

Resolving Serious Violations of Human Rights in Non-Judicial Mechanisms in Indonesia

Syaiful Rohman¹, Harkristuti Harkrisnowo²

¹School of Strategic and Global Studies, Universitas Indonesia

²Faculty of Law, Universitas Indonesia

Article Info	ABSTRACT
Article history:	Protection and respect for human rights is the state's responsibility, especially the government. The state is morally and politically responsible for ending the nation's wounds to create harmony in national and state life. Therefore, the government is obliged to resolve cases Serious Violations of Human Rights either judicially or non-judicially. Legislation has outlined that Serious Violations of Human Rights can be resolved through judicial and non-judicial mechanisms. The government has issued various policies to resolve Serious Violations of Human Rights through non-judicial mechanisms that aim to focus on recovering victims. This research uses qualitative methods using credible and relevant data sources. This research shows that non-judicial resolution Serious Violations of Human Rights is a middle way to provide a sense of justice to victims. The state is responsible and provides victims' rights through a reconciliation process to create harmony among society in the nation and state.
Keywords:	Serious Violations of Human Rights Non-judicial Resolution Victims Recovery
	<i>This is an open access article under the CC BY-SA license.</i>



Corresponding Author:

Name: Syaiful Rohman
Institution Address: Jl. Salemba Raya No 4. Jakarta Pusat
e-mail: syaifulrohman71@gmail.com

1. INTRODUCTION

Human Rights are rights inherent in human existence as creatures of God Almighty. They are His gifts that must be respected, upheld, and protected by the state, law, government, and all people for the sake of honor and protection of human dignity (UU No 39, 1999). Therefore, the state, government, or any organization is obliged to respect, protect, fulfill, and uphold the human rights of every human being without exception. This shows that human rights must always be the

benchmark and goal in the organization of state, nation, and society.

The 1945 Constitution of the Republic of Indonesia explicitly explains that the state, especially the government, in Article 28 I paragraph (4), explains that "the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government." Then, it is reinforced by Law Number 39 of 1999 concerning Human Rights, which clearly and clearly states that the state recognizes the existence of human rights inherent in every

citizen. The law has also adopted a set of norms and rules of human rights principles that have been universally recognized.

Indonesia has a bad history of the implementation of alleged past serious violations of human rights, among others: The 1965-1966 Incident, the Mysterious Shootings Incident in 1982-1985, the Talangsari Incident in 1989, the May Incident in 1998, and Trisakti Semanggi I & II Incidents, the Enforced Disappearances Incident 1997-1998, the Wasior Incident in 2001-2002 and Wamena in 2003, the Santet Shaman Murders Incident in 1998, the Simpang KKA Incident in 1999, the Jambu Keupok Incident in 2003, the Geudong House Incident in 1989-1998, the Paniai Incident in 2014, the Tanjung Priok Incident in 1984, and the Abepura Incident in 2000 (National Human Rights Commission, 2022).

The settlement process continues to be carried out by both judicial and non-judicial mechanisms. The results of the investigation conducted by National Human Rights Commission (Komnas HAM) submitted to the Attorney General's Office were deemed not to have met the formal and material elements, so they could not be continued to the following process, as well as the obstacles of the investigation of the alleged perpetrators (military) could not be forcibly summoned because the effort had to get a letter from the ad hoc human rights court. In contrast, the court itself could be formed if the President approved a proposal from the House of Representatives of Indonesia Republic.

Non-judicial have been set back, with one of the legal Laws 27/2004 on the TRC (Truth and Reconciliation Commission) being annulled by the Constitutional Court because it was deemed not to provide a guarantee of justice, noting that it is possible to achieve reconciliation through the establishment of legal policies (laws) that are in line with the 1945 Constitution and universally applicable human rights instruments, or by carrying out reconciliation through political policies in the context of rehabilitation and general amnesty.

Accomplishment serious violations of human rights is a national commitment of the

Indonesian government. This can be seen in the vision and mission of Joko Widodo in the 2014 and 2019 presidential elections. In relation to human rights, President Jokowi said that he would continue to respect, protect, fulfill, and uphold human rights by the State Constitution. The realization of this commitment has been outlined through Presidential Regulation of the Republic of Indonesia Number 2 of 2015 concerning the National Medium-Term Development Plan for 2015 - 2019, which emphasizes that handling cases of human rights violations requires special treatment. The handling of cases of alleged serious violations of human rights will not only focus on cases that will occur in the future but also on cases of alleged serious violations of human rights that occurred in the past. During the second period of government, the 2020-2024 National Medium-Term Development Plan (RPJMN) was issued, which also regulates the settlement of serious violations of human rights. The RPJMN 2020-2024 emphasizes that Indonesia's Political, Legal, Defense, and Security Development 2020-2024 is directed towards the realization of democratic consolidation, the rule of law, and the enforcement of human rights, all of which are to support the implementation of national development (RPJMN, 2020).

In 2022, the government's commitment to addressing serious violations of human rights was outlined in Presidential Decree No. 17 of 2022 on establishing a Team for the Non-Judicial Resolution of Past Serious Violations of Human Rights (PPHAM Team). The PPHAM Team was established to disclose and analyze serious violations of human rights to propose recommendations for reparations to victims or their families, and to propose recommendations to prevent the recurrence of serious violations of human rights in the future (Presidential Decree, 2022). The PPHAM team also presented a report on the findings of its investigation to President Joko Widodo at the Merdeka Palace in Jakarta.

