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A SUBSTANTIVE JUSTICE IN THE NON-JUDIAL PROCESS OF SERIOUS HUMAN RIGHTS VIOLATIONS

Rahmayanti[1], Syaiful Asmi Hasibuan[2], Muhammad Ari Syahputra[3], Endang Suhendra[4] Desrine Putri Niken Fania[5]

Program Study Master of Law
Universitas Pembangunan Pancabudi
North Sumatera, Indonesia

Email : rahmayanti@dosen.pancabudi.ac.id , syaiful_asmi@dosen.pancabudi.ac.id , arisyah44@gmail.com , endradank@gmail.com , nikevania88@gmail.com

ABSTRACT

The creation of a Truth and Reconciliation Commission by the state was a mistake and only lasted 2 years. The Constitutional Court through Decision Number 006/PUU-IV/2006, dated 7 December 2006 annulled Law Number 27 of 2004 concerning the Truth and Reconciliation Commission. Because of this, the emergence of the Non-Judicial Resolution Team for Serious Past Human Rights Violations (PPHAM Team) through Presidential Decree (Keppres) Number 17 of 2022 became a polemic. The conclusion in the discussion of this scientific work is that the protection of human rights in Indonesia has been expressly stated in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning the Human Rights Court. Then, substantive justice can be realized if the victims and or the victims' families accept the reconciliation offered without any coercion from any party. Therefore, the authors suggest that all stakeholders oversee the work of the PPHAM Team.

Keywords: Human Rights; Substantive Justice; Non-Judicial; reconciliation.

INTRODUCTION

Every nation that wants to maintain its existence and stand firm must know the direction and goals to be achieved. To know this, a nation's view of life (philosophy of life) is needed. Without a view of life, a nation will always be vacillated in facing various problems that will arise within society itself as well as problems that arise from the association of people between nations in the world. By having a view of life, a nation will have guidelines in solving problems both in the political, economic, social and cultural fields.[1]

The Indonesian people also believe in the importance of this view of life in the state so that Pancasila which was put forward in the First Session of the Indonesian Independence Preparatory Investigation Agency (BPUPKI) on June 1, 1945 was intended to make Pancasila the basis for an independent Indonesian state. Then, in the decision of the Indonesian Independence Preparatory Committee (PPKI) meeting on August 18, 1945, Pancasila was officially included in

[1]Regards, Burhanuddin, 1988, Pancasilaism Philosophy, PT. Bina Literacy, Bandung, p. 42.

the Indonesian Constitution, namely the 1945 Constitution (UUD 1945). Thus, the Indonesian nation already has a strong foundation or view of life as a state, namely Pancasila.

Pancasila is used as a way of life by the Indonesian people and at the same time as the state ideology. As the state ideology of Indonesia, Pancasila contains basic values and ideas that can be seen through the behavior, attitudes and personality of the Indonesian nation. The values contained in Pancasila are dynamic, which means that development efforts are in accordance with developments or changes and the demands of society are not something taboo that makes these basic values frozen, rigid, and gives birth to illogical fanaticism. Pancasila as a state ideology has a specificity that distinguishes it from other state ideologies, this is because Pancasila carries certain values extracted from the socio-cultural reality of the Indonesian nation.[2]

The consequence of establishing Pancasila as the basis of the state is that any laws and regulations issued may not conflict with the values of Pancasila and the 1945 Constitution. Even in Law Number 12 of 2011 concerning the Formation of Legislation, it contains a hierarchy of laws and regulations. namely the MPR Decree, Government Laws/Regulations in lieu of Laws (Perpu), Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regional Regulations. In the formation and issuance of these laws and regulations, the principle of lex superior derogate legi inferiori applies, namely that regulations that are lower in the hierarchy of laws and regulations may not conflict with those that are higher.

As the foundation of the Indonesian state, it is fitting for the Indonesian people to understand and apply Pancasila in their daily lives, including respect for human rights as a gift from God Almighty. This is in line with the values of the first precepts which explain that the Indonesian people acknowledge the existence of God. Therefore, respecting human rights means respecting the gift of God Almighty. Likewise with the state's obligation to protect human rights, of course it must refer to methods that are in accordance with Pancasila.

