Discover Crimes against Humanity as Gross Violations of Human Rights: International and Indonesia Perspectives

Gde Made Swardhana

Faculty of Law, Udayana University

E-mail correspondence: gmswar@yahoo.com

ABSTRACT

Human rights law is not identical with international humanitarian law. However, between one another, they have similar rules and objectives in essence, despite the difference in formulation, including in terms of gross violations of human rights context. This article attempts to explore both the relationship and the difference between gross violations of human rights and international humanitarian law violations. While in the Indonesian context, crimes against humanity are arranged in the Human Rights Court Law. However, it still raises discourses related to the limitation of crimes against humanity that differ with international law instruments, and it also raises problems for judges and the Human Rights Court to define crimes against humanity as the legal ground for several gross violations of human rights that are adjudicated within this framework. This article uses the normative legal research method to conduct, analyze, and arrange crime against humanity formulations with a statutory law approach, a legal conceptual approach, and a case law approach. This article concluded with a limitation that highlights whether gross human rights violations can be prosecuted and punished using international humanitarian law. This article also stresses normative and conceptual aspects related to the development of crimes against humanity, its elements of crime, and its application by the judicial system.

Keywords: Crime against humanity; gross violations of human rights

INTRODUCTION

The gross violations of human rights terminology have been well-known and are related to the violations of international humanitarian law. Sometimes, the two terms have been associated with violations of humanitarian law and gross violations of human rights. While there is a relationship between the two terms, human rights law is not identical with international humanitarian law. In this context, if legal punishment has been lifted for perpetrators of the two

1 Kasim, I. (2009). Penyelesaian Non-Prosekutorial dan Rekonsiliar terhadap Pelanggaran Hak Asasi Manusia yang Berat, Jurnal Hukum Ius Quia Iustum, 16(2), 222-237, DOI: https://doi.org/10.20885/ium.stum.vol16.iss2.art14, pp. 228-229.

2 Hadiprayitno, I.I. (2010). Defensive Enforcement: Human Rights in Indonesia, Human Rights Review, 11(3), 373-399, DOI: https://doi.org/10.1007/s12142-009-0143-1, pp. 377-378.

This work is licensed under a Creative Commons Attribution 4.0 International License.
kinds of violations, it should be defined, and made clear which legal sources stipulate legal punishment for both kinds of violations of humanitarian law or gross violations of human rights. Therefore, when we discuss legal enforcement from legality perspective and the Judges authority to adjudicate and lift the sanctions for these crimes.

The gross violations of human rights formally entered legal lexicon in Indonesia after the enactment of Law Number 39 of 1999 on The Human Rights (in further is defines as Law on Human Rights) and Law Number 26 of 2000 On The Human Rights Court (further defined as Law on Human Rights Court). These Laws are an important cornerstone of “reformasi” achievement that became legal frameworks to adjudicate the gross violations of human rights perpetrators (including state officials) to the court, and also adsorb new legal concepts or legal terminology into Indonesia’s legal system including genocide, crime against humanity, command responsibility, and other derivate concepts in international law instruments. It is also recognized to have significant impact on legal practice, and the legal educational framework in Indonesia.

Based on international human rights literature, we can conclude that gross violations of human rights terminology are not formulated into formal ways. This is reflected in the absence of a common definition of gross human rights violations in international legal literature. Theo van Boven with his research related to the rights of gross violation human rights victims, that illustratively describes gross violations of human rights terms, caused by difficulty in defining them in broader ways. Boven revealed that the phrase “gross” is used to stress the phrase “violations” caused by the severity level of crimes that are committed. Moreover, the phrase “gross” is related to the types of human rights violations that are non-derogable rights violations and therefore shall not be reduced in any circumstances. It is quite similar to the Boven argument. The Third Restatement of Foreign Affairs Relations of the United States, especially in Part 702, defines “a violation is gross if it is particularly shocking because of the importance of the rights or the gravity of the violation,” emphasizing its ties to state policy.

---

3Septika, L.P.S. (2016). Tanggung Jawab Negara dalam Penyelesaian Pelanggaran Hak Asasi Manusia, Jurnal Magister Hukum Udayana, 5(4), 661-676, DOI: https://doi.org/10.24843/JMHU.2016.v05.i04.p03, pp. 670.

4Wahjoe, O. (2008). Pengadilan Hak Asasi Manusia Ad Hoc dalam Penegakan Hukum Pidana Internasional, Jurnal Hukum Pro Justitia, 26(4), 350-367, pp. 361-362.

5Hermanto, B., & Aryani, N.M. (2018). Gagasan Pengaturan yang Ideal Penyelesaian Yudisial maupun Ekstrayudisial Pelanggaran Hak Asasi Manusia di Indonesia, Jurnal Legislati Indonesia, 15(4), 369-383, DOI: https://doi.org/10.54629/jli.v15i4.265 pp. 373-375.

6Astuti, L. 2017. Penegakan Hukum Pidana Indonesia dalam Penyelesaian Pelanggaran Hak Asasi Manusia, Kosmik Hukum, 16(2), DOI: https://10.30595/kosmikhukum.v16i2.1995

7Begem, S.S., Qamar, N. & Baharuddin, H. (2019). Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (HAM) Berat melalui Mahkamah Pidana Internasional, SIGn Jurnal Hukum, 1(1), 1-17, DOI: https://doi.org/10.37278/sih.v1i1.28, pp. 9-11.

8 A study conducted by Center for the Study of Social Conflict has been describe in further context concerning gross violations of human rights, the causes, the actors, and wider explanations that publicly known and accepted. See in further: Schmid, A. P. (1989). Research on Gross Human Rights Violation: A Programme (Center for the Study of Social Conflict, University of Leiden, Netherlands, pp. 151-158.

9 Van Boven, T., (2009). Mereka yang Menjadi Korban: Hak Korban atas Restitusi, Kompensasi dan Rehabilitasi ELSAM, Jakarta, pp. 15-18.

10 Steiner, H. & Alston, P., (1996). International Human Rights in Context, Clarendon Press, Oxford, pp. 145-147.
In different ways, the Law on Human Rights Court stresses that it belongs to an action classified as a criminal act in international law, including genocide and crime against humanity. Based on this limitation, the legislature and government have a common understanding that gross violations of human rights are divided into just two types of crimes that are internationally recognized as the worst types of crimes. Moreover, this law also transforms gross violations of human rights concepts into international criminal crimes. This law was believed to reduce gross violations of the human rights concept into two terms of international crimes, both genocide and crime against humanity.

There are several gross violations of human rights in Indonesia in recent decades. This shifts new discourse that gross violations of human rights are domestic issues and also international community concerns, especially in defining the perpetrators of gross violations of human rights in any Criminal Court or Human Rights Court in several countries. In Indonesia, gross violations of human rights continue. It has no definite universally accepted concept as internationally known. In this context, the Law on Human Rights, Lieu in Law of Human Rights Court, and the Law on Human Rights Court have different definitions of this concept. In the two previous laws, the gross violation of human rights is defined without a crime element related to systematic or widespread crimes against humanity. It can be categorized as gross violations of human rights for any violations as ius cogens. Moreover, the concept of gross violation of human rights is defined as a conflation of human rights and internationally criminalized crimes. Based on International Law history, it also placed as part of international crimes.

