CHAPTER I

INTRODUCTION

A. Research Background

The basic issues of criminal law in general discuss 3 (three) things, as quoted by Packer, namely crime, responsibility, and punishment.[1] A criminal act is an act of doing or not doing something which is asserted as a prohibited act by statutory regulations and is punishable by criminal law.[2] Criminal liability is a person's responsibility for the criminal acts he has committed.[3] Criminal liability is the reason for the imposition of criminal penalties. Without a criminal act, there can be no criminal liability, and without criminal liability, there can be no imposition of criminal penalties.[4] Responsibility in criminal law adheres to the principle of fault/*schuld* (liability on fault).[5] In criminal law doctrine, the emergence of criminal responsibility is mainly based on the fulfillment of the elements of *actus reus* and *mens rea*. *Actus reus* is identical to an act that is interdicted by criminal provisions, and *mens rea* refers to the ignoble intention (evil thought) of the perpetrator.[6]

In the current development, the dynamic of the community also contributes to the criminal law doctrine, especially with the introduction of the concept of

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[1] Herbert L. Packer, 1968, *The Limit of The Criminal Sanction*, California: Standford University Press, p. 54., as cited by Chairul Huda, 2006, *Dari Tiada Pidana Tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Jakarta: Kencana, p. 9.

[2] See Article 11 of The Renewal Bill of Criminal Code Edition 2014, as cited by Lukman Hakim, 2020, *Asas-asas Hukum Pidana*, Sleman: Deepublish, p. 47.

[3] Chairul Huda, 2006, *Op. Cit*., p. 68.

[4] Sudaryono, 2017, *Hukum Pidana Dasar-Dasar Hukum Pidana berdasarkan KUHP dan RUU KUHP*, Surakarta: Muhammadiyah University Press, p. 45.

[5] Muhammad Iqbal, Suhendar, & Ali Imron, 2019, *Hukum Pidana*, Banten: UMPAM Press, p. 23.

[6] Ekky Aji Prasetyo, Sahuri Lasmadi, & Erwin, 2024, "Pertanggungjawaban Pidana dan Penerapan Mens Rea dalam Tindak Pidana Intersepsi di Indonesia", *Collegium Studiosum Journal*, 7 (1), p. 375.

accountability without fault/*schuld* (liability without fault).[7] One form of criminal liability without fault is vicarious liability that emphasizes that a person can be criminally sentenced because of the actions committed by others.[8] In line with the idea of holding one person accountable for another's actions, International Criminal Law (ICL) applies the principle of command responsibility, especially in cases of serious human rights violations. As Antonio Cassese explains, ICL is a body of international rules aimed at prohibiting international crimes and obligating states to prosecute and punish them, including piracy, aggression, war crimes, genocide, and the slave trade.[9]

The development of the principle of command responsibility was based on various incidents of serious human rights violations that took place during the world war. Moreover, the development of this form of responsibility lies on the recognition that low-level officials or military personnel often commit crimes because their superiors failed to prevent or repress them.[10] The principle of command responsibility is based on the rational thought that criminal responsibility is not limited to the basis of physical actions but rather seeks to base the basis of responsibility on the position, authority, and negligence of a superior in preventing or punishing his subordinates as perpetrators of a crime.[11] The military commanders is the leader, organizer, trigger,

[7] Upcouncel, "*Liability Without Fault in Criminal Law*," https://www.upcounsel.com/lectl-liability-without-fault-in-the-criminal-law-criminal-defense, accessed on April 13th, 2025.

[8] Dwidja Priyatno, 1991, *Pertanggungjawaban Korporasi dalam Hukum Pidana*, Bandung: Sekolah Tinggi Hukum, p. 53., as cited by Dwi Wahyono, 2021, "The Criminal Responsibility by Corporate", *International Journal of Law Reconstruction*, 5 (1), p. 131.

[9] Shinta Agustina, 2006, *Hukum Pidana Internasional*, Padang: Andalas University Press, p. 14.

[10] Jamie Allan Williamson, 2008, "Some consideration on command responsibility and criminal liability", *International Review of the Red Cross*, 90 (870), p. 306.

[11] Ikhwan Syahdi & Sujono, 2025, "Legalitas Keterlibatan TNI dalam Operasi Militer Selain Perang (OMSP) untuk Menanggulangi Terorisme di Indonesia", *Journal of Law and Legal System*, 1 (1), p. 17-37., as cited by Salsabila Ayu Pramita, 2025, "Pertanggungjawaban Komando dan Kejahatan terhadap Kemanusiaan: Analisis Dualisme Tanggung Jawab dalam Hukum Pidana Internasional", *Causa: Jurnal Hukum dan Kewarganegaraan*, 12 (7), p. 24. doi: https://doi.org/10.6679/j9yqc375

and participant in formulating or implementing general plans or conspiracies and committing crimes.[12]

Earlier, in the post-WW2 until the end of the 1990s periods, the allied countries as winners of WW2, based on the authority obtained from Article 1 of the 1945 Nuremberg Charter, had initiated the practice of the concept of command responsibility alongside the law enforcement process against military elites for their actions on serious violations of human rights during war crimes which were marked by the establishment of *ad hoc* international judicial bodies, namely the International Military Tribunal Nuremberg (IMTN) in Germany and the International Military Tribunal for the Tokyo Far East (IMTFE) in Tokyo, Japan.[13] The doctrine of command responsibility, initially developed at the IMTN and IMTFE, was later refined and codified in the Statutes of the ICTY (1993) and the ICTR (1994). These provisions confirm that a commander may be held criminally responsible for crimes committed by subordinates when he orders them, knows or has reason to know they will be committed, and fails to take necessary and appropriate measures to prevent them.[14]

Eventually, after a long-awaited journey, on July 17th, 1998, the UN, as the highest international organization, encouraged the international community toward an agreement to build upon an international resolution (Rome Statute, 1998) that also followed by the establishment of an independent international judiciary body, International Criminal Court (ICC) in 2002. The Rome Statute contains important norms, especially on how to guarantee human rights protection for the greater good of

[12] Ryan Fani, 2020, "Doktrin Pertanggungjawaban Komando Atas Kejahatan Berat Ham Menurut Hukum Pidana Internasional", *Wacana Paramarta: Jurnal Ilmu Hukum*, 19 (1), p. 53. doi: https://doi.org/10.32816/paramarta.v19i1.84

[13] Joko Setiyono, 2019, *Pertanggungjawaban Komando (Command Responsibility) dalam Peradilan HAM Nasional Indonesia dan Peradilan Internasional*, Demak: Pustaka Magister, p. 99-100.

[14] See Article 7 paragraph (3) of the ICTY Statute *vide* Article 6 paragraph (3) of the ICTR Statute.

the international community to bring peace to the world. One of them is criminal responsibility, which also includes "command responsibility", which is greatly influenced by the earlier practice of allied countries in demanding command responsibility from military commanders during WW2. Explicitly, the command responsibility was regulated in Article 28 of the Rome Statute regarding the responsibility of commanders and other superiors.

According to Robert Cryer, command responsibility is an extraordinary doctrine in ICL. This form of responsibility justifies orders' privileges, honors, and responsibilities.[15] Hugo Grotius stated that the principle of command responsibility is inherent in civilian leaders or superiors who know that a crime has occurred and can prevent the crime. However, the commander or superior is reluctant to do so.[16] The main reason for developing this form of responsibility, notably in the international criminal arena, lies in the recognition that low-level officials or military personnel often commit crimes because their superiors failed to prevent or repress them.[17] The concept of command responsibility has a broad meaning, not only limited to military commanders but applies to every office holder or superior who has control over his subordinates, even if they are heads of state, heads of government, ministers, military leaders, or heads of companies.[18]

In the *status quo*, in addition to the scope of ICL after the enactment of the Rome Statute, the concept of command responsibility is also recognized in the national

[15] Robert Cryer, 2010, *An Introduction to International Criminal Law and Procedure*, Cambridge: Cambridgeshire University Press, p. 385., as cited by Hans Giovanny Yosua, 2023, "Criminal Responsibility of Commanders in Indonesian and Dutch Criminal Law (A Comparative Legal Study)", *ULREV UNRAM Law Review*, 7 (2), p. 260. doi: https://doi.org/10.29303/ulrev.v7i2.301

[16] Mona Ervita, 2017, "Teori Pertanggungjawaban Komando (Command Responsibility): Studi Kasus Kurt Meyer Di Pengadilan Militer Kanada", *Jurnal Ilmiah Ilmu Hukum*, 24 (2), p. 4828.

[17] Jamie Allan Williamson, 2008, *Op. Cit*.

[18] Ryan Fani, 2020, *Op. Cit*., p. 49.

legal systems of various countries, both member and non-member countries of the Rome Statute. In Indonesia, for example, as a form of commitment to law enforcement of serious human rights violations, the Indonesian government has established Law Number 26 of 2000 concerning Human Rights Court (Law 26/2000), where command responsibility is regulated in Article 42, where the Law also became the basis for the formation of a unique judicial body within the Indonesian judiciary power, namely the Human Rights Court, with authority to prosecute serious human rights violations, namely genocide, and crimes against humanity.

Once looking into another national legal instruments, long before the adoption of the 1998 Rome Statute, Indonesian military criminal law had implicitly recognized the concept of command responsibility through Articles 129 and 132 of the Military Criminal Code (KUHPM) under Law Number 39 of 1947. Article 129 criminalizes unlawful orders given by superiors, while Article 132 addresses a commander's intentional failure to prevent or respond to crimes committed by subordinates.[19] However, both provisions are vague and substantively inadequate, relying on unclear terminology, failing to distinguish acts of commission and omission, and providing disproportionately light penalties. In contrast to the clearer and more robust framework under Article 42 of Law 26/2000, these deficiencies render KUHPM outdated and underscore the need for reform to align domestic military law with international standards of command responsibility.