The statement on human rights in Pancasila contains the idea that humans were created by God Almighty with two aspects, namely, the aspect of individuality (personality) and the aspect of sociality (community). Therefore, the freedom of each person is limited by the human rights of others. This means that everyone has the obligation to recognize and respect the human rights of others. This obligation also applies to every organization at any level, especially the state and the government, especially in the State of Indonesia. Thus, the state and government are responsible for respecting, protecting, defending and guaranteeing the human rights of every citizen and resident without discrimination.[3]

[2]Lestari, Lilis Eka, and Arifin, Ridwan, Enforcement and Protection of Human Rights in Indonesia in the Context of Implementing Just and Civilized Humanity, Vol. 5 No. 2, 2019, p. 13.
[3]Supriyanto, Bambang Heri, Law Enforcement Regarding Human Rights (HAM) According to Positive Law in Indonesia, Vol. 2 No. 3, 2014, p. 153.

Before it was amended, the 1945 Constitution actually did not set aside human rights. The body of the 1945 Constitution has regulated human rights, namely equal status and obligations of citizens before law and government as regulated in Article 27 paragraph (1). Then, the right of every citizen to work and a decent living is regulated in article 27 paragraph (2). Furthermore, the right to freedom of association and assembly, expressing thoughts orally and in writing as stipulated in the 1945 Constitution article 28. After that, the right to embrace religion for residents is guaranteed by the state article 28 paragraph (1). Finally, the right to teaching article 31 paragraph (1). After the 1945 Constitution was amended, human rights were specifically regulated in Articles 28A to 28J.

Efforts to protect human rights carried out by the state can also be seen from the issuance of Law Number 39 of 1999 concerning Human Rights (UU HAM). The law emphasizes in detail the things that are part of human rights, namely the right to life, the right to have a family and continue offspring, the right to self-development, the right to obtain justice, the right to personal freedom, the right to feel safe, the right to welfare. , the right to participate in government, women's rights, and children's rights.

The Human Rights Law also regulates the National Human Rights Commission (Komnas HAM) which aims to develop conducive conditions for the implementation of human rights in accordance with Pancasila, the 1945 Constitution, and the United Nations Charter, as well as the Universal Declaration of Human Rights. Apart from that, Komnas HAM also aims to improve the protection and enforcement of human rights in order to develop the complete Indonesian human person and his ability to participate in various fields of life. In this case, Komnas HAM carries out the functions of reviewing, researching, counseling, monitoring, and mediating on human rights.[4]

Komnas HAM has a strategic position in protecting human rights in Indonesia. This strategic position is strengthened by the authority possessed by Komnas HAM to carry out investigations and examinations of events that occur in society which, based on their nature or scope, should be suspected of violating human rights, as stipulated in Article 89 paragraph (3) of the Human Rights Law. the duties and powers of Komnas HAM as an investigator of gross human rights violations are also reaffirmed in Article 18 of Law Number 26 of 2000 concerning the Human Rights Court. This shows the seriousness of the state in exposing past gross human rights violations.

Disclosure of past serious human rights cases appears to be experiencing difficulties. However, the state continues to make efforts so that victims and/or victims' families get justice. This effort is not only carried out through the courts, however, it is also carried out through non-litigation channels or outside the court through the Truth and Reconciliation Commission (TRC), whose existence is based on Law Number 27 of 2004 concerning the Truth and Reconciliation

[4]Article 75 and Article 76 of Law Number 39 of 1999 concerning Human Rights

Commission. With the formation of the TRC, the victims and/or the victim's family as their heirs sought compensation, restitution and/or rehabilitation.

The establishment of the TRC by the state was a mistake. The existence of KKR did not last long and only lasted 2 years. The Constitutional Court through Decision Number 006/PUU-IV/2006, dated 7 December 2006 annulled Law Number 27 of 2004 concerning the Truth and Reconciliation Commission. With the annulment of this law, it is certain that the formation of the TRC has violated the 1945 Constitution.

