions (*leven, lief, vrijheids, eervermogen*).⁴ The state must protect these rights from acts of confiscation and violation.⁵

In its development, J.J. Rousseau emerged with his social contract theory, which posits that the emergence of state power is based on the agreement or contract among all members of society to form a government. The state cannot revoke the fundamental rights held by individuals and society; in fact, the state must protect these rights from acts of confiscation and violation.⁶ The thoughts of John Locke and Rousseau on Human Rights became the foundation for the subsequent development of ideas about human rights and had a significant influence on the events in France and the United States.⁷

The birth of human rights in the form of written regulations was first found in the Magna Carta of 1215 in the Kingdom of England, which stated that the king's power could be limited and that he could be held legally accountable. From this, the doctrine emerged that no one is above the law, including the king who holds power. The spirit of the Magna Carta inspired the emergence of legislation in the Kingdom of England in 1689 known as the Bill of Rights. The emergence of the 'Bill of Rights' marked the beginning of the principle of 'equality before the law,' meaning that all individuals have equal and equivalent standing before the law. This principle became the foundation for the development of the rule of law and democracy, which guarantees the principles of equality and freedom as citizens.⁸

In 1776, the United States declared its independence, which explicitly stated that humans are free from the moment they are in their mother's womb, making it unreasonable for them to be shackled after birth. This spirit of independence was inspired by the ideas of Rousseau and Montesquieu regarding the theory of the separation of powers (*trias politica*). This theory of separation of powers created a fair and balanced structure of government. Similarly, in 1789, a declaration known as 'the French Declaration' was born in France, which outlined more detailed rights that became the foundation of 'the rule of law.' Additionally, the 'French Declaration' also regulated the prohibition of arbitrary arrest and detention, the principle of 'presumption of innocence,' the right to freedom of expression, freedom of religion, and protection of property rights.⁹

With the detailed human rights outlined, it can be said that the French Declaration encompasses rights that guarantee the emergence of both democratic states and the rule of law.¹⁰ Although the 'French Declaration' came after the 'Declaration of Independence' in the United States, the French Declaration represents a crystallization of a long revolution aimed at securing guarantees of human rights in the laws of the state. Two years later, the *Trisloganda* was born, which contained: (1) liberty (*Liberté*); (2) equality

³ Wijaya, D. N. (2025). *John Locke & Pembangunan Karakter Bangsa*. Suluah Kato Khatulistiwa.

⁴ Max, B. S. (2014). *Hak Asasi Manusia Bahan Pendidikan Untuk Perguruan Tinggi*. Yogyakarta: Universitas Atma Jaya.

⁵ Wijaya, D. N. (2025). *John Locke & Pembangunan Karakter Bangsa*. Suluah Kato Khatulistiwa.

⁶ Rousseau, J.-J. (2004). *The social contract*. Penguin Books

⁷ Fertikasari, N. (2024). *The Social Contract (Kontrak Sosial)*.

⁸ Bazary, S. S., Karsa, K., Indah, S., & Marseli, D. (2024). *Pemikiran Hukum John Locke Dan Landasan Hak Asasi Manusia*. Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat, 2(01).

⁹ Ima, W., & Urlialy, G. M. (2024). *Amerika Serikat dalam Gambar Waktu: Sebuah Perjalanan Sejarah*. Mega Press Nusantara.

¹⁰ Lopa, B. (1996). *Mencegah Kejahatan, Anatomi Kejahatan di Indonesia*. Bandung: Granesia.

(Égalité); and (3) fraternity (Fraternité). These three principles later gave rise to the French Constitution of 1791.¹¹

In subsequent developments, human rights continued to be a pressing issue. The rights recognized in the past were deemed inadequate to meet the demands of the evolving social conditions of society. The rights that developed at that time seemed to be limited to juridical-political rights only. Therefore, in the early 20th century, U.S. President Franklin D. Roosevelt formulated and issued 'the Four Freedoms,' which are: a) Freedom of speech, b) Freedom of religion, c) Freedom from fear, d) Freedom from want.¹²

This formulation of new human rights is the result of the thought that to live comfortably, humans cannot only be equipped with political rights but their basic needs for daily life must also be fulfilled. The Four Freedoms became an inspiration for the Universal Declaration of Human Rights (UDHR), also known as the Universal Declaration of Human Rights. This declaration contains 30 articles rich in human rights across all fields, including political, legal, social, economic, and cultural rights. The UDHR is often referred to as the First Generation of Human Rights. In its development, in 1993, a World Conference on Human Rights was held, known as the Vienna Conference. This conference resulted in a joint commitment to the implementation of human rights protection worldwide by the UDHR and other instruments related to human rights and international law issued by the United Nations (UN) in 1948.

There are various terms in foreign languages or in Indonesian used to express human rights. These terms include: 'droits de l'homme' (French), 'human rights' (English), 'meselijek rechten' (Dutch), and 'civil rights' (U.S.), which can be explained as human rights. Other terms include 'basic rights' (English) and 'grondrechten' (Dutch), which indicate the understanding of human rights. Human rights are also often referred to as 'fundamental rights' (English) or 'fundamentele rechten' (Dutch). Human rights are also known as 'constitutional rights' (English), which means rights based on the constitution. However, not all 'constitutional rights' are human rights, as there are also what are called 'the Citizen's constitutional rights,' which are the rights of the people or citizens that only apply to the respective citizens; thus, they are not universal human rights.¹³

Etymologically, human rights are formed from three (3) words: a) rights, b) fundamental, and c) human. The first two words, rights and fundamental, come from Arabic, while the word human is from the Indonesian language. The word 'haqq' is derived from the words 'haqqa,' 'yahiqqu,' and 'haqqaan,' which mean true, real, certain, permanent, and obligatory. The word 'asasi' comes from the words 'assa,' 'yaussu,' and 'asasaan,' which mean basis, foundation, or origin. Thus, 'asasi' means everything fundamental and essential, which is always inherent to its object.¹⁴

The definition of a right according to the law is everything that can be done or not done. This means that concerning a right, the ownership of that right allows for the freedom to exercise it or not. Mochtar Kusumaatmadja and B. Arief Sidharta explain that the essence of a right fundamentally revolves around the freedom to do or not do something concerning a particular subject or all legal subjects without hindrance or interference from any party, and this freedom has a legal basis (recognized or granted by law) and is therefore protected by the law.¹⁵

¹¹ Élysée. (n.d.). The Declaration of the Rights of Man and the Citizen. Diakses dari <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen>.