So if the objective elements are explained, then according to Muladi, command responsibility must at least meet the elements: "There is a relationship between the subordinate and the superior, the superior knows or has reason to know that a crime

[19] Drajad Brima Yoga, 2013, "Pengaturan Pertanggungjawaban Pidana Komandan Militer Menurut Pasal 129 dan Pasal 132 Kuhpm dan Hubungannya dengan Pasal 403 RUU Kuhp Draft 10," *Jurnal Nestor Magister Hukum*, 3 (5), p. 5-6.

has occurred or is being committed, and the superior fails to take the necessary and reasonable steps to prevent or stop the crime or attempt to punish the perpetrator".[20] The scope of command responsibility based on Law 26/2000, as stated in Article 7, is only for serious human rights violations, namely crimes of genocide and crimes against humanity.

Implementing the principle of command responsibility in the context of serious human rights enforcement still raises several problems. To begin with, the problems that emerged behind the birth of Law 26/2000, among other things, the act of the government to only adopted some of the provisions contained in the Rome Statute, seems to be seen as a political necessity needed to reduce pressure from the international community regarding events that were alleged to have robbed human rights and human dignity. The aim is that the perpetrators of this incident can only be tried within the country, and foreign countries cannot intervene in cases of alleged human rights violations that are currently occurring.[21] Until now, Indonesia has not ratified the provisions of the Rome Statute in its entirety and has only bound itself and become a party state to the Rome Statute through the accession method as stated in Article 125 paragraph (3) of the Rome Statute.

Intricacies on the principle of command responsibility in Indonesia appeared both form the normative and empirical aspect. Firstly, from the perspective of normative legal arrangements, as explained by Romli Atmasasmita, there are seven

[20] Widhiarto, M. R., *et.al*., 2014, "*Analisis Pertanggungjawaban Pidana atasan Militer Terhadap Tindak Pidana Pelanggaran Hak Asasi Manusia Berat (Studi Kasus Talang Sari)*", as cited by Suwito., *et.al*, 2022, "Juridical Analysis of Commando Accountability in Law No 26 of 2000 Concerning Human Rights Court", *Legal Brief*, 11 (5), p. 3239.

[21] Achmad Suhadak Abdul Rahman Wahid., *et.al*., 2021, "Comparison of The Concept of Command Responsibility in Human Rights Court Provisions", *Lambung Mangkurat Law Journal*, 6 (2), p. 177.

fundamental differences and deviations between the principle applied in Rome Statute and those applied in Law 26/2000, namely:[22]

No.	Rome Statute	Law 26/2000
1	Applies the principle of legality, applying strict non-retroactive principle in solving serious human rights violation.	Allows the retroactive principle in solving past serious human rights violation through the mechanism of *ad hoc* human right court.
2	Does not apply *Ne Bis in Idem* in absolute manner *vide* Article 20 paragraph (3) of the Statute.	Apply *Ne Bis in Idem*.
3	Applies "issue of admissibility", namely that the ICC cannot try case of serious human rights violation, in several condition, namely because "unwillingness" or "inability" *vide* Article 17 paragraph (1) letters a, b, and c of the Statute.	Do not include this provision.
4	Recognizes four types of human right violation under the jurisdiction of ICC, namely genocide, crimes against humanity, war crimes, and the crime of aggression.	Only recognized two types of human right violation, namely genocide and crime against humanity.
5	Recognizes Public Prosecutor's Office as the institution performing investigation and inquiries.	Only recognizes the National Commission on Human Rights (KOMNAS HAM) as the sole independent institution having authority to perform investigations and the Public Prosecutor's Office as the institution having the authority to perform inquiries and prosecutions.
6	Recognizes international law decisions of ICC as references in trying cases of human rights violation.	Only recognizes all provisions in this law and in the national criminal procedure code (KUHAP).
7	Appoints and assigns permanent Judges from several countries.	Instructing the appointment of non-career Judges and non-career Public Prosecutors from various elements of the community.

Table 1. Fundamental Differences and Deviations Between Rome Statute and Law 26/2000

One of the most prominent implications form such arrangement in Law/2006 is that the provisions of the law implicitly limit the authority of human rights courts to

[22] Romli Atmasasmita, 2004, *Pengantar Hukum Pidana Internasional*, Jakarta: PT. Hecca Mitra Utama, p. 62-63.

try only on 2 (two) types of serious human rights violations, namely genocide and crimes against humanity, as stated in Article 7 of the Law. The application of command criminal responsibility is based on fundamental legal instrument, which in Indonesia it is exclusively regulated in Law 26/2000, meaning no other laws or regulations recognize or permit its application. As a result, it applies only to genocide and crimes against humanity and may be imposed solely on defendants tried before the Human Rights Court, not within the general criminal justice system.[23] Moreover, the provision contained in Law 26/2000 confined the recognition of international law decisions of ICC in solving serious human rights violation, which limits ICC's authority to intervene in the solving of cases of serious human rights violations that occurred in Indonesia. The ICC will only assist Indonesia when serious violations of human rights occur in Indonesia. This also aims to ensure that the ICC's presence is an effort to make the national court system more effective.[24]

Another issue on the normative aspect is differences in the translation of the Rome Statute 1998, which is the basis for Law 26/2000, can be a clue that leads to the ambiguity of command responsibility norms, which shows that the protection of human rights is difficult to achieve. Especially in military culture, unit leaders have an eminent position as bearers of responsibility for all the actions and activities of their subordinates in fulfilling the scope of unit duties.[25] Article 42 of Law 26/2000 uses the term 'can' and removes the word 'criminally'. In contrast, in the original text, Article 28 (a) of the Rome Statute uses the term 'shall be criminally responsible' whose equivalent is 'must be criminally responsible'. This can lead to a double interpretation

[23] Hans Giovanny Yosua, 2023, *Op. Cit.,* p. 266.
[24] Marfuatul Latifah, 2014, "Urgensi Indonesia menjadi Negara Pihak Statuta Roma bagi Perlindungan HAM di Indonesia", *Politica*, 5 (2), p. 177.
[25] Achmad Suhadak Abdul Rahman Wahid., *et.al*., *Op.Cit*., 2021, p. 178.

for law enforcement circles because it can be interpreted that a commander 'does not always have to' be held criminally responsible for the actions of his subordinates. The use of the term 'can', and the omission of the word 'criminally' are inconsistent with the intent of Article 28 (a) of the Rome Statute, as well as Article 42 (b) of Law 26/2000 *in conjunction* with Article 28 (b) of the Rome Statute.[26] In addition, Law 26/2000 states expressly that command criminal responsibility can also be applied to police superiors or civilian superiors. Meanwhile, the Rome Statute does not explicitly mention civilian or police superiors, only stating "concerning superior and subordinate relationships not described in paragraph (a)". This shows that the Rome Statute also opens space for applying command criminal responsibility in addition to military commanders, even though it does not explicitly mention civilian superiors or police superiors like Indonesia.[27]

The problem of improper translation of the text of Law 26/2000 is a prominent issue because the translation of the norms will not be synchronized, and the social implementation will be chaotic. Even if it is implemented, it will not solve the problem of human rights violations because many regulations are not conducive to implementing human rights. These misunderstanding changes the norms of command responsibility in the Rome Statute 1998. It will also affect the boundaries of the jurisdiction of the Human Rights Court itself, indirectly highlighting the difficulty of speaking to commanding officers or order-givers who are not directly involved. Therefore, the norms of command responsibility in Article 42 of Law 26/2000 are ambiguous that revision under the norm is urgently needed, or the government needs

[26] Suwito., *et.al*., 2022, *Op.Cit*., p. 3242.
[27] Hans Giovanny Yosua, 2023, *Op.Cit*., p. 265-266.

to make changes and innovations to implement the norms of command responsibility more effectively and comprehensively.

Secondly, as a visualization of the empirical situation of the application of the principle of command responsibility in the legal enforcement process, it is reported that the prosecution of military commanders under the principle of command responsibility continues to yield a notably low success rate. Until now, there have been 17 (seventeen) cases of serious human rights violations that have occurred, including the events of 1965 to 1966, the mysterious shootings of 1982 to 1985, Talangsari 1989, Trisakti, Semanggi 1 and 2, the riots of May 1998, the mass disappearance of people post 1997-1998, Wasior 2001-2002, Wamena 2003, Murder of a "Dukun Santet" (Witch Doctor) in 1998, Simpang KAA incident in 1999, Jambu Keupok 2003, Rumah Geudong 1989-1998, Timang Gajah 2000-2003, and the Paniai case in 2014. These incidents have reached the preliminary investigation stage by the National Human Rights Commission (KOMNAS HAM).[28] However, from all cases above, it is reported that only four cases made it into the trial process held by The Human Rights Court, namely the unlawful killing of civilian in Paniai in 2014; the atrocities in Timor-Timor surrounding the 1999 Referendum; atrocities in Tanjung Priok, Jakarta in 1984 against Islamist activists; and unlawful killings, arbitrary and torture against in Abepura, Papua, in 2000.[29] However, the final outcomes on appeal to the Supreme Court resulted in zero convictions for all four cases.

[28] Mochammad Rafi Pravidjayanto., *et.al*., 2024, "Urgensi Internalisasi Prinsip Pertanggungjawaban Komando dalam KUHP Nasional untuk Mengatasi Problematika Pelanggaran HAM Berat di Indonesia", *Komparatif: Jurnal Perbandingan Hukum dan Pemikiran Islam*, 4 (1), p. 64-65.

[29] AJAR, KontraS, & TAPOL, 2022, *Short Briefing on Human Right Court Mechanism and the 2014 Paniai Papua Case*, p. 5, available at: https://tapol.org/sites/default/files/Briefing%20on%20Paniai%20Case%20HR%20Court.pdf.