In this decision, the Constitutional Court is basically of the opinion that Law Number 27 of 2004 concerning the Truth and Reconciliation Commission causes a lack of legal certainty, both in the formulation of the norms and the possibility of implementing the norms in the field to achieve the expected goal of reconciliation. Therefore, the Court considers that the a quo law as a whole is contrary to the 1945 Constitution so that it must be declared as having no binding legal force. In the decision it appears that the Constitutional Court only emphasizes the absence of legal certainty in the implementation of the Act.[5]

Disclosure of past serious human rights cases through the TRC has stalled. However, the state continues to try to resolve past serious human rights cases both through the courts and outside the court. On August 26, 2022, Indonesian President Joko Widodo issued Presidential Decree (Keppres) Number 17 of 2022 concerning the Establishment of a Team for the Non-Judicial Resolution of Past Serious Human Rights Violations (PPHAM Team). The formation of the PPHAM Team was part of the state's efforts to reconcile past gross human rights violations. One of the tasks of the PPHAM Team is to recommend recovery for victims or their families through physical rehabilitation, social assistance, health insurance, scholarships and/or other recommendations for the benefit of victims or their families.

The formation of the PPHAM and KKR Teams is basically the same effort from the state, namely as an effort to reconcile or settle cases of gross human rights violations outside the court. The emergence of the PPHAM Team certainly caused polemics in the community. This is in light of the fact that the KKR which was previously established by law has been expressly annulled by the Constitutional Court on the basis that there is no legal certainty in its implementation. However, the benefits of the TRC in fulfilling substantive justice for the victim and/or the victim's family have not been taken into consideration in the Constitutional Court Decision. Therefore, with the formation of the PPHAM Team through Presidential Decree Number 17 of 2022, the author is interested in studying Substantive Justice in the Non-Judicial Resolution Process of Past Serious Human Rights Violations.

[5] Decision of the Constitutional Court Number 006/PUU-IV/2006, December 7, 2006.

LITERATURE REVIEW.

2.1.Justice Theory

Rawls's theory of justice, which includes the original contract and original position, is a new basis that invites people to see the principle of justice as a goal (object) not just as a means of entry. Justice can only be understood if it is positioned as a condition that is to be realized by law.[6]

According to Rawls, justice is honesty (fairness). In order for social relations like the above to work in a fair manner, they must be regulated or run in accordance with the two principles that have been formulated. First, equal freedom (principle of equal liberty), that everyone has the same basic freedom. These basic freedoms include (l) political freedom, (2) freedom of thought, (3) freedom from arbitrary actions, (4) personal freedom, and (5) freedom to own wealth.

Second, the principle of difference, that the inequalities that exist between humans, in the economic and social fields, must be regulated in such a way that these inequalities, (I) can benefit everyone, especially those who are naturally not fortunate and (2) attached to positions and functions open to everyone. That is, Rawls does not require that everyone's share is the same, such as wealth, status, employment and others, because that is impossible, but rather how these inequalities are arranged in such a way that bonds, cooperation and mutually beneficial relationships are also needed between them.[7]

2.2.Progressive Law Theory

The Progressive Law Theory initiated by Satjipto Rahardja namely that it is human interests (experience) that must be the central point of attention to law, not the other way around humans have to submit themselves to law as glorified by positivism.[8]In other words, the law is made to serve humans, not humans who serve the law.

RESEARCH METHODS

The empirical legal research method or empirical juridical research method is a method of "legal research that examines the applicable legal provisions and what happens in reality in society or research conducted on actual conditions that occur in society, with the aim of finding facts that are used as research data which then the data is analyzed to identify problems that ultimately lead to problem solving.[9]Empirical legal research is based on evidence obtained from observation or experience and is analyzed both qualitatively and quantitatively.[10]

[6]Taufik,Muhammad, John Rawls' Philosophy of Theory of Justice, Vol. 19 No. 1, 2013, p. 50.
[7]Sholeh, A. Khudori, Examining the Theory of Justice John Rawls, Vol. 8 No. 1, 2004, p. 181.
[8]Marilang, Considering the Paradigm of Progressive Legal Justice, Vol. 14, No. 2, 2017, p. 326.
[9]Bambang Waluyo, 2002, Legal Research in Practice, Jakarta: Sinar Graphic, Pg. 15-16.

