

Concept of Accountability Settlement Past Gross Human Rights Violations in Indonesia

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Abstrak: *The Indonesian government is now seeking to resolve the country's past egregious human rights crimes. Although the current policies are encompassed within the regulatory framework concerning this issue: Legal disputes and activities that do not involve going to court. In the eyes of justice, these two approaches are not an option but a combination that can be used together. The problem is that the government's only choice leads to one solution: settlement outside the court. Methodology: Researchers compared settlement practices in several countries to conclude how Indonesia should solve past gross human rights violations. Finding: The ideal concept of state accountability for Past Serious Human Rights Violations in Indonesia consists of three ways, firstly by continuing its legal process to be completed through justice mechanisms such case 1998 Kidnapping Activist, Mysterious Shooting (Penembakan Misterius-Petrus), May 1998 Riots, Trisakti Student Shooting and Semanggi I-II case of 1998-1999 and Talangsari Case. The settlement was conducted by the Truth Commission for Reconciliation, addressing various cases of human rights violations. These include the 1965 case, human rights violations in Aceh from 1976 to 1998, such as the incidents at Rumoh Geudong, Sattis Aceh Post in 1989, and the Simpang KKA case in 1999. Additionally, it addressed human rights violations in Tanjung Priok, the murder of Dukun Santet from 1998 to 1999, and human rights violations in Papua from 1965 to 1998. Finally, making arrangements for legal processes regarding cases that took place after the implementation of the Human Rights Court Law, such as the Wasior Papua case from 2001-2002, the Wamena Papua case from 2003, and the Jambo Keupok Aceh case from 2003.*

Keywords: *Human Rights; Reconciliation; Transitional Justice; Truth Commission.*

INTRODUCTION

Like countries that military regimes have ruled for a long time, Indonesia is a country that has past debts in the form of gross human rights violations that have not been accounted for. The following human rights violations occurred: the 1965 case, including violations in Aceh such as the Rumoh Geudong case, the Sattis Aceh Post of 1989, and the Simpang KKA Aceh case from 1999 (spanning 1976-1999); violations in Papua from 1965-1998; the 1998 Kidnapping Activist case; the Mysterious Shooting (*Penembakan Misterius-Petrus*) of 1981; the May 1998 Riots; the Trisakti and Semanggi I-II Student Shooting incidents of 1998-1999; the Talangsari Case of 1989; violations in Tanjung Priok in 1984; the murder of Dukun Santet from 1998-1999; and lastly, the Wasior Papua case from 2001-2002, the Wamena Papua case of 2003, and the 2003 Jambo Keupok Aceh case. Instances of severe human rights abuses in Indonesia should



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not be regarded as regular criminal cases, but rather as instances of state violence that fall under the category of gross human rights violations. The legal system is accountable for addressing these violations through two mechanisms: the human rights criminal justice system and the truth commission.

The criminal justice system has at least 3 (three) success indices to be achieved, namely: success in creating rehabilitation and resocialization for convicts; success in preventing crime; and success to create social welfare. The basic level index pertains to the fundamental principles of an autonomous court, the advancement and safeguarding of human rights, and a focus on both the rehabilitative and restorative models. The source cited is Muladi (2002). Regarding the judicial system, there is a concept known as the juvenile justice system. The phrase "human rights criminal justice system" is used to simplify and distinguish it from the commonly accepted concept of the criminal justice system. In Indonesia, the criminal justice system encompasses the full process of resolving cases involving children who have committed crimes, from the first investigation stage to the subsequent guidance stage (Wiyono, 2022). Aside from the juvenile criminal justice system, the criminal justice system in Indonesia also encompasses other systems, namely the electoral criminal justice system (Sinaga, 2008), the corruption criminal justice system (Bondan, tt), and the human rights criminal justice system (Hambali, 2017).

The criminal justice system deals with human rights matters by first conducting investigations via Komnas HAM. These investigations are then sent on to the Attorney General's Office, which serves as the institution responsible for investigating and prosecuting the cases. Finally, the Human Rights Court acts as the institution that examines the cases and makes decisions on them. The system experiences a small augmentation when dealing with cases of human rights breaches that have a historical aspect, as the formation of a human rights court necessitates a request from the House of Representatives of the Republic of Indonesia and the approval of the president. By implementing this supplementary procedure, the court's character becomes non-permanent (*ad hoc*).

