

The Urgency of the Truth and Reconciliation Commission (KKR): A Problem Solving of Human Rights and Legal Stagnation in Indonesia

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ABSTRACT

Past human rights violations are still a big problem for Indonesia. Although Indonesia once had a Truth and Reconciliation Commission (KKR) as an instrument for resolving human rights cases, in its running the KKR Law was proven to be inconsistent with the 1945 constitution. This made the KKR Law unable to be implemented in Indonesia. The purpose of this study is to analyze the problems contained in the KKR Law and correct the large design of the KKR. The method used is literature through a normative approach. The results of the discussion show that it is important to reform the KKR as an effort to resolve human rights problems that occur in Indonesia. Meanwhile, the KKR in the future should be a complementary court (right to justice) that will not eliminate criminal charges against perpetrators of crimes against human rights. Therefore, removing amnesty in the new draft KKR Law is a must. In addition, to provide a sense of justice, the new KKR Law should prioritize a victim-centered approach in resolving cases of violations.

Keywords: *Reconciliation, Transitional Justice, Truth Commission, Indonesia.*

1. INTRODUCTION

Protection of human rights is one of the characteristics of the rule of law. The idea was born from the spirit of undermining despotic power towards democratic power so that the state can guarantee the fulfillment of human rights. In Indonesia, these ideas are elaborated into Pancasila values so that it can be said that guarantees of the fulfillment of human rights in Indonesia are interwoven in the concept of the rule of law of Pancasila [1].

The statement of human rights in Pancasila contains two important aspects, namely the individual aspect and the social aspect. The balance of these two aspects implies that individual freedom is limited by broader interests, namely the rights of others. Protection of human rights in Indonesia raises an unresolved problem, namely that the protection of human rights for victims and survivors of several cases of gross human rights violations has not been fully

implemented. In fact, Indonesia already has regulations that support the implementation process [2].

The idea of the KKR formulation began with the spirit of revealing the truth of the dark history of the past that had not yet been revealed. Officially, disclosing the truth will give birth to an interpretation which becomes the formal basis for the state to be able to determine the appropriate steps for the settlement process. The official interpretation of the truth will serve as an initial answer to be able to provide a sense of justice for the victim [3].

To be able to uncover cases of gross human rights violations, concrete efforts need to be made, one of which is by establishing a KKR in accordance with the mandate of Article 47 paragraph (2) of the Human Rights Court Law. Based on Law No. 27 of 2004 concerning the Truth and Reconciliation Commission (KKR Law) a KKR was established which, according

to Article 1 point 3, is intended to reveal the truth of past gross human rights violations [4].

The KKR is not a substitute mechanism for the judicial process, but it can provide a mandate in official investigations of gross human rights violations that have occurred, open the way for formal and open reflection on incidents of crimes and suffering experienced, provide a forum for victims and families of affected victims to recount events. In some cases, it can serve as a formal basis for providing compensation, reparation, and rehabilitation to victims and their affected families, as well as a basis for holding perpetrators accountable [3].

Over time, efforts to resolve gross human rights violations through the KKR route have not been implemented. This is because the KKR Law as a whole was ruled unconstitutional by the Constitutional Court through Decision Number 6 / PUU-IV / 2006. Until now, it has been a decade since the legal basis for the formation of the KKR has not yet been carried out by the government and the DPR. The KKR Bill is only included in the Prolegnas list. However, until now it has not been thoroughly discussed and has not become a priority agenda.

In addition to legal issues, materially the TRC Law has problems, one of which is contained in Article 27 of the TRC Law which regulates compensation and rehabilitation as determined by Article 19, namely if the perpetrator admits his guilt, admits the truth of the facts, expresses regret for his actions, and is willing to ask for help, sorry to the victim or the victim's family as their heirs, perpetrators of gross human rights violations can apply for amnesty to the President, and if granted, the perpetrators can be released from these demands [4].

The existence of this article also shows that the resolution of human rights violations through the TRC Law still focuses on the perpetrators, not the victims. This will certainly lead to legal uncertainty for the victim. They should be victims, those who should be concerned about legal protection with the existence of the TRC Law. This encourages the author to research and examine more carefully what the big problem with the KKR concept is in resolving past gross human rights violations.