RESULT

4.1.Protection of human rights in Indonesia

The rights that initially emerged and stood out were the rights to life, freedom, property, equality and freedom of speech. Although generally still limited to the political field, these rights are included in various charters in England. At first the Magna Carta was born in 1216, as a charter of the King of England on the freedom rights of his people. Then followed by the Petition of Right in 1672 and the Bill of Right in 1688. Furthermore, in France was also born De droit de I'homme et dul citizen in 1789. Thirteen years before that the Declaration of Independence was born in 1776 in the United States which was the the independence of the United States of America over England.[11]

The idea of Human Rights is growing in line with the development of democracy, especially with the victory of democratic countries against fascist countries in World War II. In 1948 the United Nations ratified the Universal Declaration of Human Rights, with the approval of 48 countries, although there were 8 countries that abstained, including: the Soviet Union, Saudi Arabia and South Africa. Even though the Declaration of Human Rights is not legally binding, it is still a minimum guideline and standard that all humanity aspires to.[12]

Excess Human rights arrangements in the constitution provide a very tight guarantee because changes and or deletion of one article in the constitution as in the Indonesian state administration have a very difficult and long process, including through amendments and referendums. Meanwhile, the weakness is that what is regulated in the constitution only contains rules that are still global, such as provisions regarding human rights contained in the provisions of the 1945 Constitution of the Republic of Indonesia which are still global in nature. Efforts to protect human rights emphasize various enforcement actions against human rights violations. Protection of human rights, especially through the establishment of human rights instruments and institutions. It can also be through various factors related to efforts to prevent human rights by individuals as well as society and the state.

Human Rights (HAM) are believed to have universal value, which means that they know no boundaries and space and time. The universal value of human rights is confirmed in international instruments, which also contain international institutions (institutions) as human rights monitoring and enforcement agencies. Literally what is meant by human rights is basic rights or basic rights. In this literal sense, human rights are fundamental rights, so that their

[10] Kornelius Benuf, Muhamad Azhar, Legal Research Methodology as an Instrument to Unravel Contemporary Legal Issues, Vo. 1, Issue I, 2020, p. 28.

[11]Rosana, Ellya, Democratic State and Human Rights, Vol. 12 No. 1, 2016, p. 49.
[12]Ibid.

existence is a must, cannot be contested, in fact they must be protected, respected and defended from all kinds of threats, obstacles and disturbances from other human beings.[13]

Human rights are rights that belong to humans by nature, which cannot be separated from nature and therefore are sacred. According to Miriam Budiardjo, human rights are rights that humans have that have been obtained and brought along with their birth or presence in social life. Because it is a fundamental right, human rights are something that automatically controls human life and is not a gift from society. This statement is in line with the opinion of St. Harum Pujiarto stated that human rights are an initial right, not a gift from society or the state, that right is the right to life with all its freedom to express creativity, initiative and taste in fulfilling its needs.[14]

Normatively, the notion of human rights is contained in Law Number 39 of 1999 concerning Human Rights, which basically states that human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His unique gift. must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity.[15]

Objectively the principle of protecting human rights between one country and another is the same, but subjectively the implementation is not the case, meaning that at one time there were similarities in the nature of what should be protected and regulated, but at the same time there were differences in the perception of human rights between countries that one with another. This situation is more caused by differences in ideological, political, economic, socio-cultural backgrounds and also differences in national interests of each of these countries.[16]

F Budi Hardiman explained that humans need protection of human rights because they are "creatures that are vulnerable and vulnerable to arbitrariness and cruelty. The double possibility that humans have both to become victims and to become perpetrators of cruelty raises a universal demand originating from human consciousness itself to protect that vulnerability.[17]

Attention to advancing the protection of human rights is stated explicitly in several laws and regulations such as Law Number 5 of 1998 concerning Ratification of the Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment (Convention Against Torture and Other Cruel Treatment Or Punishment, No. Humane, Or Degrading Human Dignity). Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms Of Racial Discrimination 1965

[13]Nursamsi, Dedy, International Instruments and Institutions in Upholding Human Rights, Vol. 2, No. 2, 2015, p. 424
[14]Ibid.
[15]Harahap, A. Bazar, and Sutardi Nawangsih, 2007, Human Rights and Law, Association of Independent Scholars of the Republic of Indonesia, Jakarta, p. 8.
[16]Triwahyuningsih, Susani, Protection and Enforcement of Human Rights (HAM) in Indonesia, Vol. 2, No. 2, 2018, p. 115.
[17]Kusnadi, Nandang, Perspective of Upholding Human Rights through the Human Rights Court, Vol. 3, No. 1, 2017, pp 96-97.

