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Completion of Past Gross Human Rights Violations: A Possibility of Foreign Assistance

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Abstract
Past gross human rights violations that occurred in Indonesia have not yet been resolved by the Government of Indonesia. The main obstacle was the establishment of an ad hoc Human Rights Court according to Law No. 26 of 2000. In this regard, this article would like to propose a number of reasons that can justify that the time has come for gross human rights violations to be resolved with the help of foreign parties, namely by using international dispute resolution mechanism. The reasons that can be used are that Indonesia unwilling and/or unable to resolve gross human rights violations, the obligations of Erga Omnes and the application of Universal Jurisdiction principles, and state sovereignty.
Keywords: Gross Human Rights Violations, International Dispute Resolution Mechanism, Indonesia.

INTRODUCTION

The history of the Indonesian state notes that there have been various miseries, suffering, and social inequalities caused by various unfair, discriminatory behaviors based on race, ethnicity, color, language, culture, religion, class, gender and other social status. This unfair and discriminatory behavior is a violation of human rights, both vertical and horizontal. Various cases of human rights violations mentioned above are not a few who fall into the category of gross violation of human rights. The Trisakti, Semanggi I and Semanggi II tragedies are some examples of various cases of gross human rights violations that have occurred in Indonesia.[1]

In the framework of providing protection for human rights, and efforts to resolve cases of gross human rights violations, the Indonesian Government then established Law No. 26 of 2000 concerning Human Rights Courts. The Act was formed based on the mandate of Article 104 paragraph (1) of Law No. 39 of 1999 concerning Human Rights. The gross human rights violations referred to in the Act are genocide, arbitrary / extra judicial killing, torture, slavery, forced disappearance, or systematic discrimination.[2]

The establishment of a Human Rights Court is expected to be able to examine, and adjudicate all cases of gross human rights violations, specifically cases that occurred before the establishment of Law No. 26 of 2000 which will be tried through the ad hoc Human Rights Court. But unfortunately this hope was never realized by the Government of Indonesia. Based on Amnesty International Submission report for the United Nations Universal Periodic Review, it was stated that Indonesia had failed in resolving past cases of gross human rights violations [3] Many cases investigated by the National Human Rights Commission based on Law No. 26 of 2000 has not been fully investigated by the Attorney General's Office or taken to

[1] See Kontras, "Persoalan Penting Hak Asasi Manusia di Indonesia", https://www.kontras.org/data/persoalan_penting_HAM_di_IND.pdf, accessed on date 25 Oktober 2018.
[2] See explanation of Article 104 paragraph (1) of Law No. 39 of 1999 concerning Human Rights.
[3] Amnesty International, "Indonesia: It's Not Good Enough", *Amnesty International Submission for the UN Universal Periodic Review,* 27th Session of the UPR Working Group, May 2017, p. 7.

court. The main obstacle to resolving past gross human rights violations is the establishment of an ad hoc Human Rights Court.[4]

The condition mentioned above, indirectly provide uncertainty for the victims and their families in revealing actual events, including reparations. The perpetrators involved both directly and indirectly in cases of gross human rights violations are still free, and have not been touched by the law. The mechanism for resolving past gross human rights violations in Indonesia was only carried out through the ad hoc Human Rights Court based on Law No. 26 of 2000, but if the condition of reluctance or failure to resolve cases of gross human rights violations still exists, how can the ad hoc Human Rights Court be formed, and fulfill the demands of victims.

Therefore, the discourse that needs to be expressed through this paper is that it is time for past gross human rights violations that have taken place in Indonesia to be resolved with the help of outside Indonesia through an international mechanism. The mechanism referred to by the author is not a mechanism through the International Criminal Court but the Hybrid Tribunal mechanism, which was once established in East Timor, Kosovo, Sierra Leone, and Cambodia.[5]

Hybrid Tribunal

Hybrid Tribunal is a new development that emerged around the 90s in seeking accountability for a number of crimes committed in the past. Hybrid Tribunal refers to the combination of national and international elements contained in this court, such as its personnel, the legal system, operational funds sourced from the country concerned, as well as assistance from abroad, and so on. Hybrid Tribunal is said to be the "third generation" of International Criminal Courts.[6]

The Hybrid Tribunal is here to fill the gap between national and international courts. National courts are doubtful because of their credibility, and incompetence in handling certain issues, while international courts have limitations in terms of authority and mandate. By combining these two elements, the author argues that this model is very appropriate for resolving past gross human rights violations in Indonesia. To support this discourse, the author will present three reasons, namely, (1) Indonesia is unable and / or unwilling to resolve gross human rights violations, (2) the obligation of Erga Omnes and the Application of Universal Jurisdiction Principles, and (3) State sovereignty.

