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MIMBAR KEADILAN

Two Settlement Pathways for Gross Violations of Human Rights Based on The Dignified Justice Theory

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Abstract

Settlement of gross violations of human rights might be pursued by choosing two "paths" provided. The first "path" is via the Human Rights Court. This route is also called litigation settlement. The second path is an alternative "path", and has been coined as the out of the Human Rights Court settlement. The problem is the Constitutional Court states that the alternative "path" as referred to in the Explanation of Article 47 of the Law on Human Rights Courts is contrary to the Constitution. As a result of the issuance of the Constitutional Court decision, the alternative "path" seems to be in a state of limbo, and this presupposes a legal issue of the lack of clarity on the meaning of a formulation of the applicable statutory provisions. In this paper, it is argued that Article 47 of the Law on Human Rights Courts still recognizes two "paths" for solving or settling cases of gross violations of human rights in the Pancasila legal system. The research method used in this paper is normative legal research, often known as the pure legal research method. It examined the primary legal materials. The theory used for understanding and explaining the problem is the Dignified Justice theory, the Indonesian Jurisprudence.

1. Introduction

Legal institutions to resolve and handle cases of serious human rights violations in Indonesia already exist in the Pancasila Legal System. The Pancasila Legal System is not a civil law legal system, a common law system, a communist legal system, or any other legal systems. In this paper, such an understanding is based on a legal science perspective known as the Dignified Justice theory. In the perspective of the Dignified Justice theory, law, in this case, procedural law or formal law (due process of law); namely the law that regulates the resolution and settlement of cases of serious human rights violations is a legal rule that must be found in a legal system of an independent and sovereign country, Indonesia.

The law is in the soul (spirit) of a nation. The manifestation of this, among other things, is primary, in the applicable laws and regulations. Including in the primary manifestation are final court decisions that having permanent legal force. According to the theory of Dignified Justice, legal institutions must be seen as containing the soul derived from Pancasila as the soul of the Indonesian nation (*Volkgeist)* and the highest law, the first agreement of the Indonesian nation. Pancasila is the source of all sources of law. Included in the understanding of legal sources according to the theory of Dignified Justice, are the sources of law that regulates the settlement or handling cases of gross violations of human rights.

This suggests that according to the Dignified Justice theory, the resolution and handling of cases of human rights violations in Indonesia is the completion of the handling in question, subject to all legal rules, legal principles, as well as concrete legal regulations, as well as legal findings contained in statutory regulations. The applicable statutory rules which may be

wholly, or partly, by the judge has been implemented through final court decisions that have Permanent Legal Force (PLF). All of that becomes law, namely, the soul (*ruh*/spirit) which originates or is derived from Pancasila[1]. From the perspective of the Dignified Justice theory, the rules, concrete legal regulations, as well as the above legal findings and system are the targets of study in jurisprudence (legal science).

According to the theoretical perspective of Dignified Justice, the resolution and handling of cases of serious human rights violations in Indonesia cannot be dictated by, or be subordinated to, legal principles originating from any outside Indonesia's the sovereign legal systems. This suggests that, even though we still pay attention to legal instruments that are in force and widely known in the international world which are referred to by civilized nations, the resolution and handling of, in this case serious human rights violations in Indonesia must be oriented towards legal substance, methods, and procedures as well as goals that are in line with the law as national soul derived from *Volkgeist* Pancasila as the source of all legal sources in the Pancasila Legal System. References to rules, principles, concrete legal regulations, legal systems, and final and binding court decisions or findings (*yurisprudensi*) which are not prioritize everything in the Pancasila Legal System, then the perspective used is not the theory of Dignified Justice. References originating from outside the manifestation of the Indonesian *Volkgeist* can only be made if, within the manifestation of the national spirit, there are no legal rules and the legal findings referred to.

The nation which manifests itself concretely in the form of regulations regarding the resolution and handling of cases of gross violations of human rights is closely derived from Pancasila. Instances are starting from complaints from victims' families to the formation of *Ad Hoc* human rights courts as well as permanent or *non-Ad Hoc judicial* or trial system mechanisms (Human Rights Court). The law that regulates the resolution and handling of cases of gross human rights violations is Law Number 26 of 2000 concerning Human Rights Courts. According to Article 10 of Law Number 26 of 2000: "In cases not specified otherwise in Law number 26 of 2000, procedural law for cases of gross human rights violations is carried out based on the provisions of the Criminal Procedure Law, "or Law Number 8 of 1981.

Apart from statutory regulations as manifestations of the nation's spirit, there are also final court decisions that have permanent legal force. In the description of the research results presented below, one court decision is taken as an instance, although it is not described in detail. The court decision referred to is the court decision in the case of the former Governor of East Timor. (East Timor is now an independent State). This case has become a scientific reference, including a scientific reference in the field of law according to the Dignified Justice theory.

