

LEGAL PROTECTION FOR VICTIMS OF EXTRAJUDICIAL KILLINGS AS GROSS HUMAN RIGHTS VIOLATIONS IN INDONESIA

Nurul Ikhwani and Lena Farsia

Faculty of law, Syiah Kuala University, Indonesia

Jl. Putroe Phang No. 1, Kopelma Darussalam, Kec. Syiah Kuala, Kota Banda Aceh, 23111

E-mail: nurul011100@gmail.com

ABSTRACT

This article examines the concept of extrajudicial killings and the legal protection available for victims of such heinous acts as gross human rights violations in Indonesia. The study adopts a normative approach, utilizing a comprehensive review of library, secondary, and tertiary legal materials to gather relevant data. The findings reveal that extrajudicial killings manifest in various forms, including genocide, crimes against humanity, enforced disappearance, torture, political assassination, and the excessive use of force, all of which meet the criteria for murder as defined by Law No. 26 of 2000. However, the existing legal protection for victims of extrajudicial killings falls short in fully guaranteeing their rights. The practical implementation of compensation, restitution, and rehabilitation measures encounters significant obstacles. Despite some efforts to address this issue, eradicating extrajudicial killings in Indonesia remains an ongoing challenge. The government must undertake further actions to effectively combat this grave violation of human rights.

Keywords: *Extrajudicial Killings; Human Rights; The Rights of Victims, Indonesia.*

INTRODUCTION

Extrajudicial killings are defined as arbitrary killings committed by state officers in the absence of a legal court decision.¹ Extrajudicial killings ‘vigilante’ are committed by government officials without using the legal system. Extrajudicial killing is defined in Black's Dictionary as an act outside the function of the court. However, the meaning of extrajudicial killing has not been determined with certainty in international instruments.²

There is no legal definition of extrajudicial killing in international law; however, when the death of a person occurs by authorities without a legal procedure or due process of law, it can be considered extrajudicial. In Indonesia's Criminal Code well known as 'Kitab Undang-Undang

¹ Zainal Muhtar, “Eksistensi Densus 88: Analisis Evaluasi dan Solusi terkait Wacana Pembubaran Densus 88”, 3:2 *Jurnal Supremasi Hukum*, 2014, p. 126.

² William J. Aceves, “When Death Becomes Murder: A Primer on Extrajudicial Killing”, *California Western School*, 2018, p. 119.

Hukum Pidana (KUHP)' the provision remains that such offenses as homicide refer to murder³, ordinary murder⁴, and manslaughter.⁵

Extrajudicial killing is categorized as a gross human rights violation in Article 104 paragraph 1 of Law No. 39 of 1999. There are many cases of extrajudicial killing in Indonesia which constitute gross human rights violations, but it is very difficult to prove so. In this provision, it does not explain further the forms of extrajudicial killing as serious violations of human rights. Furthermore, the victims of extrajudicial killings whose rights have been violated do not receive the justice they deserve, and the state keeps ignoring their rights. Most cases go uninvestigated and go unpunished. Victims' families have no recourse to justice and many of them do not know what happened to their loved ones.

Extrajudicial killings which are classified as grave violations of human rights are essentially resolved in human rights court. Extrajudicial killings that are not classified as gross human rights violations in Indonesia can be prosecuted in public courts under Law No. 26 of 2000. Human rights violations prosecuted in human rights courts are widespread and systematic attacks. Systematic and widespread are actions that have large-scale consequences that are carried out in an organized and planned manner.⁶

The shooting of six members of the Islamic Defenders Front (FPI) in 2020 carried out by the police was a case of extrajudicial killing which was not a serious human rights violation. The police officers were charged with Article 338 of the KUHP for ordinary murder *juento* Article 55 paragraphs 1 to 1 of the KUHP.⁷ Extrajudicial killing of gross human rights violation can be seen in Papua, the Paniai Tragedy (2014) as a crime against humanity which was charged with Article 42 Paragraph 1 Letter a and Letter b Jis Article 7 Letter b, Article 9 Letter a, Article 37 of Law Number 26 of 2000 on the Human Rights Court and Article 42 Paragraph 1 Letter a and Letter b Jis Article 7 Letter b, Article 9 Letter h, Article 40 of Law Number 26 of 2000 on Human Rights Court.⁸

³ Article 340 Criminal Code (KUHP).

⁴ Article 338 Criminal Code (KUHP).

⁵ Article 359 Criminal Code (KUHP).

⁶ Ni Ketut Sri Utari, *Buku Ajar Hukum HAM*, Fakultas Hukum Universitas Udayana, Denpasar, 2016, p.110.

⁷ "Alasan Polisi Pembunuh Laskar Pelangi FPI Dituntut 6 Tahun Bui: Sedang Tugas", CNN Indonesia, 21 September 2022, <<https://www.cnnindonesia.com/nasional/20220921123050-12-850698/terdakwa-kasus-paniai-dijerat-pasal-berlapis-ancaman-20-tahun-penjara>>[accessed 25/11/2022].

⁸ "Terdakwa Kasus Paniai Dijerat Pasal Berlapis, Ancaman 20 Tahun Penjara", CNN Indonesia, 21 September 2022, <<https://www.cnnindonesia.com/nasional/20220921123050-12-850698/terdakwa-kasus-paniai-dijerat-pasal-berlapis-ancaman-20-tahun-penjara>>[Accessed 25/11/2022].