Indonesia is unable and/or unwilling to resolve past gross human rights violations.

To determine that the Government of Indonesia is unable and/or unwilling to resolve past gross human rights violations, the author uses two indicators, namely, first, the practice of resolving past gross human rights violations that have been or have not been done by Indonesia, and secondly, the weaknesses contained in Law No. 26 of 2000. More details will be explained as follows.

1. The Practice of Past Gross Human Rights Violations Settlement

Following this, the writer will present the data compiled by the Commission for Missing Persons and Victims of Violence / Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (Kontras) concerning past gross human rights violations that have not been touched by the

[4] *Ibid.*

[5] Andrey Sujatmoko, 2015, *Hukum HAM dan Hukum Humaniter*, Jakarta: PT RajaGrafindo Persada, p. 74. See also Eddy O. S. Hiariej, 2009, *Pengantar Hukum Pidana Internasional,* Jakarta: Penerbit Erlangga, p. 84-87.

[6] Etelle R. Higonnet, "Restructuring hybrid courts: Local Empowerment and National Criminal Justice Reform" *Arizona Journal of International and Comparative Law,* Vol. 23, 2005, p. 349-350.

legal process, and which are stalled in the National Human Rights Commission and the Attorney General's Office.

Table 1. Past gross human rights violations that have not been touched by the Legal Process[7]

No.	Case	Year	Description
1	1965 Massacre	1965-1970	Victims are mostly members of the PKI, or mass organizations that are considered affiliated with it such as SOBSI, BTI, Gerwani, PR, Lekra. Most of it is done outside the legal process.
2	Petrus (Penembakan Misterius)	1982-1985	Victims are mostly criminals, recidivists, or former criminals. This military operation is illegal and carried out without a clear institutional identity.
3	Cases in Aceh Pre-Military Operations Area	1976-1989	Since the declaration of GAM by Hasan di Tiro, Aceh has always been the target of military operations with high intensity of violence.
4	Cases in Papua.	1966	Intensive military operations were carried out by the Intensive military operations were carried out by the Indonesian National Army to confront the Free Papua Organization. Some are related to the issue of natural resource control, between international mining companies, the state apparatus, and the local population.
5	The case of banyuwangi	1998	The murder of community leaders accused of being shamans.
6	Marsinah case	1995	The main perpetrators were not touched by the law, while others were made scapegoats.

Table 2. Stalled cases of human rights violations at the National Human Rights Commission and the Attorney General's Office[8]

No.	Case	Year	Context	Settlement	Description
1	Talangsari Lampung	1989	Repression of a group of Muslim communities in Central Lampung who were accused of being "ekstrim kanan" GPK.	The National Human Rights Commission formed the KPP in 2001 and the assessment team in 2004.	The agreement made by the National Human Rights Commission to form the Investigation Team was stopped without reason. Someone who is suspected of being the most responsible for this case is difficult to touch by law because of his position as Head of the National Intelligence Agency.
2	May 1998	1998	Social riot in Jakarta which is the momentum of the transition of power.	The National Human Rights Commission formed the KPP and the results were submitted to the Attorney General.	The Attorney General returned the file to the Human Rights Commission on the grounds that the file was incomplete. There is no further development.
3	Semanggi I	1998	Repression of the Indonesian National Armed Forces against students who	The National Human Rights Commission formed the KPP and the results	The House of Representatives stated that there were no gross human rights violations.

[7] Kontras, *Loc. Cit.*
[8] *Ibid.*

			reject the Special Session of the People's Consultative Assembly.	were submitted to the Attorney General.	
4	Semanggi II	1999	Repression carried out by the Indonesian National Armed Forces against students who reject the Law on State in Dangerous Conditions.	The National Human Rights Commission formed the KPP and the results were submitted to the Attorney General.	The House of Representatives stated that there were no gross human rights violations.
5	Shooting of Trisakti Students.	1998	The shooting was carried out by the Apparatus against Trisakti students who were demonstrating. This is the starting point for the transition of political power and the trigger of social riot in Jakarta and other major cities in Indonesia.	Military court for field perpetrators.	The sentence was too light, the defendant was only a low-ranking officer in the field, and did not touch the main perpetrators. The National Human Rights Commission has made a KPP (TSS) and was submitted to the Attorney General's Office in 2003, but until now it has not moved forward. The House of Representatives stated that there were no gross human rights violations.

