

# Implications In Handing Gross Human Rights Violations In Paniai District

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## **Abstrak**

*The aim of this research is to evaluate the function of Komnas HAM in handling cases of human rights violations in Paniai Regency, as well as obstacles to handling human rights cases in Paniai Regency. This research uses empirical juridical research methods, namely methods or procedures used to answer research problems by first examining secondary data and then examining primary data in the field. The aim of the research is to collect field data through interview techniques and respond to the author's concerns regarding the handling of human rights violations in Paniai Regency, namely cases of shootings against civilians by armed officers from the TNI. Based on research findings, the difficulties faced by the Papua Province Representative Commission for National Human Rights in resolving cases of serious human rights violations in Paniai Regency are in terms of examining witnesses and victims who continue to be rejected, due to the lack of public trust. in law enforcement. Therefore, Komnas HAM needs to foster a sense of public trust.*

**Keywords:** Role, The Komnas HAM, Human Rights Violations.

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## **1. Introduction**

Human Rights or abbreviated as HAM (Hak Asasi Manusia) in Indonesian are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law and government, and everyone for the honor and dignity and human dignity.<sup>1</sup>

After the end of World War II (two), there was an assumption or thought about human rights that human rights must be protected by law. As a result, the United Nations (UN) as a global institution discusses the concept of human rights, which includes universal aspects, decency, and freedoms that must be upheld regardless of race, skin color, gender, language, religion, politics, or point of view. other differences regarding national or social origin, property, birth, or other status. These were the circumstances that led to the establishment of a humanitarian memorial on December 10, 1948.

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<sup>1</sup>Komnas HAM, "Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia," Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia § (1999).

The Universal Declaration of Human Rights supported by 160 countries. Respect for human rights is very important because the rights contained in human beings are gifts from God and therefore must be respected and protected. The Second Amendment of the 1945 Constitution formalizes progress in human rights. TAP No. XVII of the MPR concerning Human Rights was passed in 1998. There are several rights in TAP No. XVII of the MPR which cannot be contested under any circumstances, namely Article 37 which states that "the right to life, the right not to be tortured, conscience, religious rights, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactively applicable laws are human beings (*non derogable*).

In addition, Article 36 states that: "In exercising their rights and freedoms, each person is obliged to comply with the restrictions that have been regulated in the law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill fair demands. in accordance with considerations of morality, security and public order in a democratic society". And in practice the law has been implemented with the establishment of the *ad hoc* courts. After experiencing several changes to the concept of human rights, Indonesia adheres to a concept of human rights that is different from international conventions. In Indonesia, the element of religion is also added, namely human rights are a gift from God the Almighty. But still stick to universal principles.

During the Reformation era, all forms of violations of human rights, such as torture, cruel, inhuman, degrading treatment or other actions, eliminating all forms of racial discrimination, especially in the form of expressing opinions, could be said to be successful because during the reformation period, it can be said that various groups of people can express their opinions wherever they are. The government can freely be criticized.<sup>2</sup>

Putting aside the tragedy of the 1998 Reformation, namely the forced disappearance of 13 activists. On March 13 1998 several New Order coercive officers sneaking from village to village in densely populated areas of Jakarta. They're looking. They're looking looking for Nezar Patria, Aan Rusdianto, Mugiyanto and Petrus Bima Anugerah The day before March 12<sup>th</sup> 1998, this group of officers kidnapped 3 people including Faisol Riza, Raharja Waluya Jati and Herman Hendrawan. The 1997/1998 kidnapping of activists was incidents

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<sup>2</sup>Prasetyo Hadi dan Savitri Wisnuwadhani, *Penegakan Hak Asasi Manusia Dalam 10 Tahun Reformasi* (Jakarta: Komisi Nasional Hak Asasi Manusia, 2008).

of forced disappearance of people or kidnapping of activists pro-democracy that occurred before implementation of General Elections (Elections) in 1997 and the General Assembly Session People's Consultative Assembly (MPR) year 1998. This kidnapping incident was confirmed takes place in three stages: Approaching elections in May 1997, within two months ahead of the MPR session in March and in the period immediately leading up to it.

