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The Responsibility of Ad Hoc Judges in Deciding Cases of Gross Violations of Human Rights Based on the Principles of Justice

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ABSTRACT

The research aims to find the substantive responsibilities of *ad hoc* judges in deciding cases of gross human rights violations based on the principle of distributive justice according to Aristotle. Finding the regulation of procedural responsibility of *ad hoc* judges personally according to the provisions of the legislation in Indonesia. Evaluate the administrative responsibility through the supervision mechanism carried out on *ad hoc* human rights judges. The normative juridical method was used in the research. The result of the research is that *ad hoc* judges deciding cases of gross human rights violations do not consider the legal elements of gross human rights violations. Also, evidentiary procedures are weak due to the fact that *ad hoc* judges are institutionally independent and personally not because the influence of the head of the court still exists. BAWASMARI's internal supervision is inadequate, such as disciplinary checks on judges that are not transparent.

Keywords: Gross Human Rights Violations, Justice, Responsibility of *Ad Hoc* Judges

INTRODUCTION

The judge's decision as an object of study among academics is currently an interesting phenomenon. After all, it can provide a critical review and analysis of the decision of whether it is accepted because it contains the principles of justice or not. In this study, the author's discussion is focused on the role of *ad hoc* human rights court judges in deciding cases of gross violations. As legal legitimacy, the state has Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power Article 1 point 8, which states special courts are courts that have the authority to examine, hear and decide certain cases that can only be formed in one of the judicial bodies, under the Supreme Court. In line with these provisions, Law of the Republic of Indonesia Number 26 of 2000 on Human Rights Courts Article 43 Paragraph 1 states that gross human rights violations prior to the enactment of this law are examined and decided by *ad hoc* human rights courts. Paragraph 2 says that the *ad hoc* human rights court was established at the proposal of the House of Representatives of the Republic of Indonesia based on certain events by Presidential Decree. Moreover, in Paragraph 3, the *ad hoc* human rights court is established within the general judiciary (ELSAM, 2001).

Ad hoc judges are responsible to the community, according to Article 50 Paragraph 1 UURI No. 48 of 2009, by considering the reasons used so that they can be assessed whether they are objective and fair or otherwise (Mertokusumo, 2019). The terminology of responsibility, as contained in this study, includes the dimensions of the administrative responsibility of judges, which demands the quality of organizational management manifested in the form of internal supervision, judicial administration in the form of decisions, substantive responsibility of judges, which relates to the accuracy in making decisions between the social facts that occur and the governing law, and procedurally which demands an evidentiary mechanism according to the procedural law used in the trial process.

If it were about to relate this assertion to the object of study of this research, it would be apparent that the reasons used by the judges of the *ad hoc* court of first instance as part of the responsibility, that there were differences of opinion from the judges when deciding on command involvement in the Tanjung Priok and East Timor cases, on the element of crimes against humanity even though various international legal instruments have been used as the basis for decisions such as the Rome Statute, ICTY and ICTR tribunals specifically regarding command responsibility.

Another issue that needs to be examined in this study is that internally, the Supreme Court of the Republic of Indonesia is trying to prevent and sanction *ad hoc* human rights judges who behave in a deviant manner in making decisions in court. Thus, by issuing Supreme Court of the Republic of Indonesia Regulation Number 8 of 2016 concerning Supervision and Guidance of Direct Superiors within the Supreme Court and the Judicial Bodies under it. The assertion contained in the Regulation in the consideration letter (a) is that in order to uphold and maintain the dignity and public trust in the judiciary, the Supreme Court requires a mechanism to prevent deviations in the performance of duties and violations of behavior by court officials as early as possible. Letter (b) states that in order to effectively prevent deviations in the performance of duties or violations of the behavior of court officials, it is necessary to carry out continuous supervision and guidance by each superior such as the head of the District or High Court, directly to his subordinates.

The independence of *ad hoc* judges also needs to be examined to avoid interventions in decisions to judges handling a case from the leadership of the judicial institution as a form of loyalty to superiors. Administratively, these judges must be responsible to their

superiors. This clause is emphasized in (SEMA No.10/2005) on the Guidance and Direction of Court Leaders to Judges/Judge Councils in Handling Cases. This SEMA emphasizes the institution's independence, while judges are assumed to be subordinate to the judiciary. This impact is that judicial power is personified in structural positions, like the Chief Justice of the Supreme Court, High Court, and District Court, rather than judges.

The violation of human rights is reflected in realistic decisions in Indonesia in the Tanjung Priok case with the verdict of the Central Jakarta *ad hoc* human rights court, No: 01/Pid.HAM/Adhoc/2003/PH.Jkt.Pst. Dated: 20 August 2004, on behalf of the defendant Capt. Sutrisno Mascung and his 12 fellows. The verdict stated that they had been proven guilty of gross human rights violations in attempted murder. They were sentenced to three years for Sutrisno Mascung and two years for his members.