Based on the description above, the Indonesian Government has only just formed an ad hoc Human Rights Court, namely the human rights court for the Case in East Timor. The ad hoc Human Rights Court in Central Jakarta which has the authority to handle the East Timor case, in accordance with Presidential Decree No. 96 of 2001 which is an improvement of Presidential Decree No. 53 of 2001. A total of 12 trials at the ad hoc Human Rights Court have resulted in decisions as can be seen in the following table.

Table 3. Recapitulation of ad hoc Human Rights Trials in the Central Jakarta District Court. [9]

File	Defendant	Claim	Verdict			
			First Level	Appeal Level	Cassation	Judicial Review
I	Timbul Silaen (Sheriff Tim-Tim)	10-year prison, 6 months	Released	-	Released	-
II	Abilio Jose Soares (Former East Timor Governor)	10-year prison	3-year prison	3-year prison	3-year prison	Released
III	Herman Sedyono (Former Regent of KDH Tk. II Covalima)	10-year prison	Released	-	Released	-
	Liliek Koeshadianto (Former PLH Dandim Suai)	10-year prison, 6 months	Released	-	Released	-

[9] Lina Hastuti, "Pengadilan Hak Asasi Manusia sebagai Upaya Pertama dan Terakhir dalam Penyelesaian Pelanggaran Berat Hak Asasi Manusia di Tingkat Nasional", *Jurnal Dinamika Hukum,* Vol. 12, No. 3, September 2012, p. 399-400.

	Gatot Subiyaktoro (Former Chief of Police Resort Suai)	10-year prison, 3 months	Released	-	Released	-
	Achmad Syamsudin (Former Kasdim 1635 Suai)	10-year prison	Released	-	Released	-
	Sugito (Former Danramil Suai)	10-year prison	Released	-	Released	-
	Johny W. Usman	10-year prison	Released	-	Released	-
	Daud Sihombing	10-year prison	Released	-	Released	-
IV	Asep Kuswani (Former Dandim Liquisa)	10-year prison	Released	-	Released	-
	Adios Salopa (Former Chief of Police Resort Liquisa)	10-year prison	Released	-	Released	-
	Leonito Martin (Former Liquisa Regent)	10-year prison	Released	-	Released	-
V	Endar Priyanto (Former Dandim Dili)	10-year prison	Released	-	Released	-
VI	Sudjarwo (Former Dandim Dili)	10-year prison	5-year prison	Released	Released	-
VII	Hulman Gultom (Former Chief of Police Resort Dili)	10-year prison	5-year prison	Released	Released	-
VIII	Eurico Guterres (Former Deputy Commander of Pro Integration)	10-year prison	10-year prison	5-year prison	10-year prison	-
IX	Adam Damiri (Former Pangdam Udayana)	Released	3-year prison	Released	Released	-
X	Tono Suratman (Former Danrem Wiradharma)	10-year prison	Released	-	Released because the prosecutor forgot to make cassation memory.	-
XI	Noer Muis (Former Danrem Wiradharma)	10-year prison	5-year prison	Released	Released	-
XII	Yayat Sudarajat (Former Dansatgas Tribuana)	10-year prison	Released	-	Released	-

Based on the table above, it can be concluded that the settlement of past gross human rights violations for the East Timor case was not carried out with thorough and earnest preparation.[10] This was proven by the free termination of the perpetrators who actually committed gross human rights violations, namely crimes against humanity. In its implementation, judges do not have the same perception, especially regarding the elaboration of the elements of "widespread" and "systematic".[11] An unequal understanding of the panel of judges is also seen in the concept of command responsibility. Unclear formulation of crimes

[10] Mouvty M. A, "Pengadilan HAM ad hoc Timor-Timur: Sebuah Kepura-puraan dan Keterpaksaan Pemerintah", in Kontras News, No. 14/Th ke-3/VI/2002, *Pengadilan HAM Timor-Timur: Pelajaran Nurani bagi Bangsa Indonesia,* p. 6
[11] *Ibid.,* p. 399 and 401.

