
RESEARCH ARTICLE

The Role and Authority of Komnas Ham in Handling, Violation and Protection of Human Rights

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ABSTRACT

This study aims to analyze the implementation of Komnas HAM's authority in resolving cases of human rights violations associated with the rule of law. To describe law enforcement efforts to resolve cases of human rights violations in the future to provide legal certainty. The polemic of resolving past gross human rights violations continues to be delayed. The regime in power since the reformation has not been able to solve it because of technical juridical problems and has a special nuance, making it difficult to hold a human rights court for perpetrators in a fair and impartial manner. This research uses a normative juridical research method using written data in statutory regulations (library research) using books, journals and articles as sources. The results of this study first show that Law No. 39 of 1999 concerning Human Rights, Komnas HAM, was given 4 powers, namely: investigation, counseling, mediation and assessment. In terms of the authority to investigate, Komnas HAM is given full authority by the Human Rights Act, but this is still lacking if Komnas HAM is not given the authority to investigate at once because after conducting an investigation of human rights violations, usually, these cases will disappear without news and clarity. While the authority in mediation and counseling is appropriate as a form of prevention so that human rights violations do not occur, in carrying out its duties, Komnas HAM should not be intervened by anyone considering its position as an independent state institution.

KEYWORDS

Role, Authority, Violation, Protection of Human Rights

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1. Introduction

Indonesia, as one of the countries that have legal instruments to provide protection to every citizen, should be implement the law enforcement process by resolving various cases of human rights violations. However, until now, the state has not been able to resolve cases of human rights violations that have been completed for years. The victim's family has never received justice for the events experienced by their family members. The state should be carried out in law enforcement, including law enforcement against perpetrators of human rights violations who must be held legally responsible before a human rights court.¹

Because currently, Indonesia has its own Human Rights Court, and this court should carry out its functions. However, due to the investigation process carried out by the Attorney General, there have been various cases of human rights violations in Indonesia, both in the past and in the present, which have not yet been completely resolved. The Attorney General is the holder of authority in handling cases of human rights violations, and so many victims have died due to the inhumanity of the perpetrators who have power. However, it seems very difficult to hold perpetrators of gross human rights violations accountable. Even though this type of crime is included in the category of *extraordinary crime*, when viewed in terms of handling, it is not so serious. This can be

¹ Dian Ferricha, *HAK ASASI MANUSIA DIALEKTIKA UNIVERSALISME VS RELATIVISME DI INDONESIA* (Dian Ferricha, 2021).

proven by the unclear handling of several serious human rights cases that have become public attention and has become a serious concern of the international community.²

In the criminal justice system, which consists of several stages, namely investigation and trial, all these stages must support and influence each other. If one sub-system is not running, it will interfere with the work of the other subsystems. That is what happens in the process of law enforcement against gross human rights violations. One of the stages is the investigation stage, which is the authority of the Attorney General's Office under the Attorney General, who is unwilling (unwilling) to resolve serious human rights cases. There are clear indications that there has been an improper delay in the national court process for various reasons, which led to the absence of an ad-hoc human rights court. It is said that he does not want to because, so far, the Attorney General has not been proactive in seeking various legal facts that can support the evidence previously presented by Komnas HAM. The Attorney General, in cases of gross human rights violations, tends to be passive. The law ordered him to conduct an investigation as soon as possible after he received the file from Komnas HAM.³

The unclear legal status of various cases of gross human rights violations in the Attorney General's Office can violate the principle of legal certainty because protracted delays in cases will create legal uncertainty and will cause public distrust in law enforcement agencies. As a legal state, Indonesia should prioritize the protection of human rights, including the settlement of cases of human rights violations by law enforcement, which in this case is carried out by the Attorney General as an investigator. Komnas HAM has so far completed the investigation files and submitted them to the Attorney General to be followed up in the investigation process. However, the current problem is that the Attorney General's authority in conducting investigations is never optimal because it is influenced by various understandings related to human rights violations and crimes against humanity, departing from the notion that human rights are a set of rights that are inherent in their nature and the existence of humans as creatures of God who are created by God. Almighty God is His gift that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity.⁴

According to Miriam Budiardjo, Human Rights are rights that are owned by everyone who is born into the world; these rights are universal because they are owned without any differences in gender, race, culture, ethnicity, religion or so on. Violation of Human Rights is every act of a person or group of people, including state apparatus, whether intentional or unintentional or negligence, which unlawfully reduces, hinders, limits and revokes the Human Rights of a person or group of people guaranteed by this Law and does not get or it is feared that they will not obtain a fair and correct legal settlement based on the applicable legal mechanism. Which has now become Law no. 26 of 2000 concerning the Human Rights Court, which reads that a violation of human rights is every act of a person or group of people, including state apparatus, whether intentional or unintentional or negligence which legally reduces, hinders, limits and or revokes the human rights of a person or group of people who guaranteed by this Law, and it is not obtained or it is feared that it will not get the applicable legal settlement.⁵

Meanwhile, crimes against humanity are crimes against humanity as acts or acts carried out with widespread and systematic attacks, such as murder, extermination and so on. Crimes against humanity, as regulated in Law no. 26 of 2000, is an act or conduct "committed as part of a widespread or systematic attack where it is known that the attack was directed directly against the civilian population". These actions can be in the form of murder, extermination, slavery, the expulsion of the population, persecution, rape and enforced disappearance.⁶

The tendency of actors and factors in the occurrence of human rights violations. Every human being in this world has human rights that must be protected and upheld, but human rights are limited by other human rights. That's why no one should be allowed to violate another's human rights. Human rights violation factors are divided into two, namely internal and external factors; internal factors mean that someone's encouragement to commit human rights violations comes from within the perpetrators of human rights violations, namely:⁷

² R B Sularto, *Pengadilan HAM (Ad Hoc): Telaah Kelembagaan Dan Kebijakan Hukum* (Sinar Grafika, 2022).

