International Journal of Multidisciplinary Education and Research
ISSN: 2455-4588; Impact Factor: RJIF 5.12
Received: 21-11-2018; Accepted: 27-12-2018
www.educationjournal.in
Volume 4; Issue 1; January 2019; Page No. 18-21

Indonesian policy on international community demands in the settlement of the case of the violation of human rights in Timor-Leste 1999

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Abstract
The main objective of this paper is to discuss how the Indonesian policies deal with the various pressures of institutions and the international community on resolving human rights violations in Timor Leste in 1999.
This study uses qualitative methods, with the main data sources collected through in depth interviews, and also using various secondary data sources both written data such as journals, books, newspapers, magazines, or in the form of relevant audio and documentary films. Based on the neo-classical theory of realism, the results of the research show that Indonesia issued a number of domestic policies and bilateral policies with Timor Leste in response to various demands from the domestic and international community.

Keywords: demands, internationally, resolution, policies, bilateral

1. Introduction
Indonesia has never denied a certain findings, facts, conclusions and recommendations obtained from the results of the investigation of independent institutions both by institutions formed by Indonesia and Timor Leste, or by those who are members of international institutions under the United Nations and NGOs on the issue pertaining violations of human rights in Timor Leste in 1999.
Almost all the institutions that conducted investigations in Timor Leste discovered and concluded that there had been gross violations of human rights and crimes against humanity in Timor Leste in 1999 (KPP, 2000) [12], (Dunn, 2001) [2], (Robinson, 2003) [14], (CAVR, 2010) [1]. The institutions that carry out the investigation demand a comprehensive and fair solution to these victims of human rights violations. Some of the solution suggested includes bringing the perpetrators of violations to an independent court (KPP, 2000) [12], meanwhile, a few NGOs even request and recommend bringing perpetrators to the international criminal courts. This paper intends to discuss the Indonesian government policy in resolving human rights violations in Timor Leste in 1999 together with the demands and wants of the international community. These policies comprised from the preparation of various laws and regulations concerning Human Rights and Human Rights Courts, Establishment of the Commission on Human Rights Violations Investigations, (so as to have a legal basis for prosecuting and bringing perpetrators to the Ad Hoc Human Rights Court), to the issuance of bilateral policies by establishing the Truth and Friendship Commission.

2. Conceptual Framework
To explain the impact of the demands from the international community towards the Indonesian government's behavior and policies in the resolution of human rights violations in Timor Leste in 1999, the thesis uses the theory of Neoclassical Realism. Neoclassical Realism is an attempt to combine domestic structures and domestic variables in explaining a country's behavior (Rose, 1998). For Structural Realism (Neorealism), structure is an important factor in shaping a country's behavior. Meanwhile, Neoclassical Realism adds a new assumption that structural influences on a country's behavior occur through domestic politics, particularly influenced by the leaders or the perceptions of the elites in the country (Tang, 2009) [17].
On the other hand, Steven E. Lobell (Lobell, 2009) [9] states that the National government or a country still has the most important role in international politics, but Neoclassical Realism does not ignore the other influences such as domestic politics, NGOs, groups of interests, public opinion, and the mass media. Essentially, this means that Neoclassical Realism focuses more attention to the domestic politics and other actors in each of their actions towards other countries involved in the international politics. They assume that domestic politics is the key to understanding a country's behavior. It is noted that the country itself is not passive, but is active in measuring the country's relative capabilities to other countries. As the main actor, the country is considered a rational actor because it is able to calculate how to achieve its interests in order to get maximum results (Viotti, Paul R., Mark V, 1998) [18]. Due to this, a country always follows the principle of pursuing, preserving and maintaining its national interests, which are defined as power in accordance with its capabilities and limitations in an anarchist world. Here, anarchists are referred to countries that are sovereign and considered to have the highest authority in their hands; hence, do not recognize higher power above them (Hara, 2011) [4].
The ongoing pressure from the international world such as the United Nations, NGOs in Timor Leste and the association of the victims involved in human rights violations, has made Indonesia to not be dealing solely with the country of Timor Leste, but also with the international community in resolving this matter. Consequently, it is logical to note that Indonesia does not have enough power and influence to deal with the

collective power of the international community. In the face of this pressure, Indonesia seemed helpless and was in a condition that forced it to follow these demands. However, Indonesia certainly did not want to be humiliated by allowing its generals and notable figures suspected of being behind human rights violations to be brought to justice at the International Court. That is why Indonesia began to estimate the relative material power capabilities it has over Timor Leste.

