

Unofficial translation

REPUBLIC OF INDONESIA

LEGISLATION

NUMBER 26 OF 2000

CONCERNING

HUMAN RIGHTS COURTS

**HOUSE OF REPRESENTATIVES
OF
THE REPUBLIC OF INDONESIA**

**REPUBLIC OF INDONESIA
ACT NO. OF 2000
CONCERNING
HUMAN RIGHTS COURTS**

WITH THE MERCY OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering:
- a. whereas human rights are basic rights bestowed by God on human beings, are universal and eternal in nature, and for this reason may not be disregarded, diminished, or appropriated by anyone whosoever;
 - b. whereas to participate in preserving world peace and guaranteeing the implementation of human rights, and to provide protection, assurance, justice, and a feeling of security to both individuals and society, it is necessary to establish forthwith a Human Rights Court in order to resolve gross violations of human rights in accordance with Article 104 clause (1) of Act No. 39 of 1999 concerning Human Rights;
 - c. whereas establishment by the government of a Human Rights Court to resolve gross violations of human rights based on Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts was considered inadequate and therefore not ratified as an Act by the House of Representatives of the Republic of Indonesia, and for this reason it is necessary to revoke the aforementioned Government Regulation in Lieu of an Act;
 - d. now, therefore, upon consideration of clauses a, b and c, it is necessary to enact provisions in an Act concerning Human Rights Courts;
- In view of:
- 1. Article 5 clause (1) and Article 20 clause (2) of the 1945 Constitution;
 - 2. Act No.14 of 1970 concerning Principal Provisions on Judicial Authority (State Gazette No. 74 of 1970, Supplement to the State Gazette No. 2951) as amended by Act No. 35 of 1999 concerning Amendments to Act No. 14 of 1970 concerning Principal Provisions on

- Judicial Authority (State Gazette No. 147 of 1999, Supplement to the State Gazette No. 3879);
3. Act No. 2 of 1986 concerning Courts of General Jurisdiction (State Gazette No. 20 of 1986, Supplement to the State Gazette No. 3327)
 4. Act No. 39 of 1999 concerning Human Rights (State Gazette No. 165 of 1999, Supplement to the State Gazette No. 3886);

With the joint approval of

**THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA**

DECREES:

To enact: ACT CONCERNING HUMAN RIGHTS COURTS.

**CHAPTER 1
GENERAL PROVISIONS**

Article 1

The terms used in this Act have the following meanings:

1. Human rights are a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to respect and protect human dignity and worth.
2. Gross violation of human rights is a violation of human rights as referred to in this Act.
3. A Human Rights Court is a court dealing specifically with gross violations of human rights.
4. A person is an individual, group of people, civil or military, or police, having individual responsibility.
5. Inquiry is a set of acts of inquiry to identify the existence or otherwise of an incident suspected to constitute a gross violation of human rights to be followed up by an investigation in accordance with the provisions set forth in this Act.

CHAPTER II
STATUS AND LOCATION OF HUMAN RIGHTS COURTS

Section One
Status

Article 2

A Human Rights Court is a special court within the context of a Court of General Jurisdiction.

Section Two
Location

Article 3

- (1) A Human Rights Court shall be located in a regional capital or a municipal capital and its judicial territory shall cover the judicial territory of the relevant District Court.
- (2) In the case of the Special District of Jakarta, a Human Rights Court shall be located in the territory of each relevant District Court.

CHAPTER III
SCOPE OF AUTHORITY

Article 4

A Human Rights Court has the task and authority to hear and rule on cases of gross violations of human rights.

Article 5

A Human Rights Court has the authority to hear and rule on cases of gross violations of human rights perpetrated by an Indonesian citizen outside the territorial boundaries of the Republic of Indonesia.

Article 6

A Human Rights Court does not have the authority to hear and rule on cases of gross violations of human rights perpetrated by persons under the age of 18 (eighteen) at the time the crime occurred.