³ Sholihin Bone, "Penataan Kewenangan Komisi Nasional Hak Asasi Manusia: Telaah Sistem Hukum," *Amanna Gappa*, 2021, 15–25.

⁴ M A Lady, Rizky Anugrah IB, and A J Wahyu, "KEDUDUKAN KOMISI NASIONAL HAM DALAM KONSTITUSI DAN KETATANEGARAAN," *Siyasah Jurnal Hukum Tatanegara* 1, no. 1 (2021): 76–93.

⁵ Shella Yovita Shella, "ANALISIS YURIDIS HAK INFORMASI MASYARAKAT DALAM PERSPEKTIF HAK ASASI MANUSIA," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 28, no. 9 (2022): 4413–28.

⁶ Abdul Karim, "KONSTITUSI INDONESIA DALAM PERSPEKTIF HAK ASASI MANUSIA," *JPeHI: Jurnal Penelitian Hukum Indonesia* 1, no. 02 (2021): 18–27.

⁷ Muhammad Erlangga, "PERAN LEMBAGA KEJAKSAAN UNTUK MENGATASI KENDALA YURIDIS DALAM PENANGANAN PERKARA PELANGGARAN HAM BERAT (Role Of Agency Institution To Overcome The Juridic Constraints In Handling Of Heavy Human Rights Violations)," *Lex LATA* 2, no. 1 (2022).

1. A high ego and is always selfish. Selfish and selfish attitude will result in a person being negligent of his obligations and always demanding his rights in various interests. This attitude will also cause a person to have a great desire to achieve something he wants. Because of this bad attitude, in the end, it is not impossible that someone will justify any means so that their rights are fulfilled even though the method can violate the rights of others.
2. Human rights awareness is low. The level of awareness of each person is different. There are those who really respect human rights and some who really ignore the existence of these human rights. Low awareness of human rights will result in a human rights violator acting arbitrarily toward others. Violators do not want to know that other people also have human rights that must be protected and respected. This attitude will certainly result in deviations from human rights. The lower one's human rights awareness, the greater one's ignorance of human rights.
3. Lack of tolerance An intolerant attitude will result in the emergence of mutual disrespect and respect for the existence of others. It's as if someone's position is humiliated and harassed. In the end, this attitude will lead someone to discriminate against others.

While external factors are factors outside of humans that encourage a person or group of people to commit human rights violations, law enforcement officers who arbitrarily make decisions are also a form of human rights violations and are not good examples; this can also trigger other forms of human rights violations, namely:

1. Abuse of power There is a lot of power in the world. This power exists within the family, in the community and in the nation and state. Power does not always lead to government power but to other forms of power, one of which is power in a company. Entrepreneurs who do not care about the rights of their workers clearly violate human rights. It can be concluded that any abuse of power will lead to human rights violations.
2. The indecisiveness of law enforcement officers Law enforcement officials who are not firm and clumsy will result in the emergence of many human rights violations that occur. Cases of human rights violations that are not completely resolved will certainly trigger other human rights violations that may be more detrimental. The violators will not feel deterred from doing the same thing if they are not given the appropriate punishment according to their actions.
3. Misuse of technology Advances in technology today have both positive and negative impacts. One of the positive impacts is that we can get information easily through the internet. The myriad of benefits offered on the internet can also be used by criminals. For example, robbery of money in an ATM by a group of hackers or it could be kidnapping someone through social networks. Indeed, anything that deviates will result in bad things. If technology is not used according to the rules, then what happens is a form of human rights violation.
4. High social and economic inequality Imbalances and inequality in lifestyle have started to be seen in the current era. Differences in the level of wealth or position held by a person trigger social and economic inequalities. If left unchecked, it is not impossible that there will be many human rights violations, such as robbery, slavery, harassment and even murder.

The tendency of parties who commit human rights violations is state officials or officials who have full power over themselves and use that power for their own interests. Because in the concept of human rights violations, when the State is the holder of obligations, which includes government officials, law enforcement officers take physical and non-physical actions against the community who are rights holders so that these human rights violations occur.⁸

In the context of human rights, the state is the main legal subject because the state is the main entity responsible for protecting, upholding, and advancing human rights, at least for their respective citizens. Ironically, history records that human rights violations are usually carried out by the state, either directly through actions that include violations of human rights against its citizens or citizens of other countries or indirectly through economic and political policies both at the national and international levels the international level, which has an impact on the non-fulfillment or denial of the human rights of its citizens or citizens of other countries.⁹

In addition to the subject of human rights law as the owner of authority and responsibility, the owner of the right is also considered a subject in human rights law, including the owner of rights here, of course, individuals, and groups of individuals, especially those categorized as groups vulnerable to human rights violations. So the point of emphasis in human rights violations is the responsibility of the state (state responsibility). The concept of state responsibility is the responsibility that arises as a result of violations of the obligation to protect and respect the human rights of every individual in society in the state. Thus it is very clear that the state must protect its citizens both in terms of human rights, economics, politics and others.¹⁰

⁸ Sularto, *Pengadilan HAM (Ad Hoc): Telaah Kelembagaan Dan Kebijakan Hukum*.