When referring to the concept of national power Hans J. Morgenthau (Morgenthau, 1951) [10], it is then understood that the national advantage of Indonesia in terms of the geographical aspects/surface area, the natural resources, the industrial capabilities, the military preparedness, the population (man power), the national character, the national morals / soul of nationalism, the quality of diplomacy, and the quality of government, Indonesia is seen to be more superior compared to Timor Leste. In relation to power, it is suggested that the stronger and the more manageable the national power by the country itself, the more effective it can achieve national interests over other countries.

Since Timor Leste officially became independent in 2002, it is no longer a sub-system of Indonesia. Timor Leste has grown as a sovereign country and has its own national aspirations and goals. As a sovereign country, Timor Leste has certainly began to think about how to develop its own country and achieve its national interests in order to survive as a country and specifically when dealing with Indonesia. Timor Leste needs to maintain its existence both as a newly independent country and to be within the ASEAN community, in the hope of becoming a member of the 11 Southeast Asian countries' organizations. It is irrefutable that Indonesia's support as one of the founding countries of the organization is a strategic attempt.

That is why in the case of resolving these human rights violations; Indonesia put forward bilateral negotiations between the two countries. Indonesia is well aware that post-independence Timor Leste has a dependency on Indonesia in multiple aspects. At the very least Timor-Leste needs Indonesian support for domestic recovery and development, to join ASEAN, whereas Indonesia has an interest in avoiding bringing human rights violations to the international court.

Here, it can be seen that Indonesian behavior is strongly influenced by the understanding of the basis of realism that the country's national security is not determined on international organizations or international law. That is why a country must reject any attempt to regulate international behavior through the mechanism of global governance (Jemadu, 2008) [7].

In addition, Indonesia actually has no interest in resolving these cases of human rights violations. Nevertheless, due to the pressure from international structures and domestic interest groups such as local NGOs and the victims of violations, Indonesia is inclined to resolve the case with by creating bilateral negotiations between Indonesia and Timor Leste. This means that the attitude of the country does not halt the role of other countries. This is when neoclassical realism explains the behavior of a country.

3. The establishment of the Commission on Human Rights and Investigation

The United Nations Security Council has issued a resolution establishing the ad hoc international criminal tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY) in the 1990s. Likewise, the same justice is demanded to fight against cases of human rights violations that occurred before and after the referendum in Timor Leste in 1999 (Hiroyuki, 2004) [6]. These demands have raised concerns from both the national and international communities on the situation happening in Timor Leste. According to the Indonesian National Commission on Human Rights, the situation of the people at that time had reached an anarchy condition, in which individuals and groups with direct testimony and omission had carried out acts of terrorism widely through elements of the security apparatus. (KPP, 2000) [12] As a manifestation of concern, the United Nations Human Rights Commission even held a Special Session on the situation in Timor Leste which lasted for almost a week, starting on the 23rd and ending on September 27, 1999 in Geneva. In fact, the Special Session produced resolution number 1999 / S-4/1 that have a few points (KPP, 2000) [12]. Firstly, the Special Session demanded that the Indonesian government cooperate with the National Human Rights Commission in ensuring that people are responsible for any acts of violence and violations systematic on human rights. Secondly, the Special Sessions requested the Secretary General of the United Nations to send an international investigative commission to Timor Leste.

Recognizing the seriousness of the international community's concern about the situation of human rights violations in East Timor, the day before the Special Session in Geneva as mentioned above, on September 22, 1999, Indonesia through the National Human Rights Commission has formed the Commission for Investigating Human Rights Violations in East Timor (KPP-HAM). This commission was formed by considering two important things, (KPP, 2000) [12], namely first, considering Law No. 39 of 1999 concerning Human Rights and Government Regulation in Lieu of Law (PERPPU) No. 1 of 1999 concerning the Court of Human Rights. Consequently, this deteriorates the human rights situation in Timor Leste after the referendum.

