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4

5 **Abstract**

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7 *Index terms—*

8 **1 I. INTRODUCTION**

9 Issues and news related to human rights have always been a polemic because human rights are inherent rights
10 of a person that cannot be contested by anyone . Problems that continue to surface regarding injustice that
11 interferes with a person's human rights are increasing day by day.

12 In fact, the laws governing human rights are very detailed. Provisions for constitutional guarantees of human
13 rights are very important and even considered as one of the main characteristics of the rule of law principle in
14 a country. However, in addition to human rights, it must also be understood that everyone has obligations and
15 responsibilities that are also fundamental. Human rights are universal, interdependent and interdependent. The
16 international community must act fairly in matters of human rights, on a basis of equality and concern. Even
17 though the government has ratified many human rights instruments, they have not been properly implemented
18 by law enforcement officials who are authorized by the government. Meanwhile, the political rights and legal
19 status of men and women in the eyes of a country cannot be separated from the perspective of human rights
20 (HAM) of that country. In the eyes of the Indonesian nation as a member of the international community,
21 human rights are essentially the same as human rights in the eyes of the nations of the world, as stated in the
22 Universal Declaration of Human Rights, in particular the Universal Declaration of Human Rights. Statement.
23 Human Rights proclaimed by the United Nations on ??december 10, 1948. Every person throughout life since
24 before birth has essential rights and obligations as a human being. The formation of a state or government, for
25 whatever reason, must not eliminate the principle of rights and obligations that must be borne by every human
26 being. Thus the guarantee of rights and obligations is not determined by a person's citizenship status. Everyone,
27 wherever they are, must be guaranteed their basic rights. At the same time, everyone, everywhere, must respect
28 the human rights of others as appropriate. A balanced perception of the existence of fundamental rights © 2023
29 London Journals Press Polemic on Human Rights Case is Still Rolling in Eastern Indonesia and obligations is
30 an important feature of the basic conception of Indonesian people and humanity that is just and civilized. The
31 Declaration of Human Rights in Indonesia has existed since time immemorial, but it is only committed to the
32 basic directives of the state, namely those contained therein.

33 Even though the law has a broader purpose, namely to maintain legal authority, government power over legal
34 norms that are violated regardless of the perpetrator's economic and social status, protect the interests of the
35 state, society and individuals and prevent the spread of crime. The government's efforts to resolve gross human
36 rights violations through mediation efforts primarily target gross human rights violations that occurred before the
37 enactment of the United States Human Rights Court Act. This has been said in the discussion of the legal basis,
38 particularly with regard to law. During the discussion, it was stated that the government is currently working
39 to establish a Joint Truth and Reconciliation Commission to handle six of the seven cases of gross human rights
40 violations investigated by Komnas HAM, namely:

41 Starting from the mysterious shootings from 1982 to 1985, the 1989 Talangsari Lampung incident, the enforced
42 disappearances from 1997 to 1998, the May 1998 riots, the Trisakti incident, the Semanggi I and II incidents, and
43 other tragedies. 7 of 1998 and 8 August 2014. Four residents were shot dead and 21 others were injured. injured
44 when residents protested against TNI security forces who had beaten a group of youths the day before. These
45 cases will be resolved through non-judicial means, namely mediation. This was done because it was difficult to
46 find evidence, witnesses and suspects, because gross human rights violations had been going on for a long time
47 as a result of the application of human rights and law in Papua was not expected by the people. Papua, where

48 there are obstacles in the implementation process. legislation for civil society. Many pro-democracy activists
49 have been killed before being tried, while the Indonesian security forces responsible went unpunished or went
50 unpunished. As a result, human rights are seen as a threat to national policies and regulations. For Papuans in
51 an international context, access to Papuans is restricted because the government limits Papuans' contact with the
52 outside world, such as forbidding members from visiting senators, congressmen, diplomats, foreign journalists,
53 and outside aid workers nation. The author will examine the causes that led to the internationalization of human
54 rights violations in Papua, because the author realizes that human rights violations experienced by people in
55 Papua are increasing. Compared to previous years, the author will write about human rights violations, both
56 big and small.