⁹ Bone, "Penataan Kewenangan Komisi Nasional Hak Asasi Manusia: Telaah Sistem Hukum."

¹⁰ Erika C Tatoya, "IMPLEMENTASI HUKUM ADMINISTRASI DALAM KONSEPSI NEGARA HUKUM DI INDONESIA," *LEX CRIMEN* 11, no. 2 (2022).

One of the recommendations from the results of the conference of the International Congress on the teaching of human rights in Vienna in 1978 and the International Congress on the teaching, information and documentation of human rights in Malta in 1987 was summarized in the report of the director general which essentially stated that in relation to international cooperation, methodological approaches to human rights education and teaching and the priority given to research, information and documentation may vary from place to place. In a further development, the World Conference on Human Rights held in Vienna in 1993, among others, discussed specifically human rights education. In the Vienna Declaration and its Program of Action, it is explained that member states of the United Nations have an obligation to carry out human rights education to their people. Thus, the promotion and protection of human rights will be guaranteed. Humans will be respected because they have high dignity.¹¹

When viewed from the point of view of its use, the background for putting forward human rights issues in legal instruments is based on the desire or effort to avoid abuse of power and authority for political reasons from the authorities. In this regard, it can be understood that the desire to formulate rights in national law is to guarantee and protect human rights. Each country has an obligation to guarantee and respect human rights and protect and enforce them in their respective countries. This obligation is not only positive, namely to be enforced or implemented in terms of implementing this, especially for human rights that are universal and have universal applicability as formulated in the declaration of human rights.¹² Therefore as emphasized in the background of the problem. This research formulates the role of Komnas HAM's authority in handling human rights violations and protection.

2. Research Method

This study uses a normative juridical research approach using written data in statutory regulations (law in books), or the law is conceptualized as a rule or norm, which is a benchmark for human behavior that is considered appropriate.¹³ This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation. So the approach taken in this paper is the statutory approach. The legal approach, in this case, is the (Komnas HAM) Law.¹⁴ The legal materials obtained in the study of literature studies, laws, government regulations, and regulations under the law, journals, opinions of scholars, and legal cases used by this author. The author describes and relates it in such a way so that it can be presented in systematic writing with the hope of providing an answer to problems that are general in nature to the concrete problems faced. The existing legal materials are used to see whether the regulation regarding the role of (Komnas HAM) authority in handling human rights violations and protection.¹⁵

3. Results and Discussion

1. Duties and Authorities of the National Human

Rights *Human* are basic rights or basic rights brought by humans from birth as a gift from God Almighty. Human rights are respected, upheld, and protected by the state, law, and government. Human rights are universal and eternal. In addition to the human rights movement, there are also several theories that support the development of human rights. Human Rights (HAM) are rights that are owned by humans solely because of humans. Humans have it not because it is given by society or based on positive law but solely based on their dignity as human beings. The origin of idea of human rights, as mentioned earlier, comes from the theory of natural rights (*natural rights theory*). The natural theory of rights stems from the theory of natural law (*natural law theory*). In its development against power emerged the Reformation Movement (Renaissance) which hoped for a return to Greek and Roman culture that respected the individual.¹⁶

The National Human Rights Commission (Komnas HAM) is an independent state institution in Indonesia whose position is at the same level as other state institutions with the function of carrying out studies, research, counseling, monitoring, investigation, and mediation on human rights issues. This commission was established in 1993 based on Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission. Komnas HAM has completeness consisting of a plenary session and a sub-commission. In addition, Komnas HAM has a general secretariat as an element of service. This institution was the first to initiate the presence of an independent state institution in Indonesia. In a situation that is often characterized as authoritarian, anti-democratic and full of human rights violations, when the New Order came to power, Komnas HAM was actually established.¹⁷

¹¹ Asep Opik Akbar, "UNIVERSALISME MINIMUM NILAI-NILAI HAM MENUJU UNIVERSALISME PLURALIS DALAM ISLAM," *Al Qisthas: Jurnal Hukum Dan Politik Ketatanegaraan* 12, no. 1 (2021): 139–81.

¹² Zaki Priambudi and Avina Nakita Oktavia, *FK2H Law Review 2021: Dinamika Perkembangan Hukum HAM, Hukum Internasional, Dan Pembangunan Hukum Di Indonesia* (UPT Penerbitan & Percetakan Universitas Jember, 2021).

¹³ S H Bachtiar, *Mendesain Penelitian Hukum* (Deepublish, 2021).

¹⁴ S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

¹⁵ Sularto, *Pengadilan HAM (Ad Hoc): Telaah Kelembagaan Dan Kebijakan Hukum*.

¹⁶ S H Ruslan Renggong, Dyah Aulia Rachma Ruslan, and M Kn SH, *Hak Asasi Manusia Dalam Perspektif Hukum Nasional* (Prenada Media, 2021).

¹⁷ Kevin Pramudya Sejati, "Hak Asasi Manusia," 2021.