In addition to finding the above defendants guilty, the Central Jakarta *ad hoc* human rights court also acquitted two other defendants, namely Major General (Ret.) Pranowo, former Kapomdan V Jaya who was a CPM colonel on 10 August 2004. Also, Captain Sriyanto Muntasram, who at the time of the Tanjung Priok incident was the head of Section 02/ Operations of the 0502 Military District Command in North Jakarta while at the time of the trial, he was already the Commanding General of the Special Forces Command on 12 August 2004. The fact that *ad hoc* human rights judges discriminated against the defendant Sriyanto. The verdict of the panel of judges also described that the defendants were not legally and convincingly demonstrate guilty of committing severe human rights violations (ELSAM, 2003). Thus, it can be explained that the facts of the trial were in a psychological condition under the pressure of these officials and influenced the judgment of the *ad hoc* judges.

The verdict of the *ad hoc* human rights appeals court No. 01/Pid.HAM/*Adhoc*/2005/PTDKI, it is believed that the appeal request of the defendants was accepted, and the decision of the *ad hoc* human rights court of the Central Jakarta District Court was canceled. Therefore, the defendants were deemed not verify legally and convincingly to have committed the criminal acts in the first, second primary, and subsidiary charges (Usman, 2008). Finally, the defendants were acquitted of all charges, and the appellants' rights were restored. The evidence in the form of one Reo truck and 13 SKS weapons were used in other cases.

Like the Tanjung Priok case, which was charged with crimes against humanity, another similar case in East Timor occurred after announcing the referendum results. The verdict of the Central Jakarta *ad hoc human* rights court, No: 04/Pid.HAM/Adhoc/2002/PH.JKT.PST, on behalf of the defendant Eurico Guterres, was found guilty and sentenced to 10 years in prison. The other defendants, such as Adam Damiri (former Military Regional Command of Udayana) and Endar Priyanto (former Central Military District 1627 Dili), were found not guilty and acquitted of all charges filed by the *ad hoc* public prosecutor (ELSAM, 2003).

It was emphasized that the decision of the *ad hoc* judges in the case of gross violations of human rights was unfair because in the 12 occurrence determined by the *ad hoc* human rights court at first. Out of 18 defendants, only six were found guilty and sentenced. Those are the three members of the TNI (military), one member of the police, and two civilians. The appeal and cassation processes overturned the first instance decision, with only Eurico Guterres pronounced guilty and sentenced to 10 years imprisonment. In the East Timor case, it is clear that the judges misused the doctrines of superior and subordinate, the element of knowledge, effective control, and other elements. There was a fundamental misunderstanding about the application of

command responsibility as a theory of liability. According to the *ad hoc* appeal court judges, there was no negligence on the part of the defendant Adam Damiri, as the clash could not be controlled; instead, it was very clear that the defendant knew but did not take appropriate steps to prevent it. The judges focused more on what the defendant did within the framework of the TNI hierarchy. The concept of the commander's responsibility in functional, cognitive, and operational terms was not an important part and needed to be considered. These verdicts, whether gross violations of human rights in Tanjung Priok or in East Timor, seem unserious, partial with technical defects, and the independence of judges is considered to have failed, not reflecting the values of justice and truth, so that it can be said that it tends to become a 'graveyard of justice' for victims.

The above issues can be used as a reflection for *ad hoc* human rights court judges to always prioritize the values of law and justice, as stated by the famous philosopher Aristotle. For him, in addition to the rule of law and certainty, the law also aims to realize justice. The form of oppression experienced by the community with the loss of rights to justice, certainty, and expediency is certainly contrary to Pancasila, the mandate of the constitution, and statutory provisions relating to human rights. From the explanation above, the researcher formulates the problems in this study. First, how is the substantive responsibility of *ad hoc* judges in deciding cases of gross violations of human rights based on the principle of justice? Second, what are the procedural responsibilities of *ad hoc* judges under Indonesian law? Last, what are the administrative responsibilities through supervision mechanisms for *ad hoc* human rights judges in general courts?

LITERATURE REVIEW

The Rule of Law Theory

Researchers view that Indonesia as a state of the law has made Pancasila the basis and a guideline for managing the state, including all existing legal systems sourced from Pancasila. So the strategic position of Pancasila is expected to animate all existing legal provisions ranging from the highest position, such as the 1945 Constitution of the Republic of Indonesia, to the lowest, namely Regional Regulations both City and Regency. The Pancasila state of the law is not just a night watchman but also provides an imperative for law enforcement officials to implement the law to ensure justice and public welfare continuously. Referring to that context, the rule of law cannot stand on human rights violations that are the most fundamental characteristic, as well as injustices that are constantly denied or hidden by law enforcers. This denial needs to be anticipated by revamping the chaotic legal system in Indonesia.

As quoted by Oksidelfa (2020), Montesquieu explained that the best state is established on law because the constitutions of many countries have three main cores, namely protection of human rights and determination of the constitutionality of a country, limiting the power and authority of State organs. This opinion is very much in line with the existence of our country's constitution, which in the content of its articles, regulates human rights as a guarantee of the protection of citizens' rights, as well as regulates the relationship between state institutions, limits the powers of the president and oversight mechanisms.