2. RESEARCH METHOD

This research is library research using a normative approach, namely reviewing Law No. 27 of 2004 concerning the Truth and Reconciliation Commission (KKR Law). This research was conducted using data

collection techniques based on literature or literature studies that were processed and analyzed descriptively and legal journals related to the discussion, such as the theory of human rights, human rights violations, victim-oriented mechanism, etc.

3. FINDINGS AND DISCUSSION

In seeking to resolve various cases of past human rights violations, despite the various criticisms that surround them, the state has actually attempted a series of solutions. One of them is the establishment of a Human Rights Court, through Law no. 26 of 2000 concerning Human Rights Courts. Through this court, in relation to past cases, at least two cases were tried, the ad-hoc Human Rights Court for cases of gross human rights violations in East Timor, in 2002, and in 2004, for cases of serious human rights violations in Tanjung Priok. 1984. However, even though the trial was held, from the existing verdicts, the results seemed unsatisfactory to justice seekers, especially those who were victims [5].

Apart from the establishment of a Human Rights Court, the state has also initiated the establishment of a Truth and Reconciliation Commission (KKR), through Law no. 27 of 2004 concerning KKR. Unfortunately, during its infancy, unexpectedly, the Constitutional Court (MK) annulled this whole law, through Decision No. 006 / PUU-IV / 2006, on 7 December 2007.² However, this does not mean that the Constitutional Court has closed its doors on all opportunities to resolve various cases of human rights violations in the past. In its decision, the Constitutional Court provides a number of alternatives for resolving past human rights violations, one of which is by reforming the truth and reconciliation commission law, which is in line with the 1945 Constitution, and upholding the principles of humanitarian law and international human rights law. Through the Truth and Reconciliation Commission, the new post-authoritarian government is allowed to reconcile the tendency of a punitive approach (for the sake of law enforcement accountability) towards perpetrators on the one hand, with a tendency to forgive or amnesty on the other, to create a condition of transitional justice, which is not completely satisfying [6].

3.1 Human Rights in International Law

In the treasury of international human rights law, the United Nations (UN), through the UN General Assembly Resolution 60/147, concerning Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International

Human Rights Law and Serious Violations of International Humanitarian Law (adopted by the UN General Assembly on December 16, 2005), has also stated several coverages of state obligations towards victims of gross human rights violations, namely:

- a. Take appropriate legislative and administrative measures, as well as any other necessary steps, to prevent violations
- b. Investigate violations in an effective, prompt, thorough and impartial manner and, to the extent appropriate, take action against those suspected of being responsible in accordance with domestic law and international law;
- c. Provide equal and effective access to justice for victims regardless of who may be ultimately responsible for the crime;
- d. Providing remedies for victims including reparations.

In full, based on the UN General Assembly Resolution 60/147, it is stated that every victim of serious human rights violations has rights that include: (i) equal and effective access to justice; (ii) adequate, effective and speedy recovery of the suffering experienced; and (iii) access to relevant information regarding violations and mechanisms for remedy. In fulfilling these rights, there are a number of principles that must be fulfilled, namely: (i) adequate, effective and fast; (ii) aimed at promoting justice; (iii) is proportional to the severity of the offense and the suffering experienced; (iv) States should pursue national programs for recovery and other assistance for victims; (v) victims must be provided with complete and effective reparations [2].

The international community has provided full support for any efforts to resolve gross human rights violations committed by the previous government regime. This support is based on awareness to jointly break impunity for human rights violations and restore the rights of victims. Apart from that, it is also realized that the institutionalization of accountability through the courts in various cases is not fully adequate to solve and expose the crimes of the previous regime. One of the most important documents that encourages the formation of a truth and reconciliation commission is the document of the United Nations High Commissioner for Human Rights on the principles of the Elimination of Impunity (E/CN.4/sub2/1997/20/rev1) which was presented at its 59th session in 1997 [7]. The historical background of this document departs from a reflection on the practice of granting amnesty by many countries, especially in Latin America which tends to be a blanket amnesty, by providing immunity for perpetrators of crimes of past human rights violations from punishment [7].

Based on a study of amnesty practices, the UN High Commissioner for Human Rights emphasized a number of basic principles for the formation of various truth commissions, in order to prevent impunity. These principles then also underlie the various forms and mandates of truth commissions established in various countries. The obligation to remember (duty to remember) and further prevent the possibility of a recurrence in the future, the obligation to punish every form of human rights violation crime (duty to prosecute) and the obligation to bring justice to victims which includes the right to rights to justice and the right to reparation. As one of the countries, which has served as a member of the UN Human Rights Council, of course, Indonesia has a moral and ethical obligation to fully implement the above principles. [5].