Suharto's resignation on May 21 This is reflected in incidents in the form of illegal arrests, kidnappings, persecution, rape, forced disappearances, even murders, burning of houses and places of worship, attacks on religious leaders and their families. Apart from that, there was also abuse of power by public officials and state apparatus who were supposed to enforce the law, maintain security and protect the people, but instead intimidated, persecuted, disappeared forcibly and/or killed.

According to Peter Baehr, gross human rights violations will involve issues that include; "The prohibition of slavery, the right to life, torture and cruel, inhuman or degrading treatment or punishment, genocide, disappearances and 'ethnic cleansing'". Regarding the forms of gross human rights violations, we can also find them in Law Number 26 of 2000 concerning human rights courts, which cover crimes of genocide and crimes against humanity.<sup>3</sup>

During the reign of President Jokowi-JK, they signed Presidential Regulation No. 75 of 2015 concerning the National Action Plan for Human Rights (RANHAM) for 2015-2019, unfortunately, this RANHAM does not contain any government plans related to law enforcement for gross human rights violations as promised by President Jokowi.<sup>4</sup> Entering the final year (fifth year) of the Jokowi-JK administration, the problem of resolving gross human rights violations has not been a major concern in its policies, even though it is realized that this is a historical burden that requires priority and a just settlement for victims of gross human rights violations and legal certainty for perpetrators.

The National Human Rights Commission (*The Komnas HAM*) recently determined that the 2014 Paniai incident was a gross human rights violation. This decision was taken in a plenary session based on the *Ad Hoc* Team's findings of the investigation on the gross human rights violations in the Paniai incident. "After conducting in-depth discussions at the plenary session, we

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<sup>3</sup>Majda El Muhtaj, "A Critical Analysis of the Indonesian Human Rights Action Plan 1998-2020," *Jurnal HAM* 13, no. 3 (2022), <https://doi.org/10.30641/ham.2022.13.519-538>.

<sup>4</sup>M. Syafi'ie, "Instrumentasi Hukum Ham, Pembentukan Lembaga Perlindungan Ham Di Indonesia Dan Peran Mahkamah Konstitusi," *Jurnal Konstitusi* 9, no. 4 (2016), <https://doi.org/10.31078/jk945>.

unanimously decided that the Paniai incident on 7-8 December 2014 was an event of gross human rights violations,"

The Paniai incident is estimated to have started on December 7 2014 in Enarotali, Paniai Regency, Papua. This incident allegedly started when a group of youths gave a warning to members of the Indonesian National Army (TNI) who were driving a black Toyota Fortuner without turning on the lights. This warning apparently triggered a fight which ended in abuse by the TNI. The persecution allegedly resulted in the loss of civilian lives. The next day, December 8 2014, a group of Ipakiye residents came to Enarotali and asked the Paniai Police and Koramil (Military Rayon Command). As a form of protest against the actions of the authorities, the community gathered at Karel Gobai Square which is located in front of the Polsek (Polsek) and Koramil (Military District Command) while singing and dancing.<sup>5</sup>

Feeling that there was no response, the situation escalated and the people started pelting the police post and military base with stones. The security forces responded to the action by shooting to disperse the crowd. Five civilians died in this riot.

Law enforcement against serious human rights violations based on the principle of command responsibility is not only a domestic issue for a country, but has become the concern of the "international community" to break the chain of practices of impunity. Therefore, efforts to hold the command accountable for perpetrators consisting of the TNI Commander, Police Superiors, and other civilian superiors for serious human rights violations in Indonesia, is a legal issue that cannot be avoided and is the rationale for conducting this research. Research like this has been carried out before, namely with the title responsibility of commanders/superiors in cases of serious human rights violations according to international law and Indonesian law written by Yulia Fitriani, Mikkael Loviana Pangemanan in this research it was concluded that the application of the doctrine of responsibility of commandos/superiors in cases of human rights violations serious according to international law, namely the court is of the view that soldiers/subordinates do not need to be proven guilty first if they want to sue their commander/superior, whereas Indonesian national law requires that the responsibility of the command/superior requires that subordinates commit serious human rights violations and that the subordinates are under control. effective. If there is no relationship between the

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<sup>5</sup> Amirullah, "Awal Mula Kasus Pelanggaran HAM Berat Di Paniai Papua," Tempo.com, 2020, <https://nasional.tempo.co/read/1308202/awal-mula-kasus-pelanggaran-ham-berat-di-paniai-papua>.

perpetrator of a serious human rights violation and the defendant organizationally or with effective control, then the defendant cannot be held accountable.