57 **2 II. FORMULATION OF THE PROBLEM**

58 Based on the background above , the author asks a question Study:

59 ? Why did the issue of human rights violations occur in Paniai District? ? What is the responsibility of the
60 state to resolve human rights cases?

61 **3 III. RESEARCH PURPOSES**

62 **4 The aim of this research is:**

63 To find out and analyze the factors causing the internationalization of the issue of Papuan human rights violations.

64 **5 Benefits of research**

65 This research is expected to provide benefits, including:

66 ? Contribute to the development of the study of Law in the future.

67 ? Provide information and become material for study for legal researchers, as well as observers of international
68 human rights issues.

69 ? Provide information to academics and practitioners who make policies in relations between countries in
70 terms of overcoming conflicts in an area.

71 **6 IV. RESEARCH METHODOLOGY**

72 The method used in this study uses the Normative Research method, where the research steps include:

73 **7 VI. DATA COLLECTION TECHNIQUE**

74 The data collection method used by the authors in this research is to use a literature study, which collects data
75 from documents related to the issues to be discussed and then analyzed. This material is in the form of books,
76 documents, journals, magazines, newspapers and websites or reports related to the issues the author will discuss.
77 In addition, the authors conducted field work at the location that became the object of this research, namely
78 Paniai Regency.

79 **8 VII. DATA TYPE**

80 In this article the author uses primary data, namely data sources that provide data directly to the author
81 (interviews, report data, photographic documents and other operational data). And secondary data are those
82 that do not provide data directly to the author, such as through documents (books, articles, the internet and
83 other electronic media) ??Hadir 1998, 137). The data analysis technique used by the author in analyzing research
84 data is a qualitative analysis technique.

85 Problem analysis is a description that starts with existing data, then connects these facts with other facts to
86 make appropriate arguments.

87 **9 Sources of Legal Materials**

88 Main legal documents Main legal documents are binding legal documents, including:

89 **10 Secondary Legal Materials**

90 Secondary legal documents are legal documents that explain primary legal documents such as research results
91 and works of legal science such as

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93 Polemic on Human Rights Case is Still Rolling in Eastern Indonesia legal journals in electronic or printed media,
94 publications, scientific books including theses, theses, theses.

95 **12 Tertiary Legal Materials**

96 Tertiary legal documents are legal documents that support first and second level legal documents by providing
97 guidance, understanding and interpretation of other legal documents.

98 **13 Techniques for collecting legal documents**

99 Legitimate document collection techniques are one way to obtain and collect the necessary data. In this study, the
100 technique used by Library Research Library Research examined written information about the legal protection
101 of civilians in internal armed conflicts and human rights from various sources and direct publications such as
102 legal works and scientific journals. Document review Document review includes examining written information
103 about titles sought and those not publicly published. Such as theses, dissertations, theses and international
104 journals. Analysis of legal documents. Data in the form of primary data and secondary data will be studied
105 using qualitative methods in the form of logical and systematic descriptions, then analyzed to get an idea of how
106 to solve the problem, from which conclusions are drawn deductively, knowing from general matters to specific
107 matters.

108 **14 VIII. DISCUSSION**

109 **15 Definition and History of Human Rights**

110 Human Rights (HAM) deals with the basic concepts of people and rights. Generally, when we hear the word
111 human, we automatically think of beings with feelings, thoughts, instincts, emotions, etc. Human Rights are
112 rooted in the human belief that all humans as creatures created by God are equal and equal. Humans are born
113 free, have the same dignity and rights. Therefore, people need to be treated equally and in a civilized manner.
114 According to Briand Orend, someone who is allowed to have human rights must be a living human being. Dead
115 or non-existent persons cannot be classified as human rights holders. 17 Orend further explained that the criteria
116 for someone who is classified as a human rights person is someone who has an emotional reaction. Evaluations
117 such as affection, emotion, sympathy, empathy, are factors that respond to immediate reality. It is this element
118 that makes a person a person. Human rights are not only related to the concept of human beings but also
119 related to the concept of rights. Rights, as Jack Donnelly believes, can be viewed from two perspectives. First,
120 right means honestly emphasizing the normative aspect, namely the right or wrong of something. Second, rights
121 can also mean rights, meaning that someone has the right to something. If the first aspect concerns standards
122 of behavior that emphasize the obligation of right-holders to respect certain predetermined norms, the second
123 aspect focuses on a person's right to enjoy something that is his right. Human rights are basic rights that enable
124 people to shape their lives with respect for freedom, equality and respect for human dignity.