In addition, the International Covenant on Civil and Political Rights, which Indonesia has ratified with Law no. 12 of 2005, also affirms the independent obligation of the state to carry out investigations, provide reparations and also to prosecute perpetrators of serious human rights violations. Even for crimes that occurred before the ratification of the covenant, that is, as long as the crimes have not been investigated, repaired or investigated or prosecuted. The implication of this obligation is that the state has an obligation to conduct thorough and effective investigations and also to provide effective remedies to victims and also to prosecute and punish perpetrators.

With regard to fulfilling the rights of victims, the protracted formation of the Truth and Reconciliation Commission has implications for the delay of justice for victims of past human rights violations. Victims, according to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, are individuals or groups who suffer harm, such as physical or mental injury, emotional suffering, economic loss, or significant impairments of their fundamental rights [4].

Refer to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly in Resolution 60/147 on December 16, 2005, which is aimed at victims of serious human rights violations and explains that every victim of serious human rights violations has the right to: (1) equal and effective access to justice; (2) adequate, effective and speedy recovery of the suffering experienced; and (3) access

to relevant information regarding violations and the mechanisms for their remedy. Under international law, remedies must, as far as possible, remove all consequences of illegal acts and rebuild a situation damaged by an act, as before the action (*restitutio in integrum*). In general, based on international human rights law, victims of gross human rights violations, are entitled to: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition [1].

3.2 The Urgency of the Reform of the KKR

3.2.1 Settlement of cases of gross human rights violations through KKR

The history of the state administration system in Indonesia has mandated the government to provide protection and enforcement of human rights. One of the important changes after the amendments to the 1945 Constitution is the strengthening of the position of human rights in the constitution which mandates the existence of a spirit of protection of human rights in every regulation. After the end of the New Order era, Indonesia was faced with an agenda to resolve gross human rights violations that occurred during the New Order era. However, during the transition period until now, the process of revealing the truth is still limited to a ruling released by Komnas HAM in the interests of the judicial process [8].

Of the several cases that have been determined by Komnas HAM, there are three cases that have entered the trial process at the ad hoc human rights court, however, the court was unable to prove the involvement of the main actors, namely the Timor-Timor case, the Tanjung Priok case from 1984 and the Abepura case. The remaining seven cases are still being handled at the Attorney General's Office, namely the 1965 Tragedy, the Mysterious Shootings (1982-1985), the Talangsari case in Lampung (1989), the Disappearance of Activists (1997-1998), the Jambu Keupok case and the KKA Intersection in Aceh, the case of Trisakti, Semanggi I, and Semanggi II (1998-1999), the case of Wasior, Wamena, and Paniai in Papua (2000).

One of the reasons for the difficulty of obtaining justice for victims of human rights violators is the absence of a TRC that played a role in uncovering historical truths in the past. The settlement through the TRC is intended to build a settlement pattern outside the court mechanism in order to create peace and national unity [2]. The process of political transition creates political will during the transition period to resolve gross human rights violations involving the previous regime. KKR is a commission that is given

the authority to disclose past gross human rights violations by a regime.

3.2.2 Constitutional Re-establishment of the KKR

On December 7, 2006, in case No. 006 / PUU-IV / 2006 regarding the review of Law no. 27 of 2004 concerning KKR, which was proposed by a number of elements of civil society, the Constitutional Court granted the petitioners' demands. However, unexpectedly, the Constitutional Court not only canceled the articles requested, but the entire KKR Law, because the objectives of the KKR would not be possible to achieve under the law in question. In the legal consideration of its decision (*ratio decidendi*), the Constitutional Court stated that the article that was canceled was the heart article of what was the objective of the KKR Law, so that with the cancellation of this article, the KKR could no longer be its goal, therefore the KKR Law had to be canceled entirely [4].

The argument that the Constitutional Court cannot add statutory norms in its decision (positive legislature) may be an excuse for the Constitutional Court, to simply annual the provisions and materials in the KKR Law, without the obligation to improve the material of the law tested. Even so, to ensure the ongoing resolution of various cases of human rights violations in the past, especially the process of revealing the truth and reconciliation, as part of the democratic transition, in its decision the Constitutional Court, among others, recommended the formation of a new KKR Law, which is in line with the 1945 Constitution, and upholds the principles -principles of humanitarian law and international human rights law. The Constitutional Court further emphasized.