The formation of the investigative commission was intended to prove to the international community that Indonesia was capable and serious in its efforts to resolve the human rights violations in Timor Leste, and ensure that perpetrators were judged with Indonesian national legal mechanisms. This seriousness can be seen in the mandate given to KPP-HAM, namely through collecting facts, data and information about human rights violations in Timor Leste that occurred from January 1999 until the issuance of the MPR Decree in October 1999, which validate the results of the opinions. The investigation is specific to the possibility of genocide, mass murder, mistreatment, and forced displacement, crimes against women and children and scorched earth politics. KPP HAM is also tasked with investigating the country's official involvement or in other agencies.

The working period of KPP HAM is from September 23, 1999 to the end of December 1999, which was later extended to January 31, 2000 with the Decree of the Chairperson of the National Commission on Human Rights. 857 / TUA / XII / 99 dated 29 December 1999. The authority of KPP-HAM is based on Law No. 39 of 1999 concerning Human Rights Article 89 (3) and Perpu No. 1 of 1999 concerning Human Rights Courts Article 10 and 11, which are: conducting investigations and examining allegations of human rights violations in East Timor, requesting information from victims, calling and examining witnesses, gathering evidence and examining various places including buildings that need to be investigated with the approval of the Chief Justice. In

addition, KPP-HAM has the authority to examine and request agency documents needed for investigations with the approval of the Chief Justice of the Court, provide protection for witnesses and victims and process and analyze facts found for the benefit of prosecution and publication (Elsam, 2007) [3].

Reports on the results of investigations by KPP HAM were submitted to Komnas HAM and then the National Human Rights Commission submits to the Attorney General's Office for investigation and prosecution to the Human Rights Court. KPP HAM consists of 9 members, 5 members of the National Human Rights Commission and 4 human rights activists. KPP-HAM assisted by an assistance team consisted of: 13 assistant investigators, 14 secretariat members and 3 resource persons.

As a follow-up to the formation of an investigation commission on human rights violations, the DPR and the Government established a court to judge the violations of human rights by referring to national law and international law, especially human rights law and humanitarian law. (Rizki, 2006) [13], (Hastuti, 2012) [5]. On November 23, 2000, the DPR passed the enactment of Law Number 26 of 2000 concerning the Human Rights Court, which replaced Perppu Number 1 of 1999.

As a process to go to court, KPP HAM conducted an investigation, which were followed up completely by Attorney General's Investigation Teamon September 1, 2000.The results of the KPP HAM investigation and the investigation of the Attorney General's Office were used to prosecute the human rights court. Initially, many parties from the beginning doubted the success of the court for Timor Leste. For instance, the UN Secretary General Kofi Anan stated in his visit to Timor Leste: we promised to ensure that parties proven to have committed human rights violations during and after the August 1999 polls were taken to court. If you want to avoid an international tribunal, the Indonesian government must prove that the human rights court that it carries out is truly transparent and meets international standards (Hastuti, 2012) [5].

Based on facts, documents, statements and testimony from various parties, KPP HAM does not only find action that can be classified as a gross violation of human rights, which is the responsibility of the state, but it is certain that the whole violation of human rights can be classified into universal jurisdiction, including murder, destruction, slavery, expulsion and forced displacement and other inhuman acts against civilians, that are severe violation of the right to life (01: the right to life (02: the right to personal integrity), the right to freedom (03: the right to liberty) the right to movement and to residence, and property rights : the right to property). (Elsam, 2007) [3].

4. Establishment of Human Rights Regulation and Ad Hoc Tribunal

With the enactment of law number 26 of 2000 concerning the Human Rights Court, legal action against perpetrators of gross violations of human rights has had a shield to be processed and judged according to national law in Indonesia. The violation of Human Rights is an extra-ordinary crime that is different from general criminal acts. Due to the differences, it is not possible to equate treatment in resolving the problem. Therefore, the Criminal Code (KUHP) cannot effectively extricate gross violators of Human Rights. As a result, it requires a special court with special criminal proceedings as well (Muladi, 2000) [11]. Understanding the need for justice specifically with special rules is the basis for the existence of a special court known as the Human Rights court.

