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Breaking the Cycle of Injustice: Revolutionizing Human Rights Violations Resolution Through the 1945 Constitution

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Abstract

The stagnation of human rights enforcement in Indonesia's Reformation Era has highlighted a critical imbalance: the current system prioritizes punishing perpetrators of serious human rights violations over addressing the recovery and well-being of victims. This research introduces *The Constitution of Peace* as a transformative, victim-centered model for resolving serious human rights violations outside the courtroom, aligning with the principles and soul of the 1945 Constitution. The proposed model comprises three innovative approaches: first, mediation facilitated by the National Human Rights Commission to foster dialogue and accountability; second, the provision of compensation, restitution, and assistance to victims through the Witness and

Victim Protection Agency, ensuring tangible support for recovery; and third, an official apology by the relevant authority, accompanied by the fulfillment of economic, social, and culpability obligations. Together, these measures aim to correct the limitations of the current retributive framework by prioritizing restorative justice and victim empowerment. By embracing these victim-oriented solutions, this model not only addresses the legal and moral obligations enshrined in the 1945 Constitution but also fosters reconciliation and societal healing. The research underscores the transformative potential of the Constitution as a foundation for peace, justice, and the resolution of entrenched human rights challenges. It calls for a paradigm shift from punitive measures to a more holistic approach, ensuring that justice serves both the dignity of victims and the broader goal of national harmony.

KEYWORDS *The Constitution of Peace, Severe Human Rights Violations Settlement, 1945 Constitution*

Introduction

Human Rights legal policies in the reform era demonstrated significant advances in the context of protecting, respecting, and enforcing human rights, particularly legal policies to resolve past human rights violations, as stipulated in The House of Representatives of the Republic of Indonesia Decree No. IV/MPR/1999, Presidential Decree No. 53 of 2001, and Law No. 26 of 2000 on Human Rights Courts (*Human Rights Court Law*). This is in accordance with the theory of objective state responsibility. State responsibility arises when a legitimate action by the state causes harm.[1] According to Al Araf, there has been significant progress in human rights respect in Indonesia at the normative level, with the inclusion of a human rights clause in the constitution and the ratification of a number of international human rights treaties in various laws. We can conclude that there is a gap between norms and practices at this point. When examined more closely, the main issue is actually a lack of political will on the part of a number of political elites to solve problems.[2]

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[1] Malcolm N Shaw, *International Law* (Cambridge: Cambridge University Press, 2008). *See also* Yuwanda Tri Maryoga, "Human Rights at the Court: Criticism of the Human Rights Courts in Indonesia." *Lex Scientia Law Review* 2, no. 2 (2018): 241-248.

[2] Al Araf, *HAM Dan Keamanan (Refleksi Penegakan HAM Dan Reformasi Sektor Keamanan Di Masa Reformasi* (Jakarta: Imparsial, 2018), vii-ix.

Although the agenda has become a very problematic legal and political issue for post-reform government, as has been the case in a number of countries in Eastern Europe, Latin America, Africa, and Asia.[3] The option of forgiving and forgetting what happened, then continuing with life and life as it is, or punishing the perpetrators, or establishing a Truth Commission, then bringing the main perpetrators to justice, are all options for resolving past human rights violations that surfaced at the start of the reform.[4] Considering human rights violations and legal norms can harm a country's international reputation.[5]

For pro-democracy activists, the use of legal mechanisms to settle disputes is critical in order to end the practice of impunity or "*preferential treatment*" of state leaders and high-level state officials who have violated human rights in the past. Courts are also important in demonstrating the supremacy of democratic values, principles, and norms in order to gain people's trust.[6] There won't be a true consolidation of democracy if justice isn't served, which can breed cynicism and a skepticism in the democratic system that is being constructed.[7] At this point, a country's responsibility to resolve serious human rights violations is tested.[8]

Although it is acknowledged that there are challenges in dealing with the past, which was full of injustice, the legal strategy of resolving prior human rights breaches through the courts has emerged as the primary preference of political law enforcement in the reform era. The transitional administration must make a decision between the new government's survival and the principles that support it, which must also be respected, in what Dianne Orentlicher refers to as a Hobson's choice.[9]

The shadow of failure is the main issue that haunts the idea of exposing past human rights violations. Can it be resolved through formal, procedural, bureaucratic, and normative legal procedures, which necessitate the availability

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[3] Ifdhal Kasim et.al (Ed), *Setelah Otoritarianisme BerIalu: Esai-Esai Keadilan Di Masa Transisi* (Jakarta: ELSAM, 2001), vi.

[4] Martin Meredith, *Coming To Terms* (New York: Public Affair, 1999).

[5] Theodor Meron, *Human Rights and Humanitarian Law as Customary Law* (Oxford: Oxford University Press, 1991).

[6] Samuel P Huntington, *Third Wave: Democratization in The Late Twentieth Century* (Oklahoma: University of Oklahoma Press, 1991), 114-124.

[7] Robert Pastor (Ed), *Democracies in The Americas: Stopping the Pendulum* (New York: Holmes and Meier, 1989), 84.

[8] Dinah Shelton, *Remedies In International Human Rights Law* (New York: Oxford University Press, 1999).

[9] Dianne F Orentlicher, "Setting Accounts: The Duty to Prosecute Human Rights Violation of A Prior Regime," *The Yale Law Journal* 100, no. 8 (1991): 199.

of formal evidence, and can judges "*stand up*" to work under the pressure of the regime or agents of the previous regime, for the sake of law and justice, given the previous regime's strong opposition? then against any attempt to expose their past crimes. Military leaders who feel threatened by the courts are afraid of trying to change the situation by staging a coup, rebellion, or other conflict that would weaken the civilian government's power. In this situation, it is feared that the courts will embolden the military to challenge democratic institutions.[10]

This concern is justified, not only because it has been demonstrated in a number of countries, but also because it is objectively difficult to operate the legal "*machine*" to investigate and prosecute past human rights violations, the perpetrators of which were mostly military personnel, for this reason, several countries established the Truth and Reconciliation Commission (KKR) to address human rights violations committed by the previous regime. The formation of the KKR reflects the new government's willingness to take steps towards identifying those responsible for these violations and acknowledging the victims.[11] This was also adopted by Indonesia through Chapter V number 3, as well as Article 47 of the Law on the Human Rights Court, providing an alternative in the form of a Truth and Reconciliation Commission mechanism, which is then regulated by Law No. 27 of 2004. However, as is well known, this alternative was never implemented, and the Constitutional Court of Republic of Indonesia even overturned the law,[12] On December 7, 2006, the Constitutional Court of Republic of Indonesia stated that Article 27 of the Truth And Reconciliation Commission Law which reads, "*Compensation and rehabilitation as referred to in Article 19 may be granted if the amnesty application is granted*" contradicts the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). However, because the entire operation of the Truth and Reconciliation Commission Law depends on and leads to this article, the legal implication is that all articles related to amnesty do not have binding legal force,

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[10] Suparman Marzuki, "Politik Hukum Hak Asasi Manusia (HAM) Di Indonesia Pada Era Reformasi: Studi Tentang Penegakan Hukum HAM Dalam Penyelesaian Pelanggaran HAM Masa Lalu" (Universitas Islam Indonesia, 2010), 9. *See also* Ni Putu Selyawati, and Maharani Chandra Dewi. "Implementation of Universal Human Rights Values Based on the Universal Declaration of Human Rights in Indonesia." *Lex Scientia Law Review* 1, no. 1 (2017): 41-56.

[11] Jorge Correa, "Dealing With The Past Human Rights Violation: The Chilean Case After Dictatorschip," *Notre Dame Law Review* 67 (1992): 1457.

[12] Suparman Marzuki, "Politik Hukum Hak Asasi Manusia (HAM) Di Indonesia Pada Era Reformasi: Studi Tentang Penegakan Hukum HAM Dalam Penyelesaian Pelanggaran HAM Masa Lalu.", 10.

so that all provisions in the Truth and Reconciliation Commission Law are impossible to implement. After Constitutional Court of Republic of Indonesia verdict No.006/PUU-IV/2006, there was a legal vacuum related to reconciliation and truth-telling of human rights violations in Indonesia that occurred especially during the New Order and Old Order. The push for the re-establishment of the Truth and Reconciliation Commission surfaced but did not receive a positive response from the legislators.[13]

The unsatisfactory process and decision of the Human Rights Court in the East Timor case, the Tanjung Priok case, the Abepura case, the handling of the Semanggi I and Semanggi II cases, has invited intense legal and political speculation, and raised general questions that are interesting to study. Not to mention the Restoration of Victim's Rights which has not yet been realized, at least in seven rebellions or movements that spilled the blood of fellow children of the nation that occurred in various regions of the Republic of Indonesia, namely 1. Rebellion in Madiun, 1948; 2. The DI/TII rebellion led by Kartosuwiryo that would spread to South-South-East Sulawesi, Aceh and South Kalimantan which began in West Java in 1949; 3. Republic of South Maluku (RMS) in South Maluku; 4. Permesta in Makassar-North Sulawesi in 1957; 5. PRRI in West Sumatra in 1958; 6. G30S or G30S PKI 1965 or some call it Gestok;[14] 7. the regional insurgencies of Darul Islam in the early 1960s.[15] 8. OPM-Irian Jaya, 1970s, and 9. even the Free Aceh Movement led by Hasan Tiro, 1974,[16] which has made peace with the Government of Indonesia Through the Helsinski MOU in 2005, until now there has been no concrete form from the state to restore the rights of victims.

