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### **Cover Page Footnote**

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## Contested Actors around the Initiation of a Non-Judicial Settlement Mechanism for Past Gross Human Rights Violations: A Socio-Legal Study of the PPHAM Team\*

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### Abstract

The PPHAM Team (Non-Judicial Resolution of Past Gross Human Rights Violations) was initiated by the Jokowi-Ma'ruf administration as an alternative settlement mechanism for Past Gross Violations of Human Rights through the issuance of Presidential Decree Number 17/2022 (Keppres 17/2022). From this context, the establishment of the policy was criticized and rejected by civil society organizations (CSOs) and the Victims. This was because the PPHAM Team was deemed a measure of State responsibility "hand-washing" and an indication of impunity preservation. Therefore, this study aimed to evaluate the contestation of actor interests among the State, Victims, CSOs, and others, by emphasizing the theoretical framework of transitional justice. This was a socio-legal study coupled with a qualitative approach, where data were obtained through interviews and observation of mass media coverage. The results argued that the initiation of the PPHAM Team was only beneficial to the interests of the State and did not completely address the preferences of the Victims on accountability and truth.

**Keywords:** Presidential Decree Number 17/2022, PPHAM Team, Gross Human Rights Violations, Non-Judicial Settlement, Transitional Justice

### Abstrak

*Melalui penerbitan Keppres 17/2022, Pemerintahan Jokowi-Ma'ruf membentuk Tim PPHAM sebagai mekanisme 'alternatif' penyelesaian yudisial kasus-kasus Pelanggaran HAM yang Berat Masa Lalu. Betapa pun, inisiasi Tim PPHAM memperoleh kritik tajam dan penolakan dari pelbagai organisasi masyarakat sipil (OMS) maupun Korban. Tim PPHAM dinilai menjadi ajang "cuci tangan" pertanggungjawaban Negara dan merupakan gelagat pelanggaran impunitas. Dengan merujuk kerangka teoretis Keadilan Transisi, artikel ini berupaya menelaah kontestasi kepentingan antara Negara, Korban, OMS HAM, dan aktor lainnya. Penelitian ini merupakan studi sosio-legal dengan pendekatan kualitatif. Ada pun perolehan data penelitian juga bersumber dari wawancara dan amatan pemberitaan media massa. Pada kesimpulannya, artikel ini mengargumentasikan bahwa inisiasi Tim PPHAM cenderung menguntungkan kepentingan Negara dan tidak menjawab kepentingan Korban yang menghendaki akuntabilitas dan kebenaran secara penuh.*

**Kata Kunci:** Keppres 17/2022, Tim PPHAM, Pelanggaran HAM yang Berat, Penyelesaian Non-Yudisial, Keadilan Transisi.



## I. INTRODUCTION

This study aims to examine the contestation of interests between State, Victims, human rights civil society organizations (hereinafter: HR-CSOs), and other parties related to the initiation of the Team for Non-Judicial Resolution of Past Gross Human Rights Violations (PPHAM Team) which established by the Joko Widodo (Jokowi)-Ma'ruf Amin administration. Since the fall of General Soeharto from power on the backdrop of economic and political instability in May 1998<sup>1</sup>, the legacy of the “State accountability debt” for Gross Human Rights Violations (GHRV) during the New Order authoritarian regime were yet to be resolved. This led the Jokowi-Ma'ruf administration to establish a mechanism to resolve cases outside of the Human Rights Court. Although this was not their first attempt, the administration still achieved the feat by signing Presidential Decree Number 17 of 2022 (Keppres 17/2022), which served as the legal basis for the establishment of the PPHAM Team.

Looking back, the end of Soeharto's rule has opened the door to a political transition, from a non-democratic regime to a more democratic government.<sup>2</sup> However, for the successive governments from 1998 until the present, the legacy of GHRV cases from the New Order era were not small.<sup>3</sup> The political circumstances surrounding the downfall of the New Order –as well as its inceptions<sup>4</sup>– were marked by the eruptions of GHRVs. Based on the establishment of the army-backed regime in 1965-1966, the emergence of anti-communist violence occurred with an estimated half a million people falling victim to massive massacres.<sup>5</sup> This led to the unlawful arrests and detentions of a majority of the people associated with the Indonesian Communist Party (PKI).<sup>6</sup> Moreover, several GHRV cases were carried out in the run-up to

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<sup>1</sup> Davidson mentioned the multiple pressures that led to Soeharto's downfall: the regional economic crisis, student protests, urban middle-class disillusionment, elite friction, riots, and polarization within the military. Jamie S. Davidson, *Demokrasi Indonesia Pasca-Orba: Antara Inovasi, Stagnasi, dan Polarisasi*, trans. Wisnu Prasetya Utomo (Yogyakarta: Insist Press, 2022), 2.

<sup>2</sup> Sri Lestari Wahyuningroem, “Faktor Transisi Politik dalam Keadilan Transisi di Indonesia”, *Jurnal Prisma–Edisi Keadilan Transisi*, Vol. 38, No. 2 (2019): 3.

<sup>3</sup> Cases that occurred before Law 26/2000 was enacted (Past GHRV), namely: (1) Events of 1965-1966; (2) Mysterious Shootings; (3) Tanjung Priok [*already tried*]; (4) Talangsari 1989; (5) Rumoh Geudong, Aceh 1989-1998; (6) Enforced Disappearances 1997-1998; (7) May 1998 Riots; (8) Trisakti, Semanggi I and II 1998-1999; (9) *Santet* Shaman Murder; (10) Simpang KKA Tragedy 1999; and (11) East Timor 1999 [*already tried*].

<sup>4</sup> See: Munafrizal Manan, “Seeking Transitional Justice in Indonesia: Lessons From The Cases of Aceh, Papua And East Timor,” *Constitutional Review*, Vol. 1, No. 2 (December 2015): 76-78. DOI: <https://doi.org/10.31078/consrev124>.

<sup>5</sup> Geoffrey B. Robinson, *The Killing Season: A History of The Indonesian Massacres, 1965-1966* (Princeton–Oxford: Princeton University Press, 2018), 120–121.

<sup>6</sup> YLBHI, *Politik Pembebasan Tapol* (Jakarta Pusat: Yayasan Lembaga Bantuan Hukum Indonesia, 1998), 30-31; Manan (2015), *Loc.Cit*; Robert Cribb, “Masalah-Masalah dalam Penulisan Sejarah Pembantaian Massal di Indonesia”, in *Pembantaian PKI di Jawa dan Bali 1965-1966*, Sixth Print, edited by Robert Cribb (Yogyakarta: MATABANGSA, 2016), 65-67.



Soeharto's departure, such as Enforced Disappearances 1997-1998, May Riots, and Trisakti Semanggi I & II (TSS) Incidents 1998-1999.

The National Commission on Human Rights, the authorized institution for conducting pro-Justitia investigations into GHRV cases, has also reportedly completed twelve probes. These probes primarily emphasized the events that committed before the enactment of Law Number 26/2000 on Human Rights Courts.<sup>7</sup> In this context, three GHRV cases were tried before the Human Rights Court, namely the East Timor Incident (1999), Tanjung Priok (1984), and Abepura-Papua (2000). However, disappointing outputs were observed because the Attorney General's Office did not indict the alleged perpetrators with top command positions, from investigation to prosecution. The verdict of the panel of judges, specifically at the Appeal, Cassation, and Reconsideration levels, also ended with the acquittal of the defendant.<sup>8</sup> In this case, the trial of GHRV cases largely experienced substantial challenges. Furthermore, the relationship between the National Commission on Human Rights and the Attorney General's Office as the investigator and prosecutor was characterized by chronic institutional friction,<sup>9</sup> with complex political factors weakening the prospects of judicially resolving the GHRV cases.

The Truth and Reconciliation Commission (TRC) was also initiated as an 'alternative' mechanism for resolving past GHRV,<sup>10</sup> besides from the Human Rights Court. Meanwhile, its legal basis, Law Number 27/2004, was ruled unconstitutional by the Constitutional Court after Victims and HR-CSOs filed a petition for judicial review of problematic provisions.<sup>11</sup> The PPHAM team was also formed amidst the impasse of the legal process and the absence of a non-judicial mechanism, such as the TRC. This team had three general tasks, namely: (a) disclose and attempt to resolve GHRV non-judicially, based on data and recommendations from National Commission on Human Rights; (b) recommend reparation for Victims or their families; and (c) suggest steps to prevent GHRV from recurring in the future. It also contained

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<sup>7</sup> Komnas HAM RI, *Merawat Ingatan, Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat* (Jakarta: Tim Publikasi Komnas HAM, 2020).

