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## State responsibility and victim protection: an evaluation of non-judicial measures for human rights violations in Indonesia

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**Summary:** 1. Introduction. 2. The journey of human rights in Indonesia: from colonialism to the reform era. 3. Challenges in human rights enforcement in Indonesia: protection for human rights defenders and legal gaps. 4. Affirmative action and human rights: addressing historical injustices and ensuring justice for victims. 5. The role of state responsibility in the non-judicial resolution of gross human rights violations in Indonesia: challenges, recommendations, and the need for institutional separation. 6. Conclusion. 7. References.

**Abstract:** This study examines the safeguarding of victims of serious human rights violations in Indonesia, with an emphasis on legal philosophy, policy frameworks, and the challenges encountered in implementation, including non-judicial methods. Indonesia has experienced a variety of significant human rights violations shaped by the dynamics of political violence and social instability. The existing legal framework designed to protect victims, including the Human Rights Court and the National Commission on Human Rights, faces significant challenges in implementation. These challenges arise from inconsistencies between national policies and their execution in the field, overlapping authority among various institutions, and insufficient oversight mechanisms. This research identifies notable challenges in non-judicial resolution, particularly the limitations faced by the non-judicial resolution team created under Presidential Decree No. 17 of 2022 in delivering effective redress for victims. Additional concerns encompass the collection of inaccurate data, disparities in the distribution of assistance, and insufficient coordination between governmental bodies and civil society organizations. The study suggests a distinct delineation between executive and oversight entities and advocates for more structured data gathering. It emphasizes the importance of civil society in the monitoring and execution of policies. A coordinated and equitable strategy that emphasizes restorative justice and enhances non-judicial mechanisms is essential for improving the protection of victims.

**Keywords:** Victim Protection; Human Rights Violations; Legal Policy; Non-Judicial; Restorative Justice.

**Resume:** Este estudio examina la protección de las víctimas de graves violaciones de derechos humanos en Indonesia, con énfasis en la filosofía jurídica, los marcos de políticas y los desafíos encontrados en su implementación, incluyendo los métodos no judiciales. Indonesia ha experimentado diversas violaciones significativas de derechos humanos, condicionadas por la dinámica de la violencia política y la inestabilidad social. El marco legal vigente, diseñado para proteger a las víctimas, incluyendo el Tribunal de Derechos Humanos y la Comisión Nacional de Derechos Humanos, enfrenta importantes desafíos en su implementación. Estos desafíos surgen de las inconsistencias entre las políticas nacionales y su ejecución sobre el terreno, la superposición de competencias entre diversas instituciones y la insuficiencia de los mecanismos de supervisión. Esta investigación identifica desafíos notables en la resolución extrajudicial, en particular las limitaciones que enfrenta el equipo de resolución extrajudicial creado por el Decreto Presidencial n.º 17 de 2022 para brindar una reparación efectiva a las víctimas. Otras preocupaciones incluyen la recopilación de datos inexactos, las disparidades en la distribución de la asistencia y la insuficiente coordinación entre los organismos gubernamentales y las organizaciones de la sociedad civil. El estudio sugiere una clara delimitación entre las entidades ejecutivas y de supervisión, y aboga por una recopilación de datos más estructurada. Se destaca la importancia de la sociedad civil en el seguimiento y la ejecución de las políticas. Una estrategia coordinada y equitativa que priorice la justicia restaurativa y fortalezca los mecanismos extrajudiciales es esencial para mejorar la protección de las víctimas.

**Palabras clave:** Protección de víctimas; Violaciones de derechos humanos; Política jurídica; No judicial; Justicia restaurativa.

## 1. Introduction

Numerous instances of significant human rights violations have been documented in Aceh, notably the Rumah Geudong case (1989-1998) during the Soeharto administration.<sup>6</sup> In the Soeharto era, the military held a significant position in multiple domains, notably overseeing civilian activities and imposing penalties on individuals suspected of infractions, with some facing punishment without the benefit of a trial. This situation similarly applied to individuals who experienced human rights violations in Aceh. Indonesia experienced a political transition that marked the conclusion of the New Order government. The situation evolved following the collapse of the Soeharto administration, leading to the government's initiation of laws and regulations focused on human rights, the restoration of victims' rights, the establishment of human rights courts, and the ratification of multiple international conventions concerning human rights. Human rights were established as both a legal foundation and a political tool.<sup>7</sup>

In the aftermath of the New Order, the Indonesian government has encountered increasing demands to confront and rectify a range of serious human rights violations. The National Commission on Human Rights has conducted investigations into several significant incidents, such as the 1999 East Timor violence, the 1984-1985 Tanjung Priok incident, the 2000 Abepura case, and the 1998 Trisakti shooting, in addition to the Semanggi I and II tragedies occurring in 1998 and 1999.<sup>8</sup> Other notable cases currently under scrutiny encompass the May 1998 riots, the Papua incidents—which include the Wasior (2001-2002) and Wamena (2003) events—the enforced disappearances of 1997-1998, the 1989 Talangsari massacre, the mass killings of 1965-1966, the enigmatic shootings from 1982-1985, the Jambo Keupok and Simpang KKA incidents in 1999, the Rumoh Geudong case in 1989, the 1998 Santet Shaman killings, and the 2014 Paniai case.<sup>9</sup>

A significant number of Indonesian citizens have experienced severe human rights violations, resulting in loss of life, physical and mental injuries, stigmatization, and systemic discrimination.<sup>10</sup> The human rights violations they faced encompass civil, political, economic, social, and cultural rights, leading to numerous humanitarian crises.<sup>11</sup> The individuals in question experienced severe forms of

<sup>6</sup> ELDRIDGE, P. "Human Rights in Post-Suharto Indonesia", *The Brown Journal of World Affairs*, V. 9, n° 1, 2002, p. 127-139. Available at: <http://www.jstor.org/stable/24590278>.

<sup>7</sup> HADIPRAYITNO, I. I. "Defensive Enforcement: Human Rights in Indonesia", *Human Rights Review*, V. 11, n° 3, 2010, p. 373-399. <https://doi.org/10.1007/s12142-009-0143-1>

<sup>8</sup> MARZUKI, S.; ALI, M. "The Settlement of Past Human Rights Violations in Indonesia", *Cogent Social Sciences*, V. 9, n° 1, 2023, p. 2240643. <https://doi.org/10.1080/23311886.2023.2240643>; AMIRUDDIN. "Komnas HAM, investigating serious human rights violations: Dynamics and challenges", *Journal of Southeast Asian Human Rights*, V. 5, n° 2, 2021, p. 244-254. <https://doi.org/10.19184/jseahr.v5i2.28118>

<sup>9</sup> RYNIK-OLSZANKA, I. "The Rights of Indigenous Peoples in Indonesia in the Context of 'Responsibility to Protect'", *Studia Iuridica*, n° 96, 2023, p. 301-317. <https://doi.org/10.31338/2544-3135.si.2023-96.15>; BAIRD, N. "The Universal Periodic Review and West Papua: Beyond Invisibility?", *International Journal on Minority and Group Rights*, V. 32, n° 1, 2024, p. 24-60. <https://doi.org/10.1163/15718115-bja10158>; POHLMAN, A. *Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect*. July 2010. Available at: [https://r2pasiapacific.org/files/478/2010\\_research\\_report\\_indonesia\\_postneworderreforms\\_promoting\\_r2p.pdf](https://r2pasiapacific.org/files/478/2010_research_report_indonesia_postneworderreforms_promoting_r2p.pdf).

<sup>10</sup> PURWANTI, A.; PRABOWO, R. A. "Women Rights Fulfillment as the Victim of Gross Human Rights Violation: Urgency for the Sexual Violence Eradication Bill", *Indonesia Law Review*, V. 8, n° 3, 2018, p. 303-315. <https://doi.org/10.15742/ilrev.v8n3.509>

<sup>11</sup> BOB, C. *The International Struggle for New Human Rights*. University of Pennsylvania Press, Philadelphia, 2009. ISBN 0-8122-2129-X.; HAFNER-BURTON, E. M. "A Social Science

torture and were executed without any adherence to judicial procedures. A variety of factors have influenced these actions, including a military ideology frequently rationalized by national security concerns, which are additionally reinforced by the lack of a functioning democracy in the country. This occurrence is not exclusive to Indonesia; comparable atrocities have taken place in different regions globally, exemplified by the Red Terror in Ethiopia between 1977 and 1978.<sup>12</sup> Matthew Lippman<sup>13</sup> conducts a comprehensive analysis of the use of violence in his article, *The Protection of Universal Human Rights: The Problem of Torture*. Lippman identifies several critical factors that drive the military to employ violence. These include (a) the extraction of information from specific individuals, (b) the execution of show trials that compel victims to publicly admit guilt, thereby lending an appearance of legitimacy to the violence, and (c) the establishment of a climate of fear within the community, which aids in maintaining control and stifling dissent.

The application of military force against the population of Aceh lacks justification. It is in direct violation of Article 5 of the General Declaration of Human Rights, which asserts that "no one shall be subjected to torture or degrading treatment or punishment." This is governed by Article 6, paragraph (1) of the International Convention on Civil and Political Rights, which underscores the inviolable right to life that cannot be revoked without just cause. The term arbitrarily lacks a detailed definition, allowing for a wide range of interpretations.<sup>14</sup>

Every nation, Indonesia included, bears the responsibility to uphold, safeguard, and realize human rights, as these rights are fundamentally intrinsic to all individuals.<sup>15</sup> This right is intricately connected to the concept of human dignity, as the absence of human rights undermines individuals' ability to live in alignment with their inherent dignity. The respect, protection, and fulfilment of human rights are essential for the comprehensive development of individuals.<sup>16</sup>

Indonesia has a constitutional duty to ensure the protection, enforcement, and fulfillment of the rights of victims of gross human rights violations, as outlined in Article 28I paragraph (4) of the 1945 Constitution. Victims encompass individuals or groups who experience a wide array of harm, which includes physical and mental injuries, emotional distress, economic difficulties, or significant violations of fundamental rights.<sup>17</sup> This definition includes not only the immediate family

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of Human Rights", *Journal of Peace Research*, V. 51, nº 2, 2014, p. 273-286. <https://doi.org/10.1177/0022343313516822>; STACY, H. *Human Rights for the 21st Century: Sovereignty, Civil Society, Culture*. Stanford University Press, Redwood City, 2009. ISBN 0-8047-4539-0.

<sup>12</sup> KAUFMAN, E.; FAGEN, P. W. "Extrajudicial Executions: An Insight into the Global Dimensions of a Human Rights Violation", *Human Rights Quarterly*, V. 3, nº 4, 1981, p. 81-100. <https://doi.org/10.2307/762112>

<sup>13</sup> LIPPMAN, M. "The Protection of Universal Human Rights: The Problem of Torture", *Universal Human Rights*, V. 1, nº 4, 1979, p. 25-55. <https://doi.org/10.2307/761784>

<sup>14</sup> WEISSBRODT, D. "Protecting the Right to Life: International Measures Against Arbitrary or Summary Killings by Governments", In: *The Right to Life in International Law*. Leiden: Brill, 1985, p. 297-314. ISBN 978-90-04-48229-6. [https://doi.org/10.1163/9789004482296\\_018](https://doi.org/10.1163/9789004482296_018)

<sup>15</sup> ABSOR, A. M. "Juridical analysis of human rights protection in the era of digital transformation: Perspective of laws and regulations", *Indonesia Media Law Review*, V. 2, nº 2, 2023. <https://doi.org/10.15294/imrev.v2i2.69472>

<sup>16</sup> NATALIS, A.; SURAYDA, H. I. "Overcoming Legal Barriers: Ensuring Justice for Persons with Disabilities Victimized by Sexual Violence", *Revista Direito e Sexualidade*, V. 5, nº 1, 2024, p. 163-195. <https://doi.org/10.9771/rds.v5i1.58997>

<sup>17</sup> AMANCIK, A.; SAIFULLOH, P. P. A.; MASYHAR, A.; NUR, A. I. "Breaking the Cycle of Injustice: Revolutionizing Human Rights Violations Resolution Through the 1945 Constitution", *Lex Scientia Law Review*, V. 8, nº 2, 2024, p. 777-816. <https://doi.org/10.15294/lsr.v8i2.7460>; TIBAKA, L.; ROSDIAN, R. "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia", *FIAT JUSTISIA: Jurnal Ilmu Hukum*, V. 11, nº 3, 2018, p. 266-288. ISSN 2477-6238, 1978-5186. <https://doi.org/10.25041/fiatjustisia.v11no3.1141>. Accessed on: 03 Apr. 2021.; PURWANTI, A.; PRABOWO, R. A. "Women Rights Fulfillment as the Victim of Gross Human Rights Violation: Urgency for the Sexual Violence Eradication Bill", *Indonesia Law Review*, V. 8, nº 3, 2018, p. 303-315. <https://doi.org/10.15742/ilrev.v8n3.509>

members or dependents of victims but also individuals who incur harm while assisting victims or working to prevent additional violations, as outlined in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34). Furthermore, UN General Assembly Resolution A/RES/60/147 (2005) underscores the worldwide acknowledgement of victims' entitlements to remedy and reparation in cases of severe breaches of international human rights and humanitarian law.<sup>18,19</sup> This paper examines the legal philosophy and political aspects that inform Indonesia's initiatives to safeguard victims of severe human rights abuses, framed within the context of national responsibilities and international benchmarks.

