

The Essence of Human Rights Violations in Social Conflict in Maluku (After The Riots In 1999)

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Abstract

The social conflict that occurred in 1999 in Maluku was a process of destroying society and culture in Maluku carried out systematically, using methods that were very difficult to trace and prove. As a result, the destruction of the Moluccan community with the *Pela Gandong* tradition was destroyed. On the other hand, this condition is exacerbated by the presence of security forces who tend to let this condition continue. This condition eventually gave birth to the reality of the fragility of a cultural order that has long been grown and maintained into a fragmented atmosphere of Maluku society where the Christian community in Maluku is no longer familiar with the Islamic community from the same Maluku community and vice versa. The solution to the problem shows that the application of international law in handling human rights violations does not reach acts that appear to be acts of violence that violate human rights such as crimes against humanity. The essence of acts of violence which undermine the degree of humanity not only comes from the authorities, but also in the case of individual or group acts of violence that cannot be limited by the authorities.

Keywords: human rights violations, riots, social conflicts.

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I. Introduction

Various places in this part of the world have been fights and even violence between groups. The solution to the problem shows that the application of international law in handling human rights violations does not reach acts that appear to be acts of violence that violate human rights such as crimes against humanity.

One example is the case in Ambon City, Maluku Province where the humanitarian conflict that occurred in 1999 has brought various negative impacts on the lives of Maluku people. The Maluku community has long been known to live in harmony, because it has a glue culture called "*Pela Gandong*" and a strong customary law system that is respected and respected by its people. However, in a relatively short period the Moluccan community was devastated by the conflict.

This shows the process of destroying communities in Maluku society. The process of destruction of Maluku society and culture is carried out systematically, using methods that are very difficult to trace and prove. The result was the destruction of the Moluccan community. On the other hand, this condition is exacerbated by the presence of security forces who tend to let this condition continue.

This condition eventually gave birth to the reality of the fragility of a cultural order that has long been grown and maintained into a fragmented atmosphere of Maluku society where the Christian community in Maluku is no longer familiar with the Islamic community from the same Maluku community and vice versa. It appears that the interests of each community and the narrow fanaticism within each community are the consequences that are intentionally created and systematically exaggerated by certain elite groups for the greater interests.¹

Victims, both human souls and property, are increasing. The *Pela Gandong* system that has been fostered for thousands of years from its origins to collapse and neglect and law enforcement is not working at all. Police officers become helpless. All of this made things worse and led to the process of destruction of the people of Maluku. This is a question whether the Maluku conflict with so many fatalities and property is a violation of human rights or not?

¹ Conflict of interests of the Central Political elite, which is channeled to the regions using the method of fighting sheep among small people who lack understanding of their position, function and role, *Harian Suara Maluku*, March 1999 Edition.

Noting the intentions of various existing regulations in national law as well as international legal instruments related to human rights and related to events that occurred during the conflict in Maluku, there are several things that will be discussed in this paper, namely cases of destruction and scorched earth and killings in various places especially in indigenous countries in central Maluku.²

Various events that arose led to an opinion in the community that the government through the military apparatus could not carry out its obligations to protect its people. This pattern is seen in various attacks carried out by one party, both from Christian groups and from Islamic groups, where it is suspected that the actions of the military apparatus that should "quell" the riots that occur are considered as actions that support one party. On the other hand the involvement of each group often uses or on behalf of certain teachings or views as a basis for carrying out attacks.

If this assumption is used to measure how far the level of protection of human rights of the State of its citizens, then for the moment it can be said that during the conflict did not get optimal protection from the state. Whereas in Chapter I General Provisions Article 1 point 1 of Law of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights (Human Rights Law) has expressly stated the existence of obligations by the state, law and government and everyone to uphold and protect human dignity.

Based on the above formula, it can be said that the subject of human rights violators is primarily the state. However, with mutual attacks and violence from one group to another group that cannot be overcome by the state, it can also be said that the subjects of human rights violations are also groups as regulated in Chapter I General Provisions Article 1 point 4 of the Law of the Republic of Indonesia Number 26 Year 2000 concerning the Human Rights Court (Human Rights Court Law).