A simple example of the regulations for resolving and handling cases of serious human rights violations is also presented and briefly examined in this article. The regulation referred to is still in the form of an abstraction of the formulation of legal provisions. It is stipulated

[1] Teguh Prasetyo And Jeferson Kameo, "Pancasila As The First And Foremost Source Of Laws: A Dignified Justice Philosophy," *Journal Of Legal, Ethical And Regulatory Issues* 24, No. I (2021): 1–8; Teguh Prasetyo, *Sistem Hukum Pancasila (Sistem, Sistem Hukum Dan Pembentukan Peraturan Perundang-Undangan Di Indonesia) Perspektif Teori Keadilan Bermartabat*, Cetakan I (Bandung: Nusa Media, 2016).

that parties or people and groups of people who are victims (including families of victims) of gross human rights violations have the right to report or complain. Reports and complaints have to be accompanied by evidence. Reports or complaints are submitted to the National Human Rights Commission (Komnas HAM). This institution is regarded as the first stage investigator regarding gross human rights violations.

Komnas HAM is obliged to "accept" reports or complaints. Accepting means that Komnas HAM is obliged to carry out regulated activities to receive the report/complaint itself. Accepting also means registering. To register would suggests recording reports/complaints regarding allegations that serious or gross human rights violations have occurred. The provisions above are limited. The provision does not open up the possibility of reports/complaints about serious human rights violations being directed at other parties (society, institutions in society, the press (conventional or online)) other than those addressed to Komnas HAM as an investigator.

Handling reports or complaints regarding allegations that serious human rights violations have occurred must continue to respect the principle of presumption of innocence. There is a purpose to the principle in question. The aim of respecting the law (legal principles) is the same as the aim formulated in the applicable laws and regulations. The aim in question is: "ensuring that the results of the investigation are closed (not disseminated), as long as they concern the names of those suspected of serious human rights violations following the provisions of Article 92 of Law Number 39 of 1999 concerning Human Rights Law".

As regulated in Article 92 paragraph (1), the Human Rights Law is an important norm. The norm is: "In certain cases and if deemed necessary, to protect the interests and human rights of the person concerned or to realize a resolution to the existing problem, Komnas HAM can determine to keep the identity of the complainant confidential." It is also stipulated that: "additionally, Komnas HAM also keeps confidential the information provided or other evidence as well as parties related to the complaint or monitoring material." Furthermore, Article 92 paragraph (2) states that: "Komnas HAM can determine to keep confidential or limit the dissemination of information or other evidence obtained by Komnas HAM, which relates to complaint or monitoring material."

Furthermore, in Paragraph (3) of Article 92 of the Law, other norms are also formulated. The norm determined the secret referred to above is based on several considerations. Such as, the dissemination of information or other evidence can endanger the security and safety of the country; endanger public safety and order; endangering personal safety; defaming individuals. It could divulge state secrets or matters that must be kept confidential in the Government's decision-making process. Divulging matters that must be kept confidential in the process of investigation, prosecution, and trial in a criminal case; hindering the realization of solutions to existing problems; or leaking things that are included in trade secrets.

Considering the existing law, in this case, the law that regulates the resolution and handling of cases of gross violations of human rights already exists and is in force, the existing law must be upheld. This is the principle of the rule of law, namely that the law is supreme. This has become an order (mandated) in Article 1 paragraph (3) of the 1945 Constitution. It is formulated that Indonesia is a rule of law (the Indonesian rule of law). In the rule of law, there

must be nothing else, including "moral, ethical, social, political and other ideas, even people, including the ruler himself," which is superior or sits on an equal footing with the law. If that happens, it will result in disrupting 'the law as the commander-in-chief', violating the principle of the supremacy of law, and thus violating Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, against the manifestation of the *Volkgeist*.

The idea coheres with the Dignified Justice theory, which always understands that the law is supreme or the sovereign, the highest. It suggests that by the highest, any doubts, or lack of trust in the law (including in this case the laws and regulations and court decisions that have permanent legal force) regulates the resolution and handling of cases of gross human rights violations) must be avoided and avoided as far as possible by Jurists. Since, if there is still doubt in and about the law, it tells that the behaviour is against the supremacy of the law, or inexistence of the rule of law. It could also mean that the rule of law is undermined.