However, the two cases have similarities and differences. The similarities between the two cases lie in the excessive use of force by the police officers which ended in death. In this case, excessive use of force cannot be justified in carrying out tasks if it is not absolutely necessary. Meanwhile, the difference lies in the courts that prosecute the accused and the application of different articles of different laws, even though it is still within the scope of murder.

According to Amnesty International, the police and military dominate extrajudicial killings in Indonesia. The police and military are responsible for hundreds of extrajudicial executions, enforced disappearances, and other unlawful acts.⁹

The Indonesian Legal Aid Foundation (LBHI) networks throughout Indonesia recorded 44 extrajudicial killing cases with 46 victims. In 2019, there were 21 cases with 77 victims, and there were even more victims in 2018, there were 182 victims in 151 cases. At least 241 cases of extrajudicial killing were found during the 2018-2020 period with 305 victims.¹⁰

Based on data, extrajudicial killings are a serious problem that must be addressed. The a need for legal protection to protect victims of extrajudicial killings from arbitrary actions by state actors.

Extrajudicial killings are a breach of national and international human rights regulations, particularly the right to life, a fundamental human right recognized by international law and the Indonesian constitution. Indonesia has accepted many international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).

Indonesia as a country highly respected for human rights must respect, protect, and fulfill the human rights of its people. The poor law enforcement in handling extrajudicial killing issues has killed victims' rights. Legal protection is needed for victims of extrajudicial killings in Indonesia that accommodate human rights. Seeing that Indonesia has not been serious in resolving extrajudicial killing cases that have claimed many lives, especially extrajudicial killing cases which are classified as grave human rights violations, this means that the government needs to make efforts to follow up on this issue.

Looking into the problem above, in the Law No. 39 of 1999 extrajudicial killing is a serious human rights violation, but the forms of these actions are not explained further, making it difficult to enforce the law of these actions. Besides, Legal protection for victims and their families is

⁹ “Apa itu Kekerasan Polisi”, Amnesty, 21 Juli 2021, <<https://www.amnesty.id/apa-itu-kekerasan-polisi/>> [Accessed 25/11/2022].

¹⁰ Muhammad Yasin, “*Extra Judicial Killing* Berulang karena Penegakan Hukum Tak Berjalan”, 24 Februari 2021, <<https://www.hukumonline.com/berita/a/iextra-judicial-killing-i-berulang-karena-penegakan-hukum-tak-berjalan-lt6035c67718f16/>> [Accessed 25/11/2022].

necessary to guarantee and fulfill victims' rights in obtaining reparations from the state, and guarantee non-repetitions. Therefore, this research will focus more on exploring in depth what

are the forms of extrajudicial killings as gross human rights violations, legal protection for victims of extrajudicial killings as gross human rights violations, and Indonesia's efforts to eradicate extrajudicial killings?

RESEARCH METHOD

This research adopts a normative approach, utilizing primary legal data, secondary data, and tertiary data for analysis. The objective is to investigate the various forms of extrajudicial killings as gross human rights violations, the legal protection available for victims of such killings, and the efforts made by Indonesia to combat extrajudicial killings. The study will be conducted in accordance with relevant international and national regulations. The research methodology employed is descriptive qualitative analysis, which involves a systematic explanation, comprehensive data gathering from various online sources, and synthesis of library findings to form a cohesive and comprehensive study.

FINDING AND ANALYSIS

1) Extrajudicial Killings as Gross Human Rights Violations

a. Extrajudicial Killings as a Crimes Against Humanity

Murder is defined as a crime against humanity in the Charter of the International Military Tribunal at Nuremberg and in all international instruments if it is part of a widespread or systematic attack on civilians.¹¹ Rome Statute does not clearly state the term extrajudicial killings. However, under international law extrajudicial killing is a crime against humanity if it is committed as part of a widespread and systematic attack targeting the civilian population.¹² Referring to the Rome Statute, the above provisions are contained in Article 9 of Law No. 26 of 2000, the provisions of which are set out in Article 7 paragraph (2) of the Rome Statute.¹³

¹¹ International Criminal Justice: Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction, Practitioners Guide No. 9, p. 102.

¹² Resolution No. 63/182, "Extrajudicial, summary or arbitrary executions", 18 December 2008. See also, Resolution No. 65/208 of 21 December 2010.

¹³ Substantially, Human Rights Court Law No. 26 of 2000 is a partial adaptation of the substance of the Rome Statute. Within the jurisdiction of the International Criminal Court, the Rome Statute covers four extraordinary crimes genocide, crimes

b. Extrajudicial Killings as Genocide

Minnesota Protocol on the Investigation of Potentially Unlawful Death categorizes extrajudicial killing as an act of genocide. Extrajudicial killings include genocide if the act fulfills these elements in the Rome Statute, that is acts committed with the intent to destroy in whole or in part of the population, national, ethnic, racial, and religious group, causing mental and physical harm or forcibly transferring children to another group.¹⁴ Refers to the Rome Statute, these provisions are contained in Article 8 Law No. 26 of 2000 whose provisions are set in Article 6 of the Rome Statute.¹⁵

c. Extrajudicial Killing as an Enforced Disappearance

The practice of enforced disappearance constitutes secret executions without trial, followed by concealment of the bodies to remove material related to evidence of the crimes that occurred. Enforced disappearance constitutes a grave threat to the right to life in Article 1 of the ICPPED,¹⁶ Article 3 of UDHR,¹⁷ Article 6 of ICCPR,¹⁸ and Article 4 of Law No. 39 of 1999.¹⁹ The Criminal Code does not specifically regulate the punishment of enforced disappearances. This action includes human rights violations in Law No. 26 of 2000 which criminalizes acts of enforced disappearance of persons as a form of gross human rights violations, that is crimes against humanity.²⁰

d. Extrajudicial Killings as a Torture

Torture violates the right to be free from torture and inhuman treatment in Article 5 of the UDHR,²¹ Article 7 of the ICCPR,²² and Article 33 of Law No. 39 of 1999.²³ Article 1 CAT, The main element of torture is an act that causes pain or severe suffering, with specific intentions and

against humanity, war crimes, and crimes of aggression. Meanwhile, the jurisdiction of the human rights court covers genocide and crimes against humanity.