History of the formation of Komnas HAM The National Commission on Human Rights (Komnas HAM) was formed on June 7, 1993, based on Presidential Decree No. 50 of 1993 concerning the National Commission on Human Rights. The Presidential Decree was issued following up on the recommendations of the Workshop on Human Rights initiated by the Ministry of Foreign Affairs of the Republic of Indonesia and the United Nations, which was held on January 22, 1991, in Jakarta. Based on the Presidential Decree, Komnas HAM aims: First, to assist the development of conducive conditions for the implementation of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations and the Universal Declaration of Human Rights. Second, increasing the protection of human rights in order to support the realization of national human development, namely the development of Indonesian people as a whole and the development of society in general.¹⁸

In its development, the history of the Indonesian nation continues to record various forms of suffering, misery and social inequality caused, among others, by the legacy of the traditional conception of feudalistic and patriarchal relations between the government and the people, the inconsistency in the description of the system and law enforcement apparatus with the norms laid down by the founders. The state in the 1945 Constitution, the instruments of Human Rights have not been widely and comprehensively socialized, and civil society has not yet been established. In summary, there are still conditions that are not conducive enough for the protection and promotion of human rights. As a result, it has given rise to various unfair and discriminatory behaviors.¹⁹

Such unfair and discriminatory behavior has resulted in human rights violations, whether committed by state apparatus (state actors), namely human rights violations committed by the state to the community (vertical human rights violations), as well as those committed by the community (non-state actors) namely, violations of human rights committed among the community (horizontal human rights violations). This is reflected in various incidents in the form of illegal arrests, kidnappings, torture, rape, enforced disappearances, murder, arson, land grabbing, social unrest in several areas and various other human rights violations.²⁰

In response to the various forms of human rights violations mentioned above, in order to avoid more victims of human rights violations and to create conducive conditions, the People's Consultative Assembly has issued MPR Decree Number XVII/MPR/1998. The decree states, among others, assigning high state institutions and all government officials to respect, uphold and disseminate understanding of human rights to the entire community. In addition, the Decree also states that the implementation of counseling, assessment, monitoring, research and mediation on Human Rights is carried out by a National Human Rights Commission stipulated by law.²¹

Following up on the mandate of the MPR Decree, on September 23, 1999, Law Number 39 of 1999 concerning Human Rights was passed. This law, apart from regulating human rights, is also about the institution of the National Human Rights Commission.⁷ With the improvement in the legal basis for the establishment of Komnas HAM from a Presidential Decree into law, it is hoped that Komnas HAM can carry out its functions more optimally to disclose various matters forms of human rights violations. With this law, Komnas HAM also has subpoena power in assisting the resolution of human rights violations. This authority was further strengthened by the enactment of Law No. 26 of 2000 concerning the Court of Human Rights. In this Law on the Human Rights Court, Komnas HAM is mandated as the only institution that has the authority to investigate serious human rights violations.²²

As for the purpose of establishing Komnas HAM based on Law Number 39 of 1999, it is not much different from the objectives of establishing Komnas HAM based on Presidential Decree Number 50 of 1993, namely;²³

1. Develop conditions conducive to 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.
2. Improving the protection and enforcement of human rights in order to fully develop the Indonesian human person and his ability to participate in various fields of life.

In order to achieve its objectives, Komnas HAM uses a reference to instruments related to human rights, both nationally and internationally. National Instruments, including the 1945 Constitution and its amendments, MPR Decree No. XVII/MPR/1998, Law no. 39 of 1999 concerning Human Rights, Law no. 26 of 2000 concerning the Human Rights Court, Law No. 40 of 2008 concerning

¹⁸ Mustamiroh Mustamiroh, "Berkas Modul Hak Asasi Dan Manusia," 2021.

¹⁹ Honing Sanny, John Pieris, and Daniel Yusmic P Foekh, "Hak Asasi Manusia, Demokrasi Dan Pancasila," *To-Ra*, 2021, 142–56.

²⁰ Sigit Sapto Nugroho and M SH, *HUKUM HAK ASASI MANUSIA* (Penerbit Lakeisha, 2021).

²¹ Sejati, "Hak Asasi Manusia."

²² Ernes Gabriel Sihotang, "Politik Hukum Kaitannya Dengan Perkembangan Demokrasi, Hak Asasi Manusia Dalam Perkembangan Hukum Di Indonesia," *Administrative Law and Governance Journal* 4, no. 1 (2021): 69–88.

²³ Lihat Komnas HAM dalam Undang-Undang Nomor 39 Tahun 1999 dan Keputusan Presiden Nomor 50 Tahun 1993.

the Elimination of Racial and Ethnic Discrimination and related national laws and regulations. The International Instruments include the United Nations Charter, the 1948 Universal Declaration of Human Rights and other International Instruments concerning Human Rights that have been ratified and accepted by Indonesia.²⁴

In carrying out the various authorities possessed by Komnas HAM referring to Article 89 of Law No.39 of 1999 concerning Human Rights.²⁵ To achieve the objectives described above, Komnas HAM has the authority to carry out four (4) main functions, namely:

