

Research Article

Fulfilment of Human Rights in The Past of Gross Human Rights Violations (Study of Inpres No. 2 of 2023 In Indonesia)

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Abstract: Presidential Decree (Keppres) No. 17 of 2022 has initiated a significant step towards addressing historical human rights violations in Indonesia. This decree establishes a Non-Judicial Resolution Team dedicated to this purpose. This Presidential Decree created the PPHAM Team, which was responsible for addressing serious human rights violations in the past. As a result of the team's efforts, the State officially acknowledged 12 instances of human rights violations until the emergence of Presidential Instruction (Inpres) No. 2 of the year. Regarding the Implementation of Recommendations for Non-Judicial Resolution of Serious Human Rights Violations in 2023. This article seeks to delve deeper into the examination of the Presidential Instruction within the realm of human rights theory. This research uses a descriptive normative approach, with the object of the research being Presidential Instruction No. 2 of 2023. The results of the research show that Presidential Instruction No. 2 of 2023 has fulfilled the principle of fulfilling human rights in past serious human rights violations in line with international human rights regulations, considering that there are principles that cover all aspects and important dimensions and mechanisms for resolving human rights violations, with four important pillars, namely: a) the right to justice; b) the right to truth (right to truth); c) the right to reparation (right to reparation); and d) guarantee of non-recurrence. Presidential Decree No. 17 of 2022 and Presidential Instruction No. 2 of 2023 are seen as significant milestones in addressing historical human rights abuses by certain groups. However, this regulation is perceived as lacking in its ability to address public inquiries. One aspect to consider is the acknowledgment of human rights violations during the 1965-1966 incident. There has been ongoing debate regarding the identification of the victim and perpetrator in this event.

Keywords: Human Rights, Presidential Instructions, Serious Human Rights Violations.

1. Introduction

All people have inherent human rights, which the state, law, and government must respect, uphold, and protect. Whether carried out by individuals, state institutions, or other entities, human rights violations cover a wide range of actions that violate people's rights. These violations can occur both at the hands of state officials and non-state actors and are characterised by a lack of legal or rational justification [1]. It is crucial to prioritise the recognition and protection of human rights, particularly by the State, due to their inherent nature in every individual.

The responsibility for overseeing the enforcement of human rights lies with the Government or legal state. This entails ensuring their implementation and regulating any limitations in the public interest, as well as the interests of the nation and state. There is a growing inclination to prioritise the preservation of public order over the protection of human rights. In this context, it is crucial for the state to refrain from intervening in matters that are deemed human rights violations

[2]. In a constantly evolving legal landscape, the state plays an active role in promoting social welfare. The regulation of state function and the administration of human rights and obligations is addressed in this manner. Nevertheless, while the state upholds human rights, it also serves the public interest [3]. Both functions harmoniously within the framework of legal regulations.

Violations of human rights, also known as HAM, refer to the infringement of fundamental guarantees outlined in the 1949 Geneva Convention's article 3 and the 1977 Additional Protocol II in non-international armed conflicts. On the other hand, serious human rights violations fall under the purview of the 1949 Geneva Conventions and the 1977 Additional Protocol, which are applicable to international armed disputes and conflicts [4]. Human rights violations can be categorised into two main forms: serious violations like genocide and crimes against humanity, such as apartheid policies, and less severe violations like defamation, suppression of free speech, and physical abuse [5]. Human rights violations, regardless of their severity, garner significant international attention.

Human rights and international criminal law are interconnected because crimes can also be classified as international crimes. Human rights violations can be classified as criminal offences, namely when they involve the breach of human rights laws and are subject to legal penalties at either the national or international level. The legal provisions pertaining to human rights, both at the national and international levels, serve as a fundamental structure for safeguarding and implementing laws related to human rights [6]. Violations of human rights are intrinsically linked to the legal entities involved, and these violations fall within the purview of national or international jurisdiction. This connection is crucial in addressing and resolving the violations in accordance with the relevant laws [7]. Various regulations, whether established at the national or international level, either autonomously or through agreements, serve a valuable purpose in governing societal and governmental affairs.

Significant violations of human rights are serious crimes that have far-reaching consequences, both domestically and globally. This criminal act also leads to both tangible and intangible consequences, which can significantly disrupt the victim's and their family's overall well-being. Receiving compensation and restitution is a crucial form of protection and a fundamental right for crime victims. The State provides compensation to victims of serious human rights violations, while restitution is given by the perpetrator of criminal acts as a means of accountability [8]. Compensation and restitution are fundamental obligations in cases of human rights violations.

