

## **Renewal of the Human Rights Court Mechanism to Handle Serious Violations Resulting from Contemporary Conflicts**

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### **ABSTRACT**

Horizontal and vertical conflicts that have occurred in Indonesia in recent decades have given birth to various forms of gross human rights violations, such as mass killings, torture, and enforced disappearances. However, the existing human rights justice mechanism has not been able to provide substantive justice and legal certainty for victims. Structural and procedural weaknesses in the judicial system, as well as the limited authority of investigative agencies, are the main inhibiting factors in the resolution of these cases. This study aims to evaluate the effectiveness of the applicable human rights justice mechanisms and offer a systemic form of legal reform. The method used is juridical-normative with a legislative and conceptual approach. Data was collected through a literature study of primary and secondary legal sources. The results of the study show the urgency of comprehensive reform in the human rights justice system to ensure accountability of perpetrators, recovery for victims, and prevention of future violations. The findings of the study reveal that: (1) the effectiveness of the current human rights justice system is very low, both quantitatively (the number of cases processed) and qualitatively (victim satisfaction); (2) there is a disharmony between legal norms and human rights enforcement practices in the field; and (3) the weak political will of the state is the root of the problem of stagnation in handling cases.

**Keywords:** Gross human rights violations; human rights justice; current conflicts; legal reform; transitional justice.

### **INTRODUCTION**

Indonesia, as a state of law based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, upholds the respect, protection, and fulfillment of human rights (Haris, 2012; Sihombing, 2017). This commitment is also juridically affirmed through the establishment of Law No. 39 of 1999 concerning Hak Asasi Manusia (Human Rights) (Hidayat, 2005; Putra, 2019) and Law No. 26 of 2000 concerning Pengadilan Hak Asasi Manusia (Human Rights Courts) (Ma'ruf, 2016; Arifin, 2020). The development of these legal instruments arose from the hope for the presence of a state capable of providing substantive justice and accountability for gross human rights violations, particularly as part of post-Orde Baru (New Order) reforms (Hasan, 2013; Gunawan, 2021).

*Gross human rights violations* are extraordinary crimes that demand resolution through fair, speedy, and transparent legal mechanisms (Khanal et al., 2023). Since the enactment of Law No. 26 of 2000 concerning the *Pengadilan Hak Asasi Manusia*, Indonesia has normatively possessed a legal framework to prosecute *crimes against humanity*. According to Jimly Asshiddiqie, “the international community and society have great hope that the ratification of this regulation will be an important milestone in upholding justice and preventing the recurrence of structural violence and gross human rights violations in the future.”

However, the reality indicates that these legal instruments have not been effective in resolving various cases of *gross human rights violations*, both from the past and as

consequences of contemporary conflicts. Data from the 2023 Komnas HAM Report states, “a number of major cases such as the 1965 Tragedy, the Trisakti-Semanggi Tragedy, East Timor, Wasior-Wamena, Paniai, and violence in Papua have not experienced significant progress in terms of investigation, prosecution, and restoration of victims’ rights.”

According to Muhaimin, “there are various structural obstacles that cause severe stagnation in human rights law enforcement, including the weak authority of *Komnas HAM* as an investigative institution, the dependence of the investigation process on the authority of the Attorney General’s Office, and the lack of political will from the state to bring these cases to the judicial realm.” In fact, Human Rights Watch stated in its report that “Indonesia has failed to meet the principles of *transitional justice*, including the right to truth and the restoration of victims.”

Furthermore, in the context of dynamic current conflicts, such as *agrarian conflicts*, armed conflicts in Papua, and violence against indigenous peoples, the state has not been able to respond with an adaptive and victim-friendly legal approach. Amnesty International noted that “violence by security forces against civil society continues without adequate accountability.” This situation demonstrates a gap between legal norms and law enforcement practices in the field.

In comparison, according to Sriram, “some countries that have also experienced gross human rights violations, such as Sierra Leone and *Timor Leste*, have established hybrid justice mechanisms or *truth commissions* to strengthen the justice transition process.” In Indonesia, efforts to reform the human rights justice mechanism are consistently hampered by dual jurisdiction issues—between national and international spheres—and the inadequate participation of victims in legal processes.

