



State responsibility in resolving alleged human rights violations in paniai papua Indonesia

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Abstract

Respect, protection and enforcement of human rights in Indonesia is regulated in Law Number 39 of 1999 and Law Number 26 of 2000 as a form of implementation of state responsibility. As a state of law, Indonesia has the responsibility to resolve cases of human rights violations that occurred, including the 2014 Paniai Case. This article aims to provide an explanation regarding the settlement of gross human rights violations through the mechanism of national law and international law so that the 2014 Paniai Case can be resolved completely because until 2022 this case has not been resolved. Allegations of gross human rights violations against humanity in Paniai 2014 based on the Komnas HAM ad hoc investigation report can be resolved through a mechanism based on Law Number 26 of 2000 and on the other hand there is an opportunity to be subject to Command Responsibility. This case cannot be resolved through the ICC because Indonesia has not ratified the 1998 Rome Statute.

Keywords: state responsibility; settlement; gross violation of human rights; human rights court

Introduction

In the life of the nation and state apart from involving individuals as well as individuals and the state. Life that is intertwined between individuals and the state must be properly maintained in order to create peace, security, order and justice. Indonesia is a constitutional state as seen in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, meaning that all actions or actions must be accountable and in accordance with applicable legal regulations. The logical consequence of Indonesia as a rule of law country is that protection, respect and enforcement of human rights are made an integral part of national laws and regulations. (Aswandi & Roisah, 2019) ^[3]. The preamble of the 1945 Constitution of the Republic of Indonesia mandates that one of the obligations of the state is to protect the entire Indonesian nation. It can be interpreted that the state must be able to carry out its obligations, namely protecting the human rights of every citizen (Nurhayati, 2016). So that human rights violations and serious human rights violations do not occur. Interactions that occur in the life of the nation and state are inevitable from conflicts or problems. Therefore, if there is a conflict or problem that results in the rights of the parties in conflict not being protected, respected and violated, they can be resolved in accordance with the applicable laws and regulations in order to achieve justice. The understanding of human rights in today's life has been generally and widely accepted as a political, moral, legal framework as well as a guideline for developing and building the world so that it becomes more peaceful and free from fear, acts of oppression and injustice. So that it becomes a thing, it is an obligation for a rule of law that guarantees for the protection of human rights are mandatory for every state of law (Asshidiqie, 2012) ^[2]. Literally, human rights are interpreted as a basic or basic right that is owned by humans from birth which is naturally attached and cannot be contested by anyone because it is a gift from God Almighty and respect for the degree of dignity as a human being (Hamidi, 2012) ^[9]. In terms of

upholding human rights, this is a principle and basis that must be obeyed by Indonesia. This can also be seen from the placement of basic principles and rights in the 1945 Constitution of the Republic of Indonesia, including the existence of non-derogable rights in Article 28I with a balance of obligations according to Article 28J of the 1945 Constitution of the Republic of Indonesia, which existed before the birth of Universal Declaration of Human Rights. Respect, enforcement and mechanisms for resolving human rights violations in Indonesia are strictly regulated in Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts. The right to self-determination is the right of all people which is recognized in several international conventions such as the 1966 International Covenant on Civil and Political Rights, the 1966 Covenant on Economic, Social and Cultural Rights and obtains equal rights in self-determination also contained in Article 3 of the DUHAM (Gooda, 2012) ^[7].

Previous research or writing of articles and journals related to state responsibility in resolving gross human rights violations through international or national mechanisms has also been written by Aulia Rosa Nasution with the title Settlement of Cases of Serious Human Rights Violations through National and International Courts and the Truth and Reconciliation Commission (Nasution, 2018) ^[14]. In writing by Aulia Rosa Nasution, the focus is on the principles of human rights, the development of human rights thinking in Indonesia, mechanisms for efforts to uphold and resolve cases of human rights violations based on applicable legal regulations both nationally and internationally. Apart from that, Ufran also wrote a journal article entitled Settlement of Serious Human Rights Violations Through the Mechanism of the National Court and the International Criminal Court (Ufran, 2019) ^[26]. The journal article focuses on the development of human rights courts in Indonesia and certain ad-hoc international criminal courts such as the Nuremburg Military Court, the Tokyo Court, the ICTY (International Criminal Tribunal for Former Yugoslavia), ICTR