¹⁴ Resolution No. 63/182, "Extrajudicial, summary or arbitrary executions, 18 December 2008. See also, Resolution No. 65/208 of 21 December 2010, *Op. Cit.*

¹⁵ *Ibid.*

¹⁶ No one shall be subjected to enforced disappearance.

¹⁷ Everyone has the right to life, liberty, and security of person.

¹⁸ Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

¹⁹ The right to life, the right not to be tortured, the right to personal freedom, thought, and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted based on retroactive laws are rights human rights that cannot be reduced under any circumstances and by anyone.

²⁰ See Article 9 of the Act No. 26 of 2000 concerning Human Rights Court.

²¹ No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.

²² No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

²³ Everyone has the right to be free from torture, punishment, or treatment that is cruel, inhumane, and degrading to their human status and dignity.

goals with the involvement of public officials.²⁴ Torture can be classified as extrajudicial killing if torture ends in death by public officials as explained in Article 1 CAT.

In the Criminal Code torture causing death is considered as murder which refers to Articles 338 and 340 which constitute ordinary murder and murder.²⁵ However, if torture does not lead to death it is included as ill-treatment contained in Articles 351-356 from light maltreatment to serious maltreatment.²⁶ Torture is a violation of human rights in Law No. 26 of 2000 which criminalizes torture as a form of gross human rights violation, that is a crime against humanity.²⁷

e. Extrajudicial Killings as a Targeted Killing or Political Assassination

Targeted killing is the premeditated, freely performed, intentional killing of a uniquely identified person.²⁸ Targeted killing as a political assassination targeting community leaders and political leaders is a human rights violation in applicable international and national law.

The Criminal Code does not specifically regulate political killings, but the targeted killing of political leaders, human rights defenders, and community leaders who are carried out in a premeditated, free manner with deliberate intent against individuals who are identified as fulfilling the elements of murder in Article 340 of the Criminal Code,²⁹ and the Law No. 26 of 2000 fulfills the element of crimes against humanity.³⁰

f. Extrajudicial Killing as an Excessive Use of Force by Law Enforcement Officials

The international community condemns the use of excessive force as a fundamental violation of the right to life. There are several principles that law enforcement officers must adhere to when using force, such as legality, necessity, distinction, proportionality, and accountability.³¹

²⁴ For this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

²⁵ See Articles 338 and 339 of the Indonesian Criminal Code.

²⁶ See Article 351-356 of the Indonesian Criminal Code.

²⁷ See Article 9 of the Act No. 26 of 2000 concerning Human Rights Court.

²⁸ Nicholas Rostow, 2014, "Targeted Killing of Terrorist", <https://ndupress.ndu.edu/JFQ/Joint-Force-Quarterly-74/Article/577535/targeted-killing-of-terrorist/> [Accessed 25/03/2023].

²⁹ The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years.

³⁰ See Article 9 of the Law No. 26 of 2000 concerning Human Rights Court.

³¹ These rules have been assembled by the Law on Police Use of Force Worldwide Project. They are derived from international human rights law, the 1979 Code of Conduct for Law Enforcement Officials, and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

In Indonesia, excessive use of force by law enforcement officials is not a specific criminal offense according to the Criminal Code, but it is included in the provisions of the criminal law regarding murder,³² torture,³³ and force that applies to everyone. Besides that, internal procedures related to the use of force are regulated in Perkap No. 1 of 2009 concerning the Use of Force in Police Action, and Perkap No. 8 of 2009 concerning the Application of Human Rights Principles and Standards in the Implementation of Police Duties of the Republic of Indonesia.

From the explanation above, it can be understood that extrajudicial killings are acts that violate the fundamental right to life in international and national regulations. Forms of extrajudicial killings as gross human rights violations are contained in the provisions of the Human Rights Court Law no. 26 of 2000 with certain criteria, but this is also a criminal offense in the Criminal Code.

The Paniai Tragedy in Papua was an act of extrajudicial killings carried out by the police and military. The President of Indonesia, Joko Widodo in his speech declared the Paniai Tragedy as a gross violation of human rights that must be tried and held accountable for the perpetrators of the crime.³⁴ The incident began when the military and police security opened fire on hundreds of protesters who had gathered at the police and military headquarters in Enarotail. The protest was held in response to the alleged beating of Papuan youths by military personnel the day before. This incident resulted in five people being killed and others being injured after they were allegedly tortured.³⁵

The Paniai tragedy constitutes extrajudicial killing with the following categories:

- 1). Acts that result in death, in this case, some civilians died while others were injured;
- 2). The act occurred without a valid legal procedure, and vigilante groups were on the rise;
- 3). The perpetrators were state actors, in this incident the perpetrators were the police and the military; and
- 4). Actions that lead to death are not committed in self-defense or carrying out statutory orders.