The KKR Law which is declared to have no binding legal force in its entirety, does not mean that the Court closes efforts to resolve past gross human rights violations through reconciliation efforts. There are many ways to do this, including by realizing reconciliation in the form of legal policies (laws) that are in line with the 1945 Constitution and universally applicable human rights instruments, or by carrying out reconciliation through political policies in the context of rehabilitation and amnesty in general [3].

The Constitutional Court's constitutional order to reform the KKR Law which is in line with the 1945 Constitution and international human rights law, is important, because this affirmation actually means that the Constitutional Court recognizes the urgency and constitutionality of the Truth and Reconciliation Commission (KKR), in resolving past human rights

violations, as part of the democratic transition process. Therefore, denial of the constitutional mandate of the Constitutional Court decision can also be interpreted as denial of the constitution. Especially for a country that is undergoing a transition process like Indonesia.

3.2.3 *KKR is a Reform Mandate*

As previously mentioned, the formation of a KKR is also the main mandate of MPR Decree No. V / MPR / 2000 concerning the Consolidation of National Unity. In the MPR Decree, it was clearly stated, to strengthen national unity and integrity, it must be realized in concrete steps, in the form of the formation of the commission for Truth and Reconciliation. In full in the second paragraph, the aims and objectives of the stipulation of the MPR decision are: Real awareness and commitment to consolidating national unity and integrity must be realized in concrete steps, in the form of the formation of a Truth and Reconciliation Commission, and formulating National Ethics and the Vision of Indonesia's Future.

The formation of the KKR is important as a guide in the nation's journey forward, or in this MPR Decree, one of them is mentioned, will greatly influence the enforcement of the rule of law and legislation, which is applied consistently and responsibly, and guarantees and respects human rights. To ensure the implementation of all this, it is necessary to precede the resolution of various cases of corruption, collusion and nepotism, as well as human rights violations.

In its implementation, this MPR Decree mentions the need to establish a National Truth and Reconciliation Commission, as an extra-judicial institution whose numbers and members and criteria are stipulated by law. Chapter V MPR Decree No. V / MPR / 2000 regarding Implementing Rules, in point 3 it states in full: Establish a National Truth and Reconciliation Commission as an extra-judicial institution whose number of members and criteria are stipulated by law. This commission is tasked with upholding the truth by exposing past abuses of power and human rights violations, in accordance with the provisions of applicable laws and regulations, and carrying out reconciliation in the perspective of the common interest as a nation. After revealing the truth, admission of guilt, apology, forgiveness, peace, law enforcement, amnesty, rehabilitation, or other alternatives that are useful for upholding national unity and integrity can be carried out by fully paying attention to the sense of justice in society [9].

Reading the above affirmation of the principles for strengthening national unity and integrity, it is very clear that the formation of the Truth and

Reconciliation Commission, whose formation and work process is regulated through law, is one of the reform mandates, which must be realized if the future of this nation is to be better. In fact, this provision guides what powers the KKR has, as well as the steps and stages of resolving past human rights violations, by upholding the sense of justice in society, especially victims [9].

The formation of the Truth and Reconciliation Commission (KKR), was also enforced by Law No. 26 of 2000 concerning Human Rights Courts, particularly in relation to the resolution of gross human rights violations that occurred before the promulgation of this law. In Article 47 of the Human Rights Law, it is stated as follows:

- (1) Serious human rights violations that occurred prior to the enactment of this law do not preclude the possibility of the settlement being carried out by the Truth and Reconciliation Commission.
- (2) The Truth and Reconciliation Commission as referred to in paragraph (1) shall be established by law.

In fact, the law clearly mandates the formation of the KKR Law, which will become an instrument for resolving gross human rights violations, which occurred in the past, prior to the enactment of the Law on Human Rights Courts. Deviation from the mandate of Article 47 above, is an act that violates the law. This means that the state can be said to have committed an act of breaking the law if it does not fulfill the order of a law. In addition, by not implementing Article 47, it indirectly does not carry out the principles of UN General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Serious Violations of International Human Rights Law and Serious Violations of International Humanitarian Law which Indonesia signed the resolution.

