

CHAPTER III

THE FUTURE SETTLEMENT OF PAST HUMAN RIGHTS VIOLATION (STUDY *RUMOH GEUDONG* CASE)

A. Allegation of Gross Human Rights Violations in the *Rumoh Geudong* Case

1. *Rumoh Geudong* Case Position

Gross Human Rights Violations were documented at the *Bille Aron* military post (*Pos Satuan Taktis dan Strategis/Pos Sattis*), widely known as *Rumoh Geudong*¹¹⁹, a large house in *Glumpang Tiga, Pidie* district (*kabupaten*), operated by the military (*Kopassus*). The military seems to have arbitrarily arrested or abducted dozens, and possibly hundreds of people who were accused of being members of the Free Aceh Movement (*GAM*)¹²⁰ or supporting and assisting *GAM*.¹²¹

In around 1989 - 1990 the Government of Indonesia decided to establish the Aceh region as a Military Operations Area (*Daerah Operasi Militer/DOM*) precisely in 1989. Since then, military operations have

¹¹⁹ *Aceh's* Traditional House.

¹²⁰ Seeing *Unfinished Story of Aceh Book*, After the Cold War (*Perang Dingin*) we witnessed many conflicts that occurred within a country, such as in Yugoslavia, Croatia, Macedonia, Bosnia and Indonesia. One of the conflicts that occur in Indonesia is the Aceh conflict, which in the conflict has claimed many victims, both fatalities and material casualties. Conflict or Rebellion in Aceh between 1976 and 2005 was instigated by the Free Aceh Movement (*GAM*) to obtain independence from Indonesia. The Free Aceh Movement or often referred to as *GAM*, is a separatist organization that has been established in Aceh since 1976. The objective of establishing *GAM* is to make Aceh free from the Unitary State of the Republic of Indonesia, and create a unitary state of its own. This movement is also known as the Aceh Sumatra National Liberation Front (*ASNLF*).

¹²¹ Dyah Rahmany P, *Rumoh Geudong: The Scar of the Acehnese (Rumoh Geudong: Tanda Luka orang Aceh)*, Cordova Institute for Social Empowerment, 2001, Pg. 41-42.

been carried out with the code of operation “*Jaring Merah*”¹²² which was held in Aceh. In Pidie District (*kabupaten/kota*), *Pos Sattis* is spread in almost all districts (*kecamatan*), Placement of military posts in a number of districts (*kecamatan*) is based on consideration of the level of security disturbances, and analysis of military strategies.

The location of *Pos Sattis* was deliberately planned in strategic places, thus allowing the military apparatus to easily oversee the activities and mobility of villagers so that people's lives and freedom of movement could be tightly controlled and restricted. Thus, it can be said that *Pos Sattis* is a mainstay of military operations at the micro level. It was a benchmark to determine the success or failure of a Military Operation in Aceh. In each of the *Pos Sattis* there are about 6-10 military personnel who are assisted by military Operational Assistance (*Tenaga Pembantu Operasional/TPO*) personnel or spies from civil society.¹²³

After the DOM was revoked on 7 August 1998, it was discovered that the military had apparently used *Rumoh Geudong* not only as a *Pos Sattis* but also as a place to carry out actions outside humanitarian boundaries such as;¹²⁴ Imprisonment (*penyekapan*), interrogation (*introgasi*), torture (*penyiksaan*), murder (*pembunuhan*) / arbitrary execution (*eksekusi sewenang-wenang*) and rape (*pemeriksaan*) of the

¹²² The “*Jaring Merah*” operation was held in Aceh with the Military Resort Command 011 / *Liliwangsa* serving as the Operational Operations Command.

¹²³ Ringkasan tim eksekutif Komnas HAM, *Hasil tim pemantauan dan penyelidikan pelanggaran HAM pada masa Daerah Operasi Militer di Provinsi Aceh*, di ketuai oleh Dr. Otto Nur Abdullah, Jakarta, 2013, Pg. 5-6.

¹²⁴ *Ibid.*, Pg. 6.

Acehnese who were considered suspects or accused of joining GAM. Actions outside the limits of humanity are experienced by civilians and not only men but also women and children.¹²⁵ It is estimated that there were thousands of people who were arbitrarily arrested without legal procedures and some of them have been killed in public executions, and a number of women experienced sexual violence and / or sexual harassment by the military.¹²⁶ The acts of torture carried out by the authorities against the victims were generally carried out to obtain information or identification related to the involvement of the person concerned or his family in the GAM or *Gerakan Pengacau Keamanan Aceh Merdeka/GPK-AM*.

On August 21, 1998, a few weeks after the DOM expired, a fact-finding team from National Human Rights Commission (*Komnas HAM*) visited *Rumoh Geudong*. They saw electrical wires on the floor of the house and blood stains on the wall. They also found remnants of the human body including bone fragments from fingers, feet, and hands and also strands of hair. The victims and witnesses reported that prior to the presence of the fact-finding team, the detainees and local villagers were ordered by the military to dig up the remains of human bodies buried around *Rumoh Geudong* and then put in vehicles to be taken elsewhere. At 3pm the same day, after the *Komnas HAM* team left the location,

¹²⁵ *Ibid*, Pg. 6-7

¹²⁶ *Ibid*.

Rumoh Geudong was burned down, reportedly by an angry crowd (*masyarakat*).¹²⁷

2. Analysis of Alleged Crimes Against Humanity in the *Rumoh Geudong* Case

The legal analysis used for the *Rumoh Geudong* incident is using Law Number 26 of 2000 concerning the Human Rights Court, is to find out whether or not the alleged violation of gross human rights violations in the event of gross human rights violations in the *Rumoh Geudong* case.

Based on the case position in the *Rumoh Geudong* incident that has been explained in above and the provisions of Article 7 in conjunction with Article 9 of Law Number 26 of 2000, the forms of acts that occur in cases of gross human rights violations in the *Rumoh Geudong* case can be categorized as crimes against humanity if the act was carried out as part of a widespread or systematic attack and the attack was directed directly against the civilian population.

As stated in the explanation of Article 9, attacks directed against civilians are a series of acts committed against civilians as a continuation of the policies of the authorities or policies relating to the organization.

Based on these provisions, the author will conduct an analysis of alleged gross human rights violations in the *Rumoh Geudong* case according to Law Number 26 of 2000 concerning Human Rights Courts.

¹²⁷ Dyah Rahmani P, *Rumoh*, *Op. Cit.*, Pg. 104.

Determination of the existence of the elements of a crime in the facts of the incident found by the National Human Rights Commission investigation team which will then become data to assist the writer in analyzing cases of gross human rights violations in the *Rumoh Geudong* case, which includes:

a. The elements of the form of the act that occurred (as referred to in Article 9 letter a-j of Law 26/2000) in the *Rumoh Geudong* case are objective elements;¹²⁸

No	Form of Act	Victims
1.	Murder ¹²⁹	378
2.	Torture ¹³⁰	193
3.	Persecution ¹³¹	569
4	Rape ¹³²	14

b. As well as the elements of crimes against humanity, as referred to in Article 9 of Law 26 of 2000 along with their explanations (objective elements), along with their *mens rea* (subjective elements), which proves that: The perpetrator knows that the relevant acts are part or intended as part of the attack widespread or systematic aimed at civilians, as a continuation of the policies of the authorities or

¹²⁸ Ringkasan tim eksekutif Komnas HAM, *hasil tim pemantauan dan penyelidikan Pelanggaran HAM pada masa Daerah Operasi Militer di Provinsi Aceh, Op Cit*, Pg. 14-16.

¹²⁹ Seeing Article 9 letter (a) of Law of 26 concerning Human rights court.

¹³⁰ *Ibid.*, letter (f).

¹³¹ *Ibid.*, letter (h).

¹³² *Ibid.*, letter (g).

policies relating to the organization; (Elements of Crimes Against Humanity according to the Rome Statute and explanation in Article 9 of Law 26 of 2000);

Based on the provisions of Article 7 and Article 9 of Law Number 26 of 2000, the forms of acts that occurred in the *Rumoh Geudong* incident, could be categorized as crimes against humanity if “these acts were carried out as part of a widespread or systematic attack and the attacks were directed directly against civilians”. As stated in the explanation of Article 9, “attacks directed against civilians” are “a series of acts committed against civilians as a continuation of the policies of the authorities or policies relating to the organization”.