The Indonesian government's concern in recent international issues concerning crimes against humanity was realized with the establishment of Indonesia's Human Rights Court, as part of Indonesia's obligations in the civilized international community. Hence, it also related to Indonesia's consequences of ratifying several international human rights law instruments, Indonesia, for example, ratified the fourth of the 1949 Geneva Convention with Law Number 59 of 1958, and it was recently emphasized with the enactment of Law Number 1 of 2018 concerning the Red Cross. This ratification has implications as stipulated in Article 49 of the 1st Geneva Convention, Article 50 of the 2nd Geneva Convention, Article 129 of the 3rd Geneva Convention.

---

11 Hastuti, L. (2011). Pengadilan Hak Asasi Manusia sebagai Upaya Pertama dan Terakhir dalam Penyelesaian Pelanggaran Berat Hak Asasi Manusia di Tingkat Nasional. Jurnal Dinamika Hukum, 12(3), 395-406. DOI: http://dx.doi.org/10.20884/1.jdh.2012.12.3.197, pp. 401-402.
12 Yulia, R. (2016). Menggugat Pemenuhan Hak Korban Pelanggaran Hak Asasi Manusia Masa Lalu, Jurnal Hukum Prioris, 4(3), 266-278, pp. 274-276.
13 Liwanga, R.C. (2015). The Meaning of “Gross Violation” of Human Rights: A Focus on International Tribunals' Decisions over the DRC Conflicts, Denver Journal of International Law and Policy, 44(1), 67-81, pp. 68-73.
14 Abidin, Z. (2010). Pengadilan Hak Asasi Manusia di Indonesia: Regulasi, Penerapan dan Perkembangannya, Makalah disampaikan pada Kursus HAM untuk Pengacara ke XIV pada ELSAM, Jakarta, 27 Oktober, 1-34, pp. 12-14.
15 Atmasasmita, R. (2000). Pengantar Hukum Pidana Internasional (Edisi Revisi), Refika Aditama, Bandung, h. 42.
16 Yusa, I.G., Hermanto, B., & Aryani, N.M. (2020). No-Spouse Employment and the Problem of the Constitutional Court of Indonesia, Journal of Advanced Research in Law and Economics, 11(1), 214-226, DOI: https://doi.org/10.14505/arle.v11.1(47).26, pp. 218-219.
and Article 146 of the 4th Geneva Convention as simplified,\textsuperscript{17} First, enact the necessary laws to provide effective criminal sanctions against everyone who committed or ordered the execution of gross violations of human rights; second, search everyone who is suspected of committing gross violations of human rights; third, prosecute the perpetrators of these gross violations of human rights regardless of their nationality; and fourth, extradite everyone who committed gross violations of human rights if desired and in accordance with national laws.\textsuperscript{18}

The recent national and international legal developments shift the fundamental needs for the government to establish the Human Rights Court as a special court for the perpetrators of crimes against humanity in Indonesia have become undeniable and realized into a legal framework with the enactment of the Law on Human Rights Court. This Indonesia’s Government effort is defining as the implementation of regulations political policy or known as legislative policy. This policy as positive laws shall interpret as certain norms that explicitly regulates into national statutory law forms, and has legal binding force as Austin said, “The Command of the Sovereign”.\textsuperscript{19} The Law on Human Rights Court also placed as the realization of Indonesia’s Government concern and good will to punish the perpetrators of crime against humanity in Indonesia that recognized as gross violations of human rights.

Based on the main legal problematic framework explained in this section, the importance of this article is twofold: first, to conduct, analyze, and formulate certainty norms related to crimes against humanity from a broader spectrum of international human rights law instruments perspective related to the placement of crimes against humanity in common perception, and second, to conduct, analyze, and formulate the crimes against humanity from a narrower spectrum of international human rights law instruments perspective related to the placement of crimes against humanity in common perception.

METHOD

This article was conducted based on normative legal method,\textsuperscript{20} that placing the legal research to analyze and found the legal problematic\textsuperscript{21} in a system of statutory law.\textsuperscript{22} In this context, this article was limited to analyzing crimes against humanity as a type of gross violation of human rights both from international or national legal instruments and further arrangements

\textsuperscript{17} Grenfell, K. (2013). Perspective on the applicability and application of international humanitarian law: the UN Context, International Review of the Red Cross, 95(891-892), 645-652, DOI: https://doi.org/10.1017/S1816383114000162 pp. 649-650.
\textsuperscript{18} Setiyono, J., (2007). Kebijakan Legislatif Indonesia, tentang Kejahatan Terhadap Kemanusiaan Sebagai Salah Satu Bentuk Pelanggaran HAM yang Berat, in: Muladi (ed.), Hak Asasi Manusia, hakekat, konsep, dan implikasinya dalam perspektif hukum dan Masyarakat. Penerbit Refika Aditama, Bandung, p. 122.
\textsuperscript{19} Wignyosoebroto, S. (2002). Hukum Paradigma, Metode dan Dinamika Masalahnya. Penerbit ELSAM Huma, Jakarta, p. 18.
\textsuperscript{20} Sudiarawan, K.A., Tanaya, P.E., & Hermanto, B. (2020). Discover the Legal Concept in the Sociological Study, Substantive Justice International Journal of Law, 3(1), 94-108, DOI: http://dx.doi.org/10.33066/sijil.v3i1.69, pp. 99-102.
\textsuperscript{21} Swardhana, G.M. (2010). Pergulatan Hukum Positivistik menuju Paradigma Hukum Progresif, Masalah-masalah Hukum, 39(4), https://https://doi.org/10.14710/mmh.39.4.2010.378-384 378-384, p. 381.
\textsuperscript{22} Choudhury, N. (2017). Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom, Asian Journal of Law and Society, 4(1), 229-255, DOI: https://doi.org/10.1017/als.2017.2 p. 231.
related to Indonesia's national statutory laws as a legal framework to prosecute and punish the perpetrators of crimes against humanity. This article's method was strengthened with a statutory law approach, a legal conceptual approach, and a legal case approach.

ANALYSIS AND DISCUSSION

A. Crimes against Humanity as International Crimes: International Law Perspectives

The international crimes can be defined as any type of crime that has the potential to cause losses to the international community, such as material losses (causalities and properties) and immaterial losses (psychology and mentality) If it was caused by human rights violations within coercive measurement, then it was adjudicated by every national court or international court based on their jurisdiction or competence to examine and adjudicate all perpetrator.

Based on international human rights instruments, in the early era, there were three types of international crimes, inter alia (1). Crimes against peace, including acts of premeditation or declarations of war aggression; (2) War Crimes, including violations of customary law related to war; and (3) Crimes against Humanity, defined as cruel acts committed during war against non-combatant or civilians. However, before these three categories were upheld as international crimes, since the 18th century, international society had recognized piracy and slavery as international crimes. It cannot be separated with the importance of trade link by countries, the piracy that happens by trade ships in the overseas is defines as common enemies of international community. Moreover, the slavery that happens in these centuries mocks dignified acts and is contrary to human values.