against humanity and lack of knowledge about command responsibility is seen in the free verdict for all defendants, especially on charges of command responsibility.[12]

In addition, cases that have not been touched by law, or detained at the national Human Rights Commission and the Attorney General's Office show that law enforcement officers do not have the competence to resolve gross human rights violations in the past, especially in collecting evidence. As a result, there were differences in findings between the National Human Rights Commission and the Attorney General's Office in assessing the types of human rights violations that occurred.[13] This is also exacerbated by the views of the House of Representatives who consider that based on the results of the Investigation there was no gross human rights violation.

2. Weaknesses of Law No. 26 of 2000

If you see the types of gross human rights violations regulated in Law No. 26 of 2000, it can be concluded that Indonesia wants to adopt the norms contained in the Rome Statute. Nevertheless, the adoption was not carried out thoroughly. There are certain crimes such as war crimes, and aggression crimes that are not included in Law No. 26 of 2000. But this is not the main problem, but there is a distortion in the translation of the provisions contained in the Rome Statute into Law No. 26 of 2000, specifically concerning crimes against humanity. This distortion will theoretically weaken the concept of crime, as follows.

a. The terms "systematic" and "widespread" are not explained further in Law No. 26 of 2000. In fact, these two things have a strategic role to show the specific nature of such gross human rights violations. Furthermore, this will have implications for the involvement of authorities who hold power in the occurrence of violations. The same condition applies to the element of "intension." The lack of clarity in the definition of these three elements will lead to various interpretations in the court.[14] This also relates to the absence of an element of crimes that clearly defines forms of crime including crimes against humanity. For example, in several decisions of the ad hoc Human Rights Court for cases in East Timor, there was a difference in understanding between the judges regarding the elements of crimes against humanity. The difference is mainly related to the description of the element "widespread" or "systematic" because the references used by each judge differ from one another.[15]
b. The phrase "directed against any civilian population" – according to the Rome Statute – translates to "aimed directly at civilians" in Law No. 26 of 2000. The word "direct" can have implications for the understanding that only the actors in the field will be subject to this article, while the perpetrators above who give orders do not apply. The term "resident" to translate the word "population" has narrowed the legal subject by using regional boundaries. This also has implications for the narrowing of potential targets of crimes against humanity only to the citizens of the country where the crime was committed
c. The phrase "directed against any civilian population" – according to the Rome Statute – translates to "direct attack on civilians" in Law No. 26 of 2000. Whereas the phrase should

[12] Devy Sondakh, "Kejahatan terhadap Kemanusiaan" *Jurnal Hukum Humaniter,* Vol. 2, No. 3, October 2006, p. 550-551.
[13] Mouvty M. A, *Loc. Cit.*
[14] Zunnuraeni, "Politik Hukum Penegakan Hak Asasi Manusia di Indonesia dalam Kasus Pelanggaran HAM Berat", *Jurnal IUS Kajian Hukum dan Keadilan,* Vol. 1, No. 2, August 2013, p. 362.
[15] Zainal Abidin, "Pengadilan Hak Asasi Manusia di Indonesia", *Seri Bahan Bacaan Kursus HAM untuk Pengacara Tahun 2007,* Lembaga Studi dan Advokasi Masyarakat, 2007, p. 12.

be translated to "directed against any civilian population [16]". The word "direct" can mean that only the perpetrators in the field will be subject to this article, while the main actors who give orders will not be subject to this Article. Then the term "civilians" to translate the word "population" has narrowed the subject of law by using regional boundaries. This also has implications for the narrowing of potential targets of crimes against humanity only to the citizens of the country where the crime was committed.[17]

d. The translation of the term "persecution" becomes "terrorization". In fact, both of these things have different meanings. Persecution implies a broader meaning compared to terrorization, because persecution refers to discriminatory treatment that results in mental, physical and economic harm. By using the term terrorization, acts of terror and intimidation of certain civilians or groups based on political beliefs are not included in that category.[18]

Besides the distortion in the translation of the words or phrases above, there are several provisions in Law No. 26 of 2000 which also causes past gross human rights violations cannot be resolved properly, and fulfills a sense of justice for the victims. These provisions inter alia.

a. Article 42 relating to the command responsibility delict. Article 42 paragraph (1) states as follows.