125 The rights which emphasize that people are free to choose their actions are fundamental expressions of human
126 dignity and worth, and are at the heart of the formulation of a number of other rights, such as liberty, freedom of
127 speech, conscience, religion), , assembly and association), , equal rights (equality before the law and protected
128 by law, protection against discrimination on grounds of sex, race, colour, religion, national or other social origin),
129 political rights (right to vote, equal access to public service or public rights, freedom to form political parties,
130 right to petition, etc.), economic rights (rights) to private property, freedom of movement, etc.), collective rights
131 (right to self-determination, protection of minorities and groups), rights to development, etc., the right to due
132 process (especially with regard to the application of criminal law) All of these provide all human beings with the
133 legal right to live in accordance with the principles of freedom, equality and human dignity.

134 Article 1 of Law Number 39 of 1999 concerning Human Rights states that: "Human rights (HAM) are a set
135 of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts
136 that must be respected, upheld and protected by the state, law, government, and everyone for the honor and
137 protection of human dignity. Based on the law, it is emphasized that there is an obligation for every individual
138 to respect the human rights of others.

139 **16 IX. HUMAN RIGHTS INSTRUMENTS**

140 At the United Nations, commitment to the realization and protection of human rights and respect for basic
141 human freedoms is emphasized globally on several occasions, including in Article 1 paragraph 1.3:

142 "Increasing international cooperation in solving international problems in the economic, social, cultural and
143 humanitarian fields, as well as promoting and promoting respect for human rights and fundamental freedoms."
144 available to everyone regardless of race, gender, language or religion. Human rights and freedoms are also stated
145 in the 1948 Universal Declaration of Human Rights through article 2: "Everyone is entitled to all the rights and
146 freedoms set forth in this Declaration, without discrimination of any kind, such as race, skin colour, sex, language,
147 religion, opinion, political or other opinion, national or social origin, wealth, birth or other circumstances.

148 This commitment was then followed up by the United Nations through the establishment of legal instruments
149 that regulate human rights as follows:

150 ? deportation, refoulement or extradition of a person to another country if there is sufficient reason to suspect
151 that the person will be in danger (as a result of torture). ensuring that anyone who claims to have been tortured
152 in any jurisdiction has the right to complain, ensuring that their case is heard quickly and fairly by the competent

153 authorities. ? ensure that complainants and their witnesses are protected from harassment or intimidation as
154 a result of their complaint or testimony. ensure that victims receive compensation and (the right to receive)
155 compensation that is fair and proper. The implementation of this Convention is supervised by the Committee
156 against Torture (CAT) which was formed based on the rules contained therein. So, for Papuans, protest is an
157 attempt to put the problem in the right place. After that, every protest movement was always suppressed with
158 weapons, "however" this suppression spread everywhere to civil or social life in Papua. Thus, the struggle for
159 human rights in Papua began to be seriously discussed. Even emphasized by international organizations that
160 view every event that occurs in written or oral form. Communities in Papua have also begun to form movement
161 organizations that can advocate for the grievances of the Papuan people.

162 **17 X. STATE RESPONSIBILITY FOR VICTIMS OF HU- 163 MAN RIGHTS VIOLATIONS**

164 **18 XI. HUMAN RIGHTS VIOLATIONS THAT OCCURRED 165 IN PANIAI DISTRICT**

166 The Origin of the Case of Human Rights Violations in Paniai, Papua Cases of human rights violations in Papua
167 are not new cases, this case began on 7/12/2014. members of the Indonesian National Armed Forces (TNI) for
168 driving a car and not turning on the headlights. However, this warning eventually led to an argument that led to
169 the arrest of three teenagers by the military. Then, on 8 December 2014, in Enarotali district, Paniai province, a
170 group of Ipakiye people came to the Enarotali Police and the Koramil to protest and ask for an explanation for
171 the incident that took place on 7 December 2014.