A fundamental challenge in safeguarding the rights of victims of human rights violations lies in ensuring coherence among philosophy, policy, and implementation in this area. The philosophy surrounding the protection of victims of human rights centres on justice, highlighting the importance of restoring the rights that victims have lost as a result of human rights violations. This aligns with Ulpianus' perspective that fairness is achieved when individuals receive what is rightfully theirs.<sup>20</sup> Current policies in Indonesia have not adequately ensured justice or the protection of victims' rights. This inadequacy stems from the overlapping authority between implementing and supervisory institutions, which leads to cognitive errors with practical implications. Ultimately, this results in a lack of a monitoring and evaluation mechanism for the fulfilment of victims' rights. The impact on implementation is significant, as numerous victims fail to receive their rights due to issues related to data collection and inequities in the distribution of assistance.

The discourse surrounding the fulfilment of the rights of victims of human rights violations can currently be categorized into two distinct segments.<sup>21</sup> Some articles concentrate exclusively on forums that address historical human rights violations, utilizing both judicial and non-judicial mechanisms for resolution. Conversely, some articles focus solely on compensation for victims of human rights violations.<sup>22</sup> This article distinguishes itself by providing a thorough examination of

<sup>18</sup> JUNAEDI, J. "The Existence of Human Rights Court as a National Effort to Eliminate the Severe Violation of Human Rights in Indonesia", *Indonesia Law Review*, V. 4, n° 2, 2021, p. 176–195. <https://doi.org/10.15742/ilrev.v4n2.110>; NURKHOLIS, A; WALUYO, B. "Alternative For Fulfilling The Rights Of The Victims Of Past Gross Violation Of Human Rights In Indonesia", In: *3rd International Conference on Law Studies "Law Enforcement in Pandemic Covid-19 Era: Experience And Comparison in Global Context Law Policy on Transnational Issues"*, 2023, p. 1–25. ISBN 978-97-93-59916-8. Available at: <https://conference.upnvj.ac.id/index.php/icoli/article/viewFile/1557/1093#page=9>.

<sup>19</sup> APTEL, C. "The Rights of Victims of Serious Violations of International Human Rights Law and International Humanitarian Law: A Human Rights Perspective", In: ANKUMAH, E. A. (ed.), *The International Criminal Court and Africa: One Decade On*, Cambridge: Intersentia, 2016, p. 401–418. ISBN 978-1-78068-485-7. <https://doi.org/10.1017/9781780684857.016>; SALMÓN, E.; PÉREZ-LEÓN-ACEVEDO, J. P. "Reparation for Victims of Serious Violations of International Humanitarian Law: New Developments", *International Review of the Red Cross*, V. 104, n° 919, 2022, p. 1315–1343. <https://doi.org/10.1017/S1816383122000297>

<sup>20</sup> LAZO, P. "Labeo, Paulus and Ulpian: Causal Reasoning and Contract Liability", *Vergentis*, V. 16, 2023, p. 43–58. <https://doi.org/10.12800/vg.16.2>

<sup>21</sup> MARZUKI, S.; ALI, M. "The Settlement of Past Human Rights Violations in Indonesia", *Cogent Social Sciences*, V. 9, n° 1, 2023, p. 2240643. <https://doi.org/10.1080/23311886.2023.2240643>; DE CAMPOS MELO, C.; DE MELLO SCHETTINI, A. B.; DE SOUSA SOARES, M. C. C. "Truth Commissions and Tribunals in the Global South: Contributions to Transitional Justice Theory", In: *Human Rights Interdependence in National and International Politics*, Abingdon: Routledge, 2024, p. 40–60.; SUBAWA, I. M.; HERMANTO, B.; RATU, I. A. M.; HATTORI, M. "Observance of the Legal Choice for the Settlement of Indonesia's Past Gross Violations of Human Rights", *Yuridika*, V. 39, n° 2, 2024, p. 231–256. <https://doi.org/10.20473/ydk.v39i2.44828>

<sup>22</sup> SEFKOW-WERNER, V. "Consistent Inconsistencies in the ECtHR's Approach to Victim Status and Locus Standi", *European Journal of Risk Regulation*, 2025, p. 1–10. <https://doi.org/10.1017/err.2024.95>; STEELE, J. "Damages in Tort and Under the Human Rights Act: Remedial or Functional Separation?", *The Cambridge Law Journal*, V. 67, n° 3, 2008, p. 606–634. <https://doi.org/10.1017/S000819730800069X>; PÉREZ-LEÓN-ACEVEDO, J.



legal philosophy, the policies aimed at fulfilling victims' rights, and their application in instances of human rights violations in Indonesia.

This study employs a socio-legal framework that integrates field realities with the existing positive legal standards pertinent to the topics addressed. The process of data collection involves conducting a literature review and engaging in field research. The literature study involves a systematic inventory of diverse policies, laws, concepts, and theories pertinent to the issues being examined. Field research was conducted involving multiple stakeholders, including policymakers (executives), perpetrators and victims, law enforcement officials, and other relevant parties. Field data collection is conducted through observation, in-depth interviews, or Focus Group Discussions. The gathered data will be chosen based on the research requirements and will undergo analysis using a qualitative method, specifically content analysis. This process will involve several steps: reviewing the data, developing a coding framework, coding the data, analyzing the data, and ultimately presenting the thesis.

## **2. The journey of human rights in Indonesia: from colonialism to the reform era**

The notion of human rights is grounded in the assertion that every individual inherently holds fundamental rights and freedoms that are crucial for their dignity and existence. The evolution of this concept on a global scale has been influenced by significant historical events, including the United States Declaration of Independence, the French Declaration of the Rights of Man and Citizen, and the Universal Declaration of Human Rights by the United Nations. The significance of these documents in establishing international norms and discourse on human rights is substantial. The 1776 Declaration of Independence highlighted the concept of natural rights and established a significant global benchmark for the acknowledgement of individual freedoms. The 1789 French Declaration, arising from the French Revolution, clearly articulated fundamental civil liberties that have significantly shaped international legal and political developments. The 1948 Universal Declaration of Human Rights builds upon these legacies by broadening the recognition of rights on a global scale, creating a detailed framework of principles that persistently influence national constitutions and international law.<sup>23,24,25,26</sup>

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P. "Non-compensatory Reparation Modalities in UN Legal Sources: Focus on Gross Violations of Human Rights", In: ZICCARDI CAPALDO, G. (ed.), *The Global Community Yearbook of International Law and Jurisprudence 2022*, Oxford: Oxford University Press, 2023, p. 155–172. ISBN 978-0-19-775226-5. <https://doi.org/10.1093/oso/9780197752265.003.0010>. Accessed on: 04 Dec. 2025.; ROACH, K. "The Disappointing Remedy? Damages as a Remedy for Violations of Human Rights", *University of Toronto Law Journal*, V. 69, nº Supplement 1, 2019, p. 33–63. <https://doi.org/10.3138/utlj.69.s1.002>; MARKOU-PAPPAS, N.; RAGAZZONI, L.; TRUPPA, C.; SALIO, F.; BARONE-ADESI, F.; LAMINE, H. "Navigating Challenges, Solutions and Requirements in the Provision of Trauma Care in Conflict Settings by Humanitarian Actors: A Scoping Literature Review", *Conflict and Health*, V. 19, 2025. <https://doi.org/10.1186/s13031-025-00643-7>; MOHAMED, E. M. Ali.; LUCERO-PRISNO, D. E. "The Effects of Sudan's Armed Conflict on Economy and Health: A Perspective", *Health Science Reports*, V. 8, nº 2, 2025, p. e70424. <https://doi.org/10.1002/hsr2.70424>. Accessed on: 12 Apr. 2025.

<sup>23</sup> BEITZ, C. R. *The Idea of Human Rights*. Oxford University Press, Oxford, 2011. ISBN 0-19-960437-1.; DONNELLY, J. *Universal Human Rights in Theory and Practice*. Cornell University Press, Ithaca, 2013.; SEN, A. "Elements of a Theory of Human Rights", In: *Justice and the Capabilities Approach*, Abingdon: Routledge, 2017, p. 221–262.; SEN, A. "Human Rights and Capabilities", *Journal of Human Development*, V. 6, nº 2, 2005, p. 151–166. <https://doi.org/10.1080/14649880500120491>

<sup>24</sup> YÜCEL, Z. "From Natural Law to Universal Declarations: Implications for International Human Rights Treaties and the Responsibility to Protect", *Journal Of Management And Economics Research*, V. 21, nº 4, 2023, p. 54–87. <https://doi.org/10.11611/yea.1307685>; ARMITAGE, D. *The Declaration of Independence: A Global History*. Harvard University Press, Cambridge, 2007. ISBN 0-674-02282-3

Certain scholars, such as Micheline Ishay<sup>27</sup>, contend that the concept of human rights has profound historical origins, with connections to ancient times evident in various religious and philosophical traditions. Robert Lamb<sup>28</sup> critiques this perspective, arguing that a definition of human rights as expansive and vague as Ishay's merely leads to ambiguity. Lamb highlights that although numerous traditions have imparted universal values, this does not imply that the concept of human rights, as understood today, was present in ancient times. In a similar vein, Samuel Moyn<sup>29</sup> perceives the evolution of human rights as a contemporary occurrence that surfaced exclusively in the 20th century, especially following World War II, emphasizing the significance of international politics and the worldwide endeavour to safeguard individuals. Nevertheless, Lamb critiques Moyn's viewpoint for its excessive emphasis on the practical execution of human rights while overlooking the foundational ideological and philosophical dimensions.

Lamb presents a more detailed perspective by differentiating between the evolution of ideas and the implementation of human rights. Lamb argues that a comprehensive understanding of human rights history necessitates an examination of the philosophical ideas that have influenced this concept rather than merely considering the associated rules or political policies. Considering human rights as a dynamic concept within human thought, rather than solely as a political or legal tool, allows for a deeper comprehension of their role as the cornerstone of moral frameworks and social justice across the globe. This highlights that human rights extend beyond the policies enacted by states or international organizations; they encompass fundamental values that affirm the dignity and rights inherent to each individual.<sup>30</sup>

Throughout history, diverse political traditions have influenced varying interpretations of human rights, illustrating the changing social and historical contexts that contributed to the creation of the Universal Declaration of Human Rights (UDHR) in 1948. René Cassin, a pivotal contributor to the UDHR, characterized it as a foundational symbol for safeguarding human dignity, organized around four fundamental pillars: dignity, freedom, equality, and brotherhood. The declaration is structured around these pillars, which encompass 27 articles detailing various rights, including individual civil liberties as well as more expansive economic, social, and cultural rights. The UDHR signifies a significant achievement in the evolution of international human rights, reflecting the intricate historical conflicts and ideological transformations that shaped its creation.<sup>31</sup>

Nonetheless, the advancement of human rights has not adhered to a straightforward trajectory and has often encountered obstacles stemming from political and ideological factors. The dynamics of nationalism, global conflicts, and power struggles, particularly evident during the Cold War and in postcolonial movements, have frequently obstructed or redefined the trajectory of human rights agendas. The ongoing debates regarding the origins of rights, the concept of cultural relativism, and the influence of Western perspectives in shaping human

<sup>25</sup> ISHAY, M. "What Are Human Rights? Six Historical Controversies", *Journal of Human Rights*, V. 3, n° 3, 2004, p. 359–371. <https://doi.org/10.1080/1475483042000224897>; BENSEL, R. F. "The Declaration of the Rights of Man and of the Citizen: The French Revolution", In: *The Founding of Modern States*. Cambridge: Cambridge University Press, 2022, p. 199–328. ISBN 978-1-00-924724-5. <https://doi.org/10.1017/9781009247245.006>

<sup>26</sup> MCCRUDDEN, C. "Human Dignity and Judicial Interpretation of Human Rights", *European Journal of International Law*, V. 19, n° 4, 2008, p. 655–724. <https://doi.org/10.1093/ejil/chn043>. Accessed on: 29 Sept. 2024.

<sup>27</sup> ISHAY, M. *The History of Human Rights: From Ancient Times to the Globalization Era*. University of California Press, Oakland, 2008. ISBN 0-520-25641-7.