(International Convention on the Elimination of All Forms of Racial Discrimination 1965). Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations and Government Regulation Number 3 of 2002 concerning Compensation,

Legally, there have been efforts to overcome gross human rights violations, both in the past and in the future, through the issuance of Law Number 26 of 2000 concerning Human Rights Courts. The law also regulates the right to compensation for victims of gross human rights violations. To implement these victims' rights, the government issued Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations. Based on Law no. 26 of 2000, the Human Rights Court is a special court which is under the general court.

Law Number 26 of 2000 concerning the Human Rights Court also provides for arrangements for the right to compensation for victims of gross human rights violations. To implement these victims' rights, the government issued Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations.

These different or special arrangements start from the investigation stage where the authority is Komnas HAM to arrangements regarding the panel of judges whose composition is different from ordinary criminal courts. In this human rights court, the composition of judges is five people, which requires three of them to be ad hoc judges. However, even though there are specificities in handling, the procedural law used still uses criminal procedural law, especially the proving procedure.[18]

The Human Rights Court also regulates the specificity of handling crimes that include gross violations of human rights by using existing norms in international law. Among the adopted norms is the principle of individual responsibility (Individual Criminal Responsibility) which is elaborated in the provisions of Law no. 26 of 2000 in article 1 paragraph (4). This individual responsibility is emphasized that responsibility is imposed on everyone but cannot be imposed on perpetrators who are under 18 years of age. This provision is in accordance with the provisions stipulated in the Rome Statute which also regulates individual responsibility and limitations on liability in certain circumstances.[19]

[18]Ufran, Settlement of Serious Human Rights Violations Through National Court Mechanisms and International Criminal Courts, Vol. 7,No.1, 2019, p. 178.
[19]Ibid.

4.2.Substantive Justice in the Non-Judicial Resolution Process of Past Serious Violations of Human Rights

Justice in legal terminology is translated as a condition that is acceptable to common sense in general at a certain time about what is right. Meanwhile, John Rawls argues in A Theory of Justice, justice is fairness, namely the condition that is built on the basis of the view that every individual has freedom, the initial status quo which emphasizes the fundamental agreement in the social contract is fair. This is the original position of humans when joining a community called a social contract. The main idea of justice in Rawls's view is how the main institutions of society regulate basic rights and obligations and determine the distribution of welfare in social cooperation that is built.[20]In this case, Rawls puts the position of justice as an object, namely the goal to be achieved. Justice as a goal, should be realized and implemented by all law enforcement, including judges.

According to Mertokusumo, a legal scholar, especially a judge, should master the ability to solve juridical cases (the power of solving legal problems), which consists of three activities, namely formulating legal problems (legal problem identification), solving them (legal problem solving); and make decisions (decision making). Therefore, appropriate steps of legal reasoning are needed in the process of solving the legal problem. There are at least six main steps in the legal reasoning process in the process of making a judge's decision, namely identifying facts to produce a case structure (map) that the judge really believes is a real case that occurred, connecting (subsuming) the case structure with relevant legal sources,[21]

This legal reasoning needs to provide space for socio legal approaches. With a socio-legal approach, you will be able to understand legal issues in society more contextually related to the socio-cultural conditions of the community. Such things are considered to give birth to substantive justice. Justice whose size is not quantitative as it appears in formal justice, but qualitative justice which is based on public morality and human values and is able to provide satisfaction and happiness for society.[22]

Then, Bagir Manan argues that there are several things that must be considered in interpreting, namely:[23]

(1) In the event that the words or rules are clear, the judge is obliged to apply the law according to the sound and arrangement of the rules, unless matters such as inconsistencies, contradictions, or provisions are found cannot reach the legal event being tried, or can cause injustice, contrary to the objectives law, or contrary to public

[20]C. Anwar, Problems of Realizing Substantive Justice in Law Enforcement in Indonesia, Vol. 3 No. 1, 2010, p. 128.
[21]Syamsudin, M., Procedural and Substantive Justice in Magersari Land Dispute Decisions, Vol. 7,No. 1, 2014, p. 22.
[22]Ibid.
[23]Ibid., p. 133-134

order, contrary to the prevailing beliefs of society, decency, or the greater public interest.

(2) It is obligatory to pay attention to the aims and objectives of making laws, unless the aims and objectives are outdated, too narrow so that a looser interpretation is needed.