The development of international crimes, as explained above, shifts the classification of international crimes into three main categories, inter alia: a. The international crimes that came from International Customary Law, and in recent development applied by countries and recognized within International Law framework. This international crimes include piracy, slavery, war crimes that include crimes against humanity; b. International crimes that came from several international conventions, that historically can be determined between international crimes as a subject of a single convention, for example, the Single Narcotics Convention, 1961, and international crimes as a subject of multiple

---

23 Freuden, S. (2019). Decision on the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute (Int'l Crim. Ct.), International Legal Materials, 58(1), 120-159. DOI: https://doi.org/10.1017/ilm.2019.3, pp. 135-136.
24 Van Sliedregt, E. & Stoitchkova, D. (2010). ‘International Criminal Law’, in: Joseph, S. & McBeth, A. (eds.), Research Handbook on International Human Rights Law, 241-271, Edward Elgar, Cheltenham, UK and Northampton, MA, USA, pp. 258-261.
25 Atmasasmita, R. (2000) Op.Cit., p. 45.
26 Syahmin, A.K., (1985). Pengantar Hukum Humaniter Internasional Bagian Umum, Penerbit Armico, Bandung, p. 45.
27 Coracini, A.R. (2008). Amended Most Serious Crimes: A New Category of Core Crimes within the Jurisdiction but out of the Reach of the International Criminal Court? Leiden Journal of International Law, 21(3), 699-718, DOI: https://doi.org/10.1017/S0922156508005268, pp. 705-707.
28 Atmasasmita, R. (2000). Op.Cit., h. 37.
conventions, for example, hijacking crimes as stipulated in the Tokyo Convention, 1963, the Hague Convention, 1970, and the Montreal Convention, 1971.

c. The international crimes that came from special international covenant related with human rights. These international crimes that exists as logical consequences as part of cruel or violations that happens during the Second World War with impacting millions combatant and civilian’s losses. The international convention that specifically has aims to protect war victims is the 1949 Geneva Convention. This covenant has become international legal framework to protect human rights, and defines crimes against humanity as an international crime causes it was contrary with fundamental values of humankind as declared in the Universal Declaration of Human Rights 1948.

The crimes against humanity as international crimes, according to Muladi, shall be fulfilled three main elements, inter alia first, international elements including the direct threat to world peace and security, the indirect threat to the world peace and security, and it was shocking to the conscience of humanity. Second, transnational elements including it was conduct affecting more than one state, including their citizens and has special means and methods transcend national boundaries. Third, necessity elements related with the need to cooperate between states to enforce international crimes.

The international community has common understanding to recognize crimes against humanity as international crimes. It is related with the willingness of the Allied Power as the winners of the Second World War as stipulates in Military Court Charter in Nuremberg 1946 and Tokyo Tribunal in Japan 1948. In this context, Nuremberg Trial and Tokyo Tribunal established by Allied Power have strict competence to adjudicate and punish perpetrators. The crimes against humanity as international crime, despite war crimes and war against peace was happens during the wars. The crimes against humanity defines as a cruelest international crime’s that contrary with humankind values in ever centuries, in this context, the international community has consensus thought that crimes against humanity belongs to hostis humanis generis.

B. The Crimes against Humanity as Gross Violations of Human Rights in Indonesia: Current Laws and Future Prospects

The Indonesian Government has been regulating the legal settlement mechanism towards gross violations of human rights, as stipulated in the Law on Human Rights Court. This
Law especially in Article 7 of Law on Human Rights Court was arranged Human Rights Court competence to adjudicate genocide and crimes against humanity.\textsuperscript{35} The genocide regulates in Article 8 of Law on Human Rights Courts while the crimes against humanity stipulates in the Article 9 of the Law on Human Rights Courts.

These genocide and crimes against humanity have quite similar forms to the arrangement of the Rome Statute of the International Criminal Court (1998), especially in Article 6 and Article 7 Par. 1 of the Rome Statute. However, there are differences between Indonesia’s Law on Human Rights Court and the Rome Statute arrangement, especially in crimes against humanity. As stipulated in letter (k) of the Rome Statute, crimes against humanity also include inhuman acts with the aim of causing serious suffering or serious physical or mental damage.\textsuperscript{36} The other differences are also related to the competence between the International Criminal Court and Indonesia’s Human Rights Court. In Indonesia, the Law on Human Rights Court recognizes genocide and crimes against humanity as the Indonesian court’s competences, while in the Rome Statute, the International Criminal Court has authority to adjudicate genocide, crimes against humanity, war crimes, and aggression crimes as the most serious crimes of international concern.\textsuperscript{37} The recognition of genocide crime and crimes against humanity arrangement in the Law on Human Rights Court adsorb Rome Statute, without arranging other inhuman act that conducted and cause heavy depression or serious illness both physically or mentally.\textsuperscript{38} This arrangement results in narrowing crime types and causes difficulty interpreting as a result of translation faults. The definition of gross violation of human rights as regulated in the Law on Human Rights Court does not provide an adequate legal framework caused by the restriction to divide gross violation of human rights into two types: the worst of crimes and human rights violations just like international crimes.\textsuperscript{39} The other issue they face is that undetailed and unclearly classified human rights violations are classified as special crimes, with distinct characteristics from the crimes regulated by the Criminal Code. The biggest concern with these arrangements is related to the difficulty of proposing adequate evidence and criminal law imposed on perpetrators, caused by judges unable to create prosecution. In this context, the brief arrangement in this law also seems distorted compared to other criminal types that are recognized in the Rome Statute.

The Nuremberg Trial and Tokyo Tribunal for the first time adjudicate the crimes against humanity within International Military Tribunal framework to adjudicate high ranking military officer

\textsuperscript{35} Nurhayati, N. (2017). Quo Vadis Perlindungan Hak Asasi Manusia dalam Penyelesaian Pelanggaran HAM Berat Masa Lalu melalui Jalur Non Yudisial, \textit{Jurnal Jurisprudence}, 6(2), 149-159, DOI: https://doi.org/10.23917/jurisprudence.v6i2.3012, pp. 154-155.

\textsuperscript{36} Prasetyo, T. & Kameo, J. (2019). Peradilan Hak Asasi Manusia: Suatu Perspektif menurut Jurisprudence Keadilan Bermartabat, \textit{DiH: Jurnal Ilmu Hukum}, 15(2), 143-154, DOI: https://doi.org/10.30996/dih.v15i2.2430, pp. 149-151.

\textsuperscript{37} Hermanto, B. (2019). Rekonstruksi Penguatan Eksistensi Pengadilan Hak Asasi Manusia di Indonesia berlandaskan Pancasila dan Statuta Roma terhadap Pengaturan Undang-undang Pengadilan Hak Asasi Manusia, \textit{Jurnal Legislasi Indonesia}, 16(1), 89-106, DOI: https://doi.org/10.54629/jili.v16i1.441, pp. 93-96.

\textsuperscript{38} Sivakumaran, S. (2010). The International Court of Justice and human rights, in; Joseph, S. & McBeth, A. (eds.), \textit{Research Handbook on International Human Rights Law}, 299-325., Edward Elgar, Cheltenham, UK and Northampton, MA, USA, pp. 303-306.

\textsuperscript{39} Abidin, Z. (2010). Op.Cit., p. 14.
or civil officer both from Germany Nazi or Japan soon after the end of the Second World War. The Article 6 (c) Nuremberg Charter defines the acts as crimes against humanity are killing, exterminating, enslaving, deportation or other inhuman acts directed against civilian population before or during war, persecution based on political, racial or religious grounds in the context or related with a crime within the jurisdiction of the Tribunal, whether or not violates domestic law of the country in which this crimes occurred.  

The trial of crimes against humanity also stressed in the United Nations General Assembly, 11 Desember 1946, and also by the International Commission on the International Law. The crimes against humanity concept was refined further by domestic courts in several countries, including Israel and France. In this era, international customary law recognized by common civilized nations places crimes against humanity as international crimes within the ius cogens degree and shall have an impact through obligatio ergo omnes. In this context, the perpetrators would be punished individually by every country with universal jurisdiction. Moreover, the crimes against humanity as recognized by international customary law do not need special requirements/nexus related to armed international conflict as defined in the Nuremberg Statute and Tokyo Charter.