<sup>28</sup> LAMB, R. "Historicising the Idea of Human Rights", *Political Studies*, V. 67, n° 1, 2019, p. 100–115. <https://doi.org/10.1177/0032321717752516>

<sup>29</sup> MOYN, S. *The Last Utopia: Human Rights in History*. Harvard University Press, Cambridge, 2010. ISBN 978-0-674-04872-0. <https://doi.org/10.2307/j.ctvj2vkf>

<sup>30</sup> LAMB, R. "Historicising the Idea of Human Rights", *Political Studies*, V. 67, n° 1, 2019, p. 100–115. <https://doi.org/10.1177/0032321717752516>

<sup>31</sup> ISHAY, M. *The History of Human Rights: From Ancient Times to the Globalization Era*. University of California Press, Oakland, 2008. ISBN 0-520-25641-7.

rights remain contentious issues in contemporary discourse. Nonetheless, inconsistencies within the human rights discourse have prompted the development of new methodologies, including the incorporation of cultural rights and the pursuit of decolonization. The trajectory of India's independence and the broader decolonization movement in Asia illustrates that the quest for self-determination is a fundamental aspect of the human rights discourse, highlighting the intricate connections between the development of these rights and significant global historical changes.<sup>32</sup>

The evolution of human rights in Indonesia has experienced numerous disruptions and obstacles closely tied to the socio-political landscape of each era. The pursuit of human rights in Indonesia originated during the Dutch colonial era, as national leaders engaged in efforts to achieve independence from colonial rule. Following Indonesia's independence, the recognition of human rights was incorporated into the nation's constitution and formal legal framework. Despite the recognition of human rights, there were ongoing violations of these rights, particularly during the New Order era.<sup>33</sup>

The pursuit of human rights in Indonesia was initiated prior to independence, with Raden Ajeng Kartini leading the charge approximately 40 years before the nation achieved its sovereignty. Kartini articulated the significance of advocating for human rights in Indonesia through her correspondence.<sup>34</sup> Following Indonesia's independence, the trajectory of human rights can be categorized into three significant phases: the Old Order Era, the New Order Era, and the Reform Era.<sup>35</sup>

In the Old Order era, the pursuit of human rights was evident in the discussions held during the Investigating Committee for Preparatory Work for Indonesian Independence session, where prominent figures like Mohammad Hatta and Mohammad Sukiman advocated for the incorporation of human rights into the 1945 Constitution. Their ideas, while not universally embraced, resulted in notable accomplishments, including the establishment of political party freedom, press freedom, and the implementation of free and democratic elections. Indonesia has signed several international conventions, including the 1949 Geneva Conventions and the Convention on Women's Political Rights.<sup>36</sup>

In the initial years following Indonesia's independence, spanning from 1945 to 1950, the emphasis in human rights discourse centred on essential rights. These included the right to autonomy, the right to participate in political organizations, and the right to freedom of expression, particularly within parliamentary contexts. In this timeframe, the conceptualization of human rights started to acquire formal recognition as it was integrated into the nation's foundational legal framework, the 1945 Constitution. The Government Decree of November 1, 1945, clearly illustrated the dedication to human rights during this period, highlighting the significance of safeguarding these rights. The subsequent action undertaken by the government involved granting the populace the liberty to form political parties, as outlined in the Government Decree dated November 3, 1945. This signified the onset of a structured acknowledgement and governance of fundamental rights within Indonesia.

Between 1950 and 1959, a period characterized by Parliamentary Democracy, there was a notable evolution in the conceptualization of human rights. During this period, liberal or parliamentary democracy became increasingly

<sup>32</sup> ISHAY, M. *The History of Human Rights: From Ancient Times to the Globalization Era*. University of California Press, Oakland, 2008. ISBN 0-520-25641-7.

<sup>33</sup> TAMPUBOLON, M. *Human Rights in Indonesia*. Iksad, Ankara, 2024.

<sup>34</sup> BIJL, P. "Legal Self-fashioning in Colonial Indonesia: Human Rights in the Letters of Kartini", *Indonesia*, V. 103, 2017, p. 51-71. <https://doi.org/10.5728/indonesia.103.0051>; SCHRÖTER, S. "Progressive and Conservative Women's Movements in Indonesia", In: *Women's Movements and Countermovements: The Quest for Gender Equality in Southeast Asia and the Middle East*, Cambridge: Cambridge Scholars Publishing, 2014, p. 79-107

<sup>35</sup> GUNAKAYA, W. *Hukum Hak Asasi Manusia*. Penerbit Andi, Yogyakarta, 2019. ISBN 978-979-29-6364-9.

<sup>36</sup> WIRATRAMAN, H. P. *Press Freedom, Law and Politics in Indonesia: A Socio-Legal Study*. 2014. Thesis (Doctoral)- Faculteit der Rechtsgeleerdheid, Leiden University, 2014.



prominent among political elites, facilitating enhanced freedom in multiple dimensions of state life. The conceptualization of human rights and their implementation during this period appears to have attained a significant high point, as the prevailing climate of freedom bolstered democratic principles. The primary indicators of this period are, firstly, the increasing number of political parties representing a variety of ideologies. Secondly, the realization of press freedom, a fundamental component of democracy, was achieved in its entirety. Third, elections were conducted in a manner that was free, fair, and democratic. The parliament, embodying the principle of popular sovereignty, demonstrated a growing capacity to monitor the executive effectively. The flourishing of discourse and thought regarding human rights can be attributed to the freedom provided by the government. During the period from 1959 to 1966, characterized by the Guided Democracy system, the situation underwent significant changes. The Guided Democracy established by Soekarno centralized authority with the president, resulting in actions that deviated from constitutional norms in both political and governmental spheres. This period saw significant restrictions on the human rights of the populace, particularly in the realm of civil and political rights, leading to a notable decline in the freedoms that Indonesians had previously experienced.<sup>37</sup>

After the transfer of power from Soekarno to Soeharto, Indonesia exhibited a significant dedication to advancing human rights, as evidenced by seminars and legal discussions in the late 1960s that suggested the creation of a Human Rights Court and Commission. The initial initiatives, including the 1968 National Law Seminar and the drafts developed by Ad Hoc Committee IV of the MPRS, highlighted the significance of judicial review and the rights of citizens. From the 1970s to the late 1980s, there was a notable deceleration in momentum under the New Order regime, characterized by a defensive and repressive approach to human rights. The government contended that human rights were fundamentally based on Western ideology and at odds with Indonesian values and Pancasila, employing this reasoning to validate restrictive laws and stifle dissent. In the face of governmental opposition, the persistence of human rights advocacy was evident through the concerted efforts of civil society, NGOs, and academics who actively campaigned against violations occurring in Tanjung Priok, Kedung Ombo, Aceh, and Irian Jaya. In the early 1990s, mounting pressure from these groups prompted the government to take a more transparent approach, as demonstrated by the establishment of the National Human Rights Commission in 1993. The Reform era represented a pivotal transformation characterized by constitutional amendments and MPR Decree No. XVII/MPR/1998, which solidified the nation's dedication to human rights. The implementation of Law No. 39 of 1999 reinforced Indonesia's commitment to upholding and safeguarding human rights by establishing a more organized and enforceable legal structure.<sup>38</sup>

Following the collapse of the New Order, Indonesia's reform agenda concentrated on the enhancement, realization, and safeguarding of human rights. This agenda garnered interest from multiple governments that followed, including the administrations of B. J. Habibie, Gus Dur, Megawati, SBY, and Jokowi, who each introduced distinct policies concerning human rights. The policies encompassed the annulment of Government Regulations in Lieu of Laws deemed to infringe upon human rights, modifications to the Constitution, the establishment of new Perpu aimed at safeguarding human rights, and the endorsement of international human rights conventions. The Reform era introduced substantial modifications to the prevailing legal frameworks, with a primary emphasis on the respect and safeguarding of human rights. Nonetheless, in light of advancements, the execution of human rights in Indonesia continues to encounter numerous obstacles, particularly regarding policy, institutional frameworks, and legal enforcement mechanisms.<sup>39</sup>

<sup>37</sup> GUNAKAYA, W. *Hukum Hak Asasi Manusia*. Penerbit Andi, Yogyakarta, 2019. ISBN 978-979-29-6364-9.

<sup>38</sup> SARDOL, S. M. "Human Rights Arrangement on Indonesian Law", *Rechtsidee*, V. 1, n° 1, 2014, p. 85-100. <https://doi.org/10.21070/jihr.v1i1.105>. Accessed on: 22 Jan. 2024.

<sup>39</sup> PRIYOSANTOSO, R. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era

During the administration of B. J. Habibie, Indonesia transitioned into the reform era characterized by significant alterations in the nation's political and legal frameworks. Habibie implemented essential measures to enhance the protection of human rights, which involved the repeal of several policies identified as infringing upon those rights. One significant legal product from this period was MPR Decree No. XVII/MPR/1999 on human rights highlighted that these rights are fundamental entitlements intrinsic to each person, characterized as natural, universal, and bestowed by a higher power. This decree established a robust framework for enhancing the protection of human rights in Indonesia. The government also enacted Law No. 5 of 1998, which ratified the Convention Against Torture, alongside Law No. 39 of 1999 concerning human rights. These laws established legal assurances for human rights, affirming them as fundamental rights inherently linked to individuals. The laws established fundamental principles, including the acknowledgement of human rights and the state's duty to protect, respect, and uphold these rights. These steps demonstrated Habibie's dedication to enhancing human rights protection in Indonesia, although obstacles persisted.<sup>40</sup>

Under Gus Dur's presidency, the emphasis on strengthening human rights was reinstated, accompanied by notable policies and legal measures. A significant development occurred with the alteration of Indonesia's legal framework, which enhanced the capacity for human rights protection. Gus Dur initiated the creation of several institutions aimed at safeguarding human rights, including the National Ombudsman Commission, which oversees public services, and the establishment of human rights courts to address historical violations, such as those related to East Timor and Tanjung Priok. Gus Dur demonstrated a commitment to addressing historical human rights violations through the issuance of Presidential Decree No. 53 of 2001, which established an Ad Hoc Human Rights Court specifically to tackle violations that occurred in East Timor and Tanjung Priok. During the discussions on the Human Rights Court Bill, controversies emerged surrounding the non-retroactivity principle, which sparked debates and opposition, particularly from the military. In light of these challenges, Gus Dur's actions demonstrated a concerted effort to address historical human rights violations and enhance the framework for human rights protection in Indonesia.

During Megawati's administration, significant progress was made in the realm of human rights protection, marked by the implementation of various legal frameworks aimed at broadcasting, the elimination of domestic violence (DV), and the protection of victims and witnesses of human rights violations. Law No. 32 of 2002 concerning broadcasting and Law No. 23 of 2004 aimed at the elimination of domestic violence represent significant examples of legal frameworks that illustrate a commitment to protecting the essential rights of individuals. Additionally, Presidential Decree No. 96 of 2001, related to the creation of the Ad Hoc Human Rights Court for the East Timor and Tanjung Priok cases, as well as Presidential Decree No. 10 of 2002, which focuses on the establishment of a fact-finding commission for the Theys Hiyo Eluay case in Papua, exemplifies the efforts made by the Megawati administration to confront historical human rights violations. In light of the progress made in legal product development, it is noteworthy that the human rights court established during this timeframe led to the acquittal of all individuals accountable for violations. This indicates a deficiency in the application of human rights law and a lack of political will to address historical human rights violations thoroughly. The Megawati administration enacted various noteworthy policies; nonetheless, its primary focus was on strengthening political institutions, leading to an inadequate political will to conduct a thorough investigation into

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Reformasi", *Jurnal Ilmu Kepolisian*, V. 15, nº 3, 2021, p. 196-205. <https://doi.org/10.35879/jik.v15i3.341>

<sup>40</sup> PRIYOSANTOSO, R. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi", *Jurnal Ilmu Kepolisian*, V. 15, nº 3, 2021, p. 196-205. <https://doi.org/10.35879/jik.v15i3.341>

historical human rights violations.<sup>41</sup>

Under Susilo Bambang Yudhoyono (SBY) administration, there was a notable progression in legal frameworks concerning human rights. This included the ratification of Law No. 11 of 2005, which pertains to the International Covenant on Civil and Political Rights, as well as Law No. 13 of 2006, which focused on the protection of witnesses and victims. Nonetheless, in spite of various policies aimed at supporting human rights protection, the SBY administration was perceived as having a limited commitment to the enforcement of human rights laws. Specific instances of human rights violations, including the Talangsari Lampung case and the abduction of activists, have not garnered significant attention and continue to be unresolved. SBY did not ratify several international human rights instruments, indicating a deficiency in focus on human rights within the global context. While certain positive measures were taken, including the establishment of a fact-finding team to examine the Munir case, the SBY administration largely failed to address past human rights violations with the seriousness they warranted. It lacked a definitive strategy for its resolution.<sup>42</sup>

Under Joko Widodo's (Jokowi) presidency, human rights have not been prioritized. However, there have been advancements in certain areas, including access to water, economic and social rights, and the right to justice. International organizations such as Amnesty International and Human Rights Watch have indicated a noticeable decline in the enforcement of human rights during Jokowi's leadership, despite ongoing efforts. The government's emphasis on economic development frequently eclipses human rights and democratic concerns, leading to ongoing violations—such as those in Papua—and unresolved past abuses that garner minimal attention. In 2015, the Jokowi administration implemented the National Human Rights Action Plan aimed at advancing human rights by establishing clear objectives and strategies. Nonetheless, the execution has encountered notable obstacles, such as inadequate coordination and varying levels of commitment from pertinent stakeholders. Ongoing challenges like land rights disputes and conflicts over natural resources continue to pose significant obstacles, underscoring the disparity between policy objectives and actual results in the realm of human rights in Indonesia.<sup>43</sup>

### **3. Challenges in human rights enforcement in Indonesia: protection for human rights defenders and legal gaps**

The article "2020: A Dark Page in the History of Human Rights in Indonesia" by Protection International underscores that the adherence to human rights in Indonesia has not yet reached a normative status, as the effort to maintain fundamental freedoms continues to encounter significant obstacles. Human rights defenders are essential in upholding the state's responsibility to protect fundamental rights; however, they often face targeted assaults and various forms of violence. The Coalition of Women Human Rights Defenders and the Civil Society Coalition for the Protection of Human Rights Defenders have called on President Joko Widodo to implement immediate and tangible measures to safeguard defenders and uphold the right to advocate for human rights. The government has a responsibility to ensure access to justice and hold perpetrators legally accountable while also providing appropriate compensation and reparations to victims. During roundtable discussions conducted in November and December 2020 with prominent institutions and experts, both coalitions articulated significant apprehension