Article 7

Gross violations of human rights include:

- a. the crime of genocide
- b. crimes against humanity

Article 8

The crime of genocide as referred to in Article 7 letter a is any action intended to destroy or exterminate in whole or in part a national group, race, ethnic group, or religious group by:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of a group;
- c) creating conditions of life that would lead to the physical extermination of the group in whole or in part;
- d) imposing measures intended to prevent births within a group; or
- e) forcibly transferring children of a particular group to another group.

Article 9

Crimes against humanity as referred to in Article 7 letter b include any action perpetrated as a part of a broad or systematic direct attack on civilians, in the form of:

- a. killing;
- b. extermination;
- c. enslavement;
- d. enforced eviction or movement of civilians;
- e. arbitrary appropriation of the independence or other physical freedoms in contravention of international law;
- f. torture;
- g. rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilisation, or other similar forms of sexual assault.
- h. terrorisation of a particular group or association based on political views, race, nationality, ethnic origin, culture, religion, sex or any other basis, regarded universally as contravening international law;
- i. enforced disappearance of a person; or
- j. the crime of apartheid.

CHAPTER IV JUDICIAL PROCEDURE

Section One General Provisions

Article 10

Unless stipulated otherwise in this Act, the judicial procedure for cases of gross violations of human rights shall be conducted according to provisions governing criminal judicial procedure.

Section Two Arrest

Article 11

- (1) The Attorney General as investigator is authorised to arrest, for the purposes of investigation, any person who, on the basis of sufficient preliminary evidence, is strongly suspected of perpetrating a gross violation of human rights.
- (2) The investigator shall carry out arrest as referred to in clause (1) by producing an order and serving the suspect an arrest warrant stating the identity of the suspect, the reason for the arrest, and the location of the investigation, along with a brief description of the gross violation of human rights he or she is suspected of perpetrating.
- (3) Attachments to the arrest warrant as referred to in clause (2) must be given to the family of the accused immediately following the arrest.
- (4) In the event of a suspect being caught in the act of perpetrating a gross violation of human rights, arrest shall be executed without an order on the condition that the arrester immediately surrenders the suspect and any evidence to the investigator.
- (5) Arrest as referred to in clause (2) shall not exceed 1 (one) day.
- (6) The period of arrest shall be subtracted from the sentence passed.

Section Three Detention

Article 12

- (1) The Attorney General as investigator and public prosecutor is authorised to undertake the detention or extend the detention of a suspect for the purposes of investigation and prosecution.
- (2) The judge of a Human Rights Court, by his or her ruling, is authorised to undertake the detention of a suspect for the purposes of investigation in a court session.
- (3) A warrant for detention or extended detention shall be served on a suspect or defendant, who based on sufficient evidence, is strongly suspected of perpetrating a gross violation of human rights, should circumstances raise concerns that the suspect or the defendant may abscond, damage or conceal evidence, and/or re-perpetrate the gross violation of human rights.

Article 13

- (1) Detention for the purposes of investigation shall not exceed 90 (ninety) days.

- (2) The time period referred to in clause (1) may be extended for a maximum of 90 (ninety) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.
- (3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the period of detention may be extended for a maximum of 60 (sixty) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.

Article 14

- (1) Detention for the purposes of prosecution shall not exceed 30 (thirty) days.
- (2) The time period referred to in clause (1) may be extended for a maximum of 20 (twenty) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.
- (3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the period of detention may be extended for a maximum of 20 (twenty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.

Article 15

- (1) Detention for the purposes of a hearing in a Human Rights Court shall not exceed 90 (ninety) days.
- (2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.

Article 16

- (1) Detention for the purposes of cross-examination in a High Court shall not exceed 60 (sixty) days.
- (2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the High Court in accordance with his or her judicial scope.

Article 17

- (1) Detention for the purposes of an appeal hearing in the Supreme Court shall not exceed 60 (sixty) days.
- (2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the Supreme Court in accordance with his or her judicial scope.

Section Four Inquiry

Article 18

- (1) Inquiries into cases of gross violation of human rights shall be

- conducted by the National Commission on Human Rights.
- (2) In conducting an inquiry as referred to in clause (1), the National Commission on Human Rights may form an ad hoc team comprising the National Commission on Human Rights and public constituents.

