
| RESEARCH ARTICLE

Polemic on Human Rights Case is Still Rolling in Indonesia

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| ABSTRACT

The purpose of this research is to find out cases of violations related to human rights in Papua and to find out the state's responsibility for violations of human rights in Paniai Regency, Papua Province. The formulation of the problem in this study is why the issue of human rights violations in Paniai District, Papua Province, has occurred again and what is the role of the state in protecting human rights in Indonesia and what is the international view of the state's role in protecting human rights in Indonesia. The purpose of this study is to determine the role of the state in protecting human rights in Indonesia and to find out the legal view of the state's role in protecting human rights in Indonesia. The research method used in this study is a normative research method with primary data sources derived from library research. This research was conducted using a statutory approach in order to further study the legal basis by examining laws and regulations related to human rights violations that occurred in Paniai district, Papua. The findings in this study are that the role of the state in protecting human rights in Indonesia has been considered in such a way as can be seen from the many laws and regulations regarding human rights, whose aim is to protect the rights of the humans themselves. However, the issue of resolving human rights cases must be carried out as fairly and transparently as possible in their settlement, considering the obligation of the state to carry out its role as a protector of human rights for all of its people must be maximized, and every right must be fulfilled. However, in practice, discrimination against human rights is still widely encountered due to injustice from the authorities.

| KEYWORDS

HAM, Paniai, Accountability and justice

| ARTICLE INFORMATION

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1. Introduction

Paniai is a district located in the mountains, so it has a tendency for low air temperature and relatively high air humidity. In Paniai Regency, the maximum air temperature was 24.6 degrees Celsius, and the average humidity was 82.3%. In Paniai during the Dutch era, the Paniai area was called Wissel Meeren, according to the names of 3 (three) lakes located around the center of Enagotali city. This lake was discovered by a Dutch pilot, Wissel, in 1938. Lake in Dutch = meer; plural = meeren. Because Wissel discovered the lakes, they later became known as Wisselmeeren. Since then, the people of Paniai began to interact with the outside world. In the past, Wissel Meeren, now Paniai Regency, was one of the 29 (twenty-nine) Regencies/Cities in Papua Province, located in the Central Mountains Region of the Plains of the Island/Land of Papua. Paniai Regency has enormous Natural Resource Potential, especially Mining Resources in the form of Gold, Copper and other Potential, which, if explored/exploited, will make a very large contribution to the welfare of the people in this area.

Issues and news related to human rights are always busy because human rights are rights inherent in a person that no one can interfere with. The problems that continue to surface regarding injustice that interferes with a person's human rights are increasing day by day. In fact, the laws governing human rights are very detailed. The provisions of the constitutional guarantee of human rights are very important and are even considered to be one of the main characteristics of the principle of the rule of law in a

country. However, in addition to human rights, it must also be understood that everyone has obligations and responsibilities that are also fundamental in nature. According to Article 1 of Law (UU), Number 39 of 1999 concerning Human Rights (HAM) are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected. by the state, law, government, and everyone for the sake of honor and protection of human dignity

Human rights have categories that are universal, interdependent and interrelated. The international community must apply human rights fairly, based on equality and emphasis (Perwita 2005, 151-152). Even though the government has ratified many human rights instruments, the instruments related to human rights have not been implemented properly by law enforcers entrusted by the government. Meanwhile, political rights and legal standing for men and women in the view of a nation cannot be separated from the perspective of human rights (HAM) of that nation. Human rights in the view of the Indonesian nation as part of the international community, are basically the same as human rights in the view of the nations of the world as contained in The Universal Declaration Of Human Rights (UDHR), namely the Universal Declaration of Human Rights, issued by United Nations on December 10, 1948.

Every person, during his life since before birth, has rights and obligations that are essential as human beings. The formation of a state and government, for whatever reason, must not eliminate the principle of rights and obligations that are carried by every human being. Therefore, the guarantee of rights and obligations is not determined by the position of a person as a citizen of a country. Every person, wherever he is located, must be guaranteed his basic rights. At the same time, every person, wherever he is, is also obliged to uphold the human rights of others as they should. The balance of awareness of the existence of basic rights and obligations is an important characteristic of the basic view of the Indonesian people regarding humans and humanity that is just and civilized. The Declaration of Human Rights in Indonesia has existed since ancient times but has only been pledged on the basic guidelines of the state, namely those within.