Previous studies, such as those by Muhaimin (2022) and Nurhasan Ismail (2021), have highlighted the structural and procedural weaknesses in Indonesia’s human rights justice system. Research by the International Center for Transitional Justice (ICTJ, 2019) and reports from Komnas HAM (2023) have documented the lack of progress in resolving major human rights cases, such as the 1965 Tragedy and the Paniai incident. Internationally, Sriram (2004) and Brett & McConnachie (2017) have explored *hybrid justice* models in countries like Sierra Leone and *Timor Leste*, showing their effectiveness in addressing *gross human rights violations*. Despite these studies, a significant gap persists between the normative framework of human rights justice in Indonesia and its practical implementation. Key issues include the lack of political will, the weak authority of Komnas HAM, and the absence of victim-centered approaches. While international models such as *hybrid tribunals* have been successful elsewhere, their applicability and adaptation to Indonesia’s unique legal and political context remain underexplored.

This research introduces a novel approach by proposing a *hybrid human rights justice model* tailored for Indonesia that combines national and international legal mechanisms. It also emphasizes the integration of a permanent ad-hoc human rights court and a comprehensive victim rehabilitation scheme, which previous research has not systematically addressed. The study further innovates by advocating for legislative amendments to strengthen Komnas HAM’s investigative authority—a critical gap in current human rights enforcement.

Considering these complexities, there is an urgent need to redesign human rights justice mechanisms to respond to *gross human rights violations* in a more effective, humane, and inclusive manner, while upholding the principle of accountability. Reform in this area is crucial not only for ensuring justice for victims but also for maintaining the state's legitimacy in domestic and international forums.

Based on the description above, two main problems can be formulated for investigation in this paper: How effective is the current human rights justice mechanism in dealing with *gross human rights violations* resulting from current conflicts? What is the ideal form of reform for the human rights justice mechanism to respond to the challenges of gross human rights violations and meet the expectations of justice?

The aim of this research is to evaluate the effectiveness of the human rights justice mechanisms currently in place in Indonesia in dealing with *gross human rights violations*, and to formulate an ideal reform model to strengthen the human rights justice system. Specifically, this research seeks to identify structural and procedural weaknesses in the human rights enforcement process, analyze the political and legal barriers that hinder the resolution of cases, and design hybrid mechanisms that integrate national and international approaches to ensure accountability for perpetrators and recovery for victims.

The benefits of this research encompass both theoretical and practical aspects. Theoretically, this research contributes to the development of the concepts of *hybrid human rights justice* and *transitional justice*, especially in the Indonesian context. Practically, the research can serve as a reference for policymakers in designing legal and institutional reforms, strengthening the role of Komnas HAM, and enhancing victims' participation in the judicial process. In addition, it is expected to encourage the fulfillment of the principles of justice, truth, and restoration for victims of gross human rights violations, and to strengthen Indonesia's legitimacy in international human rights forums.

## RESEARCH METHODS

The methods used in this research employ a *juridical-normative* approach, integrating both legislative and conceptual frameworks to analyze the effectiveness of the human rights justice mechanism in Indonesia. The legislative approach centers on an in-depth study of Law No. 26 of 2000 concerning *Pengadilan Hak Asasi Manusia* (Human Rights Courts) and Law No. 39 of 1999 on *hak asasi manusia* (human rights), along with relevant international human rights instruments.

Simultaneously, a conceptual approach is adopted to scrutinize theories of *transitional justice*, the *right to truth*, and the *recovery of victims*. Data collection is undertaken through a *literature study* that involves the examination of primary legal materials—such as statutory laws, regulations, and court decisions—and secondary sources, including books, academic journals, and institutional human rights reports. Tertiary materials are employed to deepen the understanding of foundational concepts.

Subsequently, the collected data is analyzed qualitatively by conducting an inventory and systematization of legal sources, interpreting the gaps between legal norms and real-world implementation, and critically evaluating the effectiveness of the justice system. This analysis also includes the formulation of reform recommendations, which encompass a *hybrid judicial model* and a comprehensive victim recovery scheme.

