

Construction of Gross Human Rights Settlement Arrangements in the Framework of Justice and Legal Certainty in Indonesia

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Abstract. This study examines the construction of regulatory frameworks for resolving gross human rights violations within the justice system and legal certainty in Indonesia. Despite existing legislation such as Law Number 26 of 2000 on Human Rights Courts, its implementation faces significant challenges including overlapping institutional authority, inadequate supporting legal instruments, and insufficient coordination among related agencies. The research analyzes primary legal sources including the 1945 Constitution, Law No. 26/2000 on Human Rights Courts as main national legal instruments and the few others international legal instruments, that supplemented by secondary sources from academic literature and journal articles. A deductive analytical approach is employed to test the harmony of applicable legal norms and assess whether existing regulations can realize the principles of justice and legal certainty in practice. The research highlights that addressing gross human rights violations requires not only robust criminal law enforcement, but also restorative justice approaches to ensure substantive justice for victims and comprehensive legal certainty. Therefore, regulatory and institutional reconstruction integrating national legal principles and international human rights standards is essential to enhance resolution effectiveness and provide optimal protection for victims.

Keywords: construction; gross human rights; Indonesia; justice; legal certainty; settlement

INTRODUCTION

Indonesia, as a state of law that upholds the values of justice and legal certainty, faces a major challenge in resolving longstanding cases of gross human rights violations. The constitution and national legal system guarantee the protection of human rights, as affirmed in the principle that "Indonesia is a state of law that upholds justice and legal certainty for all its citizens" (Idrus et al., 2022). This statement reinforces Indonesia's position as a state of law that is obliged to fulfill the basic rights of every citizen and ensure that the administration of justice runs effectively and continuously. The quality of public administration and policy governance is inseparable from the democratic principles that underpin state institutions, in which the capacity of local governance structures to respond to community needs determines the effectiveness of rights protection across different sectors of public life (Wisnumurti, 2018). However, the reality on the ground shows stagnation and ineffectiveness in resolving cases of gross human rights violations such as the 1965 tragedy, Talangsari, and Wasior. These cases have yet to show signs of satisfactory resolution, leading to a crisis of public confidence in the national legal system. The state's inability to respond to the suffering of victims and their

families shows the disharmony between the judicial framework stipulated in Law No. 26/2000 on Human Rights Courts and the non-judicial mechanism as stipulated in Presidential Decree No. 17/2022. This condition reinforces the perception that the existing legal system has not been able to fulfill the expectations of substantive justice for victims of gross human rights violations.

In line with that, Indonesia as a state of law has an inherent responsibility to protect human rights, which are not only regulated in domestic law but also based on various international treaties that have been ratified. (Supriyanto, 2023). Law enforcement in cases of gross human rights violations is a concrete manifestation of the state's responsibility to fulfill human rights, while ensuring legal certainty for the entire community. This phenomenon is not only a domestic issue, but also receives international attention. "Gross human rights violations are an issue that has received worldwide attention. In fact, both minor and gross violations lack legal justice" (Widayati, 2022). This indicates that the handling of human rights violations in Indonesia is far from complete, and this reflects structural problems in the national legal system that must be addressed immediately. One of the fundamental root causes is the absence of the concept of restorative justice in the system of resolving gross human rights violations in Indonesia. The legal system, which prioritizes formal judicial and non-judicial administrative approaches, has failed to provide space for healing and reconciliation that touches on the human and social aspects of victims holistically. This certainly hampers the healing process and post-conflict social reconstruction.

In the context of handling gross human rights violations in this era of transitional democracy, the concept of transitional justice is very relevant. The main issue that characterizes transitional regimes is transitional justice, which is interpreted as an action to realize justice in the transitional era in order to lead the lives of communities, nations and countries towards democracy in the future (Tumbo, 2020). This approach requires not only legal resolution but also social integration and victim recovery, so that the dark past does not continue to overshadow the process of democratization and sustainable legal development. Gross human rights violations that occurred in the past are often the product of authoritarian and repressive state power. It is not enough to rely on ordinary judicial mechanisms, but special mechanisms are needed that accommodate the needs of comprehensive and civilized justice. In this case, Indonesia as a state of law has an obligation to uphold justice and provide legal certainty to all its citizens as part of the state's commitment to protect and uphold human rights (Idrus et al., 2022). It is important to highlight that the stagnation in the resolution of cases of gross human rights violations has broad implications for the legitimacy of the legal system and public trust in the rule of law. When victims and families are denied justice, not only is the pain left untreated, but also the potential for ongoing social tensions and obstacles to inclusive democratic development.

