

SETTLEMENT OF PAST GROSS VIOLATIONS OF HUMAN RIGHTS BY THE JOKOWI GOVERNMENT

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Abstract

The pendulum of resolving the past gross human rights violations has begun to move a little forward in the second term of President Jokowi's administration. It took 8 years for President Jokowi to start solving the past gross human rights violations. Even though this is a program that he launched when he was elected for the first time in 2014. This research is aimed at exploring the policies of the Jokowi government in resolving the past gross human rights violations from the beginning to the present, including finding at the advantages and disadvantages. The research method used a qualitative, descriptive approach by examining emerging policies and viewing and analyzing a series of regulations related to their relationship with the implementation of policies in the field. From this research obtained the wall of impunity is still role to intervene a process, lack of understanding and half-hearted management to resolve the past gross human rights violations gripped the government's steps. Not to mention the existence of sabotage and stowaways to resolve the gross violations of human rights, whether they were aware of it or not within the palace. The President Jokowi's series of policies in resolving past gross human rights violations by issuing Presidential Decree Number 17 of 2022, Presidential Instruction of the Republic of Indonesia Number 2 of 2023 discusses the Implementation of Recommendations for Settlement of Rights Violations Serious Human Rights and Presidential Decree Number 4 of 2023 passed various existing regulations to resolve the past gross human rights violations.

Keywords: human rights, gross violations of human rights, transitional justice

INTRODUCTION

At the end of 2022, the government issued Presidential Decree Number 17 of 2022 concerning the Establishment of a Non-Judicial Resolution Team for Past Gross Human Rights Violations (PPHAM Team) to try to resolve various gross human rights violations in the past. This decision was then followed by the issuance of Presidential Decree No. 4/2023 concerning the Monitoring Team for the Implementation of Recommendations for Non-Judicial Settlement of Gross Human Rights Violations and Presidential Instruction No. 2/2023 concerning the Implementation of Recommendations for Non-Judicial Settlement of Gross Human Rights Violations. Through this decision, President Jokowi acknowledged that there were 12 cases of gross human rights violations that occurred in the country. However, the series of policies have a number of problems with the settlement system that has been regulated in laws and regulations, the materials that have been prepared and the implementation practices.

RESEARCH METHOD

The approach used in this study is a qualitative approach whose scope is limited to human rights issues, especially human rights law and accountability, with the object of past cases of serious human rights violations in Indonesia.

With this framework, the author explains several operational definitions in this study, including:

1. State responsibility is an international legal principle that regulates the emergence of a country's responsibility to other countries.
2. Legal accountability is a mechanism of accountability regulated in laws and regulations, namely Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts.
3. Human Rights Violations are any act by a person/group of people including state officials, whether intentional or unintentional, or negligence that unlawfully reduces, hinders, limits, and/or revokes the human rights of a person or group of people guaranteed by this Law, and does not receive, or is feared will not receive, a fair and correct legal resolution, based on the applicable legal mechanisms.
4. Gross Violation of Human Rights (Gross Violation of Human Rights) is a violation of human rights which includes the crime of genocide and crimes against humanity.
5. The New Order is defined as the period of President Suharto's rule in Indonesia which lasted from 1968-1998 or 1966-1998.

With these definitions, the focus of the research is on the extent to which the implementation of President Jokowi's government policies in both the first and second terms has been towards resolving past gross human rights violations, the variables of which are found in a series of policies in the form of legal documents and non-legal documents as well as materials and their implementation to be analyzed. Because of its qualitative approach, this research is not based on sample and population testing but rather tests and examines government narratives and policies as the main sources of research. In general, data collection techniques include carrying out a representative data collection process according to research needs, both in the form of primary data and secondary data, and selecting and identifying data, to be processed, among others, by checking while data analysis is carried out by classify, confirm its validity to be described in accordance with the research objectives and analyzed using theoretical knives, concepts and several qualitative approaches.