<sup>41</sup> PRIYOSANTOSO, R. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi", *Jurnal Ilmu Kepolisian*, V. 15, n° 3, 2021, p. 196–205. <https://doi.org/10.35879/jik.v15i3.341>

<sup>42</sup> PRIYOSANTOSO, R. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi", *Jurnal Ilmu Kepolisian*, V. 15, n° 3, 2021, p. 196–205. <https://doi.org/10.35879/jik.v15i3.341>

<sup>43</sup> PRIYOSANTOSO, R. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi", *Jurnal Ilmu Kepolisian*, V. 15, n° 3, 2021, p. 196–205. <https://doi.org/10.35879/jik.v15i3.341>

regarding the deteriorating state of human rights defense in the country. The increase in attacks, with a minimum of 116 incidents documented from January to October 2020, including 59 cases of police violence, indicates a developing human rights crisis. The assaults, frequently aimed at government critics, employed various tactics, including arbitrary arrest, harassment, hacking, account confiscation, and doxing. This is illustrated by the intimidation faced by KASBI activists protesting the Omnibus Law and the harassment experienced by female journalists and activists covering these events in October 2020.<sup>44</sup>

Since its establishment as a nation in 1945, Indonesia has systematically addressed human rights issues through the formal language articulated in its constitution. At that time, the emphasis was not primarily on human rights. The founders of the nation prioritized essential aspects of state-building, focusing on the ideology and structure of governance. Several provisions concerning human rights were incorporated, including equality before the law, freedom of association and expression, freedom of religion, the right to education, protection of culture, economic rights, and social security rights. In the years 1949 and 1950, Indonesia implemented two new constitutions that provided a more comprehensive framework regarding human rights, incorporating the rights specified in the UDHR. In 1959, a decree was issued to amend the 1950 constitution, thereby reinstating the 1945 Constitution. The 1945 Constitution was in its original form until 1999, after which it underwent four amendments between October 1999 and 2002. Notably, the Second Amendment in 2000 introduced more comprehensive provisions regarding human rights.<sup>45</sup>

Indonesia hosts a range of government and private institutions dedicated to the protection of human rights. The National Human Rights Commission represents the initial governmental effort to tackle this issue. During Soeharto's administration, the National Human Rights Commission garnered significant respect, and its recommendations played a crucial role in shaping government policies. In recent years, the recommendations of the National Human Rights Commission have received diminished attention, particularly following Indonesia's transition to a more democratic framework. This is due to the lack of follow-up from the government, the National Human Rights Commission's weak enforcement power, and competition with many non-governmental organizations (NGOs) also advocating for human rights.

Prior to 1998, the number of NGOs dedicated to human rights was quite restricted; however, following the reform era, there has been a significant surge in the establishment of these organizations. The NGOs in question are KontraS, ELSAM, and PBHI. Legal aid organizations, including the Legal Aid Institute, founded in the 1970s, expressed significant criticism regarding human rights violations perpetrated by the government or military. Nonetheless, even with advancements in legislation and an increase in organizations focused on safeguarding human rights, violations persist. Six primary factors contribute to the disparity between legal frameworks and their practical application. Initially, it is observed that current legislation is frequently formulated primarily as a reaction to external influences, such as international pressure or non-governmental organizations, or to preserve authority. Secondly, numerous laws or ratified international instruments do not sufficiently establish the infrastructure required for effective implementation. Third, the lack of accountability demonstrated by law enforcement officers towards human rights violators fails to create incentives for adherence to regulations. The abrupt implementation of laws presents challenges in enforcement, necessitating shifts in legal culture and alterations in public perception. The fifth point highlights that

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<sup>44</sup> PROTECTION INTERNATIONAL. *2020: A Dark Page in the History of Human Rights in Indonesia*. Online. 2020. Available at: <https://www.protectioninternational.org/news/2020-a-dark-page-in-the-history-of-human-rights-in-indonesia/>.

<sup>45</sup> JUWANA, H. "Human Rights in Indonesia", In: *Human Rights in Asia*, Abingdon: Routledge, 2006, p. 364-383.

international instruments ratified by Indonesia lack precise translation into domestic obligations. Sixth, there is a contradiction between national laws and policies and the international instruments that have been ratified, exemplified by the issue of corporal punishment in Aceh, which conflicts with the Convention Against Torture.

The legal landscape in Indonesia shows a clear trend of enhancement, characterized by revisions that encompass both conceptual frameworks and procedural methodologies. The primary emphasis in this context is on conceptual revision. In considering the fundamental concept of human rights, which encompasses three essential components—Responsibility, Obligation, and Rights—as previously mentioned, it is necessary to revisit two key aspects: the interplay between rights and obligations. The matter of balancing rights and obligations warrants careful examination, as there are instances in conflicts where rights often overshadow obligations. This suggests a tendency to prioritize rights and overlook equally fundamental commitments.

At present, Indonesia is experiencing significant turmoil, encountering crises across multiple facets of national existence, particularly within the legal domain. The legal system, intended to ensure justice for all citizens, frequently appears to benefit only minor, routine offenders. In contrast, individuals involved in significant offences such as corruption, collusion, and nepotism—commonly identified as white-collar criminals—frequently evade legal accountability. This underscores the disparity in the enforcement of legal standards based on an individual's social standing. In Indonesia, there are indications that the treatment of law violators by enforcement agencies reflects a disparity characterized by a stringent application of laws against lower-tier offenders while exhibiting leniency towards those in higher positions.

Law enforcement is fundamentally designed to uphold the principles of justice and truth. The obligation extends beyond traditional law enforcement to encompass every individual in society. Law No. 39 of 1999, Article 1, Paragraph (6) defines a human rights violation as any action taken by an individual or group, including state apparatus, that unlawfully diminishes, obstructs, restricts, or nullifies the human rights of an individual or group as guaranteed by law. This definition encompasses both intentional and negligent acts, as well as the failure to offer or the impending failure to provide a fair and appropriate legal resolution through the relevant legal mechanisms. The law delineates that serious violations of human rights encompass mass killings (genocide), arbitrary killings, torture, forced disappearances, slavery, and discrimination. Additional violations of human rights encompass acts such as assault, physical beating, defamation, obstructing individuals from voicing their opinions, torture, and the unlawful taking of another's life.

Efforts to prevent human rights violations encompass several key strategies. First, instilling good character in children is essential, with parents playing a pivotal role in shaping their children's personalities. Second, socialization efforts should be implemented to enhance public understanding of the fundamental aspects of human rights and provide information regarding the various forms of human rights violations. Third, the government ought to take measures to prevent human rights violations by instituting the National Human Rights Commission.

The execution of policies in developing nations, as articulated by Merilee G. Grindle,<sup>46</sup> encompasses two critical components: context and content. The context encompasses various elements, including the power dynamics, interests, and strategies of the involved actors, the attributes of the existing institutions and regimes, as well as the degree of compliance and responsiveness to the implemented policies. The effectiveness of policy implementation is contingent upon these factors, which may also give rise to tension and conflict within society. The content encompasses the objectives, benefits, and anticipated changes of the policy, as well as the implications of those changes on the social, economic, and political landscape of the country. In Indonesia, the process of policy implementation

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<sup>46</sup> GRINDLE, M. G. *Politics and Policy Implementation in the Third World*. Online. Princeton University Press, Princeton, 1980. Available at : <http://www.jstor.org/stable/j.ctt1m323qj>.



frequently necessitates the revision of the constitution or current regulations, exemplified by the Second Amendment to the 1945 Constitution. The revision process encompasses legal and technical dimensions while necessitating a comprehensive grasp of Indonesia's legal framework and cultural context, alongside an analysis of public receptiveness to these modifications.<sup>47</sup>

Policy implementation frequently encounters substantial obstacles associated with the legal framework and the prevailing societal culture. A notable instance of this is the occurrence of breaches of customary rights across different areas of Indonesia. Indigenous communities frequently perceive violations of their rights by corporations and government entities, which often endorse development initiatives without adequately addressing their land rights and established traditions. The situation in Terusan Village, where residents asserted their customary land rights in the face of threats from oil palm plantation activities, exemplifies this issue. The community's efforts to alert PT Harapan Sawit Lestari (HSL) and local officials regarding non-interference with their land were met with actions from both the company and the government that escalated tensions, resulting in conflict. In this instance, HSL not only declined to pay fines for the damage incurred but also engaged third parties, including local governments and NGOs, which exacerbated the situation and did not effectively address the conflict.<sup>48</sup>

A significant instance is the infringement of indigenous rights in Bulukumba, characterized by police violence directed at residents who were protesting the appropriation of their customary land by PT Lonsum. During this incident, five residents sustained gunshot wounds, resulting in one fatality. The event elicited significant criticism from various domestic and international NGOs, underscoring the critical need to uphold indigenous rights within the framework of development. The Bulukumba case illustrates the complexities involved in conflict resolution concerning customary rights, often obstructed by insufficient comprehension and regard for the essential rights of marginalized communities.<sup>49</sup>

The substance of policy significantly influences its execution. The content of the policy is shaped by multiple factors, such as the stakeholders involved, anticipated benefits, desired changes, locations of decision-making, those responsible for implementation, and the resources allocated for its execution. For effective policy implementation, it is essential to evaluate all these elements meticulously. In the context of constitutional or legal revisions, it is necessary to assess the stakeholders affected by the changes and analyze the implications for different societal groups. Successful implementation of a policy or revision hinges on its ability to serve the interests of the broader public rather than favouring only specific groups.

Additionally, assessing the feasibility of the proposed changes in the policy is crucial. For example, suppose the objective of the policy is to safeguard the rights of indigenous communities. In that case, it is essential to verify that the policy effectively addresses the needs and expectations of these communities rather than serving solely the interests of large corporations or the government. Implementing human rights policies in Indonesia presents significant challenges, particularly in addressing violations perpetrated by multiple entities, including the state, corporations, and non-governmental organizations. Technological advancements are broadening the scope of human rights issues to encompass privacy rights and digital rights. In the current digital landscape, there is a growing argument that internet access should be considered a fundamental human right, given the

<sup>47</sup> HAKIM, L.; KURNIAWAN, N. "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia", *Jurnal Konstitusi*, V. 18, nº 4, 2021, p. 869–897. <https://doi.org/10.31078/jk1847>

<sup>48</sup> HAKIM, L.; KURNIAWAN, N. "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia", *Jurnal Konstitusi*, V. 18, nº 4, 2021, p. 869–897. <https://doi.org/10.31078/jk1847>

<sup>49</sup> HAKIM, L.; KURNIAWAN, N. "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia", *Jurnal Konstitusi*, V. 18, nº 4, 2021, p. 869–897. <https://doi.org/10.31078/jk1847>

increasing reliance on technology and online information in various facets of human life.<sup>50</sup>

Nonetheless, even with technological advancements enhancing the enforcement of human rights, violations continue to occur, especially in economic and social contexts. In Indonesia, numerous instances of human rights violations associated with land acquisition for development purposes persist. This indicates that, despite advancements in the comprehension of human rights, the execution of policies aimed at safeguarding these rights necessitates significant focus. In this context, it is essential to enhance the institutions tasked with upholding human rights at both the national and local tiers.

Furthermore, the presence of local identity in Indonesia, which frequently contends with national identity, poses a challenge to the national narrative intended to unify the nation. A survey conducted in 2019 by the Indonesian Survey Institute revealed that most participants felt a stronger affiliation with their ethnic, religious, or cultural groups rather than identifying primarily as Indonesian citizens. This indicates that, even in the context of nationalism, robust local identities continue to play a significant role in individuals' lives. In certain areas, there is a tendency to emphasize ethnic, linguistic, and religious identities above national identity.<sup>51</sup>

The significance of local identity is further emphasized by the presence of indigenous communities, whose interests frequently diverge from those of external individuals. The Indonesian Alliance of Indigenous Peoples (AMAN) serves as an organization dedicated to promoting and defending the rights of indigenous populations, particularly concerning land and natural resource entitlements. The Indonesian Constitutional Court has confirmed these rights in its significant ruling on Constitutional Case 35; however, the practical application and enforcement of these laws continue to pose substantial challenges. Indigenous rights frequently come into conflict with the economic interests of both individuals and large corporations. This conflict illustrates how local and Indigenous rights are often overlooked in favour of more significant development initiatives aimed at enhancing national economic interests.<sup>52</sup>

The enforcement of human rights in Indonesia presents a range of intricate challenges. Economic and social disparities affecting marginalized groups, including indigenous communities and Papuans, frequently clash with national development policies that overlook local rights. This suggests that the enforcement of human rights in Indonesia necessitates not only the implementation of more robust laws and regulations but also the acknowledgement and safeguarding of local identity rights as an integral aspect of the country's diversity. Large-scale development projects designed to enhance welfare frequently overlook the existing social and cultural diversity, which can lead to tensions and conflicts within local communities.<sup>53</sup>

A security-focused approach characterized by a repressive stance can lead to a stable security environment; however, it is often perceived as contributing to various human rights violations. This should not occur again. To uphold the rule of law and democratic principles, it is essential to adopt legal and dialogical strategies that engage community participation in the process of nation-building. Increased decentralization via regional autonomy, which involves reallocating various powers from the central government to local governments, is essential. A fundamental transformation is required, moving from leaders who exert control and require compliance to leaders who prioritize serving the populace through both structural

<sup>50</sup> HAKIM, L.; KURNIAWAN, N. "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia", *Jurnal Konstitusi*, V. 18, n° 4, 2021, p. 869–897. <https://doi.org/10.31078/jk1847>

<sup>51</sup> HATHERELL, M.; WELSH, A. *The Struggle for the National Narrative in Indonesia*. Springer, Singapore, 2021. ISBN 9789811638114.