(International Criminal Tribunal for Ruanda) and ICC (International Criminal Court). While writing this article will focus on two main discussions that are different from previous research or journal articles, namely: First, writing this article will focus on discussing state responsibility in the settlement of a case of alleged gross human rights violations that occurred in Indonesia after all this time something has not been resolved to completion based on national legal mechanisms. incapacity or intentional omission not to resolve the 2014 Paniai case considering that this case has been going on for quite a long time.

Then there are countries that say they are a rule of law country, but it is not impossible that there are still violations of law that occur in their country. One of these violations is human rights violations. Based on a global analysis conducted by *Maplecroff* in the 2014 human rights risk atlas (Human Risk Atlas/HRA) released data that in a number of countries that are at risk of human rights violations have a tendency to increase. Based on *Maplecroff's* global research, Indonesia is ranked 30th in the ranking of the worst countries in terms of human rights (Patnistik, 2013) ^[17]. It seems that the rule of law and the respect, enforcement and protection of human rights are still a chore that should be thoroughly resolved to obtain justice so that it is not left unfinished for too long. Resolving cases of alleged human rights violations that are protracted or long can set a bad precedent in the future. Since the Indonesian state was founded on August 17, 1945, looking back at the past, there have been examples of alleged cases of human rights violations and gross human rights violations. The following are several incidents of alleged gross human rights violations in Indonesia (Zunnuraeni, 2013) ^[27]: 1. The Tanjung Priok incident occurred on September 12, 1984; 2. The Talangsari incident in 1989 which occurred in Lampung; 3. The enforced disappearance of 13 activists that occurred from 1997 to 1998; 4. Serious human rights violations in Indonesia, the solution of which was the intervention of the UN Security Council, namely the incident of violence in East Timor, for which the UN Security Council later issued Resolution 1264 on September 15, 1999 which strongly condemned the actions after a popular opinion poll in East Timor; 5. The Paniai Incident in 2014 which occurred recently with the hope that it can be resolved completely. Every country must be able to adopt and implement the 1948 Universal Declaration of Human Rights due to the existence of this declaration which aims to protect and enhance people's rights in terms of behaving, thinking, speaking and to improve social, political and economic conditions in society so that all world (Sethi, 2015) ^[20].

Seeing that there are still cases of alleged gross human rights violations in Indonesia such as the 2014 Paniai Papua Case which will be discussed in more detail in this writing and to find out how the state's responsibility is in resolving allegations of gross human rights violations and its relation to the International Criminal Court in resolving gross human rights violations in a country. Based on the background description above, this article is entitled " State Responsibility In Resolving Alleged Human Rights Violations In Paniai Papua Indonesia". So that the formulation of the problem that will be discussed in more depth and detail from this writing is: 1. What is the responsibility of the state in resolving cases of alleged gross human rights violations in Paniai Papua Indonesia in 2014

based on the national legal mechanism? ; 2. What are the opportunities for using the jurisdiction of the International Criminal Court to settle cases of alleged gross human rights violations in Paniai Papua Indonesia 2014?

Research Method

The research method used is the normative juridical method, namely research based on applicable legal provisions and norms (Marzuki, 2019) ^[12]. Research using this normative juridical method is used in order to provide an overview and analysis of ongoing legal issues based on applicable laws and regulations that are closely related to the issues to be discussed in this research article and the extent to which they are implemented by the stakeholders (Soekanto, 2010) ^[24]. The specification of this research uses descriptive analytical method, namely making systematic, factual and accurate descriptions, drawings, or drawings regarding the facts, characteristics and relationships between phenomena to be discussed (Perdana Putra & Pujiyono, 2022) ^[19]. The data used is secondary data with literature studies based on primary legal materials such as applicable laws and regulations, legal theory and secondary legal materials including journals and books related to issues of state responsibility in resolving allegations of gross human rights violations in Paniai Papua Indonesia 2014 (Suhendarto, 2022) ^[25]. As well as using qualitative data analysis methods by properly describing in the form of regular, logical, and effective sentences so as to facilitate data interpretation and understanding of analysis results.