These verdicts of the Indonesian Human Rights Court demonstrate that proving command responsibility under Article 42 of Law 26/2000 remains difficult, often resulting in unsatisfactory outcomes that fail to deliver justice to victims and their families. By contrast, international tribunals such as the IMTN, IMTFE, ICTY, and ICTR have achieved prosecution success rates exceeding 50% under the doctrine of command responsibility, including against high-ranking military, government, and civilian leaders, with the IMTFE notably convicting 28 Japanese wartime leaders.[30]

Tribunal/ Institution	Period	Total Defendants	Found Guilty (Sentenced)	Conviction Rate
Nuremberg Trials[31]	1945-1949	177	142	±80 %
Yokohama Trials (Jepang)[32]	1946-1948	996	854	±86 %
ICTY (Yugoslavia)[33]	1993-2017	161	93	±56-81 %
ICTR (Rwanda)[34]	1994-2015	93	62	±64 %

Table 2. Succession Rate of Prosecuting Defendant Under CR During Post-WW2 Period

These limitations can restrict the efforts to portray other criminal liability scopes that fulfill the command responsibility elements. Whereas, as explained in the provisions of Law 26/2000, in practice and development, it is necessary to understand that the doctrine of command responsibility is not only applied to military commanders but also to superiors or civilian authorities who have the authority to give

[30] Harry S. Truman Library Museum, *Indictment from the International Military Tribunal for the Far East*, https://www.trumanlibrary.gov/library/research-files/indictment-international-military-tribunal-far-east?documentid=NA&pagenumber=1, as cited by Lisa Kenny Pennington, 2012, "The Pacific War Crimes Trials: The Importance of the "Small Fry" vs. the "Big Fish", Thesis of Department of History, Old Dominion University, Virginia, p. 42, https://digitalcommons.odu.edu/history_etds/11.

[31] Joseph Brunner, 2001, "American Involvement in the Nuremberg War Crimes Trial Process", *Michigan Journal of History*, 1 (1), p. 2. https://michiganjournalhistory.wordpress.com/wp-content/uploads/2014/02/brunner_joseph.pdf

[32] Lisa Kenny Pennington, 2012, *Op. Cit.*, p. 86.

[33] Legacy website of International Criminal Tribunal for the former Yugoslavia, "*Key Figures of the Cases*," https://www.icty.org/sid/24, accessed on June 19th, 2025.

[34] Legacy website of International Criminal Tribunal for the former Rwanda, "*The ICTR in Brief*," https://unictr.irmct.org/en/tribunal, accessed on June 19th, 2025.

commands or instructions to military officials or mobilize military strength.[35] This paradigm introduced the terms superior responsibility and commander responsibility. *Thus*, considering the wide range of subjects involved in the command responsibility element, amendments should be made to implement command responsibility in Indonesia. Regulations on command responsibility need to be included in general criminal law provisions so that efforts to enforce the Law on serious human rights violations, including command responsibility, can run effectively and efficiently.

To address deficiencies in the regulation and application of command responsibility in Indonesia's human rights courts, this research conducts a comparative analysis of its development across international and hybrid human rights tribunals. It traces the doctrine from its implicit, customary law application in the Nuremberg and Tokyo tribunals to its evolving clarification in the ICTY, ICTR, and other post-Cold War tribunals, which imposed liability based on knowledge or reason to know and failure to act, and finally to its stricter and more structured codification under Article 28 of the Rome Statute, requiring effective control and differentiated standards for superiors, later reflected in bodies such as the ECCC.[36] The author compares the application of command responsibility in international legal instruments and human rights tribunals with the Indonesian legal system to identify enduring normative and practical gaps in accountability and to emphasize the need for reform to align domestic law with international standards. This comparative approach also corresponds with the direction of national criminal law reform, particularly through Articles 598 and 599 of

[35] Vonny A. Wongkar, 2006, "Tanggung Jawab Komando terhadap Pelanggaran Hak Asasi Manusia (HAM) yang Berat dan Kejahatan Perang dalam Pembaharuan Hukum Pidana di Indonesia", *Jurnal Law Reform*, 2 (1), p. 17.

[36] Case Matrix Network, 2016, International Criminal Law Guidelines: Command Responsibility, Centre for International Law Research and Policy, European Union and the Royal Norwegian Ministry of Foreign Affairs, p. 20-22.

Law Number 1 of 2023 (KUHP 2023), which incorporate core crimes of serious human rights violations into the national Criminal Code. The study further examines the implications of this integration and seeks to contribute critical analysis and recommendations on the future regulation and enforcement of command responsibility in cases of serious human rights violations in Indonesia.

From the description stated above, in the context of solving cases of serious human rights violations, the author is interested in conducting a more profound analysis regarding the application of the concept of command responsibility in solving cases of serious human rights violations based on the arrangements and practices of various international legal framework as well as looking at their application in Indonesia legal system. Therefore, this study is entitled: "***The Concept of Command Responsibility in Solving Serious Human Rights Violations (Comparative Study of International and National Legal Instruments)***".

B. Research Problems

Based on the background that the author has outlined above, the author formulates several problem formulations to analyze the issues that the author has put forward, namely:

1. How do international legal instruments regulate and resolve cases of serious human rights violations related to command responsibility?
2. How is command responsibility implemented to solve serious human rights violations within the Indonesian legal system?
3. How is the ideal conceptualization of command responsibility to achieve better solving of cases of serious human rights violations in Indonesia?

C. Research Purposes

With the problem formulation that the author stated above, in this research, the objectives that the author wants to achieve include the following:

1. Analyzing international legal instruments related to the arrangement and application of command responsibility in solving cases of serious human rights violations.
2. Analyzing the application of command responsibility in solving serious human rights violations within the Indonesian legal system.
3. Analyzing the ideal concept of command responsibility in the formulation of norms and its implementation to achieve better law settlement in solving serious human rights violations.

D. Benefits of Research

1. Theoretical benefits: This research is expected to provide in-depth knowledge through analysis based on a theoretical level and practical review related to solving of serious human rights violations that related to command responsibility by looking at the comparison from international and national regulatory and practical perspectives. In addition, it is hoped that this research can become a basis for further research in formulating norms and/or implementing law enforcement processes related to cases of serious human rights violations in the context of national legal reform.
2. Practical benefits:
   a. For Policy Maker: to provide solutions to problems related to various weaknesses and deficiencies in regulations related to settling cases of serious human rights violations, especially regarding the ideal concept of formulating norms related to command responsibility. Thus, this research

can serve as a reference in seeing which aspects are needed to formulate ideal norms regarding command responsibility in serious human rights violations.

b. For Law Enforcers: to present a perspective related to the implementation of command responsibility, both in international legal instruments and practices, so that it can become a consideration in order to achieve a law enforcement process for cases of serious human rights violations that are by efforts to achieve ideal legal goals, namely justice, legal certainty, and expediency.

E. Authenticity of Research

Regarding the search that the author has carried out, no research has been found, especially at the master thesis level, which examines explicitly the title and topic raised by the author. In the author's search through various online literature and the Google search engine, online thesis repository, no scientific research was found related to 'The Concept of Command Responsibility in Solving Serious Human Rights Violations (Comparative Study of International and National Legal Instruments)', the research obtained focuses in the solving process of serious human rights violations cases, particularly those occurring in the past, through both litigious and non-litigious avenues within the jurisdiction of national human rights courts. However, these studies do not specifically address cases of serious human rights violations that involve elements of command responsibility. Furthermore, several studies that specifically focus on the concept of command responsibility limit their analysis to national legal frameworks and have yet to present a comparative perspective on solving cases of serious human rights violations related to command responsibility from the standpoint of international criminal law provisions.

Such research is very different from the focus of the author's research study. However, the author describes research related to the topic of solving process of serious human rights violations, which can be found in the following studies:

1. Master Thesis with the title: "PENYELESAIAN PELANGGARAN HAK ASASI MANUSIA YANG BERAT SECARA NON-YUDISIAL" (NON-JUDICIAL RESOLUTION OF SERIOUS VIOLATIONS OF HUMAN RIGHTS) by Mariana Septuaginta Tamba in 2024 from Master of Law Program at Universitas Gadjah Mada. The findings indicate that the Non-Judicial Resolution Team for Past Serious Human Rights Violations (PPHAM), established under Presidential Decree 17/2022, implemented measures such as state acknowledgment, victim identification, rights restoration, reconciliation, guarantees of non-recurrence, and memorialization. However, of the twelve cases addressed, only three were effectively resolved. Major challenges included a weak legal basis due to the absence of legislative backing as required by Law 26/2000, concerns over impunity for perpetrators, and criticism that victim compensation resembled ordinary social assistance rather than meaningful and dignified justice.[37]

   This study shares similarities with the work of Mariana Septuaginta Tamba in its discussion of PPHAM as an alternative to the Truth and Reconciliation Commission for resolving cases of serious human rights violations in Indonesia through non-judicial mechanisms, particularly those implemented during President Joko Widodo's administration, however, unlike Mariana's research, this study critically examines PPHAM as an ineffective mechanism

[37] Mariana Septuaginta Tamba, 2024, "Penyelesaian Pelanggaran Hak Asasi Manusia Yang Berat Secara Non-Yudisial," Master Thesis of Master of Law Program, Universitas Gadjah Mada, Yogyakarta, p. 85-90.

that appears to weaken judicial processes, emphasizing that non-judicial mechanisms should function as a complementary approach to judicial law enforcement against perpetrators while prioritizing restitution and the recovery of victims and their families, which have long been neglected due to reliance on ineffective court decisions, thereby ensuring that law enforcement is grounded in justice for victims and their families.