<sup>52</sup> HATHERELL, M.; WELSH, A. *The Struggle for the National Narrative in Indonesia*. Springer, Singapore, 2021. ISBN 9789811638114.

<sup>53</sup> NAZRIL, M. M.; Juliandi, D.; Hikmah, L. J.; Nabela, N.; Nazmah, F.; Putera, M. L. S. "Implementasi Hukum HAM di Indonesia: Tantangan dan Solusi", *Perspektif Administrasi Publik dan hukum*, V. 1, n° 4, 2024, p. 01–15. <https://doi.org/10.62383/perspektif.v1i4.42>

and cultural reforms. This shift is essential for enhancing public services and safeguarding against human rights abuses. The equal treatment of women to ensure they possess the same rights in politics, economy, society, culture, civil matters, and other areas, in accordance with the Convention on the Elimination of All Forms of Discrimination Against Women ratified under Law No. 7 of 1984, is essential. The law's supremacy should be maintained, ensuring that the judicial system operates effectively and equitably. Law enforcement officials are obligated to carry out their responsibilities by delivering impartial and just services to individuals pursuing justice while also safeguarding all individuals from unlawful violence in the enforcement of the law. In the context of enforcing human rights, social control and political institutions are essential for government action.<sup>54</sup>

The Human Rights Court serves as a tangible example of the enforcement of human rights in Indonesia, functioning as a specialized court within the framework of the general court system. The Human Rights Court addresses significant human rights violations and was founded in accordance with Law No. 26 of 2000 concerning Human Rights Courts. This court plays a crucial role within the judicial system, focusing on delivering justice to victims of human rights violations and maintaining the rule of law in Indonesia. Article 5 of the Human Rights Court Law delineates the court's jurisdiction, which encompasses the examination and adjudication of cases involving serious human rights violations. This includes violations that occur beyond the territorial boundaries of Indonesia, provided they are committed by Indonesian citizens. The creation of this court aims to implement equitable and just judicial processes for addressing cases of significant human rights violations, thereby ensuring justice for witnesses, victims, and their families while also offering protection against various forms of threats. In instances of substantial human rights violations, the application of international legal standards is observed. International standards include individual accountability, as detailed in Article 1, paragraph (4) of the Human Rights Court Law.<sup>55</sup>

Furthermore, a new mechanism has been introduced to safeguard justice in instances of human rights violations, referred to as hybrid tribunals. This model was developed in response to the identified shortcomings of the international criminal courts for Yugoslavia and the International Criminal Court. The hybrid model, initially established in East Timor and subsequently adopted in Cambodia and Sierra Leone, integrates the advantages of international ad hoc courts with those of national or domestic courts. The hybrid human rights court model has been assessed favourably, as it is viewed as possessing enhanced legal significance as an equitable mechanism for ensuring accountability among perpetrators. The hybrid model presents a more straightforward implementation for national courts than ad hoc trials. This mechanism is perceived as having lower political controversy, greater significance for the victim community, and enhanced efficacy in the reconstruction of local judicial systems. Nonetheless, apprehensions persist regarding the potential that this mechanism, rather than leveraging the advantages of both national and international justice systems, could instead reveal their vulnerabilities.<sup>56</sup>

The enforcement of human rights is inherently linked to the application of laws, making it a significant and frequently discussed concern within society. Many individuals exhibit a sense of indifference when it comes to the enforcement of human rights laws, particularly in prominent and extensive cases, whether they pertain to criminal activities or economic offences. This indifference becomes

<sup>54</sup> NAZRIL, M. M.; Juliandi, D.; Hikmah, L. J.; Nabela, N.; Nazmah, F.; Putera, M. L. S. "Implementasi Hukum HAM di Indonesia: Tantangan dan Solusi", *Perspektif Administrasi Publik dan hukum*, V. 1, nº 4, 2024, p. 01–15. <https://doi.org/10.62383/perspektif.v1i4.42>

<sup>55</sup> NAZRIL, M. M.; Juliandi, D.; Hikmah, L. J.; Nabela, N.; Nazmah, F.; Putera, M. L. S. "Implementasi Hukum HAM di Indonesia: Tantangan dan Solusi", *Perspektif Administrasi Publik dan hukum*, V. 1, nº 4, 2024, p. 01–15. <https://doi.org/10.62383/perspektif.v1i4.42>

<sup>56</sup> NAZRIL, M. M.; Juliandi, D.; Hikmah, L. J.; Nabela, N.; Nazmah, F.; Putera, M. L. S. "Implementasi Hukum HAM di Indonesia: Tantangan dan Solusi", *Perspektif Administrasi Publik dan hukum*, V. 1, nº 4, 2024, p. 01–15. <https://doi.org/10.62383/perspektif.v1i4.42>

increasingly apparent in instances of human rights violations. Four key factors illustrate this public indifference: First, the law and its substance are perceived as incorporating legal provisions that fail to align with the ideals of justice or societal expectations. Secondly, there is a perception that law enforcement officers exhibit minimal respect or concern for crime victims, which fails to empower these individuals throughout the judicial process. This dynamic contributes to a diminished level of public involvement and input in law enforcement, particularly in relation to criminal cases. Third, court decisions increasingly fail to embody a sense of justice, especially for communities adversely affected by legal violations. Law enforcement officers and judges frequently appear to execute their responsibilities without thoroughly evaluating the implications for justice. Fourth, the law has conferred considerable discretionary authority to law enforcement officials, which is frequently misapplied for ends not aligned with justice, thereby compromising the system's integrity.<sup>57</sup>

Societal apathy toward the enforcement of human rights law can manifest in several ways: (1) a blanket rejection of all forms of human rights violations, which includes a lack of concern for such violations; (2) a sceptical attitude towards initiatives aimed at enforcing human rights laws; (3) the act of providing humanitarian assistance while also backing governmental efforts in the human rights judicial process; (4) the commitment to report any human rights violations that come to their attention. Furthermore, society can provide support by having confidence in the government and associated institutions as they work to uphold human rights. Additionally, increasing awareness of human rights can be accomplished through recovery initiatives, educational programs, and community dialogues. Trust in law enforcement is influenced by three key elements: (1) the law and its substance, (2) the conduct of law enforcement officers, and (3) the decisions made by judges. The law and its substance play a crucial role in influencing public compliance with legal standards. Laws that reflect justice and offer a vision for an improved societal future are likely to be adhered to, whereas the populace may overlook those that fail to fulfil these objectives.<sup>58</sup>

In Indonesia, addressing human rights violation cases requires focusing on the legal norms and principles relevant to resolving these matters. A solution that garners acceptance across all societal levels should emphasize human values and implement more humane approaches, including peaceful dialogue and mediation among conflicting groups. Two main approaches exist for addressing serious human rights violations: judicial and non-judicial solutions. Both approaches require the involvement of the government and relevant stakeholders in managing cases of serious human rights violations.<sup>59</sup>

Judicial resolution encompasses a judicial mechanism that emphasizes retributive justice. This mechanism functions to tackle severe human rights violations by implementing punishment, facilitating rehabilitation, and enhancing systems aimed at preventing future occurrences. Non-judicial resolution, conversely, encompasses mechanisms designed to reduce the restoration of victims. This approach provides victims with an opportunity to express their experiences, regain empowerment, receive recognition, and restore their dignity through the processes of revealing truth, rehabilitation, facilitating reconciliation, memorialization, and other related methods. Non-judicial resolution examines 12 significant human rights violation cases across different regions of Indonesia, including the events of 1965-1966, the mysterious shootings from 1982-1985, and the Talangsari massacre in 1989, among others. Initiatives aimed at non-judicial resolution for victims of

<sup>57</sup> IRAWAN, A. D.; SHOLAHUDIN, U. "Analisis Penegakan Hukum Dan Hak Asasi Manusia Di Indonesia", *Jurnal Citizenship Virtues*, V. 4, nº 2, 2024, p. 848-857. <https://doi.org/10.37640/jcv.v4i2.2082>

<sup>58</sup> IRAWAN, A. D.; SHOLAHUDIN, U. "Analisis Penegakan Hukum Dan Hak Asasi Manusia Di Indonesia", *Jurnal Citizenship Virtues*, V. 4, nº 2, 2024, p. 848-857. <https://doi.org/10.37640/jcv.v4i2.2082>

<sup>59</sup> IRAWAN, A. D.; SHOLAHUDIN, U. "Analisis Penegakan Hukum Dan Hak Asasi Manusia Di Indonesia", *Jurnal Citizenship Virtues*, V. 4, nº 2, 2024, p. 848-857. <https://doi.org/10.37640/jcv.v4i2.2082>

serious human rights violations encompass the provision of health guarantees, home rehabilitation, the construction of religious buildings, skills development, economic assistance, and the restoration of rights for exiled citizens.<sup>60</sup>

While the principle of equality before the law exists, the actual situation frequently reveals a disparity, as socio-economic differences contribute to an uneven and inequitable legal framework. In Indonesia, access to justice and the protection of human rights are notably constrained, particularly for vulnerable populations, including religious minorities, women, children, and those living in poverty. Multiple factors contribute to these limitations, such as (a) economic and geographical disparity, and the divide between rural and urban areas regarding access to legal services and justice remains significantly evident. Remote areas frequently exhibit insufficient legal infrastructure, including courts, police stations, and legal aid services, which complicates access to justice for many individuals residing in these regions. Discrimination and intimidation are prevalent issues faced by religious and ethnic minority groups, often stemming from interactions with both the public and security forces. Instances have been observed where Ahmadiyah and Christian communities in certain regions have encountered physical assaults and the vandalism of their places of worship. Notably, the individuals responsible for these acts frequently remain unapprehended or unprosecuted. The absence of legal support is evident, as numerous individuals from impoverished backgrounds and other at-risk populations do not have sufficient access to legal aid services. Legal aid institutions frequently face financial constraints and resource limitations, leading to a significant number of human rights violation cases not receiving adequate attention.<sup>61</sup>

#### **4. Affirmative action and human rights: addressing historical injustices and ensuring justice for victims**

The concept of human rights is fundamentally grounded in the principles of natural rights theory, which serves as its most significant philosophical foundation.<sup>62</sup> This theory posits that human rights are inherent entitlements that apply universally to all individuals, irrespective of time or location, simply by virtue of their humanity. Human rights are fundamentally rooted in the intrinsic nature of individuals as human beings, existing independently of political affiliations, cultural connections, religious beliefs, or social relationships. This inherent dignity renders each person unique and irreplaceable. This theory significantly contributes to the acknowledgement of human rights by affirming the protection of these rights for all individuals and establishing guarantees for freedom and equality for everyone. This framework facilitates the establishment of guarantees and support mechanisms within the human rights protection system, applicable at both national and international levels. This theory's paramount achievement lies in acknowledging individual human beings as subjects endowed with rights within society, thereby integrating them into the legal and social framework. Human rights are fundamentally natural rights that are intrinsic and cannot be annulled by any authority.<sup>63</sup>

<sup>60</sup> IRAWAN, A. D.; SHOLAHUDIN, U. "Analisis Penegakan Hukum Dan Hak Asasi Manusia Di Indonesia", *Jurnal Citizenship Virtues*, V. 4, nº 2, 2024, p. 848-857. <https://doi.org/10.37640/jcv.v4i2.2082>

<sup>61</sup> IRAWAN, A. D.; SHOLAHUDIN, U. "Analisis Penegakan Hukum Dan Hak Asasi Manusia Di Indonesia", *Jurnal Citizenship Virtues*, V. 4, nº 2, 2024, p. 848-857. <https://doi.org/10.37640/jcv.v4i2.2082>

<sup>62</sup> ROSHWALD, M. "The Concept of Human Rights", *Philosophy and Phenomenological Research*, V. 19, nº 3, 1959, p. 354-379. <https://doi.org/10.2307/2105226>; TASIOLAS, J. "Towards a Philosophy of Human Rights", *Current Legal Problems*, V. 65, nº 1, 2012, p. 1-30. ISSN 0070-1998. <https://doi.org/10.1093/clp/cus013>. Accessed on: 03 Dec. 2025.; FREEMAN, M. "The Philosophical Foundations of Human Rights", *Human Rights Quarterly*, V. 16, nº 3, 1994, p. 491-514. ISSN 02750392, 1085794X. <https://doi.org/10.2307/762434>

<sup>63</sup> NOWAK, M. *Introduction to the International Human Rights Regime*. Brill, Boston, 2021. The Raoul Wallenberg Institute Human Rights Library. ISBN 978-90-04-47907-4.



