

## The Existence Legal Certainty of the Truth and Reconciliation Commission in Indonesia

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### ABSTRACT

Indonesia is a country that has a history of gross human rights violations. However, the case has not been resolved. In addition to settlement through the court, a reconciliation pattern is highly recommended in the settlement of the case in question. But the rules on reconciliation have been canceled by the Constitutional Court. The results of the study concluded that the Settlement of cases of gross human rights violations was resolved with a pattern of reconciliation with the establishment of an independent institution (KKR). Besides that, the pattern of reconciliation can also be done in a family way. Reconciliation arrangements exist in several regions in Indonesia, namely Papua, Aceh and Palu Reconciliation patterns that exist in these rules vary, there are those who use the TRC pattern there are also those who use family reconciliation patterns.

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## 1. INTRODUCTION

The Truth and Reconciliation Commission is a phenomenon that arose in the era of political transition from an authoritarian regime to a democratic regime, related to the problem of resolving humanitarian crimes committed by the previous regime. The transitional government tries to answer this problem by trying to reconcile the tendency to punish on the one hand with the tendency to forgive or amnesty on the other side. As a "middle way", of course such efforts do not fully satisfy many parties, especially victims, victims' families and civil society organizations, but that is a transitional government effort that can be done, bearing in mind the crimes of humanity committed by the previous regime which contain very political, psychological and legal dimensions. complex.<sup>1</sup>

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<sup>1</sup> Komisi Kebenaran Dan Rekonsiliasi (KKR). (2012). Psikologi Terapan untuk Bekerja: Pengantar Psikologi Industri dan Organisasi, Edisi Kesepuluh, vol. 53.

The Truth Commission can decide cases in a relatively larger number than the court. In cases where human rights violations are widespread and systematic under the previous regime, the Truth Commission can answer all major problems or problems that are related and are not suitable for discussion in small cases. The TRC is also suitable for providing practical assistance to victims with special support, proving and proving which families or families have been victims of past freedoms, so that they are entitled to future reparations.<sup>2</sup> One of the changes made after the amendment of the Constitution is the increasing attention of the public and power holders to assert and uphold human rights in Indonesia. Regulated comprehensively in the 1945 Constitution on Human Rights in Articles 28, and 28A-28J and the enactment of Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, even regarding public information regulated in Law Number 14 of 2008 concerning Openness of Public Information, has become the basis for the protection of human rights must be upheld by all people of the state. One of them is by state institutions, it cannot be denied that the development of Indonesian state institutions gives a positive value in the enforcement of human rights.<sup>3</sup>

Efforts to resolve past gross human rights violations in Indonesia through the Truth and Reconciliation Commission (KKR) instrument face obstacles and challenges that are not easy.<sup>4</sup> This can be seen from the seriousness of the Government and the Parliament in completing the legal basis for establishing a TRC, given that Law Number 27 of 2004 concerning the Truth and Reconciliation Commission (KKR Law) was completely canceled by the Constitutional Court based on Decision Number 6 / PUU-IV / 2006 . That means the Constitutional Court's KKR Law has been canceled for 10 years, but there has been no meaningful development? in an effort to resolve it. The TRC Bill was only included in the list of national legislation programs (prolegenas) 2007-2010, 2010-2014, and 2015-2019 without any discussion at all (at least until 2016). Of the 11 alleged gross human rights violations, 3 have been brought to the Human Rights Court, while 8 of them have not been followed up by the Attorney General's Office both in the era of Susilo Bambang Yudhoyono's administration (2004-2014), as well as Joko Widodo's administration (2014-2019) which at the time this served.<sup>5</sup>

This is where the interesting problem of resolving human rights violations in the past is what the Joko Widodo administration intends to do. Efforts to be made in the form of reconciliation which in the end is in the form of an apology or regret still cause confusion and legal problems. The confusion is that this form of reconciliation is generally accompanied by the disclosure of the truth, especially from the victims, not directly in the form of apologies or regrets by the government. Meanwhile, the legal problem is that there is no legal umbrella in the form of the Truth and Reconciliation Commission Act as mentioned. Therefore, if the combination formed by the Joko Widodo Government has completed its duties, and the Joko Widodo Government has truly made an apology or regret, then the future of the Truth and Reconciliation Commission as one of the mandates of the legislation is increasingly unclear. In

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<sup>2</sup> Ibid

<sup>3</sup> Muhammad Amin Putra. (2016). Eksistensi Lembaga Negara Dalam Penegakan Hak Asasi Manusia Di Indonesia, *Fiat Justisia*, 9 (3), 256-292.