¹² Sanjaya, D., & Rahim, A. A. (2024). Freedom Of Religion And Belief In The Indonesian State Of Law: Dualism Of Conceptual Interpretation And Constitutional Court Decision. *Jurnal Konstitusi & Demokrasi*, 4(1), 2.

¹³ Bazary, S. S., Karsa, K., Indah, S., & Marseli, D. (2024). Pemikiran Hukum John Locke Dan Landasan Hak Asasi Manusia. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(01).

¹⁴ Rahmi, P. A., Zakira, R., & Kurnia, A. (2025). The Impact of Globalization on Pancasila as a Human Rights-Based Ethical System in Indonesia. *JUSTICES: Journal of Law*, 4(1), 26-31.

¹⁵ Sulubara, S. M., Basri, T. S., & Iskandar, I. (2024). Analisis Konstitusional Terhadap Perlindungan Hak Asasi Manusia Dalam Sistem Hukum Indonesia. *Jurnal Kabar Masyarakat*, 2(4), 198-211.

According to Scott Davidson, three (3) key points need attention in upholding human rights: 1). These rights are inherently natural, universal, and cannot be revoked; 2). The best protection for these human rights is found only in democratic countries; 3). The limits on the exercise of rights can only be established and revoked by law.¹⁶

In Indonesia, the regulation regarding human rights is outlined in, Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia which states that Human Rights are a set of rights inherent to human beings as creations of the One and Only God and are a gift from Him that must be respected, upheld, and protected by the state, the government, and every individual, for the sake of honouring and protecting human dignity and worth.¹⁷ From this definition, it can be understood that human rights exist solely because humans are creations of God, distinct from other created beings. These rights are also a selfless gift from God so that humans can truly live as human beings. Therefore, in the same definition, fundamental obligations are also established, which include the duty of the state, the government, and every individual to respect, uphold, and protect the human rights of others.

Based on this understanding of human rights, it is clear that human rights in Indonesia have distinct characteristics, particularly a strong theological aspect. The statement that human rights are a gift from the One and Only God indicates that these rights are a divine endowment that is inherent to every individual. Human rights become the responsibility of all parties to uphold and protect, including the state, the law, society, and each individual, anywhere and anytime. Human rights encompass rights in the civil, political, social, and economic fields, as well as the right to live in a healthy environment. Violations of human rights are tantamount to degrading human dignity and humanity.

Satjipto Raharjo categorizes human rights into three generations: the first generation, which includes civil and political rights; the second generation, which encompasses social, economic, and cultural rights; and the third generation, which contains several collective rights.¹⁸

The First Generation, known as Civil and Political Rights (Sipol), refers to the rights that citizens possess when interacting with the state, which holds sovereignty. These rights are those that citizens have as individuals within a state, as well as their political rights, which ensure that they are treated equally in the eyes of the state, without discrimination, and with equal standing as citizens and legal subjects. Civil and Political Rights are articulated in the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations in 1966. This covenant has been ratified by Indonesia and is enshrined in Law No. 12 of 2005 concerning Civil and Political Rights. The covenant represents a compromise between the interests of the Western Bloc and the Eastern Bloc following the Cold War; The Second Generation consists of Economic, Social, and Cultural Rights (Ekosob). These rights represent human beings as individuals capable of creating and requiring certain resources to sustain their lives. Essentially, Ekosob rights are fundamental needs; however, due to the phenomenon of state discrimination against vulnerable groups under the pretext of serving greater interests following the strengthening of the global economic regime, these basic needs can become rights that can be claimed by the state. Economic, social, and cultural rights are of great significance for human life for several reasons: a) Ekosob rights encompass the most pressing issues faced by individuals daily, such as adequate food, healthcare services, and decent housing, which are part of the necessities for all humanity; b) Ekosob rights cannot be separated from other human rights; the interdependence of human rights is an unavoidable reality today; c) Ekosob rights transform needs into rights based on justice and human dignity. Ekosob rights enable communities to assert their basic needs as rights that must be claimed. These Ekosob rights were first regulated in the international covenant known as the International Covenant on Economic, Social and

¹⁶ Ademola, E. O., & Ogu, O. A. Grand challenge of insecurity and Leadership: Humanizing Leadership to enhance security in divided Nigeria nation-state.

¹⁷ *Vide* Pasal 1 ayat 1 Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia.

¹⁸ Raharjo, S. (2009). Hak Asasi Manusia dalam Tiga Generasi. Dalam IJBEL, 23, 184–194. Diakses dari <https://ijbel.com/wp-content/uploads/2020/11/IJBEL23-018.pdf>.