The responsibility of the state to regulate or terminate acts of human rights violations by individuals or groups is an order of international law and also the Human Rights Court Law which should be respected and carried out properly so that the oppressed individuals and groups get protection.³ From this explanation and relying on real factors in the field, the problem in this paper is how the form of legal accountability of civil groups that violate human rights in areas of social conflict?

II. Research Method

This type of research is normative legal research⁴ with the statutory approach and conceptual approach.⁵ The data used are secondary data collected through documentation studies. The collected data is then analyzed qualitatively.

III. Results and Discussion

The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia states that: "then rather than that, to form an Indonesian Government that protects all of the Indonesian people and all of Indonesia's blood spills ...". This mandate was given to the state to be responsible for providing protection for its citizens, so this is very much related to human rights issues. So that the inability of the state to protect its citizens can be interpreted that human rights are not protected by the state at all.

When viewed in terms of international law, the Universal Declaration of Human Rights (UDHR) puts forward several principles and rights that must not be violated including: the right to life, liberty and security of person (Article 4). The UDHR also functions as "... the test norm for reporting procedures in the field of human rights and procedures for systematically demonstrating mass and gross violations ...".⁶

² When the Maluku riots occurred in 1999, Maluku Province still covered North Maluku District, Central Halmahera, Central Maluku, Buru District, Ambon City and Southeast Maluku. Then in the 2000s, North Maluku Regency and North Halmahera Regency were separated from Maluku Province and formed into North Maluku Province. Whereas what is meant by central Maluku or Maluku Province at the time included Ambon City, Central Maluku Regency, Buru Regency, Southeast Maluku Regency and West Southeast Maluku Regency.

³ J. Leatemia, *Hak Asasi Manusia dan Demokrasi*, Paper on Day Discussion conducted by the LEM Network, Ambon, June 22, 2001.

⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, Rajawali Press, Jakarta. 2004, p. 13-14

⁵ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Prenadamedia Group, Jakarta, p. 35

⁶ Th. C. van Boven, *Instrumen dan Prosedur Internasional Untuk Memajukan dan Melindungi Hak-Hak Asasi Manusia*, in

III.1. International Law and Subjects of International Law

Since Roman times, international law has been known as *ius gentium* which is translated into various languages namely:

- 1) *Volkenrecht*, in German
- 2) *Droit de gens*, in French
- 3) Law of Nation (International Law) in English

The term *ius gentium* is a term contained in Roman law, and *ius gentium* itself according to Roman law regulates the legal relationship between the Romans and people who are not citizens of the city of Rome.

Bagi C.S.T. Kansil⁷, the meaning of *volkenrecht* is not the same as that of *ius gentium*. In Roman law, the term *ius gentium* is used to express two different meanings, i.e.:

- a) *Ius gentium* is a law governing the relationship between two citizens of the city of Rome and a foreigner, ie a person who is not a person of the City of Rome;
- b) *Ius gentium* is a law derived from the natural order that regulates the society of all nations, namely natural law (*naturrecht*).

As has been explained briefly that International Law has been known as *ius gentium* which regulates legal relations between countries. In the development of legal relations between countries regulated in International Law, because International Law does not have elements with each other, it has the authority to regulate relations between countries in the world.

Regulations in international law can only be binding between countries if countries enter into agreements or legal relations through certain consensus. So, regulations in international law are only coordinative. Therefore, if there is a violation of the agreed agreement and cause a dispute, then the settlement can be done by the International Court of Justice or appoint a judicial institution to handle it.⁸

International law not only regulates relations between countries but also contains regulations for individuals and groups. By Charles Cheney Hyde as quoted by C. S. T. Kansil that International Law:

- 1) Legal regulations concerning the functioning of the institutions of international organizations, the relations of the respective institutions and organizations, and their relations with countries and individuals; and
- 2) The legal regulations concerning individuals and non-state entities as long as the rights or obligations of individuals and entities are a matter of international alliance.⁹

