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A Legal Review of The Challenges and Opportunities on Strengthening The Role of The National Commission on Human Rights of The Republic of Indonesia

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ABSTRACT

This study examines the challenges and opportunities in strengthening the role of the National Commission on Human Rights of the Republic of Indonesia (Komnas HAM) in addressing gross human rights violations. The background of this research is rooted in the persistent delay in resolving human rights cases, largely due to institutional limitations, weak inter-agency coordination, and the lack of binding power in Komnas HAM recommendations, which ultimately undermines justice for victims. The objective of this research is to critically analyze these constraints while identifying strategic opportunities for institutional reform and improved legal mechanisms. This study employs a juridical-normative research method, utilizing statutory and conceptual approaches. Data were collected through library research, including primary legal materials such as Law No. 39 of 1999 and Law No. 26 of 2000, as well as secondary sources like academic literature and institutional reports. The data were analyzed using qualitative descriptive techniques, focusing on legal interpretation and institutional evaluation. The findings reveal that the primary issues lie in limited investigative authority, weak enforcement of recommendations, and coordination gaps between Komnas HAM and the Attorney General's Office. The discussion highlights potential reforms, including expanding authority, strengthening reparations mechanisms, and enhancing cross-institutional collaboration. In conclusion, strengthening Komnas HAM requires comprehensive legal reform, clearer institutional authority, and improved coordination to ensure effective human rights enforcement and justice for victims.

INTRODUCTION

(Wardani & Suroto, 2023)This paper aims to examine and offer critical thinking to answer the challenges and opportunities of the National Human Rights Commission of the Republic of Indonesia (Komnas HAM RI) specifically related to the settlement of cases of alleged gross human rights violations both before and after the promulgation of the Human Rights Court Law Number 26 of 2000. Gross human rights violations are one of the 7 (seven) strategic issues of Komnas HAM, where the other 6 (six) strategic issues are: 1#Violations related to agrarian conflicts, 2# Institutional structuring, 3# Intolerance and extremism with violence, 4# Access and justice, 5# Violence by the state; and 6# Freedom of opinion, expression and association.

The discussion of challenges and opportunities, especially related to the role of Komnas HAM RI in resolving cases of Gross Human Rights Violations, must focus on the spirit to provide reinforcement so that the presence of Komnas HAM as a representative of the state

can be felt more by justice seekers (Phan, 2009). The strengthening of Komnas HAM RI as part of the National Human Rights Institutions (NHRI) must still refer to the Paris Principles, namely (1) competence and responsibility; (2) the composition and guarantee of independence and pluralism; (3) methods of operation; and (4) additional principles regarding the status of commissions with quasi-jurisdictional competence (Bachmann & Eda, 2018). This spirit is also in line with the Sustainable Development Goals (SDGs) for 2015 – 2030, especially SDG Number 16 on Peace, Justice and Resilient Institutions. Thus, maximizing all opportunities and challenges to strengthen the institutions and role of Komnas HAM is the same as supporting the implementation of the Sustainable Development Goals in Indonesia (Hadiprayitno, 2010).

Since its formation in 1993,Komnas HAM RI has experienced various dynamics and ups and downs, until it found a leap in historical momentum after the 1998 reform where Komnas HAM RI then played an important role in investigating cases of gross human rights violations both before and after the promulgation of Law Number 26 of 2000 concerning Human Rights Courts (Watch, 2011).

The enactment of Law No. 39 of 1999 concerning Human Rights (Human Rights Law) and Law No. 26 of 2000 concerning Human Rights Courts (Human Rights Court Law) is a great achievement in the history of human rights civilization in Indonesia. The Human Rights Law and the Human Rights Court Law further affirm the role and function of Komnas HAM RI (White et al., 2018). However, over time, the existence of the role of Komnas HAM began to find obstacles, namely the protracted follow-up of investigations towards the level of investigation by the Attorney General's Office (abbreviated as the Attorney General's Office). Although the mandate given by law is quite clear to the Attorney General, the investigation process creates endless tug-of-war.

This gap makes the present study urgent. Without a stronger institutional design, victims of gross human rights violations remain trapped in a cycle of recognition without remedy, while the state risks normalizing impunity through procedural delay. Strengthening Komnas HAM is urgent not only for the completion of past cases but also for reinforcing Indonesia’s rule of law, democratic accountability, and international credibility. This urgency is even more relevant because Komnas HAM continues to hold GANHRI “A” status, meaning that Indonesia already possesses an institution recognized internationally as compliant with the Paris Principles and therefore expected to function with real effectiveness rather than symbolic authority alone (Robet et al., 2023).