Cultural Rights (ICESCR), adopted in 1966. Indonesia has ratified this covenant, which is enshrined in Law No. 11 of 2005; The Third Generation of human rights emerges in response to development and progress within a country, which sometimes overlooks the negative impacts that result, leaving communities as victims of these changes. Collective rights include the right to development, the right to peace, the right to a clean environment, the right to natural resources, and the right to cultural heritage. The existence of these collective rights is a reaction to the development processes within a country. There is a tendency for discrimination and a lack of equitable distribution in infrastructure development, economic injustices, and the sacrifice of certain communities for the advancement of other groups, which makes the recognition and protection of collective rights increasingly important. These rights aim to ensure that all members of society benefit from development and that their voices and needs are considered in the decision-making processes that affect their lives and environments.¹⁹

Various cases of human rights violations Example of a Recent Serious Human Rights Violation Case in Indonesia the Paniai Case, Papua (December 2014)–Legal Process Concluded in 2023 Incident Summary: On December 8, 2014, in Enarotali, Paniai Regency, Papua, a shooting occurred during a protest by local civilians. As a result, four students were killed and several others were injured. The protest was sparked by an alleged beating of a young man by security forces the day before; and another case like before Serious Human Rights Violation Cases in Indonesia That Remain Unresolved 1). East Timor Case (1999) Context: After the referendum showed that the majority of East Timor's population (now Timor-Leste) voted for independence from Indonesia, widespread violence broke out, led by pro-integration militias allegedly supported by elements of the Indonesian military. Violations: Murder, mass displacement, arson, rape, and enforced disappearances. Legal Status: This case was brought before the Ad Hoc Human Rights Court, but many key perpetrators escaped justice. Timor-Leste also established CAVR (Commission for Reception, Truth and Reconciliation); 2). The 1965–1966 Massacres Context: Following the G30S incident, the government initiated a purge targeting those accused of being affiliated with the Communist Party (PKI). Violations: Arbitrary detention, torture, mass killings (estimated 500,000 to 1 million victims), and systematic discrimination against victims' families. Legal Status: Recognized by Indonesia's National Human Rights Commission (Komnas HAM) as a gross human rights violation. However, no legal proceedings have taken place to this day. The government officially acknowledged the events in 2023 as part of a non-judicial resolution; 3). Trisakti, Semanggi I & II Tragedies (1998–1999) Context: These incidents occurred during student-led reform protests demanding President Soeharto's resignation and democratic reforms. Violations: The shooting of unarmed student protesters by security forces. Trisakti: 4 students killed (May 1998); Semanggi I: 17 civilians killed (November 1998); Semanggi II: 5 civilians killed (September 1999); Legal Status: Recognized by Komnas HAM as gross human rights violations. However, the Indonesian Parliament (DPR) rejected the proposal to bring the cases to a Human Rights Court, and no perpetrators have been prosecuted; 4). Enforced Disappearances of Activists (1997–1998) Context: Dozens of pro-democracy activists were kidnapped in the final days of the Soeharto regime. Victims: 23 activists were abducted; some were returned, but 13 remain missing to this day. Legal Status: Komnas HAM classified it as a gross human rights violation. A few members of the military's Tim Mawar unit were tried, but high-ranking officials were not held accountable. All of these cases are documented by Komnas HAM, yet none have been resolved judicially, and justice for victims and their families remains elusive.²⁰

According to Hamid Awaluddin, human rights have evolved to a fourth generation. In this perspective, human rights are often referred to as the "Action Plan of Human Rights." The fourth generation of human rights began to take shape during the World Conference on Human Rights in Vienna in 1993, which is known as the "Vienna Declaration and Programme of Action" (VDPA). At this stage,

¹⁹ Raharjo, S. (2009). Hak Asasi Manusia dalam Tiga Generasi. Dalam IJBEL, 23, 184–194. Diakses dari <https://ijbel.com/wp-content/uploads/2020/11/IJBEL23-018.pdf>.

²⁰ Mustopa, M., & Hoessein, Z. A. (2025). Rekonstruksi Sistem Peradilan Hak Asasi Manusia Terhadap Kontribusi Saksi Ahli dalam Mengungkap Pelanggaran Hak Asasi Manusia Berat. Jurnal Retentum, 7(1), 216-226.

humanity is no longer merely discussing the need for clarity regarding their fundamental rights. Instead, the fourth generation of human rights demands a level of application in practice. This generation emphasizes the implementation and enforcement of human rights in real-world situations, focusing on actionable steps that can be taken to ensure that rights are not only recognized but also actively upheld and protected in various contexts. This shift reflects a growing recognition of the need for practical measures to address human rights issues and to ensure that individuals and communities can fully enjoy their rights in everyday life.

Research Method

This research uses a juridical normative legal research method that focuses on the study of written legal sources, such as laws, government regulations, and official documents related to the settlement of serious human rights violations.²¹ The approach used includes a legislative approach, namely examining national and international regulations that regulate the mechanism for resolving human rights violations through the courts and truth and reconciliation commissions. In addition, an analytical approach is applied to evaluate the effectiveness and suitability of these legal norms in ensuring the enforcement of justice and protection of victims' rights.

Research data was obtained through library research which includes primary, secondary, and tertiary legal materials. The analysis is carried out qualitatively by describing and evaluating legal norms and relating them to existing law enforcement practices.²² In this way, the research aims to provide a comprehensive understanding of the legal framework for resolving human rights violations and provide recommendations for the development of more effective laws and policies in the enforcement of human rights in Indonesia and at the international level.

Result and Discussion

Principles of Human Rights in Criminal Law

The principles of Human Rights (HAM) in Indonesian criminal law serve as fundamental foundations that ensure the implementation of criminal law does not contradict humanitarian values and justice. The first and most fundamental principle is the principle of legality (*nullum crimen sine lege*), which means that no act can be punished unless it has been previously regulated by law. This principle is explicitly stated in Article 1, paragraph (1) of the Indonesian Penal Code (KUHP) and aims to prevent arbitrary actions by law enforcement officials. With this principle, criminal law does not apply retroactively, and everyone has legal certainty regarding their actions.