As for the legal analysis of the forms of crimes against gross human rights violations in the *Rumoh Geudong* case:

a. Murder

Article 338 of the Criminal Code that explains, anyone who intentionally takes the lives of others, is convicted of murder. In

actions to eliminate the lives (of others) there are 3 (three) conditions that must be fulfilled, namely (1) the existence of actions, (2) the existence of a death (other people), (3) the existence of a causal relationship (*causal verband*) between the actions and consequences of death (other people).¹³³ The form of serious human rights violations identified in the case of gross human rights violations in

¹³³ More explanation seeing Article 338 of Criminal Code.

the *Rumoh Geudong* case is a crime of murder as regulated in Article 9 letter (a) of Law Number 26 of 2000 concerning the Human Rights Court. The elements are:

1) Element of Action

The element of gross human rights violations in the form of murder in the *Rumoh Geudong* case is an act that takes a person's life or more which then results in death with a death toll of 378 people. The act was carried out using a weapon or not using a weapon and the act has resulted in fatalities. Therefore the element of action has been fulfilled.¹³⁴

2) Element of Widespread or Systematic Attack

The elements of a widespread and systematic attacks in the event of gross human rights violations in the *Rumoh Geudong* case in the form of murder, namely (1) widespread attacks, including the large number of victims resulting from the act of taking one's life or more (murder) as many as 378 fatalities. (2) systematic, the killings as explained above were carried out by military officers who were given authority in carrying out Operation *Jaring Merah* under the Military Resort Command 011 / *Liliwangsa* which was then used as the Operational Operations Command when the Government of the

¹³⁴ Ringkasan tim eksekutif Komnas HAM, *hasil tim pemantauan dan penyelidikan Pelanggaran HAM pada masa Daerah Operasi Militer di Provinsi Aceh, Loc Cit.*

Republic of Indonesia decided to establish the Aceh area as a Military Operational Area (*DOM*) precisely in 1989. Therefore the element of widespread and systematic attack has been fulfilled.¹³⁵

3) Element of Action Against Civilian Population

The element of attack aimed at the civilian population in the *Rumoh Geudong* case was the act of eliminating a person's life or more (murder) with a total of 378 fatalities, the attack was directed directly against the civilian population ie residents or residents in Pidie District, which are located around the tactical Post Unit and strategic (*Pos Sattis*) in almost all districts including *Billie Aron, Jiem-Jiem, Tangse, Bakti Kota Bakti, Pintu Satu Tiro, Ulee Gle, Trienggading, Padang tiji, Lamlo, Pulo Kawa, Meunasah Beuracan*. The placement of a number of military posts in a number of sub-districts was based on the level of security disturbances, and the analysis of the military strategy and *Rumoh Geudong* were made as the central posts in running the *Jaring Merah* Operation.¹³⁶

b. Torture

¹³⁵ *Ibid.*, Pg. 14-16.

¹³⁶ *Ibid.*

The meaning of torture, in the context of law specifically relating to human rights, can be found in Article 1 paragraph (4) of Law Number 39 of 1999 concerning Human Rights. Article 1 paragraph (4) states the meaning of torture.¹³⁷ This act of torture is an action that aims to misery someone by hurting and torturing both physically and mentally as a form of punishment. In the same Law, Article 33 paragraph (1) states that all people have the right to be free from torture, punishment or even inhumane abusive treatment which degrading human dignity and dignity. The form of serious human rights violations identified in the case of gross human rights violations in the Rumoh Geudong case is a crime of torture as regulated in Article 9 letter (f) of Law Number 26 of 2000 concerning Human Rights Courts. The elements are:

1) Element of Action

The element of gross human rights violations in the form of torture in the *Rumoh Geudong* case is an act that aims to afflict a person or more by hurting both physically and mentally as a form of punishment which then results in victims of both serious and minor injuries of 193 people. The act was carried out using weapons or not using weapons (kicks, punches and

¹³⁷ Seeing Article 1 paragraph (4) of Law Number 39 of 1999 concerning Human Rights states as follows, “*Penyiksaan adalah setiap perbuatan yang dilakukan dengan sengaja, sehingga menimbulkan rasa sakit atau penderitaan yang hebat, baik jasmani, maupun rohani, pada seseorang untuk memperoleh pengakuan atau keterangan dari seseorang atau dari orang ketiga, dengan menghukumnya atas suatu perbuatan yang telah dilakukan atau diduga telah dilakukan oleh seseorang atau orang ketiga, atau untuk suatu alasan yang didasarkan pada setiap bentuk diskriminasi, apabila rasa sakit atau penderitaan tersebut ditimbulkan oleh, atas hasutan dari, dengan persetujuan, atau sepengetahuan siapapun dan atau pejabat politik*”.

other acts of violence) and the act has resulted in victims. Therefore the element of the crime of torture has been fulfilled.¹³⁸

2) Element of part of a widespread or systematic attack

The elements of widespread and systematic attacks in the event of gross human rights violations in the *Rumoh Geudong* case in the form of torture, namely (1) widespread attacks, including the large number of victims both seriously injured and minor injuries from the consequences of torture against a person or more than 378 victims. (2) systematic, the deeds as explained above were carried out by military officers who were given authority in carrying out Operation Red Net under the Military Resort Command 011 / *Liliwangsa* which was then used as the Operational Operations Command when the Government of the Republic of Indonesia decided to establish the Aceh area as a Military Operational Area (DOM) precisely in 1989. Therefore the element of widespread and systematic attack has been fulfilled.¹³⁹

3) Element of action against the civilian population

¹³⁸ Ringkasan tim eksekutif Komnas HAM, hasil tim pemantauan dan penyelidikan Pelanggaran HAM pada masa Daerah Operasi Militer di Provinsi Aceh, *Loc Cit.*

¹³⁹ *Ibid.*

The element of attack aimed at the civilian population in the *Rumoh Geudong* case in the form of torture was an act which resulted in serious injuries as well as minor injuries with a total of 193 people being victims. Tactical and Strategic Unit Posts (*Pos Sattis*) in almost all districts include *Billie Aron, Jiem-Jiem, Tangse, Kota Bakti, Pintu Satu Tiro, Ulee Gle, Trienggading, Padang tiji, Lamlo, Pulo Kawa, Meunasah Beuracan*. The placement of a number of military posts in a number of sub-districts was based on consideration of the level of security disturbances, and the analysis of the military strategy and *Rumoh Geudong* were made as a central post in running Operation *Jaring Merah*.¹⁴⁰

c. Persecution

The form of persecution / persecution is the equivalent of Article 7 paragraph (1) letter (h) of the Rome Statute which reads:

*Persecution of groups or collectivities identified on the basis of political, racial, national, ethnic, cultural, religious, gender relations as in paragraph (3), or on other grounds universally recognized as not permitted by international law, in connection with an act referred to in this paragraph or a crime which falls under the jurisdiction of the Court.*¹⁴¹ Article 7 paragraph (2) letter (g), which explains the

¹⁴⁰ *Ibid.*

¹⁴¹ Seeing Article 7 paragraph (1) letter (h) and (3) of Roma Statute.

meaning of the term persecution reads: *Persecution' means the seizure of basic rights that is done intentionally and violently against international law for reasons of group identity or collectivity.*¹⁴²

Information from Komnas HAM data shows that *the persecution of a certain group or association based on equality of political understanding, race, nationality, ethnicity, culture, religion, gender, or other reasons that is universally prohibited under international law*, as one form of the crime against humanity has occurred in the *Rumoh Geudong* case due to the fulfillment of the following elements:

1) Element of Action

The element of gross human rights violations in the form of persecution in the *Rumoh Geudong* case is the existence of an act of persecution against a certain group or association based on equality of political understanding, race, nationality, ethnicity, culture, religion, gender, or other reasons universally as matters which is prohibited according to international law by hurting both physically and mentally as a form of punishment which then resulted in victims of both serious and minor injuries of 569 people. The act was carried out using weapons or not using weapons (kicks, punches and other acts of violence) and the act

¹⁴² Seeing Article 7 paragraph (2) letter (g) of Rome Statute.

has resulted in victims. Therefore the element of the crime of torture has been fulfilled.¹⁴³