<sup>4</sup> Ali Abdurahman, Mei Susanto, (2016). Urgensi Pembentukan Undang-Undang Komisi Kebenaran Dan Rekonsiliasi Di Indonesia Dalam Upaya Penuntasan Pelanggaran HAM Berat Di Masa Lalu. *Padjajaran Jurnal Ilmu Hukum*, 3 (2) 509-530

<sup>5</sup> Ibid

addition, problems have also arisen with the establishment of the Aceh TRC based on the Aceh Government Qanun Number 17 of 2013 concerning the Aceh Truth and Reconciliation Commission (the Aceh TRC Qanun) as an initiative for the Provincial Government of Aceh to carry out the mandate of Law Number 11 of 2006 concerning Government Aceh (Law on the Government of Aceh) which mandated the establishment of a TRC in Aceh. The Aceh TRC Qanun itself is criticized by the Central Government through the Ministry of the Interior, which says it should wait for the national TRC Law.

The problem is with the TRC in Aceh, there is already a Qanun and the Commissioners have also been chosen. The birth of the Aceh KKR Qanun and the formation of the lembaga did not yet have a clear legal basis. In addition, the purpose of the birth of the Qanun and the formation of the Aceh TRC must not yet have adequate objectives and reasons. Broadly speaking, the legal politics of establishing a TRC in Aceh has not been answered and has reaped many problems.<sup>6</sup>

## 2. METHOD

This research is a legal research.<sup>7</sup> The method of approach used in this study is normative juridical with a focus on the statutory approach. The specifications of this study are descriptive with primary data sources in the form of secondary data. Secondary data in the form of legislation, books and other sources are inventoried and studied, then recorded based on their relevance to the problem objects. The data obtained were then analyzed using qualitative analysis. This research has a descriptive nature of analysis, which provides a description of the problems discussed in this study and the relevant legal regulations.<sup>8</sup>

## 3. RESULTS AND DISCUSSION

### 3.1. The urgency of establishing a Truth and Reconciliation Commission in Indonesia

Priscilla Hayner, who studies comparatively the presence of these commissions, found that there were four elements that each commission possessed - which could be said to be the general character of the TRC. The four elements are:<sup>9</sup>

- 1) The focus of the investigation is on past crimes; ✓ The aim is to get a comprehensive picture of human rights crimes and violations of international law at a certain time, and not focus on one case;
- 2) Its existence is for a certain period of time, usually ending after the report has finally been completed;
- 3) He has the authority to access information to any institution, and propose protection for those who testify.

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<sup>6</sup> Zaki, "The Political Law of Establishing the Aceh Truth and Reconciliation Commission: Re-Formulation of the Legality of the Aceh Kkr," *Petita: Journal of Law and Sharia Studies* 2, no. 2 (2017): 195-212.

<sup>7</sup> Fitri Pratiwi Rasyid, F. (2019). Relevance of Law Consumer Protection on Aircraft Post Master Flight Agent. *Musamus Law Review*, 2 (1), 50-65. <https://doi.org/10.35724/mularev.v2i1.2617>

<sup>8</sup> Yana Ardila, Julianto Jover Jotam Kalalo. (2019). Arrangement for Issuance of Certificate of Substitute of Land Rights. *Musamus Law Review*, 2 (1), 36-49. <https://doi.org/10.35724/mularev.v2i1.2270>

<sup>9</sup> Ihdhal Eunuch. (2000). What is the 'Truth and Reconciliation Commission'?. Jakarta.