> "A military commander or person effectively acting as a military commander **can** be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces […]." (bold print by the author)

The use of the word "can" and not the word "will" or "must" implies the understanding that command responsibility in cases of gross human rights violations is not mandatory, but is more charged to the perpetrators directly in the field – in this case the subordinates / soldiers in the field.[19]

b. Article 42 paragraph (1) letter (a) requires the person in charge of command to "acknowledges, or under the prevailing circumstances ought to acknowledge that these troops **are perpetrating** or **have recently perpetrated** a gross violation of human rights". In fact, specific source of that article is Article 28 (a) (i) of the Rome Statute which expressly states that military commander should have known that the forces **were committing** or **about to commit** such crimes […]." This distortion means ignoring the obligation of the command responsibility holder to prevent crime. Although Article 42 paragraph (1) (b) of Law No. 26 of 2000 fixing the distortion with sentence "That military commander […] failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission […]", but there are no strict definitions and

[16] The panel of judges of the ICTY and ICTR adopted a broad understanding of the civilian population to protect those who are potential victims of crimes against humanity. The definition of a civilian population is also interpreted as anyone who within a certain time limit is actively involved in events where he is in a position to defend himself in certain conditions, can be considered a victim of crimes against humanity. See *Ibid.,* p. 11.

[17] Zunnuraeni, *Loc. Cit.*

[18] Zainal Abidin, *Loc. Cit.*

[19] Budi Santoso, "Evaluasi Kritis atas Kelemahan UU Peradilan HAM", *Paper,* presented at Workshop Merumuskan Amandemen Undang-Undang Peradilan HAM held by PUSHAM UII, Yogyakarta, on August 26, 2003, p. 5.

limitations on what is "necessary" and “reasonable measures” to be carried out by the person in charge of the command.[20]

c. The evidence used in Law No. 26 of 2000 is evidence as referred to in Article 184 of the Criminal Procedure Code. The evidence is considered inadequate when compared to evidence used in international justice practices. The practice of international justice actually uses evidence beyond those regulated in the Criminal Procedure Code, such as press releases, in cameras (films or tapes containing speeches), via voice, newspaper clippings, freelance articles / opinions. All this evidence has been set out in the 1993 Yugoslav Statute, the 1995 Rwanda Statute, and the 1993 Rome Statute. Limited arrangements regarding this evidence can be seen in the refusal of witnesses' examinations through teleconferences in the ad hoc Human Rights Court in East Timor – for crimes against humanity in the form of killings that occurred at Ave Maria Church in Suai. The reason for the rejection is that the witness's examination through a teleconference has not been regulated in Indonesian law.[21] Actually, if observed carefully, the root of the problem is related to the procedural law used by Law No. 26 of 2000, in which the procedural law was used to resolve cases of ordinary crimes. Whereas gross human rights violations are extraordinary crimes which have different formulations and causes. Thus, the treatment cannot be equated in resolving cases of gross human rights violations with ordinary crimes regulated in the Criminal Code.

The presence of Law No. 26 of 2000 is expected to be an exit point for resolving gross human rights violations, as well as demonstrating the dignity of the Indonesian people to commit to respect, and uphold human rights. But in reality until now no single case has been completely resolved through a court process that fulfills a sense of justice. The Human Rights Court has failed to suppress impunity[22], both caused by its apparatus and its own law. It cannot be denied that the birth of Law No. 26 of 2000 was not due to the awareness of the Indonesian people in upholding human rights, but was caused by international pressure by looking at political factors for Indonesia. As a result, the Law that was formed was not prepared carefully, or it could be said that Law No. 26 of 2000 from the beginning was formed to fail.

Obligations of Erga omnes and Application of Universal Jurisdiction Principles.

