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RESEARCH ARTICLE

THE ACCOUNTABILITY OF SERIOUS HUMAN RIGHT ABUSE DURING THE INDONESIAN NEW ORDER ERA

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Abstract

Efforts to encourage accountability cases of gross human rights violations of the past regime in Indonesia is part of measures to ensure the enforcement of the rule of law and the principle of protection of human rights are fully guaranteed by the 1945 Constitution of the State of the Republic Indonesia (The New Indonesian Constitution 1945).

However, post-reform to date, these efforts were never implemented properly, fairly and worth. So that the expected substance accountability can never be realized. This article will briefly 1) Explain the importance of account for cases of gross violations of human rights of the new order for the Indonesian nation. 2) Describe the ideal concept of accountability cases of gross violations of human rights of the new order. With the use of normative juridical approach (normative approach), socio-juridical (sociological approach), conceptual (analytical and conceptual approach), case (case method), and comparative approach (comparative approach) obtained results, among others: A) state accountability on cases of gross human rights violations of the new order formally through a committee or body that gets stronger the legitimacy of the government would at least be able to: [1] Reveal the truth of an event (rights to know); [2] To identify the perpetrators; [3] Giving recognition to the victims [4] Finding and identifying the bureaucracy damage due to abuse in the past to be restored. [5] To ensure the certainty of the non-recurrence of violence and abuse of authority in the country today. All of this accountability targets will only be successful if implemented correctly and worth (right and proper). B) With the political situation of impunity that is still looking to strengthen the concept of accountability cases of gross violations of human rights of the new order, especially for cases other than human rights violations in 1965 should still refer to the provisions of Law No. 26 of 2000 on Human Rights Court that is through the ad hoc court. As for the case in 1965, the settlement can be done through the Truth for Reconciliation Commission.

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INTRODUCTION

Several time ago, the Indonesian government through the Coordinating Minister for Political and Security Tedjo Edhi Purdijatno said that the Attorney General and the National Commission on Human Rights will form the Committee on Conflicts of past human rights that are directly under the President. This committee will seek for evidence and witnesses to legally resolve the cases of human rights but it is also this committee was authorized to take the settlement by way of reconciliation.

Implementation of the government's commitment is probably because the government is bound to the provisions of the New Indonesian Constitution 1945 which in Article 1 Paragraph (3) states that "The state of

Indonesia shall be a constitutional state." The inclusion of an affirmation that Indonesia has established itself as state in running government based only and is subject to the law (*rechtstaat*) not to approach power (*machtstaat*). With these provisions, there is the obligation of governments to make commitments to settle past human rights violations as policies and regulations that are made by state was formed to support every action in the whole life of the community and the state to always rely on the law.

Constitutional laws have meaning include the first, recognition of human rights (*grondrechten*); secondly, the separation of powers (*scheiding van machten*); The third, based on government legislation (*wetmatigheid van bestuur*); and fourth, the judicial administration (*administratieve rechtspraak*) (Robert Mohl, 1973: 22).

In addition to understanding the scope of the idea of constitutional law both termed the rule of law and *rechtsstaats* in essence boils down to four main requirements that relate to each other, the first, the principle of legality, which means the government acted solely on the basis of applicable law; second, the freedom and independence of judicial power, especially in its function to enforce the law and justice; third, the guarantee of protection of human rights; and fourth, the existence of a system of government based on the constitution or basic law (Franz Magnis-Suseno, 1993: 298-301).

In the context of the current Indonesian constitutional state, Jimly Ashshiddiqie define into thirteen basic principles of a constitutional state (*Rechtsstaat*) as the main pillars that held up the establishment of a modern state that can be called as a legal state (*The Rule of Law*, or *Rechtsstaat*) in true meaning, namely: (Ashshiddiqie, 2007: 309-311).

1. Rule of Law (Supremacy of Law)
2. Equality in Law (Equality before the Law)
3. Principle of Legality (Due Process of Law)
4. Limitation of Power
5. Organs independent state
6. Free and Impartial Justice
7. State Administrative
8. The State Administrative Court (Constitutional Court)
9. Protection of Human Rights
10. Characteristically Democratic (*Democratische Rechtsstaat*) Serves
11. Achieve Objective Welfare (*Welfare Rechtsstaat*)
12. Transparency and Social Control
13. Believe in God

Thus, it can be concluded that there is no constitutional state without government action based on law. Likewise there is no constitutional state if no guarantee of human rights because that is the obligation of government to enforce the law and provide guarantees for the protection of human rights to be one of the main clauses in the basic constitution of the Republic of Indonesia. Therefore, law enforcement and accountability any person or entity for violation of law and human rights should be the main agenda to be implemented.