2) Element of widespread or systematic attack

The element of widespread and systematic attacks in the event of gross human rights violations in the *Rumoh Geudong* case in the form of persecution, namely (1) widespread attacks, including the large number of victims both seriously injured and minor injuries resulting from acts of persecution against a certain group or association based on equality political understanding, race, nationality, ethnicity, culture, religion, gender, or other reasons that are universally prohibited under international law for a person or more with a total of 569 victims. (2) systematic, the deeds as explained above were carried out by military officers who were given authority in carrying out Operation *Jaring Merah* under the Military Resort Command 011 / *Liliwangsa* which was then used as the Operational Operations Command when the Government of the Republic of Indonesia decided to designate the Aceh region as a Military Operational Area (DOM) precisely in 1989. Therefore the element of widespread and systematic attack has been fulfilled.¹⁴⁴

¹⁴³ Ringkasan tim eksekutif Komnas HAM, hasil tim pemantauan dan, *Loc Cit.*

¹⁴⁴ *Ibid.*

3) Element of action against the civilian population

The element of attack aimed at civilians in the *Rumoh Geudong* case in the form of persecution is the act of persecution of a particular group or association based on common understanding of politics, race, nationality, ethnicity, culture, religion, gender, or other reasons that are universally as matters which is prohibited according to international law which resulted in serious injuries and minor injuries with a total of 569 people being victims, the attack was directed directly against the civilian population ie residents or residents of *Pidie* District, which are located around the tactical and strategic Post Unit (*Pos Sattis*) located in in almost all districts including *Billie Aron, Jiem-Jiem, Tangse, Kota Bakti, Pintu Satu Tiro, Ulee Gle, Trienggading, Padang tiji, Lamlo, Pulo Kawa, Meunasah Beuracan*. The placement of a number of military posts in a number of sub-districts was based on consideration of the level of security disturbances, and the analysis of the military strategy and *Rumoh Geudong* were made as a central post in running Operation *Jaring Merah*.¹⁴⁵

¹⁴⁵ *Ibid.*

d. Rape

The World Health Organization (WHO) defines rape as vaginal or anal penetration using the penis, other limbs or an object - even if superficial by force either physical or non-physical¹⁴⁶.

Whereas the International Criminal Court for Rwanda in 1998 formulated rape as a physical invasion of a sexual nature committed against a human being in a coercive state or environment.¹⁴⁷ While

the definition of rape in article 285 of the Criminal Code is formulated as an act “with violence or threat of violence forcing women who are not their wives to have intercourse”¹⁴⁸. The elements

contained in this criminal act include: with violence or threats of violence; forcing women who are not their wives; to have sexual relations (intercourse). The form of serious human rights violations

identified in the case of gross human rights violations in the *Rumoh Geudong* case is a crime of rape as regulated in Article 9 letter (g) of

Law Number 26 of 2000 concerning the Human Rights Court. The elements are:

1) Element of Action

¹⁴⁶ Seeing <https://www.hukumonline.com/klinik/detail/ulasan/t4f9bb33933005/delik-aduan/>, Accessed On October 9, 2019.

¹⁴⁷ Seeing ICTR Statute of 1998.

¹⁴⁸ Seeing Article 285 of Criminal code concerning rape.

The element of gross human rights violations in the form of rape in the *Rumoh Geudong* case is the existence of acts of violence or threats of violence forcing women who are not wives to have intercourse by threatening and coercing which then results in the victims of these acts as many as 14 women. The act was carried out using physical violence as well as threats of violence and the act has resulted in victims. Therefore the element of the crime of torture has been fulfilled.¹⁴⁹

2) Element of widespread or systematic attack

The elements of widespread and systematic attacks in the event of gross human rights violations in the *Rumoh Geudong* case in the form of rape, namely (1) widespread attacks, including the large number of victims of acts of violence or threats that led to the rape of 14 women who were victims of these acts. (2) systematic, the deeds as explained above were carried out by military officers who were given authority in carrying out Operation Red Net under the Military Resort Command 011 / *Liliwangsa* which was then used as the Operational Operations Command when the Government of the Republic of Indonesia decided to designate the Aceh region as a Military Operational Area (*DOM*) precisely in 1989. Therefore

¹⁴⁹ Ringkasan tim eksekutif Komnas HAM, hasil tim pemantauan dan, *Loc Cit.*

the element of widespread and systematic attack has been fulfilled.¹⁵⁰

3) Element of action against the civilian population

The element of attack aimed at civilians in the *Rumoh Geudong* case in the form of rape is a form of acts of violence or threats of violence, forcing women who are not wives to have intercourse by threatening and coercing so that there is a rape of 14 women who are victims of these acts, attacks. The target is directed directly towards the civilian population, namely residents or residents of *Pidie* Regency, which are located around the tactical and strategic Post Unit (*Pos Sattis*) in almost all districts, including *Billie Aron, Jiem-Jiem, Tangse, Kota Bakti, Pintu Satu Tiro, Ulee Gle, Trienggading, Padang tiji, Lamlo, Pulo Kawa, Meunasah Beuracan*. The placement of a number of military posts in a number of sub-districts was based on consideration of the level of security disturbances, and the analysis of the military strategy and *Rumoh Geudong* were made as a central post in running Operation *Jaring Merah*.¹⁵¹

Article 9 of Law Number 26 of 2000 concerning the Human Rights Court states that the crime against humanity as referred to in Article 7 letter (b) is one of the acts carried out as part of a widespread or

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

systematic attack which he knows is that the attack was directed directly against the civilian population . So what must be proven is that the crime against humanity if the action taken is part of the attack. Where the attack was carried out systematically or extensively and clearly aimed at civilians. The attack here is intended as part of the policy of the authorities or policies relating to the organization. This understanding is in line with Article 7 paragraph (1) of the Rome Statute.

So that must be proven that the crime against humanity, if the action taken is part of the attack. The attack was carried out in a systematic (*sistematis*) or widespread (*meluas*) and targeted at civilians (*penduduk sipil*). The attack here is intended as part of the policy of the authorities or policies relating to the organization. This understanding is in line with Article 7 paragraph (1) of the Rome Statute. To prove the fulfillment of the elements referred to in Article 9 of Law Number 26 of 2000, the authors conducted data processing from the results of a summary of the executive team of the National Commission on Human Rights (*Komnas HAM*) with the title, The results of the monitoring and investigation team of human rights violations during the Military Operation Zone in Aceh Province, which was chaired by Dr. Otto Nur Abdullah. So based on the author's analysis derived from these data and the explanation described in the element of gross human rights violations as regulated in Article 9 of Law Number 26 of 2000 as follows:

- a. Acts (*Perbuatan*) suspected as gross Human Rights Violations in the form of Crimes Against Humanity are as stated in the explanation above in point a-f.
- b. From the systemic (*sistematis*) element proven by the existence of the Emergency Military Operations (*DOM*) policy in Aceh with a range of militaristic actions, the gross human rights violations focused on crimes against humanity were carried out by military officers who were given the authority to carry out Operation Red Net under the Military Resort Command 011 / *Liliwangsa* which was then used as the Operational Operations Command when the Government of the Republic of Indonesia decided to designate the Aceh area as a Military Operational Area (*DOM*) precisely in 1989-1998
- c. From the widespread (*meluas*) attacks seen from the number of victims, namely in *Pidie* District in the *Rumoh Geudong* case there were 1,377 cases of victims of the *Jaring Merah* military operation. Of these (*berupa*), there were 378 murder, 14 rape, 569 persecution, 193 torture, 223 houses were burned and 47 houses damaged. Meanwhile, the value of community property seized by security personnel is estimated to reach Rp. 4.2 billion more.¹⁵²
- d. Aimed at civilians (*terhadap penduduk sipil*), i.e residents of *Pidie* Regency who are not proven to be armed civilians or GAM members.

¹⁵² Ringkasan tim eksekutif Komnas HAM, hasil tim pemantauan, *Op. Cit*, Pg. 7.

B. The Chances For Setting of *Rumoh Geudong* Case Through Judicial Mechanism

1. *Rumoh Geudong* Settlement Case Position

The existence of a number of judicial mechanisms that can be used to deal with past gross human rights violations committed in Aceh (*Rumoh Geudong*) during the implementation of Aceh as an Emergency Area for Military Operations makes the writer confused and asks?, why is there no massive progress in legal settlement? The many disabilities and obstacles in the legal framework and the lack of political will to develop effective mechanisms and strategies for investigating and prosecuting these crimes have strengthened impunity.

