



THE CONCEPT OF COMMAND RESPONSIBILITY
IN SOLVING SERIOUS HUMAN RIGHTS VIOLATIONS
(Comparative Study of International and National Legal Instruments)

THESIS

Prepared to Meet the Requirements
Master of Law Program

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MASTER OF LAW STUDY PROGRAM

FACULTY OF LAW

UNIVERSITAS ANDALAS

PADANG

2026

VALIDITY SHEET
HALAMAN PENGESAHAN
Registration Number: 48/MH/I/2026

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**PRINSIP PERTANGGUNGJAWABAN KOMANDO DALAM
PENYELESAIAN KASUS PELANGGARAN HAM BERAT**
(Studi Perbandingan Ketentuan Hukum Internasional dan Nasional)

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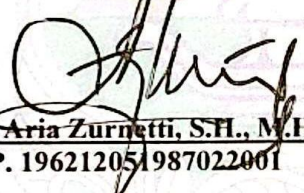
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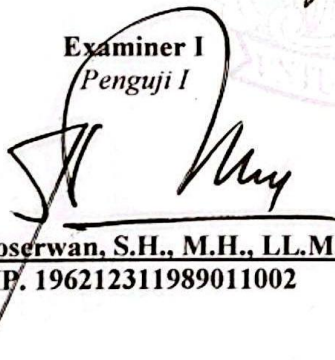
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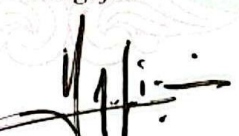
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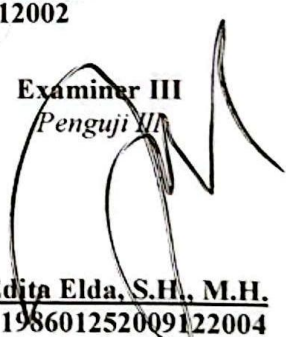
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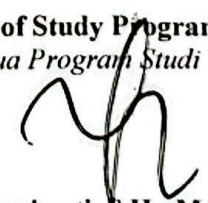
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**KONSEP PERTANGGUNGJAWABAN KOMANDO DALAM
PENYELESAIAN PELANGGARAN HAK ASASI MANUSIA BERAT
(Studi Perbandingan Instrumen Hukum Internasional dan Nasional)**

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ABSTRAK:

Pelanggaran hak asasi manusia yang berat, khususnya genosida dan kejahatan terhadap kemanusiaan, merupakan kejahatan luar biasa yang diatur di Indonesia melalui Undang-Undang Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia. Dengan berlakunya Kitab Undang-Undang Hukum Pidana (KUHP 2023) melalui Undang-Undang Nomor 1 Tahun 2023, tindak pidana tersebut dirumuskan kembali sebagai Tindak Pidana Berat terhadap Hak Asasi Manusia dalam Pasal 598 dan Pasal 599, sebagai bentuk internalisasi norma hukum pidana internasional dengan tetap mempertahankan UU No. 26 Tahun 2000 sebagai hukum acara yang bersifat khusus. Salah satu mekanisme penting dalam penegakannya adalah prinsip pertanggungjawaban komando, yang memungkinkan atasan militer maupun sipil dimintai pertanggungjawaban pidana atas kejahatan bawahan yang berada di bawah pengendalian efektifnya. Prinsip ini diatur dalam Pasal 42 UU No. 26 Tahun 2000 yang mengadopsi Pasal 28 Statuta Roma. Namun, implementasinya di Indonesia masih menghadapi hambatan normatif dan pembuktian yang serius, sebagaimana terlihat dalam kasus Tanjung Priok, Timor-Timur, Abepura, dan Paniai. Penelitian ini bertujuan untuk menganalisis pengaturan dan penerapan prinsip pertanggungjawaban komando dalam instrumen hukum internasional dan nasional, serta merumuskan konseptualisasi norma yang lebih ideal dalam penyelesaian perkara pelanggaran hak asasi manusia yang berat. Penelitian ini mengkaji tiga permasalahan, yaitu: (1) pengaturan pertanggungjawaban komando dalam hukum internasional; (2) pengaturan dan implementasinya dalam sistem hukum Indonesia; dan (3) perumusan model konseptual yang lebih efektif untuk meningkatkan akuntabilitas. Metode penelitian yang digunakan adalah normatif-empiris melalui analisis peraturan perundang-undangan dan perbandingan hukum, studi kasus, kajian pustaka, serta wawancara. Temuan penelitian menunjukkan bahwa meskipun unsur pengendalian efektif dan pengetahuan telah diperjelas dalam hukum pidana internasional, penerapannya di Indonesia masih belum konsisten akibat fragmentasi pengaturan, kelemahan pembuktian, dan keterbatasan kelembagaan. Penelitian ini menyimpulkan bahwa permasalahan utama terletak pada lemahnya penegakan hukum dan merekomendasikan harmonisasi Pasal 42 UU No. 26 Tahun 2000 dengan perkembangan hukum internasional serta penguatan kapasitas pembuktian dan kelembagaan guna mewujudkan keadilan substantif bagi korban.

Kata Kunci: Pelanggaran HAM Berat, Pertanggungjawaban Komando, Statuta Roma, Pengadilan HAM, Pembaharuan Hukum Pidana.

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ABSTRACT:

Serious human rights violations, particularly genocide and crimes against humanity, are extraordinary crimes regulated in Indonesia under Law Number 26 of 2000 concerning the Human Rights Court. Following the enactment of the new Criminal Code (KUHP 2023) through Law Number 1 of 2023, these offenses have been reformulated as Serious Criminal Acts Against Human Rights under Articles 598 and 599, reflecting Indonesia's effort to internalize international criminal law norms while maintaining Law 26/2000 as a special procedural regime. A key mechanism in their enforcement is the principle of command responsibility, which allows military and civilian superiors to be held criminally liable for crimes committed by subordinates under their effective control. This principle is regulated in Article 42 of Law 26/2000, adopting Article 28 of the Rome Statute. However, its implementation in Indonesia continues to face serious normative and evidentiary obstacles, as demonstrated by the acquittals in the Tanjung Priok, East-Timor, Abepura, and Paniai cases. This study aims to analyze the regulation and application of command responsibility in international and national legal instruments and to formulate an ideal conceptualization of norms for resolving serious human rights violations. It addresses three research problems, which: (1) international regulation of command responsibility; (2) its regulation and implementation in Indonesia; and (3) the formulation of an improved conceptual model for accountability. Employing a normative-empirical method through statutory and comparative legal analysis, case studies, literature review, and interviews, this research examines both international and national practices. The findings reveal that although international criminal law has clarified the elements of effective control and knowledge, national implementation remains inconsistent due to fragmented regulation, evidentiary weaknesses, and institutional constraints. This study concludes that the primary challenge lies in ineffective enforcement rather than normative absence and recommends harmonizing Article 42 of Law 26/2000 with international developments, clarifying its relationship with KUHP 2023, and strengthening evidentiary and institutional capacity to ensure substantive justice for victims.

Keywords: Serious Human Rights Violations, Command Responsibility, Rome Statute, Human Rights Court, Criminal Law Reform.