There has been more than three studies or research articles on relatively the same topic as this research article, around the topic of gross human rights violations and their resolution. However, there are principal differences between this article and several previous articles. Apart from the similarities in terms of topic, namely that they all focus on human rights violations and their resolution, the main differences between this article and various previous articles need to be stated here. The previous writings mostly discuss legislative policies to regulate the mitigation of demands for the settlement of cases gross violations of human rights. For example, Presidential Regulation Number 75 of 2015 concerning the National Human Rights Action Plan (RANHAM) for 2015-2019. All of the three previous articles argued that RANHAM does not contain any government plans regarding law enforcement for serious human rights violations as promised by President Jokowi. The main difference of this article and the three previous articles are all the previous writings did not use a legal theoretical basis known as the Indonesian Jurisprudence or the Dignified Justice theory in justifying settlements through litigation and non-litigation[2]. The formulation of the research question of

[2] Sarah Sarmila Begem, Nurul Qamar, And Hamza Baharuddin, "Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (Ham) Berat Melalui Mahkamah Pidana Internasional," *Sign Jurnal Hukum* 1, No. 1 (2019): 1–17, Https://Doi.Org/10.37276/Sjh.V1i1.28; Viddy Firmandiaz, "Berat Di Indonesia Oleh Komisi Nasional Hak Asasi Manusia Ditinjau Dari Kewenangannya (Studi Kasus Timor-Timur)," *Res Publica* 4, No. 1 (2020): 92–105; Moh Fadhil, "Impunitas Dan Penerapan Keadilan Transisi: Suatu Dilema Penyelesaian Kasus Pelanggaran Ham Berat Di Masa Lalu," *Petitum* 8, No. 2 (2020): 100–113, Https://Doi.Org/10.36090/Jh.V8i2.817; Aulia Rosa Nasution, "Penyelesaian Kasus Pelanggaran Ham Berat Melalui Pengadilan Nasional Dan Internasional Serta Komisi Kebenaran Dan Rekonsiliasi," *Jurnal Mercatoria* 11, No. 1 (2018): 90, Https://Doi.Org/10.31289/Mercatoria.V11i1.1509; Andito Nugroho And Muntasya Tajmahal, "Upaya Penegakan Pelanggaran Ham Berat Di Masa Lampau Berbasis Lembaga Independen," *Al-Hakam Islamic Law & Contemporary Issues* 3, No. October (2022): 90–100; Bambang Santoso, "Kewenangan Jaksa Agung Dalam Penyelesaian Pelanggaran Ham Berat Dihubungkan Dengan Prinsip Negara Hukum," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 5 (2018), Https://Core.Ac.Uk/Download/Pdf/196255896.Pdf; Rustandi Senjaya, "Pelanggaran Ham Yang Terjadi Di Papua Dan Poso," *Journal Of Islamic And Law Studies* 6, No. 1 (2022): 76–88, Https://Doi.Org/10.18592/Jils.V6i1.7123; Aldiano Hadi Nugroho, "Kebijakan Pemerintah Joko Widodo Dan Jusuf Kalla Dalam Upaya Membangun Dialog Untuk Penyelesaian Konflik Vertikal Papua Tahun 2014-2019," *Journal Of Politic And Government* 2, No. 1 (2019): 1–18, Https://Ejournal3.Undip.Ac.Id/Index.Php/Jpgs/Article/View/24056; Novita Maria Ticoalu, Cornelis Dj. Massie, And Josepus J.Pinori, "Analisis Yuridis Terhadap Transparansi Pemerintah Dalam

this article is how is the pathway for settling cases of gross violations of human rights in Indonesia based on the Dignified Justice theory?

2. Methods

The goal or purpose that is expected to be achieved from writing this research article is to describe and explain the pathways of settling of cases of serious or gross violations of human rights in Indonesia based on the theory of Dignified Justice, a pure legal theory or a philosophy of law. With the Dignified Justice theory in mind, therefore this research will use a legal research method. The research method is the legal research method and generally referred to as the normative legal research. The legal materials studied are primary legal materials. It observed the statutory regulations and final court decision closely related to the resolution of cases of gross violations of human rights that have been occurred in Indonesia.

3. Results and Discussion

However, the problem (legal issue) is that in legal science there is also a scientific fact that cannot be ignored, namely:

> The activities of human life -including the "activities" that are the focus of the discussion in this paper, namely the resolution and handling (settlements) of cases of gross violations of human rights in Indonesia - are very broad. The number and types of human life activities in society are countless. Because it is so broad, and the number and types are so diverse, human life activities cannot be covered in one legal formulation completely and clearly. Therefore, it is natural that there are no statutory regulations that can cover all activities of human life -including activities related to the resolution and handling of cases of gross human rights violations. There are no complete laws and regulations as complete and clear as is its must be. Since the formulated legislation is incomplete and unclear, the law must be sought and found.[3]

Problems of ambiguity and incomplete meaning[4] which are always present, along with the existence of statutory formulations as the theoretical view above (including those that would also contained in statutory regulations governing the resolution and handling of cases of serious human rights violations), can or have even given rise to many problems. This includes, for example, giving rise to problems of weaknesses in the legal regulations governing the resolution and handling of cases of serious human rights violations in Indonesia. As is known, weaknesses in a system have a "domino" impact or result. Regulatory weaknesses can lead to weaknesses in law enforcement. Furthermore, weaknesses in law enforcement can cause problems for the image and professionalism of law enforcers in the eyes of the public.