On November 6, 2000 the enactment of law number 26 of 2000 concerning Human Rights Courts by the House of Representatives of the Republic of Indonesia which was then promulgated on November 23,

2000 seemed to provide fresh air (*seolah-olah memberikan angin segar dalam penegakan hukum pelanggaran HAM yang berat pada masa lalu*).

This law is a law that expressly states as the law that underlies the existence of a human rights court in Indonesia that will be authorized to prosecute perpetrators of gross human rights violations. This law also regulates the existence of an ad hoc human rights court that will be

authorized to adjudicate gross human rights violations that occurred in the past.

This Human Rights Court is a special type of court to try genocide and crimes against humanity. This court is said to be special because in terms of naming the form of the court specifically using the term human rights court and the court's authority also hears certain cases. Law number 26 of 2000 which forms the basis of the establishment of a human rights court regulates a number of specificities or regulations that are different from those in criminal procedure law. This different or special arrangement starts from the investigation stage where the competent authority is Human Rights National Commission (*Komnas HAM*), while those in matters of investigation and prosecution are under the authority of the Attorney General's Office (*Kejaksaan Agung*), and in the formation of an ad hoc human rights court the interference of the House of Representatives (*DPR RI*) and the President.

In 1989 - 1998, the Government of Indonesia carried out JAMER operations with the intention of eliminating the *Gerakan Pengacau Keamanan-Aceh Merdeka (GPK-AM)* in the Aceh region. These troops were deployed in *Pidie*, East Aceh, North Aceh and Central Aceh. In 1990, the Government of the Republic of Indonesia established DOM status in Aceh and *Jaring Merah* operations placed *Korem 011 Lilawangsa* as Operations Command, with *Kopassus* carrying out field

operations. This operation led to a number of *Pos Sattis* with *Rumoh Geudong* in *Bili Aron* as the center of *Pos Sattis*.

The Aceh¹⁵³ team conducted an examination of victim witnesses and eyewitnesses in this incident from 2016-2018 totaling more or less 54 people and summoning the parties responsible.¹⁵⁴ The team found facts and evidence that the victims experienced acts of crime against humanity.¹⁵⁵ Therefore *Komnas HAM* has decided that there has been a crime against humanity as stipulated in Article 9 of Law number 26 of 2000 concerning Human Rights Courts. On August 28, 2018, the *Komnas HAM* sent a report on the Investigation of the Project on the *Rumoh Geudong* and Other *Pos Sattis* to the Attorney General. On November 27, 2018, the Attorney General's Office returned 9 (nine) files¹⁵⁶ resulting from *Komnas HAM's* investigation¹⁵⁷ of alleged gross human rights violations.¹⁵⁸ 9 (nine) files returned by the Attorney General's Office to

¹⁵³ Since 4 October 2013, the National Commission on Human Rights Plenary Session decided to form an Ad hoc Team to Investigate Serious Human Rights Violations in Prov. Aceh. This was stated in the Decree of the Chairperson of the National Commission on Human Rights Number 018 / KOMNAS HAM / XI / 2013 dated November 8, 2013 concerning the Establishment of an Ad Hoc Team for Investigation of Human Rights that was Severe Events in Prov. Aceh (hereinafter referred to as the Aceh Team).

¹⁵⁴ Komnas HAM, *Perkembangan Penyelidikan Peristiwa Rumoh Geudong dan Pos Sattis Lainnya*, LKIP Biro Dukungan Penegakkan HAM, Jakarta, 2018, Pg. 14.

¹⁵⁵ For more information, see the discussion in Chapter III in Point A.

¹⁵⁶ i.e. event file 1965-1966, peristiwa Talangsari, Lampung 1989, peristiwa penembakan misterius 1982-1985, peristiwa Trisakti, Semanggi I dan Semanggi II, peristiwa Kerusuhan Mei 1998 dan peristiwa Penghilangan Orang Secara Paksa 1997-1998, peristiwa Wasior dan Wamena, peristiwa Simpang KKA 3 Mei 1999 di Aceh serta peristiwa Rumah Geudong (pos Sattis) Lain di Aceh.

¹⁵⁷ As for the results of an investigation about the *Rumoh Geudong* case by the National Human Rights Commission, the author has described it in Chapter III point A.

¹⁵⁸ Yati Andriyani, Koordinator Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (Kontras), <https://www.voaindonesia.com/a/kontras-kejaksaan-agung-harusnya-memaksimalkan-kewenangannya/4745053.html>, Accessed on September 6, 2019.

Komnas HAM, one of which was the *Rumoh Geudong* case for alleged gross human rights violations.

2. Analysis of Settlement in the *Rumoh Geudong* Case

The Human Rights Court Procedure Law is a special law and mechanism designed for the need to deal with extraordinary crimes cases. Such a specific regulation is aimed at making the judicial process of serious violations of human rights violated fairly and competently, so that the process of carrying out this special mechanism can cut the chain of impunity against serious human rights criminals. Thus, the court is expected to provide a way of justice for the victim or her family.¹⁵⁹ Procedural law or often referred to as formal law or a law of procedure is an important set of legal norms that regulate the process regarding the operation of a justice system in the context of applying material law

In any country in the world procedural law has always been an important part and is a character of the modern legal system. The procedural law regarding cases of gross human rights violations is regulated in Law Number 26 of 2000 concerning Human Rights Courts. The Human Rights Court is a special court for gross human rights violations within the General Court.

¹⁵⁹ R. Herlambang Perdana Wiratraman, *Hukum Acara Peradilan Hak Asasi Manusia: Pengantar. Makalah untuk Pendidikan Khusus Profesi Advokat (PKPA)*, IKADIN-PERADI Fakultas Hukum Universitas Airlangga, Surabaya, 8 Agustus 2008, pg. 12.

Chapter IV of Law Number 26 Year 2000 Concerning the Human Rights Court, regulates the procedural law which consists of 8 (eight) parts, namely:¹⁶⁰

- a. Part One, General.
- b. Part Two, Arrest;
- c. Part Three, Detention;
- d. Part Four, Investigation (*penyeidikan*);
- e. Part Five, Investigation (*penyidikan*);
- f. Part Six, Prosecution;
- g. Part Seventh, Oath.
- h. Part Eighth, Examination at the court hearing;

Article 10 of Law Number 26 of 2000 states that the procedural law used is procedural law based on criminal procedural law unless otherwise stipulated in this law. This means that the procedural law that will be used for the examination process in court uses the procedural law in accordance with the Criminal Procedure Code (*KUHAP*). Law Number 26 of 2000 regulates the specificity of human rights courts outside the provisions of the Criminal Procedure Code for gross human rights violations. Specificity in handling gross human rights violations in Law Number 26 of 2000 are:

¹⁶⁰ Seeing Law Number 26 of 2000 concerning Human Rights Court.

- a. Investigators (*penyelidik*) are needed by forming an ad hoc team, ad hoc investigators (*penyidik*), ad hoc prosecutors, and ad hoc judges.
- b. An affirmation is required that investigators (*penyelidik*) are only conducted by the national human rights commission while investigators (*penyidikan*) are not authorized to receive reports or complaints as stipulated in the Criminal Procedure Code.
- c. Requirements regarding certain deadlines to conduct investigations, prosecutions and hearings in court.
- d. Requirements regarding the protection of victims and witnesses.
- e. Required provisions regarding no expiration of gross human rights violations.

This specificity is then spelled out in article by article in Law Number 26 of 2000 which is an exception to the provisions in the Criminal Procedure Code, namely

a. Provisions of the investigation (*penyelidikan dan penyidikan*)

1) Investigation (*penyelidikan*)

Letter 5 general provisions of Law Number 26 of 2000 states that the investigation (*penyelidikan*) is interpreted as a series of investigative actions (*penyelidik*) to find and find the presence or absence of an event that is allegedly a gross violation of human rights to be followed up with an

investigation (*penyidikan*) in accordance with the provisions stipulated in this Law.¹⁶¹

Law Number 26 of 2000 regulates differently from the Criminal Procedure Code about who has the right to investigate (*penyelidikan*). In its general explanation this law emphasizes that special measures are needed, including investigations (*penyelidikan*) that are specific in nature, where investigators (*penyelidik*) are required by forming an ad hoc team. Investigations (*penyelidikan*) are only conducted by *Komnas HAM* while investigators (*penyidik*) are not authorized to receive reports or complaints. The authority of the investigation (*penyelidikan*) which is different from the provisions in the Criminal Procedure Code is considered as the specialty of the investigation (*penyelidikan*) in cases of gross human rights violations.¹⁶²

Investigations (*penyelidikan*) for gross human rights violations are the authority of the National Human Rights Commission and the investigation conducted by the *Komnas HAM* is a *pro-yustitia* investigation.¹⁶³ The authority of this investigation is intended to maintain the objectivity of the results

¹⁶¹ Compare with the definition of the investigation as stipulated in the Criminal Procedure Code. Investigation is a series of investigative actions to search for and find an event that is allegedly a criminal offense to determine whether or not an investigation can be carried out in the manner stipulated in this law.