The international community does not recognize a strong central executive power as in national countries. This raises the question whether international law really is law in the real sense.¹⁰

Furthermore by Mochtar Kusumaatmadja that:

“International law itself is the entire legal norms and principles which are indispensable for regulating relations or issues that cross national boundaries between state and state, countries with non-state legal subjects, and non-state legal subjects. each other”.¹¹

As is known that the subject of international law includes:

- 1) Country;
- 2) International Organizations;
- 3) International Committee of the Red Cross;

Peter Baehr, *et.al.*, *Instrumen Internasional Pokok Hak-Hak Asasi Manusia*, Yayasan Obor Indonesia, Jakarta, 2001, p. 63

⁷ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, PN Balai Pustaka, Jakarta, 1980, p. 350

⁸ J.A.S Titahelu, *Analisis Perbuatan Pelanggaran Hak Asasi Manusia Oleh Kelompok (Studi Kasus di Provinsi Maluku)*, Undergraduate Thesis, Unpublished, Faculty of Law, Sam Ratulangi University, Manado, 2003, p. 17-18

⁹ C.S.T. Kansil, *Op.Cit.*, p. 351

¹⁰ Chairul Anwar, *Hukum Internasional Pengantar Hukum Bangsa-Bangsa, Djambatan, Jakarta, 1989, p. 4*

¹¹ Mochtar Kusumaatmadja, *Pengantar Hukum Internasional, Binacipta, Jakarta, 1981, p. 3*

- 4) Holy See or Vatican;
- 5) The company as an international legal entity is an authority;
- 6) Warring Parties;
- 7) Individual.¹²

In this paper the author does not explain the seven subjects of international law, only a few legal subjects will be explained relating to the problem to be discussed, namely:

1. Country

International law is reviewed both historically and factually. Historically, the first thing that was the subject of international law at the inception and growth of international law was the state. The role of the state as a subject of international law over time is also increasingly dominant because the largest part of international relations can create the principles and methods of international law carried out by countries. The traditional elements of a State are contained in Article 1 of the Montevideo (Pan American) Convention on Rights and Duties of the State of 1933.¹³

2. International Organizations

The following international law subjects are international organizations in the broadest sense which essentially include not only public international organizations but also private organizations (Privat International Organizations). Such organizations include regional and sub-regional organizations. There are also organizations that are universal (organization of universal character). The formation of international organizations has three aspects, namely administration, philosophical aspects and legal aspects.

As for the conditions that must be met so that the international organization can be recognized, that is:

1. The existence of international agreements such as the main instrument that will make the principles and objectives, structure and way the organization works.
2. International organizations must have at least one body.
3. International organizations must be formed under international law.¹⁴

3. Warring Parties

War is not solely due to the statement of a party to wage war, but is more synonymous with a “rebellion” against a particular country. Within the scope of international law the word “rebellion” in English has three terms, namely insurrection, rebellion and revolution. Schuman gives a definition of the three terms as follows:

In general an Uprising directed toward a radical modification of the existing political or social order throughout the whole territory of a state is referred to as a revolution, while the word rebellion is more frequently confined to efforts on the part of portion of a state to throw off the authority of the remainder. Insurrection usually refers to movements smaller in scope and purpose than those described by the other terms.¹⁵

Based on Schuman’s description above, it can be concluded that the emergence of a warring party (belligerent) in a country is preceded by an insurrection (rebellion with a small scoup), which then extends to rebellion (rebelli) and then rebelli is able to change its status to become a party war must meet the conditions (objective).¹⁶

4. Individual

Individuals as Subjects of International Law Individuals as subjects of international law have been known since the onset of World War I on the basis of a peace agreement, as stated by Chairul Anwar as follows:

Individuals are usually involved indirectly in international law. Individual relations with international law are usually carried out through the country in which the individual is a citizen. Individuals are given the right

¹² Wayan Parthiana, *Pengantar Hukum Internasional*, Mandar Maju, Bandung, 1990, p. 59 See also Birkah Latif and Kadarudin, *Pengantar Hukum Internasional*, Pustaka Pena Press, Makassar, 2013, p. 62