<sup>8</sup> ICTJ–KontraS, *Keluar Jalur: Keadilan Transisi di Indonesia Setelah Jatuhnya Soeharto* (Indonesia: International Center for Transitional Justice–KontraS, 2011), 39-44.

<sup>9</sup> The tendency is that the Attorney General's Office often returns National Commission on Human Rights investigation files on the grounds of lack of evidence, problems with formal or administrative elements, to the pretext of not having established an ad hoc Human Rights Court institution or a DPR decision that does not recommend certain GHRV cases to be handled at the Human Rights Court. See: Nurrahman Aji Utomo, "Dekonstruksi Kewenangan Investigatif dalam Pelanggaran Hak Asasi Manusia yang Berat", *Jurnal Konstitusi*, Vol. 16, No. 4 (December 2019): 817. DOI: <https://doi.org/10.31078/jk1647>.

<sup>10</sup> Article 47 of Law 26/2000 and its Explanation.

<sup>11</sup> Constitutional Court Decision Number 006/PUU-IV/2006.



12 members, including former human rights activists, academics, bureaucrats, and retired military officers.<sup>12</sup>

As principal stakeholders, some GHRV Victims expressed sharp criticism and rejection to the initiative of the PPHAM Team.<sup>13</sup> Besides, HR-CSOs, such as KontraS and LBH Jakarta, also voiced similar concerns. In this context, serious concerns were raised regarding the non-judicial process facilitated by the PPHAM Team, leading to a sense of impunity and the closure/replacement of case resolutions through the Human Rights Court.<sup>14</sup> After the completion of the PPHAM Team assignment, on January 11, 2023, President Jokowi followed up on its outputs, expressing recognition and regret for the occurrence of various GHRV cases. Although these expressions had a significant influence, HR-CSOs and Victims still regretted the lack of an ‘apology’ by the President. From this context, the consideration of acknowledging and regretting, without an apology, indicated that the Government was worried about the potential political implications occurring.<sup>15</sup>

In initiating the PPHAM Team, the dynamics remained worthy of scrutiny regardless of the outcome. Therefore, this study formulated the following question: “How is the contestation of interests between actors related to initiating a non-judicial GHRV case settlement mechanism through the PPHAM Team?”

This research is a socio-legal study coupled with a qualitative approach. The character of socio-legal studies itself is interdisciplinary. These conditions were considered because the

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<sup>12</sup> Consideration letter c. (‘Considering’) and Article 3 § 7 of Presidential Decree 17/2022.

<sup>13</sup> HukumOnline, “Keluarga Korban Tolak Keppres Pembentukan Tim Penyelesaian Non Yudisial Pelanggaran HAM Berat”, 29-08-2022. <https://www.hukumonline.com/berita/a/keluarga-korban-tolak-keppres-pembentukan-tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-lt630ca78e06daf>; KASUM, “Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat Masa Lalu dan Komposisi Keanggotaannya Melukai Korban serta Mencederai Penegakan HAM”, *Press Release*, 23-09-2022. <https://bantuanhukum.or.id/tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-masa-lalu-dan-komposisi-keanggotaannya-melukai-korban-serta-mencederai-penegakkan-ham/>; Perhimpunan IPT65–Watch 65 Association–YPKP65, “Pernyataan Bersama Tentang Keppres No. 17 Tahun 2022”, *Press Release*, 10-11-2022. <https://ypkp1965.org/blog/2022/11/12/komunike-bersama-menyikapi-keppres-no-17-tahun-2022-tentang-penyelesaian-pelanggaran-ham-berat-secara-non-yudisial-perhimpunan-ipt65/>.

<sup>14</sup> Siaran Pers Koalisi Masyarakat Sipil, “Presiden Harus Cabut dan Batalkan Keppres Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat Masa Lalu”, 18-08-2022. <https://ylbhi.or.id/informasi/siaran-pers/presiden-harus-cabut-dan-batalkan-keppres-pembentukan-tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-masa-lalu/>; KontraS, “Catatan Kritis: Keputusan Presiden Nomor 17 Tahun 2022 Tentang Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran Hak Asasi Manusia Yang Berat Masa Lalu”, 18-10-2022. <https://kontras.org/2022/10/18/catatan-kritis-keputusan-presiden-nomor-17-tahun-2022-tentang-pembentukan-tim-penyelesaian-non-yudisial-pelanggaran-hak-asasi-manusia-yang-berat-masa-lalu-tim-ppham/>.

<sup>15</sup> See: Maria Kunti Atika Putri et.al, “Permintaan Maaf Negara sebagai Bentuk Reparasi Korban”, *Justitia Et Pax*, Vol. 38, No. 2 (2023): 209.



research of law was associated with sociological, political, and economic dimensions.<sup>16</sup> Regarding its interdisciplinary characteristics, socio-legal study (or some might say “law reform research”) was an ‘external inquiry’ into the law as a social entity.<sup>17</sup> In line with the research question, the author will not only rely on the study of legal materials related to the settlement of GHRV, but would also refer to political science studies regarding the Transitional Justice process in Indonesia.

The socio-legal study also encompassed a textual review of legal products, enabling a critical assessment of the framework established in Presidential Decree 17/2022. This was to ascertain the meaning and implications of its provisions for the legal subjects (*i.e.* Victims).<sup>18</sup> Furthermore, the critical analysis aimed to discover the interests of the actors willing to benefit and be disadvantaged by the non-judicial mechanisms of the PPHAM Team. In this study, the primary data were obtained from interviews, with the information emphasizing mass media coverage (secondary data) used to obtain public statements and the attitudes of the actors surrounding the initiation of the PPHAM Team.

Sequentially, the Discussion aspects will consist of analyses on: (A) Transitional Justice in Indonesia; (B) Critical Review on Presidential Decree 17/2022; and (C) Contestation between Actors. Part A discusses the very concept of Transitional Justice and Indonesia’s experience, then Part B specifically contains an examination of the problematic articles of the Presidential Decree. Placed before the Conclusion, Part C maps the interests between actors around the PPHAM Team’s initiation.

## **II. DISCUSSION**

### **A. Transitional Justice in Indonesia**

#### **1. Transitional Justice: Basic Explanations**

The fundamental essence of the Transitional Justice concept was focused on the patterns by which a state or society transforming tackled previously transpired atrocities. This

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<sup>16</sup> Muhammad Helmy Hakim, “Pergeseran Orientasi Penelitian Hukum: Dari Doktrinal ke Sosio-Legal”, *Syariah: Jurnal Hukum dan Pemikiran*, Vol. 16, No. 2 (December 2016): 108. DOI: <https://dx.doi.org/10.18592/sy.v16i2.1031>.

<sup>17</sup> Fachrizal Afandi, “Meneliti Budaya Hukum Aparat: Sebuah Pengantar tentang Etnografi dalam Studi Hukum Acara Pidana”, *The Indonesian Journal of Socio-Legal Studies*, Vol. 1, No. 2 (2022): 5. <https://scholarhub.ui.ac.id/ijsls/vol1/iss2/1>.