RESULTS AND DISCUSSION

Constitutionality of the Policy for Resolving Past Serious Human Rights Violations

The Constitutional provisions on the rule of law that guarantee protection and equality for all citizens in the eyes of the law, including guarantees of access to justice and state accountability, were then realized in the Decree of the MPR-RI Number XVII/MPR/1998 concerning Human Rights, which assigns high state institutions and all government apparatus to respect, uphold, and disseminate an understanding of human rights to the entire community and immediately ratify various international human rights instruments and the Decree of the MPR No.V/MPR/2000, one of which mandates the need for disclosure. truth through a truth and reconciliation commission. At the same time, Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts were formed, where the state was tasked with revealing past serious human rights violations. which is done through a series of investigations

The state also established the TRC Law no. 27 of 2004 which although canceled by the Court The Constitution in its decision No. 6 of 2006 must still be made new draft of the KKR Law as a solution. In addition, supporting regulations were also formed to resolve past serious human rights violations, such as: Law No. 31 of 2014 concerning the Witness Protection Agency and Victims and

PP No. 3 of 2002 regarding the provision of compensation, restitution and rehabilitation for victims of human rights violations and other regulations such as Law No. 21 of 2001 concerning Special Autonomy for Papua which mandates the need for the establishment of a KKR in Papua and Law No. 11 of 2006 concerning the governance of Aceh which is the basis for the establishment of a KKR in Aceh.

When Jokowi was elected president, the agenda for resolving human rights violations by President Jokowi's government could be seen, among other things, in the 2015-2019 National Medium-Term Development Plan (RPJMN). which includes an agenda for the formation of a presidential mechanism to handle past human rights violations. Meanwhile, in the 2020-2024 RPJMN, the resolution of past human rights violations is included in the National Program cluster to Strengthen Political, Legal, and Security Stability and Transformation of Public Services which strengthens increased access to justice.

However, the new government will start a series of settlement steps in 2022 by issuing Presidential Decree Number 17 of 2022 Concerning the Establishment of a Non-Judicial Resolution Team for Past Serious Human Rights Violations (PPHAM Team) 26 August 2022. In its task, the Team recommended 12 serious past human rights violations that had occurred in Indonesia. The President also issued Presidential Instruction of the Republic of Indonesia Number 2 of 2023 discusses the Implementation of Recommendations for the Settlement of Gross Human Rights Violations and Presidential Decree Number 4 of 2023 concerning the Monitoring Team for the Implementation of Recommendations for the Non-Judicial Settlement of Gross Human Rights Violations. The twelve cases were officially acknowledged by the President at the State Palace on January 11, 2023. These cases are the 1965-1966 Incidents, Mysterious Shooting Incident 1982-1985, Talangsari Incident, Lampung 1989, Rumoh Geudong and Sattis Post Incident, Aceh 1989, The enforced disappearances of 1997-1998, May 1998 Riots, Trisakti and Semanggi I-II Events 1998-1999, The 1998-1999 witch doctor murder incident, KKA Junction Incident, Aceh 1999, Wasior Incident, Papua 2001-2002, Wamena Incident, Papua 2003, Jambo Keupok incident, Aceh 2003.

Notes on the Policy for Resolving Past Gross Human Rights Violations in the Jokowi Administration

Both Presidential Decree No. 17 of 2022, Presidential Decree No. 4 of 2023 and Presidential Instruction No. 2 of 2023 are still problematic in their formulation, including not being sufficiently open and aspirational. This pattern is still the same as the process of formulating policies concerning the resolution of past gross human rights violations in the previous government period. The haste in drafting to the point of lack of transparency meant that the Presidential Decree did not receive sufficient oversight as an optimal decision.

This Presidential Decree also does not pay attention to the connection between balanced and objective settlement management related to non-judicial settlement methods and judicial settlement, as a result the State appears to be afraid and avoids taking action against the perpetrators of past gross human rights violations in Indonesia.

The imposition of a method that directs the handling of gross human rights violations cases resulting from Komnas HAM investigations to be resolved non-judicially or outside the legal process clearly does not pay attention to the philosophy of the main objective of resolving gross human rights violations in the past. Not to mention the collision and absence of a legal basis where the two main regulations on handling gross human rights violations, namely Law 39/1999 on Human Rights and Law 26/2000 on Human Rights Courts, do not contain articles that specifically regulate the mechanism for resolving gross human rights violations non-judicially in the manner as stated in the Presidential Decree. Article 47 of Law Number 26 of 2000, regulates that for gross human rights violations cases that occurred before the enactment of Law Number 26 of 2000, can be resolved by the Truth and Reconciliation Commission.