Law has a broader objective, which is to uphold legal authority, and government authority over legal norms that are violated regardless of the perpetrator's economic and social status, to protect the interests of the state, society and individuals and to prevent widespread crime. The government's efforts to resolve cases of gross human rights violations through reconciliation efforts are mainly aimed at cases of gross human rights violations that occurred before the enactment of the Law on Human Rights Courts. This has been stated during the discussion on a juridical basis, especially regarding the law.

In the discussion, it was stated that currently, the Government is trying to form a Joint Truth Whistleblowing and Reconciliation Committee to resolve six of the seven cases of past gross human rights violations that have been investigated by Komnas HAM, namely: the mysterious shootings of 1982-1985, the Talangsari incident in Lampung in 1989, enforced disappearances of people in 1997-1998, the May 1998 riots, the Trisakti incident, the Semanggi I and II incidents and the Paniai Tragedy occurred on 7-8 December 2014. As many as four residents were shot dead and 21 others injured when residents protested against the beating of security forces TNI against a youth group the day before. These cases will be resolved through non-judicial channels, namely reconciliation. This was done because of difficulties in finding evidence, witnesses and suspects because these cases of gross violations of human rights took a long time to happen because the enforcement of human rights and law in Papua did not work as expected by the people of Papua, where there was a bottleneck in enforcement law for civil society. Many pro-democracy activists were killed before being tried in court, while the Indonesian security forces who were the perpetrators went unpunished or with impunity. As a result, human rights are perceived as a threat to national policies and regulations.

For the Papuan people in an international context, access to Papuan people is restricted when the government limits contact of the Papuan people with the outside world, such as by granting a ban on member visits to senators, congressmen, diplomats, foreign journalists and outside humanitarian workers country.

The author will examine the reasons for the internationalization of the issue of Papuan human rights violations that have occurred because the author sees that human rights violations suffered by the people in Papua have increased somewhat. Compared to previous years, the author will write about human rights violations, both small and large scale

1.1 Formulation of the problem

Based on the background above, the writer asks a question study:

- a. Why did the issue of human rights violations occur in Paniai Regency?
- b. What is the state's responsibility for resolving human rights cases?

1.2 Research purposes

The aims of this research are:

To find out and analyze the factors causing the internationalization of the issue of Papuan human rights violations.

1.3 Benefits of research

It is hoped that this research will have benefits, including:

1. Contribute to the development of the study of Law in the future
2. Provide information and become material for study by legal researchers, as well as observers of international human rights issues
3. Provide information to academics and practitioners who make policies in interstate relations in terms of overcoming conflicts in an area

2. Research Methodology

The method used in this study uses the Normative Research method, in which the research steps include:

2.1 Types of research

This type of research is normative juridical, namely studying laws and regulations (in this case, also reviewing international conventions) and Library Studies Techniques (materials obtained from libraries, literature and journals). Soekanto and Mamudji refer to this type of research as library research because normative legal research is carried out by examining library materials or secondary data. This research is to analyze and examine in depth the legal protection of civilians who are victims of non-international armed conflicts (internal armed conflicts) in Papua, in this case examining the compatibility of Indonesian law with international humanitarian law in practice in the land of Papua (law in 9 Soekanto in Susanti and Efendi, 2019, Legal Research, Sinar Graphic Publisher, Jakarta, pp. 19-12 books and law in action) so that this method can find results that can be accounted for its objectivity regarding the Analysis of Protection of Civilians (Papua).

2.2 Data collection technique

The data collection that the author uses in this study is by using *library research*, which collects data from the literature related to the issues to be discussed, and then analyzes them. This literature is in the form of books, documents, journals, magazines, newspapers, and internet sites or reports related to the problems the author will examine. In addition, the author has conducted *field research* on the place that is the object of this study, namely the Paniai Regency.

2.3 Data Type

In this writing, the authors use primary data types, namely data sources that directly provide data to the authors (interviews, report data, photo documentation and other activity data). And secondary data are sources that do not directly provide data to authors, for example, through documents (books, articles, internet media and other electronic media) (Hadir 1998, 137). The data analysis technique used by the author in analyzing the research data is a qualitative analysis technique.

As for analyzing the problem, it is described based on existing facts, then connecting these facts with other facts so as to produce an appropriate argument.