Since the law, *ad hoc* human rights courts have been established twice for cases of gross human rights violations following the vote in East Timor (2000) and cases of gross human rights violations in Tanjung Priok (2002). The permanent Human Rights Court has been formed on three occasions to prosecute severe human rights abuses, including in Abepura (2000), Wasior (2001), and Paniai (2014). However, there has been no such court established specifically for Papua at the Makassar Human Rights Court for Eastern Indonesia. Regrettably, the human rights tribunals in all three instances failed to efficiently carry out the process of exhumation and identification of events and perpetrators, resulting in several defendants being acquitted and just a few being convicted (Kontras, 2008; Laila, 2022; Nardiman, 2022). The significant political sway held by individuals who commit human rights violations hinders the criminal justice system from effectively delivering genuine justice. Conversely, prompt action must be taken to enforce the law and address the demands of community justice to resolve cases satisfactorily. To solve this problem, various countries have initiated the formation of crusades as a way for reconciliation to end the conflict (Crouch, 2022).

In instances of severe human rights abuses, the regulation not only governs the process of resolving disputes outlined in Law No. 26 of 2000, which pertains to the establishment of Human Rights Courts, but also supplements it with Law No. 27 of 2004, which addresses the establishment of a Truth and Reconciliation Commission. This law was approved jointly by the DPR (People's Consultative Assembly) and the Government in September 2004. The establishment of KKR in Indonesia was primarily influenced by the experiences of nations that successfully achieved reconciliation in the aftermath of significant wars, in order to address the human rights violations that took place. Call it the experience of South Africa

initiated by Nelson Mandela by forming The Truth and Reconciliation Commission (Chandhoke, 2021) and several countries in Latin America, Africa, Asia, and even parts of Europe.

Until now, more than 50 countries in the world have used truth commissions as an alternative to solving cases of human rights violations. Indonesia is almost the 24th country after Bosnia and Timor-Leste to try to solve its past crimes against humanity (Hambali, 2017). In cases of grave violations of human rights, the regulation not only governs the procedure for resolving conflicts as stated in Law No. 26 of 2000, which deals with the creation of Human Rights Courts but also complements it with Law No. 27 of 2004, which focuses on the establishment of a Truth and Reconciliation Commission. The DPR (People's Consultative Assembly) and the Government both adopted this law in September 2004. The development of KKR in Indonesia was largely motivated by the experiences of nations that effectively accomplished reconciliation after major conflicts, to redress the human rights breaches that occurred.

Truth commissions established in various countries are official institutions that receive legitimacy from the government to carry out work to investigate past gross human rights violations. Although generally, this commission is called the truth commission, in practice, although its nature, work, and mandate are intended to carry out truth-telling, not all countries use the truth commission as the standard name for this commission. In addition to truth commissions, other countries also use the names of commissions of inquiry, reconciliation commissions, historical clarification commissions, mediation commissions, peace commissions, and so on. Due to its wide scope of work, almost all truth bodies or commissions are authorized to make recommendations not only on non-legal issues such as proposed bureaucratic reforms, structure, and culture of the security forces but also to submit legal recommendations in the form of prosecution or amnesty. In doing so, the Truth Commission has served as a fulfillment of the right to know the truth for victims and the community while encouraging law enforcement to work towards achieving the expected justice. This model occurs in Sierra Leone where the Truth Commission works side by side with the Special Court for Sierra Leone.

This paper is compiled to see the extent of the consistency of the Indonesian government in resolving various incidents of gross human rights violations that have occurred in the past, precisely in the New Order period from 1965-1998. In 2022, after 8 years in office, President Joko Widodo's second term began with an initiative to address past gross human rights violations. Unfortunately, this initiative primarily focuses on non-judicial resolutions, as highlighted in Presidential Decree Number 17 of 2022. This decree officially acknowledges the existence of 12 cases of gross human rights violations that took place in the country. The instances of severe human rights violations include the occurrences of 1965-1966, the enigmatic shooting case of 1982-1985, the Talangsari Lampung case of 1989, the Rumoh Geudong case and the Sattis Aceh Post of 1989, the incident of enforced disappearance of individuals in 1997-1998, the May 1998 riots, and the Trisakti and Semanggi I-II events of 1998-1999. Additionally, the murder of Dukun Santet took place in 1998-1999, the Simpang KKA Aceh case occurred in 1999, the Wasior Papua case unfolded in 2001-2002, the Wamena Papua case transpired in 2003, and the 2003 Jambo Keupok Aceh case (AntaraneWS, 2023). Subsequently, Presidential Decree No. 4/2023 was issued, which established the Monitoring Team responsible for overseeing the implementation of recommendations for non-judicial resolution of severe human rights violations. Additionally, Presidential Instruction No. 2/2023 was issued to ensure the implementation of these recommendations.