1. Monitoring. In carrying out its monitoring function, Komnas HAM has the function and authority to:
 - a. Observation of the implementation of human rights and preparation of reports on the results of these observations;
 - b. Investigation and examination of events that arise in society based on their nature or scope should be suspected of having violated human rights;
 - c. Summons to the complainant or victim as well as the party being complained about to be asked and heard for their statements;
 - d. Summoning witnesses to ask for and hear their testimonies, and to the complainant witnesses being asked to submit the necessary evidence;
 - e. Site inspection and other places deemed necessary;
 - f. Summons related parties to provide written information or submit the required documents in accordance with the original with the approval of the Chairman of the Court;
 - g. Local inspection of houses, yards, buildings and other places occupied or owned by certain parties with the approval of the Chief Justice;
 - h. Giving opinions based on the approval of the Head of the Court on certain cases that are in the judicial process, if, in that case, there is a violation of human rights in public matters and examination procedures by the court, then the opinion of Komnas HAM must be notified by the judge to the parties.
2. Research/assessment. To carry out the functions of Komnas HAM in the field of research and study, Komnas HAM has the duty and authority:
 - a. Reviewing and researching various international human rights instruments with the aim of providing suggestions regarding the possibility of accession and or ratification;
 - b. Reviewing and researching various laws and regulations to provide recommendations regarding the formation, amendment and repeal of laws and regulations relating to human rights;
 - c. Publishing the results of studies and research;
 - d. Literature studies, field studies and comparative studies in other countries regarding human rights;
 - e. Discussion of various issues related to the protection, enforcement and promotion of human rights;
 - f. Study and research collaboration with other organizations, institutions or parties, both at the national, regional and international levels, in the field of human rights.
3. Mediation. To carry out the function of Komnas HAM in mediation, Komnas HAM has the duty and authority to:
 - a. Make peace between the warring parties;
 - b. Resolving cases through consultation, negotiation, mediation, conciliation and expert judgment;
 - c. Provide advice to the parties to resolve disputes through the courts;
 - d. Submit recommendations on a case of human rights violations to the government for follow-up resolution;
 - e. Submit recommendations on a case of human rights violations to the House of Representatives for follow-up.
4. Counseling To carry out the functions of Komnas HAM in the field of counseling, Komnas HAM has the function and authority
 - a. Dissemination of knowledge about human rights to the Indonesian people;
 - b. Efforts to increase public awareness about human rights through formal and non-formal educational institutions as well as various other groups;
 - c. Cooperation with other organizations, institutions or parties, both at the national, regional and international levels, in the field of human rights.

²⁴ Ni Putu Ega Parwati, "HAK DAN STATUS PEREMPUAN HAMIL LUAR KAWIN DENGAN PRIA BERISTRI DALAM ADAT LARANGAN POLIGAMI PERSPEKTIF HAM," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 2 (2021): 525–36.

²⁵ Yang Meliana, "KAJIAN YURIDIS TENTANG PERLINDUNGAN HAK ASASI MANUSIA DALAM KEHIDUPAN BERNEGARA DI INDONESIA DITINJAU DARI UNDANG-UNDANG NOMOR 39 TAHUN 1999 TENTANG HAK ASASI MANUSIA," *Justici* 13, no. 1 (2021): 67–91.

2. Authority of the National Human Rights Commission (Komnas HAM) According to Law Number 39 of 1999 concerning Human Rights

In its development, the history of the Indonesian nation continues to record various forms of suffering, misery and social inequality caused, among others, by the legacy of traditional conceptions of feudalistic and patriarchal relations between the government with the people, the inconsistency in the description of the system and law enforcement officers with the norms laid down by the founding fathers of the state in the 1945 Constitution. , then the People's Consultative Assembly issued MPR Decree Number XVII/MPR/1998. In addition, the Decree also states that the implementation of counseling, assessment, monitoring, research and mediation on human rights is carried out by a National Human Rights Commission stipulated by law.²⁶

Following up on the mandate of the MPR Decree, on September 23, 1999, Law No. 39/1999 on Human Rights was passed. This law, apart from regulating human rights, also regulates the institution of the National Human Rights Commission. With the improvement of the legal basis for the establishment of Komnas HAM from a Presidential Decree into law, it is hoped that Komnas HAM can carry out its functions more optimally to reveal various forms of human rights violations. With this law, Komnas HAM also has subpoena power in assisting the resolution of human rights violations. This authority was further strengthened by the enactment of Law No. 26 of 2000 concerning the Human Rights Court. In this Law on the Human Rights Court, Komnas HAM is mandated as the only institution that has the authority to investigate serious human rights violations. Komnas HAM, as stated in Article 1 point 7 of Law Number 39 of 1999, is: "An independent institution, whose position is at the same level as other state institutions, whose function is to carry out studies, research, counseling, monitoring, and mediation of human rights."²⁷

Komnas HAM is domiciled in the capital city of the Republic of Indonesia and can establish Komnas HAM Representatives in the regions. To date, Komnas HAM has 2 (two) Komnas HAM Representatives, namely in West Kalimantan and West Sumatra and 2 (two) Komnas HAM Representative Offices in Aceh and Ambon. At this time, Komnas HAM is still in the process of preparing to establish a Komnas HAM Representative in Papua. Komnas HAM is positioned as an independent state institution at the same level as other state institutions, which, in carrying out its functions and authorities, stand on par with other state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. Although vertically has an equal position with other state institutions in carrying out its functions, duties and authorities, this commission must report to the President and the DPR.²⁸

Meanwhile, judging from the other functions it carries out, Komnas HAM has the task and authority to provide opinions based on the approval of the Chairperson of the Court on certain cases that are in the judicial process, if in this case, there is a violation of human rights in public matters and the examination by the court, then the opinion of Komnas HAM must be notified by the judge to the parties. From this function, Komnas HAM performs some of the functions of the court (semi judicial) so that it is under the supervision of the Supreme Court.²⁹

According to Law No. 39 of 1999 concerning Human Rights, human rights violations can be prevented before they occur by exercising the authority of Komnas HAM in counseling,³⁰ which is stated in Law No. 39 of 1999 concerning Human Rights, article 89 paragraph 3 (three) that Komnas HAM has the duty and authority to:

- a. Dissemination of knowledge about human rights to the people of Indonesia.
- b. Efforts to increase public awareness about human rights through formal and non-formal educational institutions as well as various other groups.
- c. Cooperation with other organizations, institutions or parties, both at the national, regional and international levels, in the field of human rights.