Various cases of serious human rightsviolations that occur often leave many humanitarian problems marked by the emergence of large numbers of victims. The data collected shows that at least one million people died in the events of 1965 (1965-1966), hundreds of thousands of people died during the Papuan Military Operations Area (DOM) (1963-1987), 1321 died in the Aceh

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[13] Luthfi Widagdo Eddyono et.al, *Pengungkapan Kebenaran Dan Rekonsiliasi Pasca Putusan Mahkamah Konstitusi Nomor 006/PUU-IV/2006: Eksistensi Komisi Kebenaran Dan Rekonsiliasi Aceh* (Jakarta: Setjen dan Kepaniteraan MK RI, 2020), 3-4.

[14] Hermawan Sulistyo, *Palu Arit Di Ladang Tebu: Sejarah Pembantaian Massal Yang Terlupakan (Jombang-Kediri 1965-1966)* (Jakarta: Penerbit Pensil 324, 2011), 3-4.

[15] Yuzuru Shimada, "Authoritarianism and Constitutional Politics in Post Authoritarian Indonesian Society: Reemergence or Legacy," *Brawijaya Law Journal: Journal of Legal Studies* 9, no. 1 (2022): 95.

[16] Anhar Gonggong, "Sejarah Pemberontakan Bersenjata Di Indonesia: Sketsa Pergumulan Di Dalam Era Kemerdekaan Tahun 1948-2006," *Jurnal Hukum Humaniter* 2, no. 3 (2006): 459.

DOM (1989-1998), 16 people on 27 July 1996, 528 people were kidnapped, 2000 people died in the May riots, Trisakti, Semanggi I and II and many more.[17] Often victims of serious human rights violations do not receive proper attention from the state. This is because victims usually have a weak position when dealing with the state as the perpetrator, so that their rights are ignored. In fact, in accordance with the principle of state responsibility, the state must be present in every event of human rights violation. The responsibility of the state is realized by taking action against the perpetrators and restoring the rights of the victims.[18]

It has become a principle in international law that a state commits every violation of human rights,[19] reserved by a state, creating an obligation for the violating state to make reparations.[20] According to Victor Conde, human rights violations arise from the failure to adhere to human rights legal norms. Restitution must be made for any violations that occur.[21] The term recovery refers to efforts that can be used to restore various types of losses suffered by victims due to certain crimes. The forms of recovery in this case are restitution, compensation, rehabilitation, satisfaction, and guarantees that similar crimes will not be repeated.[22] Thus, the Basic Principles and UN Guidelines on the Right to Remedies and the Right to Redress for Victims of Serious Violations of International Human Rights Law and Serious Violations of International Humanitarian Law also regulate the right to redress.[23]

Related to that, it is important to pay attention to the results of Theo van Boven's study that said only a little attention was paid to the issue of compensation and recovery for victims. Although there are relevant international standards the perspective of the victim is often forgotten. It shows that many authorities consider this perspective a complicated, difficult and unimportant phenomenon. In addition, it should also be understood that in

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[17] Kontras, "27 Juli Sebagai Kerusuhan Sistematis" (Jakarta, 2000).

[18] Andrey Sujatmoko, *Pemulihan Korban Pelanggaran Berat HAM Menurut Prinsip Tanggung Jawab Negara* (Depok: PT. Rajagrafindo Persada, 2019).

[19] Vladislava Stoyanova, "Causation Between State Omission and Harm Within the Framework of Positive Obligations Under The European Convention On Human Rights," *Human Rights Law Review* 8, no. 1 (2018): 312.

[20] D.J Harris, *Case and Materials on International Law* (London: Sweet and Maxwell, 1998).

[21] H Victor Conde, *A Handbook Of International Human Rights Terminology* (Lincoln: University Of Nebraska Press, 1999).

[22] Pablo De Greiff (Ed), *The Handbook Reparations* (New York: Oxford University Press, 2006).

[23] M Cherif Bassiouni, "International Recognition Of Victims Rights," *Human Rights Law Review*, 2006, 203–79.

the context of past serious human rights violations, the elements of violence in the economic and social spheres have not received specific and in-depth attention. In fact, the alleged occurrence of crimes against humanity in the research on: "*Recovering Economic and Social Rights of Victims of Past Serious Human Rights Violations*" conducted by the Research and Development Agency for Law and Human Rights of the Ministry of Law and Human Rights in 2016 shows that there is a close relationship between crimes against humanity and violation of the socio-economic rights of citizens. Therefore, the non-judicial route with the concept of reconciliation needs to be put forward. Reconciliation is based on a willingness to make peace with the past and an agreement to build a peaceful common future.[24] Concurring to Mohtar Mas'oed the concept of peace is partitioned into two categories, specifically peace-negative and peace-positive. The primary may be a state of war or direct physical viciousness, whereas the moment may be a state that's not only without war, but moreover without auxiliary savagery.[25] As for Peace that's reasonable to be connected in Indonesia, to be specific within the to begin with sense where Peace is carried out by the State to Casualties of Genuine Human Rights Infringement that frequently happen in Indonesia. Typical what the creator will talk about in this article.

Article 11 Section (1) of the 1945 Structure peruses: The President with the Endorsement of the House of Representatives announces war, makes peace, and makes arrangements with other nations.[26] This article is not as it were the protected premise for International Agreements,[27] but too controls war and peace. For this reason, Jimly Asshiddiqie in his address entitled: "*Ngaji Konstitusi*" expressed the require for a Bachelor of Constitution Law to look at the Interpretation of the Constitution of War and Peace, the course of action of which is contained within the Constitution. Considering that war and peace are state elements that ought to be controlled in detail. For this reason, the author is inquisitive about composing a piece of entitled: "The Peace Constitution: Serious Human Rights Violations Settlement Model Based On

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[24] Andrey Sujatmoko, *Pemulihan Korban Pelanggaran Berat HAM Menurut Prinsip Tanggung Jawab Negara.*, 1-6.

[25] Wisnu Tri Hanggoro et.al (Ed), *Perang, Militerisme Dan Tantangan Perdamaian* (Jakarta: PT. Grasindo, 1994), 77.

[26] Merdiansa Paputungan and Zainal Arifin Hoesein, "Pembatasan Kekuasaan Presiden Dalam Melakukan Perjanjian Pinjaman Luar Negeri Pasca Amendemen UUD 1945," *Jurnal Konstitusi* 17, no. 2 (2020): 390.

[27] Noor Sidharta, *Judicial Preview Terhadap UU Ratifikasi Perjanjian Interasional* (Depok: Rajawali Pers, 2020), 4.

the 1945 Constitution", The author is interested in studying the Constitution of Peace because it requires serious discussion about this and is also a correction of the Resolution of Serious Human Rights Violations in the reform era which was oriented towards taking action against the perpetrators and did not work as expected.

In the analysis, the author uses the Ethos Constitutional Interpretation of Philip Bobbit which builds arguments based on the view of life, basic values or traditions that grow in the Constitution. The ethos is a commitment that is reflected in the general constitutional documents, and the Declaration of Independence. Ethical arguments are also sometimes called arguments from substantive, not procedural, legal processes that look at the content of the formulation of the constitution. The ethos argument is often equated with moral values that are behind constitutional texts.[28]

The purpose of the Constitution of Peace here is a model for the settlement of serious human rights violations which, according to the author, is different from many studies that are accustomed to providing ideas and solutions for the settlement of serious human rights violations by trying serious human rights violators at the serious human rights court and establishing a de facto Truth and Reconciliation Commission,[29] from the 1998 Reformation. until August 2022 did not go well. However, in this article, the author offers a model that is in line with the 1945 Constitution,[30] namely the Settlement of Serious Human Rights Violations Outside the Court which is oriented toward the Recovery of Victims of Serious Human Rights Violations. What the authors offer are: first, the settlement of serious human rights violations through mediation by the National Human Rights Commission (National Human Rights Commission), second, the settlement of serious human rights violations through the provision of compensation and restitution by the Witness and Victim Protection Agency. Third, Settlement of Serious Human Rights Violations through Apologies from the Authority. These three models are victims-oriented concepts that are oriented towards the Resolution of Serious Human Rights Violations. The author will describe these three concepts in the Discussion and Analysis Chapter.

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[28] Muhammad Ilham Hermawan, *Teori Penafsiran Konstitusi: Implikasi Pengujian Konstitusional Di Mahkamah Konstitusi* (Jakarta: Prenada Media Group, 2020), 197.

[29] Satya Arinanto, *Hak Asasi Manusia Dalam Transisi Politik Di Indonesia* (Depok: PSHTN FH UI, 2003).

[30] Andi Irmanputra AS, "Studi Hukum Konstitusi Tentang Hak Untuk Tidak Dituntut Atas Dasar Hukum Yang Berlaku Surut Menurut Pasal 28I Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (Universitas Hasanudin, 2007), 3.