<sup>18</sup> Sulistyowati Irianto, “Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya”, in *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Third Print, edited by Sulistyowati Irianto dan Shidarta (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), 177-178.



transformation emphasized a change from an authoritarian regime to a democratic system or an armed conflict state to a peaceful society. According to Ruti G. Teitel, Transitional Justice was defined as a concept of ‘Justice’ regarding the political change periods characterized by legal responses to the wrongs of previous repressive regimes. ICTJ also indicated that the concept was not a ‘special form’ of ‘Justice’. In this case, ‘Justice’ was often adapted to societies transforming themselves after a period of systematic or large-scale human rights violations. Based on the United Nations (UN) note, Transitional Justice was the full range of processes and mechanisms related to the efforts of society to handle the legacy of past large-scale atrocities, ensure accountability, serve justice, and achieve reconciliation. This concept comprised judicial and non-judicial processes and mechanisms, namely criminal prosecutions, truth-seeking, reparations programs, institutional reform, or combination thereof.<sup>19</sup>

The emergence of Transitional Justice discourse was also marked by the development of international legal instruments in the field of human rights and the ‘third wave of democratization’<sup>20</sup> in the 1980s and early 1990s. In this context, the end of the Cold War allowed the discourse to evolve, with the sharp polarization of the two world powers and the international community eased and more liberalized, respectively. The most striking example was the ‘renaissance’ of human rights and international criminal law discourses, with the UN Security Council enacting resolutions capable of establishing various tribunals to try serious crimes in the former Yugoslavia and Rwanda. Assuming the Cold War had continued, the establishment of these tribunals was likely impossible. Moreover, the third wave of democratization triggered various transformations in numerous countries, encompassing institutional reforms and endeavors to hold previous authoritarian regimes responsible for their committed atrocities.<sup>21</sup>

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<sup>19</sup> See: Ruti G. Teitel, “Transitional Justice Genealogy”, *Harvard Human Rights Journal*, Vol. 16 (2003): 69; Mark Freeman, *Komisi-Komisi Kebenaran dan Keadilan Prosedural*, trans. B. E. Wibowo et al. (Jakarta: ELSAM, 2008), 3. <http://referensi.elsam.or.id/wp-content/uploads/2014/09/16.-Komisi-Komisi-Kebenaran-dan-Keadilan-Prosedural.pdf>; John P. Grant & J. Craig Barker, *Perry & Grant Encyclopaedic Dictionary of International Law, Third Edition* (New York: Oxford University Press, 2009), 611–612; ICTJ, “What is Transitional Justice?” (International Center for Transitional Justice, 2009). <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>; UN, “Guidance Note of The Secretary-General: United Nations Approach to Transitional Justice” (March 2010). <https://digitallibrary.un.org/record/682111?ln=en>.

<sup>20</sup> The term ‘Third Wave of Democratization’ was coined by Samuel P. Huntington in describing approximately 30 countries that experienced a transition from a non-democratic government to a democratic political system.

<sup>21</sup> See: Joanna R. Quinn, “The Development of Transitional Justice,” in *Research Handbook on Transitional Justice*, edited by Cheryl Lawther et al. (Cheltenham: Edward Elgar Publishing, 2017), 13-15.





Transitional Justice was initially considered a national phenomenon before its participation in international human rights law discourse, where relevant development-based normative standards and guidelines were provided by the UN. The normative framework was set out in ‘soft law’ instruments, to guide the democratization or post-conflict peace-making process. At least two of these soft law instruments included the following: (1) *Joint-Orentlicher Principles against Impunity* (Set of Principles to Combat Impunity 2005); and (2) *Boven-Bassiouni Principles on the Right to a Remedy and Reparation* (Basic Principles and Guidelines on the Right to A Remedy and Reparation for Victims of Serious Violations of International Human Rights and Humanitarian Law 2005).<sup>22</sup>

## 2. The Indonesian Experience

At every moment of political transition, a dilemma always took place regarding the ‘redress of past injustices’ or remaining ‘forward-looking’ and restoring democratic institutions. This dilemma was partly related to the choice to maintain the stability of the nascent democratic regime and the moral/ethical imperative to handle the atrocities committed under the predecessor administration. One factor that influenced the choice of the Transitional Justice mechanism was also the nature of the political transition itself. When the transition successfully severed the power and influence of actors from the previous authoritarian regime, the high probability was considered regarding the pursuit of a comprehensive Transitional Justice policy by the new administration. However, various challenges were involved in implementing criminal prosecution mechanisms when the old elites continuously possessed some power or influence. This emphasized the likeliness of negotiations, leading to a greater emphasis on reconciliation.<sup>23</sup>

Based on Huntington’s typology of transition, Wahyuningroem argued that the character of transformation in Indonesia was a mixture of ‘rupture’ and ‘transplacement’.<sup>24</sup> In this context, the rupture transition was characterized by the improvement of the opposition futuristically overthrowing the old regime. For transplacement, democratization occurred due to the negotiation or compromise between the ruling elite of the old regime and the opposition.

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<sup>22</sup> See: Leena Grover, “Transitional Justice, International Law and United Nations,” *Nordic Journal of International Law*, Vol. 88, No. 3 (2019): 365-372.

<sup>23</sup> See: Wahyuningroem, “Faktor Transisi Politik” (2019), *Op.Cit.*, 9–11.

<sup>24</sup> Apart from rupture and transplacement, another type of political transition is ‘transformation’. This type of transition is identified with the democratization drive initiated by reformist elements within the authoritarian regime. Transformation-type transitions tend to be top-down and gradual. *Ibid*, 10.



The 1998 Reform also observed the elements of rupture when General Soeharto abandoned office due to public pressure. The elite of ‘Reform Order’ (*Reformasi*) adopted various Transitional Justice mechanisms to acquire legitimacy and distance from the New Order. The transplacement element was also demonstrated by a series of compromises, as elites critical of the New Order entered the innovative power structure. However, the old forces representing the predecessor regime, such as the Golongan Karya Party and the military, were not fully detached from the newly established *Reformasi* constellation. By its nature of transplacement, the political elite of *Reformasi* was more or less composed of the predecessor regime elements (the New Order) and actors that had previously opposed the New Order.<sup>25</sup>

The legal basis for the Human Rights Court, Law 26/2000, was considered the product of ‘tactical concessions’ by the *Reformasi* elite, regarding international and domestic pressures.<sup>26</sup> According to several studies, the development of the Law was influenced by international pressure concerning the human rights situation in East Timor following the 1999 referendum. The political elites from Islamic parties also played a significant role by actively advocating for the trial of the 1984 Tanjung Priok Incident.<sup>27</sup> In this context, the main intention behind the enactment of Law 26/2000 was not to enforce accountability for previous GHRV cases. This indicated that the implementation of the legal basis emphasized a limited and short-term Government response to international and domestic pressure.

Based on Wahyuningroem, the transplacement element influenced the outcome of the Human Rights Court mechanism that ultimately failed. This explained that the legal process for the 1999 East Timor Case and Tanjung Priok 1984 exhibited no conviction due to final binding legal decisions. Thus, the failure of the Transitional Justice process, specifically the Human

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<sup>25</sup> *Ibid*, 11.

<sup>26</sup> Sri Lestari Wahyuningroem, “Breaking the Promise: Transitional Justice between Tactical Concession and Legacies of Authoritarian Regime in Indonesia”, *International Journal of Transitional Justice* (2022): 4-10. DOI: <https://doi.org/10.1093/ijtj/ijac021>.

<sup>27</sup> See: Suzannah Linton, “Accounting for Atrocities in Indonesia”, *Singapore Year Book of International Law* 10 (2006): 207; Suparman Marzuki, *Tragedi Politik Hukum HAM* (Yogyakarta: Pustaka Pelajar–PUSHAM UII, 2011), 287-293; Yosep Adi Prasetyo, “Problematisasi Pengadilan HAM”, in *Putih Hitam Pengadilan Khusus*, edited by Hermansyah et.al (Jakarta: Sekretariat Jenderal Komisi Yudisial RI, 2013), 288-290; Wahyuningroem, “Faktor Transisi Politik” (2019), *Op.Cit.*, 13-18; Ken Setiawan, “The Human Rights Courts: Embedding Impunity”, in *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, edited by Melissa Crouch (New York–Cambridge: Cambridge University Press, 2019), 291; Melissa Crouch, “The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia”, *Constitutional Review*, Vol. 7, No. 1 (May 2021): 17. <https://doi.org/10.31078/consrev711>.



Rights Court, largely favored the alleged perpetrators<sup>28</sup> who still had significant political influence and upheld strategic positions in the Government.