Hobbes (as cited in Widiadi, 2017) categorizes a modern thinker and has given his idea of human rights as rights that all people have naturally, at all times, and in all places. Another assumption of this theory is that natural rights derive from the idea that rights come from God. The positivist theory, developed by Hume and Bentham (as cited in Gunakaya, 2017), argues that rights must be enshrined in fundamental law to be seen as rights through constitutional guarantees. In other words, rights must come from

somewhere, created and granted by the constitution or laws of the State (Gunakaya, 2017). The cultural relativist theory views humans as products of several socio-cultural environments and cultural traditions and civilizations. Therefore, the rights humans have at all times and places are rights that make humans culturally independent (Sujatmoko, 2015).

Justice Theory

Sunarjo, Isalman, and Putera (2019) said that justice is closely related to one's belief about fairness and its implication in real life. Damang (2017) quoted that Aristotle divided justice into two types. First, distributive justice is giving each party a share in proportion to what he has done. Second, commutative justice is giving each party the same share without considering individual actions (Damang, 2017). Another meaning of commutative justice is a policy of giving everyone their right or as close to their right as possible. Judges must strive for commutative justice following their work to uphold justice. For example, making decisions against defendants according to their guilt or giving compensation according to the losses suffered so that no one benefits from the suffering of others (Wibowo, 2020).

According to Aristotle, the third part is legal justice, meaning justice formulated by law in the form of rights and obligations, where violations of this justice will be enforced through legal processes, generally in court. Legal justice is a logical consequence of the implementation of the principle of commutative justice, which regulates that no party should harm the rights and interests of others concretely supported by the political system through positive law.

Theory of Responsibility

According to Levinas (as cited in Suseno, 2000), responsibility occurs when the face appears and is absolute, accompanied by responsibility for others not originating from my initiative but preceding my freedom. Without any order from others, one must be responsible for the face that appears. The researcher sees Levinas' opinion as the importance of individual responsibility when looking at the situation in front of him towards each individual or many people. Therefore, people must be more active in taking a stand on the situation seen by simply thinking each individual has solidarity with others.

RESEARCH METHODS

The research focuses on normative legal research, where this type of research is conceptualized as research by carefully studying the provisions of the legislation that are used as a benchmark for human behavior. In addition, this research also analyses internal supervision by the Supreme Court Supervisory Board of *ad hoc* judges. To complete the data, researchers conducted measured interviews with ad hoc human rights judges to find out the supervision procedures carried out.

RESULTS

Judges' Responsibilities in Applying the Legal Elements of Gross Human Rights Violations

The reality of the responsibility of *ad hoc* judges in the rule of law in judicial practice, as an example raised in this research, needs to reflect legal certainty through the panel of judges of the *ad hoc* human rights court in the Tanjung Priok and East Timor cases to uphold the substance of material law for the sake of certainty. Law enforcement, by the panel of a judge through the inverstigation and evidentiary process, is also responsible for providing the fairest possible decision for the victims of gross human rights violations.

As a form of accountability according to the provisions of Article 50 Paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009, the panel of *ad hoc* judges making decisions must be accompanied by reasons contained in the consideration section of the decision. In addition to these reasons, the panel of *ad hoc* judges used the legal elements contained in the statutory provisions as a reference in processing incidents of gross human rights violations, which need to be formulated appropriately in the decision.

In general, to be able to say whether a judge's decision is fair or not is when the judge decides a case whether or not to obey the law because the act of obeying the law is an act of justice. Justice in this context is interpreted as an effort to fulfill the interests of all people, both perpetrators, and victims, based on the applicable law. When law and justice are not upright due to law enforcers who are wrong in using legal elements, then in the life of the state, the judiciary will make law and justice back upright (Sudrajat, 2018). Conversely, if law and justice cannot be upheld, it will worsen the image of the country as a state of law.

The elements that arise in the trial showed that in the cases of crimes against humanity that were the object of study, namely Tanjung Priok and East Timor, there were inconsistencies in the judges' decisions. For instance, in the East Timor case the court of first instance decided that the elements of the law had been fulfilled even though there were differences of opinion from the panel of judges handling the case. At the level of appeal the panel of judges overturned the decision at first instance that the elements of an attack on a civilian population, widespread and systematic, and the element of knowledge were not considered by the panel of judges of the *ad hoc human* rights court at the level of appeal in giving their decision.

It should be realized that as a state of law, every decision made by the panel of judges of the *ad hoc human* rights court have to be subject to the applicable statutory provisions. For example, Article 9 of the Law of the Republic of Indonesia Number 26 of 2000 concerning Human Rights Courts with the elements of one of the acts, and carried out as part of an attack, systematic, directed at the civilian population. In synergy with these national provisions, as part of the international community, *ad hoc* human rights judges use international legal instruments such as the Rome Statute Article 7 Paragraph (2) letter a, which contains the elements of an attack directed against a group of civilians.