Furthermore, criminal law in Indonesia also guarantees protection for the rights of suspects and defendants, including the presumption of innocence. This principle states that every person accused of a crime must be considered innocent until a court ruling states otherwise. This principle is crucial to ensure that legal processes are conducted fairly and objectively, without social stigma burdening the defendant before there is evidence and a valid ruling. Protection for suspects is also reinforced by the right to legal assistance, as regulated in Article 56 of the Criminal Procedure Code (KUHAP) and Article 34 of Law No. 39 of 1999 on Human Rights. The state is obligated to provide legal counsel for those who are economically disadvantaged, ensuring that everyone has an equal opportunity to defend themselves in court.

²¹ Juliardi, B., Runtuwun, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). *Metode penelitian hukum*. CV. Gita Lentera.

²² Syarif, M., Ramadhani, R., Graha, M. A. W., Yanuaria, T., Muhtar, M. H., Asmah, N., ... & Jannah, M. (2024). *Metode Penelitian Hukum*.

Another important principle is the prohibition against torture and degrading treatment. In the context of criminal law, whether during arrest, detention, investigation, or trial, law enforcement officials are strictly prohibited from using physical or psychological violence against suspects. This is regulated in Article 28G of the 1945 Constitution and Article 33 of the Human Rights Law and is reinforced by Indonesia's commitment to various international human rights instruments such as the Convention Against Torture (CAT). Violations of this principle not only infringe upon human rights but can also serve as grounds for legal action against officials who engage in torture.

Additionally, Indonesian criminal law recognizes the principle of "no punishment without fault." This principle states that a person can only be subjected to criminal punishment if there is an element of conscious wrongdoing in their actions, whether through intent or negligence that meets the criteria for a crime. In other words, a person who acts out of necessity, mental disturbance, or without fault cannot automatically be subjected to criminal punishment. This principle ensures that penalties are not imposed unjustly and that the moral and psychological context of the perpetrator is considered.

Overall, the principles of human rights in Indonesian criminal law aim to create a just, civilized judicial system that respects human dignity. Although there is a strong normative foundation, the challenges of implementation in practice remain significant. Law enforcement practices that are still associated with torture, criminalization, and unequal access to legal assistance indicate that these principles need to be reinforced in the daily practice of criminal law.

In human rights, there are four principles of Values: 1) freedom, 2) independence, 3) equality, and 4) justice. Freedom is a respect granted by the Creator to the dignity of human beings as His creations, where humans are given the freedom by God to exercise their power. Independence means that humans have been granted freedom by the Creator; therefore, they must be allowed to be independent in the sense that they should not be colonized, shackled, or restrained in any form. These principles serve as the foundation for understanding and promoting human rights, emphasizing the inherent dignity and worth of every individual. They highlight the importance of allowing individuals to live freely and independently, without oppression or discrimination, and to ensure that all people are treated equally and justly in society.

Human beings originate from the same creation of God, and as fellow creations of God, they should not differentiate between one another. Based on this principle, it is established in legislation that every person is equal before the law and the government. The fundamental principle of justice indicates the existence of equality before the law and the government, which is a key characteristic of a rule of law and democratic state. The primary objective of a rule of law and democratic state is to ensure justice and to uphold it.

This principle of justice is also based on the theory of justice. According to Van Apeldoorn, there are two types of justice: commutative justice (equality) and distributive justice (proportionality). Commutative justice is the type of justice that allocates equal shares to everyone without regard to individual contributions. Distributive justice, on the other hand, allocates shares to each person according to their contributions.

Another theory of justice that is more relevant to human rights is the theory of justice proposed by John Rawls. According to him, there are at least three principles that govern justice. Rawls' theory conceptualizes justice as fairness, which includes the principle that free and rational individuals who wish to pursue their interests should have an equal position at the outset, and these are fundamental conditions for them to enter the associations they desire. In this understanding, according to Rawls, justice becomes fairness if the existing order is acceptable to all people in a just manner. Through the voluntary acceptance of the existing order by all groups, communities, races, ethnicities, and religions without coercion, the social order becomes just. This aims to provide a foundation for social cooperation in a

modern pluralistic society.²³ According to him, the organization of a modern pluralistic society should not be based on a specific set of life values but should be governed by principles that guarantee and express common interests. This principle is referred to as social justice or "justice as fairness".²⁴

The first principle states that every person has an equal right to the most extensive basic freedoms possible, as long as these freedoms can be reconciled with the same system for others. The second principle states that social and economic inequalities should be arranged in such a way as to provide the greatest benefit to the least advantaged members of society. The third principle provides for a system of equal access to all positions based on equal opportunity. Through Rawls' way of thinking, the conception of justice can be understood as emphasizing "fairness," as it encompasses aspects of equality, both in general (the principle of greatest equal liberty) and in terms of equal opportunity (the principle of fair opportunity), as well as addressing inequalities (the difference principle) fairly.

Human Rights (HAM) are fundamental rights possessed by every individual that must be respected, protected, and guaranteed by the state. In the context of criminal law, human rights serve as a guideline for law enforcement in maintaining a balance between public interests and the protection of individual rights. In Indonesia, the application of human rights principles in criminal law has received increasing attention, especially after the reform era marked by the amendment of the 1945 Constitution and the ratification of various international instruments related to human rights.

In criminal law, several important human rights principles include:

- a. Principle of Legality: Criminal law must be clear and precise in defining prohibited actions and their penalties, as reflected in Article 1, paragraph (1) of the Indonesian Penal Code (KUHP);
- b. Principle of Equality Before the Law: Every individual is entitled to equal treatment in the enforcement of the law without discrimination;
- c. Principle of Fair Trial: This guarantees the defendant's right to a fair and honest judicial process, including the right to legal representation;
- d. Right Not to Be Subjected to Torture: This refers to Article 28G, paragraph (2) of the 1945 Constitution and the Convention Against Torture, which has been ratified through Law No. 5 of 1998.