Human rights, viewed as natural rights inherent to individuals, represent the interconnectedness of human existence with its fundamental aspects.<sup>64</sup> Human rights are fundamentally intertwined with human identity; thus, no individual or entity has the justification to revoke them. The essence of human rights morality is to assert the dual proposition that every human being possesses inherent dignity and is inviolable, meaning they should not be violated. Human rights represent a perspective on human existence that emphasizes dignity. The relationship between human rights and human dignity is significant. The safeguarding and realization of human rights enable the attainment of an ideal state of human existence, subsequently fostering positive social interactions. Human rights possess universal applicability, signifying a significant advancement in the acknowledgement of human existence throughout the entirety of life. The concept of universal human rights enhances the foundation for mutual understanding in respectful social interactions.<sup>65</sup>

Human rights are universally acknowledged and pertain to the dynamics between the State and the individual in their capacity as a citizen. Human rights exhibit a complex web of interconnections, dependencies, and inseparability. Human rights may be understood as fundamental rights that are intrinsic to the universal identity of humanity. This right is bestowed by God directly upon all individuals. This suggests that its validity should be preserved at the core of human existence. Consequently, it is essential to grasp, analyze, and uphold it with due seriousness.<sup>66</sup>

Individuals and groups, as citizens, consistently bear the brunt of structural human rights violations in relation to the State, specifically the government. This aligns with Paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which states that "Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within Member States, including those laws proscribing criminal abuse of power." Additionally, Paragraph 18 notes that "... through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

Human rights are fundamental to every individual and apply universally; thus, the State needs to offer protection and guarantee the realization of rights for those who have experienced severe human rights violations. The State must provide comprehensive protection, both physical and mental, against threats, interference, terror, and violence from any source. The provision of this protection must be executed by law enforcement officials and security forces without any associated costs, in accordance with Article 34 paragraph (1) of Law No. 26 of 2000 concerning Human Rights Courts.

The restoration of the condition of victims of human rights violations perpetrated by the government in Aceh indicates that the government's actions align with the role of human rights as a moral, political, and legal benchmark.<sup>67</sup>

<sup>64</sup> BLAU, J.; MONCADA, A. *Human Rights: A Primer*. Taylor & Francis, Oxford, 2015. ISBN 978-1-317-25799-8.

<sup>65</sup> PERRY, M. J. "Morality and Normativity. *Legal Theory*", V. 13, nº 3-4, 2007, p. 211-255. <https://doi.org/10.1017/S1352325208070092>; PERRY, M. J. *Interrogating the Morality of Human Rights*. Edward Elgar Publishing, Northampton, 2023. Elgar Studies in Human Rights. ISBN 978-1-03-530627-5.; PERRY, M. J. *Toward a Theory of Human Rights: Religion, Law, Courts*. Online. Cambridge University Press, Cambridge, 2006. ISBN 978-0-521-86551-7. <https://doi.org/10.1017/CBO9780511499197>

<sup>66</sup> HUGHES, G. "The Concept of Dignity in the Universal Declaration of Human Rights", *Journal of Religious Ethics*, V. 39, nº 1, 2011, p. 1-24. <https://doi.org/10.1111/j.1467-9795.2010.00463.x>; SHESTACK, J. J. "The Philosophic Foundations of Human Rights", *Human Rights Quarterly*, V. 20, nº 2, 1998, p. 201-234. Available at: <http://www.jstor.org/stable/762764>

<sup>67</sup> BREAKEY, H. "What Human Rights Aren't for: Human Rights Function as Moral, Political and Legal Standards – but Not as Intervention-Conditions", In: *Conscience, Leadership and the Problem of 'Dirty Hands'*, Leeds: Emerald Group Publishing Limited, 2015, V. 13, p. 41–

This initiative aligns with ethical standards as it seeks to establish justice for violations of human rights. This represents a formal obligation of the State to safeguard individuals who have suffered from human rights abuses.<sup>68</sup> This action is consistent with United Nations Resolution No. 60/147, adopted on 15 December 2005, which emphasizes the obligation of the State to restore the rights of victims of human rights violations. The principles articulated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provide substantial support for this assertion. The principles emphasize the necessity of treating victims with compassion and dignity, ensuring their rights to access justice and redress mechanisms are upheld. Additionally, there is a call for the encouragement of the establishment, strengthening, and expansion of national compensation funds for victims, as well as the timely development of suitable rights and remedies for them.

The measures the State implements to restore this right are proactive steps that bypass the judicial process or initiate a restorative approach, emphasizing the essence of fulfilling rights over formal procedural considerations.<sup>69</sup>

Asbjorn Eide's<sup>70</sup> perspective highlights the intriguing notion that human rights are intertwined with political philosophy, particularly in terms of the dynamics between the State and society. The implication is that the State has a responsibility to safeguard the rights of its citizens. However, there are instances where the State has instead acted as a violator of these rights, as evidenced in Aceh. The government's approach to offering remedies for historical human rights violations in the Aceh case reflects a responsible response to its obligations. Felix Ermacora, a member of the UN Commission of Experts, asserted that the State bears responsibility for unlawful and ultra vires actions carried out by its organs or soldiers.<sup>71</sup> The realization of human rights holds significant importance for victims and their families, as it enables individuals to shape their futures effectively. The concept of affirmative action emerged after World War II, focusing on the provision of facilities and assistance for groups impacted by human rights violations.<sup>72</sup>

Affirmative action represents a strategic approach aimed at addressing historical injustices and inequalities through the provision of preferential treatment to marginalized groups. The origins can be identified in the Universal Declaration of Human Rights, adopted by the United Nations in 1948. The concept of "affirmative action," though not explicitly mentioned, is reflected in the text's fundamental principles, especially concerning equality and social justice. The Universal Declaration highlights that all human beings are inherently free and equal in dignity and rights, reinforcing the essential principle of equality that underpins the contemporary understanding of affirmative action.

The emphasis on equality within the Universal Declaration is crucial. Articles 1 and 2 emphasize that all individuals are entitled to identical rights and freedoms without any distinctions based on race, sex, or other characteristics. The principle of equality serves as the fundamental basis for the development of affirmative action policies. Nevertheless, the concept of equality, particularly in relation to

59. Research in Ethical Issues in Organizations. ISBN 978-1-78560-203-0. <https://doi.org/10.1108/S1529-209620150000013003>. Accessed on: 11 Apr. 2025.

<sup>68</sup> DEMBOUR, M. B. "What Are Human Rights? Four Schools of Thought", *Human Rights Quarterly*, V. 32, nº 1, 2010, p. 1–20. Available at: <http://www.jstor.org/stable/40390000>.

<sup>69</sup> BRAITHWAITE, J. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts", *Crime and Justice*, V. 25, 1999, p. 1–127. ISSN 01923234. Available at: <http://www.jstor.org/stable/1147608>. Accessed on: 29 Nov. 2022.

<sup>70</sup> EIDE, A. "The World of Human Rights: As Seen from a Small, Industrialized Country", *International Studies Quarterly*, V. 23, nº 2, 1979, p. 246–272. <https://doi.org/10.2307/2600244>

<sup>71</sup> MERON, T. "State Responsibility for Violations of Human Rights", In: *Proceedings of the Annual Meeting (American Society of International Law)*, 1989, V. 83, p. 372–385. Available at: <http://www.jstor.org/stable/25658498>.

<sup>72</sup> NAYYAR, D. "Discrimination and Justice: Beyond Affirmative Action", *Economic and Political Weekly*, V. 46, nº 42, 2011, p. 44–53. Available at: <https://www.epw.in/journal/2011/42/special-articles/discrimination-and-justice-beyond-affirmative-action.html>.

affirmative action, transcends the notion of uniform treatment; it involves a critical examination and rectification of the inequalities stemming from historical discrimination. The Declaration emphasizes the necessity of an "effective remedy" to guarantee the respect of rights for all individuals. In certain instances, this goes beyond mere equal treatment; it necessitates proactive measures to create equitable conditions.

In the United States, affirmative action developed as a reaction to the historical impacts of slavery and systemic racism, which have placed African Americans and other minority groups at a considerable disadvantage. The Civil Rights Movement of the 1960s, along with the necessity for a legal structure to uphold equality, resulted in the implementation of affirmative action policies. The policies aimed to create opportunities for marginalized groups in education, employment, and government contracting through the implementation of measures like quotas, goals, and preferences. Despite encountering considerable resistance, including legal disputes, the fundamental concept persists: addressing historical and social disparities demands more than mere equality of opportunity; it necessitates proactive measures.

Affirmative action extends beyond the borders of the United States. Various nations, such as India and several European countries, have implemented comparable policies, albeit under different designations. In India, the notion is termed "reservations," especially concerning affirmative action based on caste. The Indian government has enacted policies that allocate reserved seats for lower-caste groups in educational institutions and public employment, with the objective of addressing historical discrimination associated with the caste system. In European countries, the concept of "positive action" is implemented to advance equality, particularly concerning gender. The emphasis of these policies is frequently on enhancing the representation of women in fields that have been historically dominated by men, alongside the promotion of diversity within the workplace.

The Universal Declaration emphasizes the principle of equality while also incorporating measures designed to safeguard economic and social rights. Article 23 establishes the right to work, ensuring equal pay for equal work and protecting against unemployment. In parallel, Article 25 guarantees an adequate standard of living, which encompasses access to healthcare, education, and social services. The connection between economic and social rights and affirmative action is significant, as these rights tackle the material conditions that influence individuals' capacity to engage fully in societal activities. The underrepresentation of women and minorities in high-paying jobs and leadership positions illustrates the existence of entrenched social inequalities. Affirmative action serves as a mechanism to address these disparities and guarantee that all individuals obtain the resources and opportunities necessary for their success.

A crucial element of affirmative action is the understanding that historical disadvantages cannot be rectified merely by the removal of discriminatory laws. Structural inequalities, including disparities in education, elevated unemployment rates, and adverse health outcomes among specific racial or gender groups, necessitate focused interventions. Implementing particular measures to tackle these disparities serves both as a corrective action and as a realization of the commitments outlined in the Universal Declaration concerning the right to an adequate standard of living and the right to education. Affirmative action is closely linked to civil and economic rights, aiming to guarantee that marginalized groups receive equal opportunities compared to those in more privileged circumstances.

Affirmative action, while possessing the potential to enhance equality, remains a divisive topic. Critics contend that it fosters reverse discrimination and compromises the principles of meritocracy. Defenders of affirmative action argue that it serves as a crucial mechanism for addressing systemic imbalances. They contend that achieving true equality requires consideration of the historical and social contexts that influence individuals' opportunities. President Lyndon B. Johnson observed that merely eliminating discrimination is insufficient if individuals continue to begin the race from unequal positions. For affirmative action to achieve its intended outcomes, it is essential to acknowledge the intricate mechanisms

through which inequality is sustained and to implement targeted strategies aimed at dismantling those obstacles.

The discussion surrounding affirmative action frequently presents a conflict between the principles of equal treatment and equal outcomes. The former position promotes uniform treatment for all individuals, irrespective of their initial conditions. In contrast, the latter perspective recognizes that equitable treatment is unattainable when individuals' circumstances vary considerably due to historical and structural influences. The Universal Declaration's emphasis on equality indicates that the objective extends beyond mere formal equality to encompass substantive equality, potentially necessitating affirmative action measures to rectify entrenched disparities.

Affirmative action receives backing from various human rights treaties at the international level. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) clearly supports affirmative action, acknowledging that specific measures might be required to promote racial equality. Comparably, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) permits the implementation of temporary special measures aimed at expediting the realization of gender equality. The conventions establish a legal framework for affirmative action policies, supporting the notion that these measures are not fundamentally discriminatory but serve as a mechanism to achieve the commitment to equality for everyone.

The government is implementing this concept by offering support to victims and their families impacted by human rights violations in Aceh. This reality aligns with conceptual advancements that position human rights as the foundation for development. In the context of provision in Aceh, the assistance offered serves as a foundational support for recipients, enabling them to enhance their lives. This approach ensures that the fulfilment of human rights and development are integrated rather than viewed as separate entities.<sup>73</sup> Andrea Cornwall and Celestine Nyamu-Musembi<sup>74</sup> advocate for progress through a rights-based framework. The relationship between development and human rights is described as interdependent. Assisting the community aligns with the role of human rights, as articulated by Anna Zlobina et al,<sup>75</sup> which is to equip victims with the tools necessary to reclaim their dignity and rebuild their lives. The objective is to avert the recurrence of human rights violations and to establish a fair social framework.

The realization of victims' rights concerning past human rights violations can be examined through the interplay between human rights, the rule of law, and the delivery of justice for those affected. Human rights are intrinsic to individuals and regarded as a fundamental endowment from a higher power. In this instance, an essential purpose of the state's existence is to safeguard human rights, as articulated by Brian Z. Tamanaha<sup>76</sup> in his book chapter "Functions of the Rule of Law". He posits that the rule of law can be categorized into two distinct types: procedural rule of law and substantive rule of law. The substantive rule of law underscores the importance of fulfilling human rights, highlighting the obligation of the state to offer remedies for individuals who have experienced violations of their rights. In this context, it is essential to prioritize the protection of victims of past human rights violations, as this group has experienced a significant loss of rights,

<sup>73</sup> EIDE, A. "Human Rights Requirements to Social and Economic Development", *Nutrition and Human Rights*, V. 21, nº 1, 1996, p. 23–39. [https://doi.org/10.1016/0306-9192\(95\)00057-7](https://doi.org/10.1016/0306-9192(95)00057-7)

<sup>74</sup> CORNWALL, A.; NYAMU-MUSEMBI, C. "Putting the «Rights-Based Approach» to Development into Perspective", *Third World Quarterly*, V. 25, nº 8, 2004, p. 1415–1437. Available at: <http://www.jstor.org/stable/3993794>.