Likewise, the responsibility of *ad hoc human* rights judges in applying the elements of crimes categorized as crimes against humanity, like murdering with the intention to kill the target due to unlawful acts in the Tanjung Priok incident, extermination such as the destruction and set fire on particular places in East Timor, expulsion and forced displacement of the population, by looking at the fact that due to the actions of military officers against the civilian population in neglecting the security situation, there were casualties in the incident.

The most severe ones are crimes against humanity that have an impact on the loss of human dignity that all countries in the world place them under universal authority, regardless of the place of occurrence or where the perpetrator comes from must be immediately tried, so it can be said that there is no *safe haven* for the perpetrator. Crimes are classified into *hostis humanum* (enemy of mankind) because they are contrary to the principles of humanity and justice. This prompted the United Nations to participate in giving attention to the victims of crimes against humanity by holding a diplomatic conference to ratify the Rome *Statute on the Establishment of the International Criminal Court* with authority to prosecute perpetrators of serious crimes of concern to the world community. This provision also serves as a guideline for establishing human rights court laws in Indonesia.

Taking into account the legal elements as stated in Article 9 of UURI No. 26 of 2000 concerning Human Rights Courts as a requirement in the indictment, it is clarified here that one of the acts means an act involving a human being committing a crime against humanity. Moreover, the act is part of an attack, meaning that an act such as the killing of a civilian population occurred. The meaning of attack is expanded to mean a regular, wide-scale action resulting from the policy of a state or organization with the civilian population as the intended victim.

The East Timor case was categorized as a crime against humanity because the attack was directed against the civilian population. As described in the indictment, the "attack" here is described as a mass attack carried out by a group of people who wanted to remain united with Indonesia or pro-integration with several TNI members against houses, offices, and churches where civilians were displaced. The incident was also considered to fulfill the elements of widespread, referring to the number of victims and systematically reflecting a specific and organized manner directed against civilian groups. This element is a fundamental requirement to distinguish this crime from other national crimes.

Similarly, the element of widespread refers to the actions of the military apparatus resulting in the number of victims, which are carried out repeatedly and seriously with a coverage area from one place to another, causing casualties. These actions are carried out systematically and in an orderly manner. Looking at both East Timor and Tanjung Priok cases, this element has been fulfilled. Likewise, the mental element of "*mens rea*" which mentally influenced the actions of the perpetrators of the crime with the attacks carried out even though they knew that the intended targets were civilians and not combatants.

Another consideration of the use of the widespread element is to refer to the argumentation of the use of the legal element as an embryo of the verdict of the *ad hoc* human rights tribunal of the Rwanda Tribunal (ICTR*)* against Jean-Paul Akayesu, a mayor who was found guilty because as an authorized civilian leader, he should have taken steps to prevent crimes against humanity. This case indicates that there was a systematic and organized attack based on policies that substantially involved local authorities, even though these policies did not reflect formal state policy (Cohen, 2008).

In relation to the decision of the judges of the Rwandan court on the responsibility of superiors, it should be added that the explanation of Article 9 of UURI No. 26 of 2000 on the constituent's assault opposed to the civilian population, especially in East Timor and Tanjung Priok' cases that judges of the *ad hoc* human rights court can considerate. This is contemplate an excess policy of the power holder in a region or organization that should be able to prevent or stop crimes against humanity, but cannot be implemented. This, when viewed from the concept of commander's responsibility, contradicts both the functional aspect that the commander is obliged to limit the actions of his subordinates and the knowledge aspect that his subordinates are under effective control.

Further explanation of the criminal elements against humanity letter a, murder as in Article 340 of the Criminal Code, letter f on torture needs to be considered by the panel of *ad hoc human rights* judges that in both cases the militia assisted by the authorities committed persecution in the form of physical violence blindly. Letter I on enforced disappearance in the form of abduction and arrest of civilians without being based on legal elements because of the wrongdoing committed, this is clearly an extraordinary violation of human rights.

The *ad hoc* human rights court for the two cases has reconstructed the examination by looking at the widespread element, considering that the quantity of victims of shooting and persecution resulting in death and serious injury as crimes against humanity is true, as well as the systematic element, explained that there are indications that it was carried out regularly by military officers ranging from the highest rank to the lowest commander of KODIM 0502 North Jakarta (Usman, 2008).
The submission of the case by the public prosecutor to the *ad hoc* human rights court in the Tanjung Priok case was different from one another, where the defendants R Butar Butar and Sutrisno Mascung were found guilty because their actions fulfilled the elements of the law as contained in Article 9 of UURI No. 26 of 2000, among others, it was proven that the attack in the form of shooting was aimed at civilians and caused death and serious injuries. In addition, the systematic element was fulfilled on the grounds that at the time of the incident the two defendants were very responsible Sutrisno Mascung as a squad commander ordered the shooting of civilians.