Following the recommendations of the PPHAM team's analysis on restoring the rights of victims serious violations of human

rights, President Jokowi issued the "Presidential Instruction of the Republic of Indonesia No. 2 of 2023, on the Implementation of Recommendations for the Non judicial Settlement of serious violations of human rights". Presidential Instruction No. 2 of 2023 instructs 19 (nineteen) ministries/institutions to take necessary measures in a coordinated and integrated manner in accordance with their respective duties, functions, and authorities to implement the recommendations of the PPHAM team in the form of: First, to restore the rights of victims of serious violations of human rights fairly and wisely. Secondly, to prevent the recurrence serious violations of human rights as stated in Presidential Instruction No. 2 2023. This policy has been adopted as a form of state responsibility to ensure that the resolution and protection of human rights are implemented to the maximum and to pay attention to the victims of serious violations of human rights who have been neglected.

To ensure that the implementation of the recommendations for the non-judicial settlement of serious violations of human rights is carried out correctly and in a targeted manner, the President issued Presidential Decree No. 4 of 2023 on the Monitoring Team for the Implementation of the Recommendations for the Non judicial Settlement Serious Violations of Human Rights (PPHAM Monitoring Team). Presidential Decree No. 4 of 2023 assigns the task of monitoring, evaluating, and controlling the implementation of the Team's recommendations for the Non-Judicial Settlement of Past serious violations of human rights by Ministers/Heads of Institutions. In addition, the PPHAM Monitoring Team is tasked with reporting to the President on implementing Presidential Instruction No. 2 2023 on providing remedies to victims' serious violations of human rights (Presidential Decree, 2023).

Hopefully, this policy will provide victims with a sense of justice, restore their rights and dignity, heal the wounds of the nation's children, improve the country's

reputation in international relations, and build public confidence in the government to create national resilience.

2. THEORETICAL FRAMEWORK

2.1. Human Rights

Human rights are rights granted by God Almighty simply because he is human. This right is inherent in every human being and is inalienable. In later developments, John Locke argued in his book "The Second Treatise of Civil Government and a Letter Concerning Toleration" that all individuals are endowed with inherent rights to life, liberty, and property that are their own and cannot be taken away by the state (Locke, 1964). The emergence of human rights in international law as directly related to society eventually went beyond the primary content of civil and political rights to include economic, social, and cultural rights (Cohen, 2003).

Prof. Koentjoro Poerbopranoto said that human rights are rights that every human being has by nature and are sacred. In principle, human rights are the basis for the orientation of thinking in the enforcement and resolution of human rights cases universally. In almost all international treaties, these principles are applied to broader rights. These principles are equality, prohibition of discrimination, and positive obligations imposed on each state that are used to protect certain rights (Smith, 2008).

2.2. Serious Violations of Human Rights

The theory of serious violations of human rights in Indonesia is based on Law No. 26/2000 on Human Rights Courts, that human rights violations are the actions of a person or group of people, including the state apparatus, either intentionally or unintentionally or negligently, that legally reduce, hinder, limit and or revoke the human rights of a person or group of people guaranteed by law, and not obtained or feared to be obtained a fair and correct legal settlement based on applicable legal mechanisms. Human rights violations can be

committed by both state and non-state actors (Eddyono, 2005).

Serious violations of human rights in Indonesia, which are under the jurisdiction of human rights courts, include only two types of crimes, namely: First, the crime of genocide, which is any act committed with the intent to destroy or exterminate, in whole or in part, a national group, race, ethnic group, religious group, by killing members of the group, causing severe physical or mental suffering to members of the group. In general, the definition and explanation of the crime of genocide in Law No. 26 of 2000 does not differ from the definition of the crime of genocide in the Rome Statute of 1998.

The improvement of the justice system will be realized through strategies, one of which illustrates the application of restorative justice through optimizing the use of existing provisions in laws and regulations that support restorative justice, maximizing the role of customary institutions and institutions related to alternative dispute resolution, including prioritizing rehabilitation, compensation and restitution efforts for victims, including victims of human rights violations.

3. RESEARCH METHODS

Presidential Decree No. 17 of 2022, Presidential Instruction No. 2 of 2023, Presidential Decree No. 4 of 2023, international and national journals, and information from official government websites. The qualitative research method emphasizes problem analysis to resolve past serious violations of human rights non-judicially based on accurate data. This research is expected to comprehensively explain the government's non-judicial resolution of past serious violations of human rights through a qualitative approach.

4. RESULT AND DISCUSSION

4.1. Serious Violations of Human Rights

Indonesia has bad experienced related to past serious violations of human rights and has become a burden for modern history.

Based on the data and recommendations of the National Commission on Human Rights (Komnas HAM), until 2020 there were 12 (twelve) past serious violations of human rights, namely; 1). The Incident of 1965-1966. 2). The mysterious shootings in 1982-1985 (Petrus Incident). 3). The Talangsari Incident, Lampung in 1989 (Talangsari Incident). 4). Rumoh Geudong and Pos Sattis Incident, Aceh in 1989. 5). Disappearances Incident in 1997-1998. 6). The May 1998 Incident. 7). Trisakti and Semanggi I-II Incidents in 1998-1999. 8). Santet Shaman Murder Incident in 1998-1999. 9). Simpang KKA Incident, Aceh in 1999. 10). Wasior Incident, Papua in 2001-2002. 11). Wamena Incident, Papua in 2003. 12). Jambo Keupok Incident, Aceh in 2003 (The Secretariat of State, 2023).