<sup>75</sup> ZLOBINA, A.; BETTINSOLI, M. L.; MIRANDA, M. P.; FORMANOWICZ, M. "Back to Basics: Human Rights Violations and Dehumanization", *Current Opinion in Behavioral Sciences*, V. 51, 2023, p. 101263. <https://doi.org/10.1016/j.cobeha.2023.101263>

<sup>76</sup> TAMANAHA, B. Z. "Functions of the Rule of Law", In: MEIERHENRICH, J.; LOUGHLIN, M. (eds.), *The Cambridge Companion to the Rule of Law*, Cambridge: Cambridge University Press, 2021, p. 221–236. Cambridge Companions to Law. ISBN 978-1-316-51213-5. <https://doi.org/10.1017/9781108600569.013>

restricted opportunities for personal development, and various other forms of detriment.

The realization of justice should be grounded in the principle of affirmative action. This concept emerged in the aftermath of the Second World War with the objective of safeguarding the rights of war victims.<sup>77</sup> This aligns with the notion of human rights violations in Aceh, which is connected to the conflict between the Indonesian government and the Free Aceh Movement. This situation resulted in the predominance of military authority in the region, ultimately leading to numerous civilians suffering as victims of human rights abuses. This concept necessitates that victims receive specific accommodations through various facilities to ensure the realization of their rights. This aligns with the multiple principles put forth by John Rawls.<sup>78</sup> Additionally, there is the political preference put forth by Ronald Dworkin.<sup>79</sup>

The simplicity is evident in both the process and the content. The state must actively engage in implementing the rights of victims through established procedures. In examining the methods, it is evident that the Indonesian state implements intricate processes for addressing the rights of victims of gross human rights violations in Aceh. This complexity leads to various challenges, including issues related to data collection on the number of victims and the narrow scope of victims considered, which is restricted to the children of victims despite the impacts extending to grandchildren. In evaluating substance, injustice can be assessed through the lens of equality in treatment compared to others. In this scenario, an imbalance exists in the allocation of support to victims, as some individuals have received substantial assistance from the state.

In contrast, others have not received any support at all. The government's current approach to addressing the needs of victims of human rights violations in Aceh involves providing goods selected by the victims themselves, along with additional social assistance. This selection of remedy has led to significant disruption within the community, primarily stemming from disparities in compensation and variations in the timing of distribution. In response, victims suggested that financial compensation be provided. The compensation awarded should be equitable for the victims involved. This is a significant issue, as Kent Roach's<sup>80</sup> research indicates that numerous countries offer only minimal compensation to victims of human rights violations. This study examines the potential for the court to impose a more significant compensation sentence through litigation, contingent upon evidence that the State has failed to prevent the recurrence of human rights violations. The state has a clear obligation to address the fundamental needs of victims, which Martha Nussbaum<sup>81</sup> identifies as essential capabilities, including health and education. Furthermore, it is necessary to provide victims with tools that enable them to enhance their lives, referred to as fertile capabilities.

## **5. The role of state responsibility in the non-judicial resolution of gross human rights violations in Indonesia: challenges, recommendations, and the need for institutional separation**

Human rights, understood as natural rights, necessitate formal legality (legal

<sup>77</sup> LIPPERT-RASMUSSEN, K. "Equality of Opportunity and Affirmative Action", In: SARDOČ, M. (ed.), *Handbook of Equality of Opportunity*. Cham: Springer, 2024, p. 147–168. [https://doi.org/10.1007/978-3-031-55897-9\\_87](https://doi.org/10.1007/978-3-031-55897-9_87)

<sup>78</sup> RAWLS, J. *A Theory of Justice: Revised Edition*. Harvard University Press, Cambridge, 1971.

<sup>79</sup> DWORKIN, R. *Law's Empire*. Belknap Press, Cambridge, 1986. ISBN 978-0-674-51836-0.

<sup>80</sup> ROACH, K. "The Disappointing Remedy? Damages as a Remedy for Violations of Human Rights", *University of Toronto Law Journal*, V. 69, n° Supplement 1, 2019, p. 33–63. <https://doi.org/10.3138/utlj.69.s1.002>

<sup>81</sup> NUSSBAUM, M. "Capabilities as Fundamental Entitlements: Sen and Social Justice", *Feminist Economics*, V. 9, n° 2-3, 2003, p. 33–59. <https://doi.org/10.1080/1354570022000077926>



rights) to be effectively applicable and enforced in real-life situations. Legal rights, defined as the entitlements of an individual recognized within the context of applicable law, should be grounded in a foundational framework of philosophical values that reflect human nature, which is encapsulated in the concept of natural rights.<sup>82</sup> While the moral authority of human rights remains intact despite a lack of acknowledgement from those in power, the absence of formal recognition complicates the assurance of human integrity significantly. Rights are inherently linked to a specific status. The right is associated with the party involved in the interaction and dealings of the individual.

Indonesia demonstrates a clear commitment to enhancing the recognition and protection of human rights through the formulation of laws and regulations that align with international human rights standards. This is exemplified by its ratification of significant treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. This commitment is based on the state's duty to respect, protect, fulfill, and uphold human rights, especially in light of ongoing serious violations. Since 1998, Indonesia has implemented a series of structural reforms, notably the adoption of the People's Consultative Assembly Decree on Human Rights, the enactment of Law No. 39 of 1999 concerning Human Rights, and the constitutional enhancement of these rights via the Second Amendment to the 1945 Constitution, which established Chapter XA on human rights. Subsequently, Law No. 26 of 2000 was enacted to establish Human Rights Courts aimed at addressing severe violations. In light of these initiatives, it is evident that substantial human rights violations persist. The National Commission on Human Rights has submitted 15 case files to the Attorney General; however, victims remain subjected to injustice, discrimination, stigma, and ongoing violence. They seek a substantial resolution, acknowledgement, and initiatives aimed at addressing the discrimination and marginalization they experience.

Nevertheless, the judicial process for addressing significant human rights violations has faced numerous challenges. At this point, the reconciliation process remains unimplemented. Conversely, victims have endured trauma that presents substantial challenges to recovery. The State, as the entity responsible for upholding the rights of its citizens, is therefore required to proactively ensure the fulfilment of these rights for victims through the resolution of gross human rights violations via non-judicial processes.<sup>83</sup> The State must provide the disclosure and management of historical gross human rights violations as a fundamental requirement. Victims and their families must be afforded the right to truth, justice, reparation, and assurances against future occurrences.

In instances of violations, it is essential to evaluate which forms of compensation are most suitable compared to alternatives. The measures outlined by the International Law Commission and referenced in the Basic Principles and Guidelines include restitution, compensation, rehabilitation, and satisfaction. Rather than offering a comprehensive set of measures, it appears more logical to identify the most appropriate measures by analyzing the losses incurred and the specific characteristics of victimization. Nevertheless, given the extensive nature of the violations, both in terms of quality and quantity, it frequently becomes unfeasible to reverse the damage, irrespective of the measures implemented. The focus of compensation is harm. Two distinct categories of harm can be identified: financial harm and non-financial harm. The variation between these two types of harm can be substantial. Financial harm encompasses various aspects, including the loss of property as well as a reduction in income. Non-financial harm encompasses physical injury and psychological distress, in addition to the deprivation of opportunities.

<sup>82</sup> PURWANTI, A.; PRABOWO, R. A. "Women Rights Fulfillment as the Victim of Gross Human Rights Violation: Urgency for the Sexual Violence Eradication Bill", *Indonesia Law Review*, V. 8, nº 3, 2018, p. 303–315. <https://doi.org/10.15742/ilrev.v8n3.509>

<sup>83</sup> DEWANTO, H. "Settlement of Gross Human Rights Violations in the Perspective of Local Wisdom in Indonesia (Case Study of Tanjung Priok)", *Jurnal Dinamika Hukum*, V. 22, nº 2, 2022, p. 286–298. <https://doi.org/10.20884/1.jdh.2022.22.2.3239>

Furthermore, significant and methodical violations of human rights can result in repercussions that extend beyond the individual level. The potential impact on groups may render a return to the previous condition unfeasible or unattractive.<sup>84</sup>

Yael Danieli<sup>85</sup> asserts that the process of repairing damage seldom equates to a mere 'return to normal.' She emphasizes that this applies not only to (re)adapting to 'normal society' but also to the idea of reverting to a pre-victimization way of life as if it were possible to restore the previous life order that has been irrevocably altered. The final hope, specifically, is not merely unattainable; clinging to it may represent a denial of the victim's experience, resulting in a lack of transformation. Reverting to the previous state can fundamentally overlook the experiences and violations that the individual has faced. Consequently, this condition ought not to serve as a benchmark. The violations and the resulting harm, particularly the severe instances within the framework of serious and systematic human rights abuses, are critical factors in evaluating the viability of reparations. Both individuals and groups, as well as entire societies, can experience significant and systematic violations of human rights.<sup>86</sup>

Kumar<sup>87</sup> presents a compelling argument regarding collective reparations, emphasizing the inadequacy of reverting to the previous state. He notes that the roots of civil war are predominantly political, indicating a breakdown in a political system that fails to perform essential governance functions, which ultimately results in political rebellion. Therefore, there is a need not to return to the condition before the crisis but to move in a different direction." While focusing on political systems, the point he raises can be generalized to society as a whole. When the pre-crisis society becomes the core of the conflict, returning there will not be reparative at all. An example clarifies this argument. Wealth inequality, for instance, land distribution, could ultimately lead to conflicts and serious and systematic human rights violations. During such a conflict, property could be stolen, or land could be occupied. When discussing reparations after a conflict, returning property to the owner prior to the conflict may seem in line with the guiding principle of returning to the situation before the conflict. However, this would not truly be reparative, as it could return society to an unjust state.

Fair reparations suggest that, in contrast to the '*restitutio in integrum*' principle, the assessment of reparations cannot be defined in an abstract or absolute manner. This results in a nuanced comprehension of reparations, taking into account particular violations, the extent of harm caused, the number of victims affected, and the societal context in which these events occurred. Reparations for severe and systematic human rights violations have the potential to address all associated consequences; however, this outcome is not guaranteed in every instance. The application of the '*restitutio in integrum*' principle in particular cases is contingent upon the specific circumstances involved. At the individual level, equitable reparations necessitate that the distribution process is conducted impartially, ensuring that there is no discrimination among various groups or categories of beneficiaries (e.g., victims). Nonetheless, non-discrimination does not imply identical treatment for all victims; the rationale for any distinctions must be both reasonable and justifiable. Consequently, varying responses for distinct victims may be justifiable, whereas completely disregarding specific categories of victims who have experienced severe and systematic human rights violations presents

<sup>84</sup> FEYTER, K. De; PARMENTIER, S.; BOSSUYT, M.; LEMMENS, P. *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*. Intersentia, Cambridge, 2006. Available at : <https://www.iwm.org.uk/collections/item/object/1500104707>.

<sup>85</sup> DANIELI, Y. *International Handbook of Multigenerational Legacies of Trauma*. Springer, Boston, 1998. Springer Series on Stress and Coping. ISBN 978-0-306-45738-8.

<sup>86</sup> FEYTER, K. De; PARMENTIER, S.; BOSSUYT, M.; LEMMENS, P. *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*. Intersentia, Cambridge, 2006. Available at : <https://www.iwm.org.uk/collections/item/object/1500104707>.

<sup>87</sup> KUMAR, K. "1 The Nature and Focus of International Assistance for Rebuilding War-Torn Societies", In: KUMAR, K. (ed.), *Critical Roles for International Assistance*. Online. Boulder: Lynne Rienner Publishers, 1997, p. 1–38. <https://doi.org/10.1515/9781685858377-004>

significant issues.<sup>88</sup>

Reparations should be designed to address the specific harms experienced, taking into account the needs of victims, the nature of the violations, and the broader social context. This is especially crucial in transitional societies where resources are constrained and must be allocated effectively and equitably. This suggests the importance of emphasizing collective reparations rather than focusing solely on individual claims, acknowledging the presence of non-victims within these communities as well. Expanding access to education and healthcare for all while also offering specific benefits like reduced school fees or free access for victims' children illustrates a dual-purpose strategy that promotes justice inclusively. Although targeted benefits may seem discriminatory, they can represent valid affirmative action when the distinctions are based on objective criteria, are proportionate, and fulfill a legitimate purpose, such as addressing historical injustices. The Special Rapporteur asserts that affirmative preferences do not automatically equate to discrimination when their purpose is to reestablish fairness. They are supported by reasonable justification, with victim status resulting from severe human rights violations serving as a legitimate criterion. The primary objective of measures such as education assistance is to deliver essential support to vulnerable groups affected by historical injustices. When judicial processes are obstructed due to insufficient evidence, Indonesian law provides for alternative resolution via the Truth and Reconciliation Commission, as outlined in Article 47(1) of Law No. 26 of 2000. Additionally, Article 104 of Law No. 39 of 1999 guarantees that gross violations can still be addressed through the Human Rights Court.