3. Sources of Legal Materials

Primary Legal Materials Primary legal materials are binding legal materials which consist of:

- 1) Convention Respecting the Laws and Customs of War on Land (IV Den Haag Convention 1907).
- 2) Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention 1949).
- 3) ICTY Tadic 1995, Prosecutor v. November 27, 1950
- 4) Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission
- 5) Presidential Decree Number 96 of 2001 concerning Amendments to Presidential Decree Number 53 of 2001 concerning the Establishment of an Ad Hoc Human Rights Court at the Jakarta District Court
- 6) Decree of the People's Consultative Assembly Number XVII/MPR/1998 concerning Human Rights.
- 7) Convention against Torture and Other Degrading, Inhuman or Cruel Treatment or Punishment (1965).
- 8) Regulation of the National Commission on Human Rights Number 002/Komnas HAM/IX/2011 concerning Procedures for Carrying out Projudicial Investigations of Serious Human Rights Violations.

- 9) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
- 10) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. 11. Constitution of the Republic of Indonesia 1945
- 11) Law No. 39 of 1999 concerning Human Rights.
- 12) Law Number 8 of 1981 concerning the Criminal Procedure Code

3.1 Secondary Legal Materials

Secondary legal materials are legal materials that explain primary legal materials, such as research results, works from legal circles such as legal journals in electronic or print media, and scientific books, including theses, theses and dissertations.

3.2 Tertiary Legal Materials

Tertiary legal materials are legal materials that support primary and secondary legal materials by providing guidance, understanding and explanation of other legal materials.

3.3 Legal Material Collection Techniques

The legal materials collection technique is a way to obtain and collect the necessary data. In this study, the techniques used are:

- 1) Library Studies. Library Studies examine written information regarding the legal protection of civilians in internal armed conflicts and human rights from various sources and direct publications such as legal books and scientific journals.
- 2) Document Study. Document study is to examine written information regarding the title to be researched and not published in general, such as theses, theses, dissertations and international journals.

4. Analysis of Legal Materials

Data in the form of primary data and secondary data will be studied using qualitative methods in the form of logical and systematic descriptions, then analyzed to obtain clarity on problem-solving, and then drawn conclusions deductively, namely from general matters to specific matters.

5. Discussion

5.1 Definition and History of Human Rights

Human Rights (HAM) are related to the basic concept of humans and rights. In general, when we hear the word human, we automatically think of a living being who has taste, reason, instinct, emotion, and so on. Human rights emerge from the human belief that all human beings, as creatures created by God, are the same and equal. Humans are born free and have the same dignity and rights. It is for this reason that humans must be treated equally and in a civilized manner. According to Briand Orend, humans who are allowed to have human rights must be humans who are still alive. Humans who have died or who have not yet existed should not be included in the category of people who have human rights. 17 Orend further elaborates that the criterion for a person to be categorized as a human being who has human rights is someone who has emotional responsiveness. Assessments such as feelings, emotions, sympathy, and empathy are elements that respond to the reality faced. This factor is what makes a person human.

Human rights, in addition to relating to the human concept, are also related to the concept of rights. Rights, as believed by Jack Donnelly, can be seen from two points of view. First, right means rectitude which emphasizes the normative aspect, namely something that is right or wrong. Second, rights can also mean entitlement; that is, someone has the right to something. If the first aspect relates to the standard of conduct which emphasizes the obligation of the right holder to meet certain predetermined standards, the second aspect focuses on the rights that a person has to enjoy something that is his right. Human rights are basic rights that empower human beings to shape their lives in accordance with freedom, equality and respect for human dignity.

The rights that emphasize that humans are free to choose their actions, which are basically a manifestation of human dignity, form the nucleus that underlies the formation of a number of other rights, such as the right to freedom (freedom of speech, conscience, religion, assembly and association). , rights to equality (equality before the law and obtaining legal protection, protection against discrimination based on gender, race, color, religion, ethnicity or other social backgrounds), political rights (right to vote, equality in accessing public services or public interest, freedom to form political parties, right to petition, etc.), economic rights (right to private property, right to freedom of movement, etc.), collective rights (right to self-determination, protection of minorities and groups indigenous peoples (indigenous peoples), the right to development and so on, procedural rights (especially for the implementation of criminal law code). All of these rights provide legal rights to all human beings to live in accordance with the principles of freedom, equality and human dignity.