3.2.4 *Formulating a KKR Law for a Better Future*

Previously, Indonesia already had Law 27 of 2004 on the Truth and Reconciliation Commission. However, before this law was fully implemented, in 2006 the Constitutional Court canceled it in court, because it was considered contrary to the 1945 Constitution. The cancellation of the KKR Law was recorded in the Constitutional Court (MK) decision letter Number 006 / PUUIV / 2006. According to this decision, the cancellation of the KKR Law was carried out based on the results of a judicial review of a

number of articles contained in the legislation product. The judicial review of the KKR Law was filed on March 28, 2006 by eight people from non-governmental organizations (NGOs) and victims of past human rights violations. They are the Institute for Study and Community Advocacy, the Commission for Missing Persons and Violence (KontraS), Solidaritas Nusa Bangsa (SNB), Impartial, Research Institute for Victims of Incident 65, the Struggle for Rehabilitation of Victims of the New Order Regime, and victims of activist kidnapping and victims of incident 65.

They asked the Constitutional Court to examine the material for the KKR Law, especially Article 1 paragraph 9, Article 27, and Article 44. According to them, it contradicts universal human rights principles. In Article 1 Paragraph 9, for example, the Law allows perpetrators of gross human rights violations to obtain amnesty from the president by taking into account the considerations of the House of Representatives (DPR). It reads Article 1 Paragraph 9 "Amnesty is forgiveness given by the president to perpetrators of serious human rights violations by taking into account the considerations of the House of Representatives." Article 27 which reads "compensation and rehabilitation as referred to in Article 19 can be granted if the amnesty request is granted". According to Article 19, the sub-commission for compensation, restitution and rehabilitation as referred to in Article 16 Letter b has the task of providing legal considerations in providing compensation, restitution and / or rehabilitation to victims or victims' families who are their heirs as a result of serious human rights violations. . Article 16 The Commission as referred to in Article 4 consists of: a. the sub-commission to investigate and clarify gross human rights violations; b. compensation, restitution and rehabilitation sub-commission; and c. the sub-commission for amnesty considerations [2].

There is also Article 44 of the KKR Law which states that serious human rights violations that have been disclosed and resolved by the Commission, cannot be submitted again to the Ad hoc Human Rights Court. The results of the material lawsuit did not just revise article by article. Even the Constitutional Court at that time canceled all parts of the material of the KKR Law. The following is the letter of the Constitutional Court decision Number 006 / PUU-IV / 2006, the result of the judicial review of law number 27 of 2004 concerning the Truth and Reconciliation Commission:

- (1) Granting the Petitioners' Petition;
- (2) Declare that the Law of the Republic of Indonesia Number 27 of 2004 concerning the Truth and

Reconciliation Commission contradicts the 1945 Constitution of the Republic of Indonesia.

- (3) Declare that the Law of the Republic of Indonesia Number 27 of 2004 concerning the Truth and Reconciliation Commission does not have binding legal force.
- (4) Order the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate.

In addition, the Court is of the opinion that Article 27 of the KKR Law stipulates that compensation and rehabilitation as stipulated by Article 19, namely the provision of compensation, restitution and / or rehabilitation, shall be granted if the amnesty request is granted. The elucidation of the article stipulates that, if the perpetrator admits guilt, admits the truth of the facts, expresses remorse for his actions, and is willing to apologize to the victim or the victim's family as his heir, the perpetrator of gross human rights violations can submit an amnesty request to the President [8].

If the petition is grounded, the President can accept the request, and the victim will be given compensation and / or rehabilitation. Meanwhile, if the amnesty request is rejected, compensation and rehabilitation will not be granted by the state, and the case is followed up to be resolved based on the provisions of the Law on Human Rights Courts. According to the Constitutional Court, this regulation contains a contradiction between one part and another, especially between the parts that regulate: (1) The perpetrator has admitted the mistake, the truth of the facts and expressed regret and the willingness to apologize to the victim. (2) Perpetrators can apply for Amnesty to the President. (3) The application may be accepted or may be rejected. (4) Compensation and / or rehabilitation will only be given if amnesty is granted by the President. (5) If the amnesty is rejected, the case is submitted to the Ad hoc Human Rights Court.

The Constitutional Court is also of the opinion that there is confusion and contradiction contained in Article 27 of the KKR Law concerning the pressure that sees individual perpetrators in individual criminal responsibility, even though incidents of human rights violations prior to the enactment of the Human Rights Court Law, both perpetrators and victims and other witnesses were serious it's not easy to find anymore. The reconciliation between the perpetrator and the victim referred to in the a quo law becomes almost impossible to achieve, if it is carried out with an individual criminal responsibility approach. With such an approach, the only thing that depends on amnesty is restitution, which is compensation provided by the perpetrator or a third party [2].