2. Master Thesis with the title: "MEKANISME PENYELESAIAN PELANGGARAN BERAT HAM MASA LALU DI INDONESIA" (MECHANISMS FOR SOLVING PAST SERIOUS VIOLATIONS OF HUMAN RIGHTS IN INDONESIA) by Rival Anggriawan Mainur in 2016 from Master of Law Program at Universitas Islam Indonesia. The research finds that Indonesia's mechanism for resolving past serious human rights violations has not delivered substantive justice because it prioritizes truth seeking and institutional reform over direct victim redress. Compared with Chile, Argentina, and South Africa, which combine courts with truth commissions that provide both individual reparations and collective reforms, Indonesia through the Indonesia Timor Leste Truth and Friendship Commission focuses mainly on explaining what happened and who was involved without granting individual compensation, restitution, or rehabilitation. As a result, the process remains administrative and symbolic rather than victim centered, and it fails to meet the core standards of transitional justice that require the state to provide full and effective reparations to victims.[38]

[38] Rival Anggriawan Mainur, 2016, "Mekanisme Penyelesaian Pelanggaran Berat Ham Masa Lalu di Indonesia," Master Thesis of Master of Law Program, Universitas Islam Indonesia, Yogyakarta, p. 98-110.

This research shares similarities with the work of Rival Anggriawan Mainur in its discussion of justice aspects in the non-judicial resolution of serious human rights violations, particularly highlighting the ineffectiveness of the implementation of the Truth and Reconciliation Commission (KKR) in Indonesia, especially after the annulment of the KKR Law by the Constitutional Court. The fundamental difference between this study and Rival's work lies in the provision of analysis and proposed solutions concerning non-judicial resolution mechanisms. This study examines the existence of the PPHAM Team as a follow-up measure after the annulment of the KKR Law and recommends that non-judicial mechanisms be maximized as a complement to judicial proceedings against perpetrators. The focus is placed on ensuring the fulfillment of victims' and their families' rights to restitution, without disregarding efforts to demand accountability from perpetrators, who are predominantly military elites and/or state actors.

3. Master Thesis with the title: "JURISDIKSI MAHKAMAH PIDANA INTERNASIONAL DIHUBUNGKAN DENGAN PELANGGARAN HAM BERAT DI TIMOR-TIMUR" (THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT IS LINKED TO SERIOUS VIOLATIONS OF HUMAN RIGHTS IN EAST-TIMOR) by Yulia Fitriliani in 2010 from Master of Law Program at Universitas Padjajaran. The findings show that Law 26/2000 has been ineffective in enforcing command responsibility due to a narrow interpretation of Article 42 paragraph (1), which conditions superior liability on proof of subordinates' guilt. This has led to the acquittal of many senior military and police officials and reflects the failure of domestic courts to deliver substantive justice to victims. Although the ICC

could theoretically serve as an alternative under the principle of complementarity, jurisdictional, legal, and political constraints, particularly Indonesia's non-party status to the Rome Statute, have rendered it ineffective in the East Timor cases.[39]

This research shares similarities with the work of Yulia Fitriliani in highlighting the substantive weaknesses of Article 42 of Law 26/2000, which have led to a narrow interpretation by law enforcement in handling serious human rights violations in Indonesia and have often resulted in difficulties in proving command responsibility of senior Police and TNI officers. The key difference lies in this study's empirical approach, which examines recent cases and presents primary data obtained through interviews with law enforcement officials, thereby illustrating the actual practice of evidentiary standards in court. In addition, this research offers recommendations for a more ideal model of command responsibility based on comparative legal analysis from international legal instruments.

4. Master Thesis with the title: "TANGGUNG JAWAB KOMANDO TERHADAP PELANGGARAN HAK ASASI MANUSIA (HAM) YANG BERAT DAN KEJAHATAN PERANG DALAM PEMBAHARUAN HUKUM PIDANA DI INDONESIA" (COMMANDO RESPONSIBILITY FOR SERIOUS VIOLATIONS OF HUMAN RIGHTS AND WAR CRIMES IN CRIMINAL LAW REFORM IN INDONESIA) by Vonny A. Wongkar in 2006 from Master of Law Program at Universitas Diponegoro. The findings indicate that the application of command responsibility in cases of serious

[39] Yulia Fitriliani, 2010, "Jurisdiksi Mahkamah Pidana Internasional Dihubungkan Dengan Pelanggaran Ham Berat Di Timor-Timur," Master Thesis of Master of Law Program, Universitas Padjajaran, Bandung, p. 115-120.

human rights violations in Indonesia, particularly in Tanjung Priok and East-Timor, has been inconsistent and ineffective. This is mainly due to the formulation of Article 42 of Law 26/2000, which differs from international standards under the Rome Statute, resulting in divergent judicial interpretations and weakened evidentiary standards against commanders. The handling of cases before the *ad hoc* Human Rights Courts failed to hold senior military and police officials accountable and instead predominantly convicted field-level perpetrators or civilians. Moreover, national law continues to conceptualize command responsibility as an omission-based offense (*actus reus*) without sufficient emphasis on the superior's fault and knowledge (*mens rea*) as required under international law. Consequently, Indonesia's legal system has not yet ensured fair, firm, and effective accountability for serious human rights violations and war crimes.[40]

This research shares similarities with the work of Vonny A. Wongkar in highlighting the ineffective application of command responsibility in serious human rights violation cases adjudicated by *ad hoc* Human Rights Courts, particularly in Tanjung Priok and East-Timor. However, it differs fundamentally in its comparative legal basis, while Wongkar's research focuses solely on the Rome Statute, this study examines a wider range of international legal instruments. In addition, this study integrates a criminal law policy approach in conceptualizing an ideal model of command responsibility, drawing on best practices in international standards and proposing their formulation within national legislative policy.

[40] Vonny A. Wongkar, 2006, "Tanggung Jawab Komando Terhadap Pelanggaran Hak Asasi Manusia (HAM) Yang Berat Dan Kejahatan Perang Dalam Pembaharuan Hukum Pidana Di Indonesia," Master Thesis of Master of Law Program, Universitas Diponegoro, Semarang, p. 139-150.

Accordingly, this research seeks to make a substantive and focused contribution to the existing scholarly discourse. While prior studies have examined the doctrine of command responsibility, they have not undertaken a comprehensive comparative legal analysis. This study therefore examines international legal standards on command responsibility as developed by the ICC, ICTY and ICTR, with particular emphasis on their relevance to the Indonesian legal context. The study identifies significant shortcomings in the domestic application of these standards and advances a proposed framework to enhance both the formulation and enforcement of command responsibility. Ultimately, this research aims to provide normative and practical recommendations for strengthening the legal framework governing serious human rights violations within Indonesia's criminal law system, particularly in light of the enactment of KUHP 2023 and ongoing legal reform initiatives concerning the Human Rights Courts Law.

F. Theoretical and Conceptual Framework

1. Theoretical Framework

a. Theory of Justice

Justice is one of the objectives of law. The aim of law is not only justice, but also certainty and expediency.[41] Justice is closely related to discussions related to morality. On the other hand, certainty reflects values. Justice is an important value in law, different from certainty, which is generalized, on the other hand, justice is individual (specific/subjective). By considering the nature of justice, which is closely related to subjectivity, it needs to be examined by looking at it from 2 (two) components, formal

[41] Muhammad Erwin, 2012, *Filsafat Hukum: Refleksi Kritis terhadap Hukum*, Jakarta: Rajawali Pers, p. 218.

(procedural) which means demanding its general application, material means that every law must be following the ideals of social justice.[42]

One of the theories that is seen as the most comprehensive theory of justice is the description of justice proposed by John Rawl. Rawls' theory departs from utilitarianism, despite being influenced by Bentham, Mill, and Hume, and aligns more closely with Legal Realism. Rawls argues that there needs to be a balance between personal interests and the common interest. Justice is annotated as a means of measuring how much balance must be provided. To minimize clashes between personal and collective interests, rules are needed.[43] Law can be interpreted as a set of principles used for choosing among the various social arrangements which decide the division of advantages and for underwriting an agreement on the proper distributive share.[44] In this condition, legal existence is needed in its role as referee (appraiser). In an advanced society, the law will only be obeyed if it is able to establish the principles of justice.[45] Rawls' theory believes that society must be organized to achieve justice.[46]

Law is basically based on justice. Law should contain the value of fairness. Rawls emphasized that the main subject of justice is the basic structure of society, or more precisely the ways in which social institutions distribute fundamental rights and obligations and determine social cooperation. It is important to know that to achieve justice as a legal goal,

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[42] Margono, 2019, *Asas Keadilan, Kemanfaatan, dan Kepastian Hukum dalam Putusan Hakim*, Jakarta: Sinar Grafika, p. 105-106.

[43] Darji Darmoniharjo & Shidarta, 1995, *Pokok-pokok Filsafat Hukum Apa dan Bagaimana Filsafat Hukum* Indonesia, Jakarta, PT Gramedia Pustaka Utama, p. 159.

[44] John Rawls, 1999, *A Theory of Justice: Revised Edition*, Cambridge Massachusetts: Harvard University Press, p. 4.

[45] Darji Darmoniharjo & Shidarta, 1995, *Op. Cit*., p. 159.