Meanwhile, the decision of the panel of *ad hoc judges* stating that the defendant Sriyanto was found not guilty of crimes against humanity in the Tanjung Priok incident was very ironic because the defendant Sriyanto ran to meet the community at the shooting location with his men. According to the panel of judges, the elements of crimes against humanity charged by the prosecutor were not fulfilled, meaning that the systematic or widespread element was not fulfilled even though, based on the structure of the position the defendant Sriyanto should have known. The incident was more like a spontaneous attack between the army and the community, even though Captain Infantry Sriyanto was the leader of the troops who should have been under his control at that time.

Procedural Responsibilities of *Ad Hoc* Human Rights Judges Under Indonesian Legislation

The concept of procedural responsibility here implies that in law enforcement, ad hoc human rights judges must carefully and accurately use the procedural law used in resolving various cases of gross human rights violations. Imran (2007) emphasized that procedural responsibility contains the dimension of what elements need to be accounted for and answers the wishes of the community. It does not differentiate and has economic value, meaning the awareness of judges that there is public supervision of their actions (Imran, 2007).

It should be emphasized here that in terms of legal logic, there is a difference in evidence between the Indonesian legal system, which uses an inquisitorial system where judges have a significant role in directing and deciding cases, judges are active in finding facts and are expected to be careful in assessing evidence. In contrast, the role of judges in proving gross violations of human rights which have become international jurisprudence using an *accusatorial* system greatly affects the legal process against defendants of gross human rights violations.

The accusatorial system is generally practiced by countries using the common law legal system, where the judge will allow the defendant to prove the accusations made by the prosecutor after processing a case. Here the judge is more passive in handling the process of resolving a case. *Ad hoc* judges who are examining and trying cases of crimes against gross violations of human rights cannot handle cases outside the jurisdiction of the gross human rights court.

The judge plays a role in examining the indictment before the court date is set to avoid the possibility of the indictment being inadmissible or the lack of evidence and witnesses. The examination includes the completeness of the indictment, as well as the completeness of the evidence, before the investigation of the main case begins. The

indictment prepared by the public prosecutor in the East Timor incident fulfilled the formal requirements, as set out in Article 143 of the Criminal Procedure Code, but the material requirements were lacking in explaining the elements of crimes against humanity, elements of criminal responsibility, and command responsibility.

The role of judges as stated in Article 5 Paragraph (1) of UURI No. 48 of 2009, concerning Judicial Power, explains that judges have a role in providing legal decisions on concrete events with written legal norms. The role of the judge in this *ad hoc* human rights court is to look at the legal elements contained in the statutory provisions, in this case, the *ad hoc* human rights court.

The Responsibility of Judges in Applying the Evidence System at the *Ad Hoc* Human Rights Court

As explained in Article 10 of UURI No. 26/2000, the evidentiary procedure in gross human rights violations proceedings uses ordinary criminal law as regulated in the Criminal Procedure Code, including the trial stages and the evidence used in the trial.

Generally, in the legal world, there are material law products that need to be complemented by formal law or events so that the specifications of the rules become clear and detailed, as well as function to regulate and/or mechanisms to maintain the material law. For example, the Law of the Republic of Indonesia No. 26/2000 on Human Rights Courts materially regulates types of gross human rights violations. Still, there is no formal law to enforce gross human rights violations. There is a very obvious legal vacuum, so to avoid the malfunctioning of the material provisions, law enforcement officials have continued to use the criminal procedure code as the formal law so that crimes against humanity which are considered gross violations of human rights are equated with ordinary murder.

This is absent in the evidentiary system of the *ad hoc* human rights court, which uses the provisions of Law of the Republic of Indonesia No. 8 of 1981 on the Criminal Procedure Code. As the law regulates evidence, witness testimony, expert testimony, letters, instructions and testimony of the defendant are also used by the *ad hoc* human rights court. The procedural law should be comprehensive, covering all data that can be used in evidence (KontraS, 2008). There is no specific procedural law that is used as formal law in enforcing material law, in this case, Law of the Republic of Indonesia No. 26/2000 on Human Rights Courts, so judges use the Criminal Procedure Code.

It should be remembered that evidence in a trial process plays a very important role when the exception of the defendan''s attorney is rejected by the panel of judges. Because through evidence, the fate of the defendant is determined. Like the burden of proof in the Criminal Procedure Code, the results of the evidence will also be influential. If the evidence submitted by the public prosecutor (JPU) is not sufficient to strengthen the legal reasoning and confidence of the panel of judges, then the defendant needs to be acquitted. Conversely, if the defendan''s guilt can be proven by evidence as stipulated in the Criminal Procedure Code, the defendant must be found guilty.

This argument is seen in the context of the theory of the rule of law. According to Suseno (2000), the power possessed by the panel of judges needs to be used properly in the trial process, including in examining witnesses as evidence in the trial. The judges of the appeal court in the Tanjung Priok case, in deciding the case on the involvement of R Butar-Butar stated that he could not be held accountable because he did not fail to prevent or punish his subordinates even though the testimony of witnesses such as Tri Sutrisno and several members of the TNI stated that there was a relationship between the defendant as commander and the squad III troops who carried out the shooting.