In addition to the fundamental principles mentioned, Indonesian criminal law also emphasizes the principle of fair and impartial trial as part of the respect for human rights. This principle demands that legal processes be conducted openly, transparently, and in a balanced manner between the rights of victims and the rights of suspects or defendants. In practice, this principle includes the right to be informed of the charges in detail, the right to present mitigating witnesses, the right not to be compelled to confess, and the right to appeal. The fair trial principle is also recognized in various international human rights instruments ratified by Indonesia, such as the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005. Thus, Indonesia has a legal obligation to apply these international judicial standards within its judicial system.

The principle of *pro justitia* is also an important aspect of law enforcement based on human rights. This principle emphasizes that every legal process, especially during the investigation and inquiry stages, must be conducted solely to uphold justice and not for political, economic, or external pressures. In this context, law enforcement officials such as police and prosecutors are required to perform their duties professionally, and objectively, and to uphold the rights of citizens, including not imposing irrelevant charges or detaining someone without a strong legal basis.

²³ Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press. Revised 1999.

²⁴ Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press. Revised 1999.

Moreover, the principle of proportionality in sentencing is also a form of human rights protection in criminal law. This means that the punishment imposed must be commensurate with the severity of the criminal act committed, while also considering the personal circumstances of the defendant, motives, consequences, and potential for rehabilitation. A punishment that is too lenient can undermine the community's sense of justice, while a punishment that is excessively harsh and inhumane can violate the rights of the defendant as a human being. Therefore, in modern criminal law systems, a restorative justice approach is also being developed, particularly for minor cases, to achieve a more humane resolution focused on restoring social relationships.

Finally, the principle of protection for vulnerable groups is also part of human rights principles in the context of criminal law. Children, women, persons with disabilities, and minority groups often find themselves in a weak position within the judicial system. Therefore, criminal law and its procedures must provide special treatment that is fair and protects them from revictimization or structural injustice. For example, in the examination process of children in conflict with the law, a special approach is needed, such as child-friendly examination rooms and the presence of social workers or psychologists.

Thus, the principles of human rights in Indonesian criminal law not only protect the rights of suspects and defendants but also emphasize the importance of balancing the protection of victims, social justice, and the rule of law. Although normatively Indonesia has accommodated these principles in various regulations, the greatest challenge remains in the implementation aspect on the ground, particularly concerning the integrity of law enforcement officials, awareness of human rights, and equal access to justice for the community.

The discourse on Human Rights (HAM) in Indonesia has evolved alongside the establishment of the Unitary State of the Republic of Indonesia (NKRI). Broadly speaking, the development of human rights thought in Indonesia can be divided into two periods: the period before and after independence.

The Flow of Human Rights Thought in Indonesia

The discourse on human rights during the pre-independence period can be observed through the history of the emergence of national movement organizations, such as Boedi Oetomo (1908), Sarekat Islam (1911), Indische Partij (1912), the Indonesian Communist Party (1920), Perhimpunan Indonesia (1925), and the Indonesian National Party (1927). The birth of these national movement organizations is closely linked to the historical context of human rights violations perpetrated by colonial rulers, including oppression and exploitation of the rights of the Indonesian people. The peak of the human rights debate was articulated by national movement figures such as Sukarno, Agus Salim, Mohamad Natsir, Mohammad Yamin, K.H. Mas Mansur, K.H. Wachid Hasyim, and Mr. Maramis during the sessions of the Investigating Committee for Preparatory Work for Independence (BPUPKI). These discussions laid the groundwork for the recognition and incorporation of human rights principles in the foundation of the Indonesian state, reflecting the aspirations of the Indonesian people for justice, equality, and dignity in the face of colonial oppression.

In the sessions of the Investigating Committee for Preparatory Work for Independence (BPUPKI), national figures debated and negotiated to formulate the foundational principles of governance and the structure of the state that would guarantee the rights and obligations of the state and its citizens in the Republic of Indonesia that was to be proclaimed.

One interesting point is that although the 1945 Constitution (UUD 1945) is a written fundamental law that includes the basic human rights of Indonesians as well as fundamental obligations, the term "human rights" (HAM) itself is not found in the UUD 1945, neither in the Preamble, the Body, nor the

Explanation. Instead, it only mentions the rights and obligations of citizens.²⁵ In the early post-independence period, the discourse on human rights still emphasized the right to independence, the freedom to associate through established political organizations, and the freedom to express opinions, particularly in parliament. This focus reflected the aspirations of the Indonesian people to secure their rights in the context of a newly independent nation, highlighting the importance of political freedoms and civil liberties as essential components of the emerging democratic framework.²⁶

The discourse on human rights (HAM) during the period of 1950-1959, known as the parliamentary democracy era, marked a highly conducive phase for the history of human rights in Indonesia. According to Bagir Manan, this golden era of human rights in Indonesia is reflected in five key indicators:²⁷

- a. Emergence of Political Parties with Diverse Ideologies: Various political parties representing a range of ideologies began to form, contributing to a vibrant political landscape;
- b. Freedom of the Press: There was a notable increase in press freedom, allowing for a more open exchange of ideas and information;
- c. Conduct of Free and Democratic Elections: Elections were held in a safe, free, and democratic manner, providing citizens with the opportunity to participate in the political process;
- d. Parliamentary Control over the Executive: The parliament exercised control over the executive branch, ensuring accountability and oversight in governance;
- e. Open and Democratic Debates on Human Rights: There was a free and democratic debate on human rights, with various political factions agreeing on the substance of universal human rights and the importance of incorporating these rights into the 1945 Constitution.