If law enforcement cannot be separated from the leadership of a President as Head of State, then weaknesses in law enforcement could result in problems with a president's political

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Penyelesaian Kasus Hak Asasi Manusia (Ham) Di Indonesia," *Lex Administratum* Xi (2023); Woro Winandi And Endah Dwirokhmeiti, "Penyelesaian Pelanggaran Berat Hak Asasi Manusia," *Tsl: The Spirit Of Law* 6, No. 1 (2019): 48–61.

[3] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, Cetakan Pe (Yogyakarta: Liberty, 2000).

[4] A Formulation of Statutory Provisions Must Be Considered Clear, For Example According to The Juridical Grammar. However, Even Though the Formulation Must Be Considered Clear, As Stated Above, The Meaning Still Has to Be Sought. In The Legal Science Called *Rechtsvinding*, According to The Teachings of The Dignified Justice Theory, Generally, The Only Party Who Has The Authority And Power To Seek And Formulate The Clarity Of Meaning, Or To Fill The Gap In The Law, Is The Judge; And Only The Judge.

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image or reputation. Above all, problems stemming from the theoretical weaknesses of the applicable laws and regulations give rise to fundamental problem, namely the failure to make the law *supreme* (the commander-in-chief). The law is called upon to ultimately solve the issue. As a result, in this paper, it is argued that from the point of view of the legal science in the name of the Dignified Justice Theory or the Indonesia jurisprudence, the law is not frustrated. The law is the source of happiness. That is why from the start, the founders of the Unitary State of the Republic of Indonesia have determined that Indonesia is a State of Law (the Indonesian Rule of Law), a principle of law, derived from Pancasila.

Every jurist must always have confidence that weaknesses in the form of incompleteness and lack of clarity in the meaning of the formulation of legal provisions, rules, or regulations in laws and regulations which have been stated in the quotation taken from Sudikno Mertokusumo above can be completed and explained according to and in law. Jurists always have to be opinionated and stick to the spirituality of the Indonesian rule of law based on Pancasila, which is anti-frustration, source of happiness, as mentioned above. As seen in the quote above, problem of lack of clarity and incompleteness in the legal regulations, according to the law must be "searched for and found" within the legal system itself. The essence of the legal phrase "must be sought and found" in the quote above is a *command*. These orders in legal science called the theory of Dignified Justice have long been known as the concept of Legal Discovery (*rechtsvinding*).[5]

This article contains an overview of the meaning, in this instance, of aspects in legal regulations regarding the resolution and handling of cases of gross human rights violations. It is clear that there is a legal formulation, however, the meaning of the formulation of applicable laws and regulations needs to be provided through, among other things, court decisions that is final and have permanent legal force. This article also contains an overview of the meaning relating to the resolution and handling of cases of serious human rights violations that are not yet covered by the applicable laws and regulations. That is the meaning of formulated regulations governing the resolution and handling of cases of serious human rights violations according to law (*de lege lata*) which can be found through and in legal discovery (*rechtsvinding*) in the perspective of Dignified Justice theory.

3.1. Settlement and Handling of Gross Violations of Human Rights via Litigation

Based on Article 7 of Law number 26 of 2000 concerning Human Rights Courts an aspect has been formulated. The aspects in question are rules and regulations. Thus, ontology/essence/meaning and juridical significance[6][7] from the concept of resolving and

[5] Sofyan Sitompul And Dahlan Sinaga, *Penemuan Hukum: Dalam Perspektif Teori Keadilan Bermartabat (The Dignified Justice Jurisprudence)*, Cetakan I (Bandung: Nusa Media, 2021); Teguh Prasetyo, *Penelitian Hukum: Suatu Perspektif Teori Keadilan Bermartabat*, Cetakan I (Bandung: Nusa Media, 2019).

[6] Teguh Prasetyo And Abdul Halim Barkatullah, *Filsafat, Teori, & Ilmu Hukum: Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat*, Cetakan I (Jakarta: Raja Grafika Persada, 2012).

[7] According To the Theory of Dignified Justice, Legal Philosophy Thinking Is Characterized as Radical. Radical Is Equivalent to The Greek Word *Rodex*, Which Means "Root." Thinking Radically Is Thinking Down to The Roots. Thinking Down to The Essence, Or Down to The Substance Being Thought About. These "Roots", In Law, have "Limitations", Namely the Formulation of Legal Provisions in Statutory Regulations With Their Respective Meanings In Judges' Final Decisions Which Have Permanent Legal Force. Regarding This, See the Reaching of Teguh Prasetyo and Abdul Halim Barkatullah, Philosophy,

handling serious human rights violations. The meaning of the concept of resolving and handling cases of serious human rights violations is the resolution and handling of crimes of genocide and crimes against humanity. The two serious or gross human rights crimes are undesirable in the soul of the Indonesian nation. It is derivatives from the Pancasila. It commands that genocide and crimes against humanity are two forms of crimes that are known to other civilized nations and that can be found in the formulation of the Rome Statute of the International Criminal Court (Article 6 and Article 7).