The gross violation of human rights in the scope of international law is international crime (delicti juris gentium). This crime is considered a common enemy of humanity (hostile humanist generis) because it is related to the interests of the international community as a whole. Thus, it is the responsibility of all humanity (erga omnes obligation) to solve gross human rights violations legally, and punish the perpetrators fairly.[23]

In the case of Barcelona Traction, Light and Power Co. in 1970, the majority of the decisions of the International Court of Justice distinguished between the obligations of countries among themselves and the obligations of countries as members of the international

[20] Agung Yudhawiranata, “Pengadilan HAM di Indonesia: Prosedur dan Praktek”, *Paper,* presented at Training Hukum HAM bagi Dosen Pengajar Hukum dan HAM di Fakultas Hukum pada perguruan Tinggi Negeri dan Swasta di Indonesia, organized by Pusat Studi HAM UII and NCHR University of Oslo Norway, in Yogyakarta on 22-24 September 2005, p. 16.
[21] Budi Santoso, *Op. Cit.,* p. 2.
[22] Halili, “Pengadilan HAM dan Pelanggengan Budaya Impunitas”*, Jurnal Civics: Media Kajian Kewarganegaraan*, Vol. 7, No. 1, June 2010, p. 2.
[23] Lina Hastuti, *Op. Cit.*, p. 397.

community as a whole or known as the erga omnes obligation.[24] In relation to this problem, the International Court of Justice then provides examples of several actions that can lead to the accountability of all humanity as follows.

> *"Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."*[25]

Piracy, torture, war crimes, and crimes against humanity are some other examples of international crime. The prohibition on this crime is also the norm of jus cogens[26] which cannot be deviated by any provision. The perpetrators of international crimes will be asked for individual criminal responsibility, and can be tried through national courts where the crimes were committed, as well as through national courts of other countries on the basis of Universal Jurisdiction Principles. This was confirmed by Victor Condé's opinion on the principle of universal jurisdiction as follows.

> *"A term describing the domestic (national) legal power (competence) of courts in every state in the world to exercise jurisdiction to prosecute an alleged prepatrator of certain international crimes. Some international crimes, such as genocide, war crimes, and torture, allow universal jurisdiction of all states because these crimes are considered to be committed againsts the whole human race. Therefore, every state has the right to prosecute and punish those who commit these international crimes* [...]*"*[27]

Based on aut dedere aut punier's principle (aut judicare), international law develops a universal jurisdiction system to prevent the existence of a shelter for international criminals (no save haven principle). Article 7 of the Anti-Torture Convention explicitly requires member states to prosecute perpetrators of torture. If the country cannot or cannot afford to try, then it must be extradited to other participating countries to be tried. The application of the principle of universal jurisdiction can be seen in several cases such as Adolf Eichmann, and Pinochet Case.[28]

State Sovereignty

The most impressive philosophical view of sovereignty is that sovereignty is absolute power over a particular region. State sovereignty is the basis for the formation of a country.[29] An understanding of the concept of state sovereignty is very helpful in observing and evaluating the position of the state in the context of dynamic international relations. In

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[24] In the ICJ decision, it is conveyed as follows. *"*[...] *an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes."*
See *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain); Second Phase*, International Court of Justice (ICJ), 5 February 1970, paragraph 33.

[25] *Ibid.,* Paragraph 34.

[26] Prohibitions contained in the Convention concerning Prohibition of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; Convention concerning Prevention and Punishment of the Crime of Genocide; Serious human rights violations prohibited by the Rome Statute; International Convention on the Elimination of All Forms of Racial Discrimination; The International Convention on the Elimination of All Forms of Racial Discrimination against Women are the norm of jus cogens. See Abdul Hakim G. Nusantara, "Penerapan Hukum Internasional dalam Kasus Pelanggaran Hak Asasi Manusia Berat di Indonesia", *Jurnal Hukum Internasional Indonesia,* Vol. 1, No. 4, July 2004, p. 767.

[27] H. Victor Condé, 1999, *a Handbook of International Human Rights Terminology,* Nebraska: Univerity of Nebraska Press, p. 155.

[28] Andrey Sujatmoko, *Op. Cit*, p. 44-45.

[29] Jenik Radon, "Sovereignty: A Political Emotion, Not A Concept", *Stanford Journal of International Law,* Vol. 40, 2004, p. 195.

academic discourse, there seems to be no single definition of state sovereignty. As a result, various interpretations arise, as well as actions by a country in the implementation of the State's own Sovereignty.