Komnas HAM has the authority in terms of carrying out its functions, namely assessment and research, counseling, monitoring, and mediation. To carry out the functions of Komnas HAM in studies and research, Komnas HAM has the duty and authority to carry out, among others:³¹

²⁶ Lukman Hakim and Nalom Kurniawan, "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia," *Jurnal Konstitusi* 18, no. 4 (2022): 869–97.

²⁷ Penguatan Posisi and Peran Komisi Nasional Hak Asasi Manusia, "PENELITIAN," n.d.

²⁸ Muhamad Sadi Is and M H SHI, *Hukum Hak Asasi Manusia (HAM)* (Prenada Media, 2021).

²⁹ Ahmad Sanusi, "Pengembangan Kompetensi Jabatan Fungsional Di Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 3 (2021): 431–46.

³⁰ Dalam Undang-Undang No. 39 tahun 1999 tentang Hak Asasi Manusia

³¹ Posisi and Manusia, "PENELITIAN."

1. The study and research of various international human rights instruments with the aim of providing suggestions regarding the possibility of accession and or ratification.
2. Review and research various laws and regulations to provide recommendations regarding the formation, amendment and repeal of laws and regulations relating to human rights.
3. Publishing the results of studies and research.
4. Literature studies, field studies and comparative studies in other countries regarding human rights.
5. Discussion of various issues related to the protection, enforcement and promotion of human rights.
6. Study and research collaboration with other organizations, institutions or parties, both at the national, regional and international levels, in the field of human rights.

To carry out the functions of Komnas HAM in counseling, Komnas HAM has the duty and authority to carry out, among others:³²

1. Dissemination of knowledge about human rights to the people of Indonesia.
2. Efforts to increase public awareness about human rights through formal and non-formal educational institutions as well as various other groups.
3. Cooperation with other organizations, institutions or parties, both at the national, regional and international levels, in the field of human rights.

To carry out the functions of Komnas HAM in monitoring, Komnas HAM has the duty and authority to carry out, among others:³³

1. Observation of the implementation of human rights and preparation of reports on the results of these observations.
2. Investigation and examination of events that arise in society based on their nature or scope should be suspected of having violated human rights.
3. Summons to the complainant or victim as well as the party being complained about to be asked and heard for their statements.
4. Summoning witnesses to be asked for and hearing their testimonies, and to the complainant, witnesses being asked to submit the necessary evidence.
5. Site inspection and other places deemed necessary.
6. Summons the related parties to provide written information or submit the required documents in accordance with the original with the approval of the Chairperson of the Court.
7. Local inspection of houses, yards, buildings and other places occupied or owned by certain parties with the approval of the Chief Justice.
8. Giving opinions based on the approval of the Head of the Court on certain cases that are in the judicial process, if, in that case, there is a violation of human rights in public matters and examination procedures by the court, then the opinion of Komnas HAM must be notified by the judge to the parties.

Furthermore, in carrying out the functions of Komnas HAM in mediation, Komnas HAM has the duties and authorities, among others:³⁴

1. Make peace between the warring parties.
2. Resolving cases through consultation, negotiation, mediation, conciliation and expert judgment.
3. Provide advice to the parties to resolve disputes through the courts.
4. Submit recommendations on a case of human rights violations to the government for follow-up resolution.
5. Submit recommendations on a case of human rights violations to the House of Representatives for follow-up.

If there are allegations of gross human rights violations in an event, Komnas HAM functions as a pro-justice investigator. The authority as investigators in cases of gross human rights violations is only owned by Komnas HAM, not by the police as in ordinary crimes based on the Criminal Procedure Code (KUHP). In the explanation of Article 18 of the Law on the Human Rights Court, the authority is given to Komnas HAM to maintain the objectivity of the results of the investigation. Therefore, the Law on the Human Rights Court has a position as *lex specialis* of the Criminal Procedure Code. Komnas HAM has compiled a human rights curriculum that can be used by K/L/D/Stakeholders as a learning or counseling method. Through collaboration between Komnas HAM, especially the Education and Extension Sub-Commission with K/L/D/Stakeholders, which is manifested in the implementation

³² Dinie Anggraeni Dewi, "HAK ASASI MANUSIA: PENTINGNYA PELAKSANAAN DAN PENEGAKAN HAK ASASI MANUSIA DI INDONESIA SAAT INI," *Journal Civics & Social Studies* 5, no. 1 (2021): 90–97.

³³ Dewi.

³⁴ Enny Agustina et al., "Lembaga Bantuan Hukum Dalam Perspektif Hak Asasi Manusia," *Solusi* 19, no. 2 (2021): 211–26.

of joint activities that implement the Human Rights curriculum in various activities, both in the form of training of trainers (ToT), human rights training and dissemination of human rights. The target that has been set in 2016 is 10 (ten) K/L/D/Stakeholders implementing the Human Rights curriculum, with the realization of 10 (ten) K/L/D/Stakeholders implementing the Human Rights curriculum in their activities.