The intention to institutionalize the TRC as a non-judicial mechanism was also set out in Law 26/2000. This concept was designed through Law 27/2004 in Indonesia, which was significantly inspired by the South African TRC model featuring amnesty aside from a truth-for-amnesty process. The discourse surrounding the TRC was not also without controversy and disagreement among HR-CSOs.<sup>29</sup> However, in its dynamics, the Constitutional Court declared Law 27/2004 unconstitutional due to one of its provisions in the legal framework, concerning the awarding of compensation for Victims being dependent on the granting of amnesty to perpetrators. This annulment was projected to adversely influence the Transitional Justice process, with the ruling of the Constitutional Court legitimizing the “means by which” the Government pursued reconciliation through political policies, regarding rehabilitation and amnesty. Quoted from Wiratraman et al., the decision of the court prioritized a perspective based on the interests of the State over the Victims.<sup>30</sup>

According to the ineffectiveness of the judicial process and the absence of the TRC, the Government resorted to non-judicial resolution channels for addressing GHRV. This approach deviated from the Transitional Justice mechanisms aligning with the international human rights law norms and emphasized the solutions “appropriate to the Indonesian culture”. For example, the rhetoric about resolving GHRV cases, by deliberation and consensus or customary institutions, was stated by Wiranto. This was conducted when Wiranto was serving as the Coordinating Minister for Legal, Political, and Security Affairs in the first period of the Jokowi Government. In this case, the ‘Bakar Batu’ tradition in Papua was considered to rationalize non-judicial settlements. These settlements emphasized a tendency to “manipulate culture for impunity”, according to Wilson.<sup>31</sup>

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<sup>28</sup> Wahyuningroem, “Faktor Transisi Politik” (2019), *Ibid*, 18-19.

<sup>29</sup> Robertus Robet, *Politik Hak Asasi Manusia dan Transisi di Indonesia: Dari Awal Reformasi hingga Akhir Pemerintahan SBY* (Jakarta Selatan: ELSAM, 2014), 135-165; Sri Lestari Wahyuningroem, “Toward Post-Transitional Justice: The Failures of Transitional Justice and the Roles of Civil Society in Indonesia”, *Journal of Southeast Asian Human Rights*, Vol. 3, No. 1 (June 2019): 142-144. DOI: <https://doi.org/10.19184/jseahr.v1i2.6135>.

<sup>30</sup> R. Herlambang Perdana Wiratraman et.al, *Dampak dan Implementasi Putusan Mahkamah Konstitusi yang Memutuskan Pembatalan Undang-Undang No. 27 Tahun 2004 Tentang Komisi Kebenaran dan Rekonsiliasi terhadap Mekanisme Hukum dan Akses Keadilan Korban Bagi Penyelesaian Pelanggaran Hak Asasi Manusia Berat* (Surabaya: LKK–Universitas Airlangga, 2007), 38-39.

<sup>31</sup> Wilson, “Budaya Lokal, HAM, dan Pembangunan di Papua”, in *Kultur Hak Asasi Manusia di Negara Iliberal*, edited by Robertus Robet & Todung Mulya Lubis (Tangerang Selatan: Marjin Kiri, 2020), 207-209.



McGregor and Setiawan also observed that ‘culturalist arguments’ were continuously placed forward by Jokowi Government elites, to exhibit the irrelevance of the Transitional Justice mechanisms, such as the Human Rights Court. This was because the Government wanted to handle the problem of previous violations in an “Indonesian pattern” incompatible with universal standards. From this context, the pattern consisted of three initiatives, namely the Reconciliation Committee, the 1965 Symposium, and the National Harmony Council. These initiatives failed to meet the Victims sense of justice, distancing the accountability of alleged perpetrators and the State.<sup>32</sup>

## **B. Presidential Decree 17/2022: A Critical Review**

Based on the HR-CSOs criticism, such as KontraS, the initiation of Presidential Decree 17/2022 lacked transparency and public participation. This was supported by the Victims, which were the interested parties influenced by the process carried out by the PPHAM Team.<sup>33</sup> From this context, the secrecy of establishing Presidential Decree 17/2022 raised various questions about the motives and background of the Team initiation that led to polemics and skepticism.<sup>34</sup> Yet theoretically and ideally, the law or regulation-making process should be open to civil society participation or involvement to balance the position and role of the Government, as well as to serve as a society monitor mechanism.<sup>35</sup>

Furthermore, the PPHAM team was the umpteenth non-judicial initiative in the Jokowi government to be successfully institutionalized. The Reconciliation Committee and the National Harmony Council were also initiated by Jokowi’s administration during the first term without being established. These non-judicial initiatives were considered ‘alternatives’ to the judicial process. During the speech of the President to the People’s Consultative Assembly on August 16, 2022, the President claimed that the Decree on the PPHAM Team was signed.<sup>36</sup> However, the decree was only signed after ten days, on August 26, 2022.

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<sup>32</sup> Katharine McGregor & Ken Setiawan, “Shifting from International to “Indonesian” Justice Measures: Two Decades of Addressing Past Human Rights Violations,” *Journal of Contemporary Asia*, Vol. 49, No. 5 (2019): 849-855.

<sup>33</sup> Interview with Families of Victims of Enforced Disappearances 1997-1998 (anonymous) via Zoom Meeting, November 19, 2022.

<sup>34</sup> KontraS, “Catatan Kritis” (18-10-2022), *Loc. Cit.*

<sup>35</sup> See: Sri Wiyanti Eddyono et.al, *Gerakan Advokasi Legislasi untuk Perlindungan Pekerja Migran Indonesia* (Jakarta: Law, Gender and Society Study Centre–Fakultas Hukum UGM dan Migrant Care, 2020), 27.

<sup>36</sup> Nasional.tempo, “Alasan Jokowi Bentuk Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat”, 17-08-2022. <https://nasional.tempo.co/read/1623650/alasan-jokowi-bentuk-tim-penyelesaian-non-yudisial-pelanggaran-ham-berat>.



Based on its structure, the Team consisted of the following: (a) a Steering Committee containing relevant ministerial officials and the President's Chief of Staff; and (b) an Implementation Team with twelve members. In this context, one of the tasks of the Steering Committee was to set recommendations, with the Implementation Team tasked with proposing the suggestions and preparing the final report. The Implementation Team also carried out the task of conducting "disclosure and analysis" of GHRV events. Moreover, the office of the PPHAM Team was limited to December 31, 2022, before subsequent extension with the issuance of a Presidential Decree. The following highlights three critical notes on Presidential Decree 17/2022.

### 1. The Problem of Truth "Disclosure"

The implementation of the PPHAM Team mechanism as a 'truth', 'inquiry', or 'fact-finding' commission was still unclear. This was because all three elements were considered the Transitional Justice mechanisms upholding the right to the truth. In this case, the Truth Commission was non-judicial and quasi-judicial, with the Commissions of Inquiry and Fact-Finding typically having a relatively limited mandate.<sup>37</sup> From this context, no single phrase, "disclosure of the truth" (*pengungkapan kebenaran*), was observed in either the preamble or the 17 articles of Presidential Decree 17/2022. However, the Presidential Decree articulated only "disclosure" in the entire policymaking process.<sup>38</sup> In line with this, the Foundation for the 1965-66 Murder Victims Research (YPKP65) stated that the main task of the PPHAM Team was not "disclosure of the truth". This was attributed to the passing mention of "disclosure" within the "resolution of previous GHRV violations" (Article 3(a)), leading to a blurred meaning.<sup>39</sup>

Based on these descriptions, the issue of phrasing was not without its importance. This indicated that during the process of drafting the TRC Law in several previous years, various political tendencies were observed and implemented to hinder the prospect of truth-seeking. According to Suparman Marzuki, the Secretary of the PPHAM Implementation Team, the Indonesia Army/Police faction suggested the removal of "Truth" from the title of the TRC Bill during the parliamentary debate. This led to its renaming as the "Reconciliation Commission

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<sup>37</sup> UN, "Guidance Note of The Secretary-General" (2010), *Op.Cit.*, 8.

<sup>38</sup> KontraS, "Catatan Kritis" (18-10-2022), *Loc.Cit.*

<sup>39</sup> Perhimpunan IPT65 (*Press Release*, 10-11-2022), *Loc.Cit.*



Bill”. The faction also proposed the definition of “Truth” as the “facts or realities exhibited within the nature and spirit of Indonesia, based on Pancasila and the State Constitution.” These instances showed the presence of political actors with vested interests in limiting the disclosure of the truth and advocating for expedited resolution through “reconciliation”. In this case, the actors sharing similar interests influenced the formulation of Presidential Decree 17/2022.<sup>40</sup>

The PPHAM team was also tasked with “uncovering” the Previous GHRV determined based on National Commission on Human Right data and recommendations up to 2000. This task was expected to overlap with or simply repeat the outputs of the National Commission on Human Rights pro-Justitia investigation.<sup>41</sup> These outputs were more or less a form of truth-seeking and enforcement of the right to truth. Meanwhile, the construction was juridical-legal and limited to an “alleged incident” of the GHRV crime. Since the construction of GHRV as crimes against humanity involved elements of State or organizational policies, the outputs contained contextual analysis.<sup>42</sup> The authority of the National Commission on Human Rights, which was limited to identifying “alleged events”, did not also directly lead to the identification of suspects. This authority was assumed by investigators from the Attorney General’s Office (AGO).<sup>43</sup>

The task of PPHAM Team was subsequently able to slightly expand the outputs of the National Commission on Human Rights. This was because the scope of “disclosure and analysis” of the GHRV case included the following elements, according to Article 10 paragraph (1) of Presidential Decree 17/2022: (a) background; (b) causation; (c) triggering factors; (d) identification of victims; and (e) influences caused.