Excessive use of force which ends in violence and killing has violated the right to life and the right to be free from all forms of torture and other inhumane treatment regulated in the ICCPR,³⁶

³² See Articles 338 and 339 of the Indonesian Criminal Code concerning ordinary murder and murder.

³³ See Article 351-356 of the Indonesian Criminal Code concerning maltreatment.

³⁴ Dalam kampanyenya, Presiden Widodo menjanjikan pelanggaran berat HAM masa lalu akan diselesaikan dengan proses hukum dan akan "mengakhiri segala impunitas" di negeri, termasuk dengan merevisi Undang-Undang Peradilan Militer yang digunakan untuk melindungi aparat keamanan dari tuntutan hukum. Joko Widodo-Jusuf Kalla, Visi, Misi, dan Program Aksi, Mei 2014, hal. 27, tersedia di http://userfiles.hukumonline.com/redaksi/VISI_MISI_Jokowi-JK.pdf

³⁵ "Bagaimana Kronologis tiga kasus pelanggaran HAM berat di Papua?", BBC News, 21 Februari 2017, <<https://www.bbc.com/indonesia/indonesia-39031020>> [Accessed 25/03/2023].

³⁶ International Covenant on Civil and Political Rights in the Article 6 right to life and Article 7 right to be free from torture or Cruel, inhuman, or degrading treatment or punishment.

UDHR,³⁷ Law No. 39 of 1999 was stated explicitly as a violation of human rights.³⁸ Besides, excessive use of force in Papua shows a similar and repeated pattern of attacks by the armed forces in the form of violence against demonstrators who are civilians who are not actively involved in hostilities with the government or are not members of the armed forces, and civilians who carry firearms. The shooter knew that those who were shot were civilians who were demanding justice for the beating of Papuan youths the day before. Therefore, the Paniai Tragedy has fulfilled the elements of gross human rights violations, that is crimes against humanity in Article 9 the Law No. 26 of 2000, that is the presence of an element of murder committed as part of a widespread or systematic attack directed against any civilian populations.

2) Legal Protection for Victims of Extrajudicial Killings as Gross Human Rights Violation in Indonesia

According to Muchsin, legal protection is protecting legal subjects through applicable laws and regulations. Legal protection can be divided into two types, that is preventive and repressive.³⁹ To prevent future conflicts, preventive legal protection is required through the use of existing laws and regulations, and their enforcement is enforced through sanctions. So that the government is careful in making decisions or discretion in preventing arbitrary actions. Meanwhile, repressive legal protection aims to resolve disputes with the concept of recognizing and protecting rights which aims to limit and place obligations and has something to do with the form of recognition and protection of human rights.⁴⁰

Repressive legal protection can be seen in Indonesia acting as a legal state that upholds human rights by creating rules that protect the human rights of its people. It can be proven that Indonesia's actions in international and national regulation provide legal protection for victims of extrajudicial killing of human rights violations.⁴¹

In international law, Indonesia has ratified an international convention ICCPR became Law No. 12 of 2005, Article 2 paragraph 3 of the ICCPR obliges state parties to ensure that every person whose rights have been violated obtains an effective remedy, even if the perpetrator is a person in an

³⁷ Universal Declaration of Human Rights in Article 3 right to life and Article 15 freedom from torture or cruel, inhuman, or degrading treatment or punishment.

³⁸ The Law No. 39 of 1999 on Human Rights in Article 9 right to life and Article 33 freedom from torture or cruel, inhuman, or degrading treatment or punishment.

³⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1984, hal 20.

⁴⁰ Philipus M. Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Di Indonesia. Sebuah Studi Tentang Prinsip-Prinsipnya. Penanganan oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya. PT Bina Ilmu. Hal, 4.

⁴¹ *Ibid.*

official capacity. The state must ensure that remedies are obtained through judicial, administrative, and legislative authorities authorized according to national law. The state is obliged to investigate allegations of human rights violations effectively through independent and impartial bodies. Indonesia as a state party of ICCPR must ensure that all victims of extrajudicial killings have received remedies that can be enforced through competent judicial institutions or other bodies by Indonesian national law relating to victims' rights. Indonesia is also not allowed to defend its agent if it has committed an act of extrajudicial killing, even if this action is in the context of carrying out its state policy.

In national law, the rights of victims are contained in Human Rights Court Law No. 26 of 2000. This provision regulates aspects of the victim in the judicial process. Victims of human rights violations have the right to receive physical and mental protection, against harassment, terror, and violence from any party.⁴² This provision gives victims of serious human rights violations the right to obtain compensation, restitution, and rehabilitation.⁴³

Article 35 states that compensation is in the form of compensation provided by the state because the perpetrator cannot provide full compensation for the losses that should be his responsibility. Meanwhile, restitution can be in the form of compensation given to the victim or his family by the perpetrator or a third party. Restitution can be in the form of returning property, paying compensation for loss or suffering, or reimbursing costs for certain actions. In addition, rehabilitation or recovery to its original position can be in the form of honor, good name, position, or other rights. The compensation, restitution, and rehabilitation must be carried out appropriately, quickly, and properly.⁴⁴ The further provision regulates Compensation, Restitution, and Rehabilitation for Victims of Serious Human Rights Violations PP No. 3 of 2002.⁴⁵ Namun, pertauran ini juga tidak mengatur lebih lanjut regarding how the process for applying for those is carried out.⁴⁶

The legal basis for the protection of victims was further strengthened by the enactment of Law No. 13 of 2006. In this law, the rights of the victim are not specifically distinguished from the rights of the witness. This law respects the victim's right to adequate justice because protection has been provided from the beginning of the investigation process. The scope of victims' rights apart from

⁴² See Article 34 paragraph (1) Chapter V Protection of Victim and Witness the Act No. 26 of 2000 concerning the Human Rights Court.