In the international legal system, state sovereignty is closely related to the equality of the state. International law traditionally recognizes the state as an independent and sovereign entity, meaning that the country is not subject to other authorities.[30] In the literature of international law, there is one doctrine called the Act of State Doctrine which adopts the concept of state sovereignty. The legal doctrine that emerged in the nineteenth century (XIX) confirms that *"Every sovereign State is bound to respect the independence of every sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory"*.[31]

Nevertheless, the discourse on the nature and meaning of state sovereignty and its application in contemporary international societies seems to have undergone changes that need to be observed, especially in the late twentieth and early twentieth centuries. One phenomenon that changes the meaning and nature of state sovereignty is the respect, fulfillment and enforcement of human rights. This phenomenon has occurred since the establishment of the United Nations, where in Articles 55 and 56 the United Nations Charter requires every member of the United Nations to increase respect and enforcement of human rights. Indonesia is one of the UN member states, even on June 8, 2018, it was elected as a non-permanent member of the UN Security Council for the period 2019-2020. With this position, Indonesia should implement the mandate contained in the UN Charter, specifically respecting and enforcing human rights.[32] In this context, domestic jurisdiction, in casu Indonesia, can no longer be used as a shield to not enforce and disclose the occurrence of human rights violations in the territory of the country, nor obligations under other international law.[33]

Indonesia as part of the international community cannot avoid and must accept symptoms where human rights norms are developed and disseminated throughout the world by humanitarian organizations, civil society movements, and relevant international organizations. Such movements indirectly question the "status quo" which places state sovereignty as an absolute concept.[34] This is related to the universal characteristics possessed by human rights, where acceptance, enforcement and implementation of human rights are no longer limited by the territory of a country.

CONCLUSION

Based on the three reasons above, past gross human rights violations are possible to be resolved using international mechanisms. The use of this mechanism does not weaken Indonesia's position as a sovereign country in the international legal order. That means Indonesia still has authority as part of the international community. Indonesia is not

[30] Miguel González Marcos, 2003, *the Search for Common Democratic Standards through International Law*, Washington: Heinrich Böll Foundation North America, p. 1.
[31] Sigit Riyanto, "Kedaulatan Negara dalam Kerangka Hukum Internasional Kontemporer", *Jurnal Yustitia,* Vol. 1, No. 3, September-December 2012, p. 7-8.
[32] If Indonesia cannot fulfill these obligations, then it is certain that Indonesia will not have the strength and authority as a non-permanent member of the UN Security Council to force other countries to fulfill the same obligations.
[33] D. J Harris, 2004, *Cases and Materials on International Law,* Sixth Edition, London: Sweet & Maxwell, p. 538. Alain Pellet, "State Sovereignty and the Protection of Fundamental Human Rights: An International Law Perspective", *Pugwash Occasional Papers,* February 2000, p. 37. See also Sigit Riyanto, "Intervensi Kemanusiaan Melalui Organisasi Internasional untuk memberikan Perlindungan dan Bantuan Kemanusiaan kepada Pengungsi Internal: Debat tentang Urgensi dan Kendalanya", *Mimbar Hukum,* Vol. 19, No. 2, 2007.
[34] Sigit Riyanto, "Kedaulatan Negara …", *Op. Cit.,* p. 11.

authoritative if it maintains its position to resolve its own human rights violations – even though it is actually unable and/or unwilling – and refuses external assistance. This opinion is in line with the theory of relational sovereignty. This theory explains that essentially sovereignty is seen as an open concept, which is more emphasis on the ability to make contact with other countries. The existence of these interactions does not weaken the sovereignty of the state, but strengthens it.[35]

The author realizes that to bring foreign elements to help Indonesia in solving cases of past gross human rights violations is very difficult. Because this is related to the pride of a nation, and the commitments that have already been expressed before the international community. Therefore, it is needed humility and awareness from the Government of Indonesia itself to ask for help from the international community. The author believes that this is also what the international community is waiting for to be able to help Indonesia, besides because the international community still respects Indonesia as a sovereign country.

BIBLIOGRAPHY

Abidin, Zainal, "Pengadilan Hak Asasi Manusia di Indonesia", *Seri Bahan Bacaan Kursus HAM untuk Pengacara Tahun 2007,* Lembaga Studi dan Advokasi Masyarakat, 2007

Amnesty International, "Indonesia: It's Not Good Enough", *Amnesty International Submission for the UN Universal Periodic Review,* 27th Session of the UPR Working Group, May 2017.

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain); Second Phase, International Court of Justice (ICJ), 5 February 1970.