- 4) Formed officially by the state either through a Presidential Decree or through law, or even by the United Nations such as the El Salvador Truth Commission (1992-1993).

The Truth and Reconciliation Commission, both official and unofficial, deserves only that name if it has published a comprehensive report on past crimes. The public trusted the report, and considered it an attempt to sincerely reconstruct what actually happened in the context of patterned and systematic cases of human rights crimes.

When referring to the legal basis stipulated in MPR Decree No.V/MPR/2000 basically the TRC has a strong legal basis so now it is even reinforced through Law No. 26 of 2000 concerning Human Rights Courts, specifically related to the settlement of gross human rights violations, which occurred before the enactment of this law which is expressly regulated in Article 47 of the Human Rights Law which becomes the jurisdiction of the TRC.<sup>10</sup>

The establishment of the TRC became the main mandate of MPR Decree No. V/MPR/2000 concerning Strengthening National Unity. In the MPR Decree, with confidence, to strengthen unity and nationality must be realized in concrete steps, which consist of forming a Truth and Reconciliation Commission. In full in the second paragraph the Purpose and Objectives determined by the agreed MPR provisions: Serious awareness and commitment to strengthen national unity and unity must be included in the actual steps, involving the Truth and Reconciliation Commission, and formulating the National Ethics and Vision Indonesia of the Future. The establishment of the TRC is important as one of the guidelines in the journey of the nation forward, or one of the MPR's Tapes is supportive, it will be very necessary in law enforcement and laws, which are used in full and accountable, as well as supporting and assisting human rights . To guarantee the implementation of all, it needs to be preceded by all the problems of corruption, collusion and nepotism, as well as resolving human rights. In its implementation, the MPR Decree stated that it was necessary to establish a National Truth and Reconciliation Commission, as an additional institution whose judicial number and members and criteria were determined by law. Chapter V Tap MPR No. V/MPR/2000 concerning the Implementing Rules, in item 3 in full is stated:

*“Establish a National Truth and Reconciliation Commission as an extra-judicial body whose membership and criteria are determined by law. This commission is tasked with upholding the truth by revealing the abuse of power and violations of human rights in the past, in accordance with the provisions of the law and legislation in force, and carrying out reconciliation in the perspective of shared interests as a nation. Steps after revealing the truth, confession can be made, apologies, apologies, peace, law enforcement, amnesty, rehabilitation, or other alternatives that are useful for upholding the unity and integrity of the nation, with full attention to the sense of justice in society. Reading the affirmation of the rules of implementing the consolidation of national unity and unity above, it is very clearly written that the formation of a Truth and Reconciliation Commission, whose formation and work process is regulated through a law, is one of the mandates of reform, which must be realized if the future of this nation wants more good. In fact, these provisions clearly provide guidance on what authority the TRC has, and how the steps and stages of resolution of human rights violations in the past have been held firmly in the sense of justice of the community, especially victims.”*

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<sup>10</sup> ELSAM, Mendorong Pembentukan Kembali UU Komisi Kebenaran Dan Rekonsiliasi: ELSAM Tentang Pentingnya RUU Komisi Kebenaran Dan Rekonsiliasi, n.d.

The establishment of a Truth and Reconciliation Commission (TRC), also mandated by Law No. 26 of 2000 concerning Human Rights Courts, specifically related to the settlement of gross human rights violations, which occurred before the enactment of this law. In Article 47 the Human Rights Law is stated as follows:

- 1) The gross violation of human rights that occurred before the enactment of this Law did not rule out the possibility of its resolution being carried out by the Truth and Reconciliation Commission.
- 2) The Truth and Reconciliation Commission as referred to in paragraph (1) is formed by law. Very clearly even, the law mandates the establishment