¹³ Adolf Huala, *Aspek–Aspek Negara dalam Hukum Internasional*, Rajawali Press, Jakarta, 1991, p. 2

¹⁴ Sumaryo Suryokusumo, *Hukum Organisasi Internasional*, Alumni, Bandung, 1997, p. 43

¹⁵ Abdul Muthalib, *Hukum Internasional dan Perkembangannya*, Percetakan Unila, Bandar Lampung, 2012, p. 44-45

¹⁶ S.Tasrif, *Pengakuan Internasional dalam Teori dan Praktek*, Cetakan I, Media Raya, Jakarta, 1966, p. 87

to file claims arising from World War I Peace Agreements, at various courts established on the basis of the peace agreement.¹⁷

If you pay attention to the description Chairul Anwar above shows that individuals as subjects of international law are the development of the state as subjects of international law. This is evident from the phrase "the relationship of individuals with international law is usually done through the country where the individual is a citizen". As an individual has the right to submit claims arising as a result of the peace agreement to the courts established on the basis of international treaties. The position of the individual as a subject of international law is a further development of the state as a subject of international law.

For individuals and organized groups (not the state) consisting of individuals, C. S. T. Kansil requires: "insofar as the rights or obligations of individuals and unity are a matter of international fellowship". The issue of international alliance becomes important because it firmly focuses its focus on personal and group interests, and ultimately, their relationship with the government. The aim is to provide international protection for the rights and privacy of individuals and private groups against abuse of power by governments and other private organizations, and to strive for and guarantee a living climate that is in accordance with human dignity.¹⁸

III.2. Types of Conflict

International law on human rights does not only apply in peaceful times, but also in situations of international or non-international armed conflict.¹⁹

The systematic division of van Dijk's seems to be almost the same as the systematic distribution carried out by Jean Pictet, namely that International Humanitarian Law is divided into:

- 1) Laws of War which are grouped into: a). The Hague Law or The Hague Law is a law based on various Hague Conventions (III in 1907, IV in 1899, V in 1907) which regulates various provisions in war on land; b). Geneva Law, which is the whole law based on the Geneva Conventions (III of 1949, IV of 1949 and Additional Protocols I and II of 1977 for victims of international and non-international armed conflicts.
- 2) Human rights.²⁰

That the opinion of Th. C. Van Boven who specifically discusses human rights law can be understood because the Bill of Rights produced in the form of a declaration with a universal nature is to emphasize the condition that the provisions cover the whole world. So that the declaration is indeed directed towards humanity in its entirety, to all members of the international and national community without exception.²¹

According to Hendardi, human rights law can be said to be the norms that govern the relationship of state power to individuals.²² The norms contained in the UDHR (Universal Declaration of Human Rights 1948) and ICCPR (International Covenant on Civil and Political Rights 1966) contain obligations and limitations for the state in dealing with individuals, namely citizens.

Peter Baehr and his colleagues compiled a number of basic international instruments on Human Rights which were divided into groups of documents as follows:

- 1) General Instruments;
- 2) Self-Determination;
- 3) Prevention of Discrimination;
- 4) Administration of Justice, Detention and Abuse;
- 5) War Crimes, Humanity Crimes including Genocide;
- 6) Slavery and similar Institutions and Practices;

¹⁷ Chairul Anwar, *Op.Cit.*, p. 29

¹⁸ P. van Dijk in Peter Baehr, *et.al.*, *Op. Cit.*, p. 7-8

¹⁹ *Ibid.*, p. 7

²⁰ Jean Pictet in A.K. Syahmin, *Hukum Humaniter Bagian I*, Armico, Bandung, 1985, p. 12

²¹ Th. C. van Boven in Peter Baehr, *dkk. Op.Cit.*, p. 59-60

²² Hendardi, *HAM- Kekerasan dan Permasalahan*, Paper presented at the One-Day Seminar at the Law Faculty of Sam Ratulangi University, Manado, 2001.