Furthermore, gross violations of human rights happen whenever non-derogable rights or violations of ius cogens have been conducted by the state or their officials. The non-derogable rights that cannot be reduced or violated under any circumstances, including war conditions, whose protection cannot be delayed for any reason. The ICCPR defines non-derogable rights as including rights to life (Article 6), rights not to be tortured (Article 7), rights not to be slaved (Article 8), rights not to be punished for activities that do not belong to crimes when such acts are conducted (Article 15), rights to be recognized as equal before the law (Article 16), and freedom of thought, beliefs, and freedom to devote to any religion (Article 18).

In Indonesia, after the widespread gross violations of human rights in Timor-Timur before and after the referendum held by UNTAET in 1999, there are massive civil society efforts to pressure the Indonesian government. These crimes were committed by Indonesian military and police officers in Timor-Leste and were condemned by the international community, resulting in massive protests and demands for criminal trials within the legal framework and in accordance

---

40 Ufran, U. (2019). Penyelesaian Pelanggaran Hak Asasi Manusia Berat melalui Mekanisme Pengadilan Nasional dan Pengadilan Pidana Internasional, Jurnal Ius Kajian Hukum dan Keadilan, 7(1), 170-181. DOI: http://dx.doi.org/10.29303/ius.v7i1.602, pp. 175-177.

41 Resolution related International Law Principles that Recognized by Nuremberg Statute, UN GA Res. 95(1), 11 Desember 1946.

42 Principle VI. C. International Law Principles that Recognized in the Tribunal Decision/ Nuremberg Principles, 1950.

43 Martowirono, S. (2017). Azas Pelengkap Statuta Roma 1998 tentang Pengadilan Pidana Internasional, Jurnal Hukum & Pembangunan, 3(4), 339-356. DOI: https://doi.org/10.21143/jhp.vol31.no4.1290, pp. 344-346.

44 Terretta, M. (2017). The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values, Human Rights Quarterly, 39(1), 226-233, pp. 229-230.

45 U.N.T.S. (1966, December 16). No. 14668, vol 999. Article 4 Par. (2) The Covenant on Civil and Political Rights 1966. United Nations General Assembly Resolution 2200A [XXI]. www.cirp.org/library/ethics/UN-covenant/
with international law standards. The international pressure was raised to the highest level within the Special Session that was conducted by the UN High Commissioner for Human Rights in Geneva, September 23–24, 1999, with a special agenda to discuss the Timor-Timur case. The Indonesian Government cannot prevent this Special Session, and this Session has a resolution to pursue UN’s creating an international investigation team with their final investigation report and issuing a proper recommendation to establish an international court to solve serious crimes that happen in Timor-Timur.

Based on this evidence, which demonstrates that human rights violations are extraordinary crimes with far-reaching consequences on both a national and international scale, moreover, gross violations of human rights are not defined as ordinary crimes as the criminal acts stipulated in the Criminal Code, and they cannot be settled within common judicial mechanisms. The settlement of gross violations of human rights was conducted by the Human Rights Courts, especially in Indonesia, with the enactment of the Law on Human Rights Courts as the derivation of the Article 104 Par. (1) Law on Human Rights that regulates, “… to adjudicate gross violations of human rights shall established the Human Rights Court in the General Section of Judicial Power”. It shall be noted that the Law on Human Rights Court enacted as the further reformulation of the Government Regulations in Lieu Laws (Perppu/Peraturan pemerintah Pengganti Undang Undang) Number 1 of 1999 concerning Human Rights Court that seems irrelevant and it cannot be legal frameworks to adjudicate the perpetrators of human rights violations.

According to Article 18 of the Law on Human Rights Court, Komnas HAM or Indonesia’s Human Rights Commissions shall be the only institution with authority to investigate gross violations of human rights, it also became legal frameworks for Komnas HAM to examine several cases inter alia Wasior and Wamena Cases 2001-2003 (Jayapura), mass demonstration on

46 Special Session that held by the UN High Commissioner on Human Rights has been held for four times in this 50 years, first and second Special Session both in 1992 and 1993 to respond the war in ex-Yugoslavia (Bosnia Herzegovina), third Special Session held in 1994 to respond genocide in Rwanda, and fourth Special Session held in 1999 to respond crimes against humanity in Timor-Timur.

47 Warjiyati, S. (2018). Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia, Justicia Islamica, 15(1), 123-138, DOI: https://doi.org/10.21154/justicia.v15i1.1391, pp. 128-129.

48 Marzuki, I. & Faridy, F. (2020). Relevansi Hukum dan Hak Asasi Manusia dengan Agenda Reformasi: Dimensi Nasional dan Internasional, JCH (Jurnal Cendekia Hukum), 5(2), 350-359, DOI: http://doi.org/10.33760/jch.v5i2.242, pp. 368-369.

49 Hikmawati, P. (2016). Kompetensi Pengadilan Hak Asasi Manusia dan Pembentukan Pengadilan Hak Asasi Manusia ad Hoc, Kajian, 17(1), 1-25, DOI: https://doi.org/10.22212/kajian.v17i1.355, pp. 17-21.

50 The Government Regulations in Lieu of Law Number 1 of 1999 concerning Human Rights Court drafted based on the emergency situation to settle several gross violations of human rights that raises in Timor-Timur before and after Referendum by UNTAET at 31 August 1999.

51 Utomo, N.A. (2020). Dekonstruksi Kewenangan Investigatif dalam Pelanggaran Hak Asasi Manusia yang Berat, Jurnal Konstitusi, 16(4), 809-833, DOI: https://doi.org/10.31078/kjk1642, pp. 818-822.

52 Arliman, L. (2017). Komnas HAM sebagai State Auxiliary Bodies di dalam Penegakan Hak Asasi Manusia di Indonesia, Jurnal Bina Mulia Hukum, 2(1), 54-66, DOI: https://doi.org/10.23920/ibmh.v2n1.5, pp. 58-59.

53 Komisi Pemberantasan Korupsi (2014, December 13). The Editorial Board of KPK Annual Report. https://www.kpk.go.id/id/publikasi/laporan-tahunan/949-laporan-tahunan-kpk-2004
May 1998 in Jakarta including Trisakti case (1998), Semanggi I Case (1998), Semanggi II Case (1999), Tanjung Priok Case (1984), and Timor-Timur Case (1999).\textsuperscript{54}

The one of most well-known incidents in Indonesia is the list of the Former Minister of Defense and Security/Chief Commander of Military, General Wiranto and several high-ranking military officials into list of visa’s exceptions by the US Government. This action is related to the US government's indication of Wiranto and other high-ranking military officials in crimes against humanity in Timor-Timur after the Referendum held in 1999. This decision was made as a result of the Indonesian government's ignorance of bringing all military officers into a special court that was supported by the United Nations. The US Government action also reflected the regretful of the stagnant human rights court in Indonesia to adjudicate Wiranto and other high ranking military officers towards their actions that conducted in Timor-Timur.\textsuperscript{55} Then-US Ambassador to Indonesia, Ralph L. Boyce, diplomatically stated that the US has no individual exception regulations, and that every Indonesian citizen has the right to apply for a visit visa, which would be reconsidered based on the utility and merit system. In February 2003, General Wiranto and seven high-ranking military officials, including Lieutenant General Kiki Syahnakri (ex-Military Emergency Commander), Major General Adam Damiri (ex-Udayana Regional Resort Commander), Major General Zacky Anwar Makarim (ex-Chief of Security Task Force), Brigadier General Tono Suratman (ex-Timor-Timur Wira Darma Regional Resort Commander), and one civilian, Abilio Osorio Soares (ex-Timor-Timur Governor), were declared as suspects by the Special Panel for Serious Crime Unit (SCU), Dili District Courts, East Timor.\textsuperscript{56} The General Attorney at Dili District Courts under United Nations Mission of Support to East Timor (UNMISET) has been issuing the arrest order to all suspects with accusation of committing crimes against humanity in Timor-Timur before and after referendum in August 1999.\textsuperscript{57} However, the harsh reaction shown by the Indonesian government towards this decision is remarkable. For example, the then-Minister of Foreign Affairs, Hasan Wirajuda, in Kuala Lumpur, paid his attention and responded that Dili District Court is not an international tribunal, and it has no jurisdiction or competence to arrest, and also, the then Chief of MPR/People Representative Assembly, Amien Rais, has argued that this decision does not respect Indonesia’s sovereignty. The Existence of a Law on the Human Rights Court stresses the justification of sovereignty theory. It is related to gross violations of human rights as individual acts, and it cannot be considered automatically as state acts, which refers to individual criminal responsibility rather than state responsibility, to justify