The resolution of past serious violations of human rights has become a political promise for President Joko Widodo in the early period of his leadership. One of the points in the nine priority agendas of Nawa Cita, President Jokowi during his campaign promised to prioritize the fair resolution of past serious violations of human rights. Then President Jokowi emphasized his commitment to resolve past serious violations of human rights that have become a socio-political burden. Historically, the government has made several regulations to provide certainty regarding human rights issues, including the enactment of Law No.39/1999 on human rights as the implementation of People's Consultative Assembly Decrees (TAP MPR) XVII/MPR/1998. Furthermore, the government together with the House of Representatives issued Law No.26/2000 on human rights courts which contains provisions on the principle of retroactivity (Kontras, 2016).

Although Indonesia has a legal tool to prosecute the perpetrators of serious violations of human rights that occurred in the past, the human rights court mechanism has so far failed to satisfy the victims' right to justice. Some trials have been conducted through the Ad Hoc Human Rights Court mechanism, but the court decisions have not provided a sense of justice for the victims.

Victims' hope for justice is even more tenuous as many cases investigated by National Human Rights Commission have stalled in the hands of the Attorney General's Office (Effendi, 2007). The alleged perpetrators are still part of a network of political forces that can complicate the government's performance in implementing policies to resolve human rights violations through judicial mechanisms. The expectation of justice through the rule of law is not only based on the fact that victims have exclusive rights, but also aims at the broader public interest. Justice for past serious violations of human rights is also a prerequisite for the establishment of the rule of law in this country (Eddyono, 2005).

As one of the countries that has ratified and passed various laws on human rights, Indonesia has failed to resolve various human rights violations, especially the resolution of serious violations of human rights for crimes against humanity (Nasution, 2012). Efforts to resolve serious violations of human rights in Indonesia have always been a polemic at every change of government. Past serious violations of human rights have no legal certainty due to the difficulty of National Human Rights Commission to obtain clear evidence of serious violations of human rights, so the investigation process by the Attorney General's Office of Indonesia cannot continue (Prasetyo, 2019).

4.2. National Human Rights Commission Investigation Process

National Human Rights Commission operates under the mandate of the Human Rights Court Law to investigate incidents that are suspected to be human rights violations (Soeprapto, 2012). The state has mandated this task through Law No. 26/2000 on Human Rights Courts. Based on the report of National Human Rights Commission in 2023, it has conducted investigations on 14 (fourteen) events suspected to be serious violations of human rights, out of these 14 events, three events have been decided in court, namely; the East Timor incident in 1999, the Tanjung Priok incident in 1984, and the Abepura incident in 2000. The other 11 cases have not

been fully pursued by The Attorney General's Office to date (Komnas HAM, 2020). In 2018, the Attorney General's Office returned 9 (nine) investigation files with instructions to National Human Rights Commission, namely: 1). The Incident of 1965-1966. 2). The mysterious shootings in 1982-1985 (Petrus Incident). 3). The Talangsari Incident, Lampung in 1989 (Talangsari Incident). 4). Rumoh Gedong and Pos Sattis Incident, Aceh in 1989. 5). Disappearances Incident in 1997-1998. 6). The May 1998 Incident. 7). Trisakti and Semanggi I-II Incidents in 1998-1999. 8). Santet Shaman Murder Incident in 1998-1999. 9). Simpang KKA Incident, Aceh in 1999. Thus, the efforts to solve these human rights violations have stagnated and are still far from the expectations of the public and the victims.

The National Human Rights Commission believes that the handling of cases of serious violations of human rights has not been completed due to the paradigm difference between the investigators and the investigators, which has caused the National Human Rights Commission and the Attorney General's Office to throw case files at each other (Mahadewi, 2017). The existence of this paradigm difference is said to be one of the factors that prevent the files resulting from the National Human Rights Commission's investigation from continuing in the investigation process.

4.3. The Attorney General's Office of Indonesia Investigation Process

The completion of the serious human rights violations is still stalled because the Komnas HAM inquiry results do not meet the requirements both formally and materially, so the Attorney General's Office returned the files with instructions for investigation (Kumendong, 2012). The completeness of the Komnas HAM inquiry files is fundamental to the continuation of the investigation process. The completeness of the inquiry results is necessary for the investigation process to continue (Tumpa, 2010).

The Attorney General's Office uses a mandatory prosecution system in its

authority. This means that in the treatment of cases, it must be based on existing evidence and not use things that are outside of what has been established. This can be seen in the use of KUHAP as a complement to Law 26/2000, which directly conditions cases of serious human rights violations to be the same as traditional criminal cases (Anaada, 2018). Thus, on November 27, 2018, the Attorney General's Office returned nine files from the Komnas HAM inquiry that were considered incomplete and did not meet the formal and material requirements, and therefore could not be continued in the investigation process.