This special court is known as the Ad Hoc Court, which came through the implementation of Law Number 26 of 2000 concerning the Human Rights Court. The establishment of a Human Rights Court in Indonesia is important in the development and protection of human rights in Indonesia. Firstly, the establishment of the Human Rights Court and the Ad Hoc Human Rights Court will open up opportunities to resolve past human rights violations and those that occurred after the issuance of Law Number 26 of 2000. Secondly, the formation of the Human Rights Court and the Ad Hoc Human Rights Court became one milestone of reformation in Indonesia.

Irrefutable, the existence of Law Number 26 of 2000 concerning the Human Rights Court is one of the way Indonesian government's responses to various national and international community demands for events that took place in Timor Leste (Hastuti, 2012) [5]. The riots before and after theopinion poll in East Timor caused the UN Security Council to issue Resolution number 1264 on 15 September 1999. This resolution urged the Indonesian government to immediately prosecute those responsible for the violence in East Timor. This resolution urges Indonesian government to judge the gross violators of human rights in East Timor through ad hoc trials. Based on Article 25 of the United Nations Charter, Indonesia is legally bound to the Security Council resolution. If Indonesia does not carry out its obligations, the UN Security Council can impose suspension of rights and privileges as a member of the United Nations (Article 5), exclude Indonesia from UN membership (Article 6) and establish an international ad hoc court (Article 29) (Suryokusumo, 2003) [16].

On this basis, the Indonesian government feels the need to have legal instruments quickly for the establishment of a human rights court. For this purpose, the government initially issued a Government Regulation Amending the Law (PERPPU) Number 1 of 1999 concerning the Human Rights Court. This Perppu is a juridical basis for the investigation of cases of gross violations of human rights in Timor Leste, done by the National Human Rights Commission. However, the Perppu was deemed inadequate by the House of Representatives to be made into law, hence the Perppu number 1 of 1999 was later revoked, and then replaced with law number 26 of 2000 concerning the Human Rights Court. In the description, the draft Law on the Human Rights Court contains as follows. First, it is the embodiment of Indonesia's responsibility as one of UN members. It is thus one of the missions that develop moral and legal responsibilities in upholding and implementing human rights declarations set by the United Nations, as well as those in other legal instruments governing human rights in which the laws have been and will be received by country of Indonesia.

Secondly, it discuss on the implementation MPR Decree No. XVII / MPR / 1998 concerning Human Rights and as a follow-up to Article 104 paragraph 1 of Law Number 39 of 1999. Thirdly, it is to overcome uncertain conditions in the field of security and public order, including the national economy. The existence of this Human Rights court is also expected to restore the confidence of the public and the international community towards law enforcement and guaranteeing legal certainty regarding the enforcement of human rights in Indonesia. Of the three reasons above, the

legal basis the requirement for a human rights court to prosecute gross human rights violations is the third reason the formation of this human rights court. This leads to the implementation of the MPR TAP No. XVII / MPR / 1998 concerning Human Rights and as a follow up to Article 104 paragraph 1 of Law Number 39 of 1999. Article 104 paragraph 1 of Law Number 39 of 1999 concerning Human Rights and Komnas HAM endorses testifying major human rights violations in the general court environment. Paragraph 2 states that the court referred to in paragraph 1, in which the law is implemented it for a maximum period of 4 years (Muladi, 2000) [11].

The climax was during the approval of Law Number 26 of 2000 on the Human Rights Court by the House of Representatives of the Republic of Indonesia and was then propagated on November 23, 2000. This law expressly states as a law on the existence of a Human Rights court in Indonesia, which will be authorized to testify against major human rights violators. This law also regulates the existence of an ad hoc human rights court, which will be authorized to testify human rights violations that have occurred in the past. This Human Rights Court is a type of court specifically for prosecuting crimes of genocide and crimes against humanity. This court is said to be special because the court has specifically used the terms related to human rights court and its authority in testifying certain cases. The term human rights court is often contradicted with the term criminal justice because indeed the nature of crimes, which are the authority of the court of human rights, is also a criminal act. Law Number 26 Year 2000, which forms the basis of the establishment of this human rights court, regulates some specificities or arrangements that are different from those in criminal procedural law. This different or special arrangement starts from the investigation stage where the authorities are the National Human Rights Commission until the regulation of the panel of judges where the composition is different from the ordinary criminal court. In this human rights court the composition of judges is five people, which requires three of them to be ad hoc judges.