The novelty of this research lies in its effort to reposition the discussion on Komnas HAM from a purely descriptive review of legal obstacles into a critical institutional analysis that identifies reform opportunities. Rather than only restating the weakness of current arrangements, this study explores how the role of Komnas HAM can be strengthened through clearer authority, improved coordination with prosecutorial institutions, stronger follow-up mechanisms for recommendations, broader support for victim-centered reparations, and alignment with international institutional standards. By doing so, the study offers a more forward-looking perspective on how legal reform and institutional redesign can operate together.

Based on that context, the purpose of this research is to critically examine the challenges and opportunities in strengthening the role of Komnas HAM in the settlement of gross human

rights violations in Indonesia. The study seeks to contribute theoretically to legal scholarship on national human rights institutions, practically to policy discussions on institutional reform and inter-agency coordination, and normatively to the broader agenda of justice, accountability, and human rights protection. The objective is to formulate a more coherent understanding of what kind of institutional strengthening is needed for Komnas HAM to function more effectively, while the benefit of this research lies in providing academic, legal, and policy guidance for improving victim protection, accelerating case resolution, and supporting Indonesia's commitment to peace, justice, and strong institutions (KontraS & ICTJ, 2011;Assembly, 1993).

METHOD

(Soemitro, 1982) This study employs a juridical-normative research design, focusing on legal analysis through a conceptual and statutory approach. The population of the study consists of all legal norms, doctrines, and regulations related to human rights enforcement in Indonesia, particularly those governing the role of the National Commission on Human Rights (Komnas HAM). The sample is purposively selected in the form of primary legal materials such as Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts, as well as secondary materials including legal doctrines, scholarly journals, and institutional reports. The sampling technique used is purposive sampling, emphasizing relevance to the research objectives. The research instrument is a structured legal analysis framework used to classify, interpret, and evaluate legal provisions and institutional practices. Validity is ensured through content validity by cross-referencing authoritative legal sources, while reliability is maintained through consistency in legal interpretation and triangulation of sources.

Data collection techniques rely on library research, involving systematic identification, documentation, and review of legal documents, academic literature, and credible reports. The procedure begins with problem identification, followed by classification of legal sources, critical reading, and synthesis of findings to construct a comprehensive understanding of institutional challenges and opportunities. The study prioritizes secondary data, as normative legal research is inherently literature-based and does not involve field data collection . The collected data are organized thematically to align with key research variables, such as institutional authority, inter-agency coordination, and legal enforcement mechanisms. This structured procedure ensures coherence between research objectives and analytical outcomes.

The data analysis technique uses qualitative descriptive analysis with a legal interpretation approach, including statutory interpretation, conceptual analysis, and comparative evaluation. The analysis is conducted by examining the consistency between legal norms and their implementation in practice, identifying gaps, and proposing institutional strengthening strategies. Software tools such as Mendeley or Zotero are utilized for reference management, while NVivo or manual coding techniques may be applied to organize themes and patterns within the literature. The overall analytical approach emphasizes logical reasoning, legal argumentation, and systematic interpretation to generate valid conclusions and policy-relevant recommendations.

RESULTS AND DISCUSSION

Government Obligations under the National Law on Human Rights

(Payne et al., 2015)After Suharto stepped down in 1998, the Indonesian government [transitional period] showed its seriousness to improve the standard of protection of human rights. This is shown by the issuance of decree number XVII/MPR/1998 concerning Human Rights by the People's Consultative Assembly (MPR), on November 13, 1998. Not long after, the MPR ordered the House of Representatives (DPR) and the government to evaluate existing laws and regulations, in order to review whether the laws and regulations have met international human rights standards (Chrisbiantoro, 2023).

One of the stages of the evaluation process of laws and regulations at the national level began when the House of Representatives made amendments to the 1945 Constitution. In this amendment, the provisions on Human Rights are formulated more clearly and comprehensively, for example under article 28."