The crime of genocide is defined as any act carried out to destroy or exterminate. The targets of destruction and extermination are all or part of national groups, races, ethnic groups, and religious groups. The crime of genocide is killing group members; causing severe physical and mental suffering to group members. Apart from that, there is also another way, namely creating conditions for the group's life that will result in their physical destruction in whole or in part. Another way is to impose measures aimed at preventing births within the group or forcibly moving children from certain groups to other groups.

Meanwhile, what is meant by crimes against humanity is an act committed as part of a widespread or systematic attack. The perpetrator knew that this act was directed directly against the civilian population. The forms of crimes against humanity are murder; extermination; slavery; forced expulsion or transfer of residents. Another form, namely deprivation of liberty or other arbitrary deprivation of physical liberty violates (the principles of) the basic provisions of international law. There are also forms of crime such as torture; rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization, or other equivalent forms of sexual violence. Another form of crime against humanity, namely the persecution of a particular group or association based on similarities in political beliefs, race, nationality, ethnicity, culture, religion, gender, or other reasons which have been universally recognized as prohibited under international law. Included in crimes against humanity that constitute gross human rights violations are the forced disappearance of people; or the crime of apartheid. According to the Dignified Justice theory, the mechanism for resolving and handling cases of these gross human rights violations has been determined in the applicable laws and regulations as the manifestation of the soul of the Indonesian people (Indonesian *Volkgeist*), or the Pancasila Legal System.

Settlement of cases of serious or gross human rights violations through litigation is the settlement of cases carried out through the *Ad Hoc* Human Rights Court or the Human Rights Court. Starting with the use of rights by victims and families to make reports and complaints. Current laws and regulations that regulate mechanisms for settling and handling litigation or through human rights courts and *Ad Hoc* human rights courts are Law Number 26 of 2000 concerning Human Rights Courts.

Formulated in Article 43 of Law Number 26 of 2000 the *Ad Hoc* Human Rights Court is a court within the general justice environment. An *Ad Hoc* Human Rights Court was specially formed. The nature of this special formation is to examine and decide cases of serious human rights violations. The serious violations referred to occurred before the enactment of Act

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Theory, & Legal Science: Thoughts Towards A Just And Dignified Society, 1st Printing, Rajagrafindo Persada, Jakarta, 2012, P., 1-2.

Number 26 of 2000. The *Ad Hoc* Human Rights Court was formed at the suggestion of the DPR-RI based on certain events with a Presidential Decree. Article 43 paragraph (1) of the Human Rights Court Law essentially adheres to the retroactive principle or can be applied retroactively. This is stated in its General Explanation of the Human Rights Court Law, that: "Retroactive principles can be used for serious human rights violations such as genocide and crimes against humanity under international law. "

The provisions which are also the basis for the use of the retroactive principle in resolving and handling serious human rights violations, including in this case the holding of *Ad Hoc* human rights courts can also be found in the Elucidation to Article 4 Act Number 39 of 1999 concerning Human Rights. It is confirmed in the Explanation of the Human Rights Law that the right not to be prosecuted based on retroactive laws may be excluded in the case of serious violations of human rights which are classified as crimes against humanity.

Ad Hoc human rights courts, examined from the perspective of procedural law regulations, the Human Rights Court is described as a special court for serious human rights violations that occurred before the enactment of the Law on Human Rights Courts. This means that the Human Rights Court is not the same as the *Ad Hoc* Human Rights Court. Legal provisions like this cannot be found (explicitly formulated) in applicable laws and regulations. The authors think this because there is no express formulation in the Law on Human Rights Courts.

The formulation of the existing provisions is that the Human Rights Court is a special court within the general court environment. The duties and authorities of the Human Rights Court are: to examine and decide cases of serious human rights violations. What is meant by "examine and *decidemerto*" includes resolving cases involving compensation, restitution, and rehabilitation following applicable laws and regulations. The Human Rights Court also has the authority to examine and decide cases of serious human rights violations committed outside the territorial boundaries of the Republic of Indonesia by Indonesian citizens.

Even though there are differences, in principle the judicial mechanism in the *Ad Hoc* Human Rights Court is the same as the mechanism in the Human Rights Court. Both are referred to as mechanisms in the litigation "track". This can be concluded from the provisions of Article 44 of the Human Rights Courts Law. Human Rights Court Procedure Law and *Ad Hoc* Human Rights Court are *lex specialis* from the generally applicable rules of criminal procedural law (KUHAP). However, as stated above, in this case, the general legal principle still applies, namely that for matters not regulated in the Human Rights Courts Law, the general criminal procedural law (KUHAP) applies.