Common examples of human rights violations encompass acts of discrimination and torture. Discrimination refers to the intentional actions taken by a community group to harass, restrict, or exclude individuals or groups based on factors such as tribe, religion, race, ethnicity, gender, language, and politics. These actions ultimately lead to the infringement, deviation, or elimination of human rights and basic freedoms in both individual lives and society as a whole [9]. Meanwhile, torture is the deliberate act of inflicting severe physical and emotional pain upon an individual or group [10]. Indonesia is a nation that frequently experiences a wide range of violations.

The attitudes and views of the Indonesian people on human rights are influenced by religious teachings, universal moral values, and the noble values of national culture. These beliefs are rooted in Pancasila and the 1945 Constitution. Nevertheless, under the New Order government, numerous instances of human rights violations occurred. The HAM received criticism from both domestic and international sources. Human rights issues are frequently utilised as a means of exerting pressure on a nation in international forums. Consequently, the aid received by a country may be hindered if it is perceived as not allowing for the advancement of human rights [11]. A country must face the consequences of human rights violations.

Instances of undisclosed and unresolved human rights violations arise when victims, due to receiving threats from certain parties, are reluctant to provide testimony to law enforcement. Revealing a criminal act necessitates the involvement of the community, specifically the individuals who possess information that can aid in the detection of the crime and subsequently reporting it to the appropriate authorities [5]. In light of this, the Indonesian government took the initiative to establish a team with the aim of investigating human rights violations.

Presidential Decree No. 17 of 2022 was enacted on August 26, 2022. This Presidential Decree created the PPHAM Team, which was responsible for addressing serious human rights violations in the past. As a result of the team's efforts, the State acknowledged a total of 12 human rights violations. Furthermore, the team's primary objective is to address non-

judicial past serious human rights violations, as identified by the National Human Rights Commission's data and recommendations up to 2020. This involves conducting disclosures and implementing measures to resolve these violations; advocating for the victims or their family's recovery, as well as proposing measures to prevent the recurrence of severe human rights violations in the future. The disclosure and analysis of past serious human rights violations involves a comprehensive examination of events, including their background, cause and effect, trigger factors, victim identification, and resulting impacts [12].

The role of international law within the national legislative system involves its incorporation into national law through either legislation or Presidential Decree. Both Laws and Presidential Decrees serve as means to incorporate international law into national law [13]. The President's decision is limited in its scope and only has jurisdiction within the country. This study centres on historical instances of human rights violations, specifically analysing the content and implications of Presidential Instruction No. 2 of 2023.

Presidential Instruction No. 2/2023 serves as a National Human Rights instrument, exclusively applicable within the country of its origin. This instrument, enacted by the government, holds legal authority solely within the borders of the country in which it was established. Hence, Presidential Instruction No. 2/2023 exclusively pertains to Indonesia [6]. There are a total of 19 government institutions that are required to follow the guidelines outlined in Presidential Instruction No. 2/2023. These institutions must work together in a coordinated and integrated manner, adhering to their specific roles and responsibilities, to effectively implement the recommendations provided by the PPHAM Team. In the year 2023, in Indonesia. This article seeks to provide an explanation of how past human rights issues have been addressed in Indonesia, specifically through Presidential Instruction No. 2 of 2023.

2. Research Method

The research carried out falls under the category of normative research, specifically conducted in a library setting. Find the relevant written data by consulting the legal regulations currently in effect in Indonesia, as well as books on human rights. The research employs a documentation-based data collection technique. Additionally, the research employs a descriptive-qualitative analysis. The analysis began by collecting data in the form of statutory regulations that were the focus of the research: Presidential Instruction No. 2 of 2023; second, this process involves categorising or identifying data to determine the key discussion points related to the settlement and fulfilment of human rights. The data is then presented systematically, either in written or verbal form, as research results that address the problem at hand. Finally, conclusions are drawn by reporting the research findings in a research report.

3. Results and Discussion

Human rights are inherent rights that individuals possess from birth or upon entering society. Human rights encompass an individual's freedom to exercise their conscience in matters essential for a dignified existence. One crucial responsibility that individuals must fulfil after acquiring their rights is known as a basic obligation. This obligation arises once human rights have been obtained [14]. In order to safeguard Human Rights (HAM), it is essential for the state to be founded on the principles of the rule of law. This ensures the existence of mechanisms to monitor and address any instances of human

rights violations, while also empowering individuals to play a crucial role in shaping the affairs of the state [15]. The political system in place is a democratic one, encompassing fundamental rights such as voting, running for office, and expressing one's opinions.