The outputs of the “disclosure” process were also capable of extending beyond “juridical-legal truth”, with the possibility of using sociological and anthropological approaches to examine the background of past GHRV cases.<sup>44</sup> Based on the crucial issue, the scope of the

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<sup>40</sup> Marzuki (2011), *Op.Cit.*, 364-367.

<sup>41</sup> Christian Rahmat, “Tim Penyelesaian Nonyudisial Pelanggaran HAM Berat Masa Lalu”, *Column* in Kompas, 01-11-2022. <https://www.kompas.id/baca/opini/2022/10/31/tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-masa-lalu>.

<sup>42</sup> In the Executive Summary of the 2014 Paniai Incident, National Commission on Human Rights also explained the background and policy context of security policy in Papua, as Paniai Regency has been designated as a “red zone” for military operations since the 1970s. National Commission on Human Rights concluded that this security policy allowed the Paniai Case to occur. Komnas HAM RI, *Merawat Ingatan, Menjemput Keadilan* (2020), *Op.Cit.*, 666-667.

<sup>43</sup> Compare the definitions of ‘*penyelidikan*’ and ‘*penyidikan*’ in Law Number 8/1981 on Criminal Procedure (Article 1 point 2 § 5) and the definition of ‘*penyelidikan*’ in Law 26/2000 (Article 1 point 5).

<sup>44</sup> See comments by Amiruddin, Commissioner of Komnas HAM 2017-2022. Kompas.id, “Kasus HAM Masa Lalu, Tim Tak Akan Rekomendasikan Negara Minta Maaf”, 06-10-2022.



“disclosure and analysis” did not extend to identifying alleged perpetrators. In this case, the outcomes of the National Commission on Human Rights were more significant. This was because the Executive Summary of the investigation identified the alleged perpetrators through respective positions or roles, without explicitly mentioning their names. It also depended on the concept of command responsibility within the organizational hierarchy.<sup>45</sup>

Moreover, the “disclosure” task assigned to the PPHAM Team was inadequately defined. It was also not wrong if the PPHAM Team’s duties are considered to prioritize “non-judicial settlements” or “peace negotiations” –as Makarim Wibisono, the Head of the PPHAM Implementation Team has stated himself– rather than “disclosing the truth” itself.<sup>46</sup>

## 2. Simplified Reparation

According to Article 4 of Presidential Decree 17/2022, the recommendations for reparation to Victims or their families were exhibited as follows: (a) physical rehabilitation; (b) social assistance; (c) health insurance; (d) scholarships; and (e) other relevant beneficial suggestions. These various forms of ‘reparation’ were more or less important for Victims and were in line with the 2005 Boven-Bassiouni Principles.<sup>47</sup> However, the remedial scheme simplified the comprehensive ‘reparation’ concept, where the remedies contained in Presidential Decree 17/2022 were materialistic and did not reach immaterial reparations. This showed that the experience of GHRV in Indonesia, specifically the events of 1965-1966, inflicted traumatic conditions upon its Victims, including: (1) loss of citizenship; (2) defamation of reputation through unjust detention as political prisoners without any trial; and (3) enduring continuous societal stigmatization.<sup>48</sup>

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<https://www.kompas.id/baca/polhuk/2022/10/06/tim-non-yudisial-ppham-tidak-akan-rekomendasikan-negara-minta-maaf-soal-pelanggaran-ham-berat-masa-lalu>.

<sup>45</sup> For example, in the Executive Summary of the 1997-1998 Enforced Disappearance Cases, National Commission on Human Rights analyzed the level of command responsibility up to the field perpetrators. It stated that 27 people could be held criminally liable without mentioning names. Komnas HAM RI, *Merawat Ingatan, Menjemput Keadilan* (2020), *Op.Cit.*, 308-309 § 321.

<sup>46</sup> Kompas.id, “Tim Tak Akan Rekomendasikan Negara Minta Maaf” (06-10-2022), *Loc.Cit.*

<sup>47</sup> UN GA Resolution No. 60/147, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (December 16, 2005, A/RES/60/147), para. 20-21. According to the Boven-Bassiouni Principles, “Compensation” is a form of reparation that can be economically calculated to restore physical and mental damage, pain, suffering, and loss of opportunities, including education, livelihood, earning a living, and others. In contrast, “Rehabilitation” includes medical, psychological, as well as legal and social assistance or services. Article 4 of Presidential Decree 17/2022 partially adopts these two forms of reparations.

<sup>48</sup> KontraS, “Catatan Kritis” (18-10-2022), *Loc.Cit.*



From KontraS's perspective, the reparation in Presidential Decree 17/2022 more or less repeated the rehabilitation scheme provided by the Witness and Victim Protection Agency (LPSK). This stated that LPSK and National Commission on Human Rights worked together to empower the mechanisms for providing medical, psychological, and psychosocial assistance to Victims, by issuing a Victim Certificate of Human Rights Violations (SKKPHAM).<sup>49</sup> However, the mechanisms were considered ineffective due to financial barriers, as well as legal and political support.<sup>50</sup> Regarding the emphasis on material aspects, the forms of reparation provided by Presidential Decree 17/2022 were considered and compared to the 'compensation' from the State. As quoted from Christian Rahmat, reparation should also be transformative, not charitable.<sup>51</sup> In this context, the Coalition of Justice for Semanggi I and II asserted that a tendency was observed, concerning the exploitation of the marginalized and socioeconomically disadvantaged Victims and their families. This was to suppress and undermine the spirit of their demand for a judicial resolution.<sup>52</sup> Maria Katarina Sumarsih, as the parent of BR Norma Irmawan, the Semanggi I Victim, also stated that Article 4 of Presidential Decree 17/2022 contained the forms of reparation "degrading human dignity", because "lives were exchanged for material without a true and fair legal process".<sup>53</sup>

### 3. PPHAM Team: Substitute or Complement Judicial Process?

Non-judicial mechanisms, such as Truth or Inquiry Commissions, were often juxtaposed with judicial mechanisms. This indicated that the discourse on the tension between Truth Commission mechanisms vis-à-vis the criminal prosecution culminated in the development of the South African TRC. According to Desmond Tutu, Chairman of the South African TRC, the

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<sup>49</sup> The program is called "Medical and Psychosocial Assistance" (BMP). According to Atnike, BMP is arguably the only official Transitional Justice mechanism from the State nationally. The BMP program was run without any service time duration in 2010-2012. Subsequently, budget availability factors resulted in changes to the form, scope and duration of BMP services. See: Atnike Nova Sigiuro, "Jalan Kecil Keadilan Transisi: Program Bantuan Medis bagi Korban Pelanggaran Berat HAM di Indonesia", *Jurnal Prisma-Edisi Keadilan Transisi*, Vol. 38, No. 2 (2019): 22-31.

<sup>50</sup> Interview with Tioria Pretty (KontraS) via *e-mail*, 23 November 2022.

<sup>51</sup> Christian Rahmat (01-11-2022), *Loc.Cit.*

<sup>52</sup> Coalition of Justice for Semanggi I and II, "Response of the Coalition for Semanggi I and II on the Implementation of the Forum Group Discussion on Non-Judicial Settlement of Past Gross Human Rights Violations of the Semanggi I and Semanggi II Incidents, *Press Release*, 15-11-2022. <https://kontras.org/2022/11/16/tanggapan-koalisi-keadilan-untuk-semanggi-i-dan-ii-dalam-penyelenggaraan-forum-group-discussion-penyelesaian-non-yudisial-pelanggaran-ham-yang-berat-masa-lalu-atas-peristiwa-semanggi-i-dan-semanggi-ii/>.