Nevertheless, the provisions of the Constitution are still not fully implemented by state, especially in terms of seeking the way to account for cases of gross violations of Human Rights in the new order is correct, appropriate and equitable.

Efforts of Attorney General and the National Human Rights Commission in forming a completion team of past human rights gross violations are still considered to be a tendency to wash hands past sins without oriented real accountability. This can be seen from victims refusal to complete the formation of the reconciliation team cases of past human rights violations. The refusal was based on the existence of errors in the formation of the reconciliation team by the Attorney General and the National Human Rights Commission should be, both institutions put forward the first run of a legal mechanism such as inquiry and investigation to determine who is responsible for human rights violations the weight of the past. All these results can only be used as a basis for consideration and input for reconciliation

Various cases in the new order has become a burden for the next administration. The burden is not only seen from the strong demands of society and the victims are aggressively voiced but also on the condition of impunity persons suspected of being the perpetrators of gross human rights violations. Cause a result the momentum of transition after 1998, failed to bring justice for the victims and perpetrators. Accountability conducted post-reform government as in the gross human rights violation case of East Timor, Priok and Wasior through human rights judicial mechanisms tend to be awkward and not able to give justice to the victims (ICTJ, 2011: 5-6), it lasts up to now. Base on the fact, this article will try to explain briefly two related issues: 1) the extent the importance of

accountability cases of gross violations of human rights of the new order for the Indonesian nation. 2) How does the ideal of accountability cases of gross violations of human rights of the new order.

DISCUSSION

A. Definitions

accountability to cases of gross human rights violations have actually regulated by law in the mechanism of legislation. Especially for cases of human rights violations and serious human rights violations currently regulated by Law No. 26 of 2000 on Human Rights Court (Human Rights Court Act). However, because in cases of gross human rights violations past also has a political background, the possibility of completion mix between judicial and non-judicial, or political and legal as in the proposed establishment of human rights courts by Parliament even mix between judicial and non-judicial complementarily to implement transitional justice achievement.

Cases accountability of gross human rights violations arose because one of them there is a responsibility of the state (state responsibility) and the human rights obligations of the state over its citizens. State responsibility is a principle in international law that governs the onset of a country's liability to the other countries that have been codified and adopted by the International Law Commission (<http://www.un.org/law/ilc/introfra.htm>) in the ILC Draft Articles on State Responsibility, the ILC's 53rd Session, Geneva, 2001. The responsibility of the state emerged from the obligation of the state (state obligation) is not limited only to ensure the application of the rights but also ensure its implementation.

Responsibility and obligation of the state creating to the deliberate actions of the state in the form of a policy (state policy) is defined as a series of interrelated decisions taken by a political actor or group of political actors with regard to objectives that have been a long ways to achieve them in a situation where the decisions were in principle still within the limits of authority of power of those actors. One of the responsibilities of the state are state obligations in human rights-related duties of its citizens

The obligation of the state in carrying out the task rights of its citizens at least focused on three things: the state's obligation to respect, protect and fulfill the rights of every citizen. The state's obligation to respect human rights spread in three levels namely at the level of primary form of state obligations to respect the rights of citizens cannot be reduced under any circumstances (non-derogable rights), secondary level in the form of the state's obligation to respect the rights of citizens who in certain situations could be limited (derogable rights) and tertiary level in the form of state obligations to respect the rights of citizens in economic, social and cultural (Richard Pierre Claude, Burns H. Weston, 2006: 175).

In the national context, the human rights obligations of states under Article 71, Law 39 of 1999 on Human Rights (Human Rights Act). In the article it is clearly stated that "the Government is obliged and responsible to respect, protect, uphold and promote human rights stipulated in this Law, other legislation and international law on human rights ratified by the Republic Indonesia. "The shape of the implementation of the government in the matter of human rights obligation is also made clear in Article 72 that mentions that" The duties and responsibilities of the Government includes the implementation of effective measures in the field of legal, political, economic, social, cultural, defense and security, and other fields".

With these provisions, the post-reform government could not detach himself from the effort to implement the accountability cases of gross human rights violations that occurred in the past, especially in the New Order regime (1965-1998). New Order is defined as the reign of President Suharto in Indonesia, which lasted from 1968 to 1998. New Order replaced the Old Order that refers to the era of Soekarno (http://id.wikipedia.org/wiki/Orde_baru) which in many studies, transition power is called a coup carried out by crawling (creeping coup) (Sukmawati Sukarno, 2011: 12). New Order is present with the spirit of "total correction" of irregularities by Sukarno's Old Order. But what happened was not better because there are various abuses of power such as the rampant corruption and cases of gross human rights violations which caused many casualties.