¹⁶² Under the Criminal Procedure Code investigators are state police officers of the Republic of Indonesia who are authorized by this law to conduct an investigation.

¹⁶³ Explanation of Article 19 of Law Number 26 of 2000 concerning Human Rights Court.

of the investigation because the *Komnas HAM* is an institution that is independent both in terms of institutions and members. Institutionally *Komnas HAM* is considered to have no interest except for the protection and enforcement of human rights in Indonesia while *Komnas HAM* members are also considered to have high integration and technical capacity to conduct investigations. In conducting an investigation, the *Komnas HAM* formed an ad hoc team consisting of the National Commission on Human Rights and community elements.¹⁶⁴

Komnas HAM has the authority to take actions in the context of carrying out investigations, namely examining events based on the nature or scope of alleged gross human rights violations, receiving reports¹⁶⁵ or complaints from individuals or groups of people about gross violations of human rights, and seeking information and evidence, summon the complainant, the victim or the complained party to request and hear the statement, call the witness to hear his testimony, review and collect information at the scene and other places deemed necessary, call the relevant party to provide information in writing or submit the required documents in accordance with the original. In addition to the actions above, by order of the investigator

¹⁶⁴ The elements of society here are professional, dedicated, highly integrated figures and members of the human rights field.

¹⁶⁵ The meaning of receiving is receiving, registering, and recording reports or complaints about the occurrence of gross human rights violations, and can be supplemented with evidence.

(*penyidik*)¹⁶⁶ can take actions in the form of: 1) examination of letters, 2) search¹⁶⁷ and seizure, 3) local inspection of houses, yards, buildings, and other places that are occupied or owned by certain parties, and 4) bring experts in relations with the investigation.

Komnas HAM in conducting an investigation (*penyelidikan*) of alleged gross human rights violations must inform the investigator (*penyidik*) of this activity. After the investigator concludes that there is sufficient preliminary evidence, then for gross human rights violations the results of the conclusion are submitted to the investigator (*penyidik*). At the latest 7 working days submitted the next *Komnas HAM* submit all the results of the investigation (*penyelidikan*). If the investigator (*penyidik*) considers that the investigation (*penyelidikan*) is incomplete¹⁶⁸, the investigator (*penyidik*) returns the results of the investigation (*penyelidikan*) accompanied by instructions to be completed and within 30 days the investigator (*penyelidik*) must complete.

In addition to having the authority to conduct investigations (*penyelidikan*) in cases of gross human rights

¹⁶⁶ Explanation of the investigator's (*penyidik*) order is a written order issued by the investigator (*penyidik*) at the request of the investigator (*penyelidik*) and the investigator (*penyidik*) immediately issues a warrant after receiving a request from the investigator (*penyidik*).

¹⁶⁷ The search in this provision includes a search of the body or house. This is the same as the provisions of Article 32 of the Criminal Procedure Code.

¹⁶⁸ The meaning of incomplete is that it does not adequately fulfill the element of gross human rights violations to proceed to the investigation stage.

violations, *Komnas HAM* also has the authority to request a written statement from the Attorney General regarding the progress of the investigation (*penyidikan*) and prosecution of cases of gross human rights violations.¹⁶⁹

2) Investigation (*penyidikan*)

The definition of an investigation is not regulated in Law Number 26 of 2000.¹⁷⁰ The competent authority to investigate cases of gross human rights violations is the Attorney General. This investigation does not include receiving complaints and reports because the complaints and reports are under the authority of the *Komnas HAM*. In this investigation effort the Attorney General can¹⁷¹ appoint ad hoc investigators from the public¹⁷² and governmental elements.

Investigations (*penyidikan*) conducted must be completed no later than 90 days from the date the results of the investigation (*penyelidikan*) were received and declared complete by the investigator (*penyidik*). An extension can be carried out for the next 90 days if during the first 90 days the

¹⁶⁹ Seeing Article 25 of Law Number 26 of 2000 concerning Human Rights Court.

¹⁷⁰ The definition of an investigation can be seen in letter 2 of the general provisions of the Criminal Procedure Code which explains that an investigation is a series of investigative actions in terms of and in the manner stipulated in this law to search for and collect evidence with evidence that makes clear about the criminal acts that occurred and to find the suspect.

¹⁷¹ The explanation of the word “can” is that it is intended that the Attorney General in appointing ad hoc investigators is carried out as needed.

¹⁷² An explanation of the elements of society is from political organizations, social organizations, non-governmental organizations, or other social institutions such as universities.

investigation (*penyidikan*) has not been completed. The second extension for 60 days, both the first and the second extension is carried out by the chair of the Human Rights Court in accordance with their respective jurisdiction.

The Attorney General is obliged to issue an Order to Terminate an Investigation (SP3) if within the stipulated time sufficient evidence is not obtained. The existence of this SP3, investigation of cases can be reopened and continued if there are reasons and other evidence that complements the results of the investigation. Upon termination of this investigation, if it cannot be accepted by the victim and her family, then there is the right to submit pre-trial for the victim and her family for the termination of the investigation by the Attorney General to the head of the Human Rights court in accordance with the applicable laws and regulations in this case in accordance with the Criminal Procedure Code.

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3) Analisis

First, pro-yustisia investigations are confronted with the uncertainty of the procedural law used. Article 10 of Law 26 of 2000 states that if Law 26 of 2000 is not stipulated otherwise, the law on cases of gross human rights violations (including investigations) is based on the Criminal Procedure Code (*KUHAP*). this provision has given birth to a different interpretation. the first interpretation is that the general rule for investigating gross human rights violations is the Criminal Procedure Code because gross human rights violations are part of a specific criminal procedure law so that the general rule is the Criminal Procedure Code. and the subsequent interpretation is that the general rules for investigating gross human rights violations are not only the Criminal Procedure Code, but Law 39 of 1999 on Human Rights can also be a general rule because the Act has triggered the birth of Law 26 of 2000.

This interpretation affects the process of resolving past gross human rights violations in the *Rumoh Geudong* case through the court. especially on the authority of the subpoena (*subpoena power*)¹⁷³ possessed by Komnas HAM investigators.

Because the sub-*poena* authority is not regulated in Law 26 of 2000 and *KUHAP* as a procedural law.¹⁷⁴ But it is regulated in Law 39 of 1999 which is considered not procedural law. As a result, many witnesses, especially from military personnel who could not be questioned, were even forced to be present by *Komnas HAM* investigators (*penyelidik*) because there were no rules of procedure requiring witnesses to be called to attend. Even though Law 26 of 2000 was formed because of the mandate of Law 39 of 1999, it does not mean Law 39 of 1999 became a general rule in the regulation regarding pro-*yustisia* investigations. Because it was clear what would become the difference between Law 26 of 2000 (regulating gross human rights crimes and the law of the event) and Law 39 of 1999 (regulating the principles that must be obeyed). As for other irregularities besides the mistakes of Law 26 of 2000 and Law 39 of 1999, a very basic mistake is to use the Criminal Procedure Code as an additional procedural law if the Law 26 of 2000 is not regulated in detail related to the legal process for

¹⁷³ Authority to call witnesses by force.

¹⁷⁴ Suparman Marzuki, *Pengadilan HAM, Op. Cit*, Pg. 178.

resolving past gross human rights violations. As a result of the unclear formal rules above about investigations (*penyelidikan pro-yustisia*), in the course of completing the serious human rights violation incident in the *Rumoh Geudong* case, the law enforcement institutions have implemented it in accordance with the interpretations and interests of their respective institutions.