<sup>53</sup> Sumarsih, "Pernyataan Sikap Menolak Keppres No. 17/2022 Tentang Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran HAM yang Berat Masa Lalu", *Press Release*, 15-11-2022. [https://kontras.org/wp-content/uploads/2022/11/15.11.22\\_Pernyataan-Sikap-Keppres.pdf](https://kontras.org/wp-content/uploads/2022/11/15.11.22_Pernyataan-Sikap-Keppres.pdf).





concept was a “third way” between the “extreme options” of prosecuting criminal responsibility, such as the 1945 Nürnberg Tribunal, or granting blanket amnesty to perpetrators.<sup>54</sup> This highlighted that powerful actors in political transitions often favor Truth Commissions as a viable “compromise solution” between the demands of judicial mechanisms and the goal of achieving reconciliation.<sup>55</sup>

Based on Hayner, many UN documents and stakeholder statements suggested the non-consideration of non-judicial truth-seeking processes as an ‘alternative’ to replacing the criminal prosecution.<sup>56</sup> International human rights standards also indicated that the processes should complement judicial mechanisms. Moreover, upholding the right to truth through Truth Commissions should complement the role of the judiciary in the 2005 Joinet-Orentlicher Principles. To avoid “conflicts of jurisdiction”, the terms emphasizing Truth or Inquiry Commissions were expected to be clearly defined and consistent with the principle stating that the Commission process was not a substitute for the judicial mechanism.<sup>57</sup>

According to Presidential Decree 17/2022, no statement emphasized the closure of the judicial resolution channel of the PPHAM Team. However, none of the provisions in the Presidential Decree a quo stipulated that the “non-judicial settlement efforts” of the Team were unable to substitute for or replace the judicial process. This was due to the importance of the provision, to ensure the alignment of the non-judicial process with the judicial procedure.

In public discourse, confusion was also observed about the position and character of the PPHAM Team. From this context, the Victims and HR-CSOs proved that the Team had the potential to close the judicial process channel. Meanwhile, the State repeatedly stated that the PPHAM Team did not replace the judicial mechanism of the Human Rights Court.<sup>58</sup> In this case, confusion emerged due to the absence of a guarantee for the principle of complementarity

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<sup>54</sup> Robet (2014), *Op.Cit.*, 157.

<sup>55</sup> See: Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions, Second Edition* (New York: Routledge Taylor & Francis Group, 2011), 91.

<sup>56</sup> *Ibid*, 92.

<sup>57</sup> UN Commission on Human Rights, “Report of the Independent Expert to Update the Set of Principles to Combat Impunity” (18 February 2005, E/CN.4/2005/102), Principle 5 § 8.

<sup>58</sup> nasional.tempo, “Jokowi Tunjuk Makarim Wibisono hingga Kiki Syahnakri di Tim Non-Yudisial HAM Berat”, 21-09-2022. [https://nasional.tempo.co/read/1636607/jokowi-tunjuk-makarim-wibisono-hingga-kiki-syahnakri-di-tim-non-yudisial-ham-berat?page\\_num=1](https://nasional.tempo.co/read/1636607/jokowi-tunjuk-makarim-wibisono-hingga-kiki-syahnakri-di-tim-non-yudisial-ham-berat?page_num=1); Kompas.id, “Tim Tak Akan Rekomendasikan Negara Minta Maaf”, (06-10-2022), *Loc.Cit*; AntaraNews, “KSP: Tim Penyelesaian Nonyudisial HAM Berat Bentuk Komitmen Presiden”, 22-10-2022. <https://www.antaraneews.com/berita/3195669/ksp-tim-penyelesaian-nonyudisial-ham-berat-bentuk-komitmen-presiden>; VOA Indonesia, “Penyelesaian Yudisial dan Non-Yudisial Pelanggaran HAM Berat Masa Lalu Saling Melengkapi”, 28-08-2022. <https://www.voaindonesia.com/a/penyelesaian-yudisial-dan-non-yudisial-pelanggaran-ham-berat-masa-lalu-saling-melengkapi-/6719819.html>.



between non-judicial and judicial mechanisms in the Articles of Presidential Decree 17/2022. The Victims or their families were also likely to be skeptical, regardless of whether the Government claimed that the PPHAM Team was complementary in nature. This was due to the absence of guarantees that the legal process was smoothly operated.<sup>59</sup>

### C. Contestation between Actors

#### 1. Actors, Politics, and Law

The study of law and politics was observed from an initial premise, where the law did not exist and worked in a vacuum. This indicated that the law-making and enforcement processes were full of political decisions and interest instrumentation. In this case, the law was not considered fully autonomous and detached from non-legal matters. This emphasized its constant influence by social, political, and economic variables, as well as the existence of conflicts of interest among administrative groups or individuals involved in law-making and enforcement. Therefore, political actors strived to practically legitimize, formalize, or safeguard their interests through the development of regulations or legal frameworks.<sup>60</sup>

In examining legal politics in the *Reformasi* era, Hutagalung and Robet mentioned that at least three major groups were keen to promote their interests through legal regulations. Firstly, the civil society group promoted regulations to reform the State regarding democracy. This was accompanied by their interests related to protecting and guaranteeing human rights, participation, and regulations favoring the community. Secondly, the investor group was interested in promoting a favorable investment climate for businesses. It also supported the regulations facilitating the market economy and the exploitation of natural resources. Thirdly, the ideological or religious-based group encouraged the regulations used to “improve morals”, such as the legislation on pornography. At the local level, the motivation for the enactment of Sharia-based regional regulations and moral improvement was also promoted by this group.<sup>61</sup>

Based on Hutagalung and Robet, the dependant actor mapping reflected macro political and social realities. Marzuki also exposed the responses and roles of four prominent actors, namely the Government, the People’s Representative Council, the Indonesian Army/Police, and

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<sup>59</sup> Interviews with Families of Victims of Enforced Disappearance (*anonymous*), *Loc.Cit.*

<sup>60</sup> Reference: Marzuki (2011), *Op.Cit.*, 12-13; Syahriza Alkohir Anggoro, “Politik Hukum: Mencari Sejumlah Penjelasan”, *Jurnal Cakrawala Hukum*, Vol. 10 No. 1 (2019): 77-86. DOI:10.26905/idjch.v10i1.2871.

<sup>61</sup> Daniel Hutagalung & Robertus Robet, “Perdebatan Identitas Negara di Awal Reformasi”, in Robet & Lubis, *Kultur HAM di Negara Iliberal* (2020), *Op.Cit.*, 66.



the Pressure Groups consisting of CSOs and intellectuals. This highlighted that the Indonesian Army/Police were not very responsive when implementing legal measures for the settlement of human rights cases, due to their perceptions of the humanity practice as a rebel movement.<sup>62</sup>

## 2. Actor Map and Interest Analysis

In analyzing the contestation of interests surrounding Presidential Decree 17/2022, actor mapping was used to obtain a macro picture of reality. These actors included the following: (1) the State (Government); (2) Human Rights CSOs; (3) Victims; (4) National Human Rights Commission; and (5) Religious-Ideology-based groups. The first actor was the State (Government), which promoted non-judicial approaches to the issue of GHRV. This approach was considered less compatible with international human rights standards, as McGregor and Setiawan prioritized the “Indonesian Way”. According to the Shadow Report of Asia Justice and Rights (AJAR) and KontraS on the fourth cycle of the Indonesian Universal Periodic Review (UPR), the Government tended to primarily address GHRV issues through reconciliation or ‘harmonization’, compared to emphasizing truth-seeking and judicial processes. A settlement was also prioritized by providing monetary reparations to individual Victims.<sup>63</sup>

From these descriptions, the initiation of the PPHAM Team exhibited the Government’s prioritization of non-judicial settlement regardless of the fact that the appropriate mechanism did not close the judicial channel.<sup>64</sup> This was indicated by the slow pace of renewal and formation of legal products to resolve past GHRV cases. For example, the proposal to revise Law 26/2000, which exhibited numerous substantial and formal weaknesses, had been extensively promoted. This prioritized the Academic Paper on Amendments to Law 26/2000, which was prepared by the National Law Development Agency in 2012.<sup>65</sup> Meanwhile, the Government stated that the new TRC Bill, after the annulment of Law 27/2004, was being

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<sup>62</sup> Marzuki (2011), *Op.Cit.*, 295-313 § 354-374.