Research Result

1. State Responsibility in Settlement of Cases of Alleged Serious Human Rights Violations in Paniai Papua Indonesia Based on The National Legal Mechanism

Parties legally bound to protect, fulfill and uphold human rights are countries which can be described as follows (Perangin-angin, Rahayu, & Dwiwarno, 2019) ^[18]: 1. The state has a role and function as a bearer of responsibility, while individuals and community groups are rights holders; 2. The state does not have rights but holds obligations and responsibilities (obligation and responsibility) to fulfill the rights of every citizen; 3. If the state does not wish to fulfill its obligations and responsibilities, it can be said that the state has committed a violation of human rights. The state as an entity that has power with its various legal instruments and state institutions is deemed capable of respecting human rights. Therefore, the state has obligations in terms of human rights, namely the obligation to respect, the obligation to fulfill and the obligation to protect (Setiyani & Setiyono, 2020) ^[21]. The main obligations of the state according to International Human Rights Law are the obligation not to commit human rights violations either through action by commission or by omission and the obligation not to commit violations, to investigate when human rights violations occur, to process and punish the perpetrators and to make reparations for the impact losses experienced. The state's obligations must be carried out properly and correctly so that there are no human rights violations that go on without resolution and prevention.

The Paniai incident occurred in 2014. According to KontraS, the Paniai Papua incident began on December 8, 2014 at midnight, when a black car came from Enaro to the city of Madi where it was suspected that the vehicle contained 2

members of the TNI who were then stopped by 3 teenage residents civil (Sitepu, 2017) ^[23]. The three teenagers asked the driver to turn on the car's lights because there was a security tightening activity carried out by residents ahead of the Christmas celebration which was then detained by 3 teenagers. Unacceptable, because the car was detained, the suspected TNI member went back to the TNI Headquarters in Madi City, who then asked for help from other colleagues at the workplace of the 3 teenagers and beat them up. After that the next day the residents gathered to ask the authorities to account for the beating of the 3 teenagers, the residents gathered in the Karel Gobay field which is located in front of the Paniai Police and the Paniai Koramil, but before mediation or talks were held, the joint TNI and Polri officers allegedly shot residents who in the Karel Gobay field, four people died where 13 people were injured and 1 person died while being treated at the Madi hospital. The five people who died were Simon Degei (18 years), Otianus Gobai (18 years), Alfius Youw (17 years), Yulian Yeimo (17 years), Abia Gobay (17 years) who were five students from SMA Negeri 1 Paniai (Sitepu, 2017) ^[23].

According to Komnas HAM, the events that occurred from 7 to 8 December 2014 in Paniai Papua began with the arrogance of officials who were suspected of being the Timsus 753. there were no threatening situations from the community as a basis for the use of excessive force by the apparatus (HAM, 2016). From the results of an investigation conducted by the Komnas HAM Ad Hoc Team chaired by M Choirul Anam in February 2020, it was stated that this incident was a crime against humanity which was included in the category of gross human rights violations because of the elements of crimes, namely the existence of acts of murder and persecution and were systematic or widespread directed at civilians. Settlement of gross human rights violations in Indonesian national law can be based on Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts. Law Number 26 of 2000 regulates 2 types of gross human rights violations namely genocide and crimes against humanity which indirectly accommodates 4 types of gross human rights violations contained in the 1998 Rome Statute namely Genocide Crimes, Crimes Against Humanity, War Crimes and Aggression. However, until now Indonesia has not ratified the 1998 Rome Statute.