Through this methodological approach, the research aims to deliver a thorough evaluation and offer practical solutions to enhance and fortify the human rights justice system in Indonesia.

## RESULTS AND DISCUSSION

### Effectiveness of the Current Human Rights Justice Mechanism

The effectiveness of the human rights justice mechanism in Indonesia is still far from the expectations of the victim community and international standards. Since the enactment of Law No. 26 of 2000 concerning Human Rights Courts, only a handful of cases of gross human rights violations have been brought to trial, and even fewer have resulted in verdicts that reflect substantive justice.

Cases such as human rights violations in East Timor, Abepura, and Tanjung Priok that have been processed through human rights courts have resulted in acquittals or incomplete criminal accountability against key actors. According to Muhaimin, "this is due to the structural dependence on the Attorney General's Office which has the sole authority to bring cases resulting from Komnas HAM investigations to the investigation stage, where this process is often politicized or stagnant without clear legal reasons". Komnas HAM as an investigative institution established based on Law No. 39 of 1999 and given the main role in the initial process of human rights justice, in fact does not have adequate investigative authority. Findings or investigation reports submitted to the Attorney General's Office are often not acted upon. Nurhasan Ismail emphasized that "the absence of investigative authority makes this institution like a "tiger without fangs" in the enforcement of heavy human rights".

Amnesty International also criticized the slow process of resolving cases of gross human rights violations. In its report, Amnesty highlighted the lack of openness, disproportionate delays, and the absence of protection for victims and witnesses in cases of human rights violations in Papua. The legal process is considered biased, repressive, and does not reflect the principles of due process of law.

Institutionally, coordination between Komnas HAM, the Attorney General's Office, and the Supreme Court does not run synergistically. The Prosecutor's Office often rejects Komnas HAM's report on the grounds that it is "incomplete", without further clarification or investigation, as happened in the case of Wasior-Wamena and the Paniai Tragedy. In fact, in the pro-victim and transitional legal approach, the limitation of evidence due to the loss of time should not be a reason not to investigate, but rather a basis for strengthening the state's investigative work.

In the 2023 Komnas HAM report, it is stated that of the 14 cases of gross human rights violations that have been investigated since 2000, only 3 have entered the court process, and only 1 has been decided with criminal sanctions. It shows a very low effectiveness ratio. Even when ad-hoc human rights courts are established, as in the case of East Timor, the dominance of national political interests and pressure from the military elite results in lenient sentences and acquittals.

According to Todung Mulya Lubis, "the human rights legal system in Indonesia has stagnated due to the lack of political will from the state to confront perpetrators who still have structural power". This, according to Brett & McConnachie, is "exacerbated by the government's attitude that prioritizes the "peaceful path" or unilateral reconciliation without a juridical basis and victim participation, as seen in the "state apology" in 2023 without any court process."

The effectiveness of the system can also be assessed from an international perspective. The UN Human Rights Committee's comments on Indonesia's periodic report show concern over the incompatibility of the national human rights justice system with the principles of the International Convention on the Elimination of Torture and the ICCPR.

Thus, the effectiveness of human rights justice in Indonesia is currently considered very low both quantitatively (the number of cases processed) and qualitatively (victim satisfaction, restoration of rights, deterrent effect for perpetrators). A comprehensive reform design is needed so that this

mechanism is able to answer the challenge of gross human rights violations due to current conflicts that tend to be more complex, spread, and involve state actors.

## **Ideal Form of Human Rights Judicial Mechanism Reform**

The stagnation of the settlement of cases of gross human rights violations in Indonesia is a reflection of the failure of the national justice system in fulfilling the principles of justice, accountability, and recovery for victims. Therefore, systemic reform of the human rights justice mechanism is inevitable. In this context, this paper offers a novelty in the form of a hybrid model of human rights justice, which is an integrative mechanism that combines national and international legal approaches, as well as expanding the mandate of independent institutions such as Komnas HAM to become a central actor in the investigation and recovery of victims.