[46] Arief Sidharta, 2007, *Meuwissen tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*, Bandung: PT Refika Aditama, p. 87.

the law must be implemented in society without having to sacrifice the interests of other communities.[47] Rawls revealed that it does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many.[48] Furthermore, Rawls also stated that the main problem of justice is related to efforts to formulate and provide reasons for a series of principles that must be met by a basic structure of a just society. These principles of social justice should distribute the prospects for obtaining basic goods.[49]

According to Rawls, justice is fairness which contains the principles that free and rational people who wish to develop their interests should obtain the same position when starting out and that is a fundamental condition for those who enter the association they want which says that justice is a political policy whose rules are the basis of state regulations and these rules are a measure of what is right.[50]

Rawls' theory of justice extends the social contract tradition by defining fair principles for society's basic structure rather than a specific government. Through the original position and veil of ignorance, rational individuals choose impartial principles of justice. Rawls argues they would select equal basic liberties for all and the difference principle, allowing inequalities only if they benefit the least advantaged. He rejects utilitarianism for permitting the sacrifice of some for overall welfare. Based on a hypothetical moral contract, Rawls' theory offers a rational

[47] Margono, 2019, *Op. Cit*., p. 108-109.
[48] John Rawls, 1999, *Op. Cit*., p. 4.
[49] Darji Darmoniharjo & Shidarta, 1995, *Op. Cit*., p. 160.
[50] Margono, 2019, *Op. Cit*., p. 107.

foundation for justice in democratic societies and remains a central alternative to utilitarian and perfectionist approaches.[51]

Rawls's theory of justice is used to analyze research questions one and two by assessing whether law enforcement in international and/or national human rights courts/tribunals involving command responsibility reflects justice, particularly the benefit to the least advantaged, or merely procedural certainty. It also supports research question three by underscoring the need to amend Law 26/2000 in line with KUHP 2023, which prioritizes justice when it conflicts with legal certainty. Overall, Rawls's theory serves as the foundational framework for this study.

b. Theory of Criminal Responsibility

Criminal responsibility (*teorekenbaardheid*) refers to the assessment of whether a defendant or suspect is legally accountable for a criminal act that has occurred.[52] According to Roeslan Saleh, what is meant by being responsible for the commission of a criminal act is as follows:

> *Being responsible for a criminal act means that the person concerned can legally be charged with a criminal offense because of that act. A criminal can be legally imposed, meaning that there are regulations in a particular legal system for that action and that legal system applies to that action. In brief, this action is justified by the legal system.*[53]

Criminal liability requires the objective occurrence of a criminal act under applicable law. Criminal law theory recognizes two approaches: monistic and dualistic. The monistic approach defines a criminal act as

[51] John Rawls, 1999, *Op. Cit.*, p. 11-17.

[52] Fitri Wahyuni, 2017, *Dasar-dasar hukum pidana di Indonesia*, Tanggerang Selatan: PT Nusantara Persada Utama, p. 67.

[53] Roeslan Saleh, 1982, *Pikiran-pikiran tentang Pertanggungan Jawab Pidana*, Jakarta: Ghalia Indonesia, p. 34, as cited by Krismiyarsi, 2018, *Sistem Pertanggungjawaban Pidana Individual*, Demak: Pustaka Magister, p. 5-6.

encompassing both the prohibited act and the perpetrator's fault, so once the *actus reus* and its result are proven, liability follows without separate proof of culpability.[54] In practice, Indonesian law reflects this monistic view by merging act and fault, resulting in broader liability for corporate directors, even where intent is unclear.[55] Under this approach, committing a criminal act itself fulfills the conditions for punishment.

D. Simons, a monistic scholar, divides criminal acts into objective and subjective elements. Objective elements include human conduct, its observable results, and accompanying conditions such as acting in public under Article 181 of the Criminal Code. Subjective elements include capacity for responsibility and fault in the form of intent or negligence. Empirical studies of sextortion in Indonesia show that judges assess both the technological act and the intent to intimidate, confirming that *mens rea* remains central in monistic analysis.[56]

The dualistic school separates the criminal act from criminal responsibility. The act is limited to conduct, its consequences, unlawfulness, and statutory threat, while responsibility concerns intent or negligence and the capacity to be accountable.[57] Sudarto reflects this view by distinguishing conditions related to the act from those related to the perpetrator.[58] Research on extortion in property development in Padang

[54] Muladi, 2000, *Teori-Teori Kebijakan Pidana*, Bandung: Citra Aditya, p. 112.
[55] Emiliya Febriyani, 2021, "Perbandingan Pertanggungjawaban Pidana Direksi di Indonesia dan Belanda", *Nagari Law Review*, 4 (2), p. 215.
[56] Dea Tri Afrida, Ismansyah, & Edita Elda, 2023, "Sekstorsi Sebagai Tindak Pidana Kekerasan Seksual Berbasis Elektronik dalam Sistem Hukum di Indonesia", *Delicti*, 1 (1), p. 47.
[57] Sudarto, 1990, *Perkembangan Hukum Pidana*, Yogyakarta: Gadjah Mada University Press, p. 68.
[58] Tofik Yanuar Chandra, 2022, *Hukum Pidana*, Jakarta: PT. Sangir Multi Usaha, p. 42-46.

shows courts first establish the unlawful act, then separately assess fault before imposing punishment.[59]

The 1946 Criminal Code mixes criminal elements and liability in Books II and III, requiring experts to identify both. Early criminal law equated crime with punishment, so elements charged must be proven at trial. A person who commits an act meeting statutory elements is criminally liable, provided the act violates the law and the person is capable of responsibility.[60] Juvenile justice reforms show that failing to separate proof of the act from capacity and fault risks conflating wrongdoing with developmental incapacity and undermines restorative aims. In general, criminal liability requires capacity for responsibility, commission of a wrongful act under law, and the absence of exculpatory reasons.[61]

Criminal liability is grounded in the principle of *geen straf zonder schuld*, meaning no punishment without guilt. Most criminal offenses require intent or *opzet* as an essential element. When an act is committed intentionally, intent encompasses and dominates the other elements that must be proven.[62] Courts therefore assess both *actus reus* and *mens rea*. *Actus reus* refers to the prohibited act, while *mens rea* denotes the mental state or will to commit it.[63] Recent narcotics jurisprudence shows that

[59] Kevin Lie, Aria Zurnetti, & Edita Elda, 2023, "Penegakan Hukum Tindak Pidana Pemerasan Dengan Ancaman Dalam Pembangunan Properti Di Kota Padang", *Delicti*, 1 (2), p. 89.

[60] Fitri Wahyuni, 2017, *Op. Cit.*, p. 68.

[61] Muhammad Ridho Sinaga, Somawijaya, & Agus Takariawan, 2021, "Reformulasi Diversi dalam Undang-Undang Nomor 11 Tahun 2012 sebagai Upaya Perlindungan Anak", *Nagari Law Review*, 5 (1), p. 98.

[62] Kukun Abdul Syakur Munawar, 2015, "Pembuktian Unsur Niat Dikaitkan dengan Unsur Mens Rea dalam Tindak Pidana Korupsi", *Jurnal Ilmiah Galuh Justisi*, 3 (2), p. 223. doi: http://dx.doi.org/10.25157/jigj.v3i2.420

[63] Rizki Romandona & Bukhari Yasin, 2024, "Analisis Hukum Asas Mens Rea Dan Actus Reus Dalam Kasus Pembunuhan Brigadir Nofriansyah Yosua Hutabarat (Studi Kasus Dalam Putusan Pn Jakarta Selatan No. 796/Pid.B/2022/Pn Jkt.Sel)", *Justitiable*, 6 (2), p. 5-6.

judges rely on evidence of physical possession and subjective knowledge to establish liability, confirming its fault-based character even within strict regulatory regimes.[64] This framework ensures that criminal responsibility remains based on fault.

In its development, there are exceptions to the principal of liability on fault, known as liability without fault, such as in strict criminal liability or vicarious criminal liability. Strict liability or absolute responsibility can be interpreted as responsibility without having to prove the element of fault but simply by proving the element of the act carried out.[65] The doctrine of strict liability is the imposition of criminal liability on the perpetrator even though the perpetrator does not have the required *mens rea*. This doctrine states that a perpetrator can be sentenced to a criminal sentence if the perpetrator can be proven to have committed an act prohibited by criminal provisions (*actus reus*) without looking at his inner attitude.[66]

In the Netherlands, strict criminal liability is called *leer van het materiele feit*, which was originally used for violations, but according to Moeljatno, this concept is no longer used in the Netherlands. In England, several criminal offenses for which criminal liability is strict are used to include non-crimes committed by corporations and traffic violations committed by individual subjects.[67] The implementation of the strict

[64] Erwin Susilo, Eddy Daulatta Sembiring, & Wigati Taberi Asih, 2024, "Penerapan Teori Pada Hakikatnya dalam Menafsirkan Tindak Pidana Narkotika", *Nagari Law Review*, 8 (1), p. 56-57.

[65] Tiara Khoerun Nisa, 2022, "Asas Strict Liability dalam Pertanggungjawaban Pidana Korporasi pada Proses Pembuktian Tindak Pidana Lingkungan Hidup", *Jurnal MAHUPAS: Mahasiswa Hukum Unpas*, 1 (2), p. 10.

[66] PN Tilamuta, "*Penerapan Pertanggungjawaban Korporasi dalam Hukum Pidana*," https://pn-tilamuta.go.id/2016/05/23/penerapan-pertanggungjawaban-korporasi-dalam-hukum-pidana/, accessed on January 12th, 2025.

[67] Nani Mulyati, 2018, *Pertanggungjawaban Pidana Korporasi (Edisi Revisi)*, Depok: PT RajaGrafindo Persada, p. 210.

liability principle is regulated in Article 37 letter a of KUHP 2023, which regulates criminal liability, which states that:

a. *"punished solely because the elements of a criminal act have been fulfilled without taking into account any errors; or"*

Vicarious liability can be interpreted as a form of responsibility that someone requires for actions carried out by other people in the presence of certain relationships, such as work relationships. The concept of vicarious criminal liability is a teaching taken from civil law regarding the law of torts based on the doctrine of *respondeat superior*,[68] where the adage "*Qui facit per alium facit per se*" applies. According to this maxim, an act done by a person through another person is considered done by himself.[69] Regarding the arrangement of vicarious liability within Indonesian legal instruments, Article 37 letter b of KUHP 2023 stated, "*be held accountable for criminal acts committed by other people*". Vicarious liability can occur in the following situations:[70]

1) A person can be held responsible for actions committed by another person if he has delegated his authority according to the Law to that other person (delegation principle); and
2) An employer can be held responsible for physical/physical actions carried out by his workers if, according to Law, the worker's actions are seen as the employer's actions (the servant's act is the master's act in Law).