Violations of Human Rights is defined as any act of a person or group of persons including the state apparatus either intentionally or unintentionally, or negligence unlawfully reducing, preventing, restricting, and human rights or deprive a person or group of persons is guaranteed by this Act, and did not get, or feared would not obtain legal settlement fair and correct, based mechanism applicable law. (Human Rights Act No.39 of 1999) In addition to the definition of human rights violations, Human Rights Court Act No.26 of 2000 on also called the gross human rights violations, which includes the crime of genocide and crimes against humanity (Articles 7, 8 and 9 of Human Rights Court Act No.26 of 2000).

Referring to the definition above, in the new order, some gross human rights violations that allegedly occurred during the period 1965-1998 and caused hundreds of thousands more deaths. These cases include the events of 65 (1965-1966), the application of Military Operations Area (Daerah Operasi Militer) Papua (1963-1987), Invasion and gross human rights violations in East Timor (1975-1999), a mysterious shooting (1983-1986), political

coercion ideology of Pancasila (1978-1989), the implementation of DOM in Aceh (1989-1998), the event July 27, 1997, systematically riots May 1998, and many more.

B. State Violence As Gross Violations of Human Rights

Obligations of the state in ensuring the rights of every citizen give serious implications if ignored it. Even if state do the opposite when the state become perpetrators of human rights violations. In special cases and particular, the state on behalf of the people of Indonesia, was given the privilege to start doing violence to declare war against another country as provided for in Article 11 of the New Indonesian Constitution 1945. But on the other side, the use of state bureaucracy and the resources to do violence becoming part inseparable human rights violations because it has made the state as a source of systematic violence or state violence.

As part of a systematic action, state violence is often associated with political violence. This is because the term often refers to violent political acts of violence carried out as a state policy actions carried out in a structured, systematic and planned. C. Wright Mills calls that "almost all politics is essentially a struggle for power; and the most fundamental of the power struggle is the use of violence." (C. Wright Mills, 1956: 171).

Violence in the limited context may be one of the state-owned legal instrument to implement such policies declare a state of war, the use of repressive measures and military for the disruption of terror that threaten citizens or state and so on. (Mansour Semma, 2008: 55).

Even Karl von Clausewitz believe that violence, including violence involving various many parties such as war, represents only one branch of political activity. (Julian Reid, Vol. 28, 2003: 1). He added that it (violence and) war is difficult to separate war from politics where the military often become the main instrument of the abuse of authority (Bernard Brodie, Vol. 25, 1973: 308).

In 1919, the Paris Peace Conference, a committee of law enforcement accountability for war crimes began to assert the use of said crimes or offenses against the laws of humanity separately from war crimes or offenses against the laws and customs of war. The purpose of formulating a new legal concept aims to design the specifics of state and war crimes. (Dadrian, V. N, 1998: 503). Even attempts to specify the crimes against humanity from war crimes continue to be clarified when the London Charter of the International Military Tribunal (the London Charter or Nuremberg Charter) was formulated. By entering a new concept that includes charges of crimes against humanity German troops in the International Military Tribunal (IMT) Nurnberg August 8, 1945, London Charter begun to include clauses crimes against peace, namely in paragraph 6.A (Crimes Against Peace), 6.b (War Crimes) and 6.c, (Crimes Against Humanity). In London Charter, Crimes Against Humanity is defined as: (Machteld Boot, 2002: 185).

"Murder, extermination, enslavement, Deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal from, whether or not in violation of the domestic law of the country where perpetrated".

The concept of crimes against humanity was later adopted as gross violations of human rights the in Human Rights Court Act No. 26 of 2000.

C. Crimes Against Humanity in the Indonesian Legal system

Indonesia's domestic efforts to adopt a clause of crimes against humanity contained in the Human Rights Court Act No. 26 of 2000 which regulates the crime in special courts for gross human rights violations.

Specifically, there are three reasons for the establishment of the Human Rights Court Act No. 26 of 2000, such as: (explanation of Human Rights Court Act No. 26 of 2000, State Gazette No. 4026).