Article 19

- (1) In conducting an inquiry as referred to in Article 18, the inquirer is authorised:
- a. to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights;
 - b. to receive reports or complaints from individuals or groups concerning the incidence of gross violations of human rights, and to pursue statements and evidence;
 - c. to call on complainants, victims, or subjects of a complaint to request and hear their statements;
 - d. to call on witnesses to request and hear their witness;
 - e. to review and gather statements from the location of the incident and other locations as deemed necessary;
 - f. to call on relevant parties to give written statements or to submit necessary authenticated documents;
 - g. on the order of the investigator to:
 - 1) examine of letters;
 - 2) undertake search and seizure;
 - 3) examine houses, yards, buildings, and other places that certain parties occupy or own;
 - 4) dispatch specialists pertinent to the investigation.
- (2) The inquirer shall inform the investigator upon initiating an inquiry into an incident suspected of constituting a gross violation of human rights.

Article 20

- (1) Should the National Commission on Human Rights consider there is sufficient preliminary evidence that a gross violation of human rights has occurred, a summary of the findings of the inquiry shall be submitted to the investigator.
- (2) No later than 7 (seven) working days following the submission of the summary findings of inquiry, the National Commission on Human Rights shall submit the inquiry findings in full to the investigator.
- (3) In the event that the investigator considers the inquiry findings referred to in clause (2) insufficient, the inquirer shall immediately re-submit the inquiry findings to the investigator accompanied by guidelines for their completion, and within 30 (days) of receiving the inquiry findings, the investigator is required to consummate these insufficiencies.

Section Five Investigation

Article 21

- (1) Investigation of cases of gross violations of human rights shall be undertaken by the Attorney General.
- (2) Investigation as referred to in clause (1) excludes authority to receive reports or complaints.
- (3) In undertaking the task referred to in clause (1), the Attorney General may appoint an ad hoc investigator, which may be a government agency and/or a public constituent.
- (4) Prior to undertaking his/her task, an ad hoc investigator shall take an oath or pledge in accordance with his or her religion.
- (5) To be appointed as ad hoc investigator, a person is required to:
 1. be a Citizen of the Republic of Indonesia;
 2. be at least 40 (forty) years of age and no more than 65 (sixty-five) years of age;
 3. be a graduate at law or other graduate with expertise in law; matters;
 4. be of sound mind;
 5. be of authoritative standing, honest, fair, and of good character;
 6. to be loyal to Pancasila and the 1945 Constitution; and
 7. to have knowledge of and concern for human rights.

Article 22

- (1) Investigation as referred to in Article 21 clause (1) and (3) must be completed within a period of no longer than 90 (ninety) days from the date the inquiry findings are received and declared complete by the investigator.
- (2) The time period referred to in clause (1) may be extended for a period not exceeding 90 (ninety) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.
- (3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the investigation may be extended for a period of no more than 60 (sixty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.
- (4) If during the time period referred to in clause (1), clause (2), and clause (3) insufficient evidence is obtained from the investigation findings, a writ to terminate the investigation must be issued by the Attorney General.
- (5) Once a writ to terminate an investigation is issued, an investigation may be re-opened only if additional proof and evidence for prosecution exists which supplements the investigation findings.
- (6) In the event that termination of an investigation as referred to in clause (3) is not accepted by a victim or his/her family, the victim or his/her family by blood or marriage to the third degree, has the right to submit a pre-trial request to the Chief Justice of the Human Rights Court in

accordance with his or her judicial scope and in accordance with prevailing legislation.

Section Four Prosecution

Article 23

- (1) Prosecution of cases of gross violations of human rights shall be conducted by the Attorney General.
- (2) In the implementation of her/his task as referred to in clause (1), the Attorney General may appoint an ad hoc public prosecutor, who may be a member of the government and/or a public constituent.
- (3) Prior to undertaking his or her task, an ad hoc public prosecutor shall take an oath or pledge in accordance with his/her religion.
- (4) To be appointed as ad hoc public prosecutor, a person is required to:
 1. be a Citizen of the Republic of Indonesia;
 2. be at least 40 (forty) years of age and no more than 65 (sixty-five) years of age;
 3. be a graduate at law or other graduate with expertise in law;
 4. be of sound mind;
 5. be of authoritative standing, honest, fair, and of good character;
 6. to be loyal to Pancasila and the 1945 Constitution; and
 7. to have knowledge of and concern for human rights.