This research is normative legal research,[31] which uses doctrinal methods in analyzing the principles and norms of legislation relating to: "The Peace Constitution: Serious Human Rights Violations Settlement Model Based on The 1945 Constitution". There are three approaches used in this research, namely: statutory regulatory approach, historical approach, and conceptual approach.[32] The primary legal material in this study is: (1) the Indonesian Constitution of 1945 (UUD NRI 1945); (2) Law No.39 of 1999 concerning Human Rights; 3). Law No.26 of 2000 concerning Human Rights Courts; 4). Law No. 31 of 2014 concerning the Protection of Witnesses and Victims. Secondary legal materials in this research: Official Record Document of the Formation of the Indonesia Constitution, Official Record Document of Law, Constitutional Court Verdict, reliable papers, legal journals, books, and other scientific works.[33]

In terms of character, this research is a descriptive study. Descriptive research describes something in a certain time and area. In legal research, this descriptive research is very important for presenting existing legal materials appropriately, where according to these materials legal prescriptions are prepared. From the point of view of form, this type of research is prescriptive research, research that aims to provide an overview or formulate a problem in accordance with existing circumstances/facts. This prescriptive nature will be used to analyze and test the values contained in the law. Not only limited to the values in the area of positive law alone but also the values that underlie and encourage the birth of this law. With its descriptive characteristic and prescriptive form, this research can reveal[34] The Peace Constitution: Serious Human Rights Violations Settlement Model Based on the 1945 Constitution.

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[31] Purnima Khanna, "Constitutionalism and Human Rights: A Critical Analysis of the Rights of Transgender People in India," *Jurnal Lentera Hukum* 9, no. 3 (2022): 373.

[32] Yati Nurhayati et.al, "Investment in Indonesia After Constitutional Court's Decision in the Review of Job Creation Law," *Jurnal Lentera Hukum* 9, no. 3 (2022): 439–40.

[33] Putra Perdana Ahmad Saifulloh, "Gagasan Konstitusi Pangan: Urgensi Pengaturan Hak Atas Pangan Warga Negara Dalam Amandemen Kelima UUD 1945," *Jurnal HAM* 12, no. 2 (2021): 230–31.

[34] Putra Perdana Ahmad Saifulloh, "Rekonstruksi Pengaturan Hak Dipilih Pegawai Negeri Sipil Dalam Pemilihan Umum Legislatif Menurut UUD 1945," *Jurnal RechtsVinding* 11, no. 2 (2022): 194–95.

Revolutionizing Human Rights Violations Resolution Through the 1945 Constitution

The resolution of cases of serious human rights violations has indeed become a dilemma for the Indonesian people, especially if the violations that occurred in the past cannot be forgotten and action must be taken. The dilemma regarding the form of action that is considered the most appropriate for the perpetrators, such as granting pardons as a whole, not comprehensively, not individually, determining the responsibility of the perpetrators of violations and their processing through the courts or handling this issue without going through a court process but in a form and forum and through other means by sticking to the basic objective of the judicial process or this alternative process, namely the enforcement of justice, especially from the perspective of the victim. Maybe not only Indonesia, but also other nations who share the same fate as Indonesia. Since the end of World War II, various countries have implemented their own strategies to get out of the repressive regime by referring to the background of each country. After experiencing a period full of brutality, West Germany emerged with a democratic model which, among others, was manifested in the form of regulating the protection of human rights in the constitution, the Russian nation by bringing communism to court, and Rwanda where a number of people who were waiting to be tried to achieve justice that seemed impossible.[35]

Some other nations choose to react to their past by closing their eyes collectively, such as Austria, Spain, and Uruguay, or several other countries such as China, Korea, and Turkey which find it difficult to maintain their historical amnesia in the face of fallen victims. Hakeem Yusuf explained that the dilemma includes legal, moral, and of course politics. Political balance is the main consideration when dealing with demands for the settlement of serious human rights violations. The government does not want to risk the stability of the government. According to Teitel, the initial dilemma starts from the context of justice in political transformation where law is digested as a phenomenon that lies between the past and the future, between views of the past and views of the future, between retrospective and prospective, and between individually and collectively.[36]

In the transition period, the existing institutions and predicates regarding law do not apply. The issue of the conception of justice in the transitional period is still a debate because the discourse of transitional justice is generally framed

[35] Satya Arinanto, *Hak Asasi Manusia Dalam Transisi Politik Di Indonesia,* 153-155.
[36] Satya Arinanto, 235.

by normative issues. Democratic successor regimes, on the other hand, must balance the goals of a broader overall policy of truth and justice while respecting pluralism and the rule of law. A democratic elite must take into account the views of all sections of both the political and social spectrum. Some may want trials and truth-telling while others may choose to forget or pardon so the government should be able to formulate a policy which will usually tend to aggregate preferences rather than express a full expectation of one or the other sector. There are two main models for responding to cases of serious human rights violations, namely: the indictment model, and the truth and reconciliation model.[37] The following is a form of mechanism in an effort to realize justice in the transition period:

TABLE 1. Table of Mechanisms in Achieving Justice in the Transition Period

Type	Form	Basis
Truth Disclosure	Legal by establishing an Ad Hoc Court for Human Rights or utilizing international courts	Based on international human rights instruments
Actor's Recognition and Regret for His Mistake	Non-legal with certain commissions, such as the Truth and Reconciliation Commission and the Truth Commission (Amnesty Offering Model) and Justice (*Pendakwaan Model*).	Legislation in accordance with Universal Human Rights
Punishment of Perpetrators	_	_
Restoration of Victim's' Rights	_	_

Source: *National Human Rights Commission, Keadilan Dalam Masa Transisi, (Jakarta: National Human Rights Commission, 2001).*

Indonesia has used the two mechanisms above, in realizing justice in the transition period, namely judicially through the establishment of the East Timor Ad Hoc Human Rights Court and the Tanjung Priok Ad Hoc Human Rights Court and the Abepura Human Rights Court, and non-judicially by establishing Truth and Reconciliation Commission through the Truth and Reconciliation Commission Law which was annulled by the Constitutional Court. However, efforts to reveal the truth, acknowledge and regret the perpetrators and restore the rights of victims. However, the first mechanism proved to have failed to resolve Serious Human Rights Violations. For this

[37] Komnas HAM, *Keadilan Dalam Masa Transisi* (Jakarta: Komnas HAM, 2001).

reason, in this article the author offers a non-judicial settlement model for serious human rights violations, but not by initiating a Truth and Reconciliation Commission which has been annulled by the Constitutional Court.

The failure to resolve serious human rights violations can be attributed to three main factors, one of which is the weak authority of the National Human Rights Commission, according to Ken Setiawan (Komnas HAM), the ineffectiveness of the model for resolving cases of human rights violations through Human Rights Courts, as well as the disappearance of non-judicial mechanisms in resolving cases of human rights violations in Indonesia.[38] So far, efforts to resolve Serious Human Rights Violations have been ineffective because of the combination of a military approach and a dialogue approach. In this case there are three causes, including: a. Conflict resolution efforts are dominated by military methods rather than non-military methods. b. Political elites (especially the President) lack confidence in dialogue to resolve conflicts.

Furthermore, the civil government is weak in overseeing the conflict resolution process.[39] For this reason, Philip Bobbit's Ethos Constitutional Interpretation is needed which builds arguments based on views of life, basic values or traditions that grow in the Constitution. The ethos argument is often equated with the moral values that are behind the constitutional texts.[40] The model for the settlement of non-judicial serious human rights violations is also what the author considers to be in line with the spirit of the 1945 Constitution of The Republic of Indonesia, namely: Pancasila. Pancasila is the philosophy of the nation and the ideology of the Indonesian state. In this case, the values of the five precepts of Pancasila ontologically and axiologically begin with an understanding of the nature of Pancasila to its deepest and unchanging essence from the values of Pancasila.[41] Pancasila contains concepts, principles and values to be used as a basis and reference in the context of real life.[42] This ideal is reflected in the settlement by enforcing the settlement of serious non-judicial human rights violations in Indonesia by prioritizing the value of divinity, the

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[38] Ken Setiawan, "From Hope to Dissilusion: The Paradox of Komnas HAM, the Indonesian National Human Rights Commission," *Journal of the Humanities and Social Science of Southeast Asia* 172, no. 1 (2016): 4.

[39] Ikrar Nusa Bhakti, *Beranda Perdamaian Aceh Tiga Tahun Pasca MoU Helsinki* (Yogyakarta: Pustaka Pelajar, 2008), 105.

[40] Muhammad Ilham Hermawan, *Teori Penafsiran Konstitusi: Implikasi Pengujian Konstitusional Di Mahkamah Konstitusi*., 197.

[41] Kaelan, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia* (Yogyakarta: Paradigma, 2009), 19-20.