An example of special procedural legal provisions regulated in the Law on Human Rights Courts and *Ad Hoc* Human Rights Courts For example, regarding investigative authority. The authority to investigate, both concerning the *Ad Hoc* Human Rights Tribunal and the Human Rights Tribunal, belongs only to Komnas HAM. Meanwhile, the authority for investigation and prosecution The Attorney General only has the authority to resolve and handle cases of serious human rights violations. Komnas HAM as an investigator has the right to receive reports or complaints about serious human rights violations, both for the Human

Rights Court "track" and for the *Ad Hoc* Human Rights Court "track". Specialty (*lex specialis*) This is not recognized in the Criminal Procedure Code.

The establishment of a Human Rights Court *Ad Hoc* has been determined in Article 43 paragraph (2) of the Human Rights Court Law. It was formulated there that the establishment of a human rights court was carried out at the suggestion of the People's Representative Council (DPR). This establishment mechanism does not apply to Human Rights Courts. Within the establishment, it recommends the establishment of a human rights court *Ad Hoc* The DPR must pay attention to the results of investigations from Komnas HAM and investigations from the Attorney General who has the authority to do so.[8]

Paying attention to the formulation of the legal provisions above, it can be argued here that the establishment of an *Ad Hoc* Human Rights Court can only be carried out after the results of an investigation conducted by Komnas HAM plus the results of an investigation conducted by the Attorney General. Meanwhile, the establishment of a Human Rights Court does not need to wait for the handling of the *Ad Hoc* Human Rights Court. The Human Rights Court as a Special Court within the General Court has been established. This is following Nawacita from President Joko Widodo, that together with the Supreme Court, the existence of a Human Rights Court has been strengthened, which is different from the establishment of an *Ad Hoc* Human Rights Court.[9]

Article 43 paragraph (1) Law Number 26 of 2000 concerning Human Rights Courts contains the formulation of the legal rule that serious human rights violations that occurred before the promulgation of the law were examined and decided by the *Ad Hoc* Human Rights Court. That is why, in the Human Rights Court Law, it is known and possible for the retroactive principle to apply, or the principle of retroactive application to justify the existence and establishment of the Human Rights Court. *Ad Hoc* if necessary. The retroactive principle is unknown and cannot be applied to Human Rights Courts.

As is known, the principle or legal principle of retroactive application known in Article 43 paragraph (1) of the Human Rights Court Law was questioned by Abilio Jose Osorio Soares, former Governor of East Timor at that time (2004). By Abilio Jose Osorio Soares this retroactive law is considered to be contrary to the principle of legality in Article 1 of the Criminal Code (KUHP). Also, according to Abilio Jose Osorio Soares, the retroactive principle is contrary to the constitutional provisions of Article 28I paragraph (1) UUD 1945.

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[8] Apart From That, The Constitutional Court Decision 18 Of 2007 Has Attempted to Provide an Interpretation of The Word "Alleged" In Explanation of Article 43 Paragraph (2) of The Human Rights Court Law. According To The Constitutional Court's Interpretation, The Word "Alleged" **Is** Contrary To The 1945 Constitution (P. 95) . Therefore, In The Mk's View, The Dpr Can No Longer Do So Again Determine For Yourself The Allegations Of Serious Human Rights Violations . In The Mk's View, The Dpr Should Not Immediately Assume For Themselves Without Obtaining The Results Of Investigations And Investigations From The National Human Rights Commission And The Attorney General's Office In Proposing The Establishment Of *An Ad Hoc Human Rights Court*.

[9] *Ad Hoc* Human Rights Court Is Still Needed to Resolve and Handle Cases of Serious Human Rights Violations That Occurred Before the Human Rights Court Law. Thus, Even Though a Human Rights Court Has Been Established, As Stipulated in The Law, An Ad Hoc Human Rights Court Can Be Formed If There Are Serious Human Rights Violations Before the Human Rights Court Law.

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It is formulated in Article 1 paragraph (1) of the Criminal Code that an act cannot be punished, except based on the strength of existing criminal law provisions. Meanwhile, this is according to Article 28I Paragraph (1) of the 1945 Constitution the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law and the right not to be prosecuted based on retroactive laws is a human right that cannot be reduced under any circumstances. However, *Ad Hoc* Human Rights Court Judges in adjudicating cases of serious human rights violations at that time were still subject to the formulation of legal provisions contained in Article 43 paragraph (1) of the Human Rights Court Law. This means that human rights are not higher than the applicable laws.

It has become a rule in an interlocutory delegation in a trial at the *Ad Hoc* Human Rights Court that the retroactive principle can be used. This also happens in the case laws of international criminal courts. The case law in question once set aside the principle of non-retroactivity for the sake of upholding justice. This view is based on studies that refer to the practices of countries since the war crimes trials in Nuremberg, Tokyo, the *Ad Hoc* international tribunals for Yugoslavia and Rwanda (ICTY and ICTR), the Adolf Eichman case in the Jerusalem district court.