The House of Representatives has also passed several laws regulating human rights, including Law No. 26 of 2000 concerning Human Rights Courts, then Law No. 39 of 1999 concerning human rights, and Law No. 13 of 2006 concerning the Witness and Victim Protection Institution (LPSK) which was then amended into Law No. 31 of 2014. Not only that, the government has also stipulated Government Regulation (PP) No. 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

In addition, the Indonesian government also passed Law No. 27 of 2004 concerning the Truth and Reconciliation Commission (KKR), related to the settlement of cases of gross human rights violations in the past, outside the existing judicial mechanism. However, the age of this law did not last long. In 2006 a coalition of civil society, one of which was KontraS, submitted a material review to the Constitutional Court of the Republic of Indonesia [MKRI]. The articles tested from the Law include; the rights of the victim which depend on the legal status of the perpetrator, if the perpetrator is granted amnesty, then the victim gets his rights; In addition, another crucial issue is that this law expressly separates the mechanism of the KKR and the ad hoc human rights court. It is said that cases or cases of gross human rights violations that have been brought to court can no longer be brought to the KKR mechanism, and the opposite applies (Wahyuningroem, 2022;Setiawan, 2016).

Furthermore, specifically regarding the government's responsibility for allegations of gross human rights violations, it can be seen in Law No. 26 of 2000 concerning Human Rights Courts:

Table 1. Legal Provisions on the Investigation and Adjudication of Gross Human Rights Violations in Indonesia

Article	Conditions
Article 18	**Paragraph 1** An investigation into gross human rights violations is carried out by the National Human Rights Commission.
	Paragraph 2 The National Human Rights Commission in conducting an investigation as intended in paragraph [1] may form an ad hoc team consisting of the National Human Rights Commission and elements of the community
Article 37	Any person who commits an act as referred to in Article 9 letter a [murder], b [extermination], d [forcible expulsion], e [deprivation of liberty] or j forcible disappearance] shall be sentenced to death or life imprisonment or a maximum sentence of 25 [twenty-five] years and a minimum of 10 [ten] years
Article 43	Paragraph 1 Gross human rights violations that occurred prior to the promulgation of this Law shall be examined and decided by an ad hoc human rights court
	Paragraph 2 The ad hoc Human Rights Court as referred to in paragraph [1] was established on the proposal of the House of Representatives of the Republic of Indonesia based on certain events with presidential decrees
	Paragraph 3 The ad hoc human rights court as referred to in paragraph [1] is within the General Court.

In addition, according to Law No. 39 of 1999 concerning human rights, the government also has several other obligations, namely:

Table 2. Government Obligations and Human Rights Court Provisions under Indonesian Human Rights Law

Article	Conditions
Article 71	The Government is obliged and responsible to respect, protect, uphold, and advance the human rights regulated in this Law, other laws and regulations, and international laws on human rights accepted by the State of the Republic of Indonesia
Article 104	Paragraph 1 To adjudicate gross human rights violations, a Human Rights Court shall be established in the general judicial environment
	Paragraph 2 The Court as referred to in paragraph [1] is established by law for a maximum period of 4 [four] years.

Building a Breakthrough in Resolving Cases of Gross Human Rights Violations

(Setiawan, 2022) The victims and the families of the victims and the wider community have high hopes for the resolution of various cases of gross human rights violations that occurred in Indonesia. Several cases have been investigated by Komnas HAM RI and it has been stated that there are allegations of gross human rights violations, including:

Eleven Incidents of Alleged Gross Human Rights Violations That Have Not Received Legal Certainty include:

Table 3. List of Unresolved Cases of Alleged Gross Human Rights Violations in Indonesia

No.	Human Rights Cases
1.	Year 1965 – 1966
2.	Mysterious Shooting Events 1982-1985
3.	Talangsari 1989
4.	Trisakti, Semanggi I and II (1998-1999)
5.	May 1998 riots
6.	Enforced Disappearances 1997-1998
7.	Wasior (2001) Wamena 2003
8.	The 1998 Murder of the Santet Shaman
9.	Simpang KAA 1999
10.	2003 Squirrelly
11.	Guedong House 1989 - 1998

There are at least three cases that occurred after the ratification of Law No. 26 of 2000 concerning Human Rights Courts, and one case occurred during the administration of President Joko Widodo namely the case of alleged gross human rights violations in Paniai on December 7-8, 2014.

(Marzuki & Ali, 2023) At the end of 2021, the hope of resolving cases of gross human rights violations was again marked by the statement of the Attorney General of the Republic of Indonesia, Mr. ST Burhanuddin, who would follow up the investigation of Komnas HAM with an investigation.

This paper proposes steps that can be taken to strengthen breakthrough efforts, namely:

Ensure Recommendations Are Acted Upon

Komnas HAM RI must remain consistent in overseeing and ensuring that the recommendations of the investigation results are followed up by maximizing all existing opportunities, one of which is welcoming the investigation initiative launched by the Attorney General's Office. The duties and responsibilities of Komnas HAM RI related to the settlement of cases of alleged gross human rights violations do not only stop by issuing recommendations, recommendations are not results but recommendations are the next responsibility of Komnas HAM RI because it concerns the authority of institutions and legal certainty of justice seekers.