Article 1 of Law Number 39 of 1999 concerning Human Rights states that:

"Human Rights (HAM) are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity and worth.

Based on the sound of the law, it is emphasized that there is an obligation for every individual to respect the human rights of others.

5.2 Human Rights Instruments

In the United Nations, the commitment to fulfill, protect human rights and respect basic human freedoms is universally affirmed repeatedly, including in Article 1 Paragraph 3: "To promote international cooperation in solving international problems in the economic, social, cultural and humanitarian fields, and promote and promote respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Fulfillment and respect for human rights and freedoms are also mentioned in the 1948 Universal Declaration of Human Rights through Article 2:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other position.

This commitment was then followed up by the United Nations through the establishment of legal instruments that regulate human rights as follows:

- a. The International Covenant on Civil and Political Rights (ICCPR) The International Covenant on Civil and Political Rights was ratified by the United Nations on December 16, 1966, and entered into force on March 23, 1976. and the articles covering 6 Chapters and 53 Articles and this Covenant are binding for the countries that ratify this Covenant (agreement). The following are Civil and Political rights regulated in this Covenant, namely as follows:
 - Right to life (Article 6).
 - The right to be free from torture or cruel, inhuman or degrading treatment (Article 7).
 - Right to be free from slavery, slave trade and forced labor (Article 8).
 - Personal freedom and security (Article 9).
 - The right to freedom of movement, including leaving or entering the country (Article 12).
 - The right to be treated equally before the court (Article 14).
 - The right to be recognized as an individual before the law (Article 16).
 - The right not to interfere with personal, family, home or papers (Article 17).
 - Right to freedom of thought, belief and religion (Article 18).
 - Right to freedom of expression (Article 19).
 - Right to peaceful assembly (Article 21).
 - Right to organize (Article 22).
- b. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment The Convention against Torture and Other Cruel and Degrading Treatment or Punishment (Convention Against Torture) came into force in January 1987. Indonesia ratified this Convention through Law No. . 5 of 1998. This Convention further regulates what is contained in the Covenant on Civil and Political Rights. This convention obliges the state to take legislative, administrative, legal or other effective measures to: prevent acts of torture, expulsion, return (refouler), or extradition of a person to another country if there are sufficient grounds to suspect that the person will be in a state of danger (because of being subjected to torture).
 - guarantee that everyone who states that they have been tortured in an area of jurisdiction has the right to complain and ensure that their cases are promptly examined by the competent authorities impartially.
 - guarantee that complainants and their witnesses are protected from any ill-treatment or intimidation as a result of their complaint or testimony.
 - ensure that victims receive compensation and (the right to receive) fair and proper compensation. The implementation of this Convention is supervised by the Committee against Torture (CAT), which was formed based on the rules contained therein.

5.3 State Responsibility for Victims of Human Rights Violations

Definition of State Responsibility. The definition of state responsibility when referring to the Dictionary of Law, namely:

"Obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law."

Based on this formulation, state responsibility can be interpreted as an obligation to make repairs (reparations) that arise when a country makes a mistake in complying with legal obligations under international law. Whereas in the Black's Law Dictionary, there is only a narrow sense of responsibility, namely answerability or accountability. Sugeng Istanto provides an understanding of state responsibility by using the term state accountability. According to him, state responsibility is the state's obligation to provide an answer which is a calculation of something that happened and the obligation to provide recovery for losses that may be incurred. As it befits the national legal system, international law also recognizes responsibility as a result of the non-fulfillment of obligations under international law. There are two meanings of state responsibility.

Intensive human rights violations began to be felt in 2000 until they culminated in the tragedy, kidnapping and murder of a Papuan figure named Theys Hiyo Eluay by KOPASUS on November 10, 2001. The people in Papua and human rights fighters have never forgotten the incident of the murder and the figure of the Papuan leader Theys Hiyo Eluay. Then this incident was publicized so that it became a serious debate among human rights defenders in Indonesia and the people in Papua. Then a group of human rights fighters emerged from students and civilians who fought for the fate of the people in Papua (Giay 2003, 24).