5. Conclusion

Based on a number of policies issued by Indonesia in responding to the pressure and demands of the international community in resolving gross human rights violations in East Timor in 1999, the following conclusions can be drawn: first, Indonesia has always responded positively to various demands of the domestic and international community, even though the responses were not always satisfying to all parties. In fact, Indonesia did not deny that there had been serious human rights violations by Indonesian officials in 1999 in Timor Leste.

Secondly, as a sovereign country, Indonesia seems to avoid discourse and demands to bring perpetrators of serious crimes against humanity to the international criminal court tribunal. Undoubtedly, the issuance of a number of umbrella laws and regulations in the country regarding Human Rights is leading to the desire to testify perpetrators through national legal mechanisms, not through international courts.

Thirdly, in order to stop the international community from bringing the resolution of gross human rights violations in Timor Leste in 1999 to the mechanism of international criminal courts, the Indonesian and Timor Leste governments have expressed a shared desire to solve major crimes against humanity through bilateral mechanisms. Subsequently, this has put forward peace without punishing any party through the institutions constituted of both countries known as Truth and Friendship Commission (KKP).

6. References

1. CAVR. Chega! Laporan Komisi Penerimaan, Kebenaran, dan Rekonsiliasi Timor Leste. Jakarta: Gramedia, 2010, 1-5.
2. Dunn J. Crimes Againt Humanity in East Timor, January to October 1999: Their Nature and Causes. Dili, 2001.
3. Elsam. Seri Bahan Bacaan Kursus HAM untuk Pengacara XI Tahun, 2007.
4. Hara ABE. Pengantar Analisis Politik Luar Negeri: dari Realisme sampai Konstruktivisme. Bandung: Penerbit Nuansa, 2011.
5. Hastuti L. Pengadilan Hak Asasi Manusia sebagai upaya pertama dan terakhir dalam penyelesaian pelanggaran berat hak asasi manusia di tingkat nasional . Jurnal Dinamika Hukum. 2012; 12(3):395-406.
6. Hiroyuki T. Keadilan Transisional Yang Terabaikan? Tinjauan Ulang Masalah Indonesia/Timor Leste, (August), 2004, 1-21.
7. Jemadu A. Politik Global dalam Teori dan Praktek. Yogyakarta: Graha Ilmu, 2008.
8. KPP. Ringkasan Eksekutif: Laporan Penyelidikan Pelanggaran HAM di Timor Timur. Jakarta, 2000.
9. Lobell SE. (Ed.). Neoclassical Realism, The State, and Foreign Policy. Cambridge University Press, 2009.
10. Morgenthau HJ. Politic Among Nations. New York, 1951.
11. Muladi. Pengadilan Pidana bagi Pelanggar HAM Berat di Era Demokrasi. Jurnal Demokrasi Dan Hak Asasi Manusia, Jakarta, 2000, 54.
12. NGO A. Surat Terbuka Kepada Presiden RI dan Timor Leste Tentang KKP, 2008. http://doi.org/10.1017/CBO9781107415324.004
13. Rizki RM. Beberapa Catatan tentang Pengadilan Pidana Internasional Ad Hoc untuk Yugoslavia dan Rwanda serta Penerapan Prinsip Tanggung Jawab Nega- ra dalam Pelanggaran Berat HAM. Jurnal Hukum Humaniter. (Pusat Studi Hukum Humaniter dan HAM (terAS), FH Universitas Trisakti, Jakarta). 2006; 1:277-278.
14. Robinson G. East Timor Crimes against Humanity: A Report Commissioned by the United Nations Office of the High Commisioner for Human Rights (OHCHR). Los Angeles, 1999-2003.
15. Rose G. Neoclassical Realism and Theories of Foreign Policy. World Politics, 51(1).
16. Suryokusumo S. Aspek Moral dan Etika dalam Penegakan Hukum Internasional. Jurnal Hukum Internasional, Fak Hukum UI, Jakarta. 2003; 2(2):104-105.
17. Tang S. Taking Stock of Neoclassical Realism. International Studies Review, 2009, (11).
18. Viotti Paul R, Mark VK. International Relations Theory: Realism, Pluralism, Globalis, and Beyond. MA: A Viacom Company, 1998.