The TRC Law, which will be an instrument for resolving gross human rights violations, which occurred in the past, before the entry into force of the Human Rights Court Law. Deviations from the mandate of Article 47 above, is an act that violates the law. That is, the state has committed an act that violates the law, because it does not fulfill the orders of a law.<sup>11</sup> The pattern of resolving gross human rights violations, especially past gross human rights violations can be resolved through reconciliation, in line with one of the main approaches in resolving past gross human rights violations based on Agus Raharjo's opinion. One important element in a reconciliation is the disclosure of the truth. Disclosure of the truth is a process carried out after the fall of an authoritarian regime or after the conflict has passed. This process includes investigative steps to help the public understand the practice of abuse of power resulting in numerous gross human rights violations.<sup>12</sup>

Disclosure of the intended truth, can be revealed by conducting various investigative processes related to human rights violations that have occurred. The investigation was certainly not carried out by the victims or the perpetrators, but the investigation was carried out by a truth commission, as mentioned by Hayner. In addition to the pattern of reconciliation by a truth commission, reconciliation can also be done with a pattern of reconciliation that starts from the smallest community in society. The reconciliation process carried out is carried out and supported by the community. In addition, the role of culture and traditional ceremonies is important as a binding element of reconciliation.

Thus the ultimate goal can be the realization of national reconciliation with the disclosure of resolutions of past gross human rights violations prior to the enactment of Law Number 26 of 2000 concerning the Human Rights Court. Both the perpetrators, victims and their families obtain justice and legal certainty in accordance with the 1945 Constitution through reconciliation efforts such as compensation, restitution and rehabilitation and amnesty. The scope of material regulated in the KKR Law covers the principles and duties of forming the commission, the position, the function and authority of the commission, the tools, the procedures for completing requests for compensation, restitution, rehabilitation and amnesty, commission membership, funding, other provisions, until the closing provisions.

The legal basis for establishing a TRC is regulated in Law Number 27 of 2004 concerning the Truth and Reconciliation Commission. Broadly speaking, Chairman of the Special Committee for the KKR Bill Sidharto Danusubroto identified a crucial point

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<sup>11</sup> Afif Alamsyah. (2020). Urgency of Constitutionality Establishment of Truth and Reconciliation Commission, *Veritas: Journal program Pascasarjana Ilmu Hukum*, 6 (1). 79-98.

<sup>12</sup> Ibid



in the long journey of the KKR Bill into the KKR Law which can be grouped as follows:<sup>13</sup>

- 1) when the KKR Bill was submitted by the government to the DPR for discussion which was then followed up by forming a special committee. Religious problems arising in relation to the context of the perpetrators are the unclear perpetrators and the legal status of victims who are still discriminated against and the meaning of the KKR institutions;
- 2) Regarding victims' rights to compensation, restitution and rehabilitation. Many parties see that the victims' rights have been mortgaged by the provision of amnesty grants;
- 3) Related to the continuation of cases of human rights violations themselves, for example whether a case that has been handled by the TRC, but in fact there is no reconciliation still has hope to be resolved or if the amnesty proposed by the perpetrators is not fulfilled so that no reconciliation can still be tried through the Human Rights Court Ad hoc;
- 4) Related to the full political interests involved in the discussion of the KKR Bill which has implications for the length of time and the amount of energy expended, while the supporting facilities are not provided optimally.

The Truth and Reconciliation Commission is tasked to:

- 1) receive complaints or reports from the perpetrators, victims or victims' families who are their heirs;
- 2) conduct an investigation and clarification of gross human rights violations; 3) provide recommendations to the president regarding the request for amnesty;
- 3) submit recommendations to the government in terms of providing compensation and / or rehabilitation; and
- 4) submit annual reports and final reports on the implementation of duties and authorities relating to the case being handled, to the president and the Parliament with a copy to the Supreme Court. In its later journey, the KKR Law was filed a judicial review in the Constitutional Court, relating to Article 1 paragraph (9), Article 27 and Article 44. In the Constitutional Court's Decision Number 006 / PUU-IV / 2006 stated that the articles were petitioned by the applicant has no permanent legal force.

In its later journey, the KKR Law was filed a judicial review in the Constitutional Court, relating to Article 1 paragraph (9), Article 27 and Article 44. In the Constitutional Court's Decision Number 006 / PUU-IV / 2006 stated that the articles were petitioned by the applicant has no permanent legal force.