- 7) Nationality, Stateless,²³ Asylum and Refugees;²⁴
- 8) Marriage and Family, Children and Youth;
- 9) Right to Work and Right to Freedom of Association;
- 10) Social Welfare, Progress and Development;
- 11) Women's Political and Civil Rights
- 12) Freedom of Information and Data Protection;
- 13) Indigenous Peoples and Minority Groups.²⁵

In the series of instruments, within the group of instruments mentioned in item E there are instruments on War Crimes, Humanity Crimes, Genocide Crimes, Provisions in this instrument include mention in Article 1 which briefly concludes that no statute restriction can apply to crime war crimes and crimes against humanity committed in time of war or in time of peace.

From the description above, the author arranges the types of conflicts based on the categories of parties and the categories of equipment used as follows:

The parties	Utilization	
	Armed	Unarmed
Between countries (International)	War is a way to resolve conflicts	Diplomatic settlement
Country with Group (Non-International)	Handling is carried out through Military Operations or otherwise armed uprisings by groups	Political settlement
Group by group	Riots in the form of fighting using physical violence or weapons both traditional and organic	Disputes or cases which are settled through negotiation or various other forms of settlement.

Thus, there are six types of conflicts, namely:

- 1) International armed conflict (between countries);
- 2) Unarmed international conflict;
- 3) Armed conflict between countries and groups;
- 4) Unarmed conflict between state and group (non-armed non-international conflict);
- 5) Armed conflict between groups and groups in the same country (non-international armed conflict)
- 6) Unarmed conflicts between groups.

From these various types of conflicts, the scope of international law related to human rights issues mainly covers three types of conflict, i.e:

- 1) International armed conflict;

²³ In Karita Sakharina and Kadarudin, *Pengantar Hukum Pengungsi Internasional, (Perbedaan Istilah Pencari Suaka, Pengungsi Internasional dan Pengungsi Dalam Negeri)*, Deepublish, Yogyakarta, 2017, p. 21. See also Kadarudin, *Keterkaitan antara Stateless Persons, Pencari Suaka, dan Pengungsi*, Jurnal Pengembangan Ilmu Hukum "Gratia" Volume VIII No. 1, April 2012 Edition, p. 105

²⁴ Kadarudin, Portraits in Indonesia: International Refugees face Uncertain Future (A Study of International Refugee Law), *Veritas et Justitia*, Volume 4 No. 1, June 2018 Edition, p. 4

²⁵ Peter Baehr, *et.al.*, *Op.Cit.*, p. 269-1108

- 2) Armed conflict between countries and groups;
- 3) Armed conflict between groups and groups.

The latter two types of conflicts are also referred to as non-international armed conflicts. As mentioned by van Dijk that:

“The aim of international law is to provide international protection for the rights and privacy of individuals and private groups against abuse of power by the government, and in certain cases also on the behavior of individuals, private groups and other private organizations, and to strive for and guarantee them a living climate. in accordance with human dignity”.²⁶

So it can be said that the granting of protection by international law actually occurs when the three types of conflict that have been stated above.

III.3. The Essence of Human Rights Violations in Social Conflict

The problem of human rights dilator is behind a number of major events in the world, firstly the economic reasons that occurred in the 1930s (malaise), the two new countries in Asia and Africa as the influence of Lenin and Wilson's opinion on the position of individual humans and groups to establish their own country,²⁷ third there was a massacre of Jews carried out by Adolf Hitler in Germany.

In those days the state and the actions of the states were always considered the main, while the individual was always regarded as an insignificant party. So, there are two sides facing each other, namely a state with sovereignty and absolute and absolute power, dealing with weak individual human beings, who have no power. Therefore, human rights issues arise that limit the sovereignty of the state, so that the sovereignty and power of the state are not used to oppress individual human beings, both their own citizens and foreigners who live in certain countries.

December 10, 1948 was born UDHR (Universal Declaration of Human Rights), as a moral member who is very influential, inspiring members, becomes a material for consideration and an educational material about humanity. This declaration starts observing all human problems that have been brought down and understanding how to overcome them.

The relationship between human rights and international law is that what is stipulated in the declaration, is the basis of international action against the state that attacks individuals both citizens themselves and others.