172 In this action, the community held a demonstration by performing regional dances at the Polres and Koramil
173 beaches. This dance is performed to express attitudes towards past abuse and harassment of mandarins. The
174 plane also dispersed the community action with shots. This shooting occurred after a peaceful community protest.
175 The shooting of an indigenous Papuan by the police and TNI left four people dead from stab wounds and hot
176 bullets. Twenty-one people were also injured as a result of the persecution. One of the youngest victims was an
177 8 year old boy who was shot in the arm.

178 Following the incident in Paniai on 7 January 2015, Komnas HAM formed a Fact Finding Team (TPF). TPF's
179 mission is to provide recommendations to the government. Then, in the same year, 18-20 February, Director
180 Nasution, head of the TPF, met with witnesses and victims. The results of the meeting were then reported to
181 the media that there were signs of violations of the four elements of human rights. These factors are the right to
182 be free from violence, women's rights, the right to life, and the rights of children. Komnas HAM also conducted
183 investigations and gathered evidence for approximately 5 years, from 2015 to 2020. Based on the results of an
184 investigation conducted by a special team to investigate gross human rights violations, a universal decision was
185 made. Everyone unanimously decided that a human rights violation was a flagrant human rights violation. M
186 Choirul Anam as the head of the special team said that the Paniai incident met the elements of a crime against
187 humanity in the form of murder and persecution.

188 Komnas HAM also stated that the perpetrators allegedly responsible for this case of gross human rights
189 violations were the XVII/Cenderawasih Regional Military Command and the Enarotali Regional Military
190 Command, Paniai. In addition, there was evidence of violations committed by the police, but these violations were
191 not considered as gross human rights violations. This decision was taken based on the results of the examination of
192 26 witnesses, examination of the crime scene (TKP), examination of several documents, discussions with experts
193 and various other sources of information. witnesses, conducted interviews at the TKP, examined supporting
194 documents for the settlement of this case, and held discussions with a number of experts. Key witnesses during
195 interrogation included the Coordinating Minister for Politics, Law and Security, several POLRI officers and
196 Papuan and Paniai security forces. However, the TNI, as the source of information on the incident, ignored calls
197 from Komnas HAM to provide information.

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200 Not only that, Komnas HAM has also collected evidence for forensic weapons testing, both in terms of weapons
201 handling procedures and forensic testing procedures. Because it has been determined that this is a case of gross
202 human rights violations, the authority to resolve this case lies with the Attorney General's Office. This is in
203 accordance with the results obtained by Komnas HAM at the investigation stage. Currently, Komnas HAM has
204 formed a team to collect preliminary evidence to be used as Komnas HAM documents which will be submitted
205 to the Attorney General's Investigative Team to conduct an investigation.

206 After several times Komnas HAM submitted the results of the investigation, on December 3, 2021, the Attorney
207 General's Office issued an investigative mandate. Based on the letter, an investigation team has been formed to
208 investigate cases of alleged gross human rights violations in Paniai, Papua. The team of 22 senior prosecutors
209 is tasked with finding and gathering more evidence from the Paniai case. This was done because the evidence
210 previously collected by Komnas HAM was not sufficient to support the allegations of gross human rights violations

211 raised so that the perpetrators could be found immediately. Given the unresolved cases of gross human rights
212 violations in Indonesia, the principle stated in Article 1(3) that Indonesia as a rule of law cannot be predicted as
213 a country. The protection of human rights has been consistently enshrined in law, and the regulations still seem
214 too far-fetched to say they are working well. The justice promised by the state is only rules on paper that do not
215 run optimally in practice.