The purpose of the proof system, according to Harahap (1998) is to find out how to put a legal fact to explain with certainty a case that is being processed. The criminal procedure code adheres to a negative statutory proof system as stipulated in Article 183 of the Criminal Procedure Code, to determine the guilt or innocence of the defendant (Harahap, 1988). The defendan''s guilt must be proven by at least two pieces of evidence, and based on this evidence, the judge is convinced that the criminal offence really happened and that the defendant is the one guilty of committing it.
As a result of the intimidation and terror experienced by victim-witnesses, part of the testimony evidence was disallowed, and even the testimony in the Minutes of Examination was revoked in terms of enforcement of the examination procedure. Evidence of violations of the law in the element of crimes against humanity that had been submitted by the public prosecutor was ultimately not taken into consideration by the panel of judges.

Administrative Responsibility of *Ad Hoc* Judges through Internal Supervision of Judges

Supervision is considered important to ensure that the existing process is carried out in accordance with the main tasks and functions. Is there a guarantee that those who supervise, such as the head of the district court or the supervisory body, have integrity and good performance, so they can become role models for the judges they supervise. This is an ideal answer, but the fact is that currently the supervision of judges in Indonesia is not only carried out by the supervisory body (BAWAS) of the Supreme Court of the Republic of Indonesia, which ex officio includes the chairman of the district or high court, conducting internal supervision of the behavior and administration of judges but also by the judicial commission externally on the behavior of judges.

Hans Jonas (as cited in Toya, 2021) asserts that if judges have a sense of responsibility, it is not because they are obliged to reciprocate or because others have the right to fulfil it but because the object of responsibility invokes a sense of individual responsibility. Jonas (as cited in Toya, 2021) believes that internal and external monitoring of behavior and administration is the most important element in the administration of justice, including *ad hoc human rights* courts that resolve gross violations of human rights.

Supervision means inviting someone or several people to carry out an activity with caution so that mistakes or errors do not occur (Makmur, 2015). This context is clearly visible in the process of resolving cases of gross violations of human rights, from prosecution by the attorney genera''s team to the process of evidence, examination of defendants and decisions by the *ad hoc* panel of judges. Supervision is also a policy analysis procedure used to provide information about the causes and consequences of public policy because it allows analysis to describe the relationship between work implementation and the results achieved. Farid (2022) added supervision is a source of information about the implementation of a policy. It is unfortunate that there are still judges who interpret supervision with formal enforcement of discipline, for example, through apple activities every morning to hear directions from superiors.

DISCUSSION

Substantive Responsibilities of *Ad Hoc* Human Rights Judges

The decision of the *ad hoc* panel of judges on the Tanjung Priok case of gross human rights violations involving the defendants R. Butar Butar and Sutrisno Mascung, in contrast to the defendant Sriyanto can be seen based on the thinking of the Indonesian rule of law based on Pancasila, where the practice of the precepts of social justice for all Indonesian people has deviated. This is explicitly stated in the decision made by the

panel of human rights judges against the defendants, Sutrisno Mascung as a squad commander and Sriyanto as a squad leader.

The rationale used by the panel of *ad hoc* judges in their decision is considered very confusing because how is it possible that in an incident with the same place and time of occurrence *(locus* and *tempus delicti),* but resulted in two different decisions. All of the evidence, such as the testimonials of the victim-witnesses presented to the court, were almost the same. The victims, through their testimony, stated that they personally experienced and heard the crimes against humanity committed by the defendants. In contrast to the East Timor case in which the *ad hoc* judge ruled against the defendant Adam Damiri, the panel of judges gave more credence to the victim witness. In the Tanjung Priok case involving Sriyanto, the panel of judges listened to and believed the witnesses of the officers/perpetrators more than the victim-witnesses, especially for legal facts. The judges of the *ad hoc* human rights court were instrumental in concluding their decision by stating that the defendant Adam Damiri was legally and convincingly proven guilty of committing the crime of crimes against humanity and was therefore sentenced to three years imprisonment. This guilty verdict is inseparable from the judge'' selection of witness testimony and use of international doctrine on crimes against humanity and commands responsibility despite the Indonesian judicial system not recognizing jurisprudence as a binding source of law. The lack of facts and legal arguments used by the first-instance judges resulted in the decision being overturned by the court of appeal when it accepted the request.

The decision read out stated that the Jakarta Court of Appeal accepted the appeal, meaning that Adam Damiri was found not guilty of committing the crime of gross human rights violations that he was charged with. Adam Damiri was declared not responsible for the series of serious human rights violations in East Timor. Seeing this decision can be said to be inversely proportional to the principle of justice because the perpetrators who were proven guilty, both individually and responsible for the actions of their subordinates, were ignored by the *ad hoc* judges of the court of appeal. Here we can analyze the concept of justice according to Aristotle that distributive justice will be accepted if a judge can give a decision to the perpetrators in accordance with their respective roles in cases of crimes against humanity.