Furthermore, according to research conducted by Muhammad Jailani entitled *State Responsibility in Providing Protection for the Rights of Victims of Serious Human Rights Violations in Indonesia*. In this research, it can be concluded that the state's responsibility for providing protection (compensation, restitution and rehabilitation) to victims of serious human rights violations based on the Human Rights Law does not reflect the concepts and norms regarding the obligation to protect victims' rights by the state. The difference with previous research is that in this research the focus of the study is on upholding human rights in general, whereas the research conducted by the author places more emphasis on upholding human rights in Papua which specifically needs to receive different treatment from other regions in Indonesia.

Based on previous research, it turns out that this research found that handling the process of resolving cases of human rights violations committed by TNI and Polri officers must be done in a more humane way so that they gain trust. the public regarding the applicable legal process so that the law enforcement process can run smoothly.

Resolving serious human rights violations in principle prioritizes state responsibility. This is because human rights instruments (law) have characteristics that focus on the state as the main actor that requires external supervision. Based on the originality that has been described, this research article will try to provide an analysis of what the role of Komnas HAM should be in handling cases of human rights (HAM) violations in Paniai Regency carried out by TNI and police officers so that the law enforcement process can run well so that in the future there will be no are again encountering obstacles and obstacles in the process of law enforcement for serious human rights violations.

## **2. Research Method**

The type of research used in this research is empirical juridical research; namely the method or procedure used to solve research problems by first examining secondary data, namely looking for references from previous research and from literature, both books and journals, then it will be linked to compliance with Law 39 of 1999. Then the next step is for researchers to research Primary data in the field is by taking interview data from related parties. Empirical research is

also carried out by traveling directly to research locations to observe cases related to human rights violations. This type of empirical research is research carried out by identifying facts regarding the role of the Papuan Human Rights Commission in handling human rights violations in Paniai Regency.

### 3. Research Results and Discussion

#### 3.1. Human Rights Law

After the Indonesian independence in 1945, the concept of human rights gained a position in the form of regulations that were triggered in the 1945 Constitution. Human rights have received legal recognition, which can be used to further develop the concept of human rights. People's sovereignty as embodied in a democratic system or rule of law can be used as a vehicle to guarantee the protection and respect of human rights.<sup>6</sup> Even though there is a forum for guaranteeing the protection and respect for human rights, it cannot be said that the protection of these human rights has been strong.<sup>7</sup>

In the UN Human Rights Protection has also been regulated in the UN (*United Nations*).<sup>8</sup> and Human rights protection for individual rights has also been included in international legal documents as formulated at the United Nations (UN) and has also been made the foundation of democratic political life. This was established in 1948 which was codified in 1966 in the International Convention on Civil and Political Rights (*International Covenant on Civil and Political Rights*) and the International Convention on Economic, Social and Cultural Rights (*International Covenant on Economic, Social and Culture Rights*).<sup>9</sup>

The United Nations (UN) Declaration on Defenders of Human Rights, adopted in 1998, emphasizes the importance of universal respect for and the obligation to comply with human rights and fundamental freedoms, both those ratified by the United Nations and regional instruments. This declaration also affirms that everyone has the obligation to respect human

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<sup>6</sup>Tegar Septyowibowo Rusdi Saputra, "Perkembangan Pemikiran Hak Asasi Manusia Di Indonesia," *Academia* (2018).

<sup>7</sup>Aditya Yuliansyah and Fakhlur, "Urgensi Perlindungan Hukum Terhadap Korban Pelanggaran HAM Berat Dalam Sistem Peradilan Pidana," *J-CEKI: Jurnal Cendekia Ilmiah* 2, no. 1 (2022), <https://doi.org/10.56799/jceki.v2i1.1175>.