⁴³ Article 35 paragraph (1) the Act No. 26 of 2000 states that "Every victim of gross human rights violations and/or their heirs can receive compensation, restitution and rehabilitation".

⁴⁴ Soedjono Dirdjosisworo, Pengadilan HAM Indonesia, PT. Aditya Bakti, Bandung, 2002, hlm.88.

⁴⁵ See Article 35 paragraph (3) stated that "Provisions regarding procedures for protecting victims and witnesses are further regulated with Government Regulations".

⁴⁶ See Article 2 paragraph (2) of PP No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation of Victims of Serious Human Rights Violations.

compensation, also includes personal protection, legal assistance, case settlement information, living expenses allowance, community medical and psychological services, testimony outside of court, and the absence of prosecution for testimony or reports.⁴⁷ The procedures are further governed by PP No. 44 of 2008,⁴⁸ this provision regulates in detail the procedures for requesting compensation and restitution from victims to LPSK. LPSK filed a claim for compensation with the Attorney General, noting that LPSK believes that compensation should be considered carried out with the main case of serious human rights violations.⁴⁹

In its implementation, the provision of protection to victims did not run as expected, especially in the provision of compensation, restitution, and rehabilitation, the implementation of which was not carried out as fully as possible by the state. The following are cases of serious human rights violations that can be used as a reference in the practice of fulfilling victims' rights in the form of this issue.

In the case of the Paniai Tragedy Human Rights Court tried who was suspected of being responsible for the bloody Paniai tragedy which occurred in 2014. The defendant was declared acquitted because he was not legally proven and was convinced of committing human rights violations as in the two charges against him. Lack of evidence that implicates the defendant in committing crimes against humanity in the form of murder and torture, as well as the failure to prove command responsibility for serious human rights violations against him.⁵⁰

The Paniai Court decided that the perpetrator was found not guilty, but there were allegations of serious human rights violations in the form of crimes against humanity which resulted in five people being killed and others being injured as a result of torture.⁵¹ The loss of life and torture of civilians do not make problems related to victims' rights being violated appear on the surface. In the court's decision, neither in its considerations nor in its ruling did it discuss or include compensation, restitution, and rehabilitation.

There is no discussion or decision regarding compensation, restitution, and rehabilitation for victims and their families, most likely due to the absence of applications related to this matter being submitted to the court. Even though based on the provisions of Article 35 Law No. 26 of 2000, it is

⁴⁷ See Articles 5 and 6 the Act No. 13 of 2006 concerning the Protection Witness and Victim.

⁴⁸ See PP No. 3 of 2002 concerning Providing Compensation, Restitution, and Assistance to Witnesses and Victims.

⁴⁹ Representation of victims by LPSK in submitting requests for compensation and restitution is determined by LPSK's decision accompanied by its considerations.

⁵⁰ "Terdakwa kasus Paniai Berdarah divonis bebas, Komnas HAM desak Jaksa Agung ajukan kasasi", BBC News, 9 Desember 2022, <<https://www.bbc.com/indonesia/articles/cjq7zx022y2o/>> [Accessed 30/03/2023].

⁵¹ Faja Nugraha, "Govt Claims Seriously Resolve 13 Severe Human Rights Cases", *medcom.id*, 21 September 2022, <https://www.medcom.id/english/national/dN6aXwRK-govt-claims-seriously-resolve-13-severe-human-rights-cases/> [Accessed 25/03/2023].

explicitly stated that victims of serious human rights violations have the right to compensation, restitution, and rehabilitation. However, apart from the absence of a request from the public prosecutor or the victim, the non-recognition of the victim's rights in this court is contrary to the principles of human rights law that apply both nationally and internationally.

Compared with the Abepura tragedy in 2000 which was tried in the same court in 2004, where the defendant was also declared free. The victim in this case filed a class action.⁵² However, the victim's demands were not granted because the existing legal regulations do not regulate procedures for claiming compensation in cases of serious human rights violations.⁵³

From the two cases above, the practice of the fulfillment of the rights of victims of serious human rights violations is not fully implemented. There are no applications regarding compensation, restitution, and rehabilitation by victims and their families in court. Besides, rigid and flawed procedures make it difficult for victims and their families to obtain compensation that should be provided by the state as a form of reparation and effective remedy.

To uphold human rights, a series of regulations and policies were created to strengthen this matter. Indonesia has established an ad hoc human rights court and a Truth Reconciliation Commission (TRC) in an effort to protect human rights. Through this mechanism, it is hoped that the rights to justice, truth, and recovery, including the rights to compensation, restitution, and rehabilitation will be fulfilled.⁵⁴ However, this was not completely successful in fulfilling victims' rights. Therefore, a special team was formed under the leadership of President Jokowi, team to resolve the cases of past gross human rights violations through a non-judicial mechanism, well-known as the 'PPHAM Team' through a mandate contained in Presidential Decree No. 17 of 2022.⁵⁵

Efforts to resolve past human rights violations through non-judicial mechanisms emphasize restoring victims' rights through material assistance. Victims and their families also receive physical rehabilitation, social assistance, health insurance, scholarships, etc., and guaranteed non-repetitions. Non-judicial processes can provide fast and efficient solutions to fulfill victims' rights.