Basically, the judicial mechanism is deadlocked because Komnas HAM has difficulty finding evidence that meets the formal and material requirements of the Attorney General's Office. The Attorney General's Office does not want to be like the ad hoc human rights court cases in Timor-timor incident in 1999, Tanjung Priok incident in 1984, Abepura incident in 2000 and Paniai incident in 2014. The Ad Hoc Human Rights Court in these cases acquitted the defendants in the four cases because they were not proven guilty, which shows that there was negligence/error in the investigation process conducted by human rights enforcement officials. In the end, cases of serious human rights of violations do not receive legal certainty and cannot be optimally resolved through judicial mechanisms.

4.4. Non-judicial Resolution of Serious Violations of Human Rights

The government has stated its vision and mission in efforts to uphold human rights in the National Medium-Term Development Plan 2020-2024 (RPJMN 2020-2024), one of which is a commitment to a fair resolution of past cases of serious violations of human rights, which remain a dark history of the nation and a political burden for the Indonesian people. The government has promoted the handling of cases of serious violations of human rights in various ways, ranging from judicial mechanisms to non-judicial mechanisms. The non-judicial settlement of serious violations of human

rights is the responsibility of the state and government (Kusnadi, 2017). As a step to initiate this responsibility, the government issued Presidential Decree No. 17 of 2022 by establishing the Team for Non-Judicial Settlement of Past Serious Violations of Human Rights (PPHAM). The non-judicial mechanism carried out by the PPHAM team does not necessarily lead the government to stop the judicial mechanism.

The non-judicial settlement of serious violations of human rights uses two approaches, namely the reconciliation process and the fulfillment of victims' rights. The reconciliation process emphasizes all kinds of material and non-material compensation for the victims of human rights violations. The State is obliged to take special measures to ensure the full effectiveness of reparation measures. Reparations must be proportionate to the gravity of the violations and losses suffered and include restitution, compensation, rehabilitation, satisfaction and guarantees that similar events will not be repeated (Semendawai, 2009). The State must provide reparations to victims for acts or omissions that cause serious violations of human rights.

Presidential Decree No. 17 of 2022 has outlined that the resolution of past serious violations of human rights can be done through judicial and non-judicial mechanisms. The establishment of the PPHAM team is an alternative mechanism in the midst of the ineffectiveness of the settlement through the Human Rights Court and the establishment of the TRC, which have their own obstacles. However, within these limitations, the government does not want the victims to experience continuous and multiple losses. The settlement through the unfinished courts should not delay some of the rights of the victims of human rights violations, which should be enforceable, although limited to certain rights. It is on this basis that the government, through PPHAM, seeks non judicial settlements, but PPHAM is not intended to replace or eliminate the judicial process. The PPHAM was established to uphold the rights of victims with regard to

physical rehabilitation, social assistance, health insurance, scholarships and/or other matters for the benefit of victims or their families, as stated in Presidential Decree 17/2022.

Several other countries, such as Chile, Argentina, Germany, the Philippines, Bhutan and Sri Lanka, have established non-judicial mechanisms to deal with past serious violations of human rights, the results of which are accepted and considered fair by the victims and recognized by the international community. Therefore, the government feels compelled to take this step to uphold the rights of the victims. Therefore, the PPHAM team is tasked solely to fulfill the state's call to free the country from past hostages. PPHAM analyzed 12 (twelve) cases of serious violations of human rights recommended by the National Human Rights Commission. In addition, PPHAM held discussions with communities of victims of serious violations of human rights, academics, and community leaders in order to prepare recommendations for the reparation of victims or their families as required by Article 4 of Presidential Decree No. 17 of 2022.

At the end of its work, the PPHAM submitted a report to President Joko Widodo containing 11 (eleven) recommendations for the restoration of the rights of victims and families, as well as efforts to prevent future human rights violations. After receiving the PPHAM report, President Jokowi delivered a statement at the Merdeka Palace on January 11, 2023. The 11 (eleven) PPHAM recommendations to the government are; first, the government should express recognition and regret for the past serious violations of human rights. Second, the government must make serious efforts to rewrite the history and narrative of events as a balanced official version of the state's historical narrative, taking into account the human rights of those who were victims of the events. Third, the state must restore the rights of victims of other serious violations of human rights not included in the PPHAM team's mandate. Fourth, the government must reestablish victim data collection. Victim data

collection can be done by using existing institutions or by using special institutions that will accelerate data collection by cooperating with existing state institutions in the field of human rights such as Komnas HAM, LPSK and other relevant institutions that have data. Fifth, the state must restore victims' rights in two categories, namely constitutional rights as victims and rights as citizens.

The sixth PPHAM recommendation, namely; strengthen the fulfillment of the State's obligations towards the recovery of victims specifically and carried out with alternative efforts of cultural national harmonization. Seventh, the resocialization of victims with the wider community. Eighth, the state must adopt policies to ensure the non-repetition of serious violations of human rights through: a). Public awareness campaigns. b). Community support by continuing to encourage efforts to be aware of human rights, as well as showing the presence of the state in efforts to assist human rights victims. c). Increasing the active participation of the community in joint efforts to mainstream human rights principles in everyday life. d). Creating a policy of structural and cultural reform in the TNI/Polri. Ninth, build a memory based on adequate historical documents and warnings so that similar incidents will not happen again in the future. Tenth, the government must make efforts to institutionalize and instrumentalize human rights. These efforts include the ratification of various international human rights instruments, the amendment of laws and regulations, and the enactment of new laws. Eleventh, it is important for the state to ensure the implementation of the PPHAM recommendations and to develop a mechanism to implement and monitor the implementation of the recommendations made by the PPHAM team as stated in the PPHAM final report and published in the news (cnnindonesia, 2023).