Second, which became a polemic in the procedural law for resolving gross human rights violations in Law 26 of 2000 in terms of differences in the views of the National Commission on Human Rights and the Attorney General's Office, other matters concerning the formal and material conditions of the results of the investigation. The formal requirements which are the reason for the Attorney General's Office are reversing the files or documents resulting from investigations of alleged past gross human rights violations in the *Rumoh Geudong* case, among others, about oath of office and the requirement to make minutes

that do not contain the complete identity of the subject or person heard as a witness as regulated in article 143 paragraph (2) letter a Criminal Procedure Code. The reason for oath of office is certainly questionable because Law 26 of 2000 only requires oath of office to investigators or ad hoc investigators as

stipulated in article 21 paragraph (4)¹⁷⁵, article 23 paragraph (3)¹⁷⁶ and article 30¹⁷⁷. So there is no requirement for the investigation team to take an oath of office. In its journey *Komnas HAM* as investigator of past gross human rights violations cases never had problems in the oath of office and even until the formation of the Ad Hoc Human Rights Court for the *Tanjung Periok* and East Timor cases there were never such problems.¹⁷⁸

A request to fulfill the witness's identity is also wrong and has no juridical relevance to the task of investigation. Article 143 paragraph (2) of the Criminal Procedure Code is a provision governing the duties of the public prosecutor in making indictments. thus, those who should complete the identity of the subject or person heard as a witness are public prosecutors not *Komnas HAM* investigators (*penyelidik*).¹⁷⁹

In responding to *Komnas HAM's* investigation (*penyelidikan*), the Attorney General's Office was in a capacity,

¹⁷⁵ Before carrying out their duties, ad hoc investigators take oaths or promises according to their respective religions.

¹⁷⁶ Before carrying out their duties the ad hoc public prosecutor takes an oath or promise according to their respective religions.

¹⁷⁷ Ad hoc judges appointed as referred to in article 28 paragraph (1) before carrying out their duties must take an oath according to their respective religions.

¹⁷⁸ Suparman Marzuki, *Pengadilan HAM, Op. Cit*, Pg. 181.

¹⁷⁹ The provisions of Article 143 (2) of the Criminal Procedure Code, the indictment have two conditions that must be met, namely formal and material conditions. Formal requirements, namely the clear and complete identification of the suspect's identity, consisting of full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation. And the indictment was dated and signed by the public prosecutor. Whereas the material requirements contain a detailed, accurate and complete description of the criminal acts charged.

not as a public prosecutor. Therefore, the provisions of article 143 paragraph (2) of the Criminal Procedure Code above are not relevant to being a formal element in the return of the recommended documents for alleged past gross human rights violations in the *Rumoh Geudong* case.

Meanwhile, the material aspects questioned by the Attorney General's Office included that there was no witness examination, namely the military apparatus and relevant documents. The term examination of witnesses for the task of investigation is unknown in Law 26 of 2000 concerning human rights courts. *Komnas HAM* investigations are only authorized to summon witnesses to request and hear their statements, and to call relevant parties to provide written statements or submit required documents in accordance with the original. The same is the Criminal Procedure Code. No one mentions the term examination of witnesses in connection with an investigation (*penyelidikan*).¹⁸⁰ In addition, it is difficult for *Komnas HAM* to summon witnesses from the military apparatus who later clearly refused. The Attorney General's Office should have acted on the rejection by giving written instructions to *Komnas HAM* investigators (*penyelidik*).

¹⁸⁰ Seeing the authority of the investigator (*penyelidikan*) in article 5 paragraph (1) and paragraph (2) of the Criminal Procedure Code.

From the explanation above, it can be identified that the weakness of the substance of Law 26 of 2000 concerning human rights courts in a number of rules governing the interrelation of the functions and authority of the National Commission on Human Rights and the Attorney General's Office is the legal reason for the non-functioning legal process of resolving past human rights violations in the *Rumoh Geudong* case.

b. Provisions of the Prosecution and Hearing Examination

1) Prosecution

Law Number 26 of 2000 regulates prosecution provisions in Articles 23 and 24. Article 23 states that prosecutions regarding gross human rights violations were carried out by the Attorney General and in conducting prosecutions. The Attorney General can appoint ad hoc public prosecutors.¹⁸¹ To be appointed as an ad hoc public prosecutor must meet certain conditions.¹⁸²

Article 24 regulates the duration of the investigation, which is 70 days from the date the investigation result is received. The provisions regarding this time period differ from

¹⁸¹ In his explanation ad hoc public prosecutors from elements of society are primarily taken from former public prosecutors in general justice or prosecutors in military justice.

¹⁸² Article 23 paragraph 4 regulates the requirements to become an ad hoc public prosecutor, namely a citizen of the Republic of Indonesia, at least 40 years old and a maximum of 65 years old, educated with a law degree and experienced as a public prosecutor, physically and mentally healthy, authoritative, honest, fair, and behaves impeccably, is loyal to *Pancasila* and the 1945 Constitution and has knowledge and concern in the field of human rights.

the provisions in the Criminal Procedure Code which does not regulate the existence of a prosecution period.

Experience with a number of human rights courts including the East Timor ad hoc human rights court and the *Tanjung Priok* ad hoc human rights court shows that the investigation and prosecution process in some of these cases has been delayed and does not comply with the time limitation provisions in accordance with Law Number 26 of 2000. Ad hoc prosecutors in addressing this delay submits a letter to the court for approval of the extension of the investigation and prosecution process. The limitation or time limitation in the investigation and prosecution process based on the experience of the ad hoc human rights court that has the reason for the legal counsel of the defendant in his exception to the state that the investigation and the prosecution process exceeded the provisions of Law Number 26 of 2000.¹⁸³

2) Examination at the Court Hearing

First, the composition of judges and ad hoc judges. Article 27 of Law Number 26 of 2000 stated that cases of gross human rights violation were examined by a panel of judges, totaling 5 people consisting of 2 judges of the human rights court

¹⁸³ Zainal Abidin, *Pengadilan Hak*, *Op.Cit*, Pg. 19.

concerned and 3 ad hoc human rights judges. The panel of judges is chaired by a judge from the relevant human rights court. At the appeal level the panel of judges numbered 5 consisting of 2 judges from the local court and 3 ad hoc judges.

Likewise, the composition of the panel of judges on appeal.

From the provisions above, the regulation on ad hoc judges only reaches the cassation level. There is no clarity regarding judges who can try at the review level (*Peninjauan Kembali*) or (*PK*), given that in criminal procedural law it states that a review of a criminal case is also possible and that is the right of the defendant or his heirs but in the provisions of Law Number 26 of 2000 this is not regulates ad hoc judges for examination of extraordinary remedies by way of reconsideration. Provisions regarding judges who will try at this review level are not regulated in Law Number 26 of 2000.¹⁸⁴

The definition of an ad hoc judge is a judge who is appointed outside of a career judge who meets professional, dedicated and highly integrated requirements, lives up to the ideals of the rule of law and the welfare state which has a core of justice, understands and respects human rights and basic human obligations. The number of ad hoc judges in a human rights court to be appointed is at least 12 people and the term of

¹⁸⁴ *Ibid*, Considering that judges adjudicating gross human rights violations always require ad hoc judges, there is no regulation regarding ad hoc judges at the review level that the mechanism cannot be submitted using the provisions of the Criminal Procedure Code.

office is 5 years which can be appointed for 1 more term. The ad hoc judge was appointed and dismissed by the president as Head of State at the suggestion of the Chief Justice of the Supreme Court. This provision is the same for ad hoc judges in the high court, while for ad hoc judges the cassation level in the Supreme Court is appointed by the President as the head of state on the proposal of the Indonesian House of Representatives and the term of office is only one period, namely for 5 years.

This ad hoc judge in his election requires certain conditions set forth in Article 29.¹⁸⁵ Ad hoc judges are also required to take an oath. The requirements to become an ad hoc judge apply to appellate and judge ad hoc judges. Special exceptions for ad hoc judges are at least 50 years of age and there is no maximum age limit.

Cases of gross human rights violations are examined and decided by a court within a maximum period of 180 days from the case referred to the human rights court. At the appellate level the case is examined and decided no later than 90 days. If the case is requested for cassation, the case of gross human rights violations is examined and terminated for a maximum of 90

¹⁸⁵ To be appointed as an ad hoc judge must meet the following requirements: a citizen of the Republic of Indonesia, devoted to God Almighty, at least 45 (forty five) years old and a maximum of 65 (sixty five) years old, educated in law or undergraduate degrees others who have expertise in the field of law (Islamic scholars or graduates of police tertiary sciences), are physically and mentally healthy, authoritative, honest, fair, and behave impeccably, loyal to the *Pancasila* and the 1945 Constitution, and have knowledge and concern in the field of human rights.

days or 3 months. Provisions to be considered are regarding the process of transferring case files in the first instance to the appeal level and from the first level to an appeal when the prosecutor submits an appeal when the defendant is acquitted.