Furthermore, there were several incidents of human rights cases in Papua which became the writer's attention for research between 2012 and 2015. The first series of events was on May 29, 2012, when the victim Djetmar Pieper who was a German citizen, was shot. Previously, on May 25 2012, the United Nations human rights commission held its 13th meeting with the agenda of evaluating the human rights policies of the Government of the Republic of Indonesia. Several countries, including Germany, spoke out about the situation of human rights violations in Papua (Haluk, Dead or Alive 2013, 198).

The second case was on June 14 2012, when the Densus 88 Anti-terror shooting was carried out against Mako Tabuni. Four projectiles were found on the victim's body. The victim was shot at the Perumnas III Waena taxi round, Heram district, Jayapura (Markus 2013, 200).

The third case was on December 16, 2012, when Huber Mabel was shot by the Jayawijaya Police. Huber was shot in the village of Abusak, Kurulu district (SKPKC Franciscan 2012, 153). The fourth case was on May 1 2013, when Abner Magalawak was shot by the police. At that time, Abner was commemorating the 50th anniversary of the transfer of the administration of Papua to Indonesia. In addition, four people were rushed to the hospital with injuries. The authorities then banned human rights lawyers from meeting the victims (International Coalition for Papua 2015). The fifth case occurred on 11 May 2013, at 9:00 WIT; six members of Infantry Battalion 756 Wimane Sili were involved in an altercation with Arton Kogoya. The victim, who was drunk, shouted at them in front of an internet cafe on Jl. Yos Sudarso (International Coalition for Papua 2015).

After getting into an argument, Arton then returned home with a friend who later became an eyewitness. The six soldiers followed Arton and his friend and then shot Arton Kogoya six times (International Coalition for Papua 2015). The sixth case occurred on January 26 2014, during a sweeping operation in Puncak Jaya Regency. Thousands of people then fled to Wamena, Nabire and Jayapura. A GIDI church (the Bible Church in Indonesia) was burned down, and the police tortured three people, namely Oktavianus Tabuni, Tigabur Tabuni and Caban Tabuni (International Coalition for Papua 2015).

The seventh case was on April 2 2014, when Alfares Kapisa and Yali Wenda were arrested during a demonstration on the Cendrawasih University (UNCEN) campus. They demand the unconditional release of political prisoners in Papua. The two were detained at the Jayapura Regional Police for more than 1x24 hours and received torture and unpleasant treatment from the police (International Coalition for Papua 2015).

The eighth case occurred on 26 August 2014, when Martinus Yohame was killed and found in a gunny sack on Nana Island, Sorong Regency. The police are suspected of being the mastermind behind the murder case of Martinus Yohame (International Coalition for Papua 2015).

The ninth case was on 8 December 2014, when four indigenous Papuans were shot dead by the military and police, and seventeen other people were injured. This incident occurred in the Enarotali district, Paniai regency. The shooting occurred following a peaceful demonstration in the form of a traditional dance (International Coalition for Papua 2015). There have been cases of shootings, arrests, the closing of democratic spaces and other restrictions. Successively, the condition of Papua has always worsened for the people in Papua, and the role of the government has been minimal in the incidents of human rights violations that have occurred in Papua.

The State of Indonesia, as a sovereign country, takes security measures against one of the provinces of East Indonesia, which is mandatory in order to maintain the integrity of the country. The reason for security in Papua is to quell rebellion or resistance by the Papuan people, who are considered treason. The government had designated Papua as a military operation area (DOM) from 1978 to October 5, 1998. Even though the government revoked the status of DOM in 1998, the facts speak; differently; it is evident that crimes against humanity are still occurring in Papua, which the people of Papua have experienced directly (Haluk, Menjuang Freeport 2014).

Then for the people in Papua, resistance is an effort to put the problem in the right place. Successively every resistance movement has always been suppressed with weapons, "but" this suppression has spread everywhere to civil life or society in Papua. As a result, the struggle for human rights in Papua has begun to be seriously discussed. It was even highlighted by international organizations, which saw every incident that occurred in written or oral form. Communities in Papua have also begun to form movement organizations that can advocate for the grievances of the people in Papua.

5.4 Human Rights Violations That Occurred In Paniai District

The Origins of the Case of Human Rights Violations in Paniai, Papua Cases of human rights violations in Papua are not new cases; this case began on December 7 2014. The initial events of this case came from a group of youths who reprimanded members of the Indonesian National Armed Forces (TNI) who brought a car and did not turn on the lights. However, this rebuke ultimately resulted in an argument that led to the persecution of three teenage boys by the military. Then, on 8 December 2014, in Enarotali District, Paniai Regency, a group of Ipakiye people came to the Enarotali Police and Koramil to protest and ask for an explanation for the incident that occurred on 7 December 2014.