[42] Kaelan, *Pendidikan Pancasila* (Yogyakarta: Paradigma, 2010), 115-117.

value of humanity-civilization, the value of national unity, the value of deliberation and consensus, and the value of social justice.[43]

Social relations play an important role in the dispute resolution process. When the continuation of social relations is considered as important for a person, they will make every effort to maintain the relationship. These efforts include seeking a settlement through peace, negotiation or settlement through institutions (deliberations), which in principle will result in a compromise settlement to obtain peace, or even avoid disputes.[44] Resolution of the conflict of interest can be achieved through an arrangement that satisfies one interest at the expense of the other's interests or by trying to reach a compromise towards a peace for all interests.[45]

The advantage of non-judicial mechanisms is that the process can take place quickly because it can be realized in the form of deliberation by involving the disputing parties directly. In addition, the parties can usually accept gracefully the settlement agreement which is sought with a high intensity of involvement from each party during the dispute resolution process, whether it is a direct deliberation process that only involves the parties or a process assisted by a mediator. The mediator mentioned before here as a third party is derived from the relevant institutions that can bridge the settlement process that will be carried out by the parties.[46]

Efforts to settle through non-judicial mechanisms like this, which in principle prioritize dispute resolution by means of a win-win solution, combine efforts to resolve deliberation between the parties and formal legal remedies. The advantages of non-judicial mechanisms are that the process can be short, does not require high costs and does not place the disputing parties into the win or lose camp because what is prioritized is the principle of acceptability by both parties to the dispute resolution efforts undertaken.[47] The following is a description of the Model for Resolving Serious Human Rights Violations that

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[43] Nyoman Mas Aryani and Bagus Hermanto, "Gagasan Pengaturan Yang Ideal Penyelesaian Yudisial Maupun Ekstrayudisial Pelanggaran Hak Asasi Manusia Di Indonesia," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 380.

[44] Sulistyowati Irianto, *Perempuan Di Antara Berbagai Pilihan Hukum* (Jakarta: Yayasan Obor Indonesia, 2005), 46.

[45] Hans Kelsen, *General Theory of Law and State* (New Jersey: Transaction Publishers, 2006), 16.

[46] Komnas HAM, *Belajar Dari Pengalaman: Praktek Mediasi Hak Asasi Manusia* (Jakarta: Komnas HAM, 2012), 140.

[47] Yuniar Kurniawaty, "Efektivitas Alternatif Penyelesaian Sengketa Dalam Sengketa Kekayaan Intelektual," *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 163.

the author is referring to, which is an explanation of the value of the Constitution of Peace which is a characteristic of Indonesia.

Settlement Through Mediation by National Human Rights Commission

Ken Setiawan sees the weakness of the National Human Rights Commission's role in investigating serious human rights violations in the past.[48] For this reason, optimizing Komnas HAM's other authorities, especially non-litigation mechanisms, is necessary. National Human Rights Commission is a state institution that is authorized to make efforts to resolve disputes through a mediation process that has a human rights dimension, as regulated in Article 76 in conjunction with Article 89 paragraph (4) in conjunction with Article 96 of Law No.39 of 1999 concerning Human Rights. Article 1 point 7 in conjunction with Article 76 paragraph (1) of the Human Rights Law, explains that National Human Rights Commission carries out the functions of assessment and research, education and counseling, monitoring and investigation, and mediation.

The term mediation etymologically comes from the Latin "*mediare*" which means being in the middle. This shows that the role displayed by the third party is as a mediator in carrying out their duties to mediate and resolve disputes between the parties. The word "*in the middle*" also means that the mediator must be in a neutral and impartial position in resolving the dispute. In mediation, the mediator must be able to maintain the interests of the disputing parties fairly, so that it will foster trust from the disputing parties. According to Laurence Bolle, the definition of mediation is a decision-making process in which the parties are assisted by a mediator, in this case the mediator's efforts to improve the decision-making process and to help the parties achieve the results they want together. Then Garry Goopaster put forward the notion of mediation as a problem-solving negotiation process in which an impartial external party cooperates with the disputing parties to help them obtain a satisfactory agreement.[49]

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[48] Ken Setiawan, "Between Law, Politics and Memory: The Indonesian National Commission on Human Rights (Komnas HAM) and Justice for Past Human Rights Crimes The Establishment of a Human Rights Framework," *Australian Journal of Asian Law* 19, no. 1 (2018): 1–14.

[49] Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Jakarta: Kencana Prenada Media Group, 2009), 24.

According to Christopher W. Moore, mediation is the intervention in negotiations or conflicts of an acceptable third party that has limited or no authoritative decision's making power, but helps the parties involved in voluntarily reach a mutually acceptable resolution of the dispute. Therefore, the definition of mediation expressed by Laurence Belle above emphasizes that mediation is a decision-making process carried out by the parties assisted by a third party as a mediator. Belle's statement shows that the decision-making authority is entirely in the hands of the parties and the mediator only assists the parties in the decision-making process later.[50]

The presence of a mediator is a very important factor because the mediator can help and make the decision-making process better, resulting in a final decision that is acceptable to those in conflict. So, with regard to the definition of mediation expressed by Folberg and Taylor above, it emphasizes the concept of mediation on the efforts made by the mediator in carrying out mediation activities. These two experts stated that dispute resolution through mediation was carried out jointly by the disputing parties and assisted by a neutral party.

The definition of mediation expressed by Moore above explains the relationship between mediation and negotiation, in the form of mediation as a form of intervention in negotiations carried out by third parties. The mediator has limited decision-making authority and he only assists the parties in reaching an agreement for dispute resolution. Therefore, the existence of a mediator must be accepted by both parties who are neutral and impartial. This activity is carried out by the mediator as a party who helps find various alternative dispute resolutions. The position of the mediator in mediation is to encourage the parties to reach agreements that can end disputes and disputes. The mediator does not have the authority to force the parties to accept his offer of dispute resolution. It is the parties who determine what agreement they want, the position of the mediator is only to help find alternatives and encourage them to jointly participate in resolving the dispute.

The mediator can develop and offer dispute resolution options and the parties may also consider the mediator's offer as an alternative to an agreement in dispute resolution. The alternative in resolving a dispute offered by the mediator is expected to be able to accommodate the interests of the disputing parties. Mediation can bring either a winning party or a losing party. Then the notion of mediation in Goopaster's view, is described as a process of mediation activities, the position of the parties, and also the role of third parties, as well as the purpose of doing a mediation.

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[50] Syahrizal Abbas, 24.

Goopaster clearly emphasizes that mediation is a negotiation process, in which a third party engages in dialogue with the disputing parties and tries to find a possible settlement of the dispute. The existence of a third party is intended to help the disputing parties find a way to solve the problems encountered so that in the end it will lead to an agreement or agreement that satisfies both parties. Regulation of the Supreme Court No.1 of 2016 concerning Mediation Procedures in Courts sets out the definition of mediation and the definition of mediator. Definition of Mediation is the settlement of disputes through the negotiation process of the parties with the assistance of a mediator. Meanwhile, the definition of a mediator is a party who is neutral and impartial, and whose function is to assist the parties in finding various possible dispute resolutions.[51]

The definition of mediation in the Supreme Court regulation is not much different from the essence of mediation put forward by the experts above. However, this definition of mediation according to the Supreme Court emphasizes one important aspect where mediators are proactive in seeking various possible dispute resolutions. The mediator must be able to find alternative dispute resolution. The mediator is not only bound and focused on what the parties have in resolving disputes between them. Therefore, the mediator should have a number of skills that can facilitate and assist the parties in resolving their disputes, because mediation simply has the aim of reconciling the parties to the dispute.

Based on Article 96 paragraph (1) of the Human Rights Law, it is explained that the settlement as referred to in Article 89 paragraph (4) letters a, b, and c regarding mediation is carried out by the Commissioner of the National Human Rights Commission who is appointed as a mediator. So the article said: to carry out the functions of the National Human Rights Commission in mediation as referred to in article 76, the National Human Rights Commission has the duty and authority to carry out: a). peace of both parties, b). settlement of cases through consultation, negotiation, mediation, conciliation, and expert judgment, c). providing advice to the parties to resolve disputes through the courts. Thus, the National Human Rights Commission currently has a significant existence in providing a settlement process through mediation in human rights disputes and understanding human rights to the community. Based on these provisions, it can be understood that the mediation function of the National Human Rights Commission is intended as a form of breakthrough in solving problems of human rights violations directly and completely, as well

[51] Syahrizal Abbas.

as legal breakthroughs regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. With these various mechanisms, there are very open opportunities for the parties involved to discuss a settlement that is acceptable to all parties to disputes over minor human rights violations such as acts of discrimination as minor human rights violations with a human rights dimension that occurred. If a direct solution is not reached, the National Human Rights Commission can submit recommendations to the government and/or the House of Representatives to follow up on problems that occur and take steps to resolve them in accordance with the authority of each institution.

Then after the mediation is considered successful which has been carried out by the National Human Rights Commission regarding the results of the agreement that has been met by the disputing parties, the next stage is the National Human Rights Commission can register the results of the mediation agreement with the District Court. As explained in Article 96 paragraph (3) of the Human Rights Law, it is stated that the mediator submits and registers the decision resulting from the mediation to the clerk of the district court. Furthermore, in the explanation of Article 96 paragraph (4) it is stated that if one of the parties does not carry out its obligations as stated in the mediation agreement, the National Human Rights Commission may ask the District Court to carry out fiat executions, and the court is obliged to carry out the execution if the party concerned still fails to fulfill their obligations.

Based on the provisions of Article 96 it can be understood that in the event that the mediation process results in an agreement, then the agreement is legally binding on the parties and in the event of a default by one of the parties, the mediation decision in the form of an agreement can be executed by the court. Thus, the mediation decision is executable without having to go through a lawsuit, appeal, or cassation mechanism. So, the concept of this settlement is commonly referred to as a quasi-judicial mechanism. In John Rawls's view, positioning the existence of an equal and equal situation between each individual in society, then there is no difference in status, position or having a higher position between one another, so that one party with another can make a balanced agreement. Rawls's view is an original position that rests on the notion of reflective equilibrium based on the characteristics of rationality, freedom, and equality in order to regulate the basic structure of society. So, moving on from this theory, it can be said that mediation as an alternative for resolving civil disputes in court and outside the court has the basis for providing equal rights to the disputing parties without any distinction from these rights in resolving civil disputes in court as equality before the law so that it can be seen that there is justice in applying the rule of law as the goal of the law itself.