This paper aims to explain the concept of resolving past gross human rights violations contained in the national legal system in Indonesia while comparing it with the government's policy choices that tend to use a non-judicial approach. the discussion is also carried out to test and analyze the government's non-judicial approach, against the legal objectives to be achieved. with this discussion, this paper uses a model

that aims to test the implemented government policies with the policies contained in the regulations. from a series of tests, analysis of the discussion and data is used to be able to produce conclusions and proposals.

METHOD

This research examines the implementation of addressing historical egregious human rights breaches in Indonesia's legal system and compares it to the government's preference for non-judicial approaches. The debate also aims to evaluate and analyze the government's non-judicial approach concerning the legal objectives it seeks to accomplish. This study utilizes a model to evaluate the effectiveness of government programs by comparing them to the policies outlined in the regulations. Through a series of tests, the analysis of discussions and data is utilized to generate definitive conclusions and recommendations.

The author of this study utilizes legal norms and laws as a framework for evaluating the effectiveness of policy implementation in addressing historical instances of severe human rights abuses (Bomhoff & Adams, 2012). The author also examines the formation of instances of severe human rights abuses, to identify potential solutions based on the framework established by the statutes and regulations. This analysis examines the likelihood of settling criminal cases using both judicial and non-judicial options. It focuses on the application of norms in criminal laws, including procedural legislation and the criminal justice system. Furthermore, a comprehensive transitional justice strategy is employed to analyze all cases, aiming to obtain justice for victims through a relative settlement.

RESULTS AND DISCUSSION

The Results of The Framework Research

After mapping and analysis of the problem starting from the basic construction which becomes the direction of research to then be parsed through the flow of theories and concepts to bring up the main indicators as the direction of discussion with the sub-sub-indicators. The construction of the discussion is then directed with a regulative approach to test and affirm the existing model owned by Indonesia in its efforts to properly resolve past gross human rights violations. Systematically, the framework of this paper can be described as follows:

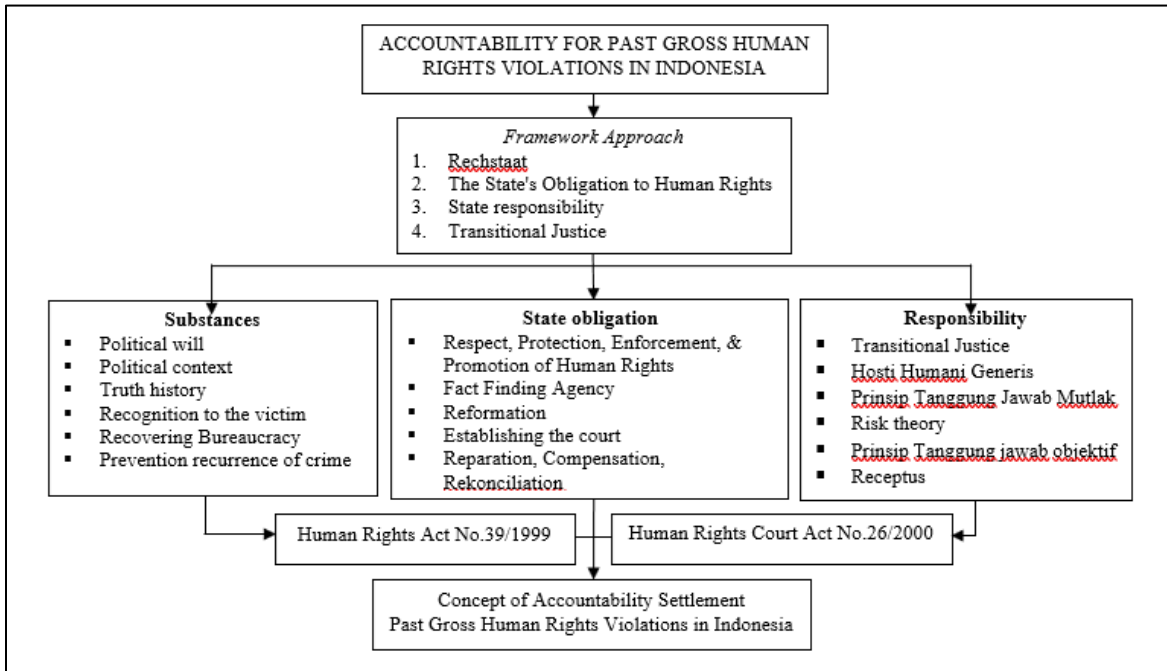


Figure 1. The Framework Research

The results of regulation mapping

Legislation has been enacted to control the resolution of previous egregious human rights abuses in Indonesia. The first regulation appeared in Law No. 39 of 1999 concerning Human Rights which provided a judicial settlement mechanism for all forms of human rights violations. Chapter IX Article 104 Paragraph (1) of Law No. 39 of 1999 states that to prosecute gross human rights violations, a Human Rights Court is established within the General Court of Human Rights. The delegation provision gave rise to Law No. 26 of 2000, which established the Human Rights Courts as a criminal justice system specifically designed to address cases involving severe violations of human rights. Article 4 of this law explicitly states that the Human Rights Court is responsible for investigating and adjudicating cases of gross human rights violations. Article 5 of the Law on Human Rights Courts allows for the investigation of severe human rights abuses, even if they occur outside of Indonesia's borders.

The Human Rights Court Act outlines the procedure for investigating severe human rights violations in two categories: violations that occurred after the law came into effect, which are handled by the regular human rights court (as stated in article 1, paragraph 3), and violations that occurred prior to the law's enactment, which are addressed by the ad hoc human rights court (as mentioned in article 43, paragraph 1). The establishment of the ad hoc human rights court necessitates the participation of the House of Representatives through the submission of a proposal for each previous significant human rights violation incident (article 43, paragraph 2).

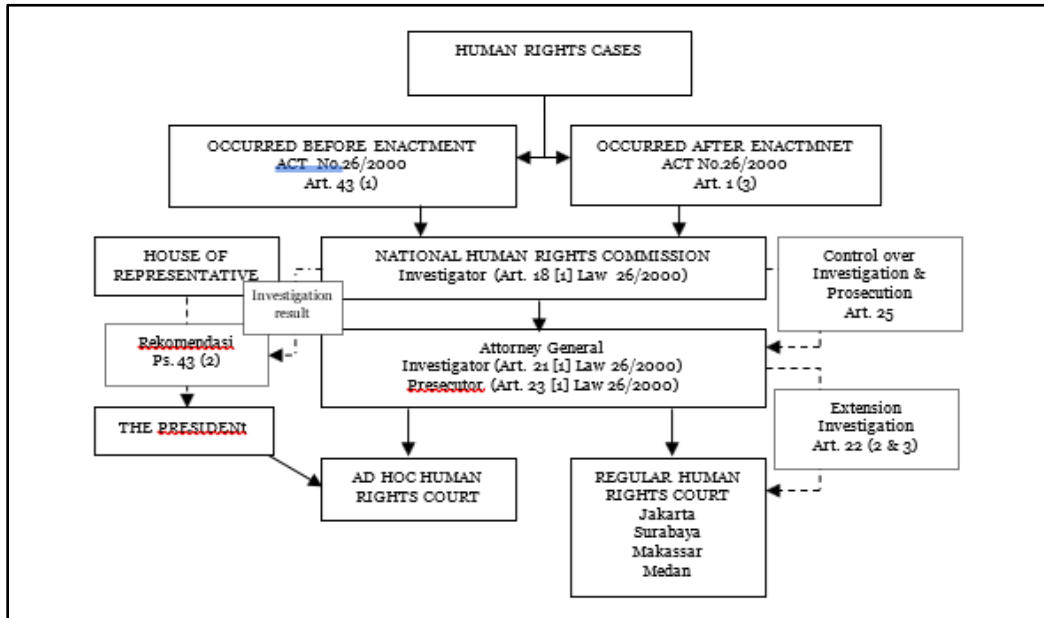


Figure 2. Indonesia Human Rights Criminal Justice System

As the examination does not have a time limit, the law on human rights courts states that even for serious human rights violations that occurred before the law came into effect, it is still possible for a settlement to be reached through the Truth and Reconciliation Commission (Article 47, paragraph 1). The existence of a Truth and Reconciliation Commission as delegated by law a human rights court will be established by law (Article 47 paragraph 2). The phrase "does not rule out" in Article 47 paragraph 1 actually must be read that past gross violations of human rights are indeed not ordinary criminal crimes that must be handled not only cannot use simple procedural law as used in ordinary criminal justice but also because there are considerable differences of the elements of crime in the two crimes.