In this action, the community held a demonstration by presenting traditional dances at the Polres and Koramil yards. The dance was performed as a form of expression of an attitude towards torture and harassment by officers the previous day. The apparatus also dispersed the action carried out by the community by shooting. This shooting occurred after a peaceful action carried out by the community. The shooting incident of indigenous Papuans by police and military forces left 4 people dead due to stab wounds and hot bullets. There were 21 people who were also injured as a result of the persecution. One of the youngest victims was an 8-year-old boy who received a gunshot wound to the hand.

After the incident that occurred in Paniai on January 7 2015, Komnas HAM formed a Fact Investigation Team (TPF). The task of the TPF is to provide recommendations to the government. Then, in the same year, from 18 to 20 February, Manager Nasution, as head of the TPF, met with witnesses and victims. The results of the meeting were then conveyed to the media that there were indications of violations of the four elements of human rights. These elements are the right to be free from persecution, women's rights, the right to life, and the rights of children. Komnas HAM also conducted investigations and collected evidence for approximately five years, from 2015 to 2020. Based on the results of an investigation conducted by the Ad hoc Team investigating gross human rights violations, a plenary decision was issued. It was decided unanimously that the human rights violations committed were gross human rights violations. M. Choirul Anam, the head of the ad hoc team, said that the Paniai incident met the elements of a crime against humanity because there were acts of murder and persecution.

Komnas HAM also said that the perpetrators allegedly responsible for this case of gross human rights violations were the XVII/Cenderawasih Regional Military Command and the field command in Enarotali, Paniai. In addition, evidence was also found that the police committed violations, but these were not included in the framework of gross human rights violations. This decision was obtained from the results of examining 26 witnesses, examining the crime scene (TKP), examining a number of documents, discussions with experts, and various other sources of information witnesses, conducting examinations at the scene of the case, examining documents that support the resolution of this case, and also held discussions with several experts. Important witnesses from the investigation included the Coordinating Minister for Political, Legal and Security Affairs, several POLRI officers, and security officers in Papua and Paniai. However, the TNI, as the source of information about the case, did not heed the summons from Komnas HAM to provide information.

Not only that, but Komnas HAM has also collected evidence for forensic testing of firearms, both regarding procedures for using weapons and procedures for forensic testing. Because it has been determined as a case of gross human rights violations, the party that is then authorized to resolve this case is the Attorney General's Office. This is in accordance with the results obtained by Komnas HAM in the investigation stage. At this stage, Komnas HAM forms a team that aims to collect initial evidence that will be used as material for Komnas HAM to be submitted by the Attorney General's investigative team to conduct an investigation. After several times Komnas HAM submitted investigation results, on 3 December 2021, the Attorney General's Office issued an investigation warrant¹⁸. Based on the letter, a team of investigators was formed to investigate cases of alleged gross human rights violations in Pania, Papua. The team consists of 22 senior prosecutors; their job is to find and collect further evidence from the Paniai case. This was done because the evidence previously collected by Komnas HAM was not sufficient to substantiate the

allegations of gross human rights violations committed so that the perpetrators could be found immediately. With cases of gross human rights violations that have not been resolved in Indonesia, the principle stated in Article 1 paragraph (3) that Indonesia as the rule of law cannot be foreseen as a whole for the people¹⁹. The protection of human rights that has been coherently regulated in laws and regulations still feels too far away to be said to be running well. The justice promised by the state is only a rule on paper whose practice has not run optimally.

Factors Hampering the Settlement of Serious Human Rights Cases in Paniai Based on the explanation above, there are several factors that impede the resolution of serious human rights cases in Paniai, including Poor communication between Komnas HAM and the Attorney General's Office is a matter of concern because these causing inconsistencies in handling cases of gross human rights violations that occurred in Paniai. Therefore the need for communication between the two institutions, as stated in Law no. 26 of 2000 concerning the Human Rights Court.