METHOD

Normative legal research is a method widely used in legal studies, especially to examine abstract and normative legal provisions. This method focuses on analyzing laws and regulations, legal doctrines, and comparisons with relevant sources of international law. In the context of research on the construction of arrangements for resolving gross human rights violations in the order of justice and legal certainty in Indonesia, the normative juridical approach was chosen as the main method because of its suitability in examining the legal-formal and normative aspects of applicable legal instruments. Normative legal research is legal research conducted by examining library materials or secondary data (Diantha, 2016). Normative legal research is legal research conducted by examining library materials or secondary data (Ariawan, 2013), this research is oriented towards the study of legal documents which include laws and regulations, legal doctrine, academic literature, as well as regulations

and international legal instruments that are the basis and reference in resolving gross human rights violations in Indonesia.

The legal sources used in this research are classified into three main categories. First, primary legal sources include the 1945 Constitution of the Republic of Indonesia, Law No. 26/2000 on Human Rights Courts, and the Rome Statute as the legal basis for the *International Criminal Court*. These primary legal sources become the central point in the analysis to see how national and international legal instruments interact and harmonize in the context of resolving gross human rights violations. Second, secondary legal sources are academic literature, journal articles, books, and legal studies that discuss the theory and implementation of human rights law and transitional justice. This secondary literature provides an in-depth theoretical and analytical framework to understand the relevance, effectiveness, and obstacles in the application of existing primary legal provisions. Third, tertiary legal sources in the form of legal encyclopedias, legal dictionaries, and complementary reference materials that help clarify the terminology and legal concepts used in the research.

The analytical method used is qualitative-deductive, where legal data collected from various sources are critically analyzed to test the harmony of applicable legal norms. The deductive approach allows researchers to draw conclusions from general provisions (legal norms and doctrines) to specific phenomena related to the resolution of cases of gross human rights violations. This approach also emphasizes the validity of substantive justice promised by the constitution and international human rights law, by examining whether existing rules are able to realize the principles of justice and legal certainty in practice. In practice, the normative juridical method demands rigor and validity of legal logic in every step of the analysis, to ensure that the research results have a strong and valid basis academically and legally. This approach is very important because the resolution of gross human rights violations is not only related to formal legal aspects, but also requires integration with more substantial and civilized values of justice.

DISCUSSION

In this study, a number of very basic problems were found both from the normative and implementative sides related to the regulation of the settlement of gross human rights violations in Indonesia. The first problem that is highlighted is the dualism of institutions that play a role in the process of resolving gross human rights violations. The National Commission on Human Rights (Komnas HAM) and the Human Rights Court often experience overlapping authority, which causes legal uncertainty in the implementation of their duties. Komnas HAM, as an institution that has the authority to investigate cases of gross human rights violations, in practice is still constrained by limited legal instruments that are not adequate to fully support this function. Komnas HAM is authorized to investigate cases of gross human rights violations, this limitation is a major obstacle so that the effectiveness of the investigation is disrupted (Firmandiaz et.al., 2020). In addition to the issue of authority, Law No. 26/2000 on Human Rights Courts, which is the main regulation in dealing with the resolution of gross human rights violations, is still unable to answer real challenges in the field. The law is often considered not to provide sufficient legal force in the law enforcement process against gross human rights violations in Indonesia. This law has not been able to run effectively and efficiently in the context of resolving complex and highly politicized gross human rights cases (Sinaga et.al., 2022). This is further reinforced by the facts on the ground, especially at the Makassar Human Rights Court, which is one of the main juridical institutions for handling gross human rights cases, where the implementation of its duties is far from adequate and effective.

There are various serious obstacles in the aspects of procedural law and implementation in the field that make the process of resolving gross human rights violations delayed and even significantly hampered (Pakpahan, 2017). These obstacles are not only technical in nature, but

also closely related to the unclear authority between institutions and the weak coordination between institutions that should be strategic partners in handling these cases. This makes the legal resolution mechanism unclear and does not run in accordance with ideal expectations. The unclear and overlapping authority between Komnas HAM and the Human Rights Court, as well as other related institutions, ultimately has a serious impact on the power of legal coercion that can be carried out. This condition causes weak substantive law enforcement, especially in terms of providing fair justice for victims of gross human rights violations (Alimudin *et al*, 2021). Without legal certainty and good coordination, efforts to resolve cases of gross human rights violations are very difficult, and even seem to stagnate.

