

# THE EFFECTIVENESS OF NON-JUDICIAL SETTLEMENT ON PAST SERIOUS HUMAN RIGHTS VIOLATIONS TO ESTABLISH LEGAL CERTAINTY (A STUDY ON PRESIDENTIAL DECREE NO. 17 OF 2022 ON THE ESTABLISHMENT OF A NON-JUDICIAL SETTLEMENT TEAM FOR PAST SERIOUS HUMAN RIGHTS VIOLATIONS)

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## ABSTRACT

*The preamble of the 1945 Constitution affirms the state's objective to protect the entire Indonesian nation, which essentially implies the state's obligation to protect the human rights of every citizen. The purpose of this research is to analyze the Government's Efforts in Settling Past Serious Human Rights Violations and Analyze whether Presidential Decree Number 17 of 2022 concerning the Establishment of a Non-Judicial Settlement Team for Past Serious Human Rights Violations can be Effective in Realizing Legal Certainty. The theory used in this research as the main point of view is Legal Effectiveness. This research applies normative legal research method, using a statute approach this research reveals that these efforts have not been fully effective in achieving certainty of law. Concerns were particularly raised that the regulation is considered violating the law of 26/2000 and the mandate of the 2000 TAP MPR, which mandated the establishment of a Truth and Reconciliation Commission (TRC) as a more appropriate solution. In this context, this study highlights the incompatibility of the Presidential Decree with the principles of legal effectiveness and emphasizes the need for a more holistic approach in dealing with cases of gross human rights violations in order to achieve true justice and legal certainty.*

Keywords: Effectiveness of Law, Human Rights, Presidential Decree

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## INTRODUCTION

Past serious human rights violations that occurred before the enactment of the Human Rights Court Law can still be investigated, examined, and prosecuted through the *Ad hoc* Human Rights Court. However, the establishment of the *Ad hoc* Human Rights Court is proposed by the DPR after receiving the results of investigations and inquiries from Komnas HAM and the Attorney General's Office. The provision of legal instruments as a political choice of the state has actually not made significant progress since 2000 after the administration of President BJ Habibie established Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Courts.

Nowadays, the violations related to human rights are increasingly common in diverse societies. It is also often debated among the relevant agencies, but these human rights violations are often not handled properly in accordance with existing regulations. Although regulations to protect witnesses and victims exist, their implementation is often not in line with their initial purpose.

In handling cases of serious human rights violations, a non-judicial policy approach is often used. It is important to note that resolving past cases of serious human rights violations can be done through both judicial and non-judicial resolution approaches, since they are complementary rather than substitutes. This approach is used to ensure a comprehensive resolution of the case, so that all aspects and implications of the case are properly handled.

In regards to human rights, the Law on Human Rights can be referenced in Law No. 26/2006. The Human Rights Court Law was created as a moral message from Chapter IX Article 104 Paragraph (1) of Law No. 39/1999. Following the creation of Law No. 26/2000 on Human Rights Courts, the resolution of cases of serious human rights violations is carried out in the General Court.

The effectiveness based on the duties and functions of the Non-Judicial Settlement Team for Past Serious Human Rights Violations needs to be questioned. Expected outputs such as analysis of cases of human rights violations as an actual recovery is already contained in Law Number 26 of 2000 of Human Rights Courts.

Specifically, the purpose of the establishment of the Non-Judicial Settlement Team for Past Serious Human Rights Violations is to provide rehabilitation for victims of human rights violations, but in practice, the perpetrators of the incident did not receive punishment because in reality, if the government continues to use non-judicial settlement, it must be equal to judicial settlement.

Judicial settlement can be applied to cases of gross human rights violations that occurred both before and after the enactment of Law No. 26/2000 on Human Rights Courts. Therefore, there are two approaches that can be used in handling such cases, namely judicial and non-judicial approaches. Cases of human rights violations have been followed up through legal action, by punishing the perpetrators in the field, and to this day, none of the cases of human rights violations in Indonesia have been resolved through the courts. This happens due to many factors, including the absence of a special court authorized to examine and decide cases of serious human rights violations. This has sometimes led to turmoil in the community and a loss of public trust in the government and the law in Indonesia.

The limited implementation of the law is also an obstacle, where the current regulations are not sufficient to comprehensively fulfill victims' rights. Although there are laws that regulate the provision of compensation and restitution, their fulfillment has not been effective and efficient. Slow judicial processes, such as in the case of the 1965 incident, prevent the

restoration of victims' rights. In this case, concrete steps are needed from the government to demonstrate its commitment to resolve cases of serious human rights violations. In addition, there are three models for resolving human rights violations, including *"to forget and to forgive," "never to forget, never to forgive,"* and *"never to forget, but to forgive."* In relation to these models, non-judicial channels, such as the Truth and Reconciliation Commission (TRC), tend towards the model of *"to forget and to forgive,"* which can maintain impunity. In taking non-judicial paths, the government is reminded to abide by universal principles, including the right to know, victim recovery, and enforcement of accountability through legal prosecution, in order to prevent the recurrence of human rights violations.

## RESULT AND DISCUSSION

The resolution of gross human rights violations is a complex issue and requires a comprehensive approach, especially in the context of international law. Human rights abuses are violations of basic human rights that are considered very serious and involve acts that harm human dignity, such as murder, torture, rape, slavery, and other serious acts. The settlement of serious human rights violations involves several aspects, such as international law, jurisdiction, international institutions, and legal proceedings.