<sup>8</sup>Herman Sujarwo, "Perlindungan Korban Pelanggaran HAM Dalam Instrument Internasional," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 1, no. 01 (2015), <https://doi.org/10.32699/syariati.v1i01.1100>.

<sup>9</sup>Majda El Muhtaj, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, Dan Budaya* (Jakarta: PT Raja Grafindo Persada, 2013).

rights and fundamental freedoms for all, regardless of race, color, sex, religion, language, social origin, or position. and also stressed the importance of working together to eliminate all human rights violations. One of them is the rejection of the people's right to self-determination.<sup>10</sup>

### **3.2. The role of The Komnas HAM in handling cases of violations of human rights (HAM) in Paniai District**

Community expectations of *The Komnas HAM* as a champion of justice are not fully fulfilled. However, many organizations have recognized *The Komnas HAM*'s efforts to protect human rights in Indonesia. Various cases of human rights violations and mistreatment of ordinary people can be resolved with the help of *The Komnas HAM*. *The Komnas HAM* is currently an alternative location for people to complain about their fate in seeking truth and justice.<sup>11</sup>

The public's increasing expectations of the *Komnas HAM* show that the *Komnas HAM* is believed to be independent and capable of handling the issues it complains about. On the other hand, this optimism is balanced by the fact that the *Komnas HAM* has repeatedly failed to resolve cases of human rights violations in Indonesia.<sup>12</sup>

The rights of every human being as regulated in Law Number 39 of 1999 concerning Human Rights are also the rights of victims, because victims are also human beings who must be treated as befits human beings so that their rights need to be protected.<sup>13</sup>

Victims of gross human rights violations as stipulated in Law Number 26 of 2000 concerning Human Rights Courts have the following rights, namely:<sup>14</sup>

- a. The right to obtain physical and mental protection from threats, disturbances, terror and violence from any party;

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<sup>10</sup>Ifdal Kasim, *Dimensi-Dimensi HAM* (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2000).

<sup>11</sup>Nurma Audina Audina, "Perlindungan Hukum Terhadap Korban Pelanggaran HAM Berat ( Tinjauan Hukum Nasional Dan Hukum Internasional)," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 5, no. 1 (2020), <https://doi.org/10.32505/legalite.v5i1.1464>.

<sup>12</sup>Viddy Firmandiaz, "Berat Di Indonesia Oleh Komisi Nasional Hak Asasi Manusia Ditinjau Dari Kewenangannya (Studi Kasus Timor-Timur)," *Res Publica* 4, no. 1 (2020).

<sup>13</sup>J Ogiandhafiz, "Prosiding Seminar Nasional:" Pengadilan HAM Di Indonesia: Evaluasi Terhadap Perlindungan Hak-Hak Korban Pelanggaran HAM Berat", *Seminar Nasional Viktimologi*, no. November 2019 (2019).

<sup>14</sup>Gatot Sugiharto, "Perlindungan Hukum Terhadap Korban Pelanggaran HAM Berat Dalam Sistem Peradilan Pidana," *Jurnal UII*, 2006.

- b. Right to Compensation, Restitution and Rehabilitation.

More details will be described one by one regarding the rights as stipulated in Law Number 26 of 2000 concerning Human Rights Courts.

**1) The Right to Get Physical and Mental Protection from Threats of Terror and Violent Disturbances from Any Party.**

The protection of victims as referred to in the first victim's rights are rights that are owned by a witness and usually the victim is also a witness, so the law mentions protection for victims and witnesses.

Arrangements regarding the protection of victims and witnesses in Law Number 26 of 2000 concerning Human Rights Courts are formulated in article 34 as follows:

- a. every victim and witness in gross human rights violations has the right to physical and mental protection from threats of terror and violence from any party;
- b. the protection referred to in paragraph (1) must be carried out jointly by law enforcement officials and security forces;
- c. Provisions regarding procedures for the protection of victims and witnesses are further regulated by government regulations.