In addition, the various cases of gross human rights violations that have unfolded over the past few decades show a lack of political courage from policy makers. This political courage is essential to provide adequate legal and political support so that the legal process can run thoroughly and fairly. Unfortunately, in practice, this courage is still very minimal, so that the handling of these cases often only stops at the investigation stage or the legal process has not yet reached its final point. This is very detrimental to victims and their families, who feel they are not getting the justice they deserve. In this context, overlapping and unsynchronized arrangements between judicial and non-judicial mechanisms are also a serious problem. Although Law 26/2000 regulates the settlement mechanism through the Human Rights Court, the presence of Presidential Decree 17/2002 as a non-judicial mechanism still creates confusion and conflict of functions. This shows a disharmony that weakens the power to resolve gross human rights violations. This shows that the Indonesian legal system has not fully accommodated the need for comprehensive restorative justice.

Furthermore, unclear regulations and weak supporting legal instruments also raise doubts about legal certainty, which is the foundation of the rule of law. These obstacles contribute to the ineffectiveness of investigations and law enforcement, leading to public doubts about the justice system (Firmandiaz *et al*, 2020). The role of law enforcement institutions in guaranteeing justice requires strong coordination mechanisms and clear legal authority, as effective legal enforcement depends not only on procedural compliance but also on the substantive capacity of institutions to resolve disputes and protect citizens' rights (Sugiarta, 2020). This legal uncertainty directly interferes with the sense of justice for victims and the wider community, which in turn has the potential to create a sense of distrust of law enforcement agencies. This study emphasizes that to overcome these various obstacles, a comprehensive reconstruction is needed both in terms of regulations and institutions. The reform must clarify the authority of relevant institutions and strengthen existing legal instruments so that the functions of investigation and prosecution can be carried out more effectively and efficiently. In addition, this reconstruction must also integrate the principle of restorative justice that prioritizes the restoration of victims' rights and social reconciliation as part of efforts to resolve gross human rights violations. In this context, the principle of legal protection that balances the interests of all parties in the legal system serves as a fundamental prerequisite for creating a just and comprehensive settlement mechanism, ensuring that victims' rights are fully upheld within the framework of applicable legal norms (Mahendrawati & Arini, 2021).

The Philosophical Meaning of Justice and Legal Certainty in the Context of Gross Human Rights Violations

In the philosophical framework, justice and legal certainty play a fundamental role as the main footing in resolving gross human rights violations. Justice is not only limited to fulfilling formal or normative procedures, but must include real substantive aspects, namely the recognition and fulfillment of victims' rights and the restoration of just conditions as a whole. This means that justice in cases of gross human rights violations demands more than just the punishment of perpetrators; it must embrace mechanisms capable of restoring the dignity and social integrity of affected victims. In this case, substantial justice becomes a concept that

places victims at the center of attention, not only as objects of law but also as subjects who are entitled to recognition and reparation for the suffering experienced. In the realm of legal philosophy, there is an understanding of restorative justice as an approach that places human values and reconciliation above mere punishment. This approach seeks to open a space for dialogue and comprehensive truth-telling between perpetrators and victims, so as to create mutual understanding and steps to repair social relations damaged by the offense. Natsif (2018) explicitly states that restorative justice mechanisms are non-judicial alternatives that prioritize the process of truth-telling and apologies from the perpetrator as an integral part of the resolution process. It is not just a matter of finding who is guilty, but also how to rebuild trust and social harmony that has been torn apart.

In this context, it adds that restorative justice actively involves victims and perpetrators in the conflict resolution process. Thus, victims get the space to convey their pain, while perpetrators are given the opportunity to admit guilt and take moral responsibility (Wahid, 2021). This process focuses not only on legal aspects, but also psychological and social aspects, so it is expected to have a more sustainable impact in healing collective wounds. However, the application of this restorative justice concept in cases of gross human rights violations in Indonesia faces serious challenges. The complexity of cases rooted in systemic and political violations, as well as the dominant pressure of criminal charges, make it difficult to integrate restorative mechanisms optimally. In addition to justice, another important pillar is legal certainty. Legal certainty guarantees that the entire process of resolving gross human rights violations takes place consistently, transparently and predictably in accordance with applicable legal norms. In the national legal framework, legal certainty is the foundation for the creation of public trust in the justice system and human rights enforcement. A fair process is not enough if it is not accompanied by the certainty that the law is applied consistently without discrimination or ambiguity. Normative legal research that focuses on document and regulatory analysis shows the importance of legal certainty as the main instrument in maintaining the legitimacy of legal settlements.