President Jokowi, who received the PPHAM's final report, then delivered a speech in which he acknowledged and

regretted the occurrence of 12 serious violations of human rights in Indonesia, as he said in his speech, "With a clear mind and a sincere heart, I, as the Head of State of the Republic of Indonesia, acknowledge that serious violations of human rights have indeed occurred in various events". Furthermore, the President expressed his commitment to prevention efforts when he said, "I and the government are making serious efforts so that serious violations of human rights will not occur in Indonesia in the future. In addition, the government will take concrete steps in efforts to restore the rights of victims, as he emphasized in his speech, "I and the government are striving to restore the rights of victims fairly and wisely without negating the judicial settlement". The President asked the Coordinating Minister for Political, Legal and Security Affairs to oversee the government's concrete efforts so that these two things can be carried out properly, as stated in the YouTube channel and news from the website of the Ministry of State Secretariat (setneg, 2023).

4.5. Principles of Reparation for Victims of Serious Violations of Human Rights

The implementation of effective legal, policy and institutional measures to ensure the protection and promotion of human rights is one form of state responsibility. One of the efforts that the Indonesian government can make in addressing past serious violations of human rights is to provide for the restoration of victims' rights.

Restoration of the rights of victims of serious violations of human rights is carried out by the government in order to provide a sense of justice to victims of human rights violations, which require attention and assistance from various parties in order to restore the victim's condition to its original position or at least to alleviate the burden of the victim's suffering. Law No. 13 of 2006 explains that victims of human rights

violations have two exclusive rights granted by law, namely the right to compensation and the right to assistance (Komnas Perempuan, 2007). The reparation for the victims is in the form of assistance needed by the individual victims, such as houses, or collective assistance in the form of the construction of places of worship or bridges.

The state must be responsible and have an obligation to provide full reparation for losses as a result of acts or omissions that are the cause of serious violations of human rights. Reparation according to international law related to human rights violations, namely: restitution, compensation, rehabilitation.¹ However, this reparation is after a judicial decision process, while the principle of reparation implemented by PPHAM is victim-centered and humanitarian. The principles of implementing victim reparations must be victim-centered or victim-oriented. Restoration of the rights of victims of human rights violations must be adequate, effective and proportional to the gravity of the violations and the losses suffered. Reparation shall be provided for all economically assessable damages that are appropriate and proportional to the gravity of the violation and the circumstances of each incident of serious violations of human rights, such as (1). Physical or mental injury (2). Loss of opportunities, including employment, education and social benefits (3). Property damage and loss of earnings, including loss of earning potential (4). Moral damage (Boven, 2002).

The process of reparations can begin with the victim's willingness to participate. It can open the door to the victim's active participation and ensure the victim's empowerment. Reparations can include the return of confiscated assets, assistance for destroyed homes, assistance for stolen livestock, social security and health insurance. In addition, the government must provide counseling services and guarantees that

¹ Pasal 31 International Law Commission Draft on responsibility of states for internationally wrongful act 2001

human rights violations will not be repeated to assist in the process of rehabilitation (personal continuity) for victims who may take a long time to recover emotionally.

4.6. Implementation of PPHAM Recommendations

Indonesia has a bad history of serious violations of human rights and continues to be a burden on the government from time to time until the current administration of President Jokowi. The problems and dynamics of efforts to resolve serious violations of human rights require the government to seek a breakthrough as a form of commitment to provide certainty regarding the resolution of serious violations of human rights oriented toward the recovery of victims for the common interests of the Indonesian people. In the era of President Joko Widodo, the government is committed to resolving human rights violations out of court. This step began with the issuance of Presidential Decree No. 17 of 2022 and continued with Presidential Instruction No. 2 of 2023 and Presidential Decree No. 4 of 2023 as a commitment to restore the rights of victims' serious violations of human rights, which was officially launched by the President on June 27, 2023 at Rumoh Geudong Kab. Pidie, Aceh (Setneg, 2023).

The Program for the restoration of the rights of victims of Serious Violations of human rights (PKPHAM), which is being implemented, refers to the basic rights of victims in order to provide a sense of justice to victims and seeks to restore the victims to their original position or at least to alleviate the burden of suffering of victims who have not received attention from the government. The restoration of victims' rights is carried out effectively and proportionately by ministries and institutions (Kementerian/Lembaga) in accordance with Presidential Instruction No. 2/2023. The process of restoring victims' rights is a continuous, personalized and dynamic process. Ongoing means that the reparation process does not stop at one point. It is also not always in one direction, but can go back and forth, up and down. It is personal in the

sense that each victim needs a different time and way of receiving the recovery program. It is dynamic in that the recovery process will continue to be carried out in accordance with the changing needs of the victims and the real data about the victims that the team receives in the field.