Referring to the results of the Komnas HAM ad hoc team's report which conducted an investigation to obtain preliminary evidence for the 2014 Paniai case. Allegations of gross human rights violations in the category of crimes against humanity need further analysis. An incident of human rights violations that is said to be a crime against humanity according to Article 7 of Law No. 26 of 2000 must meet the qualifying elements as stated in Article 9 of Law No. 26 of 2000. First, that the actions committed it was a widespread and systematic attack and it was realized that the aim of the attack was the civilian population. Second, there must be knowledge of the perpetrator that his actions were by carrying out the attack that it was part of a widespread or systemic attack aimed at civilians. Widespread means the number of mass victims (large scale) and the actions are massive or repeated and carried out collectively with serious consideration (an act designed in such a way). Systematic means that there is a pattern or plan on how to carry out the attack and as a form of a fixed pattern or a certain method that is thoroughly organized. All

of these elements or qualifications must be able to be proven in court.

Seeing from the facts that happened that: 1. The number of casualties that occurred was not very large; 2. It only occurs in the Karel Gobay Field and does not extend to other areas; 3. There may be efforts that have been planned in advance by the authorities and this needs further proof; 4. The attack was indeed directed against the civilian population, but the attack must be part of a widespread or systematic attack; 5. There has been an incident of persecution and shootings by the apparatus which resulted in the killing or killing of someone. From this fact, if the 2014 Paniai case is categorized as a crime against humanity as alleged by the Komnas HAM Ad Hoc Investigation Results in February 2020, it can be said that there must be further evidence because the elements of crimes are based on Article 7 of Law Number 26 Year 2000 and Article 7 paragraph (2) The 1998 Rome Statute relating to widespread and systematic attacks cannot yet be proven strongly and conclusively. On the other hand, in this case, it is also possible to have command responsibility because the shooting incident was allegedly carried out by troops from the Timsus 753 TNI Headquarters, Madi City, based on an investigation report by Komnas HAM.

So that commanders should know all crimes that will occur / are happening / have recently occurred because it is attached to the authority they have so that no criminal acts occur which are the result of not properly and correctly controlling troops as stipulated in Article 42 of Law Number 26 of 2000 about the Human Rights Court (Anwar & Makarim, 2021) ^[1]. Commanders or superiors in this case can be held legally responsible.

Based on the mechanism for resolving human rights violations in Law No. 26 of 2000 that gross human rights violations that occurred after the promulgation of this law then go through the Human Rights Court as regulated in Article 4 of the law. As stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia in essence that every human being has the right to obtain recognition, protection, guarantees and legal certainty based on justice and receive equal treatment before the law. As an implementation of the constitutional mandate, the resolution of the 2014 Paniai Papua case can be seen from the process of investigating the case which began in December 2021 by the Attorney General's Office with a juridical basis in the form of Decree Number 267 of 2021 and Investigation Order Number Print-79/A/JA/12/ 2021 appoints an ad hoc investigator consisting of senior and experienced prosecutors with a team headed by the Junior Attorney General for Special Crimes. Investigations carried out must prioritize participatory and independent aspects and be open to all parties so that later they will get the fairest possible solution. The new hope for resolving the 2014 Paniai case can also be seen in 2022 where the Attorney General's Office has named the suspect with the initials IS who is suspected of violating Article 42 paragraph (1) jo Article 9 letter a jo Article 7 letter b Law Number 26 of 2000 and Article 40 jo Article 9 letter h in conjunction with Article 7 letter b Law Number 26 of 2000. The IS suspect, according to a press statement from the Kapuspenkum Attorney General's Office, is a member of the TNI. It is reasonable to suspect that the 2014 Paniai Papua incident actually occurred because the military commander was unable to coordinate or control his troops effectively.