Starting from a case that occurred after the ratification of Law No. 26 of 2000

One of the strategic options that can be taken by Komnas HAM RI is to encourage follow-up for cases of alleged gross human rights violations that occurred after the promulgation of Law Number 26 of 2000 concerning the Human Rights Court. These cases do not qualify under Article 43 of Law No. 26 of 2000 concerning the Establishment of Ad Hoc Human Rights Courts.

Some of these cases are the Wasior case (in 2001) and the Wamena case (in 2003) as well as the Jambo Keupok Tragedy on May 17, 2003.

Equalizing the perceptions of researchers and investigators

The tip of the communication between Komnas HAM RI and the Attorney General of the Republic of Indonesia is to produce measurable priority steps and in line with existing laws

and regulations for the settlement of cases of gross human rights violations, including by ensuring the following: First. The Attorney General immediately determines which cases will be prioritized for investigation; Second, the perception of imperfections in the results of the investigation can be complemented through intensive and constructive coordination between the two institutions to erode the barriers of differences in interpretation and minimize debate into complementary cooperation; Third, each institution places representatives representing both institutions to facilitate coordination and accelerate the series of investigation processes that have been stopped for a long time (can also be called representative officers).

Strengthening the Role and Function of Komnas HAM RI

In addition to the difference in interpretation, one of the problems that is no less important is the limited authority and role of Komnas HAM, which is an investigator of cases of gross human rights violations. The limited authority of Komnas HAM is one of the weak points in the settlement of 13 cases of alleged gross human rights violations in Indonesia.

Proposed priority areas for strengthening Komnas HAM regulations of the Republic of Indonesia:

a. Giving authority to Komnas HAM RI to conduct investigations and investigations of cases of alleged gross human rights violations then at the level of prosecution Komnas HAM RI can enter the public prosecution team under the coordination of the Attorney General's Office of the Republic of Indonesia.
b. Granting subpoena authority to Komnas HAM RI without having to ask permission from the Chief Justice of the District Court. The experience so far, regarding the forced summons of reported or examined persons is often a problem at Komnas HAM RI because based on Law No. 39 of 1999, especially Article 95, Komnas HAM RI must apply for a permit in the form of the Determination of the Chief Justice of the District Court. The implementation of this article is time-consuming and difficult to realize.
c. Emphasizing the role of the House of Representatives of the Republic of Indonesia is only limited to a recommendation to the President of the Republic of Indonesia to establish an ad hoc human rights court for alleged gross human rights violations that occurred before 2000, not the other way around, determining whether a case of gross human rights violations is a case or not. The recommendation of the House of Representatives of the Republic of Indonesia must be given after the investigation process is completed by the Attorney General and will continue to the prosecution stage to the Ad Hoc Human Rights Court. The House of Representatives of the Republic of Indonesia as a political institution should not assess, let alone intervene, the results of the investigation of the Attorney General of the Republic of Indonesia.

Urgent Reparations & Cross-Agency Cooperation

Regarding urgent reparations, as a member of the United Nations (UN), Indonesia has ratified an important UN instrument on Human Rights (HRC), while as a member of the UN Human Rights Council (HRC) which will end in 2022, Indonesia also has an obligation to improve the standards of human rights protection within its jurisdiction.

One of the issues that is quite crucial is the reparation or restoration of the rights of victims and families of victims of gross human rights violations which until now has not been

implemented properly. This paper considers it important to recall the obligation of the Indonesian government, one of which is through the role of Komnas HAM RI to affirm that the mechanism of urgent reparations is an inseparable part of the international legal instrument and should be practiced at the domestic level in harmony with international standards.

Komnas HAM RI can be the motor or initiator so that urgent reparations for victims and victims' families can become a mutual understanding between related institutions so that they can be outlined in technical protocols or regulations so that the urgent need for the recovery of victims and victims' families can be realized without having to wait for a long and tortuous legal process. This is a manifestation of a commitment that is in line with international human rights law standards that mandate Indonesia as a country party to establish similar standards at the national level.

Cooperation with various parties

Komnas HAM RI must continue to improve the ability of institutional cooperation with various elements, both cooperation with state institutions at the national level and cooperation at the international level, both with institutions at the United Nations (UN) level and UN special agencies, as well as cooperation with various international legal subjects closely related to human rights. In addition, cooperation at the regional level in the Asia Pacific is also important to continue to be maintained and improved, Komnas HAM RI has a fairly good reputation in the region considering that Komnas HAM RI has managed to maintain accreditation A by the Global Alliance of NHRIs (GANHRI).