The restoration of victims' rights is divided into two categories: individual restoration and community/communal recovery. On June 27, 2023, the PKPHAM Kick Off in Pidie, Aceh, the government provided restoration of the rights of 99 victims or their heirs who were recorded at the initial stage of the serious violations of human rights in the Jambo Keupok, Simpang KKA, and Rumoh Geudong incidents. The Ministries and Institutions mentioned in Presidential Instruction No. 2 of 2023 are providing assistance to 99 victims or their heirs. This assistance includes house renovations, social security, job training, scholarships, animal and agricultural equipment, and KITAS/citizenship for two ex-Mahids who are present. Additionally, 230 victims and their families can benefit from the Priority Healthy Indonesia Card for health insurance. Communal restoration of victims' rights in Aceh includes the construction of places of worship and the provision of clean water for public use. Additionally, a Living Park will be built in Rumoh Geudong, Pidie, which will serve as a center for education, gathering, and recreation for the local community. The Living Park development will include a mosque as a place of worship. The Living Park and Mosque will be equipped with an inscription signed by the President as a sign of inauguration and respect for human values in the nation and state (Setneg, 2023).

In addition to providing reparations to victims of serious violations of human rights in the country, the Government will/have also provided reparations to victims of serious violations of human rights who are living abroad or former Mahid (official bonded students). On August 23-29, 2023, the Coordinating Minister for Political, Legal and Security Affairs and the Minister of Law and Human Rights made a working visit to the

Netherlands and the Czech Republic, which then held discussions and provided restoration of victims' rights in the form of temporary and permanent residence visas for victims who were abroad.

In accordance with Presidential Instruction No. 2 of 2023, the Ministry of Law and Human Rights (Kemenkumham) issued Ministerial Regulation No. M.HH-05.GR.01.01 of 2023 on Immigration Services for Victims of Serious Human Rights Violations on August 11, 2023. Based on this policy, former victims of the Mahid who have been verified can visit Indonesia with greater ease in obtaining immigration services. Victims of past serious violations of human rights who are abroad can obtain visa processing services, residence permits and re-entry permits free of charge (Rp 0). To obtain these services, the ex-mahid must submit an application to the Embassy of the Republic of Indonesia (KBRI) where the ex-mahid resides. In addition, the embassy will process the application by forwarding it to the central government. Visa applications for ex-Mahids are granted by the Minister of Law and Human Rights or a designated immigration officer after receiving a recommendation from the Coordinating Ministry for Political, Legal and Security Affairs (Kemenkumham, 2023).

As a concrete manifestation of the restoration of victims' rights, the Ministry of Law and Human Rights issued a re-entry visa to one of the former mahids on behalf of Sri Budiarti. The document was symbolically handed over by Minister Yasonna Laoly to Sri Budiarti during a meeting with ex-mahids in the Netherlands (kemenkumham, 2023). At this time, the majority of ex-mahids in the Netherlands are no longer Indonesian citizens. Restoration is given as a state responsibility and promotes love for the homeland.

Furthermore, on December 11, 2023, the government implemented the restoration of the rights of victims of serious violations of human rights that occurred in Jakarta, including the Trisakti, Semanggi I, Semanggi II, May 1998 Incident, and enforced disappearances. The ministries/institutions

are offering the right of reparation to 51 (fifty-one) victims and their families who have been registered by the PPHAM Monitoring Team (polkam.go.id, 2023). This restitution is expected to provide a sense of justice to the victims of human rights violations who are actually part of the heroes who have unwittingly paved the way for change and justice in the governance order in Indonesia.

The restoration of the rights of victims of serious violations of human rights was also carried out in Central Sulawesi Province on December 14, 2023. The government provided restitution to victims of the 1965-1966 incident as many as 146 victims recorded with 448 beneficiaries spread over Palu City, Donggala Regency, Sigi Regency, Parigi Moutong Regency, Buol Regency and Murowali Regency. In Jakarta or Central Sulawesi, ministries/institutions listed in Presidential Instruction no. 2 2023, including; Priority Healthy Indonesia Card from the Ministry of Health, Family Hope Program, Attention and Basic Food Packages from the Ministry of Social Affairs, Micro Business Training and Business Identification Number Issuance from the Ministry of Cooperatives and SMEs, New Year Gifts from the Ministry of State-Owned Enterprises (BUMN), Jasa Raharja and BTN, Renovation or Construction of Decent Houses Program from the Ministry of Public Works and Housing (PUPR) (Polkam.go.id, 2023).

The non-judicial settlement policy adopted by the current government is a step forward by the Indonesian government and also shows that the government is not ignorant of the events of serious violations of human rights that occurred as well as the condition of the victims by continuing to take steps to deal with what can be done based on the Constitution and laws and regulations in force in Indonesia. This policy is solely in consideration of the victims who have been waiting for certainty for so long without access to state remedies for their constitutional and civil rights. This is done as an effort to knit the future carried out by the state, but the non-judicial settlement mechanism carried out by the government

does not negate or impunity for the process of judicial resolution of human rights violations.

This victim-centered rehabilitation is an important agenda for maintaining human dignity as a nation and a state, and therefore this joint step must be supported by all components of the state. Victims of serious violations of human rights welcome and appreciate the restoration of their rights provided by the government, and the recovery that has been carried out provides a sense of justice and contributes to the well-being of their lives affected by dark events. Although the government has not provided restitution to all victims in 12 (twelve) cases of serious violations of human rights by the end of 2023, the government is committed that the restitution of victims' rights will continue and become a sustainable program in providing attention to victims. This is a manifestation of moral responsibility and national policy to heal the nation's wounds and stop human rights violations that have occurred in Indonesia in order to create harmony in the life of the nation and state.