\begin{itemize}
\item \textsuperscript{54} Crouch, M. 2013. Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia. \textit{Hague Journal on the Rule of Law}, 5(2), 146-177, DOI: https://doi.org/10.1017/S1876404512001108, pp. 158-159.
\item \textsuperscript{55} Azhar, H. (2014). The Human Rights Struggle in Indonesia: International Advances, Domestic Deadlocks, \textit{Sur International Journal on Human Rights}, 11(20), 226-234, pp. 229-230.
\item \textsuperscript{56} Saptohadi, S. (2013). Eksistensi Pengadilan Hak Asasi Manusia dalam Penegakan Hukum di Timor Timur pasca Jajak Pendapat, \textit{Jurnal Dinamika Hukum}, 13(2), 355-366, DOI: http://dx.doi.org/10.20884/1.idh.2013.13.2.216, pp. 359-362.
\item \textsuperscript{57} Halili, H. (2010). Pengadilan Hak Asasi Manusia dan Penanggengan Budaya Impunitas, \textit{Jurnal Civics: Media Kajian Kewarganegaraan}, 7(1), 18-35, DOI: https://doi.org/10.21831/civics.v7i1.3461, pp. 24-25.
\end{itemize}
the principle of no safe haven in relation to truth enlightenment with judicial or extrajudicial approach by national jurisdiction for any types of gross violations of human rights.  

The sovereignty is became enormous discourse that faced especially in the context everyone that suspected as perpetrators in any gross violations of human rights. The sovereignty issues is raises especially for everyone that suspected in this crimes became the state representation or symbol of state sovereignty that threatened by foreign powers. However, the international community has obligation to arrest, detention, to prosecute, and to adjudicate the perpetrators of crimes against humanity. The good example was shown by Slobodan Milosevic as the Head of State of Yugoslavia in 90’s that facing 60 charges by the Public Prosecutor of the Former Yugoslavia Tribunal, and also one of the Generals during Milosevic reign was arrested while attending an international conference in an European country that taken by the international community to applying universal jurisdiction. Other example, the international community also taking action by the UN bodies to adjudicate the perpetrators of gross violations of human rights within court framework, in this context the Tribunal for Rwanda, or Tribunal for Cambodia with special characteristic that dealt by international community as a hybrid tribunal with function as judge and general prosecutor, with aims to adjudicate ex-military and civil high ranking official during Red Rogue era (1975-1979).

Indonesia’s Human Rights Court is designed differently than other judiciary model that established by international community. However, the existence of Indonesia’s Human Rights Court has weaknesses points. First, the Law on Human Rights Court has partially adopted provisions that are arranged in the Rome Statute. The Law on Human Rights Court just recognized crimes against humanity and genocide. The legislature does not regulate the inclusion of war crimes and aggression as competences of Indonesia’s Human Rights Court. Second, based on the application of this law, one partially failed legal framework that was upheld based on the principle of no safe haven in relation to truth enlightenment with judicial or extrajudicial approach by national jurisdiction for any types of gross violations of human rights.

---

58 Mulyadi, L. (2008, September 3), Sebuah Analisis Pemikiran tentang Eksistensi Komisi Kebenaran dan Persahabatan (KKP) Indonesia dan Timor Leste dikaji dari Perspektif Yuridis dan Hak Asasi Manusia (HAM), Paper presented in a Legal Seminar on Universitas Brawijaya, Malang, Indonesia. 1-15, pp. 7-9.
59 Fry, E. (2012). Between Show Trials and Sham Prosecutions: The Rome Statute’s Potential Effect on Domestic Due Process Protections, Criminal Law Forum, 23(1-3), 35-62, DOI: https://doi.org/10.1007/s10609-012-9172-6 , pp. 43-46.
60 De Jonge, A. (2015). Book Review: A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights, Asian Journal of International Law, 5(1), 211-213, DOI: https://doi.org/10.1111/1729-960X.12122, pp. 212-213.
61 Halili, H. (2016). Politik Penegakan Hak Asasi Manusia pada Masa Transisi di Indonesia, Jurnal Civics: Media Kajian Kewarganegaraan, 13(2), 199-208, DOI: https://doi.org/10.21831/civics.v13i2.12744 , pp. 204-205.
62 Simmons, A.J. (2017). Domestic Attitudes towards International Jurisdiction over Human Rights Violations, Human Rights Review, 18(3), 321-345, DOI: https://doi.org/10.1007/s12145-017-0459-1 , pp. 331-334.
63 Phan, H.D. (2009). Institutions for the Protection of Human Rights in Southeast Asia: A Survey Report, Contemporary Southeast Asia, 31(3), 468-501, DOI: https://doi.org/10.1355/cs31-3e , pp. 485-488.
64 Meisenger, S.M. (2015). Complying with Complementarity? The Cambodian Implementation of the Rome Statute of the International Criminal Court, Asia Journal of International Law, 5(1), 123-142, DOI: https://doi.org/10.1017/S2044251315400019 , pp. 130-131.
65 Cholidah, C. (2018). Hybrid Court sebagai Alternatif Penyelesaian Pelanggaran Hak Asasi Manusia, Legality: Jurnal Ilmiah Hukum, 26(1), 61-80, pp. 69-71.
66 Faisal, F. (2019). Eksistensi Pengadilan Hak Asasi Manusia terhadap Penegakan Hak Asasi Manusia dalam Sistem Peradilan, Gorontalo Law Review, 2(1), 33-48, DOI: https://doi.org/10.32662/golrev.v2i1.559 , pp. 38-39.
on this law is the ad-hoc Human Rights Court of Timor-Timur. However, this ad-hoc Court acquitted the perpetrators or sentenced them to less than 10 (ten) years in prison, as regulated in the Law on Human Rights Court. The judgment that was decided by the Panel of Judges also did not order the prosecutors to execute the convicts immediately after serving their sentences.\textsuperscript{67} All of these were flaws in Indonesia’s unwillingness and inability to establish a strong and fair judicial framework to adjudicate perpetrators of crimes against humanity, particularly in Timor-Leste.\textsuperscript{68}

Recently, the effort as strong legal framework of gross violations of human rights settlement based on new spirit and commitment as reflected in the Bill of Indonesia’s Criminal Code,\textsuperscript{69} especially in the Bill of Indonesia Criminal Code of 2019 (RKUHP 2019) that regulates: First, the certain crimes related with human rights issues, are the Paragraph 3 concerning the Contempt towards Certain Civilian Groups in Article 242 and 243 Par. (1)-(2) RKUHP 2019 regulates that everyone who publicly expresses feelings of hostility, hatred, or contempt towards one or several groups of the Indonesian population based on race, nationality, ethnicity, skin color, religion, sex, mental disability, or physical disability shall be punished, including for everyone that publicly broadcast, or display with information technology to the public related this issues also shall be punished. Paragraph 4 concerning Crimes based on Discrimination in Article 244-245 RKUHP 2019 stipulates that everyone who makes distinctions, exclusions, or restrictions based on race and ethnicity, which result in revocation or reduction of recognition, acquisition, or exercise of human rights equally in all spheres shall be punished, and for everyone who deprives another life, tortures, rapes, or deprives liberties based on racial and ethnic discrimination shall also be punished.