The hybrid tribunal model is not new in international legal practice. Countries such as Bosnia-Herzegovina, Cambodia, and Sierra Leone have successfully implemented mixed justice systems that combine the national legal apparatus with the involvement of the international community in order to avoid domestic political obstacles and enhance the credibility of the judicial process. In Sierra Leone, the Special Court for Sierra Leone (SCSL) is an example of how synergy between national and international jurisdictions can result in effective, transparent, and victim-friendly courts.

Indonesia has the potential to adapt this approach by carrying out three main forms of reform:

### **a. Amendment of the Human Rights Court Law to Strengthen the Authority of Komnas HAM**

Law No. 26 of 2000 normatively designates Komnas HAM as an investigative institution for cases of gross human rights violations, but does not give it investigative authority. This makes Komnas HAM dependent on the Attorney General's Office in the follow-up of cases. To address this inequality, amendments are needed that provide limited investigative authority or the establishment of a special investigation unit under Komnas HAM, as suggested by Nurhasan Ismail (2021; 109). This is in line with the principle of quasi-judicial independence that is also applied to similar institutions in Latin America and South Africa.

### **b. Establishment of a Permanent Ad-Hoc Human Rights Court with International Participation**

One of the main drawbacks of the current system is the temporary nature of the Ad-Hoc Human Rights Court, which is only established on the basis of political decrees (President and DPR). This makes it difficult to be consistent and continuity in handling cases. By establishing a Permanent Ad-Hoc Human Rights Court that includes international elements (foreign judges or advisors), the independence of the legal process can be further guaranteed. Such institutions have proven effective in the Extraordinary Chambers in the Courts of Cambodia (ECCC), which tried Khmer Rouge crimes with a hybrid system.

Such courts in Indonesia can be strategically placed as part of the Supreme Court, but with special procedures and assemblies tasked with handling cases of gross human rights violations. According to Teitel, "international involvement, while limited, can add moral pressure and credibility to the court's outcome".

### **c. Integrated Rehabilitation Scheme for Victims**

Human rights judicial reform is not only about the punishment of perpetrators, but also about ensuring comprehensive rehabilitation for victims. In many cases in Indonesia, victims of gross human rights violations feel neglected by the legal system because they do not have access to compensation, rehabilitation, or even official recognition. Therefore, the reform of the human rights mechanism, according to Heyner, "must include the establishment of a Victim Reparation Commission under a national human rights institution tasked with administering victims' rights administratively, as was done in post-apartheid South Africa".

This scheme includes the provision of financial compensation, psychosocial services, a guarantee of non-recurrence, and the restoration of the victim's social identity. This instrument is also in line with

the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law adopted by the United Nations General Assembly (United Nations, A/RES/60/147, 2005).

By adopting a hybrid model and implementing legislative, institutional, and victim-oriented reforms, Indonesia can create a more effective, independent, and inclusive human rights justice system. The novelty of this judicial system lies not only in the conceptual proposal of a hybrid model of human rights justice, but also in the design of a new institutional architecture that allows synergy between law enforcement and victim recovery in one complete and sustainable framework.

## CONCLUSION

Based on the results of the study on the effectiveness of the current human rights justice mechanism and the ideal form of its reform in responding to *gross human rights violations* due to the current conflict, it can be concluded as follows: The prevailing system still faces various structural, juridical, and political obstacles. The existing human rights justice mechanism has not been able to address the complexity of *gross human rights violations* resulting from contemporary conflicts. Factors such as politicization, ineffective inter-institutional coordination, and the limited authority of investigative institutions are the main obstacles. Ideal reforms in the form of strengthening independent institutions, establishing *hybrid human rights courts*, and adopting a *transitional justice* approach oriented towards victim recovery are solutions that need to be implemented without delay.

To complement these findings, it is recommended that future research conduct field studies through in-depth interviews with various stakeholders, including victims, law enforcement officials, and human rights activists, in order to enrich the normative analysis that has been carried out. A more comprehensive comparative study of the implementation of *hybrid court* models in various countries is also needed to adapt them to Indonesia's legal and political context. In addition, it is important to conduct specific research on the political and legal aspects that influence the process of forming and implementing human rights judicial reform policies, as well as to develop comprehensive success indicators to measure the effectiveness of the reformed judicial mechanisms.

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