Historical instances of grave human rights breaches perpetrated by unconventional actors. He is not just a collection of individuals consisting of government officials, but also utilizes the bureaucratic apparatus and government policies to endorse the severe human rights abuses he has perpetrated. In general, the law states that there is a special nature of a gross violation of human rights, namely massive, systematic and widespread. This clearly cannot be read as an ordinary crime that relies on evidence as an ordinary criminal examination. Because of the aspect that goes beyond formal boundaries, a settlement through a truth commission is also provided, not intended as an alternative but chosen as a need and major goal of resolving past gross human rights violations, one of which is creating reconciliation in its true meaning. Even though the Truth Commission for reconciliation Act No. 27 of 2004 has been annulled by the Constitutional Court, but we can underline that this law on the positive side has put in place a good concept that absorbs the emergence of difficulties if the settlement of past gross human rights violations is only relied on the judicial mechanism of the courts.

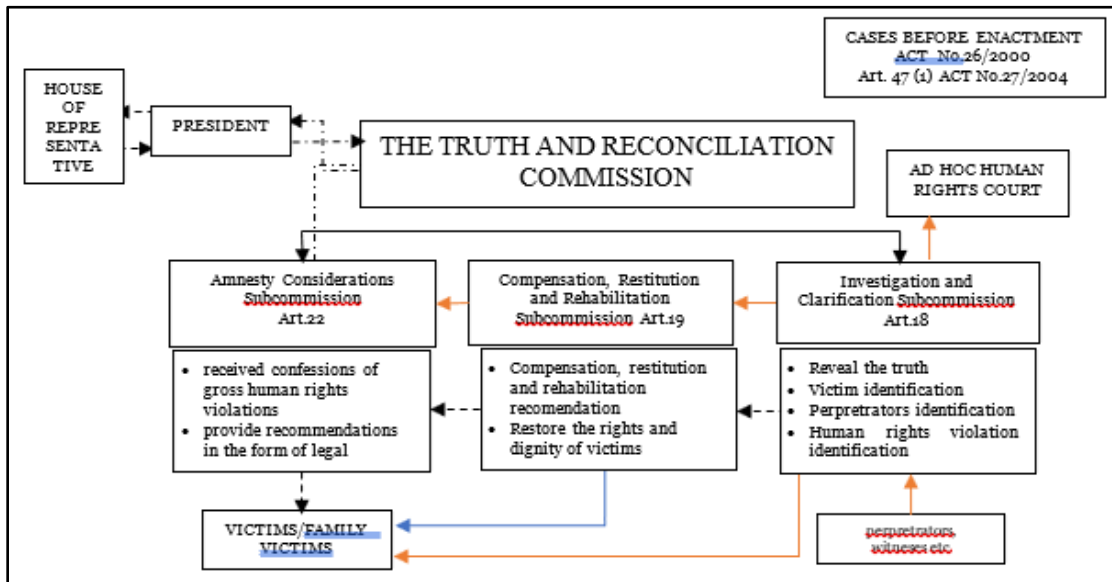


Figure 3. Truth Commission for Reconciliation Act No. 27 of 2004

The term "truth" refers to the accurate representation of an incident that can be revealed in connection with severe abuses of human rights, encompassing the victims, offenders, locations, and timeframes involved (as defined in article 1, number 1). Reconciliation is defined as the outcome of a process that involves the revelation of truth, acknowledgement, and forgiveness. This process is facilitated by the Truth and Reconciliation Commission, with the aim of addressing severe human rights violations and fostering peace and national unity (as stated in Article 1, point 2). The Truth and Reconciliation Commission, often known as the Commission, is an independent entity that has been formed to uncover the truth regarding severe human rights abuses and facilitate the process of reconciliation (Article 1 point 3).

The Truth and Reconciliation Commission, established under the Truth Commission for Reconciliation Act, possesses three distinct instruments, as outlined by a set of predetermined definitions, namely the sub-commission on investigation and clarification of gross human rights violations, the sub-commission on compensation, restitution, and rehabilitation; amnesty consideration subcommittee (Article 16).

The Jokowi's government policy choice

The 2015-2019 National Medium-Term Development Plan (RPJMN) outlines the government's agenda for addressing past gross human rights violations under President Jokowi's administration. This includes the establishment of a presidential mechanism to handle these violations. Meanwhile, in the second period, efforts to resolve past human rights violations were only slightly outlined in the 2020-2024 RPJMN by including this agenda in the National Program cluster to Strengthen Political Stability, Polhukhankam and Transformation of Public Services which strengthen increased access to justice. What's unique is that the two decade-long programs can only be realized in 2022 by issuing a number of policies.