⁵² During the trial process, the victim group also filed a lawsuit for Merging Compensation Cases which was filed through a class action mechanism by victims of gross human rights violations in the Abepura incident. This lawsuit represents members of the community who suffered losses as a result of serious human rights violations. The victims in this lawsuit are demanding restitution, compensation, and rehabilitation. See, Laporan Pemantauan Kelompok Kerja Pemantau Pengadilan HAMELSAM-KONTRAS-PBHI 24 Agustus 2006 "Pengadilan Yang Melupakan Korban".

⁵³ The panel of judges' rejection was accompanied by advice to the victim to file a complaint Compensation, restitution, and rehabilitation are submitted directly to the panel of judges through the public prosecutor when the victim is examined as a witness in court. Next, the prosecutor will file at the time of prosecution.

⁵⁴ "Memastikan Pemenuhan Hak atas Reparasi Korban Pelanggaran HAM Yang Berat", ICJR, 9 Juli 2016, <<https://icjr.or.id/memastikan-pemenuhan-hak-atas-reparasi-korban-pelanggaran-ham-yang-berat/>> [Accessed 1 April 2023].

⁵⁵ See Article 9 of Presidential Decree No. 17 of 2022 concerning the Establishment of a Team for the Non-Judicial Resolution of Past Serious Violations of Human Rights.

Therefore, the existence of the PPHAM Team is a concrete step in fulfilling the rights of victims of past serious human rights violations including extrajudicial killings which fall into the realm of serious human rights violations such as the Abepura and Paniai Tragedies.

Victims of extrajudicial killings do not receive full protection from the state, compensation, restitution, and rehabilitation are not fully obtained. On the other hand, the victim's family has the right to obtain information about what happened to the victim and demand justice by asking the state to punish the perpetrator. For recovery to be effective, the state needs to uphold justice by eliminating the consequences of crimes that befell victims and ensuring that these evil acts do not happen again.

3) Indonesia's Efforts to Eradicate Extrajudicial Killings

a. Respect for Human Rights by Law Enforcement Officials Under Human Rights Law

To minimize extrajudicial killings, law enforcement officers must understand and respect human rights. Article 8 Perkap No. 8 of 2009, states that the police must understand the human rights instruments apply in national and international regulations.⁵⁶

The importance of awareness for the Polri to respect human rights in carrying out their duty as law enforcement officers. Efforts are needed to strengthen the accountability of law enforcement officials through human rights-based training and awareness-raising programs. The existence of a human rights training course for the Polri can be used as a lesson so that in the future there will be more respect for human rights and reduced human rights violations in carrying out their duties.

The need for human rights security guarantees in the use of force in law enforcement as stipulated in the UN Code of Ethics for Law Enforcement Officers (1979) and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers (1990). The two instruments can be used as the main guideline in the use and power of firearms for law enforcement officers in any condition, including for police on duty and not on duty in Indonesia. In national regulation, adopted on the Use of Force in Police Action Perkap No. 1 of 2009, this provision that the use of force in police actions is regulated based on the principles contained in these two UN provisions in the forms of legality, necessity, proportionality, reasonableness, prioritizing general obligations, and preventive way.

b. Upholding Laws that Violate Human Rights through Accountability Mechanisms

⁵⁶ See Article 8 Perkap No. 8 of 2009 on the Implementation of Human Rights Principles and Standards in the Implementation of Police Duties.

The a need for a mechanism for an effective investigation into allegations of extrajudicial killing, as well as prosecuting law enforcement officials who commit violations by applying relevant procedures by applicable law.

In police, an effective internal disciplinary hearing mechanism is needed to handle complaints of human rights violations. Violations that constitute criminal acts must be processed based on criminal law even if the violation causes an official to receive disciplinary sanctions such as dismissal.

In the military relevant regulations are needed for military personnel who commit human rights violations, such as extrajudicial killings. It is necessary to enact a law that allows civil courts to have jurisdiction to prosecute soldiers who violate the Criminal Code. The justice mechanism for the military can be resolved by revising the Military Justice Law, which tends to be used to protect members of the military from alleged human rights violations. In this case, the scope of military justice must be limited to violations of military discipline, excluding violations of human rights or other crimes under international law.

c. Establishment of the National Human Rights Commission (Komnas HAM) and Human Rights Court

National Human Rights Commission well-known 'Komnas HAM' was formed on June 7, 1993, through Presidential Decree No. 50 of 1993. The existence of Komnas HAM is further regulated by Law No. 39 of 1999. The establishment of Komnas HAM was supported by the establishment of a human rights court through Law No. 26 of 2000. The law states that it is the law that underlies the existence of a human rights court in Indonesia that has the authority to prosecute perpetrators of gross human rights violations. In carrying out its duties, Komnas HAM has limitations, this institution is not authorized to carry out further investigations into findings of human rights violations, where the Attorney General has the authority to further investigators for cases of human rights violations. Komnas HAM's authority is limited to conducting research, monitoring, and investigating allegations of human rights violations

Komnas HAM should be given the authority to carry out a full investigation into extrajudicial killings whose perpetrators are dominated by state officials. Independent complaint mechanisms are needed to ensure that investigations are deemed necessary to continue at the prosecution stage and that the relevant institutions do not cover up the perpetrators of crimes. The limitations of Komnas

HAM are proof that an independent complaint mechanism is absolutely necessary to ensure the end of impunity for perpetrators of human rights violators.