Based on these data, it can be explained that the achievement in 2016 was 100%. The ten K/L/D/Stakeholders that implement the human rights curriculum include:

1. The Indonesian National Police, especially the Legal Division: The Human Rights Pocket Book has been published for members of the Indonesian National Police, especially the Sabhara unit, Detainees and Evidence, as well as the Criminal Investigation Unit, which is used as one of the materials in the implementation of human rights training and counseling for members of the Police. Activities that have been carried out with the material of the human rights pocket book include training and counseling on human rights for members of the Police for the Directorate of Investigation of the Regional Police in Indonesia on 27 April 2016, members of the Narcotics Investigation Unit on 21 July 2016, members of the Special Unit for Women and Children Complaints Investigation Unit (PPA Unit) from 30 Polda on 30 August 2016, members of the Special Criminal Investigation unit from 30 Polda on 27 October 2016, and 30 members of the Investigation at the Water Police Directorate which was attended by 30 Polda on 29 November 2016. This pocket book was created as a result of the collaboration between Komnas HAM and the Indonesian National Police by prioritizing respect for human rights in every police task.
2. The Indonesian National Commission for UNESCO (KNIU) and the Ministry of Education and Culture: Teacher's companion book in human rights learning at the SMA/SMK/MA level is implemented as a learning instrument for teachers, especially those who teach Pancasila and Citizenship Education. This companion book has been tested in the training of teachers at the SMA and SMK levels as well as the implementation of the TOT microteaching Trial of Human Rights Learning Methods. This activity is carried out so that teachers and school principals can apply human rights learning methods in each school in accordance with those contained in the Companion Book. Activities that have been carried out for training and trial book companions were carried out on August 8, 2016, involving 10 alumni who were in the Jakarta, Bogor, Tangerang and Bandung areas; on 14-17 September 2016 in Bogor involving 27 principles of the DKI Jakarta area; on 6-7 September 2016 in Serang, and on 7-8 September 2016 in Bandar Lampung involving alumni teachers, principals, and students, then on 1-4 November 2016 involving the Principal/Vice Principal.
3. Ministry of Youth and Sports: Commissioner of the Education and Extension Sub-Commission, as well as Komnas HAM extension workers, provided human rights counseling in Human Rights Extension activities at the 2016 JAMBORE NASIONAL X 2016 on 14 – 19 August 2016. This activity became a routine agenda of the Ministry of Youth and Sports as well as a form of introduction to human rights for youth.

In its development, Komnas HAM has compiled a human rights training manual with the theme City/Regency of HAM and, at the same time, compiled a position paper as an instrument in achieving the objectives of the City/District of Human Rights mainstreaming program for all Cities and Regencies in Indonesia. For this reason, in carrying out the trial of the human rights training manual with the theme City/District of HAM, Komnas HAM, in collaboration with the Government, conducted counseling and TOT for the apparatus and civil society. This activity is in line with the government's efforts to encourage public participation in development in order to realize human rights through a good government work program which is a manifestation of the responsibility of local governments in realizing human rights obligations to respect, protect and fulfill, the human rights of their citizens. For example, the focus of work in the health sector through the revitalization program for health centers and the provision of medical personnel and facilities is an effort to fulfill the right to public health.

So far, a number of powers held by Komnas HAM are felt to be inadequate, so they are felt to be ineffective in efforts to protect and enforce human rights. Therefore, to improve and strengthen the institutional effectiveness of Komnas HAM, apart from strengthening the existing authority, it must also be carried out in the following ways: First, granting the authority to Komnas HAM to be able to carry out investigations into cases of serious human rights violations where it is emphasized that The position of the Attorney General's Office only acts as a prosecutor. Second, in establishing an ad hoc, Human Rights Court for cases of serious human rights violations in the past, the institution authorized to recommend its establishment to the President is Komnas HAM. Here the DPR is no longer used as the institution authorized to propose the establishment of an ad hoc Human Rights Court as before, with the consideration that the DPR as a political institution is not appropriate to be involved in the legal process of

handling cases of human rights violations. In addition, the President determines the period of time that must be met in issuing a Presidential Decree on the establishment of an ad hoc Human Rights Court after receiving a recommendation from Komnas HAM.³⁵

Third, strengthening the authority of Subpoena for Komnas HAM regarding the authority to summon people, where Komnas HAM must be given the authority to carry out a forced summons. Everyone whose presence, information, testimony, statement, or cooperation is required by Komnas HAM, if summoned three times in succession, but does not come, then Komnas HAM has the authority to request assistance from the National Police to present the person concerned by force." Fourth, within the authority to issue recommendations by Komnas HAM, each party receiving the recommendation is obligated to implement it. In the event that the party receiving the recommendation is not willing to implement all or part of the recommendation, then the party receiving the recommendation is obliged to explain in writing to Komnas HAM about his unwillingness to do so within a maximum period of seven days. If Komnas HAM cannot accept the reason from the recipient of the recommendation, Komnas HAM can apply for a court order.³⁶

Theoretically, the President's authority to establish Komnas HAM through a Presidential Decree is full authority as the administrator of the government. Jellinek said that The administration of government formally contains elements of regulating and deciding and materially containing elements of governing and organizing. In this dimension, the functions played by Komnas, such as the function of holding a human rights awareness movement through research, counseling and training broadly, cannot be separated from the element of participating in organizing the government so that the position of Komnas is also under the executive body. Meanwhile, in the function of mediation and investigation, Komnas HAM carries out a semi-judicial function, so Komnas HAM indirectly has a relationship with judicial institutions. This semi-judicial function is the authority of the subpoena, where Komnas has the investigative authority. However, this authority actually has international standards.³⁷