Apart from that, the considerations of the panel of judges at the Human Rights Court *Ad Hoc* which justifies the application of the retroactive principle is also based on the following principle. Crimes of serious human rights violations are extraordinary crimes and have a broad impact. Therefore, the Judge of the *Ad Hoc* Human Rights Court in Indonesia, in the *Ad Hoc* Human Rights Court towards Abilio has his views. The retroactive principle can be applied with the amendment to the 1945 Constitution, Article 28, paragraph (2). Thus, the rule for resolving and handling cases of serious human rights violations is through the *Ad Hoc* Human Rights Court, not through the Human Rights Court as regulated in Law Number 26 of 2000 concerning Human Rights Courts (HAM), can be justified based on the retroactive principle, namely based on the provisions of Article 43 paragraph (1) of the Human Rights Court Law.

It needs to be emphasized here that the fixed principles as stated above were used in the consideration of the Panel of Judges of the *Ad Hoc* Human Rights Court in the case of Jose Osario Abilio Soares, Brigadier General Timbul Silaen, and Herman Sediono,[10]Major General TNI Adam Damiri (Commander of Kodam IX/Udayana who is also in charge of Timor-Timor at that time), Brigadier General TNI Noer Muis Danrem East Timor, Brigadier General Pol. The East Timor Police Chief, Eurico Guteres (Leader of the pro-Indonesian Militia Troops), and others who were formed with a proposal from the DPR-RI through Decree Number

[10] It Needs to Be Stated Here That of The Resolution and Handling of Cases of Serious Human Rights Violations Through The Ad Hoc Human Rights Court, of the 12 Defendants, Only Eurico Guteres Was Sentenced According to Statutory Regulations, While the Other Defendants Were Free. The Basis for Consideration of Various Justice Council Decisions States That the Defendant Is Legally and Convincingly Guilty of Committing Crimes Against Humanity, And Punishment Is Needed for The Perpetrator as A Form of Justice for The Victim and A Preventive Function Through the Arrest Process, In Realizing the Values and Principles of Human Rights and Universal Humanity. As The Main Foundation in The Context of Crimes Against Humanity in East Timor.

44/DPR-RI/III/2000-2001 dated March 21, 2001. Through this Decree, the DPR -The Republic of Indonesia has approved the establishment of an *Ad Hoc* Human Rights Court regarding allegations of serious human rights violations that occurred in East Timor and Tanjung Priok in 1984. Then this decision was proposed to the President in the Letter of the Chairman of the Indonesian People's Representative Council Number KD.02/1733/DPR-RI/2001 dated 30 March 2001.

Presidential Decree Number 53 of 2001 concerning the Establishment of an *Ad Hoc* Human Rights Court at the Central Jakarta District Court was amended by Presidential Decree Number 96 of 2001. Presidential Decree Number 53 was stipulated in Jakarta on April 23, 2001. The Presidential Decree was promulgated by President Gus Dur (Abdurrahman Wahid) in Jakarta on April 23, 2001. Presidential Decree Number 96 of 2001 was issued due to the provisions of Article 2 of Presidential Decree Number 53 of 2001 needs to be refined by further clarifying the place and time of criminal acts (*Locus and tempus delicti*) of serious human rights violations that occurred in East Timor and Tanjung Priok.

It is formulated in Article 2 of the Presidential Decree above as follows. That: "The *Ad Hoc* Human Rights Court as intended in Article 1 has the authority to examine and decide cases of serious human rights violations. "This includes serious human rights violations that occurred in East Timor within the jurisdiction of Liquica, Dilli, and Soae in April 1999 and September 1999 and those that occurred in Tanjung Priok in September 1984." This presidential decree was stipulated in Jakarta on August 1 2001 by the President of the Republic of Indonesia Megawati Soekarnoputri and promulgated in Jakarta on August 1, 2001.

3.2. Alternative Pathway of Settlement of Gross Violation of Human Rights

Regulations regarding the resolution and handling of cases of serious human rights violations in Indonesia are not only resolved through judicial channels; namely through the Human Rights Court and the *Ad Hoc* Human Rights Court as described above. System for resolving and handling cases of serious human rights violations that occurred before the enactment of Law Number 26 of 2000 concerning Human Rights Courts and post Law Number 26 of 2000, even though it must be acknowledged that there are "obstacles" due to the results of the law review process by the Constitutional Court, it is still open through "pathways" outside the human rights court, other than what was previously possible through a Truth and Reconciliation Commission (TRC)[11]. Spirituality in the soul of the nation, a derivative of Pancasila, can be seen in the Explanation of Article 47 of Law Number 26 of 2000. It is formulated as an applicable legal provision, namely Article 47, that the existence of Article 47 is intended to provide an alternative resolution for serious human rights violations committed outside the Human Rights Court.