In practice, the human rights court mechanism has jurisdictional limitations. The gross violations of human rights that are recognized in human rights courts are genocide and crimes against humanity. Even though in Law No. 39 of 1999 states that extrajudicial killing is a serious human rights violation.⁵⁷ However, extrajudicial killing is a separate crime in international law. Therefore, district courts including human rights courts with jurisdiction to prosecute gross human rights violations should have jurisdiction to prosecute extrajudicial killings.⁵⁸

d. Establishment of Human Rights Instruments

In Indonesia regulations related to human rights violations have been formed, either in the form of victims' rights or punishments for perpetrators of crimes. Indonesia's efforts to minimize human rights violations can be seen from the implementation of Article 2 Paragraph 3 of the ICCPR by establishing laws and regulations related to human rights violations. Those are Law No. 39 of 1999 on Human Rights as the legal basis for the existence of the National Commission on Human Rights, the Law No. 26 of 2000 concerning Human Rights Court as the legal basis for special courts to prosecute gross human rights violations.

In fulfilling the rights of victims in the international scope, Indonesia has ratified the ICCPR to become Law No. 12 of 2005. In national regulations regulated in Law No. 13 of 2006 on the Protection of Witness and Victim, Law No. 26 of 2000 concerning Human Rights Court, and Presidential Decree No. 17 of 2022 on the Establishment of a Team to Resolve Past Gross Non-Judicial Human Rights Violations. Indonesia has taken concrete steps to eradicate extrajudicial killing by implementing these regulations effectively, quickly, and immediately.

Efforts made by Indonesia to eradicate extrajudicial killings have not been fully successful. Even though Indonesia has formed Komnas HAM to investigate gross human rights violations, there are jurisdictional limits where Komnas HAM cannot fully carry out its duties. Besides, special jurisdiction is needed to prosecute crimes related to extrajudicial killing in public courts and human rights courts in Indonesia.

⁵⁷ See Article 104 paragraph (1) on Human Rights Law No. 39 of 1999 what is meant by "serious human rights violations" is mass murder (genocide), arbitrary or extraneous killing court decisions (arbitrary/extra-judicial killing), torture, disappearance of people by force, enslavement, or systematic discrimination (systematic discrimination).

⁵⁸ Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission, The Law Number 39 of 1999 contains the existence and authority of the National Commission on Human Rights, and The Law Number 26 of 2000 concerning the Human Rights Court Komnas HAM as the institution authorized to investigate gross human rights violations.

Indonesia is obliged to eradicate extrajudicial killings by upholding human rights by collaborating with the authorities to carry out independent, thorough, and effective investigations into allegations of extrajudicial killings. The necessary to establish a judiciary that is competent, independent, impartial, and accommodates a public complaints mechanism for violations of human rights.

Indonesia in efforts to eradicate extrajudicial killings requires cooperation from the government, related institutions, and society. Progress has been made, but much work is still needed to eradicate extrajudicial killings and ensure that perpetrators are held accountable for their actions. The government and civil society must work together to promote and uphold human rights.

CONCLUSION

The United Nations General Assembly has condemned extrajudicial, arbitrary, and summary executions as serious violations of the right to life under the International Covenant on Civil and Political Rights (ICCPR). While the Criminal Code in Indonesia does not specifically address extrajudicial killings, it can be referred to as ordinary murder under Articles 338 and 340. Extrajudicial killings constitute a gross violation of human rights and can be considered as crimes against humanity, genocide, political assassination, torture, forced disappearances, excessive use of force, and can fulfill the elements of murder as defined in Law No. 26 of 2000 concerning the Human Rights Court.

Legal protection for victims of extrajudicial killing as a violation of human rights in Indonesia is Law No. 12 of 2005 on the Ratification of ICCPR, Law No. 13 of 2006 on the Protection of Witnesses and Victims, and Law No. 26 of 2000 on Human Rights Court. In practice, the issue of compensation for victims in the Indonesian criminal justice system is still difficult to fulfill. However, the government formed a 'PPHAM Team' based on Presidential Decree No. 17 of 2022 which focuses on restoring the rights of victims of past human rights violations through non-judicial mechanisms that ensure victims' rights are protected and fulfilled in a fair, transparent, and accountable way.

Indonesia has made significant efforts to combat extrajudicial killings by law enforcement officials, demonstrating a commitment to human rights. These efforts include the enforcement of laws that respect human rights, the establishment of accountability mechanisms to address violations, the creation of the Komnas HAM (National Commission on Human Rights) and the Human Rights Court to investigate and prosecute human rights violations, as well as the

development of written regulations governing this issue. However, despite these measures, the complete eradication of extrajudicial killings has not yet been achieved in Indonesia. Collaborative efforts among the government, community institutions, and civil society are crucial in upholding and respecting human rights to effectively eliminate extrajudicial killings as gross human rights violations.

BIBLIOGRAPHY

Books

Ghufran H. Kordi K., M, *HAM Tentang Hak Sipil, Politik, Ekonomi, Sosial, Budaya Dan Umum: Komplikasi Instrument HAM Nasional Dan Internasional*, Yogyakarta: Graha Ilmu, 2013.

Rhona Smith, (eds), *Hukum Hak Asasi Manusia*, Yogyakarta: Pusham UII, 2008.

Rizky Ariestandi, *Hukum, Hak Asasi Manusia Dan Demokrasi*, Yogyakarta: Graha Ilmu, 2013.