<sup>63</sup> See: *Kompilasi Laporan Bayangan Organisasi Masyarakat Sipil untuk Universal Periodic Review 4<sup>th</sup> Cycle Indonesia* (March 2022), 182-192. <https://kontras.org/2022/08/31/kompilasi-laporan-bayangan-organisasi-masyarakat-sipil-untuk-universal-periodic-review-4th-cycle-indonesia/>.

<sup>64</sup> Interview with Pretty (KontraS), *Loc.Cit.*

<sup>65</sup> See: BPHN, *Laporan Akhir Naskah Akademik Rancangan Undang-Undang Perubahan UU Tentang Pengadilan Hak Asasi Manusia* (Jakarta: BPHN-Kementerian Hukum dan HAM RI, 2012). [https://bphn.go.id/data/documents/na\\_ruu\\_tentang\\_perubahan\\_uu\\_no\\_26\\_tahun\\_2000\\_tentang\\_pengadilan\\_ham.pdf](https://bphn.go.id/data/documents/na_ruu_tentang_perubahan_uu_no_26_tahun_2000_tentang_pengadilan_ham.pdf).



administratively discussed and improved.<sup>66</sup> According to McGregor and Setiawan, the non-judicial initiatives of the Jokowi administration had shifted from the Transitional Justice mechanisms compatible with international human rights standards, instead of revising Law 26/2000 and re-enacting the TRC Law.<sup>67</sup> In this case, the PPHAM Team inevitably represented the interests of the State, which avoided accountability mechanisms.

The second actor was the HR-CSOs represented by LBH Jakarta, Amnesty International Indonesia (AII), Imparsial, KontraS<sup>68</sup>, Setara Institute<sup>69</sup>, and Solidaritas Perempuan<sup>70</sup>. These actors demonstrated criticism and skepticism of the PPHAM Team. In this context, the HR-CSOs believed that the Team risked being used as a means of laundering accountability or “whitewashing” GHRV cases. A move was also observed by the Government to attract human rights activists to work for PPHAM. For example, Usman Hamid, the Executive Director of AII, declined the invitation of Mahfud MD to join the team. This decision was made to preserve AII’s institutional independence and address the significant issue with Presidential Decree 17/2022, which solely focused on victim rehabilitation.<sup>71</sup> AII also institutionally indicated that non-judicial settlements were not capable of resolving the obligation of the State to prosecute perpetrators of GHRV.<sup>72</sup> In addition, other HR-CSO highlighted the composition of the PPHAM Implementation Team, which consisted of experienced retired officers and the former Deputy Chair of the National Intelligence Agency.<sup>73</sup>

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<sup>66</sup> CNN Indonesia, “Jokowi: RUU Komisi Kebenaran dan Rekonsiliasi dalam Proses Pembahasan”, 16-08-2022. <https://www.cnnindonesia.com/nasional/20220816111330-20-835178/jokowi-ruu-komisi-kebenaran-dan-rekonsiliasi-dalam-proses-pembahasan>; Antara News, “RUU Komisi Kebenaran dan Rekonsiliasi”, 18-08-2022. <https://www.antaraneews.com/infografik/3065189/ruu-komisi-kebenaran-dan-rekonsiliasi>.

<sup>67</sup> McGregor & Setiawan (2021), *Op. Cit.*, 855.

<sup>68</sup> HukumOnline, “3 Catatan Imparsial Atas Terbitnya Keppres Pembentukan Tim Penyelesaian Pelanggaran HAM Berat”, 26-09-2022. <https://www.hukumonline.com/berita/a/keppres-pembentukan-tim-penyelesaian-pelanggaran-ham-berat-lt63314bfed24e7?page=1>.

<sup>69</sup> Setara Institute, “Keppres 17/2022 Beredar, Pseudo Akuntabilitas Penyelesaian Pelanggaran HAM Masa Lalu”, 21-09-2022. <https://setara-institute.org/keppres-172022-beredar-pseudo-akuntabilitas-penyelesaian-pelanggaran-ham-masa-lalu/>; Gatra.com, “Setara Institute Menolak Keras Pembentukan Tim PPHAM dari Presiden”, 22-09-2022. <https://www.gatra.com/news-552998-hukum-setara-institute-menolak-keras-pembentukan-tim-ppham-dari-presiden.html>.

<sup>70</sup> Solidaritas Perempuan, “Solidaritas Perempuan Menolak Keppres tentang Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat Masa Lalu di Aksi Kamisan”, 25-08-2022. <https://www.solidaritasperempuan.org/solidaritas-perempuan-menolak-keppres-tentang-pembentukan-tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-masa-lalu-di-aksi-kamisan/>.

<sup>71</sup> Kompas.com, “Saat Usman Hamid Tolak Ajakan Mahfud MD Ikut Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat”, 29-09-2022. <https://nasional.kompas.com/read/2022/09/29/11004681/saat-usman-hamid-tolak-ajakan-mahfud-md-ikut-tim-penyelesaian-non-yudisial>.

<sup>72</sup> CNN Indonesia, “Usman Hamid Tolak Gabung Tim Penyelesaian HAM Berat”, 07-09-2022. <https://www.cnnindonesia.com/nasional/20220907165421-20-844709/usman-hamid-tolak-gabung-tim-penyelesaian-ham-berat>.

<sup>73</sup> KontraS, “Catatan Kritis” (18-10-2022); *Loc. Cit.*, Interview with Pretty (KontraS), *Loc. Cit.*



The third actor was represented by the Victims, which mostly occupied a similar position as the HR-CSOs. Based on the interview with one of the families of the Enforced Disappearance Victims 1997-1998, some of the sufferers, such as Maria Katarina Sumarsih, Talangsari group<sup>74</sup>, and YPKP65 (Victims of 1965-1966)<sup>75</sup>, emphasized their position to reject the non-judicial settlement regarding Presidential Decree 17/2022. The Victims of the *Simpang Kertas Kraft Aceh* Tragedy also explicitly expressed a similar stance<sup>76</sup>, where the interests of sufferers in judicial or a comprehensive truth-seeking process were not reflected in the PPHAM Team mechanism. However, the interview participants stated that some Victims accepted the settlement, specifically the elderly and people with many needs. The vulnerability of their socio-economic situation also enabled their high likelihood of accepting the remedial schemes provided by the PPHAM Team mechanism.<sup>77</sup> The forms of reparation provided through the non-judicial process of the team were also considered an attempt to deceive and divide Victims.

The fourth actor, National Commission on Human Rights, did not occupy the position and stance of HR-CSOs and Victims to reject Presidential Decree 17/2022. As expressed by one of its 2017-2022 Commissioners, Amiruddin Al-Rahab, the PPHAM Team did not replace the judicial process. Al-Rahab stated the initiation of the Team was a form of the State's commitment to resolving the series of GHRV. The PPHAM Team considered did not also annul or overlap with the National Commission on Human Rights pro-Justitia investigation.<sup>78</sup>

The fifth actor, Religious-Ideology-based groups, was represented by the Presidium of Alumni (PA) 212, the National Movement to Guard the Fatwa (GNPF) of the Ulama, and the Muslim Brotherhood Front (FPI). These representatives provided a call for rejection of the PPHAM Team as a legitimization tool for the State to apologize to the PKI. From this context,

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<sup>74</sup> See: [lampung.suara.com](http://lampung.suara.com), "Keluarga Korban Talang Sari Tolak Penyelesaian Pelanggaran HAM Lewat Jalur Nonyudisial", 15-11-2022. <https://lampung.suara.com/read/2022/11/15/164401/keluarga-korban-talang-sari-tolak-penyelesaian-pelanggaran-ham-lewat-jalur-nonyudisial?page=1>; Kompas.id, "Korban Talangsari, 33 Tahun Menanti Tanggung Jawab Negara", 15-11-2022. <https://www.kompas.id/baca/nusantara/2022/11/15/korban-talang-sari-33-tahun-menanti-tanggungjawab-negara>.