Implementation of protection for victims and witnesses in gross human rights violations as referred to in Article 34 paragraph (2) emphasizes "It must be carried out by law enforcement officials and security forces together"

The protection of victims and witnesses in cases of gross human rights violations regarding procedures for protection is regulated in Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Victims of the Gross Human Rights Violations. In this Government Regulation, in essence, every victim or every witness has the right to protection from law enforcement officials and security forces. From other people in general. the first person from the rest of the people in general. the first person from the other people from the rest the first person from the rest of the people. In addition, protection concerns the identity of the victim



or witness, as well as the provision of information during the examination at the trial court without meeting the defendant face to face.<sup>15</sup>

Government Regulation Number 2 of 2002 further regulates the procedure for providing protection to victims and witnesses carried out at the initiative of law enforcement and security officials or requests submitted by victims or witnesses. The request is submitted to the National Human Rights Commission at the Investigation level, the Prosecutor's Office at the Investigation and Prosecution level and the court at the examination stage in court. Then the request is submitted to the security forces.

In detail how to protect victims and witnesses can be seen further in PP No. 2 of 2002. Even though there are still government regulations, practical and effective implementation guidelines (JUKLAK) are still needed regarding how to take protective measures by law enforcers and also by officials. security. So that victims and witnesses really feel protected and can provide information in a safe and secure way and are not gripped by fear.

Regarding the financing of this protection by Government Regulation Number 2 of 2002, it is stated in CHAPTER IV article 8 as follows:

1. Victims and witnesses are not charged anything for the protection given to them;
2. All costs required for the implementation of the protection of victims and witnesses are borne by the budget of each law enforcement agency or security apparatus.

## **2) Right to Obtain Compensation, Restitution and Rehabilitation**

Victims of gross human rights violations apart from receiving the right to physical and mental protection against terror attacks, victims also according to Law Number 26 of 2000 concerning Human Rights Courts have the right to receive compensation, restitution and rehabilitation.

Arrangements regarding compensation, restitution and rehabilitation in Law Number 26 of 2000 concerning Human Rights Courts are formulated in article 35 namely:

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<sup>15</sup>Jayadi Damanik and Nicken Sarwo Rini, "Analisis Terhadap Penyelidikan Komnas HAM Tentang Peristiwa Kematian Enam Orang Laskar FPI," *Jurnal HAM* 12, no. 1 (2021), <https://doi.org/10.30641/ham.2021.12.165-178>.

- a. Every victim of gross human rights violations and/or their heirs can obtain compensation, restitution and rehabilitation;
- b. Compensation, restitution and rehabilitation as referred to in paragraph (1) shall be included in the decision of the Human Rights Court;
- c. Provisions regarding compensation, restitution and rehabilitation are further regulated in government regulations.

Regarding compensation, restitution and rehabilitation as referred to in paragraph (3) is regulated in Government Regulation Number 3 of 2002 concerning Compensation, restitution and rehabilitation. Compensation, restitution and rehabilitation in Law Number 26 of 2000 are intended for victims. Compensation, restitution and/or rehabilitation shall be provided to the victim or the victim's family who are the heirs.

Compensation, restitution and/or rehabilitation must be carried out in a "timely, efficient and appropriate manner". Regarding this problem, there is already a legal basis for its implementation, namely compensation that is imposed on the State, for which there is already a Government Regulation that regulates it, even though this matter in the Criminal Procedure Code is intended to accommodate demands for compensation filed by suspects who feel entitled to be involved in the process. dispute. if the person is proven innocent, or if the investigation is not in accordance with or deviates from the provisions of the Criminal Procedure Code. The relevant Government Regulation is Government Regulation Number 27 of 1983. 122.

Compensation regulated in the Criminal Procedure Code is intended if the suspect or the suspect's family or their proxies file a claim for compensation in accordance with Article 1 point 22 and Article 95 of the Criminal Procedure Code. These articles are not intended for victims as referred to in Law Number 26 of 2000, however, in implementation of course with a court decision. Therefore, the application, namely in a court decision to charge the State regarding payments, will of course be carried out by the Ministry of Finance.

It needs to be reiterated that the provision of compensation, restitution and rehabilitation for victims of gross human rights violations is regulated in Government Regulation Number 3 of 2002. The procedure is for the Human Rights Court to send a copy of the decision of the Human Rights Court,

High Court or Supreme Court which has obtained permanent legal force to the Prosecutor. Great. The Attorney General carries out the decision by making minutes of the implementation of the court decision to the relevant Government agencies to carry out the granting of compensation and or rehabilitation and to the perpetrators and or third parties to carry out the granting of restitution.