The principle of the existence of the UDHR is to establish international law related to humanitarian issues. The aim is to provide international protection to individuals who are humiliated with the degree and dignity of humanity carried out by authorities who abuse their power.

These human rights are applied not only to domestic problems (rulers to citizens), but also if there is an armed conflict between states. Therefore, the operationalization or implementation of human rights requires instruments and procedures. But the problem of upholding human rights is very difficult because there is a conflict between the interests of the state on the one hand and the interests of humanity as a whole on the other hand.

Dadang Juliantara went on to say that human rights violations occur if there is an “act of violence” committed by one party (the ruler) against another party (the people).²⁸ The existence of an act of violence is if there is an attack in the form of beatings, torture, murder, torture and others. Dadang Juliantara revealed several factors that caused the occurrence of acts of violence in the field of human rights, namely:

- 1) Power inequality in society. The ruling party tries to do everything it can to maintain its power. The ruling party can use violence against its political opponents or anyone who opposes its power or the ruler can make various laws and regulations so that his power can be maintained. Anyone who acts against the provisions of the law he makes, will be dealt with violently. The authorities made laws that legalized the violence.
- 2) Inequality in the state and people's power system. The state considers itself to have power because of the will of God (Theocracy Theory) or has received the full mandate of the people (Social Contract Theory from Thomas Hobbes). Therefore, the state's enormous power is legal, so other powers that are contrary to state power must be followed up harshly.

²⁶ Dadang Juliantara, *Jalan Kemanusiaan, Panduan Untuk Memperkuat Hak Asasi Manusia*, Lapera Pustaka Utama, Yogyakarta, 1999, p. 108

²⁷ Antonio Cassese, *Hak Asasi Manusia di Dunia Yang Berubah*, translated by A. Rahman Zainuddin, Yayasan Obor Indonesia, Jakarta, 1994, p. 10

²⁸ Dadang Juliantara, *Op.Cit.*, p. 137

- 3) Totalitarianism which means control of the state in everything. This principle of totalitarianism puts forward so that it allows the authorities to use violence against individuals on the grounds that the state is a protector of the people's interests.²⁹

Dadang Juliantara's view above illustrates the meaning of acts of human rights violations in general, which includes various actions of the authorities that demean human dignity by using violence, and also actions that violate human rights in the economic, social and cultural fields.

In connection with this writing, acts that violate human rights are intended acts that are associated with acts of violence that demean humanity. In this case the author does not intend to analyze and describe human rights violations in the economic, social and cultural fields.

The essence of acts of violence that demean humanity not only comes from the authorities, but also in the case of individual or group acts of violence that cannot be limited by the authorities. James W. Nickel emphasizes the importance of the right to be free from murder, persecution as a central element of human life over life and freedom³⁰ so that the meaning of security as stated by Henry Shue is an absolute requirement for the fulfillment of the rights to be free from murder and ill-treatment.³¹ This important requirement is owned by the authorities in providing protection for their citizens and others.

In various types of conflicts, violations of human rights can occur. The meaning of the word "acts that violate" is to do what is not permitted or not to do what must be done (silent, deliberately not willing to do, or let). By using theory in criminal law, this understanding is formulated into two things, i.e.:

- 1) An active act that is doing an act that should not be done which is categorized as a *delictum commissionis*.
- 2) Passive acts that is ignoring what is ordered by law to be done or categorized as *delictum* or *delicta omissionis*.³²

Thus, acts that violate human rights are any active actions or passive actions against the provisions regarding human rights in the form of acts of violence that demean humanity. Acts that demean humanity, especially the author observed, are related to acts of violence that occurred in social conflicts in Maluku which have resulted in many deaths, disabilities, property losses and so on.

An active act (*delictum commissionis*) on human rights is an act that must not be done against humans, both individuals and groups, so that it harasses or even decreases the meaning of human rights according to international instruments and national laws.

The passive (*delictum omissionis*) action on human rights is the neglect or let happen what should not happen as intended in the universal and domestic instruments regarding human rights.