Second, the Chapter XXXIV concerning Special Crimes in Part One is regulates Gross Crimes against human rights in Article 598 RKUHP 2019, it is regulates that genocide shall be punished to everyone that conducting crimes with aims destroying or eliminate partly or fully of nations, race, ethnic, or religious groups with (a) murder; (b) cause heavy physical or mental suffering; (c) create conditions of group life that accurately resulting physical destruction, in whole or partly; (d) force any acts with aims to prevent the birth of certain groups; or (e) forced displacing children from one to another groups. The Article 599 RKUHP 2019 stipulates that crimes against humanity shall be punished by everyone that conducts an act widely or systemically known to affect civilians, including (a) killing, extermination, expulsion, or forced displacement, deprivation of liberty or other deprivation of physical liberty that violates basic principles of international law,

\textsuperscript{67} Fransambudi. (2003, August 6). Adam Damiri Divonis Tiga Tahun Penjara, Liputan6. https://www.liputan6.com/news/read/59814/adam-damiri-divonis-tiga-tahun-penjara

\textsuperscript{68} Tahir, A. (2013). Penegakan Hukum terhadap Pelanggaran Berat Hak Asasi Manusia, Supremasi Hukum: Jurnal Kajian Ilmu Hukum, 2(2), 68-81, pp. 73-75.

\textsuperscript{69} Suartha, I.D.M., Martha, I.D.A.G.M., & Hermanto, B., (2021). Innovation based on Balinese Local Genius shifting Alternative Legal Concept: Towards Indonesia Development Acceleration, Journal of Legal, Ethical, and Regulatory Issues, 24(7), 1-9, pp. 5-6.
or crime of apartheid; (b) slavery, torture, or other inhuman acts that have a similar nature with the aim of causing serious suffering or serious injury or physical and mental health; (c) persecution of groups based on any discriminatory reasons that are universally recognized as a prohibition of international law; or (d) rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, sexual violence, or enforced displacement of persons.

Furthermore, the RKUHP 2019 stresses and stipulates in Article 626 Par. 1 RKUHP 2019 that any provisions in Article 8, Article 9, and Article 36 until Article 41 of the Law on Human Rights Court have no legal binding force since this RKUHP 2019 was enforced. The fundamental arguments that are recognized in the RKUHP 2019 to classify gross violations of human rights (including crimes against humanity) as special crimes related to Indonesia's obligation based on the doctrine of pacta sunt servanda, and Indonesia shall implement all international law instruments that have been ratified or adsorb, including Law Number 5 of 1998 concerning the Ratification of the CAT/Convention against Torture, as the main consideration to regulate the provisions of Article 242, 243, 244, and 245 of RKUHP 2019. This RKUHP 2019 also determines gross violations of human rights as special crimes based on (a) huge victimization impact; (b) transnational organized in nature; (c) the arrangement of its procedural criminal law has specialized terms; (d) sometimes contrary to general principles of material criminal law; (e) there are auxiliary institutions as special legal enforcers with special competences; (f) it is also supported within the international convention framework; (g) it also belongs to hostis humanis generis; (h) it still develops dynamically, unstable, and follows the law; and (i) it is also related to corporation liability in criminal law.

**CONCLUSION**

Gross violations of human rights as serious crimes and extraordinary crimes are recognized by the international community. These international crimes cannot be defined as domestic affairs. In this context, it is also the international community's obligation to prosecute these crimes, including to punish the perpetrators of crimes against humanity based on humankind's values and dignified human rights, and eliminate all kinds of worst crimes that hurt the common senses of the international community. In Indonesia, the efforts to establish a strong and continuous national mechanism to settle gross violations of human rights became a new process that still needed improvement in all aspects, with the final result being a workable mechanism to create dignified justice based on international standards. This effort is an

---

70 Daud, B.S. & Jaya, N.S.P. (2019). Penyelesaian Masalah Hak Asasi Manusia Masa Lalu dan Rekonsiliasi Nasional di Indonesia. Pandecta Research Law Journal, 14(2), 83-96, DOI: https://doi.org/10.15294/pandecta.v14i2.21044, pp. 87-88.

71 As comparison, related with corporation liability in terms of human rights, see further: Ali, M. (2011). Pertanggungjiwaban Pidana Korporasi dalam Pelanggaran Hak Asasi Manusia yang Berat, Jurnal Hukum Ius Quia Iustum, 18(2), 247-265, DOI: https://doi.org/10.20885/iumtum.vol18.iss2.art6, pp. 258-259.
imperative arrangement that stipulates in the Indonesia Constitution to protect and further human rights as a state responsibility according to their obligations as part of the international civilized community. The problem that is faced by the Indonesian government, especially after the Timor-Timur ad hoc Human Rights Court, shows several weaknesses in the Law on Human Rights Court, both in material aspects and procedural aspects. The recommendation that is proposed in this article is that the amendment shall be adopting and implementing international legal instruments related to serious crimes and creating further reform in the Law on Human Rights Court, which regulates widely arrangements related to gross violations of human rights. Furthermore, other serious crimes shall be arranged, including war crimes and aggression crimes, in future bills of amendment to the Law on Human Rights Court and the Bill of Indonesia Criminal Codes.

ACKNOWLEDGEMENT
The author delivers acknowledgement to all of the parties that improved this article until it qualified as a journal article. First, the author also delivers gratitude to the Department of Criminal Law, Udayana University, for encouraging and strengthening legal materials needed for this article. Second, the author would like to express gratitude to all the anonymous reviewers and proofreaders that improved the quality of this article until it could be processed and published in its most recent version.

REFERENCES
Abidin, Z. (2010). Pengadilan Hak Asasi Manusia di Indonesia: Regulasi, Penerapan dan Perkembangannya, Makalah disampaikan pada Kursus HAM untuk Pengacara ke XIV pada ELSAM, Jakarta, 27 Oktober, 1-34.
Ali, M. (2011). Pertanggungjawaban Pidana Korporasi dalam Pelanggaran Hak Asasi Manusia yang Berat, *Jurnal Hukum Ius Quia Iustum*, 18(2), 247-265, DOI: https://doi.org/10.20885/iustum.vol18.iss2.art6.
Ariliman, L. (2017). Komnas HAM sebagai State Auxiliary Bodies di dalam Penegakan Hak Asasi Manusia di Indonesia, *Jurnal Bina Mulia Hukum*, 2(1), 54-66, DOI: https://doi.org/10.23920/jbmh.v2n1.5.
Astuti, L. 2017. Penegakan Hukum Pidana Indonesia dalam Penyelesaian Pelanggaran Hak Asasi Manusia, *Kosmik Hukum*, 16(2), DOI: https://10.30595/kosmikhukum.v162.1955.
Atmasasmita, R. (2000). *Pengantar Hukum Pidana Internasional (Edisi Revisi)*, Refika Aditama, Bandung.
Azhar, H. (2014). The Human Rights Struggle in Indonesia: International Advances, Domestic Deadlocks, *Sur International Journal on Human Rights*, 11(20), 226-234.
Begem, S.S., Qamar, N. & Baharuddin, H. (2019). Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (HAM) Berat melalui Mahkamah Pidana Internasional, SIGn Jurnal Hukum, 1(1), 1-17, DOI: https://doi.org/10.37276/sjh.v1i1.28.