Article 24

Prosecution as referred to in Article 23 clause (1) and clause (2) must be completed within no more than 70 (seventy) days from the date of receipt of the investigation findings.

Article 25

The National Commission on Human Rights may at any time request a written statement from the Attorney General concerning the progress of the investigation and prosecution of a case of gross violation of human rights.

Section Seven Oath

Article 26

The oath taken by an ad hoc investigator and ad hoc Public Prosecutor as referred to in Article 21 clause (4) and Article 23 clause (3) shall be worded as follows:

"I solemnly swear/promise that in undertaking this task, I shall not, directly or indirectly, using any name or method whatsoever, give or promise anything whatsoever to anyone whosoever".

"I swear/promise that I, in order to undertake or not undertake something related to this task, shall not at any time accept directly or indirectly from anyone whatsoever any promises or favours".

"I swear/promise that I will be faithful to, uphold, and apply the state principles of Pancasila, the 1945 Constitution, and legislation in force for the state of the Republic of Indonesia".

"I swear/promise that I will consistently undertake this duty conscientiously, objectively and with integrity, without discriminating between people, and will hold professional ethics in the highest regard in carrying out my obligations in proper and fair manner as befitting an official of good character and integrity with regard to upholding law and justice".

Section Eight Court Hearings

Paragraph 1 General Provisions

Article 27

- (1) Cases of gross violations of human rights shall be heard and ruled on by a Human Rights Court as referred to in Article 4.
- (2) Hearings of cases of gross violations of human rights as referred to in clause (1) shall be conducted by a Human Rights Court judges' panel of 5 (five) persons, comprising 2 (two) judges from the relevant Human Rights Court and 3 (three) ad hoc judges.
- (3) The Panel of Judges referred to in clause (2) shall be chaired by a judge from the relevant Human Rights Court.

Article 28

- (1) Ad hoc judges shall be appointed and dismissed by the President as Head of State upon the recommendation of the Chief Justice of the Supreme Court.
- (2) The total of ad hoc judges as referred to in clause (1) shall number at least 12 (twelve) persons.
- (3) Ad hoc judges shall be appointed for a period of 5 (five) years and may be re-appointed for 1 (one) additional period of office.

Paragraph 2 Conditions of Appointment for Ad Hoc Judge

Article 29

To be appointed as ad hoc Judge, a person is required to:

1. be a Citizen of the Republic of Indonesia;

2. be faithful to God Almighty;
3. be at least 45 (forty-five) years of age;
4. be a graduate at law or other graduate with expertise in law;
5. be of sound mind;
6. be of authoritative standing, honest, fair, and of good character;
7. be loyal to Pancasila and the 1945 Constitution; and
8. have knowledge of and concern for human rights.

Article 30

Prior to undertaking his/her tasks, an appointed ad hoc judge as referred to in Article 28 clause (1) is required to take an oath or pledge in accordance with his/her religion, worded as follows:

"I solemnly swear/promise that in undertaking this task, I shall not, directly or indirectly, using any name or method whatsoever, give or promise anything whatsoever to anyone whatsoever".

"I swear/promise that I, in order to undertake or not undertake something related to this task, shall not at any time accept directly or indirectly from anyone whatsoever any promises or favours".

"I swear/promise that I will be faithful to, uphold, and apply the state principles of Pancasila, the 1945 Constitution, and legislation in force for the state of the Republic of Indonesia".

"I swear/promise that I will consistently undertake this duty conscientiously, objectively and with integrity, without discriminating between people, and will hold professional ethics in the highest regard in carrying out my obligations in proper and fair manner as befitting an official of good character and integrity with regard to upholding law and justice".

Paragraph 3 Hearing Procedure

Article 31

Cases of gross violations of human rights shall be heard and ruled on by a Human Rights Court within a period of no more than 180 (one hundred and eighty) days from the date of the case being brought before the Human Rights Court.