### **3.2. Settlement of cases of gross human rights violations through the Truth and Reconciliation Commission**

The settlement of past gross human rights violations in Indonesia, according to Agus Raharjo, there are three main approaches, including:<sup>14</sup>

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<sup>13</sup> Putra, Muhammad Amin. (2016). "Eksistensi Lembaga Negara Dalam Penegakan Hak Asasi Manusia Di Indonesia." *Fiat Justisia*, 9 (3),256-292.

- 1) By forgiving and forgetting what has happened, then "continuing life" just like that;
- 2) By prosecuting all perpetrators through legal channels by creating a human rights court;
- 3) Accepting what happened in the past, to a certain degree and condition, focusing on the goal of uncovering the truth and providing compensation and rehabilitation for victims by establishing a "Truth Commission", and only demanding the main actors to be brought to justice.

The pattern of resolving gross human rights violations, especially past gross human rights violations can be resolved through reconciliation, in line with one of the main approaches in resolving past gross human rights violations based on Agus Raharjo's opinion. One important element in a reconciliation is the disclosure of the truth. Disclosure of the truth is a process carried out after the fall of an authoritarian regime or after the conflict has passed. This process includes investigative steps to help the public understand the practice of abuse of power resulting in numerous gross human rights violations. Disclosure of the intended truth, can be revealed by conducting various investigative processes related to human rights violations that have occurred.<sup>15</sup> The investigation was certainly not carried out by the victims or the perpetrators, but the investigation was carried out by a truth commission, as mentioned by Hayner.

In addition to the pattern of reconciliation by a truth commission, reconciliation can also be done with a pattern of reconciliation that starts from the smallest community in society. The reconciliation process carried out is carried out and supported by the community. In addition, the role of culture and traditional ceremonies is important as a binding element of reconciliation.<sup>16</sup>

The Truth and Reconciliation Commission is a commission that is tasked with finding and disclosing violations committed in the past by a government, with the hope of resolving conflicts left behind from the past.<sup>17</sup> This commission is oriented to the investigation of past cases in large numbers, formed in a temporary period, for a certain predetermined period, and obtained several types of authority as an effort to describe all human rights violations during a certain period. Reconciliation in post-authoritarian authoritarian societies is very important because transitional justice is more than just dealing with human rights violations on a case-by-case basis but also becomes the moral basis of transitional government in respecting human dignity through democratic, non-violent means and in accordance with the principle of rule of law. All of that aims to prevent the same mistakes from happening in the future.

In a situation where gross and widespread and systematic human rights violations occurred under the previous regime, the Truth Commission can investigate all cases or a large number of cases in a comprehensive manner and is not limited to handling a small number of cases. The Truth Commission is in a position to provide practical

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<sup>14</sup> Zahratul Ain Taufik. (2017). "Penyelesaian Kasus Pelanggaran HAM Melalui Pola Rekonsiliasi Pasca Putusan Mahkamah Konstitusi Tahun 2006," *Jurnal IUS*, 5 (2), 202-218.

<sup>15</sup> Ibid

<sup>16</sup> Aulia Rosa Nasution. (2018). Penyelesaian Kasus Pelanggaran HAM Berat Melalui Pengadilan Nasional Dan Internasional Serta Komisi Kebenaran Dan Rekonsiliasi. *Mercatoria*, 11 (1), 90-126.

<sup>17</sup> Ibid

assistance to victims, who specifically identify and prove which individuals or families have been victims of past crimes so that they are legally entitled to receive reparations in the future. The KKR can also sort out the responsibilities and disclosures of the perpetrators.

The Truth Commission can also reduce the number of lies that are circulated without being verified in public. For example in Argentina, the work of the Commission makes it impossible for the military to claim that they did not throw half-dead victims from helicopters into the sea, as in Chile, in public, one cannot say the Pinochet regime did not kill thousands of innocent people because the Truth Commission had revealed it.