Fulfillment and in an effort to demand rights, it will not be separated from the fulfillment of obligations that must be carried out. Likewise, in fulfilling individual interests, it must not damage the public interest. Therefore, fulfillment, protection and respect for human rights must be followed by fulfillment of human obligations and human responsibilities in personal, community and state life. So that it can be understood that the essence of human rights is the integration of human rights, human rights obligations and human responsibilities which must be carried out in a synergistic and balanced manner.

Based on Law Number 39 of 1999 concerning Human Rights, *The Komnas HAM* is defined as an independent institution whose position is on the same level as other state institutions whose function is to carry out studies, research, counseling, monitoring, mediation of human rights. The position of *The Komnas HAM*, which in Law Number 39 of 1999 concerning Human Rights, is more significant than what is stipulated in the Presidential Decree, whose position is still under the President.

Several other significant changes to *The Komnas HAM* include expanding the function of *The Komnas HAM* with a mediation function. In addition, *The Komnas HAM*'s authority in carrying out the monitoring function of cases of human rights violations was expanded by having the authority to call witnesses by force (*subpoena*). Likewise in terms of the number of members, the National Commission on Human Rights based on Article 83 paragraph (1) of Law Number 39 of 1999 concerning Human Rights is filled with 35 (thirty five) members. To carry out its functions, initially *The Komnas HAM* was equipped with four sub-commissions, namely: Assessment and Research Sub-commission, Extension Sub-commission, Monitoring Sub-commission, and Mediation Sub-commission.

However, since the promulgation of the new National Commission on Human Rights Rules, through *The Komnas HAM* Decree No. 13/*THE KOMNAS HAM/IV/2004* which was established on April 29 2004, the *The*

*Komnas HAM* Sub-Commission has been changed into three sub-Commissions, namely: Civil and Political Rights (Sipol); Sub-Commission on Economic, Social and Cultural Rights (Ekosob); and the Sub-Commission on the Protection of Special Groups. Currently, it is through these three sub-commissions that the functions of the National Commission on Human Rights, as stipulated in Article 76 and Article 89 of Law Number 39 of 1999 concerning Human Rights, are carried out.

So far, the existence of the National Commission on Human Rights has the impression that it has not carried out its functions optimally. *The Komnas HAM* always appears to be late in upholding and respecting human rights. The National Commission on Human Rights should not only appear after the occurrence of violations against human rights, but also appear as a shield to stem the rate of human rights violations by carrying out a series of efforts in the form of outreach regarding the understanding of human rights.

According to Mr. Ahmad Taufan Damanik, Head of the Papua National Commission on Human Rights:<sup>16</sup>

"The various efforts to provide protection for human rights in general and the gross violations of human rights that occurred in Paniai Regency are not something that is trivial in the nature of *taken for granted*, however, requires a long process in which at least three main variables must be considered. The three variables are international dynamics; existing legal instruments; and how to determine the approach to the legacy of the past.

The role of the *The Komnas HAM* representative of the Papua Province in cases of human rights violations in Paniai Regency is in terms of the investigative process. The investigative process in this case can take many forms, starting from forming an ad hoc team, then collecting evidence, completing the files that will be submitted to the attorney general for the judicial process. In this case the whole process was not easy because the National Commission on Human Rights in carrying out the investigation phase encountered many obstacles, especially cultural factors from the Mee tribe where when they wanted to carry out the autopsy process for the victim they were refused because according to the custom of the Mee tribe,

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<sup>16</sup>The results of an interview with Mr. Ahmad Taufan Damanik, chairman of the National Commission on Human Rights Representative for Papua on 15 September 2022

if a person has been buried, his grave cannot be dug up again on the grounds that whatever.<sup>17</sup>

Apart from that, in the context of Papua, in relation to cases of gross human rights violations, it is full of political intervention that affects the law enforcement process. Therefore, it is necessary to have good political will in the State of Indonesia, because the mandate given to *The Komnas HAM* is only limited to the next stage of investigation for the law enforcement process, all of which are handed over to the courts. Therefore, we hope that the courts must be as fair as possible to victims and perpetrators of gross human rights violations.<sup>18</sup>