On the other hand, if the aim is reconciliation, with an approach that is not individual in nature, then the starting point is the existence of gross human rights violations and the existence of victims which are the benchmarks for reconciliation by providing compensation and rehabilitation. The two approaches, in relation to restitution, compensation and rehabilitation, cannot depend on one unrelated issue. Because, amnesty is the prerogative of the president, whose granting or rejection depends on the President.

The fact that gross human rights violations have occurred, which is actually the state's obligation to avoid or prevent them, and the emergence of victims whose human rights should be protected by the state is sufficient to create legal obligations on both the state and individual perpetrators who can be identified to provide restitution and compensation, as well as rehabilitation of victims, without other conditions. Article 44 of the KKR Law reads, "Serious human rights violations that have been disclosed and resolved by the Commission, the case can no longer be submitted to the Ad hoc Human Rights Court." From the General Elucidation of the KKR Law, it can be concluded that the KKR's task is to reveal the truth and uphold justice and to form a culture of respecting human rights in order to bring about reconciliation to achieve national unity, due to gross human rights violations prior to the enactment of the Law on Human Rights Courts. The KKR does not involve the legal prosecution process, but regulates the processes of revealing the truth, granting restitution, and / or rehabilitation as well as providing considerations for amnesty. The question is whether the KKR is a substitute or substitute for the court or not [2].

The general explanation also explicitly states that if the KKR has decided gross human rights violations, the Ad hoc Human Rights Court has no authority to decide, unless the amnesty request is rejected by the President. Likewise, on the other hand, if the Ad hoc Human Rights Court has made a decision, the KKR has no authority to make a decision. Although it is said that the KKR is only an alternative to the Human Rights Court and is not a law enforcement body, it is clear that it is an alternative dispute resolution mechanism, which will resolve a human rights dispute amicably and if successful will close the legal settlement mechanism.

Although the petitioners' arguments cite international human rights arguments and principles against impunity, the settlement of human rights violations has thus been accepted in international practice, for example in South Africa, and has also been recognized in customary law. The closure of the

legal process through the Ad hoc Human Rights Court when obtaining a settlement at the KKR is a logical result of an alternative dispute resolution mechanism so it does not need to be seen as a justification for impunity. This is because, in general, legal mechanisms for resolving gross human rights violations prior to the enactment of the Law on Human Rights Courts have experienced difficulties with the passage of a long period of time which resulted in the loss of evidence to serve as a basis for evidence in the individual criminal responsibility approach [4].

The Law on Human Rights Courts which refers to the Statute of Rome On The International Criminal Court qualifies the crimes of genocide and crimes against humanity as the most serious crimes in the international community as a whole. International practice as well as the General Comment of the UN Human Rights Commission in general are of the opinion that amnesty is not permitted for gross human rights violations. It was said that although the KKR was intended to create conducive conditions for the existence of national peace and reconciliation, efforts were needed to determine the limits of amnesty, namely that the perpetrators should not be benefited by the amnesty. Amnesty should not have legal consequences insofar as it concerns the victim's right to reparation, and furthermore, amnesty should not be granted to those who have committed violations of human rights and international humanitarian law which constitute crimes, which do not allow amnesty and other forms of immunity [3].

Although the General Comment and Report of the Secretary-General of the United Nations have not been accepted as binding law, it seems that this definition is the content of the 1945 Constitution which regulates the principles of protection of human rights contained in Article 28G Paragraph (2) of the 1945 Constitution, namely the right to be free from torture, Article 28I Paragraph (1) of the 1945 Constitution, namely the right to life and the right not to be tortured, Article 28 Paragraph (4) and Paragraph (5) of the 1945 Constitution, namely the protection, promotion and fulfillment of human rights which are the responsibility of the state. However, Article 1 Number 9 is only an understanding or definition contained in a general provision and is not a norm that regulates and relates to other articles, so that the Petitioners' petition regarding these provisions is disregarded and will be further considered in conjunction with the article. - articles related to amnesty, as will be described below. [10].