In practice, legal certainty in resolving gross human rights violations in Indonesia still faces significant obstacles. One of the biggest obstacles is the duality of authority between authorized institutions, such as Komnas HAM and the Human Rights Court, which leads to overlapping duties and responsibilities. This not only creates confusion at the implementation level, but also weakens the overall strength of the law. With weak coordination between institutions, legal certainty, which is expected to be the foundation for resolving gross human rights cases, is difficult to fully realize. This situation certainly hampers the effectiveness of law enforcement and has the potential to cause injustice to victims. The legal instruments governing the settlement of gross human rights violations are still incomplete and not fully harmonized with international human rights law standards. This creates loopholes that can be utilized by perpetrators to avoid legal accountability. From a philosophical perspective, legal certainty not only refers to the consistency of the application of existing rules, but must also be able to guarantee the protection of victims' rights as a whole, while providing clarity of legal mechanisms that can be accessed and understood by all parties. Without strong legal certainty, efforts to achieve substantive justice and social recovery will be ineffective and potentially lead to distrust of legal institutions.

Evaluation of Regulations and Practices for the Resolution of Gross Human Rights in Indonesia

When discussing the resolution of gross human rights violations in Indonesia, it is important to evaluate the regulations that govern the process. Law No. 26/2000 on Human Rights Courts is indeed the main legal umbrella, but in practice this regulation still faces a number of significant obstacles that have the potential to hamper the effectiveness of resolving cases of gross human rights violations completely. Various obstacles that arise are not only limited to aspects of procedural law procedures, but also to the real implementation in the field

that has not gone as expected (Pakpahan, 2017). This has created uncertainty in the law enforcement process and ultimately affected public confidence in the human rights justice system. One of the main issues is the role and authority of the National Human Rights Commission (Komnas HAM) in investigating cases of gross human rights violations. Although Komnas HAM has the mandate to conduct investigations, the existing legal instruments are not sufficient to fully support this function. (Firmandiaz et.al, 2020). The incompleteness of these regulations results in the limitations of Komnas HAM in collecting and processing evidence to the fullest, thus reducing the effectiveness of the investigation which is the main gateway in the subsequent legal process. In addition, there are also bureaucratic and politicization problems that weaken the role of Komnas HAM, which ultimately complicates the process of resolving gross human rights violations.

If we look at the practice of resolving gross human rights violations in other countries, there are more comprehensive and integrated approaches that can serve as inspiration. A comprehensive approach to legal protection requires not only the enactment of formal rules but also mechanisms for resolving disputes through mediation and alternative processes that prioritize substantive fairness over strict procedural adherence (Mahendrawati et al., 2022). For example, in South Africa and Rwanda, transitional justice mechanisms do not rely solely on criminal courts, but also incorporate non-judicial mechanisms such as truth and reconciliation commissions. This model serves as a platform for victims and perpetrators to reveal the truth, while opening up space for a comprehensive post-conflict social recovery and reconstruction process. The integration of formal justice processes and non-judicial mechanisms provides more effective results in accommodating victims' justice needs while creating sustainable peace (Alimudin, et.al, 2021). In the Indonesian context, the existence of non-judicial mechanisms such as those enshrined in Presidential Decree No. 17 of 2022 on the Resolution of Gross Human Rights Violations, although an important initial effort, has not been able to fully replace the role of human rights courts. The confusion arising from the overlapping functions and lack of synchronization between judicial and non-judicial mechanisms has created legal dilemmas that slow down the resolution of cases. For example, Komnas HAM and the Human Rights Court often experience dualism of authority that makes the legal process slow and inefficient. This condition is exacerbated by the lack of strong political support from the government so that the resolution of cases of gross human rights violations tends to stagnate.

Furthermore, an in-depth evaluation of the practice of resolving gross human rights violations also shows that there are still significant obstacles in terms of coordination between relevant institutions. Institutions such as Komnas HAM, the Attorney General's Office, the Police, and the Human Rights Court often operate separately without strong integration, so that investigation, prosecution, and trial efforts do not run synergistically. This lack of coordination is a crucial factor that causes the process of resolving cases to not run smoothly and often ends without adequate legal clarity. (Pakpahan, 2017). In the context of criminal law enforcement, when institutional coordination is absent and legal procedures are not systematically applied, justice cannot be properly delivered, and the credibility of the entire legal apparatus is fundamentally undermined (Sugiartha, 2020b). This gives the impression that the human rights law enforcement system in Indonesia is still unable to answer the expectations of victims and the wider community. In addition, the need to strengthen the capacity of human resources and supporting legal instruments is also a part that should not be ignored. Technical obstacles such as the lack of experts, incomplete evidence, and non-comprehensive implementation rules have also become serious obstacles in accelerating case resolution (Firmandiaz et.al, 2020). Without this capacity building, existing regulations will be difficult to implement optimally, so that justice for victims of gross human rights violations becomes difficult to realize in reality in the field.