### **3.3. The obstacles faced by The Komnas HAM in handling cases of violations of human rights (HAM) in Paniai Regency**

Laws concerning human rights courts, namely Law Number 26 of 2000 concerning human rights courts which need to be completed to ensure legal certainty for victims, need to be revised. Victims of human rights violations need legal guarantees. The Constitutional Court strictly ordered the legislators to complete the provisions in Article 20 paragraph 3 of the Constitutional Court Law, specifically the phrase "incomplete".<sup>19</sup>

It is important to regulate the settlement if there is a difference of opinion between the investigator (*The Komnas HAM*) and the investigator (Attorney General). The DPR as the legislator must immediately revise article 20 of the Law on Human Rights Courts so as not to diminish the rights of victims to legal certainty.<sup>20</sup> The DPR and the Ministry of Law and Human Rights were asked to complete the provisions in article 20 of the Law on Human Rights Courts in order to provide solutions for several problems. Among other things, investigators and investigators have different opinions regarding allegations of gross human rights violations, especially the completeness of the results of the investigation. If the investigator is unable to complete the deficiencies in the results of the investigation within the 30-

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<sup>17</sup>Risma Sri Nurani, "Aktualisasi Peran Komisi Nasional Hak Asasi Manusia Republik Indonesia Dalam Kasus Pelanggaran Hak Asasi Manusia," *Jurnal Iman Dan Spiritualitas* 2, no. 3 (2022), <https://doi.org/10.15575/jis.v2i3.19654>.

<sup>18</sup>I Gusti Putu Buana and Heddezul, "Solusi Komprehensif Penyelesaian Masalah Papua," *Jurnal Lemhannas RI* 9, no. 4 (2021), <https://doi.org/10.55960/jlri.v9i4.415>.

<sup>19</sup>Zainal Abidin Pakpahan, "Mekanisme Penyelesaian Pelanggaran Ham Di Indonesia Berdasarkan Undang-Undang No. 26 Tahun 2000 Tentang Pengadilan Ham," *Jurnal Ilmiah Advokasi* 5, no. 1 (2017).

<sup>20</sup>Asror Nawawi, "KOMNAS HAM: SUATU UPAYA PENEGAKAN HAM DI INDONESIA," *Hukum Progresif XI*, no. 1 (2017).

day grace period or according to the article, citizens need legal steps if they feel aggrieved by the arrangement of these two issues.

The process of proving gross human rights violations also faces obstacles because it must comply with the Criminal Procedure Code (KUHAP). The testimony of a witness cannot be used as evidence unless it is supported by other evidence such as forensic experts, ballistic tests, or related documents. Difficulties in obtaining evidence of gross human rights violations occurred because the time and location of the incident had changed. Regulations related to options for handling gross human rights violations in Indonesia in the context of achieving legal certainty need to be reviewed in order to achieve reconciliation in the form of legal policies that do not conflict with the 1945 Constitution and universal human rights instruments.

The phenomenon that occurred, First, from the side of the parties handling cases of gross human rights violations, currently, there is no common view in resolving cases. Second, in terms of settlement rules (Procedural Law), in Law Number 26 of 2000 concerning Human Rights Courts, not all procedural law settlement procedures are regulated, so that the provisions of Article 10 are the liaison rules for the criminal procedural law.

Even though the Law on Human Rights Courts has been in effect for a very long time, the establishment of a Human Rights Court has been very slow, even though the settlement of cases of gross human rights violations in Paniai has gone through an investigative process. Delays in the implementation of the *Ad Hoc* Human Rights Court. It was hampered by various legal and political obstacles, as well as the understanding of those involved in the process of handling cases of crimes against humanity.

In resolving cases of gross human rights violations in Paniai District, *The Komnas HAM* faced several obstacles. In the results of an interview conducted with Mr. Melky Waroi as the Sub-coordinator of the Human Rights Enforcement Service at the National Human Rights Commission Representative for Papua Province that:

There are several obstacles faced by *The Komnas HAM* in the process of investigating gross human rights violations in Paniai Regency, namely the first statement submitted by the victim or witness to *The Komnas HAM* through the mechanism of Law No. 39 of 1999 cannot be entirely converted into a pro justitia statement based on Law no. 26 of 2000 because a number

of witnesses refused to undergo a re-examination which was used as the minutes of the examination.