The theory of criminal responsibility is used to address research questions one and two, particularly in explaining the doctrine of command responsibility as a deviation from conventional criminal liability theory. It provides the conceptual basis for holding a commander criminally

[68] *Ibid*., p. 213.
[69] Kukuh Dwi Kurniawan & Dwi Ratna Indri Hapsari, 2022, "Pertanggungjawaban Pidana Korporasi Menurut Vicarious Liability Theory", *Ius Quia Iustum*, 20 (2), p. 338-339.
[70] Ramelan, 2007, "Pertanggungjawaban Korporasi dalam Hukum Pidana", *Jurnal Prioris*, 1 (2), p. 129.

responsible for crimes committed by subordinates due to the failure to prevent, stop, or control such acts. This theory also clarifies the mental relationship underlying a superior's responsibility for human rights violations committed by subordinates in the field.

c. Theory of Criminal Law Policy

Legal Policy is defined as the discretion of the state through authorized bodies to establish the desired regulations, which are thought to be able to be used to express what is contained in society and to achieve what is aspired to.[71] Referring to the understanding of legal policy above, Criminal Law Policy suggest the effort on formulating good criminal legislation. Sudarto stated that criminal law policy suggests holding elections to achieve good criminal legislation results in the sense of meeting the requirements of legal justice and efficiency.[72]

A similar explanation can also be seen in Marc Ancel's definition of "penal policy" where he briefly argues that criminal law policy is "a science and art whose aim is to enable positive legal regulations to be formulated better", where in this case what is meant by positive legal regulations is none other than legislation in the field of criminal law. *Thus*, Marc Ancel's term "penal policy" is the same as the term "criminal law policy or politics".[73] Efforts and policies to create good criminal law regulations in essence cannot be separated from the aim of crime prevention. Therefore, criminal law policy

[71] Soedarto, 1983, *Hukum Pidana dan Perkembangan Masyarakat, Kajian terhadap Pembaruan Hukum Pidana*, Bandung: Penerbit Sinar Baru, p. 93, as cited by Ali Zaidan, 2015, *Menuju Pembaruan Hukum Pidana*, Jakarta: Sinar Grafika, p. 62.

[72] Hamdan, 1997, *Politik Hukum Pidana*, Jakarta: PT RajaGrafindo Persada, p. 20.

[73] Barda Nawawi Arief, 2010, *Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru)*, Jakarta: Kencana, p. 27.

or politics is also part of criminal policy, criminal law politics is synonymous with the meaning of "policy for dealing with crime with criminal law".[74]

Furthermore, crime prevention efforts with criminal law are essentially also part of law enforcement efforts (especially criminal law enforcement). For this reason, it is often said that politics or criminal law policy is also part of law enforcement policy, which is of course implemented through an Integrated Criminal Justice System mechanism. Apart from that, efforts to combat crime through the creation of criminal legislation (laws) are essentially an integral part of efforts to protect society.[75] In West Sumatra, *adat* law helps address village fund corruption through community-based prevention and enforcement. Nagari Situjuah Batua Regulation Number 8 of 2019 authorizes institutions such as BP2AS and Ninik Mamak to resolve cases using communal values of shame to deter misconduct and promote reintegration before formal prosecution.[76] Prosecutor's Guideline Number 1 of 2021 similarly reflects restorative justice by requiring victim support for women and children during criminal proceedings.[77] In the corporate sphere, anti-corruption culture emphasizes prevention through compliance and ethical governance, consistent with the principle of *afwezigheid van alle schuld*.[78] Overall, criminal law

[74] Hamdan, 1997, *Op. Cit*., p. 21.
[75] *Ibid*., p. 24.
[76] Aria Zurnetti & Nani Mulyati, 2022, "Countermeasures Model of Village Fund Corruption Through the Customary Criminal Law Approach and Local Wisdom in West Sumatera", *Nagari Law Review*, 5 (2), p. 122-123.
[77] Aria Zurnetti, Nani Mulyati, Efren Nova, Riki Afrizal, 2024, "Model Perlindungan Hukum Terhadap Perempuan dan Anak Korban Tindak Pidana Kekerasan Melalui Pedoman Kejaksaan No. 1 Tahun 2021", *Nagari Law Review*, 7 (3), p. 530-531.
[78] Nani Mulyati, 2019, "Pentingnya Membentuk Budaya Antikorupsi Dilihat dari Perspektif Pertanggungjawaban Pidana Korporasi", *Nagari Law Review*, 2 (2), p. 186-187.

policy is inseparable from social policy aimed at public welfare and community protection.[79]

Criminal law policy, understood as the effort to formulate sound criminal legislation, is relevant for analyzing the third research question concerning the ideal conceptualization of command responsibility norms within Indonesia's national legal framework. By integrating both policy-oriented and value-oriented approaches, this theoretical framework helps illustrate the future direction of legal reforms in solving cases of serious human rights violations, particularly which includes the element of command responsibility, toward a more effective criminal law legislation.

2. Conceptual Framework

a. Comparative Study

Based on the Big Indonesian Dictionary (KBBI), the comparison is equated with the resemblance. In contrast, another equivalent is comparing, which is putting two objects side to side (things and so on) to find their similarities or differences.[80] Comparative can be understood as or about comparison. It can also be defined as the activity of continuing with, based on, or using comparison as a study method.[81] Thus, in comparison, the object to be compared is known beforehand, but this knowledge is not yet firm and clear.

A comparative study is a method of examining phenomena that are analyzed side by side in order to reveal their differences and similarities.

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[79] Barda Nawawi Arief, 2010, *Op. Cit*., p. 28.

[80] Kamus Besar Bahasa Indonesia (KBBI), https://kbbi.web.id/banding, accessed on January 15th, 2025.

[81] Dictionary.com, "*Comparative*," https://www.dictionary.com/browse/comparative, accessed on January 15th, 2025.

Comparative analysis, therefore, involves describing and explaining commonalities and differences in situations or experiences between large social units, such as regions, nations, societies, and cultures. This approach encompasses traditions such as intercultural analysis in anthropology, trans-social analysis in sociology, international analysis in political science, comparative historical analysis in history, and psychological analysis.[82]

In this research, the comparative study utilizes the legal comparative method, as explained by Winterton, that legal comparative is a method that compares legal systems and the comparison produces comparative legal system data.[83] Sudarto said that legal comparative is a research method that is carried out by comparing one legal system with another legal system.[84] The object of study of legal comparative is none other than the legal sub-system, namely the substance of law (regulations), legal structure (law enforcement officials) and legal culture in a country.[85] Furthermore, legal comparative is the comparative study of the intellectual conceptions that exist behind the main legal institutions of one or several foreign legal systems. The goal is to analyze and understand the principles underlying the different legal systems.[86]

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[82] Seyed Mojtaba Miri & Zohreh Dehdashti Shahrokh, 2019, A Short Introduction to Comparative Research, p. 1, https://www.researchgate.net/publication/336278925_A_Short_Introduction_to_Comparative_Research.

[83] Dika Wicaksono, 2022, "Perbandingan Sistem Hukum Pidana Indonesia dengan Belanda Berdasarkan Karakteristik Romano-Germanic Legal Family", *Ajudikasi*, 6 (2), p. 182.

[84] MD Shodiq, 2023, *Perbandingan Sistem Hukum*, Solok: Mafy Media Literasi, p. 5.

[85] Wartiningsih, Indien Winarwati, & Rina Yulianti, 2019, *Buku Ajar Pendingan Hukum*, Surabaya: Scopindo Media Pustaka, p. 22.

[86] Dijan Widijowati, 2023, *Perbandingan Hukum Pidana,* Malang: PT. Literasi Nusantara Abadi Grup, p. 22.

b. Solving

Solving, in this context, refers to a series of legal processes followed in addressing cases of serious human rights violations, as outlined in applicable legal regulations. In the context of enforcing ICL, the mechanism for solving cases of human rights violations is resolved through a direct enforcement system through international judicial institutions, or an indirect enforcement system using national court.[87] Legal settlement in solving cases of serious human rights violations includes the stages of pre-investigation, investigation, prosecution, and trial as contained in the mechanism for solving cases of serious human rights violations that occur within the territory of Indonesia Republic as well as in the mechanism for solving serious human rights cases that are the object of the jurisdiction of the International Criminal Court (ICC) in specified circumstances.

Indonesia addresses human rights violations under Law 26/2000 through the Human Rights Court. The mechanism for solving human rights violation cases in Indonesia is regulated Law 26 2000 which carried out through a Human Rights Court, and for cases of serious violations in the past, it is carried out in two ways, namely through an *ad hoc* Human Rights Court and the Truth and Reconciliation Commission.[88] The law covers genocide and crimes against humanity.[89] At the international level, the 1998 Rome Statute established the ICC and recognizes four most serious

[87] Shinta Agustina, 2006, *Op. Cit*., p. 79.

[88] Komnas HAM RI, "*Komnas HAM Dorong Komitmen Penyelesaian Pelanggaran HAM Berat*," https://www.komnasham.go.id/index.php/news/2022/5/19/2130/komnas-ham-dorong-komitmen-penyelesaian-pelanggaran-ham-berat.html#:~:text=Mekanisme%20penyelesaian%20Pelanggaran%20HAM%20Berat,cara%20penyelesaian%20yaitu%20melalui%20Pengadilan, accessed on January 14th, 2025.

[89] See Article 7 Law Number 26 of 2000 concerning Human Rights Courts.

crimes of concern to the international community: genocide, crimes against humanity, war crimes, and aggression.[90]

The legal force of the Rome Statute and the ICC's jurisdiction over human rights violations depend on how fully states incorporate the Statute into their domestic law. While states may bind themselves through ratification, accession, acceptance, or approval, ratification carries the strongest legal effect.[91] Accordingly, the Rome Statute and the ICC's authority have full legal force only in states that have ratified it. The ICC follows the principle of complementarity, meaning national courts have primary responsibility for prosecuting serious human rights violations. Under Article 1 of the Rome Statute, the ICC acts only when a state is unwilling or unable to investigate or prosecute such crimes, thereby complementing rather than replacing national jurisdiction.[92]

c. Serious Human Rights Violations

Under the 1946 Criminal Code, criminal acts were divided into crimes, which were inherently wrongful, and violations, which were criminalized only by law.[93] Violations cause less serious harm than crimes and therefore carry lighter sanctions.[94] Another key difference is that crimes are universally regarded as reprehensible acts, while violations are not fixed and may change over time. However, through national criminal

[90] See Article 5 of the Rome Statute.