Ideal Construction of Future Arrangements

In building an ideal construction related to the settlement of gross human rights violations in Indonesia, it is very important to place harmonization between human rights criminal law and transitional justice mechanisms as the main foundation. The enforcement of criminal law related to human rights violations must be strengthened with the support of institutions that are independent, have clear authority and solid legal legitimacy, and are supported by adequate legal instruments. One crucial aspect in the reconstruction of the human rights justice system in Indonesia is the strengthened role of expert witnesses, as they hold a vital function in uncovering the facts of gross human rights violations that are often complex and sensitive (Mustopa et.al, 2025). In addition, the reconstruction of national human rights law must be a priority agenda that is not only oriented towards fulfilling administrative formalities, but also ensuring real substantive meaning (Pratiwi, 2019). This is especially important as a form of implementation of Indonesia's commitment to ratify international human rights instruments that have become the moral and legal footing of the state. The reconstruction includes the revision and improvement of national legal norms in order to effectively guarantee the protection of human rights and ensure access to justice for victims of gross human rights violations. Future arrangements must make human rights law not just a normative document, but a living instrument capable of realizing substantive justice and protecting the fundamental rights of citizens.

One of the fundamental challenges that must be overcome in this effort is the problem of authority vagueness and institutional dualism that has been a serious obstacle in the process of resolving gross human rights violations. The establishment of a legally and operationally strong independent institution is a crucial step towards eliminating these problems. This institution should have a clear mandate, adequate investigative capabilities, and the power to enforce the law without political intervention or external pressure. With such an institution, the law enforcement process can be more transparent, effective, and accountable, so that public confidence in the human rights justice system can be rebuilt. The strengthening of institutional governance through policy-based approaches rooted in local knowledge and democratic values is essential for building public trust and developing accountable, responsive institutions that effectively serve community interests (Wisnumurti, 2019). Furthermore, the ideal construction of future human rights arrangements also needs to include elements of harmonization between restorative justice approaches and criminal mechanisms. This approach should not solely be oriented towards prosecuting and punishing perpetrators, but should also provide space for the process of victim recovery and social reconciliation. By prioritizing the principles of restorative justice, legal arrangements can help restore social relations damaged by gross human rights violations while providing opportunities for victims to get proper recognition and recovery. This harmonization is very important so that the resolution of human rights cases does not only end in criminal formalities, but also results in substantive justice and legal certainty that is more comprehensive for all parties.

Strengthening the role of expert witnesses not only enriches the evidentiary aspects of the trial, but also supports an accurate and thorough reconstruction of the history of the offense (Mustopa et.al, 2025). Expert witnesses can provide scientific and technical perspectives that assist the court in objectively assessing evidence and avoiding deviations from the legal facts. Future arrangements should include the development of a system of training and professional recognition for expert witnesses, so that they can contribute optimally to the human rights judicial process. On the other hand, strengthening the national legal system in the context of human rights must also be supported by the political will of the government and all stakeholders (Pratiwi, 2019). Without a strong and consistent commitment, regulations that have been improved and independent institutions established still have the potential to stagnate or be weakened by external factors. The construction of an ideal arrangement must integrate strategies to ensure that all relevant actors carry out their roles and responsibilities fully and professionally for effective human rights enforcement.

CONCLUSIONS

The current system for resolving gross human rights violations in Indonesia still shows significant gaps, both in normative and functional terms. Normatively, existing regulations have not been able to provide a strong and comprehensive legal basis to ensure an effective and equitable settlement process. Functionally, institutions authorized to resolve gross human rights violations often experience overlapping authority and lack of coordination, resulting in weak law enforcement and lack of substantive justice for victims. This has led to a gap between public expectations and the reality of the practice of resolving gross human rights cases in Indonesia. A comprehensive regulative and institutional reconstruction is needed to optimize the system for resolving gross human rights violations. The proposed approach must be holistic and based on the principle of the rule of law, which not only upholds legal certainty, but also guarantees non-impunity, so that perpetrators are not free from legal responsibility. The integration of restorative justice values is also an important element, because the resolution of gross human rights must pay attention to the recovery and fulfillment of victims' rights substantively, not only focusing on the criminal aspect. The resolution of gross human rights violations must be able to provide comprehensive legal certainty for all citizens without discrimination. This legal certainty is important so that the human rights enforcement process runs transparently, consistently and fairly, while strengthening public confidence in the national legal system. Thus, the reconstruction of the system for resolving gross human rights violations in Indonesia is not only a legal necessity, but also a moral and social imperative to uphold true justice.

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