Human rights violations occur when individuals or groups, including government officials, intentionally or unintentionally, through negligence, infringe upon the legally guaranteed rights of others. These violations result in the reduction, hindrance, limitation, or revocation of human rights, as protected by the law. It is concerning when these violations are not addressed through fair and proper legal means, as outlined by the relevant legal mechanisms. Human rights can be violated by both state actors and non-state actors [16]. State actors refer to individuals and institutions that act on behalf of the state, including those in the legislative, executive, and judicial branches [17]. Human rights violations occur when state representatives fail to uphold their obligations to respect, protect, and fulfil the human rights of their citizens.

Presidential Instruction No. 2 of 2023 signifies the government's recognition of the PPHAM Team's recommendations concerning 12 instances of human rights violations in the past [18]. The twelve violations are: the 1965/1966 incident, the 1982/1985 Mysterious Incident, the 1989 Talangsari Lampung Incident, the Rumoh Geudong and Static Post incident in Aceh 1989, the 1997/1998 Forced Disappearance of People, the May 1998 Riots, the Semanggi I and II Incidents 1998/1999, the 1998/1999 Witchcraft Witch Murder Incident, the Simpang KKA Incident in Aceh 1999, the Wasior Papua Incident 2001/2022, the Wamena Papua Incident 2003, and the Jambo Keupok Incident in Aceh 2003 [19].

The recognition was further supported by the Press Statement of the National Human Rights Commission of the Republic of Indonesia (Komnas HAM) Number: 01/HM.00/I/2023. In the statement, Komnas HAM expressed its approval of the President's stance on acknowledging 12 incidents. Instances of grave human rights violations. The recognition by Komnas HAM demonstrates the government's dedication to fulfilling its responsibilities in restoring the rights of victims. This commitment is reflected in the various laws and regulations, such as Law Number 26 of 2000, Government Regulation Number 7 of 2018, Government Regulation Number 3 of 2002, and Presidential Decree Number 17 of 2022, which outline the provision of compensation, restitution, and rehabilitation for victims of human rights violations [19].

The United Nations (UN) has established significant principles to address human rights violations, aiming to redress past injustices and eradicate impunity globally [20]. The principles discussed encompass all relevant aspects and dimensions, along with significant mechanisms for addressing human rights violations. These principles are supported by four key pillars, namely: a) the right to justice (right to justice) [21]; b) the right to truth (right to truth) [22]; c) the right to reparation (right to reparation) [23]; and d) guarantee of non-recurrence [24]. All of these pillars are based on a fundamental principle: the state's responsibility to take decisive action against impunity. Impunity stems from the failure of states to meet their obligations in investigating, prosecuting, and punishing perpetrators, providing remedies for victims, ensuring the right to truth, and preventing future occurrences. [25]. Presidential Instruction No. 2 of 2023 aims to address past human rights violations and ensure accountability for those responsible.

The pillars of the principle of fulfilling human rights in Presidential Instruction No. 2 of 2023 can be explained as follows:

1. the right to justice: The President has directed the restoration of the rights of victims of serious human rights violations in a just and knowledgeable manner.
2. the right to truth. The President has emphasised the need

for enhanced diplomacy with the international community regarding the government's efforts to address serious human rights violations through non-judicial means.

3. right to reparation. The President has instructed to collaborate with the Witness and Victim Protection Agency to offer psychosocial and psychological rehabilitation, along with victim protection services.
4. guarantee of non-recurrence. This is evident in the President's directives aimed at preventing the recurrence of grave human rights violations.

The primary purpose of the state's existence is to ensure the safety and well-being of its citizens. The state has certain obligations that it must fulfil in relation to its citizens [26]. The obligations that arise from the relationship between the state and its citizens are extensive and diverse. One such obligation is the legal responsibility that emerges from claims related to human rights. The government, as the legal entity representing the state, is responsible for fulfilling the goals and functions of the state in its interactions with citizens [27]. The state and its citizens share a legal relationship that is mutually bound and interconnected.

The failure of the state to fulfil human rights has repercussions for the state, which is referred to as state responsibility. State responsibility is a crucial principle in international law that stems from the doctrine of sovereignty and equality of rights between states [28]. State responsibility is triggered when there is a breach of an international duty to either perform or refrain from certain actions, regardless of whether this duty is derived from an international treaty or customary international law.

The key aspects of state responsibility are determined by fundamental factors. These factors include the presence of an international legal obligation that applies to two specific countries, the occurrence of an act or omission that breaches international law and leads to state responsibility, and the presence of damage or loss resulting from these unlawful acts or omissions [29]. When considering human rights violations, it is crucial to thoroughly examine every action and form of state responsibility.