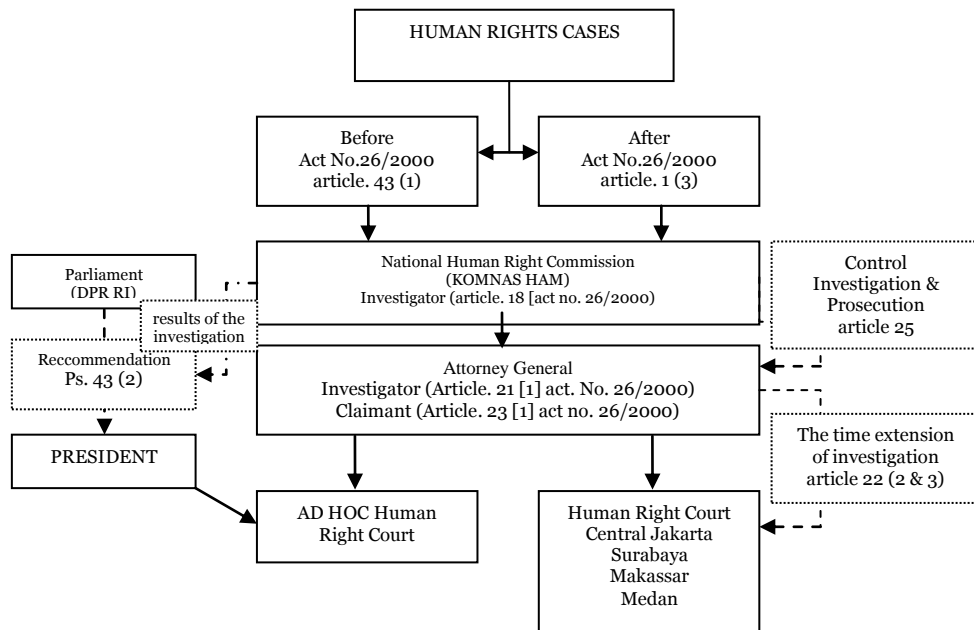
- a. Gross violations of human rights are "extraordinary crimes" and broadly impact both on the national and international levels and is not a ordinary criminal offense regulated in the Code of Criminal Law and inflict material and immaterial losses resulting insecurity good to individuals and society, so it needs to be restored in the realization of the rule of law to achieve peace, order, peace, justice, and prosperity for all the people of Indonesia;
- b. For cases of human rights gross violations that required severe measures of inquiry, investigation, prosecution, and examination of the specific nature of specialization seen in:
 - 1) Required an investigators to establish ad hoc team, ad hoc investigator, prosecutor ad hoc and ad hoc judges;

- 2) Required assertion that the investigation is only carried out by the National Commission on Human Rights, while the investigator was not authorized to receive reports or complaints as stipulated in the Law on Criminal Procedure;
 - 3) Necessary provisions regarding certain period of time to conduct the investigation, prosecution, and examination in court;
 - 4) Necessary provisions regarding the protection of victims and witnesses;
 - 5) Necessary provisions insists there is no expiration for human rights violations are severe.
- c. Gross violation of human rights, especially genocide and crimes against humanity can use the retroactive principle is not used in ordinary criminal act solely in order to protect human rights itself is based on Article 28 A (2) of the the New Indonesian Constitution 1945. Therefore, this law also governs the ad hoc Human Rights Court to examine and decide cases of human rights gross violations that occurred before the enactment of this Act.

With the confirmation, the variety of human rights gross violations, including that happened in the past can not be placed as an ordinary criminal case. Due to the special provision, gross violations of human rights form a separate criminal justice system as the criminal justice system of human rights. Human rights criminal justice system refers to a system of "half room". This is because, the criminal justice system is not fully human rights refers to the Human Rights Court Law Act No. 26 of 2000 but also still refers to the Code of Criminal Procedure postscript is ordinary criminal law guidelines. (Article 10, Human Rights Court Law Act No. 26 of 2000)

Human Rights Court Law Act No. 26 of 2000, substantively included in the criminal law because it contained material criminal law and formil criminal law at once. This indicates that these laws actually walk in the broad framework of the criminal justice system. However, the difference is, the presence of other agencies or institutions that act as law enforcement officers are not different from that typically found in a criminal justice system. Such as the appointment of the National Human Rights Commission as an investigative agency in cases of human rights violations. (Article 43, Human Rights Court Law Act No. 26 of 2000)

Scheme
Ciminal Justice System of Human Right



D. The importance of accountability Cases Serious Violations of Human Rights of the New Order

Some experiences accountability halfhearted, apparent even diverting intends to rescue the perpetrators obviously will never be able to touch the purpose of achieving justice. This is because, the state demanded

accountability and shared carried does require commitment, cooperation, sincerity and courage of all parties to seriously terminate and cut off his dark past has always been a stumbling block for the future progress of a nation. Although difficult, this prerequisite remains non-negotiable, but can be conditioned gradually. The importance of state accountability in cases of gross human rights violations of the new order is correct, fair and should at least be able to

a. Reveal the truth of an event.