216 Factors inhibiting the resolution of serious human rights cases in Paniai Based on the explanation above,
217 several factors hindering the resolution of serious human rights cases in Paniai, include: The miscommunication
218 between Komnas HAM and the Attorney General's Office is troubling. , because it led to inconsistency in the
219 handling of cases of gross human rights violations that occurred in Paniai. Therefore, there must be a relationship
220 between the two agencies as stated in in Internal Armed Conflict Provisions that apply to the protection of the
221 civilian population (Papua) in armed conflict is the promulgation of the 1945 Constitution, Law no. 39 of 1999
222 concerning Human Rights and the provisions of international human rights treaties that apply in terms of the
223 protection of civilians or civilians whose human rights are not protected and respected by the parties to the
224 dispute in the homeland of Papua, especially rights that cannot be reduced. The Office for the Protection of
225 Civilians (Papua) in the conflict that occurred in Papua uses national legal instruments, human rights and law
226 as a legal framework for conflict-affected communities. The armed conflict in Papua is included in the category
227 of civil unrest and tension.

228 ? The Paniai human rights violation case was identified by Komnas HAM as one of the most serious human
229 rights violations in about five years. Komnas HAM led the investigation and after submitting lots of evidence to
230 the Attorney General's Office, on December 3, 2021, the Attorney General's Office finally issued an investigation
231 warrant. Until now, the process of handling flagrant human rights violations in Paniai, Papua is still ongoing.
232 Several factors contributed to the resolution of human rights violations in Paniai Province, Papua, including
233 the lack of communication between Komnas HAM and the Attorney General's Office, an institution that failed
234 to carry out its mandate and function optimally. Not only that, Komnas HAM still lacks preliminary evidence
235 to submit cases to the Attorney General's Office, has a definite interest in protecting the good name of the
236 organization, and the government's promises have yet to be fulfilled. ? In the decision of the Ad Hoc Human
237 Rights Court, the Makassar District Court acquitted the sole accused of gross human rights violations in Paniai,
238 Major Inf Purn. Isak Sattu, is considered to have failed to provide justice for the victims, survivors, and their
239 families. Civil society organizations that are members of the 2014 Paniai Monitoring Coalition consider that
240 the acquittal shows the poor performance of law enforcement in resolving gross human rights violations and
241 acquittals in cases of human rights violations in Paniai Regency add to the black list of human rights cases which
242 are always ambiguous in the resolution process.

243 **20 Suggestion**

244 As the holder of the highest state office, the president is obliged to provide for the welfare of all his people
245 according to the mandate enshrined in the 1945 Constitution so that people's trust in the government will recover.
246 In addition, the importance of clarity over the settlement of gross human rights violations in Paniai, Papua by
247 law enforcement officials is the goal of creating a peaceful and peaceful country for all. right. human rights as
248 human rights held by other existing people. in Java, Sumatra, Kalimantan, or Sulawesi as compatriots of the
249 Republic of Indonesia. Thus, indigenous Papuans also have the right to life, independence, and personal security,
which must be protected, respected, and fully implemented by the state by applicable laws and regulations.



Figure 1:

Rights (ICCPR) The International Covenant on Civil and Political Rights was ratified by the UN on December 16, 1966 and entered into force on March 23, 1976. and its articles consist of 6 chapters and 53 articles and the Convention is mandatory the countries that ratified this agreement (agreement).
? Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) entered into force in January 1987.

Figure 3:

251 [Koentjaraningrat. Community Research Methods. Jakarta: Gramedia ()] , *Koentjaraningrat. Community Re-*
252 *search Methods. Jakarta: Gramedia 2005.*

253 [Law ()] *12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights and (UU*
254 *No. 24 of 2000 concerning International Agreements, State Gazette of the Republic of Indonesia of, No Law*
255 *. 2000. 185. (Supplement to the State Gazette of the Republic of Indonesia Number 4012)*

256 [Rahayu ()] 'Government Regulation of the Republic of Indonesia Number 2 of 2002 Concerning Procedures
257 for the Protection of Victims and Witnesses in Serious Violations of Human Rights Law of the Republic of
258 Indonesia Number 23'. Rahayu . <https://www.cnnindonesia.com/nasional/2022120906591> People
259 Transport, etd. eprints.ums.ac.id 2009.