In response to the decision of the judge of the *ad hoc human rights court* at the appellate level, the panel of judges of the Court of Appeal rejected the defendan''s defence counse''s appeal against the *interlocutory* decision of the ad hoc human rights court at first instance regarding jurisdiction. On the other hand, the panel of judges of the Court of Appeal accepted the appeal of both the prosecution and the defence regarding the final decision of the *ad hoc* human rights court of first instance (Cohen, 2008). The legal argumentation contained in the decision of the Court of Appeal judges considered that the *ad hoc* human rights court had misjudged witness testimony and drawn erroneous legal consequences. The decision of the appeal court judges was based on mitigating witness testimony, and they found that there was no evidence that subordinates/ troops under the effective control of the accused were involved in clashes between pro-independence and pro-integration/autonomy groups.

The ad hoc judge at the court of appeal rejected the decision of the court of first instance, not basing it on an analysis of the evidence on which he based his conclusion. The appellate court did not address the findings of the court of first instance that crimes against humanity had occurred, with the element of attacks on civilian populations. In the judge'' view, this was merely a clash, indicating that there were weaknesses in the judge'' decision that did not take into account the testimony of witnesses, including analyzing the standard of review (Cohen, 2008). The measure of judgement used by the

appellate judges was not in accordance with a conscience but only a false formality; it was due to being in the shadow and intervention of superiors, lack of knowledge of applicable legal provisions, for example, the basis for analyzing the testimony of witnesses.

This is when viewed in terms of a decision based on the principle of justice as the spirit of the rule of law, namely if the *ad hoc* judge is impartial to the provisions of international human rights law designed to protect individuals from unlawful and arbitrary restrictions or deprivation of justice that should be received by individuals. When used to analyze the verdict, Aristotl''s theory of distributive justice is considered inappropriate, and it is expressly stated that individuals such as Sriyanto and Adam Damiri were considered responsible but acquitted. It means that there is an injustice to their position in the TNI institution, who knew the actions of their subordinates and took steps to control them.

The context of commut'live justice from Aristotle if analyzed in the context of the decision of the *ad hoc* human rights judge in this case of crimes against humanity, even though the commanders were present at the trial with all the attributes used, but the conscience and responsibility of the *ad hoc* human rights judge if properly functioned, the goal of justice seekers in this case the victim or the vict'm's family to obtain justice can be realized.

Procedural Responsibilities of *Ad Hoc* Human Rights Judges

The *ad hoc* Human Rights Court in Indonesia has applied the concept of command responsibility in prosecuting cases of gross violations of human rights in East Timor, where most perpetrators were prosecuted under Article 42 of Law of the Republic of Indonesia No. 26/2000 on command responsibility, both military and civilian, not only civilians but the governor and regent were also prosecuted.

However, the appeal decision of the *ad hoc* judges emphasized the injustice of the East Timor case as two errors were found in two important sentences. Firstly, the phras‘ 'chain of comma'd' must be drawn vertically. In international court jurisprudence, there does not have to be a formal command structure o‘ 'chain of comman',' and it does not have to be traced upwards. It is important to establish the subordina'e's superior is *de facto* authority in the form of effective control. It is all about the effectiveness of control and whether subordinates follow their orders to stop the attack once the order has been issued. It needs to be proven that the command hierarchy at the time was not functioning normally with regard to the comma'd's knowledge of what its members were doing. Secondly, the *ad hoc* judge stated that it must first be proven that there were gross violations of human rights committed by its members; otherwise, there will be no accountability of the commander. It should be understood that a subordinate is not necessarily a member of the unit under his formal command or of the armed forces. What matters here is not membership but *de facto* authority to determine the existence of effective control.

This example is emphasized in the international legal doctrine of command responsibility which is a doctrine relating to individual criminal responsibility developed through custom, and the practices of war crimes tribunals especially after World War II. The requirement that responsibility rests with the military commander is at the root of this doctrine, as a commander is believed to be professional in controlling his men, directing and instructing his men on the performance of dangerous tasks, supervising the performance of tasks to completion and taking disciplinary action if his men fail or neglect to complete tasks.

According to Article 42 Paragraph (1) of Law of the Republic of Indonesia Number 26 of 2000 on Human Rights Courts, a military command or a person effectively acting as a military command may be held accountable for criminal offenses within the jurisdiction of a human rights court, committed by troops under their effective command and control, such criminal offenses result from the failure to properly control the troops, which means that a member of the armed forces, who has the authority to issue direct orders to his subordinates or to subordinate units and supervise the implementation of these orders, but does not do so, is categorized as an act of omission. Thus, the elements that must be proven are the military commander is effectively acting as a military commander, his effective control, his subordinates were committing or had recently committed gross violations of human rights (in the form of murder and/or persecution), the failure to exercise proper control over the troops, knowing or on the basis of the circumstances at the time should have known (Cohen, 2008).

The trial judge's decision interpreted the element of a military commander or someone who can effectively act as an army commander in an international law superior-subordinate relationship. So it is not important whether he is a military commander; legally, the perpetrators involved are also military. The perpetrator is also a non-military member. What is important and decisive in fulfilling this element is whether the commander has effective control over the perpetrators.