R. Soesilo, *Kitab Undang-Undang Hukum Pidana Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politea, 2019.

R. Wiyono, *Pengadilan Hak Asasi Manusia di Indonesia*, Jakarta: Kencana, 2006.

Soekanto, Soerjono, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 1986.

Journals/Theses

Agi Nugraha, "Extrajudicial Killing Perspective of Positive Law and Islamic Law", Skripsi Universitas Islam Negeri Jakarta, 2022.

Cherif Bassiouni, *Derecho Penal Internacional-Proyecto de Penal Code International*, Ed. Tecnos, Madrid, 1983

Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Vol. I: Rules 89*.

Kresna Prameswari, "Human Rights Violation of Extrajudicial Killing to the Alleged Drug Offenders in the Philippines", Skripsi Universitas Gajah Mada (Yogyakarta), 2019

Legowo, Danoel Hasto, "Perlindungan Hukum Terhadap Korban Pelanggaran HAM Berat dalam UU. No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban", Skripsi Universitas Sebelas Maret (Surakarta), 2010.

Sylvester Kanisius Laku, "Pelanggaran HAM Berat dan Hukumannya Menurut Statuta Roma. Bandung", 2005.

Willy Innocenti, et al, "International Legal Protection Victims of Extrajudicial Killing (Case Study of Extrajudicial Killing in President Duterte's War Drug Policy in the Philippines)", Skripsi Universitas Negeri Surabaya.

William J. Aceves, "When Death Becomes Murder: A Primer on Extrajudicial Killing", California Western School, 2018.

Laws and Regulations

Universal Declaration of Human Rights.

International Covenant on Civil and Political Rights.

Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).

International Convention for the Protection of All Persons from Enforced Disappearance.

Criminal Code (KUHP).

Law No. 39 of 1999 concerning Human Rights.

Law Number 26 of 2000 concerning Human Rights Court.

Law No. 13 of 2006 concerning the Protection of Witness and Victim

Presidential Decree No. 17 of 2022 concerning the Establishment of a Team to Resolve Past Gross Non-Judicial Human Rights Violations.

Perkap concerning Use of Force in Police Action.

Websites

"Alasan Polisi Pembunuh Laskar Pelangi FPI Dituntut 6 Tahun Bui: Sedang Tugas", CNN Indonesia, 21 September 2022, < <https://www.cnnindonesia.com/nasional/20220222140640-12-762437/alasan-polisi-pembunuh-laskar-fpi-dituntut-6-tahun-bui-sedang-tugas/>> [accessed 25/11/2022].

"Apa itu Kekerasan Polisi", Amnesty, 21 Juli 2021, <<https://www.amnesty.id/apa-itu-kekerasan-polisi/>> [Accessed 25/11/2022].

"Bagaimana Kronologis tiga kasus pelanggaran HAM berat di Papua?", BBC News, 21 Februari 2017, <<https://www.bbc.com/indonesia/indonesia-39031020/>> [Accessed 25/03/2023].

Faja Nugraha, "Govt Claims Seriously Resolve 13 Severe Human Rights Cases", medcom.id, 21 September 2022, <https://www.medcom.id/english/national/dN6aXwRK-govt-claims-seriously-resolve-13-severe-human-rights-cases/> [Accessed 25/03/2023].

Institute for Policy Analysis of Conflict (IPAC), the Current Status of the Papuan Pro-Independence Movement, 24 Agustus 2015, p.2, <<http://www.understandingconflict.org/en/conflict/read/43/The-Current-Status-of-the-Papuan-Pro-Independence-Movement/>>[Accessed 02/03/2023].

Muhammad Yasin, “*Extra Judicial Killing* Berulang karena Penegakan Hukum Tak Berjalan”, 24 Februari 2021, <<https://www.hukumonline.com/berita/a/iextra-judicial-killing-i-berulang-karena-penegakan-hukum-tak-berjalan-lt6035c67718f16/>>[Accessed 25/11/2022].

Nicholas Rostow, 2014, “Targeted Killing of Terrorist”, <<https://ndupress.ndu.edu/JFQ/Joint-Force-Quarterly-74/Article/577535/targeted-killing-of-terrorists/>>[Accessed 25/03/2023].

Richard Chauvel and Ikrar Nusa Bhakti, *The Papua Conflict: Jakarta’s Perceptions and Policies*, East-West Center, Washington, 2004, p. 25-31, <<http://www.eastwestcenter.org/publications/papua-conflict-jakarta%E2%80%99s-perceptions-and-policies/>> [Accessed 02/03/2023].

The Law on Police Use of Force Worldwide, 2021, <<https://www.policinglaw.info/country/indonesia/>>[Accessed 26/03/2023].

“Terdakwa Kasus Paniai Dijerat Pasal Berlapis, Ancaman 20 Tahun Penjara”, CNN Indonesia, 21 September 2022, <<https://www.cnnindonesia.com/nasional/20220921123050-12-850698/terdakwa-kasus-paniai-dijerat-pasal-berlapis-ancaman-20-tahun-penjara/>>[Accessed 25/11/2022].

“Terdakwa kasus Paniai Berdarah divonis bebas, Komnas HAM desak Jaksa Agung ajukan kasasi”, BBC News, 9 Desember 2022, <<https://www.bbc.com/indonesia/articles/cjq7zx022y2o/>>[Accessed 30/03/2023].

Dictionaries

B.A. Garner: *Black Law Dictionary* 7th Ed, USA: West Group Publishers, 1999.

C. Soanes, A. Stevenson: *Concise Oxford English Dictionary* 11th Ed, Oxford University Press, 2007.