<sup>75</sup> On the other hand, Victims who are members of 'Humanists' welcome the Presidential Decree 17/2022 initiative. This stems from the consideration that many Victims are elderly, and want to restore their good name to end the stigma that every time before the General Election becomes a political commodity. See: Tirto.id, "Mungkinkah Kasus HAM 65 Diselesaikan Lewat Proses Yudisial?", 01-10-2022. <https://tirto.id/mungkinkah-kasus-ham-65-bisa-diselesaikan-lewat-proses-yudisial-gwKC>.

<sup>76</sup> Liputan6, "Korban Tragedi Sp KKA Tolak Keppres Penyelesaian Pelanggaran HAM Masa Lalu Non-Yudisial", 18-11-2022. <https://m.liputan6.com/regional/read/5127521/korban-tragedi-sp-kka-tolak-keppres-penyelesaian-pelanggaran-ham-masa-lalu-non-yudisial>.

<sup>77</sup> Interview with Families of Victims of Enforced Disappearances, *Loc.Cit.*

<sup>78</sup> Komnas HAM RI, "Komnas HAM: TPP-HAM Tidak Menganulir Kewenangan Penyelidikan Komnas HAM", 20-10-2022. [komnasham.go.id/n/2255](http://komnasham.go.id/n/2255).



the attitude and position were double-barreled, with the actor considering the risk of the Team becoming a means of reviving the PKI, leading to its rejection. Meanwhile, the revelation of human rights violations involving the extrajudicial killings of 10 FPI members in the Kilometer 50 case (May 21-22, 2019) was demanded.<sup>79</sup>

Until the present, the Jokowi-Ma'ruf government was interested in “resolving” previous GHRV cases. This interest was based on two factors, namely: (i) the ‘electoral’ political commitment promised since the General Election contestation; and (ii) the image before the international community. Regarding a civilian background and an image unassociated with the New Order, Jokowi was likely a more capable figure in ensuring human rights enforcement than the rival, Prabowo Subianto, in the two rounds of the Presidential Election. This rival allegedly had a problematic record on past human rights issues.<sup>80</sup> Since the campaign, the resolution of the GHRV was one of the practical political modalities of President Jokowi in the Presidential Election. This was subsequently outlined in the political program document entitled *Nawa Cita*, which explicitly stated the commitment of the Jokowi Government to emphasize the following: “*Resolve in a just manner the cases of past human rights violations that are still a socio-political burden for the Indonesian people.*” In this case, instead of promoting a judicial process, the Jokowi government promoted non-judicial initiatives and reconciliation since its first term.<sup>81</sup>

The post-New Order regime of the Government of Indonesia also improved its image as a country with a good human rights record. Moreover, the dynamics of human rights and Transitional Justice development were influenced by international pressure in Indonesia. Based on Wiratraman, the post-New Order government also implemented a “politics of image” regarding human rights, as evidenced in both its domestic and foreign policies. This portrayal did not consistently align with significant advancements in human rights.<sup>82</sup> At the UPR forum, the Government of Indonesia firmly stated its commitment to investigating and resolving

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<sup>79</sup> CNN Indonesia, “PA 212 hingga FPI Tolak Negara Minta Maaf ke PKI Lewat Tim PPHAM Berat”, 28-09-2022. <https://www.cnnindonesia.com/nasional/20220927114708-20-853124/pa-212-hingga-fpi-tolak-negara-minta-maaf-ke-pki-lewat-tim-ppham-berat>.

<sup>80</sup> McGregor & Setiawan (2021), *Op.Cit.*, 848-849; Robertus Robet, “Meninjau Kembali Negara Organik: Hak Asasi Manusia dan Demokrasi Pasca-Reformasi di Indonesia”, in *Kultur HAM di Negara Illiberal* (2020), *Op.Cit.*, 137.

<sup>81</sup> KontraS, “Ringkasan Eksekutif Laporan 5 Tahun Pemerintahan Joko Widodo – Jusuf Kalla: Pekerjaan Rumah yang Tidak Selesai”, 21-10-2019. <https://kontras.org/2019/10/21/ringkasan-eksekutif-laporan-5-tahun-pemerintahan-joko-widodo-ae-jusuf-kalla-pekerjaan-rumah-yang-tidak-selesai/>.

<sup>82</sup> Herlambang P. Wiratraman, “Human Rights Constitutionalism in Indonesia’s Foreign Policy”, *Constitutional Review*, Vol. 1, No. 1 (May, 2015): 154-155. DOI: <https://doi.org/10.31078/consrev116>.



human rights issues, including cases of previous violations.<sup>83</sup> However, the Office of the UN High Commissioner for Human Rights and Indonesian HR-CSOs showed the persistence of the impunity climate.<sup>84</sup>

This study posited that the State's establishment of the PPHAM Team was a pragmatic decision driven by two factors. In this case, State elites were motivated to address past GHRV cases to meet the political campaign promises delivered during the Presidential Election. The elites also want to present the Government of Indonesia with excellent human rights performance in international forums. However, judicial mechanisms were deliberately avoided due to the continued presence and continuous power positions of the persons allegedly responsible for the New Order era.

The mechanism of the Non-Judicial Settlement PPHAM Team was also an option because the political elite of the previous regime remained part of the present ruling administration. This was in line with the analysis of Wahyuningroem, where the failure of Transitional Justice in Indonesia was examined as one of the factors caused by the nature of the political transition. Regarding the transition marked by elements of transplacement, the negotiation and compromise process has resulted in an elite configuration consisting of incorporated New Order elements within the body of the current *Reformasi* administration. This political configuration weakened various accountability mechanisms, such as the Human Rights Court, leading to the adoption of non-judicial options by the State. The criticisms and skepticism expressed by HR-CSOs and Victims regarding the selection of a “non-judicial settlement”, such as the PPHAM Team, also emphasized its lack of full compatibility with international standards. This choice tended to favor the perpetrators responsible for the previous violations of human rights rather than holding them accountable, simultaneously neglecting the Victims pursuit of justice and truth.

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<sup>83</sup> HRC-WG on the UPR, “National Report submitted appropriate to the paragraph 5 of the annex to Human Rights Council Resolution 16/21\*: Indonesia”, 1–12 May 2017 (Third Cycle–A/HRC/WG.6/27/IDN/1), para. 123-124; HRC-WG on the UPR, “National Report submitted pursuant to Human Rights Council Resolutions 5/1 and 16/21\*: Indonesia”, 7–18 November 2022 (Forth Cycle–A/HRC/WG.6/41/IDN/1), para. 126-129.

<sup>84</sup> Human Rights Committee, “Concluding Observation on the Initial Report of Indonesia”, 21 August 2013 (CCPR/C/IDN/CO/1), para. 8; HRC-WG on the UPR, “Compilation on Indonesia: Report of the OHCHR”, 1–2 May 2017, (Third Cycle–A/HRC/WG.6/27/IDN/2), para. 37-38; HRC-WG on the UPR, “Indonesia: Compilation of Information Prepared by the OHCHR”, 7–18 November 2022 (Forth Cycle–A/HRC/WG.6/41/IDN/2), para. 18.



### III. CONCLUSION

In conclusion, the initiation of the PPHAM Team primarily benefited the interests of the State and did not fully address the Victims demands for accountability and truth. This argument affirmed the criticism and skeptical response from various HR-CSOs and Victims, who suspected that the PPHAM Team risked perpetuating a state of impunity. These actors also raised concerns about the lack of participation and transparency in forming Presidential Decree Number 17/2022. Furthermore, the substance of the decree contained various issues, including: (1) the vague nature of the “disclosure” task assigned to the PPHAM Team; (2) the forms of reparation prioritizing material aspects and simplifying the concept of remedy; and (3) the absence of provisions guaranteeing that the mechanism of PPHAM Team was unable to close or replace the judicial path of the Human Rights Court.

Based on these results, the initiation of the Team demonstrated that the State prioritized resolving past GHRV cases through non-judicial channels. This was consistent with Wahyuningroem, McGregor, and Setiawan (2019), where a related mechanism benefited the perpetrators. The State elites were also interested in addressing human rights issues. In this case, their motivations prioritized meeting political campaign promises to win the Presidential Election and presenting a positive image of human rights enforcement before the international community. However, the outcomes of the political transition process in Indonesia were marked by the continued influence of actors from the New Order regime, promoting the State to sideline the path of the Human Rights Court and abandoning the Victims demanding justice and truth.





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