Disclosure of the truth not only gives complete knowledge of events but also give separate recognition. The recognition not only for the parties involved but also for a truth and courage to be honest. The importance of a formal recognition is also seen to be strong, especially because during the rebuttal, burial and formally and massive deflection has done extremely deep. Some observers measure the need for official truth, and then the precision of a truth commission, by comparing the extent to which a government tried to hide the true nature of the regime. Aryeh Neier stated that the need to find the truth is determined by how hidden atrocities (Priscilla B. Hayner, 2001: 26). Crimes and atrocities committed by the ruling party usually often followed by attempts of fraud, embezzlement and blurring. Some governments try to maintain international legitimacy of the version history of violent crimes All things about the authorities sought to be indisputable. Therefore, if fraud against the truth of the past history is a continued infringement, the disclosure of the real truth has gained a great importance to do.

It could be in the disclosure of the truth that is done on the one hand does not bring new facts about an event. This situation usually experienced by victims even as the actual perpetrators of an incident are revealed. But on the other hand. The disclosure of the truth that there are no new facts had actually been unpacked undisguised truth and refute the lies that have been widely recognized and has always spoken of the community as a version of the truth. In an event of gross violation of human rights which the civilian and military personnel involved in a brightly lit in the past, has successfully buried only with the repressive actions of despotic governments (Nigel Biggar, 2003: 157). At this point, the process aims to stop the disclosure of truth and untruth fear that continued into the silent history.

History formation of the state often begins by monopoly of information and followed by a series of indoctrination about the version that should be owned by the community. The new order "PKI Rebellion" movie is an example that the New Order state, deliberately and systematically want to preserve the memory of even the public hatred of the other versions of the events of 1965 gradually began to open.

In the context of legal responsibility, disclosure of the truth is one of the goals to be achieved to be other material in subsequent processes such as identifying the perpetrators and provide the rights and recognition of the victims. Thus, the reluctance of the state to open the correct version of history that in fact is not only an evasion and blurring a history but also a systematic action to bury all attempts responsibility (Robert B. Pippin, 2005: 131).

b. Identify the perpetrators

As soon as an incident of violence, correctly and officially announced, it is almost certain, the explanation would bring the parties who are involved either directly or indirectly. Identification of the perpetrator is a necessity of a series of revealing the truth. Moreover, there will be no event without preceded by a perpetrator's actions are causing casualties. Therefore, the responsibility by the state in the case of past human rights violations should not be done half-heartedly to cover up who the real parties and individuals who should be responsible. Obfuscation on this matter by the same countries refuse real accountability.

There are never exact reason of neglect to call to account past violence unless their intent to harass the law and sort of sanction (inequality before the law) for allowing the perpetrators can not be touched by a tool of accountability. Soon after a violent event, officially, announced, then almost certainly, the explanation would bring the parties who are involved either directly or indirectly.

c. Give recognition to victims

A fundamental difference between justice and truth-telling mechanisms such as a truth commission is in the nature and scope of their attention on the victims. If within the justice system primarily serves to examine the specific actions of the accused perpetrators. So on accountability through truth-telling mechanism to provide flexibility over which no formal to the victim to pour the entire memory to be recorded and tested in the public hearing process. Since forming starting in 1970-1989, two of the seven existing Truth Commission, provide public hearing. Meanwhile, the rest did close the hearing. The tendency of increase in the period 1989-1999, of which there are four Truth Commission presents a public hearing. Meanwhile, the

rest did close the hearing. The participation of victims is increasing with the public hearing held during the period of the formation of the 22 Truth Commission in 2000-2009, where fifteen existing Commission presents a public hearing (Holly L. Guthrey, 2015: 21).

d. Locate and identify damage bureaucracy

New Order state violence is a systemic orchestration violence machine launched by both civilian and military bureaucracy. Using of bureaucracy as oppressors machine and other power objectives clearly not only contrary to the proper purpose of the service bureaucracy but also has established a culture and bureaucratic structure that puts people as enemies of the state.

Such a mindset will not be restored by sporadic and partial measures. Reform focus in the Armed Forces at the time which separation between the military and police and disarm the military role of business conducted was not propagate to the elements and other elements of the bureaucracy.

The public is not aware that commando operation to restore security and order (*Komando Operasi Pemulihan Keamanan Dan Ketertiban- Kopkamtib*) a cruel powerfull new order regime institution disbanded because the agency has become the main of violence of the New Order tool which coordinates almost all bureaucratic institutions as a way to use violence as one and only approach. By obscurity concept on bureaucratic reform aspect, of course, could easily guess how chaotic and lack of bureaucracy in the public service.

e. Prevent the recurrence of violence and abuse of power.