During this period, the acknowledgement of human rights became a shared commitment among different political parties, highlighting the growing awareness and importance of human rights in the Indonesian political discourse. This era laid the groundwork for further developments in human rights protections and the establishment of a more democratic society.

The discourse on human rights (HAM) entered the period from 1959 to 1966 under the system of Guided Democracy, which was centred around the power of President Sukarno. Guided Democracy was essentially a rejection by President Sukarno of the parliamentary democracy system, which he viewed as a Western construct. According to Sukarno, parliamentary democracy was incompatible with the character of the Indonesian nation, which had its traditions in social, national, and state life. Under the Guided Democracy system, power became centralized in the hands of the President. The President was not subject to parliamentary control; rather, the parliament was controlled by the President. Sukarno's power was absolute, and he was even declared President for life. The direct consequence of this highly individualistic model of governance was the suppression of citizens' human rights. All political views within society were required to align with the authoritarian policies of the government. This period saw a significant curtailment of freedoms, including freedom of expression, assembly, and association. The political climate became increasingly repressive, with dissenting voices silenced and public debate on human rights issues severely restricted. The emphasis on a singular national ideology and the centralization of power led to a lack of accountability and transparency in governance, further undermining the protection and promotion of human rights in Indonesia during this era.²⁸

²⁵ Badan Pembinaan Hukum Nasional. (1999). Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia. Diakses dari <https://bphn.go.id/data/documents/99uu039.pdf>.

²⁶ Juwana, H. (2021). Human Rights in Indonesia. *Indonesian Journal of International Law*, 4(1), Article 1. DOI: 10.17304/ijil.vol4.1.131. Diakses dari <https://scholarhub.ui.ac.id/ijil/vol4/iss1/1>.

²⁷ Wahyudi, I., & Masduki, Y. (2024). Perbandingan Muatan Hak Asasi Manusia dalam UUD NRI Tahun 1945 dan Rancangan UUD Usulan Kelompok Republik Persatuan Indonesia (RPI). *Ahmad Dahlan Legal Perspective*, 4(2), 135-149.

²⁸ Wahyudi, I., & Masduki, Y. (2024). Perbandingan Muatan Hak Asasi Manusia dalam UUD NRI Tahun 1945 dan Rancangan UUD Usulan Kelompok Republik Persatuan Indonesia (RPI). *Ahmad Dahlan Legal Perspective*, 4(2), 135-149.

During the period from 1966 to 1998, the discourse on human rights (HAM) entered the era of the New Order regime. Initially, the New Order promised new hope for the enforcement of human rights in Indonesia, with various seminars on human rights being conducted. However, in reality, the New Order left a dark history of human rights violations in Indonesia. Human rights violations during the New Order can be seen in the regime's centralistic political policies and its anti-political movement stance against any opposition to the government. Among the points of rejection by the New Order government against the concept of universal human rights were: a) Human Rights as a Western Construct: The government argued that human rights were a product of Western thought that did not align with the noble values of Indonesian culture, as reflected in Pancasila; b) Pre-existing Human Rights Awareness: The government claimed that the Indonesian nation had already recognized human rights, as enshrined in the 1945 Constitution, which was established before the Universal Declaration of Human Rights; c) Western Manipulation of Human Rights Issues: The government contended that human rights issues were often used by Western countries to undermine developing nations like Indonesia.²⁹

Under President Suharto's administration, the term "opposition party" was virtually nonexistent, and any movements opposing government policies were deemed anti-development or anti-Pancasila. Through a security approach characterized by violent methods that contradicted human rights principles, the New Order government did not hesitate to suppress any societal aspirations deemed contrary to its rule. This led to numerous cases of human rights violations during this period, such as the Tanjung Priok incident, the Kedung Ombo case, and events in Lampung and Aceh, which are just a few examples of the extensive list of human rights abuses committed by the New Order authorities. The repressive environment stifled dissent and curtailed the fundamental rights of citizens, creating a legacy of human rights challenges that would persist long after the fall of the New Order regime.

Efforts to enforce human rights (HAM) by non-governmental groups through Non-Governmental Organizations (LSM) yielded encouraging results. The strong demands for human rights enforcement from society ultimately led to a shift in the New Order government's stance, making it more accommodating to human rights demands. One of the accommodating actions taken by the government was the approval of the establishment of the National Commission on Human Rights (Komnas HAM) through a Presidential Decree (Keppres). The presence of Komnas HAM was intended to monitor and investigate the implementation of human rights and provide opinions, considerations, and recommendations to the government regarding human rights practices. This institution also played a crucial role in promoting and implementing human rights by Pancasila and the 1945 Constitution. Komnas HAM became a platform for civil society to voice their concerns and seek accountability from the government regarding human rights issues. The establishment of Komnas HAM marked a significant step towards recognizing and institutionalizing human rights in Indonesia, reflecting the growing awareness and advocacy for human rights within society. Despite the challenges that remained, this development indicated a shift towards a more open dialogue about human rights and the need for accountability in governance.

Mechanism for Resolving Gross Human Rights Violations Cases in Indonesia

Until now, there is no single definition regarding the concept of human rights violations, although there is a consensus among experts that human rights violations are understood as "violations of the obligations of the state arising from international human rights instruments. Violations of these state obligations can occur in two ways:³⁰

- a. Acts of Commission: This refers to active actions taken by the state or state agents that violate human rights. Examples include torture, arbitrary detention, or killings carried out by authorities;

²⁹ Nazril, M. M., Juliandi, D., Hikmah, L. J., Nabela, N., Nazmah, F., & Putera, M. L. S. (2024). Implementasi Hukum HAM di Indonesia: Tantangan dan Solusi. *Perspektif Administrasi Publik dan hukum*, 1(4), 01-15.