Condé, H. Victor, 1999, *a Handbook of International Human Rights Terminology,* Univerity of Nebraska Press, Nebraska.

Halili, "Pengadilan HAM dan Pelanggengan Budaya Impunitas", *Jurnal Civics: Media Kajian Kewarganegaraan*, Vol. 7, No. 1, June 2010.

Harris, D. J, 2004, *Cases and Materials on International Law,* Sixth Edition, Sweet & Maxwell, London.

Hastuti, Lina, "Pengadilan Hak Asasi Manusia sebagai Upaya Pertama dan Terakhir dalam Penyelesaian Pelanggaran Berat Hak Asasi Manusia di Tingkat Nasional", *Jurnal Dinamika Hukum,* Vol. 12, No. 3, September 2012.

Hiariej, Eddy O. S, 2009, *Pengantar Hukum Pidana Internasional,* Penerbit Erlangga, Jakarta.

Higonnet, Etelle, "Restructuring hybrid courts: Local Empowerment and National Criminal Justice Reform" *Arizona Journal of International and Comparative Law,* Vol. 23, 2005.

Jenik Radon, "Sovereignty: A Political Emotion, Not A Concept", *Stanford Journal of International Law,* Vol. 40, 2004.

Law No. 26 of 2000 concerning Human Rights Courts

Law No. 39 of 1999 concerning Human Rights.

Marcos, Miguel González, 2003, *the Search for Common Democratic Standards through International Law*, Heinrich Böll Foundation North America, Washington.

Mouvty M. A, "Pengadilan HAM ad hoc Timor-Timur: Sebuah Kepura-puraan dan Keterpaksaan Pemerintah", in Kontras News, No. 14/Th ke-3/VI/2002, *Pengadilan HAM Timor-Timur: Pelajaran Nurani bagi Bangsa Indonesia.*

Nusantara, Abdul Hakim G, "Penerapan Hukum Internasional dalam Kasus Pelanggaran Hak Asasi Manusia Berat di Indonesia", *Jurnal Hukum Internasional Indonesia,* Vol. 1, No. 4, July 2004.

[35] Helen Stacy, "Relational Sovereignty", *Stanford Law Review*, Vol. 55, No. 5, May 2003, p. 2030-2031.

Pellet, Alain, "State Sovereignty and the Protection of Fundamental Human Rights: An International Law Perspective", *Pugwash Occasional Papers,* February 2000.

Riyanto, Sigit, "Intervensi Kemanusiaan Melalui Organisasi Internasional untuk memberikan Perlindungan dan Bantuan Kemanusiaan kepada Pengungsi Internal: Debat tentang Urgensi dan Kendalanya", *Mimbar Hukum,* Vol. 19, No. 2, 2007.

Riyanto, Sigit, "Kedaulatan Negara dalam Kerangka Hukum Internasional Kontemporer", *Jurnal Yustitia,* Vol. 1, No. 3, September-December 2012.

Santoso, Budi, "Evaluasi Kritis atas Kelemahan UU Peradilan HAM", *Paper,* presented at Workshop Merumuskan Amandemen Undang-Undang Peradilan HAM held by PUSHAM UII, Yogyakarta, on August 26, 2003.

Sondakh, Devy, "Kejahatan terhadap Kemanusiaan" *Jurnal Hukum Humaniter,* Vol. 2, No. 3, October 2006.

Stacy, Helen, "Relational Sovereignty", *Stanford Law Review*, Vol. 55, No. 5, May 2003.

Sujatmoko, Andrey, 2015, *Hukum HAM dan Hukum Humaniter*, PT RajaGrafindo Persada, Jakarta.

Yudhawiranata, Agung, "Pengadilan HAM di Indonesia: Prosedur dan Praktek", *Paper,* presented at Training Hukum HAM bagi Dosen Pengajar Hukum dan HAM di Fakultas Hukum pada perguruan Tinggi Negeri dan Swasta di Indonesia, organized by Pusat Studi HAM UII and NCHR University of Oslo Norway, in Yogyakarta on 22-24 September 2005.

Zunnuraeni, "Politik Hukum Penegakan Hak Asasi Manusia di Indonesia dalam Kasus Pelanggaran HAM Berat", *Jurnal IUS Kajian Hukum dan Keadilan,* Vol. 1, No. 2, August 2013.