Cholida, C. (2018). Hybrid Court sebagai Alternatif Penyelesaian Pelanggaran Hak Asasi Manusia, Legality: Jurnal Ilmiah Hukum, 26(1), 61-80.

Choudhury, N. (2017). Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom, Asian Journal of Law and Society, 4(1), 229-255, DOI: https://doi.org/10.1017/als.2017.2.

Coracini, A.R. (2008). Amended Most Serious Crimes: A New Category of Core Crimes within the Jurisdiction but out of the Reach of the International Criminal Court? Leiden Journal of International Law, 21(3), 699-718, DOI: https://doi.org/10.1017/S0922156508005268.

Crouch, M. 2013. Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia, Hague Journal on the Rule of Law, 5(2), 146-177, DOI: https://doi.org/10.1017/S1876404512001108.

Daud, B.S. & Jaya, N.S.P. (2019). Penyelesaian Masalah Hak Asasi Manusia Masa Lalu dan Rekonsiliasi Nasional di Indonesia, Pandecta Research Law Journal, 14(2), 83-90, DOI: https://doi.org/10.15294/pandecta.v14i2.21044, pp. 87-88.

De Jonge, A. (2015). Book Review: A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights, Asian Journal of International Law, 5(1), 211-213, DOI: https://doi.org/10.1017/S2044251314000277.

Faisal, F. (2019). Eksistensi Pengadilan Hak Asasi Manusia terhadap Penegakan Hak Asasi Manusia dalam Sistem Peradilan, Gorontalo Law Review, 2(1), 33-48, DOI: https://doi.org/10.32662/golrev.v2i1.559.

Freudent, S. (2019). Decision on the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute (Int’l Crim. Ct.), International Legal Materials, 58(1), 120-159, DOI: https://doi.org/10.1017/ilm.2019.3.

Fry, E. (2012). Between Show Trials and Sham Prosecutions: The Rome Statute’s Potential Effect on Domestic Due Process Protections, Criminal Law Forum, 23(1-3), 35-62, DOI: https://doi.org/10.1007/s10609-012-9172-6.

Grenfell, K. (2013). Perspective on the applicability and application of international humanitarian law: the UN Context, International Review of the Red Cross, 95(891-892), 645-652, DOI: https://doi.org/10.1017/S1816383314000162.

Hadiprayitno, I.I. (2010). Defensive Enforcement: Human Rights in Indonesia, Human Rights Review, 11(3), 373-399, DOI: https://doi.org/10.1007/s12142-009-0143-1.
Halili, H. (2010). Pengadilan Hak Asasi Manusia dan Pelanggengan Budaya Impunitas, *Jurnal Civics: Media Kajian Kewarganegaraan*, 7(1), 18-35, DOI: https://doi.org/10.21831/civics.v7i1.3461.

Halili, H. (2016). Politik Penegakan Hak Asasi Manusia pada Masa Transisi di Indonesia, *Jurnal Civics: Media Kajian Kewarganegaraan*, 13(2), 199-208, DOI: https://doi.org/10.21831/civics.v13i2.12744.

Hastuti, L. (2011). Pengadilan Hak Asasi Manusia sebagai Upaya Pertama dan Terakhir dalam Penyelesaian Pelanggaran Berat Hak Asasi Manusia di Tingkat Nasional, *Jurnal Dinamika Hukum*, 12(3), 395-406, DOI: http://dx.doi.org/10.20884/1.idh.2012.12.3.197.

Henze, A. (2019). The 20th Anniversary of the Rome Statute, *Criminal Law Forum*, 30(1), 109-135, DOI: https://doi.org/10.1007/s10609-018-9361-z.

Hermanto, B. (2019). Rekonstruksi Penguatan Eksistensi Pengadilan Hak Asasi Manusia di Indonesia berlandaskan Pancasila dan Statuta Roma terhadap Pengaturan Undang-undang Pengadilan Hak Asasi Manusia, *Jurnal Legislasi Indonesia*, 16(1), 89-106, DOI: https://doi.org/10.54629/jli.v16i1.441.

Hermanto, B., & Aryani, N.M. (2018). Gagasan Pengaturan yang Ideal Penyelesaian Yudisial maupun Ekstrayudisial Pelanggaran Hak Asasi Manusia di Indonesia, *Jurnal Legislasi Indonesia*, 15(4), 369-383, DOI: https://doi.org/10.54629/jli.v15i4.265.

Hikmawati, P. (2016). Kompetensi Pengadilan Hak Asasi Manusia ad Hoc, *Kajian*, 17(1), 1-25, DOI: https://doi.org/10.22212/kajian.v17i1.355.

Kerstin, B. & Markand, N. (2016). Contested Collisions: Conditions for a Successful Collision Management – The Example of Article 16 of the Rome Statute, *Leiden Journal of International Law*, 29(2), 551-575, DOI: https://doi.org/10.1017/S0922156515000783.

Kasim, I. (2009). Penyelesaian Non-Prosekutorial dan Rekonsilitif terhadap Pelanggaran Hak Asasi Manusia yang Berat, *Jurnal Hukum Ius Quia Iustum*, 16(2), 222-237, DOI: https://doi.org/10.20885/iustum.vol16.iss2.art14.

Komisi Pemberantasan Korupsi (2014, December 13). *The Editorial Board of KPK Annual Report*. https://www.kpk.go.id/id/publikasi/laporan-tahunan/949-laporan-tahunan-kpk-2004.

Liwanga, R.C. (2015). The Meaning of “Gross Violation” of Human Rights: A Focus on International Tribunals’ Decisions over the DRC Conflicts, *Denver Journal of International Law and Policy*, 44(1), 67-81.

Martowirono, S. (2017). Azas Pelengkap Statuta Roma 1998 tentang Pengadilan Pidana Internasional, *Jurnal Hukum & Pembangunan*, 31(4), 339-356, DOI: https://doi.org/10.21143/jhp.vol31.no4.1290.
Marzuki, I. & Faridy, F. (2020). Relevansi Hukum dan Hak Asasi Manusia dengan Agenda Reformasi: Dimensi Nasional dan Internasional, JCH (Jurnal Cendekia Hukum), 5(2), 350-359, DOI: http://doi.org/10.33760/jch.v5i2.242.

Meisenberg, S.M. (2015). Complying with Complementary? The Cambodian Implementation of the Rome Statute of the International Criminal Court, Asian Journal of International Law, 5(1), 123-142, DOI: https://doi.org/10.1017/S2044251314000010.

Muladi, (2007). Hak Asasi Manusia, Hakekat Konsep dan Implikasi dalam Perspektif Hukum dan Masyarakat, Penerbit Refika Aditama, Bandung.

Mulyadi, L. (2008, September 3). Sebuah Analisis Pemikiran tentang Eksistensi Komisi Kebenaran dan Persahabatan (KKP) Indonesia dan Timor Leste dikaji dari Perspektif Yuridis dan Hak Asasi Manusia (HAM), Paper presented in a Legal Seminar on Universitas Brawijaya, Malang, Indonesia. 1-15.