Furthermore, John Rawls expressed his view on justice that justice enforcement programs with a populist dimension must pay attention to two principles of justice; First, with the principle of the greatest equal principle, which means giving equal rights and opportunities to the broadest basic freedoms that are the same for everyone. Second, being able to reorganize the social economy that occurred so as to provide reciprocal benefits.

So then, if the mediation process through the relevant National Human Rights Commission cannot be pursued, then the parties as victims of discriminatory acts as a minor human rights violation can file their rights through a civil lawsuit to the competent court for the damage they suffered. The mechanism of the mediation process through the relevant legal institutions is described in the Supreme Court Regulation Number 1 of 2016 concerning mediation procedures in the Court must require several stages. In the first trial attended by the parties, the judge requires the litigants to go through mediation before the trial proceeds to the next stage and the parties choose mediators, and the judge appoints and determines the mediator and at the same time submits a photocopy of the case file to the mediator. If an agreement is reached in the mediation process, the parties shall formulate a written agreement and notify the judge of the results of the agreement to fulfill the confirmation of the agreement as a deed of peace by the judge. If the parties do not want the peace agreement to be strengthened into the peace deed, the peace agreement must make a clause revocation of the lawsuit and or a clause stating the case has been completed. Mediation that gave birth to a peace agreement will be a complete settlement because the end result does not use the win-or-lose principle. Settlement with the mediation process provides many benefits for the parties, the time taken will reduce costs to be cheaper, from an emotional point of view, settlement by mediation can provide comfort for the parties because the points of the agreement are made by the parties themselves according to their wishes.

Then Article 4 of Law no. 48 of 2009 concerning Judicial Power emphasizes the need for an alternative system in dispute resolution as states, that the Court assists justice seekers and tries to overcome all obstacles and obstacles in order to achieve a simple, fast, and low-cost trial. This shows that the civil justice system in court also expects an institution that can accommodate the interests of the litigants to be resolved quickly and at a low cost and that can only be done in the form of mediation as an alternative to dispute resolution outside the court.

Regulation of the Supreme Court No.1 of 2016, states that mediation has been included in the formal judicial process in Article 2 paragraph (1) which confirms that all civil cases submitted to the court must be resolved through

reconciliation with the help of a mediator. Failure to take the mediation procedure based on this regulation is a violation of the provisions of Article 130 HIR and or 154 RBG which results in the decision being null and void. The Supreme Court Regulation Number 1 of 2016 concerning the mediation process must require several stages in the mediation.

On the other hand, Omas Ihromi described in his writing, Informal Methods of Dispute Settlement in Indonesia, the patterns of dispute resolution in rural and urban areas in Indonesia. where village settlements can be categorized into two types. The first is a dispute relating to parties belonging to the same ethnic group. In this case, the dispute will be resolved by customary law institutions, through family deliberations, or by a village judiciary led by community leaders or other informal leaders. On the other hand, as stated by Nader and Todd, it can be observed that when it comes to modern influences, especially when economic issues are related to finance, disputes involving large money resources, or relating to things that symbolize prestige will tend to be brought to justice. Second, if the dispute involves parties from different ethnic groups accompanied by hostility, a mediator from a local government official such as the local police or military commander is usually required. However, if these groups are successful in tolerance, then the mechanism between these groups can be raised. Mediation as an alternative dispute resolution has five principles, namely the principle of confidentiality, the principle of voluntary, the principle of empowerment, the principle of neutrality, and the principle of a unique solution.[52]

In Indonesia, mediation with the aim of a win-win solution is highly prioritized in the court process before entering into the main case, If mediation is not carried out in a court process it will be null and void so that dispute resolution through mediation has a major role in ending disputes because provide justice and mutual benefit from both parties in the event of a dispute. Thus, in resolving disputes, these institutions prioritize peace between the parties themselves, and only if these efforts fail will the parties concerned submit them to the District Court.

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[52] Tapi Omas Ihromi, *Antropologi Dan Hukum* (Jakarta: Yayasan Obor Indonesia, 1984), 46-47.

Settlement of Serious Human Rights Violations through the Provision of Compensation, Restitution and Assistance by Witness and Victim Protection Agency (LPSK)

The next model for the settlement of serious human rights violations is the recovery of victims of serious human rights violations by providing compensation, restitution, and assistance by the Witness and Victim Protection Agency. This is done through an approach to economic, social, and cultural rights (ECOSOB rights) which are non-judicial in principle. In the context of Indonesia, it is relevant to do so considering that Indonesia has now ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) through Law No. 11 of 2005 concerning the Ratification of the International Covenant on Ecosob Rights. Ecosob rights are also called positive rights, considering that Ecosob rights cannot stand alone and require government intervention to be actively involved in their implementation.[53] In line with the purpose of the establishment of the state as stated by John Locke, is to provide protection for the protection of human rights for its people. Therefore, the responsibility of the state in advancing the rights of eco-social and social affairs is not only in the form of an obligation of result but also in the form of an obligation of conduct.[54] In the context of such responsibilities, state policies in the field of economic and social rights must be able to guarantee the fulfillment of these two forms of obligations.[55] The Maastricht principles do not separate the state's responsibilities in the areas of obligation of conduct and obligation of result.[56] The failure of the state to provide guarantees for economic and social rights can be considered as a state that has violated the Maastricht Principles. Violation of Ecosob rights can be in the form of omission and commission (deliberately doing the act itself).[57] Even negligence in protecting citizens'

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[53] Olly Viana Agustine and Muhammad Reza Winata, *Hak Ekonomi, Sosial, Dan Budaya: Perlindungan Melalui Peradilan Konstitusional* (Depok: PT. Rajagrafindo Persada, 2020).

[54] Moch. Marsa Taufiqurrohman and Dilla Restu Jayanti, "Regulasi Regenerasi Petani Dalam Konteks Ketahanan Pangan: Sebuah Upaya Dan Jaminan Perlindungan Hak Atas Pangan," *Jurnal HAM* 13, no. 1 (2022): 35.

[55] Winata, *Hak Ekonomi, Sosial, Dan Budaya: Perlindungan Melalui Peradilan Konstitusional.*, 235.

[56] Majda El Muhtaj, *Dimensi-Dimensi HAM: Menguai Hak Ekonomi, Sosial Dan Budaya* (Jakarta: Rajawali Pers, 2013), xxix.

[57] Yahya Ahmad Zein, *Problematika Hak Asasi Manusia (HAM)* (Yogyakarta: Liberty, 2012), 84.

human rights is a violation of the State responsibility doctrine.[58] Andrew Clapham's concept of State negligence is referred to as "*Passive Human Rights Violation*." This means that the State, through its inaction or failure to act, violates human rights.[59]

TAP MPR No.V/MPR/2000 concerning the Consolidation of National Unity and Unity mandates that for past abuses and violations of human rights, the state needs to disclose, admit mistakes, request and apologize for peace, law enforcement, amnesty, rehabilitation or other alternatives that are in accordance with the feelings of the people justice. The existing laws and regulations use the term "assistance" as a form of recovery (in addition to compensation and restitution). This is stated in Articles 6 and 7 of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims (UU PSK) and Government Regulation (PP) No.7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance which states that medical and psychosocial assistance is provided. in the form of assistance. Nothing in the two regulations explicitly mentions that the mechanism for medical and psychosocial assistance to victims is a form of recovery. It is also not stated that the rights of victims of gross human rights violations are regulated in the two regulations as part of the remedies for victims of gross human rights violations. The form of service for medical and psychosocial is "assistance".[60]

The right to remedy is closely related to the right to an effective remedy. However, the 1945 Constitution does not specifically standardize the right to obtain effective legal remedies as a human right. The right to an effective legal remedy is not guaranteed constitutionally in the 1945 Constitution. Theoretically, the non-existence of these rights in Chapter XA of the 1945 Constitution does not mean that these rights do not exist. Considering that, in essence, as a procedural right with a corrective or remedial function, this right can exist logically based on the circumstances of the violation of the previous substantive provisions on human rights. The figure of rights in Chapter XA of the 1945 Constitution that is closest to the right to an effective legal remedy is essentially the right to recognition, guarantee, protection, and fair legal certainty as stated in Article 28D paragraph (1) of the 1945 Constitution. The nature of

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[58] Danwood Mzikenge Chirwa, "The Doctrine of State Responsibility As a Potential Means of Holding Private Actors Accountable for Human Rights," *Melbourne Journal of International Law* 5, no. 1 (2004): 3–27.

[59] Andrew Clapham, *Human Rights In The Private Sphere* (New York: Oxford University Press, 1993).