The procedure of proving by the prosecutor that the militia was actually under the command of the Indonesian military needs to be considered by the judge. Bern Hausler, on justice for victims of the human rights cou't's legal opinion on East Timor crimes, argues that Article 42 of UURI No 26 2000 states that a person who effectively acts as a military commander can be held accountable for criminal offenses within the jurisdiction of the Human Rights Court committed by troops under his or her command. Article 28 of the Rome Statute states the failure to act of an unconscious superior in cases where he has knowledge of atrocities at the applicable time is treated as an act.

Administrative Responsibility of Judges through Internal Supervision of Judges

Supervision of judges by the Supreme Court is currently based on Article 39 of Law of the Republic of Indonesia Number 48 of 2009 on Judicial Power which in Paragraph (1) states that the highest supervision over the administration of justice in all judicial bodies under the Supreme Court in exercising judicial power shall be exercised by the Supreme Court. Paragraph (2) states that in addition to the supervision referred to in Paragraph (1), the Supreme Court shall exercise supreme supervision over the implementation of administrative and financial duties.

From a brief conversation with one of the personal secretaries of the judge of the Central Jakarta District Court handling the gross human rights violations case, we learned that the High Court has the authority to supervise judges, clerks, administration, and finances in accordance with existing regulations. Internal supervision of *ad hoc judges* is necessary to enforce disciplines such as punctual attendance and order in the trial process. There is a slight difference between *ad hoc judges* and career judges, as can be seen from the volume of supervision of career judges and *ad hoc* judges.

It was further explained that the influence and exemplary behavior of the head of the district or the high court determines the enforcement of internal supervision of *ad hoc* judges. Whether the KPN is easily intervened by politics and power depends on the individual concerned. It was also added that for *ad hoc* human rights judges because there is one-stop supervision, there are no other parties who have the opportunity to correct the wrong policies of the judiciary.

Mechanism of supervision of judges conducted internally by BAWAS with the following provisions: a. Chairman/Deputy Chairman of the appellate level as supervisory coordinator holds monthly supervisory meetings. b. Handling of every complaint submitted through the complaints desk or by mail, fax, and website is carried out, c. Appellate-level courts carry out the handling of complaints delegated by BAWAS MA, c. The appointed High Judge conducts an examination to the chairman of the appellate level court, then forwarded to BAWAS MA, d. BAWAS MA conducts an investigation of reports submitted to the Supreme Court. BAWAS MA examines the report submitted to the Supreme Court.

Supervision is one of the critical factors in increasing public trust in the courts. As stated by Levinas (as cited in Suseno, 2000), the supervision of judges is the seriousness of the judicial institution to control the freedom of judges. According to supervisory guidelines, supervision consists of two types: inherent supervision and functional supervision. Inherent supervision is a series of activities that are in the nature of continuous control, carried out by direct superiors against their subordinates preventively and repressively so that the implementation of subordinate tasks runs effectively and efficiently in accordance with the activity plan and applicable laws and regulations.

CONCLUSIONS

Based on the author's description above, it can be concluded that the responsibility of *ad hoc* judges of the Court of Appeal in deciding cases of gross violations of human rights is carried out not using the legal elements of gross violations of human rights as contained in the applicable statutory provisions. Therefore, the decision is considered unfair for gross human rights violations in Tanjung Priok and East Timor because the involvement of commanders and superiors is not considered. This indicates that the responsibility of judges to break command impunity in crimes against humanity in East Timor and Tanjung Priok has not been implemented. Finally, in an ideal decision reconstruction, for example, according to religion, purification of the judge's identity needs to be implemented to realize a fair decision accepted by all parties, both victims and perpetrators. Second, the responsibility of *ad hoc* judges procedurally was not implemented in resolving cases of gross human rights violations because it did not include elements of crimes against humanity, command responsibility and criminal responsibility. Third, the administrative responsibility of ad hoc human rights judges through supervisory mechanisms is carried out internally by the Supervisory Board of the Supreme Court of the Republic of Indonesia and externally by the Judicial Commission. The mechanism in BAWAS consists of determining the object of examination and the implementation schedule set before the implementation date no later than two weeks after receiving public complaints in the form of judicial technical, administrative and disciplinary *ad hoc* human rights judges.

In conclusion, the author recommends ad hoc judges must be legally responsible by not limiting the *locus and tempus delicti* as stipulated in the Criminal Procedure Code in making decisions. Secondly, evidentiary procedures need to follow international legal standards, for which the government should immediately improve regulations to accommodate the independence of judges at all levels of the judiciary so that it does not seem that judges are institutionally independent. Still, the influence of the head of the court who participates in directing the panel of judges when processing cases does exist. Third, the supervision mechanism both internally from the Supreme Court supervisory body (BAWAS) and externally from KY (on judicial technical, administration, code of ethics and behavior of a judge) needs to be carried out transparently and informed to the public. Because even though the supervision method has been carried out using an

online supervision system, the public cannot access the transparency and accountability of judges for decisions.

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