[91] Badan Keahlian, Sekretariat Jenderal DPR RI, Anotasi Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional Kompilasi dengan Peraturan Pelaksana dan Pertimbangan Hukum Mahkamah Konstitusi, p. 8, available at: https://berkas.dpr.go.id/puspanlakuu/kompilasi/kompilasi-public-206.pdf.

[92] Eza Aulia, Apri Rotin Djusfi, & Phoenna Ath Thariq, 2020, "Kewenangan Yurisdiksi International Criminal Court Terhadap Pelanggaran Hak Asasi Manusia," *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 4 (2), p. 295-296.

[93] Faisal Riza & Erwin Asmadi, 2023, *Hukum Pidana Indonesia*, Medan: UMSU Press, p. 56.

[94] Lalu Arfa'am Andesa & Firdanigsih, 2025, "Perbedaan Kejahatan Dan Pelanggaran," *JUSTITIA*, 1 (1), p. 18.

law reform, Indonesia has now merged the concepts of crimes and violations into criminal offenses.[95]

In the field of general criminal law (1946 Criminal Code), a violation implies minor harm, which contrasts with special statutes outside the Criminal Code such as Law Number 39 of 1999 concerning Human Rights (Law 39/1999) and Law Number 26 of 2000 concerning Human Rights Courts (law 26/2000), where acts that reduce, obstruct, restrict, or deprive human rights are inherently fatal. Despite this, both laws use the term "human rights violations" rather than crimes because the emphasis is on the infringement of humanity and human dignity and on state or individual responsibility under international law, even when such acts constitute genocide or crimes against humanity. Law 39/1999 further distinguishes between ordinary human rights violations and serious human rights violations, a distinction that carries legal consequences, as serious violations fall under the jurisdiction of the Human Rights Court.[96]

A contextual definition of human rights violations can be found in Article 1 number 6 of Law 39/1999, which stipulates that: [97]

> Human rights violations are any actions by a person or group of people, including state officials, whether intentional or unintentional or through negligence, that limit and/or revoke the human rights of a person or group of people guaranteed by this Law, and do not receive, or are feared not to receive, a fair and correct legal resolution based on the applicable legal mechanisms.

[95] Apriyanto Nusa & Darmawati, 2022, *Pokok-Pokok Hukum Pidana*, Malang: Setara Press, p. 79-80.

[96] Xavier Nugraha, Maulia Madina, & Ulfa Septian Dika, 2019, "Akibat Hukum Berlakunya Putusan MK Nomor 18/PUU/V/2007 Terhadap Usulan DPR Dalam Pembentukan Pengadilan Ham Ad Hoc," *HUMANI*, 9 (1), p. 58.

[97] See Article 1 number 6 of Law Number 39 of 1999 concerning Human Rights.

Among experts, there is general agreement in defining human rights violations as violations of state obligations arising from various international human rights instruments. Violations of these obligations can be committed through one's own actions or negligence. Another definition also explains that human rights violations are state actions or omissions that violate norms that are not yet criminalized under national criminal law, but rather internationally recognized human rights norms. This is the difference between human rights violations and ordinary legal violations.[98]

Human rights violations are considered criminal acts that can vary in severity, ranging from serious to minor. The ones that have attracted the most global attention are those related to serious human rights violations.[99] Although human rights are fundamental rights, due to differences in their elements and typologies, not all human rights violations are considered serious violations. The limitation lies in the object of the serious human rights violation itself, namely, whether it is individual or mass in nature, in the form of cruelty (atrocities) that shakes the conscience of humanity and endangers international peace and security. Serious human rights violations are extraordinary crimes that result in losses that are difficult to return to their original condition. Victims of serious human rights violations generally suffer physical injuries, mental injuries, emotional suffering, and

[98] Nurliah Nurdin & Astika Ummy Athahira, 2022, *HAM, Gender dan Demokrasi (Sebuah Tinjauan Teoritis dan Praktis*), Purbalingga: Sketsa Media, p. 72.

[99] Laras Astuti, 2017, "Penegakan Hukum Pidana Indonesia Dalam Penyelesaian Pelanggaran Hak Asasi Manusia," *Jurnal Kosmik Hukum*, 16 (2), p. 107. doi: https://doi.org/10.30595/kosmikhukum.v16i2.1955

other losses related to human rights. Serious human rights violations also cause material losses to the victims. [100]

The offenses classified as serious human rights violations differ across national legal instruments. Still, they are mostly held to the generally agreed international arrangement as can be found in Article 5 of the Rome Statute 1998. According to Article 5 of the statute, four acts are identified as the most serious crimes that concern the international community as a whole. These offenses are: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression. In the context of national legal instruments, the types of offense classified as serious human rights violations can be found in the Law 26/2000, especially in Article 7, namely: a. the crime of genocide; b. crimes against humanity.

d. Command Responsibility

The principle of command responsibility in international law allows tribunals to hold superiors criminally liable for crimes committed by their subordinates, even when the perpetrators are not individually identified. It addresses the limits of international tribunals in prosecuting all direct offenders and is based on a superior's failure to act despite a duty to do so. [101] The doctrine has a dual nature, encompassing both the commander's liability and the subordinate's claim of acting under orders. A commander may be liable for issuing unlawful orders or for failing to

[100] Joko Setiyono, 2020, *Peradilan Internasional atas Kejahatan HAM Berat*, Semarang: Penerbit Pustaka Magister, p. 3.

[101] Judge Bakone Justice Moloto, 2009, Article: Command Responsibility in International Criminal Tribunals, p. 1, available at: https://bjil.typepad.com/Moloto_pdf.pdf.

prevent or punish crimes they knew or should have known were being committed.[102]

It's essential to understand the difference between superior orders and command responsibility. The distinction gives rise to two different systems of criminal liability. In command responsibility, a commander can be held responsible even if they did not directly commit a crime. If subordinates commit a crime related to their duties, and that act is not directly linked to the command, the commander might still face criminal liability if certain conditions are met. In situations involving superior orders, a subordinate executes the directives issued by their superior. In this context, it is the commander who incurs responsibility for any misconduct by instructing subordinates to engage in actions that constitute a violation or offense.[103]

e. International Legal Instruments

International legal instrument refers to the various tools used in international law through which states create rights and obligations among themselves.[104] International legal instruments form the basic structure of the global legal system, which also influences how countries act and impact the formulation of national laws, international cooperation, and judicial interpretation on relevant legal issues. These instruments include various legal documents, such as treaties, conventions, declarations, and protocols that are not merely symbolic but represent such legal commitments that

[102] Ann B. Ching, 1999, "Evolution of the Command Responsibility Doctrine in Light of the Celebici Decision of the International Criminal Tribunal for the Former Yugoslavia," *N.C. J. Int'l L. & Com. Reg*, 25 (1), p. 176. doi: http://scholarship.law.unc.edu/ncilj/vol25/iss1/4

[103] Sihombing, 2004, "Pertanggung Jawaban Komando", *Jurnal HAM*, 2 (2), p. 64.

[104] UNECE, 2022, Presentation Materials: International Legal Instruments, p. 2-3, available at: https://unece.org/sites/default/files/2022-05/Presentation%20No.%201_0.pdf.

have been negotiated and serve as the primary medium through which international norms are created, codified, and enforced.

From the contextual framework, international legal instrument is a formally adopted document, recognized by the international community, that either binds its signatories to certain legal obligations or expresses shared normative aspirations. International legal instruments can be described as texts that "set out agreed-upon norms and standards that govern international behavior," and are characterized into binding and non-binding forms, each playing distinct roles in the legal order of states and international bodies.[105] Binding instruments, such as treaties or conventions, create enforceable legal obligations under international law. They require written form, the intention of the parties to be legally bound, and compliance with international legal procedures like ratification or accession, as defined in the 1969 and 1986 Vienna Conventions.[106] In contrast, non-binding instruments which often referred to as *soft law* include such as declarations, resolutions, or guidelines, do not impose legal obligations but reflect political commitment or aspirational norms. Despite lacking formal enforceability, they can influence state practice, guide policy, and in some cases, contribute to the formation of customary international law.[107] A key criterion for distinguishing between binding and non-binding instruments is the intention of the parties, alongside textual

[105] Federal Judicial Center, "*International Instruments*," https://judiciariesworldwide.fjc.gov/international-instruments, accessed on July 30th, 2025.

[106] UNECE, 2022, Presentation Materials: Types of Legal Instruments and Related Actions within the United Nations, p. 3-4, available at: https://unece.org/sites/default/files/2022-09/Presentation%206.pdf.

[107] World Intellectual Property Organization, 2023, Document: Legal Principles Related to an International Instrument, p. 4-5, available at: https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_47/wipo_grtkf_ic_47_12.docx.

language and implementation practices. Courts like the International Court of Justice (ICJ) have assessed these factors in determining whether an agreement is legally binding.[108]

An additional aspect of legal documents relevant to this discussion concerns the roles of provisions and regulations. Reflected to the earlier despeciation, international legal instruments are formal legal documents such as treaties, conventions, and protocols that define and regulate legal obligations between states. Furthermore, within these instruments are provisions, which a clause in a statute, contract, or other legal instrument.[109] In contrast, regulations, as defined as an official rule or order, having legal force, usually issued by an administrative agency[110] that carries the force of law which typically serve to interpret and implement statutes. Though less common in international law, regulations are self-executing and directly binding rules, often issued by bodies like the EU or WHO.

f. National Legal Instruments

In this case, national legal instruments are all legal documents made by the legislative and/or executive branches of power per the provisions referred to in the Law Number 12 of 2011 as amended twice through Law Number 15 of 2019 and Law Number 13 of 2022 concerning the Formation of Legislation (Legislation Law). In this context, what is meant as national legal instruments is referred to the terms of Statutory Regulations, which

[108] Mathias Forteau, 2022, Report of the International Law Commission on the Work of Its Seventy-Third Session: Non-Legally Binding International Agreements, p. 356-357, available at: https://legal.un.org/ilc/reports/2022/english/annex1.pdf.