Therefore, the Court considers a quo law as a whole contradicts the 1945 Constitution so that it must

be declared as having no binding legal force. By stating that the KKR Law does not have binding legal force as a whole, it does not mean that the Court closes efforts to resolve past gross human rights violations through reconciliation efforts. There are many ways to do this, including by realizing reconciliation in the form of legal policies (laws) that are in line with the 1945 Constitution and universally applicable human rights instruments, or by carrying out reconciliation through political policies in the context of rehabilitation and amnesty in general [1].

The Constitutional Court's decision was much unexpected by many human rights activists. Initially, they only wanted to fix the harmful articles, so that the reconciliation process could be carried out. But the decision to cancel the KKR Law has stopped efforts to resolve past cases. Because the noble goal of enacting the KKR Law is to bring about truth-telling and healing for past human rights violations. The existence of the KKR should guarantee the disclosure of cases of past human rights violations, as well as treating the wounds of the families of victims of human rights violations. The KKR also needs to be re-established as an effort to resolve unresolved human rights problems in Indonesia. As a complement to the KKR, it should later become a complementary court that will not eliminate criminal charges against perpetrators of human rights crimes. It is therefore important to abolish amnesty in the forthcoming draft of the KKR Law. In addition, the new KKR Law must also prioritize a victim-centered approach in resolving cases.

4. CONCLUSION

Based on the discussion above, KKR is important to be re-established as an effort to resolve human rights problems that occur in Indonesia. Meanwhile, the KKR in the future should be a complementary court (right to justice) that will not eliminate criminal charges against perpetrators of crimes against human rights. Therefore, removing amnesty in the new draft KKR Law is a must. In addition, to provide a sense of justice, the new KKR Law should prioritize a victim-centered approach in resolving cases of human rights violations in order to provide a greater sense of justice for victims of human rights violations.

Finally, the support from all parties, especially the DPR and the President, as the main actors that can be expected in the formation of policies related to the KKR, will greatly determine the acceleration of the discussion and the formation of the new KKR Law. The urgency of the formation of the new KKR Law, will be proof of the constitutional obedience of the legislators (President and DPR) to the 1945

Constitution. Conversely, postponing / postponing or even canceling the formation of the new KKR Law is a form of betrayal of the 1945 Constitution and the mandate of reform. , because the MPR as the manifestation of all Indonesian people, and also the Constitutional Court, has very clearly stated the urgency and constitutionality of the Truth and Reconciliation Commission (KKR).

REFERENCES

- [1] M. Fadhil, "Komisi Pemberantasan Korupsi, Politik Hukum Antikorupsi dan Delegitimasi Pemberantasan Korupsi," *Al-Ahkam*, vol. 2, no. 3, pp. 7-36, 2019.
- [2] B. H. Suprianto, "Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif di Indonesia," *Al-Azhar Indonesia Seri Pranata Sosial*, vol. 2, no. 3, pp. 151-168, 2014.
- [3] I. Kasim, "Penyelesaian Non-Prosekutorial dan Rekonsiliatif Terhadap Pelanggaran Hak Asasi Manusia Yang Berat," *Jurnal Hukum Ius Qui Iustum*, vol. 16, no. 2, pp. 222-237, 2009.
- [4] Z. Ulya, "Politik Hukum Pembentukan Komisi Kebenaran dan Rekonsiliasi Aceh: Reformulasi Legalitas KKR Aceh," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah*, vol. 2, no. 2, pp. 135-154, 2017.
- [5] A. R. Nasution, "Penyelesaian Kasus Pelanggaran HAM Berat Melalui Pengadilan Nasional dan Internasional Serta Komisi Kebenaran dan Rekonsiliasi," *Jurnal Mercatoria*, vol. 11, no. 1, pp. 90-126, 2018.
- [6] M. A. Putra, "Eksistensi Lembaga Negara dalam Penegakan Hak Asasi Manusia di Indonesia," *Fiat Justitia Jurnal Ilmu Hukum*, vol. 9, no. 3, pp. 256-292, 2015.
- [7] C. O. H. Rights, *The Administration Of Justice And The Human Rights Of Detainees (E/CN.4/Sub.2/1997/20/Rev.1)*, United Nations, 1997.
- [8] A. Alamsyah, "Urgensi Konstitusionalitas Pembentukan Komisi Kebenaran dan Rekonsiliasi," *Veritas*, vol. 6, no. 1, pp. 79-98, 2020.
- [9] "Tap MPR No. V/MPR/2000 Bab IV Arah Kebijakan Butir".
- [10] "Putusan MK Nomor 006/PUU-IV/2016".