How can crime be reduced is the next question to be answered by an attempt to reveal the truth. Disclosure of truth in this aspect aims to ensure the guarantee is not the repetition of state violence in the name of any (Rosario Figari Layús, 2010: 20).

Police officers are still promoting violence, the murder of Munir (a human rights defender) without the perpetrator is identified, violence without perpetrators and high levels crime such of corruption untouched, is a continuation of a series of uncertainties due to the completion of the accountability of state violence in the past.

The whole process appears on the past efforts of state responsibility would clearly contribute enough not only for the cessation of systematic state violence but also for a guarantee to not repeat of the violence itself in the present. This is partly because the actors perpetrators of violence in the past not only feel invulnerable before the law but also confident that the law will not be able to stop their crimes.

State responsibility as the real key words must be understood as any action taken in various ways in order to put an end to all claims and demands arising. Thus the state as a political entity can perform any steps to meet the various demands accountability, ranging from political, legal and other state action. This has also been taken by countries around the world in responding to the demands of public accountability to a series of state crimes that occurred in the country.

E. The concept of accountability Cases of Serious Violations of Human Rights In the New Order Era

With a variety of issues and challenges that have been reviewed previously, a formal mechanism for disclosure of the truth about human rights violations that occurred in the past continues to be relevant in the current context. Truth must be the foundation for the achievement of the recovery of victims' rights, reconciliation between all the parties who have been affected by state policies that violate human rights and take part in human rights violations, as well as being the basis of the policy change and improvement of institutions that have resulted human rights violations in the past. This truth should be the starting point for the renewal of the nation, for the realization of justice and democracy in Indonesia.

The commitment of the state in implementing policies to account for state crimes cases always incomplete and failed. The absence of the concept, commitment, consistency and cooperation, including in the face of potential interference turned out to be more visible. Even state in this problem has become a save player with sorting out the various steps safely run with the human rights agenda does not clash with acute illness and wash away within him. This step is also being done by a handful of people in the government on "get around" a forum called them as a mechanism of accountability but in substance similar to simplify the problem because some of the main prerequisites, namely the disclosure of truth, justice parameter to be achieved as well as a fundamental reform of the structure and culture of recovery bureaucracy is not addressed properly.

Single policy to create a committee on completion versions of Attorney General and Human Rights Commission, likely contains goodness, but the fact is otherwise. Completion of the half-hearted, improper handling, destination oriented to injustice makes a lot of time, effort, cost and resources of the state increasingly scattered

aimlessly because there is a lot of significance to the improvement of the nation. Even one after another, sin and damage to the body of bureaucracy as a bribe, brokering case, a wave of corruption of high state officials as a result of not touching the bureaucracy improvement of the results of the disclosure of the truth to the surface pushed back completion and treatment demands. Elsewhere, the government's half-hearted action settlement that also does not give lessons and still regard violence as the best way of handling a problem, dialogue and mediation is considered as an obsolete and not be the best way for anyone completion.

The reluctance of the government to provide real justice also have serious consequences for the destruction of the legal systems and cultures. At the highest level, legal entanglement for officials only become a toy in the discourse of political opponents bluffing. Siding with the justice solely just to intimidate parties bersebarangan or into a counterattack. At this point the settlement insistence past gross human rights violations discovered his true enemy: the impunity of perpetrators (impunity) that are backed up state.

Indonesia human rights commission has conducted over at least five pro-justisia investigation. Report the results of these investigations have been submitted to the Attorney General to be followed up with an investigation and prosecution. From a number of cases that have been completed under investigation by Komnas HAM, the two cases which have been followed up and resolved through ad hoc Human Rights Court, which is the case of gross human rights violations in East Timor post-poll 1999, and cases of serious violations of Tanjung Priok 1984. While cases of serious human rights violations in Abepura Papua, which occurred after promulgation of Human Rights Court Act No. 26/2000, has been followed up and resolved through the permanent human rights court. While the results of other investigations such as case (1) Trisakti, Semanggi I and Semanggi II, (2) May riots 1998, (3) Forced Disappearance, and (4) Talangsari, Lampung has not followed an investigation by the Attorney General on the grounds yet the formation of an ad hoc human rights court for each event.