When referring to the mechanism for solving gross human rights violations based on Law Number 26 of 2000, the applicable procedural law is the Criminal Procedure Code which originates from the Criminal Procedure Code with provisions as long as they are not specifically regulated in Law No. 26 of 2000 (*lex specialis derogat lex generalis*) (Pakpahan, 2017) ^[16]. The resolution mechanism is 1. The investigation stage is carried out by Komnas HAM which is an independent institution aiming to maintain the objectivity of the investigation results; 2. Serious human rights investigations are carried out by the Attorney General. To carry out his duties, the Attorney General appoints ad hoc investigators from government and community elements. Investigations must be completed no later than 90 days after the results of investigations from Komnas HAM are received and can be extended by the Chief Justice of the Human Rights Court of his jurisdiction for 90 days and can be extended for another 60 days; 3. The Prosecution Stage is carried out by the Attorney General, the Attorney General can appoint ad hoc public prosecutors; 4. The stage in the Court where the examination is carried out by a panel of judges consisting of 2 judges at the Human Rights Court and 3 ad hoc judges so that the panel of judges has a total of 5 judges. The period of examination until a decision is rendered is 180 days from when the case is transferred to the Human Rights Court. Appeals can be made at the High Court and cassation can be filed with the Supreme Court. Efforts to resolve allegations of gross human rights violations that have occurred are the responsibility and obligation of the state to respect, protect and uphold and promote human rights as set forth in Article 71 of Law No. 39 of 1999 concerning human rights. This responsibility and obligation is inherent in the state because the state is the holder of a legal obligation to carry out the implementation of steps to resolve cases of human rights violations that have occurred in its country (Mardiyono, 2016). Pancasila as the basis of the Indonesian state has the meaning of thinking that humans were created by God Almighty with two aspects, these aspects are individuality or personal and social or community aspects so that every freedom that a person has is limited by the human rights that other people have (Musak, 2019). This is also what the state and government must maintain in order to respect, protect and uphold human rights without discrimination.

2. The Opportunity to Use the Jurisdiction of the International Criminal Court for Settlement of Cases of Alleged Serious Human Rights Violations in Paniai Papua Indonesia 2014

Cases of alleged gross human rights violations can be resolved through national legal mechanisms with a juridical basis in the form of Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning the Human Rights Court can also be resolved through international legal mechanisms. Settlement through this international legal mechanism can be based on the 1998 Rome Statute. If you want to make a settlement based on international law, you must meet the existing requirements. Therefore, it will be discussed in depth and in detail the settlement of alleged gross human rights violations such as the Paniai Papua Indonesia 2014 case. If the settlement is through a national legal mechanism, there is a Human Rights Court and an ad hoc Human Rights Court for events that occurred before the existence of Law No. 26 of 2000 in

international law, there is International The Criminal Court (ICC) or also known as the International Criminal Court which based on Article 5 of the 1998 Rome Statute has the authority or jurisdiction to conduct investigations and try individuals for serious human rights crimes such as crimes of genocide, crimes against humanity, war crimes and aggression (Christmas & Roisah, 2021) ^[6]. The ICC's jurisdiction is limited to crimes that occurred after the entry into force of the 1998 Rome Statute (Begem, Qamar, & Baharuddin, 2019) ^[5].

The presence of the ICC is not a substitute for the function of national criminal justice but is complementary. The International Criminal Court is a permanent judicial body whose establishment is carried out by the United Nations which functions as a body to try and provide sentencing for perpetrators of international crimes based on the law of the 1998 Rome Statute (Christmas & Roisah, 2021) ^[6]. Based on the provisions of Article 13 of the 1998 Rome Statute that the ICC can exercise its authority or jurisdiction when 1. The case in question is transferred to the public prosecutor by a state party; 2. The case in question is submitted to the public prosecutor by the UN Security Council; 3. The public prosecutor took the initiative to carry out a proprio motu investigation. The ICC can exercise its criminal jurisdiction over a crime provided that a court from a national country concerned has been identified as unwillingness or unable (Aulia, 2021) ^[4].