[60] Andrey Sujatmoko, *Pemulihan Korban Pelanggaran Berat HAM Menurut Prinsip Tanggung Jawab Negara.*, 82.

remedial rights is essentially to provide fair legal certainty for human rights violations that occur.[61]

In Indonesia, the definition of victims in the context of gross human rights violations has been regulated in a number of laws and regulations and in the existing laws and regulations the term "*gross human rights violations*" is formulated with the term "*gross human rights violations*". According to Government Regulation No.2 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations, what is meant by victims are individuals or groups of people who experience suffering as a result of serious human rights violations that require physical and mental protection from threats, harassment, terror, and violence from any party. Meanwhile, according to Government Regulation No. 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations, victims are individuals or groups of people who experience physical, mental or emotional suffering, economic loss, or experience neglect, reduction or deprivation of rights. - their basic rights, as a result of gross human rights violations, including that the victim is the heir.[62]

The Protection of Witnesses and Victims Law and PP No. 7 of 2018 state that what is meant by a victim is someone who has suffered physical, mental, and/or economic loss caused by a criminal act. When compared with the definition of victim regulated in PP no. 2 of 2002 and PP No. 3 of 2002, then the definition of victims contained in the the Protection of Witnesses and Victims Law, and Government Regulation No. 7 of 2018 has a much narrower scope. This is because what is meant by victims according to the four rules are only individuals or individuals (not including groups). This is different from the definition of victim which is regulated in PP No. 2 of 2002 and PP No. 3 of 2002 which has included groups as Victims. The laws and regulations above have a narrower scope than the definition of victim in the Basic Principles and Guidelines, Victims Declaration, and the 1998 Rome Statute which includes organizations/institutions as victims.

Provision of Compensation, Restitution, and Assistance by the Protection of Witnesses and Victims Article 6 of Law No.31 of 2014 concerning the Protection of Witnesses and Victims and Government Regulation No.7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance is

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[61] Titon Slamet Kurnia, *Interpretasi Hak-Hak Asasi Manusia Oleh Mahkamah Konstitusi, Republik Indonesia: The Jimly Court, 2003-2008* (Bandung: CV Mandar Maju Bekerja Sama Dengan Fakultas Hukum, Universitas Kristen Satya Wacana, 2015), 227-228.

[62] Romli Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia Dan Penegakan Hukum* (Bandung: CV Mandar Maju, 2001), 86.

indeed a settlement of serious human rights violations that lead to elements of social and cultural affairs for victims affected by past serious human rights violations. By paying attention to these elements, efforts to resolve existing cases are not trapped solely in the stagnation of the political process of establishing a judicial route (through the mechanism of an ad hoc human rights court), but can also target economic and social recovery. It should be understood that conceptually, the program for the restoration of the victims' economic and social rights is also an important part of creating national reconciliation and maintaining peace. Recovery for victims of serious human rights violations through the eco-social rights approach has actually been implicitly regulated in Indonesia. This is regulated in Article 6 of the Protection of Witnesses and Victims Law. The definition of victims of serious human rights violations includes victims of criminal acts of terrorism, criminal acts of trafficking in persons, criminal acts of torture, criminal acts of sexual violence, and serious maltreatment who are entitled to psychosocial rehabilitation assistance (including medical and psychological assistance).

The explanation of the article above states that what is meant by psychosocial assistance is all forms of psychological and social services and assistance aimed at helping relieve, protect, and restore the victim's physical, psychological, social, and spiritual conditions so that they are able to carry out their social functions normally again. Among other things, the Protection of Witnesses and Victims agency seeks to improve the quality of life of victims by collaborating with the relevant authorities in the form of assistance in the fulfillment of clothing, food, shelter, assistance in obtaining employment, or assistance in continuing education.

As for what is meant by the term "assistance" here is the service provided to witnesses and/or victims by victims' social services by the Protection of Witnesses and Victims agency in the form of medical assistance and psychosocial rehabilitation assistance. and psychological. The term "assistance seems to be interpreted as a form of recovery (in addition to compensation and restitution) provided within the LPSK framework. the fulfillment of victims' rights even though the human rights judicial process does not yet exist, but specifically in psychosocial services, the Protection of Witnesses and Victims Agency still needs instruments or cross-ministerial/institutional schemes because the mandate given by law to Protection of Witnesses and Victims Agency requires Protection of Witnesses and Victims Agency to be able to work together and coordinate the provision of rehabilitation services. psychosocial assistance to victims which includes assistance in fulfilling clothing, food, assistance in obtaining employment, and assistance in continuing to obtain

education, as well as restoring the victim's mental condition so that they are able to carry out their social functions normally again. This requires continuous and positive effort and enthusiasm. This is a continuation of the Protection of Witnesses and Victims Agency's work partners, especially the government, both central and regional so that the mandate of the Law can be carried out properly.

States are also required to 'provide economic and social rights when individuals or groups have no reasonable grounds to consider beyond their control the means to realize those rights themselves, with the balance of the Settlement at their disposal. This is especially the case for those who are particularly vulnerable and marginalized. In fact, victims of serious human rights violations, both individually and in groups, are vulnerable and marginalized. In this regard, it can be said that the government has also fulfilled its obligation to 'provide' economic and social rights, of course with a number of notes. Recovery through the LPSK mechanism has not yet provided real economic rights for victims. This is because these rights can only be realized through the provision of compensation and restitution" based on the decisions of the Human Rights Court (for the events of 1965-1966 it was decided by the ad hoc Human Rights Court). Moreover, this court has not been established until now.

Then, regarding compensation and restitution, the Protection of Witnesses and Victims Agency is only authorized to accept requests from victims regarding it (can be done before or after a court decision that has obtained permanent legal force). Furthermore, the Protection of Witnesses and Victims Agency submits the application to the ad hoc human rights court established under the Law on the Human Rights Court. Recovery through the eco-social rights approach to victims of serious human rights violations in Indonesia seems more realistic at this time. Because, ECOSOB's rights are relatively more "neutral" from judgments or assumptions that tend to be political in nature which will actually complicate the realization of the Recovery itself, when compared to civil and political rights. In addition, the eco-social rights are also very "*basic*" because they involve basic needs in everyday life.

Settlement of Genuine Human Rights Infringement through the Ruler's Expression of Remorse

States are also required to 'provide economic and social rights when individuals or groups have no reasonable grounds to consider beyond their control the means to realize those rights themselves, with the balance of the Settlement at their disposal. This is especially the case for those who are

particularly vulnerable and marginalized. In fact, victims of serious human rights violations, both individually and in groups, are vulnerable and marginalized. In this regard, it can be said that the government has also fulfilled its obligation to 'provide' economic and social rights, of course with a number of notes. Recovery through the Witnesses and Victims mechanism has not yet provided real economic rights for victims. This is because these rights can only be realized through the provision of compensation and restitution" based on the decisions of the Human Rights Court (for the events of 1965-1966 it was decided by the ad hoc Human Rights Court). Moreover, this court has not been established until now.

According to Romli Atmasasmita, the acknowledgment of gross human rights violations followed by an apology is seen as the most accommodating step towards the victims' feelings of justice and is expected to restore social balance and maintain national unity and integrity. Recognition of the existence of gross human rights violations in the past is seen as one of the most chivalrous ways to resolve the protracted conflict between the perpetrator and the victim/victim's family.[63]

Efforts for forgiveness consist of total or partial amnesty, pardon, reduction of punishment or other special mechanisms. Although Indonesia still uses the judicial mechanism as a way to resolve cases of serious human rights violations, it is better for Indonesia to start thinking about other channels that can accommodate the wishes of the victims, for example through non-judicial channels. Considering that the settlement of serious human rights violations that had been committed in Indonesia was the step of the Vice President of the Republic of Indonesia from 1993 to 1998, Try Soetrisno tried to make peace in the Tanjung Priok case with the victims by providing compensation, but it was deemed unsuccessful, so an Ad Hoc Court was formed for this case.[64]

For this reason, a non-judicial approach with an eco-social approach has been carried out by the state through the Protection of Witnesses and Victim Law and Government Regulation No. 7 of 2018 which regulates compensation, restitution, and assistance. In addition to arrangements regarding compensation, restitution, and assistance facilitated by the Protection of Witnesses and Victims Agency. Actually, there is a practice that was carried out well by the Mayor of Palu from 2005 to 2015, Rusdy Mastura. When the central government was still "silent" in responding to the Serious Human Rights Violations Incident, especially the 1965/1966 Incident, the Mayor of Palu,

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[63] Romli Atmasasmita., 182-183

[64] Dhahana Putra, "Rekonsiliasi Sebagai Upaya Penyelesaian Kasus Pelanggaran HAM Berat Tanjung Priok," *Jurnal Pemasyarakatan HAM* II, no. 3 (2003): 22.

Rusdy Mastura, admitted that there had been mistakes in the past committed by this nation and state. On March 24, 2012, the Mayor of Palu expressed his apologies—both personally and on behalf of the city government—to the residents of Palu City who have been victims of human rights violations related to the 1965/1966 Incident." According to Rusdy Mastura, an apology can be made, among other things, because the stigma that is built to "*imprison*" victims socially and politically is built systematically and lasts a long time. They experience stigmatization and discrimination, and are marginalized socially and economically because of the loss and closure of various accesses and opportunities (especially access to education and employment).

The Mayor of Palu issued the Palu Mayor's Regulation (*Perwali*) No. 25 of 2013 concerning the Regional National Action Plan for Human Rights (RANHAM). The Regulation defines victims as individuals or groups of people who experience physical, mental, or emotional suffering, economic loss, or experience neglect, reduction, or deprivation of their basic rights, as a result of human rights violations, including victims who are their heirs. This regulation is the implementation of Palu as a "*Human Rights Aware*" city. One of the city's principles of "*Human Rights Awareness*" is: "*protecting and fulfilling the rights of victims of human rights violations that have been neglected so far, especially the rights to truth, justice, and guarantees that similar conditions will not be repeated*".