The attitude of the Attorney General, in fact does not reflect the attitude of law enforcement also must obey the law. Because in this matter, the State of Constitutional Court Republic Indonesia has decided that the Parliament in recommending the establishment of an ad hoc human rights court is precisely that first must pay attention to the results of the investigation the Commission and the Attorney General's investigation results as citations to the opinion of the State of Constitutional Court Republic Indonesia as follows (the State of Constitutional Court Republic Indonesia Decision No. 18 / PUU V / 2007 on judicial review of Human Rights Court Act No. 26 Year 2000):

".. To determine whether or not the establishment of an ad hoc Human Rights Court on a particular case according to the locus and tempus delicti does require the involvement of political institutions that reflect the representation of the people of the House of Representatives. However, the House of Representatives in recommending the establishment of an ad hoc Human Rights Court must consider the results of the investigation and the investigation of authorized institutions for that. Therefore, the Parliament would not necessarily suspect himself without obtaining the results of investigations and inquiries in advance from the competent institution, in this case the Commission as investigators and Attorney General's Office as an investigator according to the provisions of Human Rights Court Act No. 26 Year 2000.. "

As well as settlement through other than ad hoc tribunals, which are also regulated in Human Rights Court Act No. 26 Year 2000, where cases of past human rights gross violations can completion through the Truth Commission. The establishment of a truth commission does not necessarily arise from the settlement of past cases desire recklessly. The truth commission was formed based on the past experiences of violence in each country. From the context and the experience, the country seriously wants to finish his past correctly, appropriate and fair then formulate the name, mandate and authority of different types of human rights crimes it investigated. Even so, the commissions it related with one common characteristic. Almost all of the obstacles that occur for the implementation of a truth commission, especially at the stage of implementation of the recommendations emerging from violent groups that act specifically military refused to even oppose the work of the commission.

For pragmatic group, forgiveness is considered as a 'national reconciliation'. Yet forgiveness is only a little fraction of reconciliation in order to build the future. Another important part is the narrative truth telling of past events, trauma and psycho social rehabilitation of victims as well as the sterilization of personal and bureaucratic structure of state violence. Just for forgiveness not only unconstitutional, because the President right to pardon recognized constitutionally should not include people who have not been convicted, including in the case of Suharto. Such forgiveness is not considered appropriate modern future be a privilege of the President for the rights over preserving cultural remnants of the government of the monarchy should be abolished.

Because of the importance of accountability, foreign government- groups whose citizens became victims of the Dirty War in Argentina even perform individual claims against the former military regime. France, for example,

has trying to extradition on Captain Alfredo Astiz for the kidnapping and murder of its citizens, including nuns Leonie Duquet. (Naomi Roht-Arriaza, 2006: 122). Adolfo Scilingo, a former Argentine navy officer, was convicted in Spain on April 19, 2005, and sentenced to 640 years on charges of crimes against humanity. (Helen Fein, 2007: 88).

F. Commission on the Truth for Reconciliation

Once again it must be stressed that, a truth commission is the official government agency formed to have the following characteristics: (1) focusing on the past; (2) investigate patterns of violations over a period of time, not a specific event; (3) are temporary, usually working for six months to two years, and completed their task by providing reports; and (4) was officially established, agreed and given power by state (and sometimes also by armed opposition as part of a peace agreement). This official status gives access to a broader truth commission on the source of official information, more security to run the sensitive investigations, and a greater likelihood that the reports and suggestions will get serious attention by the government.

With such provisions, the committee established Attorney General and the National Human Rights Commission to resolve cases of past human rights violations in Indonesia with reconciliation as its main focus actually very weak and almost certainly will not give the correct destination settlement, worth much less fair. Moreover, for cases that have been investigated and the Human Rights Commission is in the "table" the Attorney General.

As for the case in 1965, the settlement can be done through the Truth for Reconciliation Commission where the draft, mandate, mission and authority in this committee is very different with the Attorney General and the National Human Rights Commission. The term "truth commission for reconciliation," an assertion no reconciliation without truth is worth. The name also means that the disclosure of the truth preceded by a fair and true reconciliation should then be addressed.

The Truth Commission established in various parts of the world generally give full attention to the victims therefore, truth commissions are also given the authority to carry out a policy of reparations in the form of rehabilitation, restitution and compensation for the macro to be implemented technically by other state agencies. Otherwise in terms of the amnesty, the commission is not authorized to provide immediate amnesty, but could only give a recommendation to the terms and strict procedures.

1. Victims Reparations

In December 2005, the UN General Assembly has adopted "Basic Principles and Guidelines on the Right to Completion (right to remedy) and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law." In such provisions are intended to Repair including:

- a) The right to restitution, ie reinstatement victim to the situation before the violations, including the right to freedom, basic rights, the right to identity, family life, citizenship, residence, employment, and property;
- b) compensation for economic losses proportionate to the violations experienced;
- c) Rehabilitation, ie medical care, psychological, legal and social;
- d) guarantee no repeat of past infringing including institutional reform;
- e) the right to satisfaction that includes a halt to violations, the recognition of the truth, the search for missing persons, including the excavation of mass graves, the official declaration or a judicial decision restoring the dignity of victims, an official apology, sanctions against the perpetrators, victims awards through the memorial and monuments.