Serious human rights violations are based on a number of international legal instruments that protect human rights. One of the main instruments is the Universal Declaration of Human Rights, adopted by the United Nations in 1948. This declaration became the foundation for the development of international human rights law. In addition to the Universal Declaration, there are a number of human rights conventions that regulate specific rights such as the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. States that stand for these conventions have an obligation to comply with their provisions.

In the settlement of human rights violations, the establishment of the Truth and Reconciliation Commission in Indonesia originated from the need to resolve cases of human rights violations in the past. Every society has an understanding of the concepts of justice, honesty, dignity and respect. Human rights are one of the important aspects in realizing these concepts. Every individual, as a citizen, has human rights that need to be respected and protected, both in the category of non derogable rights that must be protected in a state of war emergency, and derogable rights that must still be protected in normal circumstances.

The Decree of the People's Consultative Assembly (MPR) No. XVII/MPR/1998 on Human Rights was the first commitment of the Indonesian people after the fall of authoritarian rule, which emphasized the importance of respect for human rights. As a response to public demand, international pressure, and changes in the approach to handling human rights issues, this Presidential Decree reflects the important role of the government in achieving reconciliation, justice, and an acceptable settlement to society at large. Presidential Decree (Keppres) No. 17 of 2022, which provides for the establishment of a Non-Judicial Settlement Team for Past Serious Human Rights Violations, is an initiative of the Indonesian government aimed at addressing the serious problem of resolving cases of gross human rights violations that occurred in the past. The Decree introduces a non-judicial mechanism to uncover, investigate and resolve cases of serious human rights violations that become a burden on the country's history.

The ideal Truth Commission should be complementary to the court process, and not negate the existence of the court itself. Truth Commissions should not be considered the only way to resolve cases of serious human rights violations. This institution has an important role in revealing historical truth facts that have significant value for the state. The establishment of such a commission should be based on the principles of independence, autonomy, victim focus, and gender mainstreaming. These principles include the duty of the Truth Commission to conduct investigations that are impartial, competent, and efficient; involving the public in the truth-seeking process to create transparency and inclusiveness; spreading information and creating space for open dialogue; and providing legal protection and sanctions.

One of the key elements in establishing a Truth Commission is the involvement of and alignment with victims. The Truth Commission should focus its attention on the experiences, views, needs, and hopes of victims. A victim-centered approach will provide a deeper understanding of the impact of human rights violations and ensure that the truth-seeking process takes place in accordance with justice and the interests of victims. The settlement of past serious human rights violations should focus on restoring the dignity of victims who have been deprived by systematic violence and cutting through the culture of impunity. This process includes truth-telling, perpetrator accountability, and apologies as a measure to prevent similar incidents in the future. Although judicial efforts at Paniai Court were not optimal, the existence of the Presidential Decree of the PPHAM Team is irrelevant as it could obscure the efforts of victims and their families to seek justice through truth-telling and a guarantee of the non-repetition of similar incidents.

The Presidential Decree on the PPHAM Team is seen more as an attempt to politicize the handling on past serious human rights violations, which may be done to settle the Government's political debt in a simplistic manner. However, it is considered inconsistent with Law 26/2000 and the mandate of the 2000 TAP MPR, which called for the establishment of a Truth Commission to expose abuses of power and human rights violations and achieve reconciliation. The Presidential Decree is not considered a strategic solution, but rather an attempt to strengthen impunity and ignore the basic rights of victims. The recommended action is to instruct the Attorney General to follow up on the results of Komnas HAM's investigation and establish an Ad-hoc Human Rights Court, and to discuss the Truth Commission Bill with meaningful public participation. This is considered more in line with the spirit of resolving cases of serious human rights violations in a just manner than the formation of the PPHAM Team.

Resolving past serious human rights violations is a task that requires a thoughtful and holistic approach. In establishing the ideal policy, several fundamental principles need to be considered. This is in order to create an effective law that can be accepted by the community and institutions while still prioritizing collective welfare in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia.

Public participation also contributes significantly to effective law enforcement. High levels of legitimacy motivate the public to be actively involved in the law enforcement process, both as witnesses and information providers, increasing the capacity of investigations and prosecutions. Legitimacy also supports victim rehabilitation and empowerment programs, reinforcing the

perception that the legal system pursues not only punishment but also the welfare of society. In a long-term perspective, a good level of legitimacy can act as a deterrent mechanism for future human rights violations.

Public trust in the legal system as an effective enforcer of justice may create a deterrent effect, reducing the potential for similar offenses to occur. In addition, high legitimacy strengthens the foundation of the legal system as a whole, encouraging participation in the building of strong and sustainable legal institutions. Thus, the integration of legal legitimacy in the settlement of human rights cases not only increases public support and compliance of relevant parties, but also establishes a solid foundation for an effective legal system in realizing justice and protecting human rights.

## CONCLUSION

This Presidential Decree cannot be a strategic solution, but is more noticeable as an attempt by the Government to strengthen impunity and ignore the basic rights of victims which has the potential to create legal conflicts that reflect tensions or conflicts between policies or legal actions with internationally recognized human rights principles such as the enforcement of the death penalty which can cause conflicts with human rights, especially the right to live and the right not to be tortured or treated violently. Such conflicts often involve a dilemma between national security or government policy and the protection of the human rights of individuals or groups because they conflict with existing and established provisions, which can open up additional complex legal issues.

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