The resolution of judicial matters has reached a standstill, alongside the TRC/KKR mechanism, which is rendered unusable due to the annulment of Law No. 27 of 2004 on TRC by Constitutional Court Decision No. 006/PUU-IV/2006. Nevertheless, the State, as the duty bearer in the realm of human rights, retains its obligation to address serious human rights violations. In this context, the State assumes a dual role: it is both the entity tasked with upholding human rights and the entity accountable for violations committed, whether through action or inaction, by individuals acting on behalf of the State.

On August 26, 2022, the President issued Presidential Decree No. 17 of 2022, which established a Team for the Non-Judicial Resolution of Past Gross Human Rights Violations. This establishment has elicited a range of responses from different stakeholders, with some expressing outright opposition and questioning the team's capability, as well as raising concerns about its compliance with Law Number 26 of 2000 regarding Human Rights Courts.

The objective of this team is to identify and address instances of gross human rights violations through non-judicial settlements, guided by data and recommendations established by the National Commission for Human Rights up to 2020. We advocate for the recovery of victims and their families. Furthermore, we propose measures to avert future gross violations, ensuring that such severe crimes do not recur (Article 3 Presidential Decree No. 17 of 2022). The documented gross human rights violations, as per the recommendations of the Human Rights Commission, include events from 1965-1966, the Mysterious Shootings from 1982-1985 (Petrus Case), the Talangsari Case, the Rumoh Geudong and Pos Satis Aceh cases in 1989, Forced Disappearances from 1997-1998, the May 1998 turmoil, the Trisakti case, Semanggi I and II from 1998-1999, the Shaman Murder in 1998-1999, the Simpang KKA Tragedy in 1999, the Wasior Case in Papua from 2001-2002, the Women Case in 2003, and the Jambo Keupok Case in Aceh in 2003.

The working team for this task was formed in accordance with Presidential Decree No. 17 of 2022, with a mandate effective from August 16 to December 31, 2022. Throughout this timeframe, the team executed their responsibilities with diligence, engaging in thorough studies and research, which culminated in a set of

<sup>88</sup> FEYTER, K. De; PARMENTIER, S.; BOSSUYT, M.; LEMMENS, P. *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*. Intersentia, Cambridge, 2006. Available at: <https://www.iwm.org.uk/collections/item/object/1500104707>.

comprehensive and well-considered recommendations. Upon completion of their work, the team presented a report to the President, outlining 11 critical recommendations identified as vital for the state to implement in order to restore the rights of victims of human rights violations in Indonesia.

The team's initial recommendation involves acknowledging and expressing regret for the human rights violations that have occurred. This acknowledgement is essential as it offers symbolic justice to the victims and initiates a reconciliation process between the state and the impacted communities. In the absence of this recognition, public trust in the state is likely to erode further, exacerbating the historical wounds caused by these violations. Consequently, it is imperative for the state to formally recognize these violations and convey regret to commence the healing process.

The second recommendation emphasizes the necessity of systematic efforts to restructure the narrative surrounding human rights violations. This narrative should not remain ambiguous or concealed; instead, it must be formally organized and meticulously documented. Such an initiative is crucial for ensuring that future generations grasp the comprehensive nature of these violations and safeguarding the facts related to human rights abuses from being obscured over time. The undertaking of this historical organization should incorporate transparent, participatory research grounded in robust evidence.

The third recommendation emphasizes the state's duty to fulfil and restore the rights of victims of human rights violations. This restoration process must encompass both the constitutional rights of victims and the broader rights of citizens. The state is required to implement measures to reinstate the rights that were compromised due to violations, which includes compensation, rehabilitation, and various forms of restitution tailored to the victims' specific needs and situations. This obligation underscores the state's critical role in safeguarding and equitably restoring the fundamental rights of its citizens.

The fourth recommendation emphasizes the necessity for the state to restructure the data pertaining to victims of human rights violations. The importance of accurate and systematically organized data cannot be overstated, as it serves as a crucial basis for delivering aid and facilitating the restoration process for victims. In the absence of well-structured data, the state would face significant challenges in executing effective recovery policies. Consequently, it is imperative for the state to promptly undertake a systematic and transparent approach to victim data collection, ensuring that every victim is recognized and granted the rights they are entitled to.

The fifth recommendation highlights the critical need to restore victims' rights across two main categories: constitutional rights as victims and citizens' rights. In this context, restoration should encompass more than just compensation or rehabilitation; it must also recognize their status as victims whose rights require respect and fulfilment by the state. The state is obligated to provide victims with thorough restoration, which includes not only material assistance but also psychological, social, and cultural support that facilitates their reintegration into society.

The sixth recommendation suggests enhancing the state's responsibility to develop alternative recovery initiatives that align with the principle of cultural harmonization. This is crucial as the restoration of victims' rights requires careful consideration of cultural and social values. The state should formulate policies that are not only effective but also resonate with local wisdom and traditions, ensuring that the community embraces the recovery process and does not clash with established norms.

The seventh recommendation indicates that the state should focus on the resocialization of victims to facilitate their reintegration into society. This is essential, as individuals who have experienced human rights violations frequently find themselves marginalized. Consequently, the state must offer opportunities for reintegration, including educational programs, skills training, and various social initiatives designed to assist them in adapting to life following prolonged periods of suffering.

The eighth recommendation emphasizes the necessity of preventing the recurrence of human rights violations. The state must implement specific actions that guarantee such violations do not happen again, including public awareness initiatives, societal backing, and community engagement in the monitoring and protection of human rights. Enhancing awareness of human rights and fostering community involvement in oversight are critical strategies for averting similar violations in the future.

The ninth recommendation advocates for the creation of memorabilia or historical monuments grounded in existing historical documents. This initiative seeks to avert the recurrence of human rights violations by safeguarding the events of the past. Such monuments or memorabilia function not only as reminders for future generations but also as symbols of the state's dedication to remembering past errors and ensuring that history does not repeat itself.

The tenth recommendation emphasizes the necessity of embedding and implementing human rights within the state framework. The state must guarantee that the institutions tasked with human rights are adequately prepared to fulfil their responsibilities efficiently and sustainably. Furthermore, these institutions should operate under robust legal structures and transparent processes to ensure comprehensive protection of human rights.

The eleventh and final recommendation underscores the necessity for the state to ensure the effective implementation of the team's recommendations. The state must demonstrate a definitive commitment to monitoring each recommendation and facilitating the efficient restoration of victims' rights. Additionally, the state should maintain transparency in its progress reports to the public, enabling society to oversee the restoration process in alignment with principles of justice and human rights.

The State is tasked with the obligation to guarantee the execution of human rights recommendations. Presidential Decree No. 4 of 2023, issued on March 15, has established a Supervisory Team tasked with overseeing the implementation of non-judicial settlement recommendations concerning gross human rights violations. The team is responsible for the continuous monitoring, evaluation, and oversight of the implementation of pertinent recommendations by ministries and agencies. It is mandated to provide reports to the President at a minimum of every six months or as necessary (Article 3). Article 5 outlines that the team is composed of senior officials, including coordinating ministers and leaders from various ministries in areas such as law, human rights, education, health, and social affairs. It also includes heads of state institutions, the Attorney General, the military commander, the national police chief, and the head of the Presidential Staff Office, indicating the extensive inter-ministerial and institutional collaboration required to fulfill this mandate.

According to the Presidential Decree, all institutions are required to undertake coordinated and integrated actions aligned with their respective functions and authorities to implement the team recommendation. This includes addressing victim rights recovery related to gross human rights violations based on principles of justice. The supervisory role of the Team Recommendation is defined under Presidential Decree No. 4 of 2023, while the Team of Executors, as outlined in Presidential Instruction No. 2 of 2023, comprises members from the same Ministry/Agency. Policies enacted by the state must prioritize the fulfilment of victims' rights and the assurance against gross human rights violations. However, the current structure, where the executor and supervisor are the same entity, presents a problematic scenario. This arrangement is suboptimal despite the team's composition of practitioners and academicians. Therefore, state policy must be oriented towards the constituents or prevailing law.<sup>89</sup>

In light of this analysis, it is essential to distinguish the executor team from the supervisor team. An interview with the coordinator of the Independent Human Rights Monitor Commission, a non-state organization, highlighted the expectation

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<sup>89</sup> RAHARDJO, S. *Ilmu Hukum*. PT. Citra Aditya Bakti, Bandung, 2000.



for the country to fulfil its responsibilities in alignment with the commitments outlined by The Team. The victims of the Rumoh Geudong and Pos Sattis Simpang KKA tragedy in Aceh echo this sentiment. Furthermore, recovery aid should be allocated in a monetary form with clear standardization of amounts. Additionally, recovery aid must reach victims who have yet to receive any assistance.

In the realm of human rights remedies, Indonesia must examine the legal frameworks of other nations, such as the UK. Notably, Article 7 of the Human Rights Act stipulates that courts have the authority to impose penalties on the State for human rights violations, which may include damages or compensation.<sup>90</sup>

The description above shows that there is a lack of harmony in the regulation of the authority of the Non-Judicial Settlement Team for Gross Human Rights Violations, namely as executors and supervisors in fulfilling the rights of victims of gross human rights violations. This overlap is not in line with the value of legal certainty, which requires harmony between laws and regulations, including between statutes and regulations in an equal position.<sup>91</sup> Moreover, the misalignment is related to an essential aspect of the institution's authority, namely as an implementer and supervisor. In fact, the two should be separated because the supervisory institution should provide corrections to the actions of the implementing institution so as to create improvements. This means that the supervisory institution should carry out a correction mechanism for the actions of the implementing institution to improve the fulfilment of victims' rights as a goal. If the correction mechanism is not implemented, the fulfilment of victims' rights will not be optimum, as is currently the case. The impact in the realm of implementation is that there is no improvement in the data collection of victims' rights, and there is also uneven assistance provided to victims. This means that the corrective justice expected due to past violations cannot be fully realized.<sup>92</sup>

The preceding description illustrates a clear relationship between justice and legal certainty. A law and regulation embodying legal certainty must also prioritize the values of justice. From this perspective, legal uncertainty regarding the fulfilment of victims' rights leads to injustice.<sup>93</sup> Ideally, legal certainty should promote harmony among rules, preventing overlapping authority in substance. Furthermore, the creation of regulations should accurately reflect social conditions and actualize the value of justice.<sup>94</sup>

## 6. Conclusion

Indonesia's strategy for tackling the rights of victims of gross human rights violations is founded on the principle of restorative justice. This approach highlights the importance of not only holding perpetrators accountable but also restoring the dignity of victims and ensuring that their compromised rights are reclaimed. This concept is recognized in both national and international legal frameworks; however, its implementation faces significant challenges. Recent legal and institutional advancements, including the formation of the Human Rights Court and the endorsement of international human rights treaties, have created a foundation for

<sup>90</sup> STEELE, J. "Damages in Tort and Under the Human Rights Act: Remedial or Functional Separation?", *The Cambridge Law Journal*, V. 67, n° 3, 2008, p. 606–634. <https://doi.org/10.1017/S000819730800069X>

<sup>91</sup> YZAGUIRREIRRE, V. G. Y. G. "Legal Certainty and Predictability", *Archiv für Rechts- und Sozialphilosophie*, V. 110, n° 4, 2024, p. 551–571. <https://doi.org/10.25162/arsp-2024-0027>

<sup>92</sup> SEFKOW-WERNER, V. "Consistent Inconsistencies in the ECtHR's Approach to Victim Status and Locus Standi", *European Journal of Risk Regulation*, 2025, p. 1–10. <https://doi.org/10.1017/err.2024.95>

<sup>93</sup> OSTAPENKO, H. "The Role of Legal Certainty Principle in Provision of Access to Justice in Ukraine in Wartime", *Access to Justice in Eastern Europe*, V. 6, n° 3, 2023, p. 1–13. <https://doi.org/10.33327/AJEE-18-6.3-a000306>

<sup>94</sup> WICAKSONO, R. M. T. A. D. "Reviewing Legal Justice, Certainty, and Legal Expediency in Government Regulation Number 24 of 2018 Concerning Electronically Integrated Business Services", *Lex Scientia Law Review*, V. 5, n° 1, 2021, p. 1–24. <https://doi.org/10.15294/lesrev.v5i1.44905>. Accessed on: 06 Feb. 2023.

tackling historical injustices. Nevertheless, individuals affected—particularly from areas such as Aceh, East Timor, and Papua—frequently remain in a state of marginalization, lacking sufficient acknowledgement, compensation, or assistance. The presence of inconsistencies between central policies and local implementation, along with overlapping institutional mandates and ineffective coordination, significantly obstructs the delivery of justice.

Furthermore, non-judicial settlement initiatives, including those created under Presidential Regulation No. 17 of 2022, have encountered criticism regarding their credibility, transparency, and structural clarity. Inadequate data systems, unequal distribution of aid, and a recovery model that prioritizes material compensation overlook the psychological and social aspects essential for effective victim rehabilitation. For enhanced protection and recovery outcomes, Indonesia needs to reform its human rights framework by clarifying institutional roles, collecting precise data through the involvement of victims and civil society, and implementing a comprehensive rehabilitation strategy. Enhancing the participation of civil society and converting legal acknowledgement into tangible, inclusive measures is crucial for attaining significant and fair justice for victims.

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