4.7. Prevention of Serious Violations of Human Rights

In an effort to prevent the recurrence of serious violations of human rights in Indonesia, the government needs to formulate concrete policies and take preventive measures in the community through public awareness campaigns related to human rights and joint efforts of all elements of the nation to mainstream human rights principles in everyday life. The Non-Judicial Resolution of Serious violations of human rights Team (Tim PPHAM) formed by President Joko Widodo in 2022 has recommended a number of things, including the eighth and tenth points which state that the state must formulate policies and make serious efforts so that serious violations of human rights do not occur again in the future.

PPHAM's recommendations for preventing the recurrence of serious violations of human rights in Indonesia include educating the state's defense instruments, namely the Indonesian National

Army, in humanitarian law and instilling universal human rights values in the state's security instruments, namely the Indonesian National Police (Kompas, 2023).

Strengthening education on Human Rights Law and Humanitarian Law, under the theme "Human Rights and Conditions of Correct Fighting" as stipulated in Humanitarian Law, must be a basic knowledge and skill of soldiers closely associated with each member of the TNI/Polri. This knowledge must be mastered along with other standardized knowledge/skills such as P5 (Marching Regulations (PBB), Military Respect Regulations (PPM), Internal Service Regulations (PPUD), Garrison Service Regulations (PDG), and Military Ceremonial Regulations (TUM)), map reading, marksmanship, individual movement, navigation, and pioneering (PPHAM, 2022).

5. CONCLUSION

Based on the analysis, we can conclude that the resolution through judicial mechanisms of serious violations of human rights that have occurred in Indonesia has experienced a deadlock that does not provide a sense of justice for victims. Therefore, the government took the initiative with a non-judicial settlement policy that focuses on the process of restoring the rights of victims who have not received attention from the state. This recovery is carried out as the responsibility of the State for the past negligence that caused suffering and victims in the human rights violations that occurred, without negating the judicial process. In the judicial process, the Government has always encouraged the Attorney General's Office and the National Human Rights Commission to coordinate and communicate with each other in following up to resolve human rights violations, so that the legal status becomes clear. Victims of serious violations of human rights welcome and appreciate the government's policy of providing individual and communal reparation.

In addition, the government is also committed to maintaining and respecting

human rights so that serious violations of human rights do not occur again in the future. According to the author, the non-judicial settlement process carried out by the government has received great enthusiasm from victims, so that in the future the recovery

process must be carried out well felt by victims, right on target and provide respect for victims.

REFERENCE

- [1] Anaada, Demis F. "Mekanisme Penyidikan dan Penuntutan Terhadap Pelanggaran Hak Asasi Manusia Menurut Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan HAM." *LEX PRIVATUM* 6, no. 4 (2018).
- [2] David Cohen, 2003, "Intended to Fail: The trials before the Ad Hoc Human Rights Court in Jakarta", International Center for Transitional Justice. <https://www.ictj.org/publication/intended-fail-trials-ad-hoc-human-rights-court-jakarta>.
- [3] Eddyono, Supriyadi Widodo dkk. *Perlindungan Saksi dan Korban Pelanggaran HAM Berat*. Jakarta: ELSAM, 2005.
- [4] Effendi, A. Mansyur dan Evandri, Taufani Sukmana, *HAM Dalam Dimensi/Dinamika Yuridis, Sosial, Politik, Ghalia Indonesia*, Bogor, 2007.
- [5] Enny Soeprapto, 2012, "Penyelidikan Menurut Hukum Acara Perkara Kejahatan Genosida dan Kejahatan Terhadap Kemanusiaan Menurut Undang-Undang No. 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia: Beberapa Catatan", Makalah yang disiapkan untuk dipaparkan pada Rapat Sidang Paripurna Komnas HAM 9-10 Juli 2012.
- [6] Harifin A. Tumpa, 2010, *Peluang dan Tantangan Eksistensi Pengadilan HAM di Indonesia*, Kencana, Jakarta.
- [7] Instruksi Presiden Republik Indonesia Nomor 2 Tahun 2023, tentang Pelaksanaan Rekomendasi Penyelesaian Non-Yudisial Pelanggaran Hak Asasi Manusia Yang Berat (2023).
- [8] John Locke, *The Second Treatise of Civil Government and a Letter Concerning Toleration*, (Oxford: Oxford University Press, 1964), 4
- [9] Keputusan Presiden Nomor 17 Tahun 2022 tentang Pembentukan Tim Penyelesaian Non Yudisial Pelanggaran HAM yang Berat Masa Lalu (2022).
- [10] Keputusan Presiden No 4 Tahun 2023 tentang Tim Pemantau Pelaksanaan Rekomendasi Penyelesaian Non Yudisial Pelanggaran HAM yang berat (2023).
- [11] Komnas Perempuan, https://www.komnas_perempuan.go.id/read-news-13-pertanyaan-kunci-tentang-pemulihan-makna-luas
- [12] Kumendong, Wempie JH. "Kajian Terhadap Pelanggaran Hak Asasi Manusia Yang Berat Menurut Uu No. 26 Tahun 2000 Tentang Pengadilan HAM." (2012).
- [13] Kusnadi, Nandang. "Perspektif Penegakan Hak Asasi Manusia Melalui Pengadilan Hak Asasi Manusia." *Pakuan Law Review* 3, no. 1 (2017). Makamea, R. (2018). "Pengembalian Berkas Perkara Dari Penuntut Umum Kepada Penyidik". *Lex Crimen*, 7(5).
- [14] Nasution, Bahder Johan, *Negara Hukum Dan Hak Asasi Manusia*, Mandar Maju, Bandung, 2012.
- [15] Oka Mahadewi, I Gusti Ayu. Skripsi "Kajian Yuridis Kedudukan Komisi Nasional Hak Asasi Manusia (Komnas HAM) Dalam Struktur Ketatanegaraan Indonesia". Fakultas Hukum Universitas Mataram
- [16] Pasal 31 International Law Commission Draft on responsibility of states for internationally wrongful act 2001
- [17] Prasetyo, Teguh, and Jeferson Kameo. "Peradilan Hak Asasi Manusia: Suatu Perspektif Menurut Jurisprudence Keadilan Bermartabat." *DiH: Jurnal Ilmu Hukum* 15, no. 2 (2019): 143-154.
- [18] Rancangan Pembangunan Jangka Menengah Nasional (RPJMN) 2020-2024, (https://perpustakaan.bappenas.go.id/e-library/file_upload/koleksi/migrasi-data-publikasi/file/RP_RKP/Dokumen%20RPJMN%202020-2024/Lampiran%201.%20Narasi%20RPJMN%202020-2024.pdf)
- [19] Republik Indonesia, UU No. 26 Tahun 2000. Tentang pengadilan HAM
- [20] Rhona K.M. Smith, *Hukum Hak Asasi Manusia*, (Yogyakarta: PUSHAM UII, 2008), 39
- [21] Semendawai, Abdul Haris Jurnal Hukum No. 2 Vol. 16 April 2009: 253 – 267,