Implementation that is different from the regulations above is carried out by the government at this time by issuing Presidential Decree Number 17 of 2022 concerning the Formation of a Team for the Non-Judicial Resolution of Past Serious Human Rights Violations (PPHAM Team) on August, 26 2022. In the

Presidential Decree as stipulated in article three, the government gives the team the task of (a) disclosing and non-judicial efforts to resolve past gross human rights violations based on recommendation data stipulated by the National Human Rights Commission up to 2020, (b) recommend recovery for victims and their families, and (c) recommending steps to prevent gross violations of human rights from recurring in the future. specifically for victim recovery, article four of the Presidential Decree states that recommendations for recovery include (a) physical rehabilitation, (b) social assistance, (c) health insurance, (d) scholarships, and (d) other recommendations for the benefit of victims or their families.

To enforce the Decree, the President issued Presidential Decree No. 4 of 2023, which establishes the Monitoring Team responsible for overseeing the implementation of recommendations for resolving serious human rights violations outside of the judicial system. Additionally, Presidential Instruction No. 2 of 2023 was issued to guide the implementation of these recommendations.

The results of the analysis of government policies in resolving past gross violations of human rights

Upon comparing this policy with current regulatory frameworks, it becomes evident that this Presidential Decree lacks any connection to fair and unbiased management of settlements through non-judicial methods for resolving legal disputes. The State, in particular, appears to be unwilling and hesitant to hold accountable those responsible for severe human rights violations in the past. This Presidential Decree appears to instruct that cases involving severe human rights breaches that have already undergone judicial proceedings through Komnas HAM should be redirected towards non-judicial resolutions or other legal processes. This plainly contradicts the fundamental principle of addressing previous severe human rights abuses. The non-judicial settlement mechanism mentioned in the Presidential Decree contradicts the options outlined in Article 47 of Law Number 26 of 2000. This article states that cases of gross human rights violations that occurred before the enactment of the law could be resolved through the Truth and Reconciliation Commission. The government's goal of pursuing alternative methods to resolve previous grave human rights breaches, rather than relying solely on legal systems, is a coercive endeavour that promotes a unilateral approach.

The resolution of severe abuses of human rights can be achieved by either a legal or non-judicial method, both of which are complimentary. The judicial approach explains the truth by referring to evidence while the non-judicial approach sews the truth based on a series of constructs to events, the underlying policies, and the relationships and involvement of actors including victims. The Presidential Decree also fails to understand the aspect of recovery for victims which is interpreted in a narrow and limited way because it only refers to recovery which is limited to physical rehabilitation, social assistance, health insurance, and scholarships. the failure to explore the events and impacts of gross human rights violations that occurred on the victims caused the regulatory orientation to become very standard-oriented towards material goods and did not reach a comprehensive remedy.

Both Presidential Decrees and Presidential Instructions issued by the government are still far from achieving the desired comprehensive goals in resolving past gross human rights violations, among others, to achieve reform of the bureaucratic structure of the state which used to be the backbone of the machinery of state violence. Bureaucratic reform is expected to be able to break up the dark past with the future, including by providing a deterrent effect on punishing perpetrators in order to encourage the creation of guarantees of non-repetition and deterrence for anyone.

CONCLUSIONS

The concept of accountability for past gross human rights violations in Indonesia is a complex and multifaceted issue that involves legal, social, and political dimensions. This research highlights the challenges and progress in addressing the legacy of human rights abuses, including the difficulties in achieving justice and reconciliation. The study demonstrates that while there have been efforts to establish legal frameworks and mechanisms for accountability, significant gaps remain in their implementation and effectiveness. The lack of political will, legal obstacles, and societal divisions have hindered the progress toward comprehensive accountability and justice. Furthermore, the limited participation of victims and their families in the process has raised questions about the inclusivity and fairness of existing mechanisms. To move forward, Indonesia needs to adopt a holistic approach that not only emphasizes legal accountability but also promotes truth-seeking, reparations, and institutional reforms.

By integrating international human rights standards with local cultural and social contexts, Indonesia can create a more effective and meaningful accountability process. This approach should involve all stakeholders, including government agencies, civil society organizations, victims, and the international community, to ensure that justice is not only done but also seen to be done. Ultimately, achieving accountability for past gross human rights violations is crucial for Indonesia's path toward national reconciliation, sustainable peace, and a stronger democratic foundation.

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