The proper and just resolution of past gross human rights violations does not actually provide room for practices that lead to inequality and impunity. The purpose of resolving past gross human rights violations has essentially been explained in the previous section without setting aside one approach over another. This is different from the Presidential Decree which is oriented towards a non-judicial approach only. The consideration of this method as an alternative effort other than the judicial mechanism in resolving past gross human rights violations is an attempt to lock the approach into only one method. In this regard, the government should immediately correct and refer back to various provisions, especially Law 26/2000 concerning the Human Rights Court.

The Indonesian government must also pay attention to standards and procedures, especially regarding the handling of past gross human rights violations, which in global regulations include The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN

General Assembly on 29 November 1985. In this statement, at least two rights of victims are regulated which must be fulfilled by the state, namely (1) equal treatment as a dignified human being to be able to enjoy the right to access justice; and (2) guarantee of the implementation of the right to receive compensation, as a unified system which accompanies other rights to fulfil justice for victims, such as the fulfilment of the victim's right to truth, the right to receive justice, the right to restitution, and guarantee of certainty that they will not be a victim again. This principle is not the main reference for the philosophical basis in point c of the section Considering Presidential Decree Number 17 of 2022 concerning the Establishment of a Non-Judicial Resolution Team for Past Serious Human Rights Violations which states "that in order to resolve past serious human rights violations independently, objectively, carefully, fairly and completely, alternative efforts are needed other than judicial mechanisms by revealing the violations that occurred..."

The regulation of the Presidential Decree that emphasizes alternative mechanisms for resolution other than judicial is increasingly apparent with no explicit regulation regarding the mechanism for revealing the truth. Article 3 point a of the Presidential Decree states that the task of the PPHAM Team is only to carry out disclosure without being followed by the phrase truth ending with the sentence "non-judicial resolution". Regulations like this provide unclear objectives for the implementation of the resolution of past gross human rights violations including breaking away from national norms such as MPR Decree No. V/MPR/2000, Law No. 26/2000 and others including the International Basic Principles on access to justice for victims of the disclosure of the truth from gross human rights violations including the truth about who the victims were, who committed them, how the policy was designed and the extent of the use of the power structure at that time.

The government should understand that resolving past gross human rights violations is not a partial job. This work does not only involve law but also has a connection with social psychology, political and bureaucratic reform and the main target of healing wounds to strengthen the social foundation of Indonesia as a strong nation. Without sincerity and caution, the stages that have been built with great difficulty to achieve the goal of resolving past gross human rights violations will again reach a dead end or be partial.

Unifying the process of revealing the truth with either a judicial or non-judicial approach is a primary requirement that cannot be negotiated, because both are a complementary unity. The judicial approach tries to reveal the truth based on formal material evidence while the non-judicial approach unravels the truth based on a series of constructions and mappings of events, policies that underlie the involvement of actors that give rise to gross human rights violations.

With such comprehensive exploration, the disclosure of the truth aims to restore all aspects of the desired justice for the perpetrators, for the victims, for the history of the nation, for society and for the certainty of preventing the recurrence of heinous acts by combating inequality in legal treatment, protection against mistakes as also regulated in the international Set of Principles for The Protection and Promotion of Human Rights through Action to Combat Impunity.

In addition to the disconnection between objectives and substance, Article 3 point a of Presidential Decree No. 17 of 2022 states that the PPHAM Team has the task of disclosing and making non-judicial efforts to resolve past gross human rights violations based on data and recommendations determined by the National Human Rights Commission. This clearly oversteps the authority of the ad hoc human rights court as an institution that examines, tries and decides on past gross human rights violations.

Partiality of regulation in the Presidential Decree also occurs in the aspect of recovery for victims which is interpreted narrowly and limitedly because it is limited to physical rehabilitation, social assistance, health insurance, scholarships. Lack of understanding of the excesses of gross human rights violations that occur to victims causes sporadic regulatory orientation, where the recovery efforts are only directed at material forms, not comprehensive recovery that ignores the facts of pressure, traumatic threats, discrimination, loss of citizenship, damage to dignity, self-esteem and good name due to arbitrary treatment for a long time, including experiencing state stigmatization that spreads to society.