[109] Bryan A. Garner, 2014, *Black's Law Dictionary Deluxe Tenth Edition*, p. 1420.

[110] *Ibid*. p. 4018.

explained by Article 1 number 2 of Legislation Law as written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures stipulated in Statutory Regulations.[111]

National legal instruments are the basis and tools for enforcing law at the national level. In the context of human rights, these instruments include constitutions, laws, government regulations, and other policies that guarantee and protect human rights. In addition, the state also established special institutions to handle human rights issues and ensure the effective implementation of these instruments.[112] Subsequently, in this study what is meant as national legal instruments, include all legal regulations in the field of criminal law which regulate mechanisms for solving cases of serious human rights violations in Indonesia, such as: 1) Law Number 39 of 1999 concerning Human Rights (Human Rights Law); 2) Law Number 26 of 2000 concerning Human Rights Courts (Human Rights Court Law); 3) Presidential Decree Number 17 of 2022 concerning the Establishment of a Non-judicial Resolution Team for Past Serious Human Rights Violations; and 4) Several Presidential Decree on the establishment of *ad hoc* Human Rights Court.

G. Research Method

1. Research Typology

This study uses a normative-empirical approach, which focuses on examining legal norms and implementing normative legal instruments on particular legal

[111] See Article 1 number 2 Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning The Legislation.

[112] M. Syafi' ie, 2012, "Instrumentasi Hukum Ham, Pembentukan Lembaga Perlindungan Ham di Indonesia dan Peran mahkamah Konstitusi", *Jurnal Konstitusi*, 9 (4), p. 687.

events and their results.[113] Normative-empirical research is a legal research approach based on secondary data and supported by empirical field data. This approach views law both descriptively and prescriptively, so it not only analyzes the implementation of law in society but also provides recommendations for improving the legal system.[114] This study examines the application of the principle of command responsibility from international and national legal perspectives with the aim of developing a more refined future conceptual model therefore the normative empirical method is highly relevant to the research objectives.

2. Research Approach

Regarding the nature of this study as a comparative study, it examines the regulation and application of command responsibility in solving serious human rights violations by comparing international and national legal instruments to identify similarities and differences.[115] The analysis focuses on international tribunals such as the ICTY and ICTR and hybrid tribunals including the Special Panels for East Timor, the SCSL, and the ECCC to identify similarities and differences in normative regulation and practice. These instruments are selected for their strict norms, equal application to military and civilian superiors, and recognition of effective command and control, making them a relevant reference for Indonesian legal reform.

As a normative-empirical study, this research employs several commonly used approaches as identified by Peter Mahmud Marzuki which includes: statute approach, case approach, historical approach, and the

[113] Muhaimin, 2020, *Metode Penelitian Hukum*, Mataram: Mataram University Press, p. 117.
[114] Muhammad Syarif., *et.al*., 2024, *Metode Penelitian Hukum*, Padang: Get Press Indonesia, p. 93-94.
[115] Nur Solikin, 2021, *Pengantar Metode Penelitian Hukum*, Pasuruan: Qiara Media, p. 49.

conceptual approach.[116] The author in this study uses the following approaches: 1) the statute approach to examine international and national legal provisions on command responsibility; 2) the case approach to analyze its application in international and national judicial decisions; 3) the historical approach to trace the development of the doctrine and its regulation in international and national legal instruments; and 4) the conceptual approach to integrate relevant legal theories and doctrines, particularly concerning the principle of command responsibility.

3. Research Source

This study uses both secondary data (library data and legal documents), better known as legal materials, as well as primary data directly obtained from the community; subjects studied at institutions and community groups, who are direct actors who can provide information to the researcher, known as respondents or informers.[117] Secondary data for this study were obtained from:[118]

a. Primary legal sources which have binding forces and are authoritative, namely statutory regulations, jurisprudence or court decisions, and international agreements (treaties). Primary legal materials related to the discussion of this master thesis consist of the following:

1) International Legal Instruments, such as:

a) Rome Statute

b) Treaties Establishing International Tribunals (IMTN; IMTFE; ICTY, 1993; ICTR, 1994)

[116] Gunardi, 2022, *Buku Ajar Metode Penelitian Hukum*, Jakarta: Damera Press, p. 46.
[117] Muhaimin, 2020, *Op. Cit*., p. 124.
[118] Sigit Sapto Nugroho & Anik Tri Haryani, 2020, *Metodologi Riset Hukum*, Karanganyar: Oase Pustaka, p. 67-68.

c) Treaties Establishing Hybrid Tribunals (SPSC, 2000; SCSL, 2000; ECCC, 2004)

d) International Humanitarian Law (Hague Regulations 1899/1907; Hague & Geneva Conventions 1907/1929; Additional Protocol I, 1977; Second Protocol to the Hague Convention, 1999)

e) United Nations Legal Documents (Convention on the Prevention and Punishment of the Crime of Genocide, 1948; General Assembly Resolution 3314, 1974)

2) National Legal Instrument, such as:

a) Constitution of the Republic of Indonesia of 1945

b) Law Number 1 of 1946 concerning Regulations on Criminal Law (KUHP)

c) Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM)

d) Law Number 39 of 1999 concerning Human Rights

e) Law Number 26 of 2000 concerning Human Rights Courts

f) Law Number 12 of 2011 concerning Formation of Legislation as amended firstly trough Law Number 15 of 2019 and secondly trough Law Number 13 of 2022

g) Law Number 1 of 2023 concerning Criminal Code (KUHP)

h) Presidential Decree Number 53 of 2001 concerning the Establishment of an *ad hoc* Human Rights Court at the Central Jakarta District Court as amended by Presidential Decree Number 96 of 2001

i) Presidential Decree Number 17 of 2022 concerning the Establishment of a Non-judicial Resolution Team for Past Serious Human Rights Violations

3) Court verdicts from international and hybrid tribunals, as well as Indonesian human rights (*ad hoc*) courts, such as:

a) Trial Report: Case No. 21 on General Yamashita Case in IMTFE

b) Trial Report: Case No. 47 on Hostage Case in IMTN

c) Trial Report: Case No. 72 on High Command Case in IMTN

d) Trial Judgement: The Prosecutors v.s. Jean-Paul Akayesu in ICTR

e) Trial Judgement: The Prosecutor v.s. Clément Kayishema and Obed Ruzindana in ICTR

f) Verdict of the Supreme Court of Indonesia in The Case Number 06 K/PID.HAM AD HOC/2005

g) Verdict of the Supreme Court of Indonesia in The Case Number 34 PK/Pid.HAM.Ad.Hoc/2007

h) Verdict of the Supreme Court of Indonesia in The Case Number 01 K/Pid.HAM.Ad.Hoc/2006

i) Verdict of Makassar District Court in The Case Number 1/Pid.Sus-HAM/2022/PN Mks

b. Secondary legal sources, namely legal materials, can explain primary legal sources, including draft legislation, research results, textbooks, scientific journals, newspapers, pamphlets, leaflets, brochures, and internet news.

c. Tertiary legal sources help explain primary and secondary legal sources, including dictionaries, encyclopedias, and lexicons.

As for the primary data, is data obtained directly from the primary source, either through interviews, observations, or reports in the form of indirect documents that the author finds later.[119] In order to obtain the primary data, the author held a semi-structured interview sessions with corresponding stakeholder. In this case are several related institutions in the law enforcement process of solving cases of serious human rights violations in Indonesia, which are Commission on Human Rights (KOMNAS HAM), Attorney General's Office of the Republic of Indonesia (KEJAGUNG RI), and Human Rights Court at the Makassar District Court.

4. Data Collection Method

Data variation in normative-empirical legal research consists of secondary and primary data. Therefore, data collection methods in normative-empirical legal research can be used separately or together. Secondary data is collected through literature, document studies, and conventional and digital searches. Next, primary data was collected through semi-structured interviews with informers, in this case, law enforcement officers from related institutions in terms of solving cases of serious human rights violations, namely Mr. Eko Dahana as Secretary of the Follow-up Team for the Results of Investigations into Serious Human Rights Violations at KOMNAS HAM, Mr. Jufri as Head of the Prosecution Sub-Directorate of DIRHAM Berat at KEJAGUNG RI, Mr. Yulian Bernard as the former Investigation Prosecutor of Paniai Case, and Mrs. Siti Noor Laila as the Ad Hoc Human Rights Judge at Human Rights Court at the Makassar District Court.

[119] Zainudin Ali, 2010, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, p. 106.

5. Data Processing and Analysis Technique

Data processing will mainly be carried out deductively by the researcher through three stages: (1) Editing, namely rewriting the legal materials obtained to complete any incomplete data and simplifying them into clear language; (2) Systematization, namely selecting, classifying, and organizing legal materials logically and systematically; and (3) Description, namely describing and analyzing the research results based on the legal materials obtained.[120] As for primary data in the form of interview results, the researcher will process them through the following stages: 1) Transcription, namely replaying the interviews and converting them into written documents to ensure data validity; 2) Data categorization, namely sorting the data into categories based on the research topic; and 3) Data presentation, namely compiling the data in the form of narratives, charts, or graphs.

Data analysis used in this study is qualitative analysis through a descriptive approach, where the researcher wishes to provide an overview or explanation of the research subjects and objects based on the research results. The researcher does not justify the results of the study.[121] In legal research, qualitative analysis is intended to test the quality of the substance of legal norms where the formulation of justification is based on the quality of the opinions of legal experts, doctrines, and theories, as well as the formulation of legal norms themselves.

[120] Nur Solikin, 2021, *Op. Cit.*, p. 123.

[121] Wiwik Sri Widiarty, 2024, *Buku Ajar Metode Penelitian Hukum*, Yogyakarta: Publika Global Media, p. 155.