260 [HAM in Indonesia is viewed from various aspects of life Journal of Law and Development ()] 'HAM in Indone-
261 sia is viewed from various aspects of life'. *Journal of Law and Development* 2007. Lubis, Mulya. 3.

262 [Garner ()] 'Handbook of Humanitarian Law in Armed Conflict Effendi, Mansyur, 1994, International Humani-
263 tarian Law and Doctrine Principles of HANKAMRATA'. Bryan A Garner . *Black Law Dictionary*, (St. Paul;
264 Surabaya) 2009. 1995. National Company. (: West)

265 [Kunto and Prajarto ()] 'Human Rights (HAM) in Indonesia Towards a Democratic Government'. Kurniawan
266 Kunto , Nunung Prajarto . *Journal of Social Sciences Political Science* 2005. 8 p. . (Sustainability, Goddess)

267 [Gultom ()] *Human Rights Violations in Indonesia's Emergency Law*, Binsar Gultom . 2010. Jakarta: PT
268 Gramedia Pustaka Utama.

269 [International Committee of the Red Cross, Treaties and Customary Law] <http://www.icrc.org/eng/war-and-law/treaties-customary-law/overviewtreaties-and-customary-law.htm>
270 *International Committee of the Red Cross, Treaties and Customary Law*,

271 [Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006
272 *Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (State Gazette of the Republic*
273 *of Indonesia of 2006 Number 63). Internet 15. Arlina Permanasari, What is "Non-International Armed*
274 *Conflict, (| Arlina web blog (wordpress.com)*

275 [Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (State Gazette of the Republic of Indonesia of 2001
276 *Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (State Gazette of the*
277 *Republic of Indonesia of. State Gazette 2001. 2008. 2008. 57 (4843) . (135 and Supplement to State Gazette*
278 *No. 4151) as amended by Perpu No. 1 of. UU no. 21 of 2001 consisting of 79 articles regulates the authority*
279 *of the Province of Papua in implementing Special Autonomy)*

280 [Law Number 26 of 2000 concerning the Human Rights Court (State Gazette of the Republic of Indonesia of 2000)
281 *Law Number 26 of 2000 concerning the Human Rights Court (State Gazette of the Republic of Indonesia of,*
282 *2000. 208. (Supplement to the State Gazette of the Republic of Indonesia Number)*

283 [Laws ()] 'Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (State Gazette of the
284 *Republic of Indonesia of. Regulations Laws . UUD 1945. 1999. 165. (Supplement to the State Gazette of the*
285 *Republic of Indonesia Number 3886)*

286 [London Journals Press Polemic on Human Rights Case is Still Rolling in Eastern Indonesia Instruments, Indonesian Obor Found-
287 *London Journals Press Polemic on Human Rights Case is Still Rolling in Eastern Indonesia Instruments,*
288 *Indonesian Obor Foundation, 2023. Jakarta. LBH, Ake Arif Working Group*

289 [Papua: 5 Human Rights Problems that Must Be Solved Amnesty Indonesia] 'Papua: 5 Human Rights Prob-
290 *lems that Must Be Solved'. Amnesty Indonesia*

291 [Araf ()] 'The Dilemma of the Reorganization of the State Defense and Security System'. Al Araf . *Dynamics of*
292 *Security Sector Reform* 2005. Jakarta. (Not taking sides)

293 [Upholding human rights, demanding discrimination 69. M Cranston, What are Human Rights? ()] 'Upholding
294 *human rights, demanding discrimination'. 69. M Cranston, What are Human Rights?, What Are Human*
295 *Rights (New York; New York) 2009. 1973. 1973. Basics Books. 39.*

296 [Faqih and Hariyadi ()] *War as a Violation of Human Rights*, Faqih , Hariyadi . 2003. Malang. Publishing
297 *Institute of the Faculty of Law, Islamic University of Malang*