³⁰ Komnas, H. A. M. (2024). *Instrumen HAM Nasional*. Komnas HAM.

- b. Acts of Omission: This refers to the state's failure to protect or fulfil human rights. For instance, if the state does not take action to prevent human rights violations committed by third parties, or if the state fails to provide protection to individuals or groups who are threatened.

In another formulation, human rights violations can be defined as "actions or omissions by the state against norms that have not been criminalized in international criminal law but are recognized as human rights norms internationally." This indicates that human rights violations do not always have to violate existing criminal laws but can also encompass violations of fundamental human rights principles that are universally recognized. This definition reflects the complexity and dynamics of understanding human rights violations, as well as the importance of the state's commitment to respect, protect, and fulfil human rights by international standards.

From this formulation, it is clear that the party responsible for human rights violations is the state, not individuals or other legal entities. The focal point in human rights violations is the concept of state responsibility. The concept of state responsibility in international law is generally understood as "responsibility arising from violations of international law by the state." However, in international human rights law, the meaning of state responsibility shifts to "responsibility arising from violations of the obligation to protect and respect human rights by the state. The obligations referred to are those that arise from international human rights treaties as well as from international customary law, particularly norms of international customary law that possess the character of "jus cogens. Jus cogens norms are fundamental principles of international law that are universally recognized and cannot be violated or derogated from, reflecting the highest standards of human rights protection. This shift in understanding emphasizes the state's duty to uphold human rights and the consequences that arise when it fails to do so.

The formulation of human rights violations is not identical to "the most serious international crimes." Although international crimes such as genocide, crimes against humanity, aggression, terrorism, and war crimes can be referred to as "human rights violations," they cannot simply be equated with human rights violations because their accountability mechanisms are very different.

International crimes typically involve a higher threshold of severity and are subject to specific legal frameworks and jurisdictions, such as the International Criminal Court (ICC). These crimes are prosecuted under international law and often require a different level of evidence and legal procedures compared to other human rights violations, which may be addressed through domestic legal systems or human rights bodies. Thus, while there is an overlap between the concepts, the distinctions in terms of legal responsibility, definitions, and the processes for accountability highlight the complexity of addressing human rights violations in both national and international contexts.³¹

The definition of human rights violations is outlined in Article 1, point 6 of Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia, which explains that a human rights violation is any act by an individual or a group of individuals, including state apparatus, whether intentional or unintentional, or due to negligence, that unlawfully contravenes, reduces, obstructs, limits, and/or revokes the human rights of an individual or group of individuals guaranteed by this Law, and does not receive, or is feared not to receive, a fair and proper legal resolution based on the applicable legal mechanisms. This definition emphasizes the various forms that human rights violations can take, including both active and passive actions, and highlights the importance of access to justice for victims of such violations. It underscores the obligation of the state to ensure that individuals can seek redress and that their rights are protected under the law.

The formulation regarding human rights violations mentioned above, according to Titon Slamet, is considered less accurate because it does not theoretically refer to the normative concept of human rights

³¹ Putra, A. B. (2024). Kejahatan internasional dan peran Mahkamah Pidana Internasional dalam menegakkan hukum pidana internasional. *Jurnal Universitas 17 Agustus 1945 Jakarta*.

that views the factor of state power as a problem. The normative concept of human rights aims to prevent the possibility of abuse of authority and the coercive power of the state. By linking human rights violations to state power, there are two types of human rights violations: those involving actions (acts of commission) and those involving inaction (acts of omission). The latter occurs when violations are committed by individuals or groups who are not state agents, but the state, through its apparatus, fails to act, either preventively or repressively. This perspective emphasizes the responsibility of the state not only to refrain from violating human rights but also to take proactive measures to protect individuals from violations committed by non-state actors. It highlights the dual role of the state in both preventing and addressing human rights violations, reinforcing the idea that state accountability is crucial in the protection of human rights.³²

In a meeting of 30 experts held in Maastricht from January 22 to 26, 1997, the "Maastricht Guidelines" were produced as a framework for elaborating the principles of implementation of the Limburg Principles regarding the International Covenant on Economic, Social, and Cultural Rights. These guidelines address the nature and scope of violations of economic, social, and cultural rights. The Maastricht Guidelines explain that violations of human rights by state actors or non-state actors can occur through actions taken to commit violations (acts of commission) by the state or other parties that are not adequately regulated by the state, or through the failure of the state to take any action (acts of omission). This highlights the dual responsibility of the state: not only must it refrain from violating rights, but it must also ensure that adequate measures are in place to protect individuals from violations committed by others, including non-state actors. The guidelines emphasize the importance of state accountability in safeguarding economic, social, and cultural rights, reinforcing the idea that both action and inaction can lead to human rights violations.³³

The mechanism for resolving serious human rights violations in Indonesia is specifically regulated by Law No. 26 of 2000 concerning Human Rights Courts. This law was enacted as a response to various humanitarian tragedies that occurred in the past, to ensure that every form of serious human rights violation, such as genocide and crimes against humanity, can be processed fairly and transparently through the national judicial system.

The mechanism begins with an investigation conducted by the National Commission on Human Rights (Komnas HAM). Komnas HAM is authorized to collect evidence, request testimonies from witnesses, and conduct thorough investigations into allegations of serious human rights violations. If strong indications are found, the results of the investigation are submitted to the Attorney General's Office, which is responsible for conducting further investigations and bringing the case to the Ad Hoc Human Rights Court. This court is special and can only be established with the approval of the House of Representatives (DPR), and it applies only to specific cases that occurred before the enactment of the law, such as the East Timor case and the Trisakti-Semanggi tragedy.