The commission's mandate to perform repairs also include the recovery of victims to be done by working with organizations that provide services (social, medical, counseling, etc.) according to the needs of victims, and corresponding basic principles of the rights of victims. Victim recovery efforts can be divided into two stages:

- Short-term: to provide immediate care to the victims of the most vulnerable, using a variety of methods and media, including social recovery through artistic activities, counseling, support groups, health care, therapy etc. The Commission should work together with the various mechanisms and programs of government and non-government victim services. Referral of the Commission to provide urgent care for certain victims must be implemented immediately, a "binding recommendation."
- Long-term: to collect information in order to design a long-term reparations program that must be run by the government based on the recommendations of this Commission.

In addition, the implementation of the core mandate to provide reparation Victims are also carried out in collaboration with the institutions that already exist. For example, the National Human Rights Commission who has

experience of revealing the truth and the recovery process can be complementary to the victims of the process. Also with the Witness and Victim Protection Republik Indonesia, (Lembaga Perlindungan Saksi dan Korban-LPSK) especially at the regional level, where the Commission to interact intensely with the victim.

2. Amnesty

According to the concept and common practice, the truth commission is not a substitution of the proceedings. Thus the commission does not grant amnesty but an amnesty can only make recommendations in accordance with the level of crime and mechanisms of legislation.

In terms of the level of crime, the amnesty is only given to individuals who do not have a motive accidentally, because of coercion, pressure and the like until he committed the crime. As for the master mind, the planner, and executor with motive and intent are clear and meet the elements of human rights violations and crimes against humanity, cannot be recommended given amnesty and recommendation to be forwarded to the prosecution. Thus, even on the contrary, truth commissions can work complementarily with the court, with reference to important cases and evidence it has collected to the court. According to the Indonesian constitution, amnesty can only be granted by the President to consider the input from Parliament.

The recommendations of granting amnesty to the perpetrators of minor crime still accompanied by a another penalty in the form of lustration and revocation of political rights to participate in government.

The Commission should present a reconciliation as once of goal, or achievements of the Commission, but not specifically to facilitate reconciliation mechanism at the national level. Exceptions to facilitate reconciliation at the local level should be given to Aceh, where a local Commission designed and established based on local needs, under the Aceh Government Act and the Qanun, and then integrated in the concept of a Indonesian truth commission.

CLOSING

A. Conclusion

State responsibility over cases of gross human rights violations of the new order is officially the strong legitimacy of government will at least be able to: [1] Reveal the truth of an event. It is also associated with the rights to know the community; [2] To identify the perpetrators; [3] Giving recognition to the victims [4] Finding and identifying the bureaucracy damage due to abuse in the past to be restored. [5] To ensure the certainty of the non-recurrence of violence and abuse of authority in the country today. All of this accountability targets will only be successful if implemented correctly and worth (right and proper). Some experiences accountability halfhearted, apparent even diverting intends to rescue the perpetrators obviously will never be able to touch any of the above objectives overall. This is because, state accountability referred to in this mechanism does require commitment, cooperation, sincerity and courage of all parties to seriously terminate and cut off his dark past has always been a stumbling block for the future progress of a nation. Although difficult, this prerequisite remains non-negotiable, but can be conditioned gradually.

With the political situation of impunity which is still strong in the structure and culture of governance in Indonesia, the ideal concept of accountability cases of gross violations of human rights of the new order, especially for cases other than human rights violations in 1965 should still refer to the provisions of Human Rights Court Act No. 26 of 2000 that is through the ad hoc court. Moreover, there are some cases of past human rights violations that have been completed investigation by Indonesia Human Rights Commission and the Attorney General are on the table.

B. Suggestions

Human rights violations that occurred in the past should be a serious concern for rearranging identity, honour and Indonesian sovereignty as an independent nation. To that must be resolved in a manner that is fair, appropriate and dignified.

President immediately ordered the Attorney General and the National Human Rights Commission in order to prepare the ingredients the investigation into the serious human rights violations that have been completed to continue the process of investigation and so on.

The government immediately scheduled a truth commission bill with precisely, careful, earnest and pay attention to the voices of victims and communities who are committed to the resolution of past human rights violations are fair and appropriate, to be used as the basis for the quality goes to the Truth Commission Reconciliation.

The government will soon prepare infra and supra structure for the reparation of victims of gross human rights violations in the form of rehabilitation, restitution and compensation.

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