Provisions regarding the mechanism for transferring the documents to the level of appeal and cassation use the Criminal Procedure Code.

Second, the procedure of proof in a human rights court is not regulated separately which means that the evidence mechanism in a human rights court hearing uses the mechanism stipulated in the Criminal Procedure Code. The exception to the Criminal Procedure Code mechanism for the evidentiary procedure concerns the witness process in court. In order to protect witnesses and victims of gross human rights violations, the process of examining witnesses can be carried out without the presence of the accused.¹⁸⁶ This provision is contained in

Government Regulation (*PP*) Number 2 of 2002 concerning the protection of victims and witnesses of gross human rights violations.

¹⁸⁶ The testimony process without the presence of the defendant has actually been regulated in Article 173 of the Criminal Procedure Code which states that the presiding judge can hear witness testimony about certain matters without the presence of the defendant, for that he asked the defendant to leave the courtroom but after that the examination of the case must not proceed before the defendant was told all things when he was absent. This is different from *Peraturan Pemerintah* Number 2 of 2002 which does not regulate the procedure without the presence of the defendant for examination of testimony.

With regard to acceptable evidence, it also refers to evidence that is in accordance with the Criminal Procedure Code, namely Article 184.¹⁸⁷ The things that can be used as evidence in this Criminal Procedure Code are considered inadequate if they are compared with international justice practices. International experiences which have tried cases of gross human rights violations have instead used evidence outside the provisions of the Criminal Procedure Code. For example, recordings, whether in the form of films or tapes containing speeches, press releases, victim interviews, interviewing perpetrators, conditions of the scene and so on. Then the evidence used is also permitted in the form of copies of documents, newspaper clippings, loose articles, until an opinion related to the case being tried.¹⁸⁸ The procedure of proof in a human rights court is the same as an ad hoc human rights court. The experience of the East Timor ad hoc tribunal court shows that the procedure using the Criminal Procedure Code is a lot of obstacles in the process of proving crimes against humanity which should have special proving procedures.¹⁸⁹

3) Analysis

¹⁸⁷ Evidence according to Article 184 of the Criminal Procedure Code is witness statements, expert statements, letters, instructions and statements of the accused.

¹⁸⁸ Seeing Progress Report monitoring of Elsam's ad hoc human rights court to X. January 28, 2003.

¹⁸⁹ Zainal Abidin, *Pengadilan Hak*, *Op.Cit*, pg. 39.

November 27, 2018 is the momentum where the Indonesian Attorney General's Office returned the recommendation documents from the investigation of the *Rumoh Geudong* case to the National Human Rights Commission (*Komnas HAM*). By reason of not fulfilling formal and material elements in the results of the investigation of the *Rumoh Geudong* case. Seeing the action of returning the file, on 27 December 2018 *Komnas HAM* responded by sending back the results of the investigation to the Attorney General's Office with a note, there is no reason for the Attorney General's Office to return the file because according to *Komnas HAM* the file complies with legal procedures. Has been regulated in Law number 26 of 2000 concerning human rights courts. On this occasion *Komnas HAM* hopes that the attorney general's office will immediately conduct an investigation of the *Rumoh Geudong* case. Interesting in handling the *Rumoh Geudong* case until the author completes the research in this thesis there is no news related to the continuation of the settlement of the *Rumoh Geudong* case.

As for other factors which later became an obstacle in the settlement of the *Rumoh Geudong* case, it was regarding the provisions of the prosecution and hearing of the trial or examination. Provisions in Article 23 paragraph (1) Law

Number 26 of 2000 concerning Human Rights Court can be seen that the Attorney General is the only Public Prosecutor in cases of Serious Human Rights Violations. The Attorney General may not appoint an ad hoc public prosecutor, but the problem is that the Attorney General himself will not prosecute all gross human rights violations. Just like the appointment of an ad hoc investigator (*penyidik*), the appointment of an ad hoc public prosecutor is also set forth in a Decree of the Attorney General.¹⁹⁰ Ad hoc public prosecutors who have authority such as the authority of the Attorney General as public prosecutors, except the authority to carry out detention and further detention as specified in Article 12 paragraph (91). Although only acting as an investigator (*penyidik*) and public prosecutor is the Attorney General, the submission of the results of investigations (*penyidikan*) in the form of cases of Gross Human Rights Violations from investigators (*penyidik*) to the public prosecutor must be carried out formally, with a view to calculating the duration of the prosecution, because Article 24 determines that the prosecution was carried out no later than 70 (seventy) days from the date the investigation (*penyidikan*) was received by the public prosecutor from the investigator (*penyidik*).

¹⁹⁰ Seeing Explanation of Article 23 paragraph (1) of Law Number 26 of 2000 concerning Human Rights Justice.

In accordance with what is meant by prosecution, as contained in Article 1 paragraph (7) of the Criminal Procedure Code, the 70 (seventy) days period is the period from the date the results of the investigation in the form of case files are received by the public prosecutor from the investigator until the time the public prosecutor handed the case file to the Human Rights Court.¹⁹¹ As a result of the provision that the acting, both as an investigator (*penyidik*) and as a public prosecutor, is the Attorney General, the authority to conduct pre-prosecution from public prosecutors as determined in Article 14 letter b of the Criminal Procedure Code, occurs between ad hoc investigators and ad hoc public prosecutors.

The Public Prosecutor delegates the case of Gross Human Rights Violations to the Human Rights Court, there are 2 (two) things that need attention, that is by paying attention to the provisions contained in Article 203 paragraph (1) and Article 205 of the Criminal Procedure Code, the examination program at the Court is an Ordinary Examination¹⁹², because the verification and application of the law in cases of gross human rights violations is not easy and is not simple in nature.

The provisions contained in Article 12 paragraph (1) *jo.* Article 14 paragraph (1) can be known that for the purposes of

¹⁹¹ Seeing Article 1 paragraph (7) of the Criminal Procedure Code.

¹⁹² Chapter XVI Part Three and Part Four Criminal Procedure Code.

prosecution, the Attorney General as the public prosecutor has the authority to carry out detention for a maximum of 30 (thirty) days. If the aforementioned period of prosecution cannot be completed, Article 14 paragraph (2) stipulates that detention can be extended for a maximum period of 20 (twenty) days by the chair of the Human Rights Court in accordance with their jurisdiction. If within the extended period of time the prosecution still cannot be completed, Article 14 paragraph (3) stipulates that detention can be extended for a maximum of 20 (twenty) days by the Chair of the Human Rights Court in accordance with their jurisdiction. For the purpose of prosecution, the maximum period of time available for detention is 70 (seventy) days.

Based on the author's analysis related to the prosecution and hearing examination. First, Issues Delegation of files to the Prosecution and to the Courts. Article 24 of Law Number 26 Year 2000 has been determined limitative that prosecution of gross human rights violations must be carried out no later than 70 (seventy) days from the date the results of the investigation are received. Constraints found in practice relating to this issue, namely when the investigation has been completed and ready to be upgraded to the prosecution stage, but it turns out that the ad hoc human rights court and its ad hoc panel of judges have not

yet been formed, so as to avoid the time limitation provisions stipulated in article 24 Law Number 26 of 2000, the delegation of the results of the investigation to the prosecution stage was postponed, pending the formation of an ad hoc human rights court and the inauguration of its panel of judges. Second, the Problem of Time Limitation in Trial In accordance with the provisions of Article 31 of Law Number 26 of 2000 is stated as follows: “Cases of gross human rights violations, examined and decided by the Human Rights Court within a maximum period of 180 (one hundred eighty) days from the case is transferred to the Human Rights Court”. According to Ronny Isturyanto¹⁹³, obstacles encountered in the field during the trial process, The number of witnesses in cases of gross violations of human rights is generally more than 50 (fifty) people, while the number of judges is 5 (five) and the number of prosecutors is 2 to 4 while the number of legal advisors is 5-15, so generally in one trial, the maximum number of witnesses that can be heard in front of the trial is 2-3 people, and it is carried out from morning to evening. And the residence / domicile of members of the Ad hoc panel of judges and witnesses are far from the Ad hoc Human Rights Court, so that the trial schedule generally can only be held once a week. The above conditions make it almost

¹⁹³ Ronny Isturyanto, *Beberapa Perspektif Peradilan HAM di Indonesia*, Ghalia Indonesia, Jakarta, 1991, pg. 29.

impossible to fulfill the provisions of Article 31 of Law Number 26 of 2000 above.