Initiating Legal Opportunities under Article 12 [3] of the Rome Statute

Indonesia has signed the Rome Statute in 1998, but the Government is still reluctant to ratify this Statute. Therefore, this paper emphasizes, even though Indonesia has not ratified the Rome Statute, the Government has the opportunity to invite prosecutors from the International Criminal Court [ICC], in accordance with Article 12 paragraph 3 of the statute, which reads as follows:

If the admission of a State which is not a Party to this Statute is required under paragraph 2, the State may, by a statement submitted to the Registrar, accept the exercise of jurisdiction by the Court in respect of the crime in question. The receiving country shall cooperate with the Court without any delay or exception in accordance with Section 9.

Article 12 (3) can be an alternative or a means for the Government of Indonesia, if it is proven that the national legal system and the political will of the government are very weak to process perpetrators of gross human rights violations. Of course, the spirit of the international criminal court is that "the most serious crimes of concern to the international community cannot be left unpunished and an effective prosecution process must be secured by taking steps at the national level and encouraging international cooperation"

In this case, Indonesia can take the example of the government of Côte d'lvoire, which made a statement [official declaration] pursuant to Article 12 (3) of the Rome Statute related to the crimes committed by its former President, Laurent Gbagbo. The grave human rights violations in Côte d'Ivoire were triggered by President Gbagbo, who refused to accept defeat in the presidential election on November 28, 2010, and ordered armed forces loyal to him to attack and commit acts of violence against civil society, specifically people of certain ethnicities and religions who supported another candidate, Allsane Ouattara.

The Pre-Trial Chamber III of the International Criminal Court/ICC allowed for further investigations, after the Prosecutor presented sufficient evidence to charge President Gbagbo with charges of carrying out widespread attacks on civil society in Côte d'Ivoire. According to information successfully documented by Human Rights Watch [HRW], as many as 3,000 people were killed and hundreds of women were raped in the incident, mainly for political and ethnic reasons.

It is important to note, that at the time of making the declaration, Côte d'Ivoire had not ratified the Rome Statute, and in order to give recognition to the jurisdiction of the ICC, on 18 April 2003, the Government made a declaration under Article 12 (3) of the Rome Statute, stating that it "accepts the jurisdiction of the ICC to identify and investigate the perpetrators and their accomplices, who have committed crimes on the territory of the State, since the events of 19 September 2002." The current President of Côte d'Ivoire, Ouattara, on 14 December 2010 and 3 May 2011, has revoked the declaration under article 12 (3). After making the declaration, President Outtara indicated his cooperation in the International Court of Justice investigation for "all crimes and violence committed since March 2010."

CONCLUSION

Based on the points of thought that have been outlined above, this paper then provides the following conclusions: The protracted settlement of cases of alleged Gross Human Rights Violations cannot be separated from several factors, including the lack of understanding between the Attorney General's Office of the Republic of Indonesia and Komnas HAM RI and the lack of authority of Komnas HAM RI in filing cases of alleged Gross Human Rights Violations only limited to Investigations so that the follow-up is very dependent on other institutions, namely the Attorney General's Office of the Republic of Indonesia. The recommendations of Komnas HAM RI seem to have no legal force so that they are easily ignored or set aside with various considerations. This is the homework of Komnas HAM RI how to oversee and ensure that the recommendations issued can be carried out by the intended institution, for this reason Komnas HAM RI needs to continue to gather communication and support so that every recommendation issued is not limited to a letter but also there is progress that is achieved and reported to the public at large. The restoration of victims' rights through the Urgent Reparation program has not yet become a cross-institutional policy so that the spirit and implementation are not optimal to reach all victims and families of victims of gross human rights violations in Indonesia.

The government, both the House of Representatives of the Republic of Indonesia and the President, must have the same understanding and understanding to strengthen the role and existence of Komnas HAM RI as an important element of human rights enforcement and strengthening budget support as one of the important pillars of human rights development in Indonesia as implied and explicit in the Paris Principles; The strengthening of Komnas HAM RI must include strengthening regulations in the form of constructive amendments to Law No. 26 of 2000 concerning human rights so that it is stronger in providing legal certainty for justice seekers, especially victims and families of victims of gross human rights violations. Komnas HAM RI must be able to bridge communication and build cross-institutional understanding so that Urgent Reparations becomes a collective policy in the form of technical protocols or

regulations so that victims and families of victims of gross human rights violations get legal certainty.

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