By being acquitted in a human rights case in Paniai Regency on December 9, 2022, the single defendant for the Paniai Human Rights (HAM) violations that occurred in Papua, namely Major Inf (Purn) Isak Sattu, after the panel of judges handed down an acquittal, of course, made human rights problems in Papua even worse turbulent for the victim's family. For information, the trial of the Paniai Papua human rights case was conducted by an ad hoc panel of judges at the Makassar District Court, South Sulawesi. After reading the verdict, the retired TNI officer who was the liaison officer when the Paniai Tragedy occurred in 2014 said that prosecutors should no longer prosecute those who don't deserve to be prosecuted. The protection of civilians who are victims of armed conflict is very crucial, and there needs to be decisive action from the government accompanied by legal instruments that are used clearly and openly and not arbitrarily by the conflicting parties. For example, the case of armed conflict that occurred in Paniai Regency in the land of Papua. The endless conflict has only escalated the conflict and resulted in the loss of many lives among civilians who must be protected by law.

For most Indigenous Papuans, special autonomy is considered a failure in various ways, so the rejection of volume II has taken place everywhere through demonstrations, seminars and public discussions. Freedom of expression is not as smooth as hoped. Many members of the public and students were appointed and detained. All demonstration activities and discussions were restricted and prevented. Not to mention that Jakarta unilaterally changed the Special Autonomy Law without the active involvement of indigenous Papuans. Article 77 of Law Number 39 of 1999 concerning Human Rights, which states that "The government is obligated and responsible to respect, protect, uphold, and promote human rights regulated in this law, other laws and regulations, and international law regarding human rights accepted by the Republic of Indonesia. All of this illustrates that what is written in the law needs to be put into concrete practice by the government as the executor of the rules and is responsible.

6. Conclusions and Recommendations

6.1 Conclusion

1. Internal Armed Conflict The provisions governing internal armed conflict are article 3 of the 1949 Geneva Convention, Additional Protocol II 1977 and the ICTY Decision regarding the landmark case of Dusko Tadic. Particularly in the national law of Internal Armed Conflict regulated in Article 10 of Law no. 3 of 2002 concerning National Defense and Article 7 of Law no. 34 of 2004 concerning the Indonesian National Armed Forces (TNI), although it is not explained explicitly in the law.
2. Protection of Civilians (Papua) in Internal Armed Conflict provisions that apply in protecting Civilian (Papua) During Armed Conflict is the enactment of the 1945 Constitution, Law No. 39/1999 on Human Rights and the provisions of international agreements on human rights that apply in terms of protecting civilians or civilians whose human rights are not protected and respected by the parties to the dispute in the Land of Papua specifically non-derogable rights. Protection of civilians (Papua) in the conflict that occurred in Papua uses national legal instruments and law & human rights as the legal umbrella for civilians affected by the conflict. The armed conflict in Papua is included in the category of internal disturbances and tension.
3. The case of human rights violations in Paniai has been determined by Komnas HAM as one of the grave human rights violations for approximately five years. Komnas HAM conducted an investigation process, and after repeatedly submitting evidence to the Attorney General's Office, finally, on December 3, 2021, the Attorney General's Office issued an investigation warrant. Until now, the process of resolving gross human rights violations in Paniai, Papua, is still ongoing. There are several factors that influence cases of settlement of human rights violations in Paniai Regency, Papua, namely the lack of communication between Komnas HAM and the Attorney General's Office; the competent institution does not carry out its duties and functions optimally. Not only that, there is still a lack of initial evidence from Komnas HAM to submit a case to the Attorney General's Office, there is a special interest in protecting the name of the agency, and the government's promises have yet to come to light.
4. In the decision of the Ad Hoc Human Rights Court at the Makassar District Court, which acquitted the single accused in the Paniai gross human rights violation case, Major Inf Purn Isak Sattu is considered to have not provided justice for victims and survivors and their families. Civil society organizations who are members of the 2014 Paniai Monitoring Coaisi consider that

the acquittal shows poor law enforcement performance in the settlement of gross human rights violations, and the acquittal in cases of human rights violations in Paniai District adds to the black record list of human rights cases which are always ambiguous in the resolution process.