In practice, the resolution of serious human rights violation cases often faces various challenges, including political, legal, and technical aspects. One of the main obstacles is the lack of political will from the relevant institutions to bring cases to court, even though Komnas HAM has indicated the presence of serious human rights violations. Additionally, this mechanism is also considered ineffective in delivering justice for victims and their families, as many cases end without punishment for the main perpetrators. In several cases, such as the 1965-1966 tragedy, the Semanggi I and II tragedies, and the enforced disappearances of activists in 1997-1998, none have been fully prosecuted in the Human Rights Court. As a result, public trust in the judicial mechanism has diminished.

³² Rizqiqa, L. D., Wulandari, W., & Putri, N. S. (2024). Implikasi Pengaturan Pelanggaran Ham Berat Dalam Kuhp 2023 Terhadap Keberlakuan Asas-Asas Khususnya: Penguatan Atau Pelemahan?. *Litigasi*, 25(1), 21-60.

³³ Rizqiqa, L. D., Wulandari, W., & Putri, N. S. (2024). Implikasi Pengaturan Pelanggaran Ham Berat Dalam Kuhp 2023 Terhadap Keberlakuan Asas-Asas Khususnya: Penguatan Atau Pelemahan?. *Litigasi*, 25(1), 21-60.

As an alternative, the Indonesian government has begun to develop non-judicial resolution approaches, such as the state's recognition of 12 past serious human rights violations in 2023. However, this approach has also faced criticism for neglecting aspects of justice and legal accountability. Thus, although Indonesia has a normative legal framework for addressing serious human rights violations, its implementation is still far from expectations. Serious reforms, increased transparency, and genuine commitment from all state institutions are needed to uphold justice and provide redress for victims. Without concrete steps, the resolution of serious human rights violation cases will remain a discourse without legal certainty and true justice.

The existing legal mechanisms indicate that Indonesia has a fairly complete structure to handle serious human rights violation cases, starting from investigations by Komnas HAM, prosecutions by the Attorney General's Office, to judicial processes through the Human Rights Court. However, in practice, there is a disconnection between law enforcement agencies, causing the process to be very slow or even stalled. Komnas HAM often complains that the investigation results they submit are not seriously followed up by the Attorney General's Office, citing a lack of evidence or failure to meet formal requirements. In the context of systemic serious human rights violations, evidence is often difficult to access due to the involvement of state power or actors, necessitating more progressive legal interpretations and political courage to follow up.

Moreover, the dependence of the establishment of the Ad Hoc Human Rights Court on the approval of the DPR also poses a serious issue, as it makes the legal process highly vulnerable to political intervention. Many believe that the DPR often does not show support for victims, leading to frequent rejections of court establishment recommendations. This contradicts the spirit of justice and the protection of victims' rights, which should be a top priority. In cases like the Semanggi I and II tragedies, for example, the DPR explicitly stated that these events were not serious human rights violations, despite Komnas HAM stating otherwise based on their investigations.

This situation has prompted the government to offer non-judicial resolutions, focusing more on recognition, reconciliation, and the restoration of victims' rights without going through judicial processes. One concrete form of this approach is the establishment of the Non-Judicial Resolution Team for Serious Human Rights Violations (PPHAM) in 2022, which resulted in the government's official recognition of 12 past serious human rights violation cases. However, this approach still faces both support and opposition. On one hand, this step is seen as a good-faith effort by the state to acknowledge and respond to the suffering of victims. On the other hand, without legal processes and accountability for perpetrators, justice is not truly upheld, and victims still do not receive comprehensive redress, whether legal, social, or psychological.

In this context, it is important to highlight that the mechanism for resolving serious human rights violations should not only be oriented towards formal legal processes but also consider the principles of transitional justice: truth, justice, reparation, and guarantees of non-recurrence. These four pillars must work in tandem for the resolution of serious human rights violations to be accepted by society and to fulfil the sense of justice for victims. Unfortunately, until now, Indonesia still lags in building a system that can effectively integrate.

Based on the above description, it can be concluded that the mechanism for resolving serious human rights violations in Indonesia has a sufficient legal foundation through Law No. 26 of 2000 concerning Human Rights Courts. This mechanism includes stages of investigation by the National Commission on Human Rights (Komnas HAM), prosecution by the Attorney General's Office, and judicial processes through the Ad Hoc Human Rights Court. However, in practice, there are still many obstacles faced, including weak coordination among institutions, political intervention, and a lack of willingness to seriously follow up on investigation results. As a result, many cases of serious human rights violations, such as the 1965 Tragedy, the Semanggi Tragedy, and the enforced disappearances of

activists, have not yet found justice for the victims. Although the alternative non-judicial resolution offered by the government shows state recognition of the violations that occurred, this approach is not sufficient to fulfil the rights to truth and justice that victims and their families should receive. Therefore, the resolution of serious human rights violations in Indonesia must be carried out comprehensively. This should not only include recognition but also fair, transparent, and victim-oriented law enforcement. These steps are essential to prevent the recurrence of similar violations in the future and to build public trust in the judicial system, as well as to ensure that the rights of victims are respected and restored.

Conclusion

Gross human rights violations are serious issues in Indonesia that require more attention and effective handling. Although the government has tried to resolve these cases through Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia and Undang-Undang No. 26 Tahun 2000 tentang Pengadilan HAM, the implementation is not optimal. The existence of international tribunals such as the ICC and various ad hoc tribunals shows that human rights violations must be held legally accountable. The settlement mechanism through the Truth and Reconciliation Commission (KKR) can be the best alternative to uncover the truth, provide justice for victims, break the cycle of impunity, and support the transition to a democratic system that respects law and human rights. A strong commitment from all parties is needed to ensure that the settlement of human rights violations is carried out fairly and transparently, to be able to build public trust in the justice system in Indonesia.

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