(3) Interpretation is solely done for the sake of giving satisfaction to justice seekers. The interests of the community are taken into account as long as they do not conflict with the interests of justice seekers.

(4) Interpretation is solely carried out in the context of actualizing the application of the law, not to change the law.

(5) Interpretation must follow the method of interpretation according to law and pay attention to the principles of general law, public order, legal benefit and can be legally justified.

(6) In interpretation, judges can use legal teachings as long as these teachings are relevant to the legal issues to be resolved and do not harm the seeker of justice.

(7) Interpretation must be progressive, namely oriented to the future, not to withdraw past legal conditions that are contrary to living conditions and legal developments.

Bagir Manan's opinion is believed to be able to create a decision that contains substantive justice that is able to bring satisfaction and happiness to justice seekers. This is in line with Satjipto Rahardjo's concept of 'progressive law', namely law that makes people and their nation happy, starting from a reality that law is understood only as a formulation of a law, and is applied with a syllogism. Progressive legal thinking arises because of dissatisfaction and concern about the performance and quality of law enforcement in society. Law enforcement carried out raises a problem, namely injustice.[24]

Attention to law enforcement in Indonesia should cover all aspects including law enforcement in non-judicial settlements of past gross human rights violations. Although there are not as many cases of gross human rights violations as cases of law violations, it is undeniable that the state has experienced difficulties in disclosing past cases of gross human rights violations. This certainly hinders the seekers of justice, namely the victims and the families of the victims, to get justice.

Since the issuance of Law Number 26 of 2000 concerning the Human Rights Court, Komnas HAM has investigated 11 incidents of alleged gross human rights violations namely the 1999 East Timor Case, the 1984 Tanjung Priok Case, the 2000 Irian/Papua Incident Case, the Trisakti, Semangi I and Semangi II Cases. , Cases of May 1998, Cases of Wasior Juni 2001-2002 and Wamena 2003, Cases of Forced Disappearances of 1997-1998, Cases of Talang Sari 1989, Cases of Mysterious Shootings 1982-1985, Cases of Tragedy 1965-1966, Cases of Simpang KKA in Aceh 1999. From Of the 11 cases of alleged gross human rights violations, 3 have been

[24]Haryono, Value-Based Law Enforcement of Substantive Justice, Vol. 7 No. 1, 2019, p. 30.

brought to the Human Rights Court, while 8 of them have not been followed up by the Attorney General's Office.[25]

Polemics could not be avoided over the emergence of the PPHAM Team through Presidential Decree No. 17 of 2022. This Presidential Decree can be seen as reviving the KKR with a new nickname. Those who are against the emergence of the PPHAM Team certainly doubt that the Team will be able to provide justice for the victims and/or the victims' families. Apart from that, the PPHAM Team can be considered as a political movement to save the real criminals. Moreover, the TRC had previously been abolished by the Constitutional Court.

In the decision of the Constitutional Court Number 006/PUU-IV/2006, dated 7 December 2006, the Panel of Judges in their considerations stated that Reconciliation opens alternative opportunities for perpetrators to admit their actions without being confronted with the usual legal process. The perpetrator has the opportunity to consider his attitude towards the case in which he is involved.

The attitude to reject the PPHAM Team cannot be stated to be wrong. Because it is related to gross human rights violations, international law requires states to prosecute perpetrators of gross human rights violations such as crimes against humanity, genocide, torture and enforced disappearance. The Inter-American Court of Human Rights, among others, has repeatedly stated that amnesty is unacceptable if its function is only to cover up crimes that have occurred. Then, reconciliation remains difficult for victims who have suffered as a result of these crimes.[26]

The opinion of a well-known human rights lawyer, Aryeh Neier, can be considered as a non-judicial settlement of past gross human rights violations. He stated that of the two stages, the "truth" stage according to him was more important. By knowing what happened, a nation can honestly debate why and how these horrendous crimes occurred. Identifying those responsible, and showing what they did, is tantamount to marking them with a disgrace in the eyes of society which is already a punishment in itself and identifying the victims, and recalling how they were tortured and killed is a way to recognize their worth and dignity.[27]