Furthermore, the Palu City government made a Mayor Regulation related to the fulfillment of human rights at the end of 2013. Palu's Mayor Regulation No.25 of 2013 concerning the Regional National Action Plan for Human Rights contains 17 articles, with three articles specifically containing rules regarding the fulfillment of rights for alleged victims. Human Rights Violations, one of the implementations of the "*Human Rights Awareness*" city, the Palu City government needs to protect and fulfill human rights for victims of human rights violations. One of the city's principles of "*Human Rights Awareness*" is: "protecting and fulfilling the rights of victims of human rights violations that have been neglected so far, especially the rights to truth, justice, and guarantees that similar conditions will not be repeated".

The "*Human Rights Awareness*" city is organized through three main programs: *first,* fulfillment of human rights for vulnerable communities in Palu; *second,* fulfillment of human rights for victims of alleged human rights violations in the 1965/1966 incident; and *third,* building a law-conscious society towards a human rights-aware society. Its activities, among others, are: the establishment of Palu Mayor Regulation No.25 of 2013; strengthening of the Palu City Regional National Action Plan institutional strengthening; implementation of work together with several state institutions/NGOs; research

on victims of alleged human rights violations in 1965/1966; fulfillment of human rights to victims (research results); fulfillment of human rights for all vulnerable communities in Palu City; and the establishment of a "*Counseling Center*".

The issuance of the Palu Mayor Regulation No. 25 of 2013 should not only be seen as one of the concrete steps to fulfill the obligations and responsibilities of the Palu City Government in implementing human rights enforcement. Moreover, the Major Regulation can be viewed as a local initiative to bridge the process of resolving cases of human rights violations in the 1965/1966 incident through a non-judicial mechanism as recommended by the National Human Rights Commission. The implementation of the Mayor Regulation, he hopes, will be able to guarantee and improve the fulfillment of the economic and social rights of the residents of Palu City, especially for those who are victims of human rights violations.

The regional national action plan, which was initiated by the mayor of Palu, is the implementation of the obligation to advance. Both efforts aim to restore the realization of all economic and social rights of victims of serious human rights violations. The regional national action plan also includes tools for the definition of victims and the process of verifying and collecting data on victims of the 1965 serious human rights violations as an effort to implement human rights norms and standards which are one of the regional scopes of the regional national action plan. The city of Palu also carried out the rehabilitation of victims of serious human rights violations in the events of 1965-1966, with the programs detailed as follows: the right to health by providing social security agency cards (*BPJS*) and health services; the right to education by providing scholarships; the right to housing in the form of house renovation and assistance for the construction of toilets and baths (*MCK*); the right to work through the provision of business capital assistance, the provision of assistance in the form of a hopeful family program by including it in the local community empowerment program or labor-intensive, providing assistance for agricultural seeds and livestock for victims; the right to food in the form of giving Raskin; the right to health or the right to an adequate standard of living in the form of providing clean water assistance, and in the form of providing free lighting or electricity assistance.

The authors believe that this apology and fulfillment of the ECOSOB's rights will be very good if it is carried out by the Central Government, in this case, the President. Here, the writer imagines that the life of the state will be very beautiful if the culture of forgiveness becomes a constitutional convention. This is where the Constitutional Court's role can be optimized by re-

establishing a Constitutional Dialogue and Collaborative Action between the Constitutional Court and State Institutions. The Constitutional Dialogue can be done by the Constitutional Court giving consideration to the concept of Peace as regulated by the Constitution, as a logical consequence of the Constitutional Court's function as interpreter of the constitution.[65]

According to Muhammad Reza Winata, it is urgent to build a sustainable cycle in the form of constitutional dialogue between state institutions in the Indonesian constitutional system. According to Anne Meuwese and Marnix Snel, the definition of constitutional dialogue can be said as an implicit or explicit communication back and forth between two or more actors characterized by the absence of a dominant actor with a common intention to improve the practice of interpreting the constitution of state institutions. Tom Ginsburg explained that the Judiciary plays an important role and contributes to the constitutional dialogue with the legislature and the executive to consolidate democracy and increase political stability. According to Anne Meuwese and Marnix Snel, the core of constitutional dialogue between state institutions is involvement in conversations about the meaning of constitutionality, these actors are required to listen to and learn from each other from the perspective of each other state institutions, so that then it can lead to modifying their views. alone. The aim of the constitutional dialogue is to strike the right balance between constitutional principles and public policy so that this dialogue can represent a middle ground between judicial supremacy on the one hand and parliamentary supremacy on the other. Another goal of constitutional dialogue is to be a means of transforming political conflicts in the democratic.[66] This is where the role that the Constitutional Court can play is to give consideration to the aspect of forgiveness from a constitutional point of view. In this capacity, the Constitutional Court does not act as an agency for administering power, but as a First-Layer State Institution or Main State Organ that is a partner of the President.[67]

This Constitutional Dialogue was held during the Soesilo Bambang Yudhoyono (SBY) Administration, where SBY was the initiator, namely the State High Institutions Meeting which was held several times a year to discuss constitutional issues and also as a means of consolidation between State High

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[65] Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Setjen dan Kepaniteraan MK RI, 2006), 7.

[66] Muhammad Reza Winata, *Pengujian Konstitusionalitas Undang-Undang: Rigiditas Tindak Lanjut Dalam Pembentukan Undang-Undang* (Depok: Rajawali Pers, 2020), 189-193.

[67] Novianto M Hantoro, "Klasifikasi Jabatan Dalam Kelembagaan Negara: Permasalahan Kategori Pejabat Negara," *Jurnal Negara Hukum* 7, no. 2 (2016): 148.

Institutions. This meeting ran for four years from 2010-2014. However, during the administration of President Joko Widodo (Jokowi), this is no longer done. According to the author, if this is made a tradition, it can become a typical Indonesian Constitutional Dialogue Concept, and it can become a Constitutional Convention which is a Source of Formal Constitutional Law. As a habit, constitutional conventions must meet several requirements, among others, (1) there must be precedents that arise repeatedly; (2) precedents that arise because of causes that are generally understandable or acceptable; and (3) the precedent is due to the existing political conditions.[68] According to Ismail Sunny, the convention occurred due to the existence of an express agreement between a number of elites, both executive and legislative.[69] Considering that state administration does not only rely on statutory regulations but is also equipped with constitutional conventions. This is in line with the function of the Constitutional Convention, according to Bagir Manan, which is to dynamize, perfect, and complete laws and regulations.[70]

The writer's hope in the future from the idea of resolving non-judicial serious human rights violations is the meaning of the realization of building an independent nation and state within 77 years of Indonesian independence. The meaning and realization of the common will of Indonesia as a nation and state. Indonesia is a country with diversity in diversity that requires pluralism in the midst of a dialogical agreement to become one unified nation-state. However, there is a common goal that must be realized together, to create a just and prosperous society. By paying attention to the occurrence of rebellion within the territory of the Republic, it is inseparable from the two things mentioned above. This means that there is a gap between the central government and regional governments and/or there is a difference in interpretation of the meaning of nation-state and independence, as well as steps to realize what we mean by fair and prosperous which will be obtained by all citizens of the Indonesian nation. In line with that, if you want to be honest, admit that for at least 39-40 years from the age of independence, this Republic was ruled by a president and a dictatorial authoritarian government. Because with certainty it cannot be expected to work a just government that will provide mutual prosperity. What might be done in the future is that we must again agree on the results of the joint dialogue when the founding fathers formulated Pancasila and

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[68] Ahmad Gelora Mahardika, "Konvensi Ketatanegaraan Dalam Sistem Hukum Nasional Di Indonesia Pasca Era Reformasi," *Jurnal RechtsVinding* 8, no. 1 (2019): 56–57.

[69] I Gede Yusa, *Hukum Tata Negara Pasca Perubahan UUD NRI 1945* (Malang: Setara Press, 2016).

[70] Bagir Manan, *Konvensi Ketatanegaraan* (Bandung: Armico, 1987).

the Constitution. Pancasila as the state foundation of the Unitary State of the Republic of Indonesia (NKRI). During Indonesia's independence, the leaders have never consistently realized Pancasila in every policy. For this reason, it is important to implement Pancasila consistently to maintain common life in independent Indonesian nations, now and in the future.

The three models that the author proposes are what the author considers to be the ideal concept of resolving serious human rights violations which is the embodiment of a peaceful constitution which the author interprets from Philip Bobbit's Ethos Constitutional Interpretation. The ideal concept in the generally known approach to legal science is the same as ius constituendum which means the law that is aspired or imagined. Therefore, to support the ideal concept that the author initiated is to build legal legitimacy efforts, political legitimacy, and scientific legitimacy.[71] First, legal legitimacy by optimizing the three models of settlement of serious human rights violations which the author considers to be the Constitution of Peace. Second, Political Legitimacy can be played by the President and the House of Representatives of The Republic of Indonesia (DPR) which have a function in the budgeting field to make a pro-budget for the fulfillment of the economic and social rights of victims of past serious human rights violations. A further challenge is regarding the regulation of the policy in the legislation.[72]

Third, Scientific Legitimacy. In order for every policy to be made systematically, comprehensively, and oriented to the constitutional rights of citizens, journals, books, research, seminars, focus group discussions, debate competitions, constitutional drafting, and quiz competitions are needed. formula for the settlement of non-judicial serious human rights violations.