[22] Theo Van Boven, Mereka yang Menjadi Korban, Hak Korban atas Restitusi, Kompensasi, dan Rehabilitasi. Pengantar Buku; Ifdhal Kasim hal. xxi-xxii, ELSAM, 2002.

[23] Tim KontraS , Bahan Advokasi Pelanggaran HAM Berat Masa Lalu, November 2016 Penerbit: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS) Jalan Kramat II nomor 7, Jakarta

[24] Undang-Undang No 39 tahun 1999, bab I ketentuan umum pasal 1

[25] <https://news.detik.com/berita/d-7082433/hak-pemulihan-korban-98-dan-trisakti-diberikan-11-desember-sisanya-bertahap> (access 17 Jan. 24).

[26] <https://polkam.go.id/ppham-salurkan-pemenuhan-hak-korban-pelanggaran-ham-berat/> (access 17 Jan. 24).

[27] <https://polkam.go.id/tim-pemantau-ppham-salurkan-pemenuhan-hak-korban-pelanggaran/> (access 17 Jan. 24).

[28] https://setneg.go.id/baca/index/presiden_jokowi_sesalkan_terjadinya_pelanggaran_ham_berat_di_tanah_air (access 17 Jan. 24).

[29] <https://www.bbc.com/indonesia/indonesia-56677731> (access 16 Jan. 24)

[30] [https://www.cnnindonesia.com/nasional/20230112110023-12-899393/11-rekomendasi-ppham-ke-jokowi-untuk-selesaikan-pelanggaran-ham-berat.](https://www.cnnindonesia.com/nasional/20230112110023-12-899393/11-rekomendasi-ppham-ke-jokowi-untuk-selesaikan-pelanggaran-ham-berat) (access 16 Jan. 24)

[31] <https://www.cnnindonesia.com/nasional/20231210183801-12-1035381/hak-pemulihan-korban-98-hingga-trisakti-diberikan-di-hari-ham-dunia> (access 17 Jan. 24).

[32] <https://www.kemenkumham.go.id/berita-utama/menkopolhukam-dan-menkumham-temui-eks-mahid-di-belanda-bahas-kewarganegaraan-dan-repatriasi> (access 16 Jan. 24).

[33] <https://www.komnasham.go.id/index.php/news/2020/6/11/1443/penyelesaian-proses-hukum-atas-kasus-pelanggaran-ham-yang-berat-terhambat.html> (access 16 Jan. 24)

[34] <https://www.komnasham.go.id/index.php/news/2020/6/11/1443/penyelesaian-proses-hukum-atas-kasus-pelanggaran-ham-yang-berat-terhambat.html> (access 17 Jan. 24).

[35] <https://www.komnasham.go.id/index.php/news/2023/9/29/2419/jadi-perbincangan-nasional-pelanggaran-ham-yang-berat-prioritas-bagi-komnas-ham.html>

[36] <https://www.kompas.id/baca/polhuk/2023/05/28/mencegah-pelanggaran-ham-berat-terulang> (access 17 Jan. 24).

[37] https://www.setneg.go.id/baca/index/presiden_jokowi_sesalkan_terjadinya_pelanggaran_ham_berat_di_tanah_air_1 (access 16 Jan. 24)