From some of the examples of cases above it can be seen that the task of the TRC is to find, find and express facts or facts about an event with all its consequences; consider and place justice for victims and perpetrators as a working principle; may not apply unfairly or unfairly to the perpetrators; and finally all findings must be stated truthfully, fairly, honestly and transparently, not manipulatively to achieve the real goal of reconciliation, namely to reconcile the parties who have been in conflict or are hostile. Reconciliation as the key word for the formation of a TRC is clearly related to efforts to improve social, political and psychological relations between citizens as individuals or groups with the state due to unjust and inhumane treatment or actions of the state. Reconciliation is needed to build the future of a democratic nation and state on the choice of forgiveness or forgetfulness, and not criminal prosecution. Reconciliation requires disclosure of the truth.

So what is meant here is a national reconciliation in which the success of the Truth Commission is partly calculated from within four years after the ratification of Law No. 26 of 2000 concerning Human Rights Courts, Law No. 27 of 2004 concerning the Truth and Reconciliation Commission after the mandate of TAP MPR No. V / MPR / 2000 and Law No. 26 of 2000. But unfortunately on December 7, 2006 or two years after promulgation, the KKR Law was canceled by the Constitutional Court through its decision No. 006 / puu- IV / 2006. The Court ruled that Law No.27 of 2004 concerning the Truth and Reconciliation Commission (KKR) was in conflict with the 1945 Constitution. Therefore the TRC was declared not to have binding legal force.

The Aceh Qanun on KKRA also stressed that a comprehensive reconciliation process could be carried out if there was an official apology, acknowledgment of past crimes, and a promise that past violations would not be repeated in the future. The government's efforts in resolving past gross human rights violations cases accommodated in Law no. 21 of 2001 concerning Special Autonomy for the Province of Papua. In Article 45 paragraph (1) and paragraph (2), the Government accommodates the resolution of gross human rights violations carried out by the regional government. As in Chapter XII which discusses human rights.

However, the Government has not yet succeeded in establishing a Papua TRC with Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua, in addition, the government also has not fulfilled the mandate of the Papua Special Autonomy Law to establish a Human Rights Court in Papua. In relation to the resolution of human rights violations that occurred in Indonesia, particularly in the Aceh region, the Aceh government together with the Aceh DPR formed Aceh Qanun Number 17 of 2013 concerning the Aceh Truth and Reconciliation Commission. The



Aceh Qanun on KKRA contains the whole about the TRC. The Aceh Qanun on KKRA has not been able to run as it should. Because the KKRN (National Truth and Reconciliation Commission) has not been formed until now after the Constitutional Court's ruling on the Cancellation of Law Number 27 of 2004 on the Truth and Reconciliation Commission on Thursday, December 7, 2006. The hammer government's efforts in resolving cases of gross human rights violations in its area were started with an apology from the Mayor of Palu City period 2005-2015, Rusdi Mastura. Beljiau conveyed his apologies to the victims of the '65 tragedy, both as individuals and as the Head of the Regional Government of Palu City.

After apologizing, he undertook SKP-HAM's demands to provide reparations for victims and their families. Furthermore, the Mayor also promised to realize improvements that were considered very urgent for the victims and their families, in the form of free health insurance, scholarships, old age insurance and business assistance. The cost of repairs has been budgeted in the Palu City Regional Revenue Budget in 2013. The Palu Mayor's apology was followed up with the issuance of the Palu Mayor Regulation No. 25 of 2013 concerning the Regional Human Rights Action Plan which contained recognition of victims of alleged human rights violations and guaranteed human rights fulfillment for victims of human rights violations. The process of resolving past human rights violations in the Municipality of Palu has been running smoothly so far. The process budget uses the Regional Revenue and Expenditure Budget (APBD).

#### 4. CONCLUSION

The urgency of establishing a Truth and Reconciliation Commission in Indonesia is very important to form a KKR with the consideration that there have been serious human rights violations in the past, for example the GAM case in Aceh. law and finally provide compensation and rehabilitation for victims.

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