In this case, the author also highlights Komnas HAM which is given the authority to conduct an investigation into an event that is suspected of having occurred in a gross violation of human rights, as regulated in Law no. 26 of 2000 concerning the Human Rights Court. Other special powers granted to Komnas HAM are stated in Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, namely carrying out Supervision of all forms of efforts to eliminate racial and ethnic discrimination carried out by Komnas HAM.³⁸

Based on the performance achievements of Komnas HAM in 2016, the Performance Achievements of Strategic Target I are described as follows: Indicator Number of cases of serious human rights violations that have been resolved Achievement of indicators, with a target of 3 (three) incidents of serious human rights violations being resolved, has so far reached 3 (three) cases were resolved, namely, the Jambo Keupok incident in South Aceh, the KKA intersection incident in North Aceh, and the incident in Papua (Wasior and Wamena). The Jambo Keupok and Simpang KKA incidents have been transferred to the Attorney General's Office for investigation. For the Events in Papua based on the instructions of the Attorney General, the case files for the Events in Papua were separated into the files for the Wasior Incident and the Wamena Incident. Komnas HAM has complied with these instructions with the issuance of a decree on the formation of the Wasior investigation team and the Wamena investigation team. The report on the fulfillment of these instructions has been submitted to the Attorney General.³⁹

In the implementation of the judge's decision by force, it is done because the losing party is not willing to carry out the judge's decision voluntarily. Barriers to the implementation of forced executions can be in the form of juridical and non-juridical obstacles. Non-juridical obstacles are the object of execution unclear or vague, the object of execution changes hands to a third party, the issuance of a new certificate for the object of execution, the losing party is not willing to carry out the judge's decision to mobilize the masses, use objects to prevent the executing officer. Barriers to judicial execution are the existence of judicial review efforts, resistance by third parties (*derden verzet*), and the judge's decision is not punitive (*condemnatoir*) but is a statement (*declaratoir*) and creates or eliminates legal relations (*constitutief*). In practice, it is found that the winning party only wins on paper or wins empty because the object of execution no longer exists or the executed party can no longer show the object of execution. The implementation of the judge's decision is carried out by the Registrar or bailiff based on a letter of determination from the Head of the District Court, who decides the case. The clerk or bailiff, in carrying out the execution, shall make a report on the execution

³⁵ Ryan M Welch, Jacqueline H R DeMeritt, and Courtenay R Conrad, "Conceptualizing and Measuring Institutional Variation in National Human Rights Institutions (NHRIs)," *Journal of Conflict Resolution* 65, no. 5 (2021): 1010–33.

³⁶ Kevin Yi Tan, David Cohen, and Aviva Nabahan, *Human Rights and ASEAN: Indonesian and International Perspectives* (World Scientific, 2021).

³⁷ Elsa Aulia Fadhilah, Dinie Anggraeni Dewi, and Yayang Fuji Furnamasari, "Hak Asasi Manusia Dalam Ideologi Pancasila," *Jurnal Pendidikan Tambusai* 5, no. 3 (2021): 7811–18.

³⁸ Muhammad Nurkhoiron, "HAK ASASI MANUSIA, REZIM KEAMANAN, DAN POPULISME DI ERA JOKO WIDODO," *MIMIKRI* 7, no. 2 (2021): 23–50.

³⁹ Nurkhoiron.

of the execution, which is witnessed by two witnesses. The Court may request the assistance of security forces (Police or TNI) to maintain security in the execution.⁴⁰

4. Conclusion

The role of Komnas HAM's authority in handling human rights violations and protection. The National Human Rights Commission (Komnas HAM) is an independent state institution in Indonesia whose position is at the same level as other state institutions with the function of carrying out studies, research, counseling, monitoring, investigation, and mediation of human rights. Through Law Number 39 of 1999 concerning Human Rights, it can be seen that the position of Komnas HAM is as an independent institution that helps the government develop conditions conducive to the implementation of human rights in Indonesia. President and DPR. The authority possessed by Komnas HAM as a state institution that has the right and is mandated by the president to handle cases of human rights violations is not optimal in handling human rights cases in Indonesia because although it has been given special authority, namely the investigation in accordance with Law no. 21 of 2000 concerning the Human Rights Court, but that has not been able to strengthen the authority of Komnas HAM in the field of investigation.

Law enforcement for the settlement of human rights violations can be done by implementing three law enforcement policy strategies to provide legal certainty in the future, namely:

1. The DPR, as a representation of the people's power, can carry out checks and balances through its supervisory function (controlling) to the President by proposing the re-establishment of an Ad-hoc Human Rights Court to resolve human rights violations and demand criminal responsibility for every intellectual actor such as the Semanggi I and II events, the May 1998 riots, the 1999 Enforced Disappearances and the 1989 Talangari incident;
2. Transferring the authority of investigation and prosecution from the Attorney General to Komnas HAM by revising Law No. 26 of 2000 concerning the Human Rights Court so that the authority of Komnas HAM begins at the stage of investigation, investigation and prosecution. The transfer of authority aims to accelerate the completion of cases of past gross human rights violations.
3. Establish a Truth and Reconciliation Commission (TRC) as a non-judicial settlement effort to conduct investigations and uncover facts about gross human rights violations that are presented in the final report and contain recommendations that must be carried out by the President.

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⁴⁰ Kiki Astuti Wulandary Sutin, "Kewenangan Jaksa Agung Dalam Mengesampingkan Perkara Demi Kepentingan Umum," *Kalabbirang Law Journal* 3, no. 1 (2021): 20–33.

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