At this level, the standard effort whereby States are required to implement an effective remedy (right to an effective remedy) as part of the basic international principle of reparation for victims of gross human rights violations and victims of serious crimes, has been ignored.

In the implementation of recovery, the state is obliged to restore the victim's condition to the way it was before the crime occurred according to the principle of *restitutio in integrum* by restoring balance to its position or restoring the chaos that occurred in the previous situation even though it may not be possible for the victim or his family's condition to return to its previous condition. That is why the state is obliged to carry out recovery to the victim as completely as possible and cover

various important dimensions including rehabilitation, compensation, restitution, the right to victim satisfaction, and certainty of guarantees of non-recurrence of the incident.

The issuance of Presidential Decree No. 17 of 2022 seems to take a shortcut that covers up the weaknesses of efforts to focus on victims with a recovery approach as described in Presidential Instruction of the Republic of Indonesia Number 2 of 2023 concerning the Implementation of Recommendations for the Settlement of Serious Human Rights Violations. This Presidential Instruction is also only directed at strengthening the knowledge and understanding of human rights of TNI/Polri officers. The Presidential Instruction is unable to reach the bureaucratic reform of the state structure that used to be the backbone of the state's violence machine. Likewise, creating momentum to break the past and the future by identifying the perpetrators and punishing them in order to create a guarantee of non-recurrence and deterrence for anyone who will repeat it.

The Presidential Instruction only orders 19 ministers and state institutions, namely the Coordinating Minister for Political, Legal and Security Affairs, Coordinating Minister for Human Development and Culture, Minister of Home Affairs, Minister of Foreign Affairs, Minister of Religious Affairs, Minister of Law and Human Rights, Minister of Finance, Minister of Education, Culture, Research and Technology, Minister of Health, Minister of Social Affairs, Minister of Manpower, Minister of Public Works and Public Housing, Minister of Agriculture, Minister of BUMN, Minister of Cooperatives and SMEs, Minister of Tourism and Creative Economy, Attorney General, TNI Commander, and Chief of Police to follow up on the recommendations of the PPHAM Team by taking the necessary steps in a coordinated and integrated manner according to the duties, functions, and authorities of each ministry and institution. These tasks include restoring the rights of victims of serious human rights violations fairly and wisely and preventing serious human rights violations from happening again. However, unfortunately, the second objective does not have an effective implementation, at least as seen from the tasks given to the Attorney General who provides assistance during the verification of victim data and the Police who are tasked with maintaining security and optimizing human rights education and training.

CONCLUSION

In order to resolve past gross human rights violations, the government's policy of issuing Presidential Decrees and Presidential Instructions is certainly not a bad thing. However, expanding understanding and deepening awareness of the comprehensive goals of resolving past gross human rights violations philosophically needs to be the starting point for every step. It is undeniable that the wall of impunity in Indonesia is still thick. The efforts of the civilian president who is trying to improve the governance system have not even entered the strategic realm of legal and security bureaucratic reform. It takes not only courage and control to realize an effective resolution of past gross human rights violations, but also a guarding strategy is needed to block the intervention of the impunity movement to divert the goal of this resolution.

Mistakes and carelessness in implementing this step will lead to the strengthening of impunity and ignoring the basic rights of victims which violates the laws of existing and ongoing provisions, thus giving rise to other, worse problems.

President Joko Widodo immediately accompanied the policy of resolving past gross human rights violations through a non-judicial approach by issuing a policy that is the same as the judicial approach by ordering the Attorney General to immediately conduct transparent and responsible investigations into past gross human rights violations, and to form an Ad-hoc Human Rights Court for past gross human rights violations, including encouraging the DPR to form an ad hoc human rights court for cases that are being or will be investigated by the Attorney General's Office.

In the meantime, the government and related stakeholders must immediately improve the technical structure, resources and clear, precise and measurable references for the implementation of the examination of human rights cases in human rights courts that are able to avoid errors in identifying events, constructing responsibilities that result in the acquittal of the accused and the escape of other perpetrators from the clutches of the law.

In terms of strengthening the non-judicial approach, the government is obliged to follow up on the Constitutional Court Decision No. 006/PUU-IV/2006 to form a Truth Commission Bill that is open and effective, especially for survivors and victims' families.

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