It is crucial to prioritise the provision of fulfilment, respect, and protection to victims. It has accelerated the human rights justice process to uncover the truth and protect the well-being of citizens. [30]. Protection for victims is outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which is based on UN General Assembly Resolution Number 40/34 from 29 November 1985. In addition, the International Criminal Court (ICC) has established procedural and evidentiary law rules that enhance the recognition of victims in cases involving serious human rights violations [31]. In addition, it is crucial to assign state responsibility to victims of human rights violations. The victim's declaration (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power) emphasises the importance of guaranteeing and protecting the basic rights of victims by the state. These rights include:

1. the victim has the right to access justice mechanisms and receive prompt compensation (in the form of compensation or restitution).
2. individuals have the right to access information about their rights when it comes to seeking compensation and staying informed about the status of ongoing legal proceedings, including compensation.
3. the right to express one's perspectives and offer opinions.
4. the right to receive support throughout the process of punishment.
5. the entitlement to protection, prevention of intimidation or retaliation from wrongdoers, safeguarding personal freedom, and ensuring the safety of personal and family rights.
6. the right to a prompt and streamlined judicial mechanism

or process without unnecessary delays [32].

Just like the subjective and objective aspects in criminal law, human rights violations also possess qualifications that bear striking resemblance. It becomes apparent when a violation satisfies two elements: the objective element (*actus reus*) and the subjective element (*mens rea*) [33]. An *actus reus* refers to an action that conforms to the legal definition (*delict*) and is considered unlawful. On the other hand, the concept of *mens rea* encompasses a wide range of factors, such as error, accountability, intent or negligence, and the absence of justifiable reasons. The concept of *mens rea* is closely tied to an individual's mental state, which can take the form of intention, knowledge, negligence, or recklessness. In the context of crimes against humanity, it is necessary to consider the inclusion of the two principles of the elements of crimes [34]. *Actus reus* and *mens rea* are legal actions that carry legal consequences.

Crimes against humanity involve the act of carrying out an attack that violates both humanity and the law, leading to significant suffering or injury to the body or mental and physical health. In the context of criminal law, the *mens rea* element pertains to the mental state of the perpetrator. It involves the perpetrator's intention or knowledge that the act they committed was a deliberate part of a widespread or systematic attack [35]. From a human rights standpoint, victims encompass not only those who have perished, but also their descendants and individuals who endure the consequences of the wrongdoers' actions. Victims are individuals or groups who have experienced various forms of harm, such as physical or mental injuries, emotional distress, financial losses, or violations of their fundamental rights. These losses can result from deliberate actions or negligence. In a study conducted by Etzioni [36], the findings were presented. *Actus reus* and *Mens rea* play crucial roles in formulating measures to protect human rights and prevent violations.

Presidential Decree No. 17 of 2022 and Presidential Instruction No. 2 of 2023 are seen as significant measures in addressing historical human rights abuses by certain groups. Nevertheless, this regulation is perceived as lacking in its ability to address public inquiries. One aspect to consider is the acknowledgment of human rights violations during the 1965/1966 incident. There has been debate regarding the identification of the victim and perpetrator in this situation.

4. Conclusion

Both the state and individuals have distinct responsibilities when it comes to the enforcement of human rights. It is the duty of the state to guarantee the respect, fulfilment, protection, and promotion of human rights for all its citizens. Addressing human rights violations and holding perpetrators accountable is crucial for the promotion and protection of human rights in its entirety. One of the fundamental responsibilities of a state in relation to Human Rights is to respect, fulfil, and protect them. In this case, the obligation to respect can be seen as the state's commitment to uphold human rights by refraining from intervention, unless it is justified by applicable law. In addition, it is the responsibility of the state to ensure the realisation and protection of Human Rights through legislative, administrative, and practical measures. Finally, the state has a duty to ensure the protection of human rights for all individuals under its jurisdiction, safeguarding them from any violations that may occur. The protection of human rights encompasses safeguarding against violations perpetrated by both state and non-state actors. It is imperative that all parties, including the state, fulfil their obligations to uphold and safeguard human rights without exception. The fulfilment of this duty falls upon the state, as it is crucial for safeguarding the welfare of humanity.

Presidential Instruction No. 2 of 2023 has addressed the crucial aspects of past gross human rights violations, focusing on four key pillars: ensuring justice, uncovering the truth, providing reparations, and preventing future recurrence. Presidential Decree No. 17 of 2022 and Presidential Instruction No. 2 of 2023 are significant measures in addressing historical human rights abuses, according to certain groups. Nevertheless, this regulation is perceived as lacking in addressing public inquiries. One aspect to consider is the acknowledgment of human rights violations during the 1965/1966 incident. There has been debate regarding the identification of the victim and perpetrator in this event.

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