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[71] Muwaffiq Jufri, "Urgensi Amandemen Kelima Pada Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terkait Hak Dan Kebebasan Beragama," *Jurnal HAM* 12, no. 1 (2021): 123.

[72] Ngesti Dwi Prasetyo et.al, "The Politics of Indonesia's Decentralization Law Based on Regional Competency," *Brawijaya Law Journal: Journal of Legal Studies* 8, no. 2 (2021): 182.

Practices for Non-Judicial Resolution of Serious Human Rights Violations Committed in Argentina and Chile

A. Practices for Non-Judicial Resolution of Serious Human Rights Violations Committed in Argentina

The Argentine government has taken measures to provide compensation for the victims of enforced disappearance. Under UU no. 23,466, the next of kin of the missing person are entitled to a pension that is equivalent to 75% of the lifetime minimum salary. This pension can be claimed by minors under the age of 21 who can prove that one or both parents were victims of enforced disappearance. In addition to this, surviving spouses, children under 21 years of age, parents, and/or younger siblings who lived with the victim before their disappearance may also be eligible to receive a pension.[73]

Later, President Menem would sign a decree stating that people detained for political reasons during the 1976-83 period would be entitled to financial assistance. Special laws were enacted to bring about the principle of compensation. Law No. 24,043 was enacted on December 23, 1991, providing for compensation from the State, payable in six installments, for persons who were "placed in National Executive exile, or who, as civilians, experienced detention solely eyes were carried out by military tribunals" while the country was in a state of emergency, but they had not received compensation based on a previous court order. In detail, compensation consists of one-thirtieth of the monthly salary in the highest category on the civil service scale for each day of detention. For those who suffer severe injuries during arrest, compensation consists of one-thirtieth of the monthly salary for each day of detention plus an amount equivalent to five additional years, reduced by 30%. The law is implemented under the authority of the Human Rights Office of the Ministry of Home Affairs. Claims must be submitted within 180 days of the enactment of the law, and the claiming party must waive the right to any other compensation.

While the law compensates for harm suffered by arbitrarily detained persons, several obstacles have prevented many individuals from benefiting. First, the victims must prove the number of days in the elimination by showing

[73] Andrey Sujatmoko, "Pemulihan (Reparations) Korban Pelanggaran Berat Hak Asasi Manusia Di Argentina Dan Cile," *Asy-Syari'Ah* 19, no. 2 (2017): 179.

the elimination warrant (issued by the executive) and the sender's order. However, the country's ruling military government has characteristically refused to admit to kidnapping fraud, and the new government has not uncovered many essential facts. In addition, many victims and families have indicated that they do not want to accept approval from the government because, according to them, submitting financial consent is a bribe for something that cannot return what has been lost. Public dissatisfaction with Argentina's amnesty provisions can be balanced by compensating victims, but it is not seen as a replacement for punishment or a reduction in the state's obligation to identify and punish human rights violators.[74]

Recovery programs initially include retirement, health, retraining, and education-related benefits, and occasionally housing benefits. NGOs such as the Association of the Relatives of Detained Disappeared People played a significant role in the process. A new government institution, the Corporation for Reparations and Reconciliation, has coordinated government policy and is tasked exclusively with its functions. Currently, one gets the impression that the recovery policy is being implemented to avoid issues of truth and justice and to continue a pattern that reaffirms impunity and denial of justice.[75]

Argentina's transition to democracy and its response to serious human rights violations committed between 1975 and 1983 included the creation of the National Commission on Disappearances of Persons [Comisio´n Nacional sobre Desaparicio ´n de Personas (CONADEP)], the punishment of high-ranking military officials, and a broad economic recovery policy. The first two steps received national and international attention and served as an example of the transition to democracy that followed in many other countries. Economic recovery for victims, however, does not receive the same attention despite being quite prominent on the international stage in terms of its achievements. In the significant body of literature that exists during Argentina's transition, there is little to be found regarding economic recovery for victims of state terrorism. This may be because recovery programs were implemented at a time when democracy had been reestablished for several years in the country, so the attention of analysts and researchers has focused on other transitional cases. Another reason for this gap in the literature is, without a doubt, the lack of available publications and accurate information that would allow an in-depth analysis.[76]

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[74] Andrey Sujatmoko.

[75] Andrey Sujatmoko.

[76] Andrey Sujatmoko.

As part of the background to Argentina's recovery policy, it is important to highlight the recommendations made by CONADEP in 1984 in its final report: 'Norms should be put in place to provide economic assistance to the children and/or families of persons who disappeared during the repression: scholarships, social assistance, and employment opportunities. Likewise, measures deemed appropriate to reduce the social and family problems arising from the enforced disappearance of persons should be taken. While these recommendations were specifically aimed at one crime (disappearance), a series of laws regarding recovery were issued between 1984 and 1985. The benefits generated by these laws were not exclusively economic, and they did not constitute a formal recovery policy in a narrow sense. However, the rule is fundamental in remediating certain situations of heirs.[77]

B. Practices for Non-Judicial Resolution of Serious Human Rights Violations Committed in Chile

In 2005, the Chilean government provided the 28,459 registered victims and their families with perpetual government compensation (approximately 200 US Dollars per month) and free education, housing, and health care. UU no. 19992, amended in December 2009, sets out in detail the modalities and qualifications of those entitled to relief. On November 24, 2009, the Chilean Congress passed Law No. 20,405, which created the Institute for Human Rights. As per the law, Michell Bachelet, the former president, was responsible for creating an advisory commission that would investigate the disappearance of prisoners, individuals executed without trial, prisoners of faith and torture victims. The agency has a time limit of six months to investigate around 4,000 new cases based on the Valech and Rettig Commissions' findings, along with new cases discovered through the judicial process. The head of the Valech Catholic Church will lead the follow-up to this mechanism, which will include the same members as the 'Valech' Commission. The "Museum of Memory and Human Rights" opened in Santiago, Chile, in January 2010.[78]

The public impact of the Valech report upon its initial publication in 2004 was substantial, perhaps even more significant than that of the Rettig report at its time. At a greater distance from the events, and against the backdrop of the gradual political and judicial distrust of Pinochet and some of his notorious followers, details of crimes emerged, including using dogs on naked female captives, torturing children to make their parents speak, or the 'side

[77] Andrey Sujatmoko.
[78] Andrey Sujatmoko.

effects' (collateral damage) of failure to persuade through prolonged beatings and sexual assault resulted in a weak, blindfolded captive. These reports are hardly susceptible to the 'state of war' justification that some have found at least as plausible as the deaths of young male militants immediately resulting from the devastating consequences of the coup.[79]

Law No. 19,123 provides a "*pension*," a monthly allowance to the families of victims of human rights violations or political violence identified in the National Commission report and people recognized as victims by the Corporation itself (Articles 17 and 18). Those entitled to apply for such a "pension" are the surviving spouse of the victim, the mother (or father if the mother is not available) of children under 25 years of age, or disabled children of any age (Article 20). Other forms of compensation are medical benefits (Article 28) and educational benefits (Articles 29-31). Chile has greatly emphasized truth-telling regarding the most severe violation of human rights: the right to life. Reparations focus primarily on clearing the good names of the victims of these serious violations and compensating their families. Meanwhile, it should be noted that Chile's reparative measures do not cover other serious human rights violations and that it remains unclear whether and to what extent those responsible for crimes committed during the military injustice will be brought before justice.[80]

Conclusion

The Constitution of Peace here is a model for the settlement of serious human rights violations which, according to the author, is different from many studies which are accustomed to providing ideas and solutions for the settlement of serious human rights violations by prosecuting serious human rights violators at the serious human rights court and establishing a de facto of the Truth and Reconciliation Commission which from the 1998 Reformation to August 2022 is not going well. However, in this article, the author offers a model that is in line with the spirit of the 1945 Constitution, namely the Settlement of Serious Human Rights Violations outside the Court which is oriented towards the Recovery of Victims of Serious Human Rights Violations. The writers offer are: first, the settlement of serious human rights violations through mediation by the National Human Rights Commission, second, the settlement of serious human rights violations through the provision of compensation and restitution by the Witness and Victim Protection Agency. Third, the Settlement of Serious

[79] Andrey Sujatmoko.
[80] Andrey Sujatmoko.

Human Rights Violations through the Apology of the Ruler is accompanied by the fulfillment of the economic and social rights of victims of the Settlement of Serious Human Rights Violations. These three models are victim-oriented concepts.

The suggestion in this paper to support the ideal concept that the author proposes is to support the ideal concept that the author proposes is to build legal legitimacy efforts, political legitimacy, and scientific legitimacy. First, legal legitimacy by optimizing the three models of settlement of gross human rights violations which the author considers to be the Constitution of Peace. Second, Political Legitimacy can be played by the President and the House of Representatives (DPR) which have a function in the budgeting field to make a pro-budget for the fulfillment of the economic and social rights of victims of past gross human rights violations. Third, Scientific Legitimacy. In order for every policy to be made systematically, comprehensively and oriented to the constitutional rights of citizens, journals, books, research, seminars, focus group discussions, even debate competitions, constitutional drafting, and quiz competitions are needed. formula for the settlement of non-judicial gross human rights violations.

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