Unwillingness in the sense that the state or its national court has rendered a decision or tried but there has been a denial of justice due to that: 1. Legal steps that have been taken or are being taken or decisions that have been decided have the intention of providing protection to the party concerned from the criminal responsibility of that party; 2. There is an improper suspension when carrying out legal steps inappropriately such as the intention to bring the party before the court to be tried; 3. Legal steps taken in the past or present on an impartial or not independent basis (Aulia, 2021) ^[4]. Separately unable can be interpreted as the inability of the national or state courts because the national courts of the country concerned have collapsed entirely or most of their national court system then the inability of the state to bring the accused along with supporting evidence of the crimes he committed and witnesses to the trial, perhaps because the accused the person to be brought has a strong and important position or position in the country (Aulia, 2021) ^[4].

Related to the regulation of Unwillingness and Unable is contained in Article 17 of the 1998 Rome Statute. International criminal law norms can also be included in the national criminal law section, but on condition that ratification has been carried out (Siswanto, 2016). When a country has ratified a convention or international agreement, the norms contained in the ratified agreement must apply. However, at present Indonesia's position has not yet become a state party to ratify the 1998 Rome Statute so that Indonesia cannot be bound by the norms contained in the 1998 Rome Statute so that the International Criminal Court cannot exercise its jurisdiction over Indonesia (Latifah, 2014) ^[10]. This resulted in the case of alleged gross human rights violations in Paniai Papua 2014 to be brought to the International Criminal Court because Indonesia was not a country that ratified the 1998 Rome Statute. Even though the Indonesian state is considered Unwillingness and Unable though. So that the settlement of the 2014 Paniai case must

be thoroughly resolved to obtain justice through a national legal mechanism based on Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts.

Conclusion

According to a report on the results of an investigation by Komnas HAM in February 2020, the alleged gross human rights violations in Paniai Papua were crimes against humanity. It can be said as a crime against humanity if the elements of crimes are fulfilled based on Article 9 of Law Number 26 of 2000 and Article 7 paragraph (2) of the 1998 Rome Statute, namely an act of widespread and systematic attack aimed at civilians, causing many victims to be

massively or repeatedly and carried out collectively that has been organized. On the other hand, in the 2014 Paniai case, it is also possible to apply Command Responsibility because the incident of persecution and shooting which caused loss of life was carried out by Troops from the Madi City TNI Headquarters as stipulated in Article 42 of Law Number 26 of 2000. Settlement of gross human rights violations is based the national legal mechanism in Indonesia is based on Law No. 39 of 1999 and Law No. 26 of 2000. Based on Law No. 26 of 2000, the resolution can be through the Human Rights Court on the grounds that the 2014 Paniai Papua incident occurred after the promulgation of Law No. 26 of 2000. The investigation process was carried out by Komnas HAM, the investigation and prosecution stages are carried out by the Attorney General and the trial stage is carried out by the Human Rights Court which can be appealed and cassation. The timeframe for the process of resolving this case is quite long because since 2014 the incident has occurred, however, there is a state responsibility that must be fulfilled through its legal instruments and state institutions in resolving it because in 2020 Komnas HAM has released the results of its investigation and submitted it to the Attorney General's Office. which was then followed up with Decree Number 367 of 2021 and Investigation Order Number Print-79/A/JA/12/2021 regarding the appointment of ad hoc investigators.

After that there was development with the identification of the suspect with the initials IS in the 2014 Paniai case by the Attorney General's Office who is a member of the TNI. This case must be resolved immediately by the state because the state has an obligation under Article 71 of Law No. 39 of 1999 to respect, protect and uphold and promote human rights in Indonesia.

Besides being able to be resolved through national legal mechanisms, gross human rights violations can also be resolved through international legal mechanisms, namely based on the 1998 Rome Statute. Settlements based on international law can be through the International Criminal Court (ICC) whose establishment is based on the 1998 Rome Statute. The ICC can exercise jurisdiction or its authority when the country concerned is identified as unwillingness and unable. However, there is a condition that if gross human rights violations are to be resolved at the ICC, the country concerned must first ratify the 1998 Rome Statute, but Indonesia has not ratified it so far that the 2014 Paniai Papua Case cannot be resolved through the ICC but can be resolved by national legal mechanisms. based on Law No. 39 of 1999 and Law No. 26 of 2000.

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