Nurhayati, N. (2017). Quo Vadis Perlindungan Hak Asasi Manusia dalam Penyelesaian Pelanggaran HAM Berat Masa Lalu melalui Jalur Non Yudisial, Jurnal Jurisprudence, 6(2), 149-159, DOI: https://doi.org/10.23917/jurisprudence.v6i2.3012.

Payne, L.A., Lessa, F., & Pereira, G. (2015). Overcoming Barriers to Justice in the Age of Human Rights Accountability, Human Rights Quarterly, 37(3), 728-754, DOI: https://doi.org/10.1353/hrq.2015.0040.

Phan, H.D. (2009). Institutions for the Protection of Human Rights in Southeast Asia: A Survey Report, Contemporary Southeast Asia, 31(3), 468-501, DOI: https://doi.org/10.1355/cs31-3e.

Prasetyo, T. & Kameo, J. (2019). Peradilan Hak Asasi Manusia: Suatu Perspektif menurut Jurisprudence Keadilan Bermartabat, DiH: Jurnal Ilmu Hukum, 15(2), 143-154, DOI: https://doi.org/10.30996/dih.v15i2.2430.

Principle VI. C. International Law Principles that Recognized in the Tribunal Decision/ Nuremberg Principles, 1950.

Resolution related International Law Principles that Recognized by Nuremberg Statute, UN GA Res. 95(1), 1946, December 11.

Saptohadi, S. (2013). Eksistensi Pengadilan Hak Asasi Manusia dalam Penegakan Hukum di Timor Timur pasca Jajak Pendapat, Jurnal Dinamika Hukum, 13(2), 355-366, DOI: http://dx.doi.org/10.20884/1.jdh.2013.13.2.216.

Schmid, A. P., (1989), Research on Gross Human Rights Violation: A Programme (Center for the Study of Social Conflict, University of Leiden, Netherlands.

Septika, L.P.S. (2016). Tanggung Jawab Negara dalam Penyelesaian Pelanggaran Hak Asasi Manusia, Jurnal Magister Hukum Udayana, 5(4), 661-676, DOI: https://doi.org/10.24843/JMHU.2016.v05.i04.p03.
Setiyono, J., (2007). *Kebijakan Legislatif Indonesia, tentang Kejahatan Terhadap Kemanusiaan Sebagai Salah Satu Bentuk Pelanggaran HAM yang Berat*, in: Muladi (ed.), *Hak Asasi Manusia, hakekat, konsep, dan implikasinya dalam perspektif hukum dan Masyarakat*. Penerbit Refika Aditama, Bandung.

Simmons, A.J. (2017). Domestic Attitudes towards International Jurisdiction over Human Rights Violations, *Human Rights Review*, 18(3), 321-345, DOI: [https://doi.org/10.1007/s12142-017-0459-1](https://doi.org/10.1007/s12142-017-0459-1).

Sivakumaran, S. (2010). ‘The International Court of Justice and human rights, in: Joseph, S. & McBeth, A. (eds.), *Research Handbook on International Human Rights Law*, 299-325., Edward Elgar, Cheltenham, UK and Northampton, MA, USA.

Steiner, H. & Alston, P., (1996). *International Human Rights in Context*, Clarendon Press, Oxford.

Suartha, I.D.M., Martha, I.D.A.G.M., & Hermanto, B., (2021). Innovation based on Balinese Local Genius shifting Alternative Legal Concept: Towards Indonesia Development Acceleration, *Journal of Legal, Ethical, and Regulatory Issues*, 24(7), 1-9.

Sudiarawan, K.A., Tanaya, P.E., & Hermanto, B. (2020). Discover the Legal Concept in the Sociological Study, *Substantive Justice International Journal of Law*, 3(1), 94-108, DOI: [http://dx.doi.org/10.33096/sijil.v3i1.69](http://dx.doi.org/10.33096/sijil.v3i1.69).

Swardhana, G.M. (2010). Pergulatan Hukum Positivistik menuju Paradigma Hukum Progresif, *Masalah-masalah Hukum*, 39(4), [https://doi.org/10.14710/mmh.39.4.2010.378-384](https://doi.org/10.14710/mmh.39.4.2010.378-384).

Syahmin, A.K., (1985). *Pengantar Hukum Humaniter Internasional Bagian Umum*, Penerbit Armico, Bandung.

Tahir, A. (2013). Penegakan Hukum terhadap Pelanggaran Berat Hak Asasi Manusia, *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 2(2), 68-81.

Terretta, M. (2017). The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values, *Human Rights Quarterly*, 39(1), 226-233.

The Government Regulations in Lieu of Law Number 1 of 1999 concerning Human Rights Court drafted based on the emergency situation to settle several gross violations of human rights that raises in Timor Timur before and after Referendum by UNTAET at 31 August 1999.

U.N.T.S. (1966, December 16). No. 14668, vol 999. Article 4 Par. (2) *The Covenant on Civil and Political Rights 1966*. United Nations General Assembly Resolution 2200A [XX1]. [www.cirp.org/library/ethics/UN-covenant/](http://www.cirp.org/library/ethics/UN-covenant/)

Ufran, U. (2019). Penyelesaian Pelanggaran Hak Asasi Manusia Berat melalui Mekanisme Pengadilan Nasional dan Pengadilan Pidana Internasional, *Jurnal Ius Kajian Hukum dan Keadilan*, 7(1), 170-181, DOI: [http://dx.doi.org/10.29303/ius.v7i1.602](http://dx.doi.org/10.29303/ius.v7i1.602).
Utomo, N.A. (2020). Dekonstruksi Kewenangan Investigatif dalam Pelanggaran Hak Asasi Manusia yang Berat, _Jurnal Konstitusi_, 16(4), 809-833, DOI: https://doi.org/10.31078/jk1647.

Van Boven, T., (2009). _Mereka yang Menjadi Korban: Hak Korban atas Restitusi, Kompensasi dan Rehabilitasi_ ELSAM, Jakarta.

Van Sliedregt, E. & Stoitchkova, D. (2010). ‘International Criminal Law’, in: Joseph, S. & McBeth, A. (eds.), _Research Handbook on International Human Rights Law_, 241-271, Edward Elgar, Cheltenham, UK and Northampton, MA, USA.

Wahjoe, O. (2008). Pengadilan Hak Asasi Manusia Ad Hoc dalam Penegakan Hukum Pidana Internasional, _Jurnal Hukum Pro Justitia_, 26(4), 350-367.

Warjiyati, S. (2018). Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia, _Justicia Islamica_, 15(1), 123-138, DOI: https://doi.org/10.21154/justicia.v15i1.1391.

Wignyosobroto, S. (2002). _Hukum Paradigma, Metode dan Dinamika Masalahnya_. Penerbit ELSAM Huma, Jakarta.

Yulia, R. (2016). Menggugat Pemenuhan Hak Korban Pelanggaran Hak Asasi Manusia Masa Lalu, _Jurnal Hukum Prioris_, 4(3), 266-278.

Yusa, I.G., Hermanto, B., & Aryani, N.M. (2020). No-Spouse Employment and the Problem of the Constitutional Court of Indonesia, _Journal of Advanced Research in Law and Economics_, 11(1), 214-226, DOI: https://doi.org/10.14505/jarle.v11.1(47).26.

Zegveld, L., (2010). Victims’ Reparations Claims and International Criminal Courts Incompatible Values?, _Journal of International Criminal Justice_, 8(1), 79-111, DOI: https://doi.org/10.1093/jicj/mgp088.