However, the legal principles in Article 47 of the Human Rights Court Law above, you still have to pay attention to the "obstacle" aspect." This disturbing aspect was created as a result of efforts to review the law at the Constitutional Court. The law being tested is Law Number 27 of 2004 concerning the Truth and Reconciliation Commission (CC TRC). Even though, in Article 1 number 3 of Law Number 27 of 2004, the ontology or meaning of K KR is formulated as an independent institution established to reveal the truth about serious human

[11] In The Absence Of A Supporting Law, It Is No Longer Possible To Use This Extra-Judicial "Path".

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rights violations and carry out reconciliation. Thus, various non-judicial resolutions, for example, those carried out by President Jokowi in Aceh not long ago, are "breakthroughs" to fill the legal vacuum following the infallibility of the TRC Law.

Paying attention to the steps in the nation's soul as stated above, it is also necessary to think about other "breakthroughs" here. This breakthrough provides an alternative form of mechanism for resolving and handling cases of serious human rights violations. The breakthrough is meant to be resolved and handled through reconciliation and so on, following the wisdom and wisdom of the government. Including, the wisdom and discretion of the government that will be formed from the 2024 elections. All these "breakthrough" steps can be taken, as long as they do not conflict with the law and do not hurt the sense of justice and degrade human dignity. As is known, is meant by reconciliation, for example, what has been known in the national soul is a process of truth disclosure, confession, and forgiveness to resolve serious human rights violations to create peace and national unity.

It is necessary to state here the basic principles that are expected to manifest in several steps in establishing the truth about whether or not there were serious human rights violations in the past. These serious human rights violations occurred before the enactment of Law number 26 of 2000. The settlement was carried out outside of the court, which was once known as the soul of the nation. Settlement and handling of cases of human rights violations outside the "channels" of human rights courts can take steps aimed at; revealing the truth, admitting mistakes, giving forgiveness, peace, law enforcement, amnesty, rehabilitation, or other alternatives. The aim of the axiology of resolving and handling cases of serious human rights violations through the "pathways" and steps mentioned above is none other than to uphold national unity and unity while still paying attention to the sense of justice in society.

If amnesty, for example, is chosen, then Forgiveness granted by the President to perpetrators of serious human rights violations needs to take into account the views of the people's representatives. Komnas HAM, or the Attorney General, is expected to receive complaints and collect information and evidence regarding serious human rights violations. This was obtained from the victim or another party. They also search for facts and evidence of serious human rights violations; obtain official documents belonging to civil or military agencies as well as private entities, both within and outside the country; summon every person concerned to provide information and testimony to clarify a person suspected of being the perpetrator or victim of serious human rights violations; Likewise, determining categories and types of serious human rights violations must still pay attention to the legal rules that have been determined in the manifestation of the nation's spirit, namely Law 26 of 2000. Apart from all that, there needs to be compensation, restitution, and/or rehabilitation following the law and a sense of dignified justice.

The mechanism for resolving and handling cases of serious human rights violations is accompanied by several requests. For example, requests for compensation, restitution, rehabilitation amnesty, or administrative channels under the President and so on must provide the possibility of "opening" the litigation route if justice is not achieved. The President as chief executive needs to provide certainty of resolution through a Presidential Decree and

consult with people's representatives. The President's decision was conveyed to the public and also to the victims or their families who are their heirs.

Settlement and handling outside of litigation or non-judicial channels above do not rule out the possibility if the perpetrator is not willing to admit truth and error and is not willing to regret his actions. If this is not achieved, the process can take the judicial route. What is meant by the resolution of the litigation route is namely being submitted to the Human Rights Court or *Ad Hoc* Human Rights Court. The structure for resolving and handling cases of serious human rights violations above still refers to the legal principle that resolution through judicial means (criminal process) is the last resort (*ultimum remidium*).

4. Conclusions

To conclude this work, we would argue that based on the Dignified Justice theory, the Indonesian Jurisprudence, it was found that there is already a law that regulates two pathways for resolving and handling or settling cases of serious or gross human rights violations in the Pancasila Legal System. This is following the principle of the rule of law as the soul of the Indonesian nation (*Volkgeist*). In the Indonesian state, the law is supreme, must be obeyed and its existence cannot be doubted, including the means in the form of two channels or pathways for resolving cases of serious or gross violations of human rights in Indonesia. The resolution and handling of cases of serious human rights violations follow the values of case resolution known in Pancasila as the *Volkgeist* of the Indonesian nation. On this basis, it is still possible to resolve serious human rights violations in the past through non-judicial efforts, as long as all existing efforts adhere to applicable law and are conducted in the spirit of Pancasila as the *Volkgeist* of the Indonesian nation and do not harm the sense of justice that humanizes humans.

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