Both positions are equally valid. But in real practice, why one country chooses to settle its past with the TRC and why the other doesn't ultimately depends on the political landscape, the nature of the democratization process, and the distribution of political power during the transition and afterward. Not much influenced by moral and legal considerations. According to Samuel P. Huntington's observations, of the countries that became democracies before 1990, only in Greece did trials and meaningful convictions of a sufficient number of authoritarian officials take place. Most of them chose a settlement through the Truth and Reconciliation Commission.[28]

[25]Abdurahman, Ali, The Urgency of Establishing a Truth and Reconciliation Commission Law in Indonesia in the Efforts to Resolve Past Serious Human Rights Violations, Vol. 3, No. 3, 2016, p. 511.
[26]Institute for Community Studies and Advocacy, Briefing Paper Series on the Truth and Reconciliation Commission, No. 1, 2000, p. 6.
[27]Ibid.
[28]Ibid. matter. 7.

CONCLUSION

Protection of human rights in Indonesia has been expressly stated in the 1945 Constitution which is specifically listed in Articles 28A to 28J. Then, human rights in Indonesia are also explained in detail through Law Number 39 of 1999 concerning Human Rights. In addition, the process of resolving human rights violations can be carried out through a Human Rights Court based on Law Number 26 of 2000 concerning Human Rights Courts, and settlement of past gross human rights violations can also be carried out non-judicially based on Presidential Decree Number 17 of 2022.

The non-judicial settlement of past gross human rights violations has certainly experienced polemics in society, including the victims and/or the victims' families. However, substantive justice can be realized if the victims and or the victims' families accept the reconciliation that is offered without any coercion from any party. By accepting without coercion the reconciliation process offered, the state has actually created laws that serve society as desired by progressive legal theory.

REFERENCES.

Book

Harahap, A. Bazar, and Sutardi Nawangsih, 2007, Human Rights and Law, Association of Independent Scholars of the Republic of Indonesia, Jakarta.

Regards, Burhanuddin, 1988, Pancasilaism Philosophy, PT. Bina Script, Bandung.

Waluyo, Bambang, 2002, Legal Research in Practice, Sinar Graphic, Jakarta

Journal

Abdurahman, Ali, The Urgency of Establishing a Truth and Reconciliation Commission Law in Indonesia in the Efforts to Resolve Past Serious Human Rights Violations, Vol. 3, No. 3, 2016.

Benuf, Korneliaus, et al, Methodology of Legal Research as an Instrument for Parsing Contemporary Legal Issues, Vo. 1, Issue I, 2020.

C. Anwar, Problems of Realizing Substantive Justice in Law Enforcement in Indonesia, Vol. 3 No. 1, 2010.

Haryono, Value-Based Law Enforcement of Substantive Justice, Vol. 7 No. 1, 2019.

Kusnadi, Nandang, Perspective of Upholding Human Rights through the Human Rights Court, Vol. 3, No. 1, 2017.

Institute for Community Studies and Advocacy, Briefing Paper Series on the Truth and Reconciliation Commission, No. 1, 2000.

Lestari, Lilis Eka, and Arifin, Ridwan, Enforcement and Protection of Human Rights in Indonesia in the Context of Implementing Just and Civilized Humanity, Vol. 5 No. 2, 2019,

Marilang, Considering the Paradigm of Progressive Legal Justice, Vol. 14, No. 2, 2017.

Nursamsi, Dedy, International Instruments and Institutions in Upholding Human Rights, Vol. 2, No. 2, 2015.

Rosana, Ellya, Democratic State and Human Rights, Vol. 12 No. 1, 2016.

Sholeh, A. Khudori, Examining the Theory of Justice John Rawls, Vol. 8 No. 1, 2004.

Supriyanto, Bambang Heri, Law Enforcement Regarding Human Rights (HAM) According to Positive Law in Indonesia, Vol. 2 No. 3, 2014.

Syamsudin, M., Procedural and Substantive Justice in Magersari Land Dispute Decisions, Vol. 7,No. 1, 2014.

Taufik,Muhammad, John Rawls' Philosophy of Theory of Justice, Vol. 19 No. 1, 2013.

Triwahyuningsih, Susani, Protection and Enforcement of Human Rights (HAM) in Indonesia, Vol. 2, No. 2, 2018.

Ufran, Settlement of Serious Human Rights Violations Through National Court Mechanisms and International Criminal Courts, Vol. 7,No.1, 2019.