6.2 Suggestion

The president, as the highest office holder in the state, is obliged to provide welfare to all his people in accordance with the mandate written in the 1945 Constitution so that people's trust in the government can be reawakened. In addition, the importance of clarity regarding the resolution of severe human rights in Paniai, Papua by law enforcement officials is the goal of creating a peaceful state for all Indonesian people, bearing in mind that Indigenous Papuans as human beings also have the same human rights as human rights possessed by other existing people in Java, Sumatra, Kalimantan or Sulawesi as fellow citizens of the Republic of Indonesia. In this way, Indigenous Papuans also have the right to life, the right to be free and the right to personal safety, which must be protected, respected and fulfilled by the state's human rights in accordance with applicable laws and regulations.

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References

- [1] Adnan B N and Patra A M (2006) Basic International Human Rights Instruments, Indonesian Torch Foundation, Indonesian Legal Aid Foundation, Ake Arif Working Group, Jakarta.
- [2] Araf, A (2005) The Dilemma in Reorganizing the State Defense and Security Systems, in the Dynamics of Security Sector Reform, Jakarta: impartial.
- [3] Arlina P (n.d) What does Non-International Armed Conflict mean? | Arlina web's blog (wordpress.com)
- [4] Amnesty Indonesia (n.d) Papua: 5 Human Rights Problems that Must [Be Solved](#)
- [5] Binsar G (2010) Human Rights Violations in Emergency Law in Indonesia, PT Gramedia Pustaka Utama, Jakarta.
- [6] Bryan A. G (2009) Black Law Dictionary, ninth edition, (St. Paul: West). Dieter Fleck, 1995, The Handbook of Humanitarian Law in Armed Conflict Effendi, Mansyur, 1994, International Humanitarian Law and Principles of HANKAMRATA Doctrine, Surabaya: National Enterprises.
- [7] Cranston M (1973) Upholding human rights, suing discrimination. *Journal of Law and Development* 39 (2009): 69. What Are Human Rights? (New York: Basics Books, 1973. What Are Human Rights? New York: Basics Books
- [8] Faqih, M (2003) War as a Violation of Human Rights, Malang: Publishing Institute of the Faculty of Law, Islamic University of Malang.
- [9] International Committee of the Red Cross, Treaties and Customary Law, <http://www.icrc.org/eng/war-and-law/treaties-customary-law/overviewtreaties-and-customary-law.htm>
- [10] Koentjaraningrat. (2005) Community Research Methods. Jakarta: Gramedia,
- [11] Kurniawan K, Nunung P (2005) Human Rights (HAM) in Indonesia Towards Democratic Governances. *Journal of Social Sciences Political Science* 8: 295-296. Sustainability, Goddess.
- [12] Lubis, M (2007) Human Rights in Indonesia are reviewed from various aspects of life. *Journal of Law and Development* 3
- [13] Laws and Regulations: the 1945 Constitution; Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights (State Gazette of 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886);18
- [14] Law No. 26 of 2000 concerning the Human Rights Court (State Gazette of the Republic of Indonesia of 2000 Number 208, Supplement to the State Gazette of the Republic of Indonesia Number 4026);
- [15] Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 63
- [16] Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua (State Gazette of the Republic of Indonesia of 2001 No. 135 and Supplement to State Gazette No. 4151), which was amended by Perpu No. 1 of 2008 (State Gazette of 2008 No. 57 and Additional State Gazette No. 4843). UU no. 21 of 2001, which consists of 79 articles, regulates the authorities of the Papua Province in carrying out Special Autonomy;
- [17] Nasional (n.d). <https://www.cnnindonesia.com/nasional/20221209065915-12-884998/terdakwa-kases-paniai-menangis-divonis-gratis-hakim-diberkati-tuhan>.
- [18] Rahayu, (2009) Transportation of People, etd.eprints.ums.ac.id. Government Regulation of the Republic of Indonesia, Number 2 of 2002 Concerning Procedures for the Protection of Victims and Witnesses in Serious Violations of Human Rights Republic of Indonesia Law, Number 23
- [19] RI Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights and (Law No. 24 of 2000 concerning International Agreements, State Gazette of the Republic of Indonesia of 2000 Number 185, Supplement to the State Gazette of the Republic of Indonesia Number 4012);
- [20] US Dept. of State Foreign Relations, 1961–63, Vol XXIII, Southeast [Asia http://wpik.org/Src/950306_FRUS_XXIII_1961-63.html#Indonesia](http://wpik.org/Src/950306_FRUS_XXIII_1961-63.html#Indonesia)