Law Number 26 of 2000 concerning Human Rights Courts has substantial weaknesses. As for the later weakness of the legal substance caused by, the settlement of past human rights violations has never been a pure desire of the government, but as a response to domestic and international pressure. The lack of seriousness results in the weakness of the substance of the legal product having implications for the level of enforcement. The polemic was proven in the ad hoc Human Rights Court case in East Timor and *Tanjung Priok* which failed to punish the perpetrators, stop impunity, provide justice to victims, and provide lessons for legal life, democracy and humanity in the future.¹⁹⁴ The problem is that the Indonesian government does not want to clean up and evaluate what has become a weakness in resolving past gross human rights violations. Sadness in the settlement of gross human rights violations in the eastern case of East Timor and *Tanjung Periok* was also felt in the settlement of the *Rumoh Geudong* case, which until now the process has stopped at the stage of delivering the results of the investigation to proceed to the investigation stage. The failure occurred because of the accumulation of the weaknesses of the substance of Law number 26 of 2000 concerning the human rights court, so that in carrying out the legal

¹⁹⁴ Suparman Marzuki, *Pengadilan HAM, Op. Cit*, Pg. 189.

procedure of the human rights court in resolving gross human rights violations in the *Rumoh Geudong* case there were many obstacles regarding the process of investigation, investigation, prosecution and trial hearings as the author has described above. on the basis of the author's analysis of the provisions of procedural law that are not clearly regulated in Law number 26 of 2000 by being contextualized against issues of resolution of the *Rumoh Geudong* case the authors expressly state, that Law Number 26 of 2000 concerning the Human Rights Court does not guarantee opportunities for the settlement of the *Rumoh Geudong* case.

C. Crime Against Humanity On Islamic View

Human rights in Islam are contained transcendentally for the benefit of humans, with the *syari'at* passed down through revelation. According to the *shari'ah*, humans are free beings who have duties and responsibilities. Therefore, he also has rights and freedoms. The basis is justice that is upheld on the basis of equality. This means that the tasks carried out will not be realized without freedom, while freedom existentially will not be realized without the responsibility itself.¹⁹⁵ Islamic teachings are basically in line with human rights motivation. In general, Islam and the West have the same normative principles or values related to equality, freedom and justice.¹⁹⁶

¹⁹⁵ Drs. Dalizar Putra, *Hak Asasi Manusia Menurut Al Qur'an*, Al-Husna Zikra, Jakarta 1995. Pages. 36

¹⁹⁶ *Ibid*, Pg. 28

Allah SWT revealed Islam to guarantee every side of human life so that crime must be conquered as well as acts of crime against humanity. Crimes against humanity, namely acts of murder, extermination, slavery, forced displacement and other inhumane acts directed at civil society, before or during war, or oppression based on politics, race or religion in practice or within the scope of this court, whether the act is whether violating or not the law in which the act was committed¹⁹⁷. Which according to the author of an act that hurts the concept of Islamic teachings that must humanize humans. The crime against humanity that occurred in the *Rumoh Geudong* case, according to the author in the perspective of Islamic Law is an act that makes damage on earth in accordance with the word of God:

مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

Meaning: *Therefore we have determined (a law) for the Children of Israel (bani israil), that: whoever kills a human being, not because that person (kills) another person, or not because of causing damage on earth, it is as if he has killed a whole human . And whoever preserves the life of a human being, it is as if he has preserved the lives of all people. And indeed came to them our apostles with (carrying) clear statements, then many of them after that really exceeded the limits in doing damage on earth.*¹⁹⁸

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

¹⁹⁷ Seeing Article 6 letter (c) Nuremberg Charter of the International Military Tribunal

¹⁹⁸ Seeing Q.S Al-Maaidah (5) : 32

Meaning: *Surely retaliation against those who fought Allah and His Messenger and made mischief on earth, only they were killed or crucified, or their hands and feet were cut off in reciprocal, or thrown out of the country (their residence). Such is (as) an insult to them in the world, and in the hereafter they will suffer great torment.*¹⁹⁹

The explanation of the above verse confirms that whoever killed a human being, as if he had killed all humans for no apparent reason. The description of the above verse is an act that causes damage on earth. the act of crime against humanity in the *Rumoh Geudong* case is very inconsistent with the sources of Islamic teachings whose essence includes:

1. Life in Islam is humanizing humanity, as the message Q.S Al-Maidah: 32.
2. The basic concept of Islam exists in this world as a blessing for the natural world, not for a particular religion or ethnicity. Which indicates that fellow human beings respect each other because the reality of life that appears is diversity which cannot always be uniformed as a capital towards unity in diversity.²⁰⁰

The crime is a gross violation of human rights in Islam Human Rights have been explained which contains the basic principles of equality, freedom and respect for fellow human beings. Equality, it means that Islam views all human beings as equal, the difference is the achievement of piety. Freedom is the most important element in Islamic teachings. The presence of Islam provides a guarantee for human freedom to avoid vanity and pressure, both

¹⁹⁹ Seeing Q.S Al-Maaidah (5) : 33

²⁰⁰ Moh. Rosyid, Evoking the Role of Islamic Humanitarian Law in Deciphering Historical Historical Perspective Conflicts, *Journal of Discourse on Islamic Law and Humanity*, Vol. 12, No. 2, Dec 2012, Pg. 213-214

related to religious, political and ideological issues.²⁰¹ However, the granting of freedom to humans does not mean they can use that freedom absolutely, but in that freedom the rights and interests of others must be respected. Regarding respect for fellow human beings, in Islam all human beings have the same honor. The basis of the equation is the manifestation of human glory. Humans in the teachings of Islam are descendants of Adam and all his children and grandchildren are glorified without exception. This statement is contained in the word of Allah SWT:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

Meaning: *And verily we have glorified the children of Adam, we transported them on land and in the sea, we gave them sustenance from the good and we exaggerate them with perfect advantages over most of the creatures that we have created.*²⁰²

Based on the explanation of the three principles of human rights in Islam, namely, freedom, equality and respect in human life, then it would be inappropriate for the action that hit the principle to occur. However, in the past history in the *Rumoh Geudong* case the principle was easily hit by the imposition of political-ideological differences between the Indonesian government and the people of Aceh. In Islamic law, a heinous act (murder) will get a painful punishment namely:

²⁰¹ Kementrian Agama RI, Human Rights in the Perspective of the Qur'an, Al-Hadith and Ijtihad Ulama, <http://bdkbandung.kemenag.go.id/jurnal/259-hak-asasi-manusia> in the perspective of alqur-an-alhadits- and-ijtihad-ulama, accessed on November 26, 2019

²⁰² Seeing Q.S Al-Israa' (17) : 70

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا

Meaning: *And whoever kills a believer on purpose the reward is Jahannam, eternal he is in it and Allah is angry with him, and curses him and provides a great punishment for him.*²⁰³

Because Indonesia is a law state that upholds justice, the Indonesian government must be able to uphold the truth as fairly as possible in terms of the settlement of the Rumoh Geudong case, because in Islamic law justice is the basis of Islamic ideals to uphold peace and prosperity. Every individual is instructed to always act fairly in every way, as stated in the Qur'an, namely:

إن الله يأمر بالعدل والإحسان وإيتاء ذى القربى وينهى عن الفحشاء والمنكر والبغى يعظكم لعلكم تذكرون

Meaning: *Verily Allah SWT commands (you) to act justly and do good, give assistance to relatives, and He forbids (commits) abominable acts, munkar, and hostility. He teaches you so you can take lessons.*²⁰⁴

لَا يَجْرَدُ الْإِسْلَامُ كَفْرًا وَلَا يَنْتَقِلُ الْإِسْلَامُ كُفْرًا

²⁰³ Seeing QS.An-Nisā : 93

²⁰⁴ Seeing Q.S Al-Nahl : 90