From the explanation above, it can be concluded that *The Komnas HAM*, in the investigation process, requires more communication and approaches to victims and/or witnesses in carrying out investigations so that the public understands the procedures in accordance with the law in the examination process so that they can be used as minutes of examination. Furthermore, Mr. Melky Waroi also explained that:<sup>21</sup>

The second obstacle after the bloody Paniai tragedy was that many teams were formed to resolve the case according to President Joko Widodo's directions at that time. Therefore, many families of witnesses and victims were confused as to which team was actually responsible for resolving the case of the bloody Paniai gross human rights violations at that time. In this case *The Komnas HAM*, which was considered the institution most responsible for the case, was rejected in the investigation process. The third obstacle is that the TNI was not willing to fulfill summons to provide information regarding the bloody Paniai incident.

From the information above, it can be concluded that *The Komnas HAM*, in carrying out the investigation process, received a lot of rejection from the families of witnesses and victims because the community felt that the statements that had been given to the teams formed to handle the case were not optimal because these teams did not coordinate. good things so that people become lazy if they have to continue to be visited for the same purposes and goals. Therefore, *The Komnas HAM* took a re-approach and provided a deeper understanding to the public as victims of human rights violations related to the duties and powers of the *Komnas HAM*.

*The Komnas HAM* as an institution that is authorized in the investigation process in terms of summoning parties suspected of being involved. In the records of the team handling cases of gross human rights violations in Paniai District, the TNI who were duly summoned via summons did not come. Law no. 26 of 2000 also statea that *The Komnas HAM* does not have the authority to carry out forced summons which is also an obstacle faced by *The Komnas HAM* because at that time, according to *The Komnas HAM*,

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<sup>21</sup>The results of an interview with Mr. Melky Waroi as Sub Coordinator of Human Rights Enforcement Services at the *Komnas HAM* Representative for Papua Province on 15 September 2022

there were allegations of TNI members being involved in the bloody Paniai case.<sup>22</sup>

## **4. Conclusion**

### **4.1. Summary**

After Indonesia gained independence in 1945, the concept of human rights received a position in the form of regulations issued in the 1945 Constitution. Human rights have received legal recognition, which can be used to further develop the concept of human rights. The role of Komnas HAM representing Papua Province in resolving cases of serious human rights violations is limited to the investigation process to collect evidence which is then submitted to the Attorney General to be brought to court. This is in accordance with the mandate given to Komnas HAM in Law no. 39 of 1999 concerning Human Rights. The obstacle faced by the Papua Province Representative Commission for National Human Rights in resolving cases of serious human rights violations in Paniai Regency was that they received many rejections when carrying out the investigation process of witnesses and victims. This happened because during the investigation process many teams were formed consisting of the police, TNI and government, thereby creating a sense of public trust.

### **4.2. Recommendations**

Regarding the resolution of cases of serious human rights violations in Paniai Regency, it is recommended that the government use reconciliation efforts. Steps after revealing the truth can be in the form of admitting mistakes, apologizing, giving a peaceful apology, law enforcement, amnesty, rehabilitation or other alternatives that are useful for upholding national unity and unity by fully paying attention to the sense of justice in society. Regarding the obstacles faced by Komnas HAM in resolving cases of serious human rights violations in Paniai Regency, the DPR is advised to propose again to the President to establish a Human Rights Court. For this reason, the President must act independently in carrying out this commitment. resolve human rights violations and delegate investigative and prosecutorial authority from the Attorney General to Komnas HAM so that the investigative and prosecutorial authority functions can be carried

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<sup>22</sup>Ridha Wahyuni and Atik Wananti, "Optimalisasi Kewenangan Amicus Curiae Komnas HAM Dalam Proses Pemeriksaan Perkara Di Pengadilan Berdimensi Hak Asasi Manusia," *Unes Law Review* 5, no. 1 (2022).



out in an integrated manner by one institution and speed up the law enforcement process.

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