Quoting the opinion of Lalit Palmar who provided a catalog of actions that could be categorized as human rights violations, i.e.:

1. Lack of awareness or knowledge about human rights; due to lack of appropriate information; people do not know what that they have rights or that they must have rights.
2. Fear of exercising human rights: the fear to defend one's own human rights and those of others.
3. Devaluation of human rights; underestimating or minimising the value of human rights.
4. Obstruction to human rights; any acts that prevent someone from enjoying his/ her human rights.
5. Breach of human rights; denying someone's rights to benefit from his/ her rights.
6. Molestation of those who attempt to exercise their human rights; any molesting or annoying acts that intimidate people so that they are deprived of enjoying their rights.
7. Attack on human rights; some people do not wish to allow other people to enjoy their rights. Any clear, direct or indirect, attack to the rights of others.³³

²⁹ *Ibid.*, p. 138-140

³⁰ James W. Nickel, *Hak Asasi Manusia: Making Sens of Human Rights-Refleksi Filosofis Atas Deklarasi Universal Hak Asasi Manusia*, Gramedia Pustaka Utama, Jakarta, 2006, p. 196

³¹ *Ibid.*, p. 197

³² A. Zainal Abidin Farid, *Hukum Pidana I*, Sinar Grafika, Jakarta, 1995, p. 236

Thus, acts that violate human rights are any active actions or passive actions towards all provisions that protect human dignity, so that actions do not reduce the meaning of humanity as contained in international instruments or national provisions on human rights.

In order to be called an “act that violates” the act (active or passive) must contain elements against the law or the existence of a *strafbar feit* in accordance with norms in international instruments and national law.

In relation to human rights violations, the above is a condition. In the event of “not being able to provide adequate protection so as to cause murder and torture”, this situation determines the existence of human rights violations by the authorities, namely committing a delictum ommisionis in providing adequate security so that the right to be free from murder and torture can be fulfilled. In this case too, the meaning of human rights violations by the authorities also happened so that it humiliated humanity in general.

Then, acts of human rights violations can also occur in the form of indirect actions. Like the case handled by the British Military Court regarding Zyklon B material, it was found guilty of the perpetrators, ie the poison gas factory supplying gas to the Concentration Camp, with the knowledge that the gas was used to kill humans (usually used to kill mice) was guilty.³⁴ Even though the owner and manager of the factory that supplied the material to kill the rats were not directly involved (*delictum commissionis*) in killing people in the Concentration Camp using the supplied material, the factory owner and manager were also involved in committing human rights violations if he knew that the toxic gas material what he supplies is to kill humans.

By knowing the use of these toxic materials, the owner and manager of the factory are in the category of participating in indirect human rights violations.

Acts such as violating human rights can be included in the catalog put forward by Lalit Parmar, namely reducing the value of human rights in the sense of degrading or minimizing, making it difficult to fulfill human rights in the form of acts that are detrimental to prevent someone from enjoying his human rights, denying the right of a person or group of people to benefit from their rights, and persecution or disturbing actions intended to intimidate people so that the person negates their will to enjoy their rights. As well as allowing or allowing others to enjoy their rights, both directly and indirectly.

IV. Conclusion

That the essence of human rights violations committed in social conflicts is to commit a delictum ommisionis based on the inability of the state to provide protection (in this case, it can be addressed to the state as a group) against residents who are victims of human rights violations. The state is defined as a group of civilians who are structured in a neat organization, with quite a large membership. So that it is needed the formulation of the rules governing the accountability of groups (countries) who commit acts of human rights violations both in the national and international realm as a manifestation of a backlash against the principle of individuality responsibility which cannot answer the problem of violation of human rights by groups.

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³³ Lalit Palmar, *Human Rights*, 1st edition, Anmol Publicaion Pty., Ltd., India, 1998, p. 77-80

³⁴ Geofferly Robertson QC, *Kejahatan Terhadap Kemanusiaan: Perjuangan Untuk Mewujudkan Keadilan Global*, Komnas HAM, Jakarta, 2002, p. 386

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