Article 32

- (1) In the event of a request for appeal to the High Court, the case of gross violation of human rights must be heard and ruled on within a period of no more than 90 (ninety) days from the date of the case being brought before the High Court.

- (2) Hearings of cases as referred to in clause (1) shall be conducted by a judges' panel of 5 (five) persons, comprising 2 (two) judges from the relevant High Court and 3 (three) ad hoc judges.
- (4) The total of ad hoc judges in the High Court as referred to in article (2) shall number at least 12 (twelve) persons.
- (5) Provisions set forth in Article 28 clause (1) and clause (3), Article 29, and Article 30 shall also apply for the appointment of ad hoc judges to the High Court.

Article 33

- (1) In the event of a request for appeal to the Supreme Court, a case of gross violation of human rights must be heard and ruled on within a period of no more than 90 (ninety) days from the date of the case being brought before the Supreme Court.
- (2) Hearings of cases as referred to in clause (1) shall be conducted by a judges' panel of 5 (five) persons, comprising 2 (two) Supreme Court judges and 3 (three) ad hoc judges.
- (3) The total of ad hoc judges in the Supreme Court as referred to in article (2) shall number at least 3 (three) persons.
- (4) Ad hoc judges in the Supreme Court shall be appointed by the President as head of state upon the recommendation of the House of Representatives of the Republic of Indonesia.
- (5) Ad hoc judges as referred to in clause (4) shall be appointed for one period of office of 5 (five) years.
- (6) To be appointed as ad hoc judge in the Supreme Court, a person is required to:
 - a. be a Citizen of the Republic of Indonesia;
 - b. be faithful to God Almighty;
 - c. be at least 50 (fifty) years of age;
 - d. be a graduate at law or other graduate with expertise in law;
 - e. be of sound mind;
 - f. be of authoritative standing, honest, fair, and of good character;
 - g. be loyal to Pancasila and the 1945 Constitution; and
 - h. have knowledge of and concern for human rights.

CHAPTER V PROTECTION OF VICTIMS AND WITNESSES

Article 34

- (1) Every victim of and witness to a gross violation of human rights has the right to physical and mental protection from threats, harassment, terror, and violence by any party whatsoever.
- (2) Protection as referred in clause (1) is an obligatory duty of the law enforcement and security apparatus provided free of charge.
- (3) Provisions on procedures for protecting witnesses shall be further

governed in a Government Regulation.

CHAPTER VI COMPENSATION, RESTITUTION, AND REHABILITATION

Article 35

- (1) Every victim of a violation of human rights violations and/or his/her beneficiaries shall receive compensation, restitution, and rehabilitation.
- (2) Compensation, restitution, and rehabilitation as referred to in clause (1) shall be recorded in the ruling of the Human Rights Court.
- (3) Provisions concerning compensation, restitution, and rehabilitation shall be further governed in a Government Regulation.

CHAPTER VI PENAL PROVISIONS

Article 36

Any person who perpetrates actions as referred to in Article 8, letter a, b, c, d or e, shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 37

Any person who perpetrates actions as referred to in Article 9 letter a, b, d, e, or j shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 38

Any person who perpetrates actions as referred to in Article 9 letter c shall be sentenced to a maximum of 15 (fifteen) years in prison and no less than a minimum of 5 (five) years in prison.

Article 39

Any person who perpetrates actions as referred to in Article 9 letter f shall be sentenced to a maximum of 15 (fifteen) years in prison and no less than a minimum of 5 (five) years in prison.

Article 40

Any person who perpetrates actions as referred to in Article 9 letter g, h, or i shall be sentenced to a maximum of 20 (twenty) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 41

For attempting, plotting, or assisting the perpetration of a violation as referred to in Article 8 or Article 9, the sentences set forth in Article 36, Article 37, Article 38, Article 39, and Article 40 shall apply.

Article 42

- (1) A military commander or person acting as military commander shall be held responsible for any criminal action within the judicial scope of a Human Rights Court perpetrated by troops under his or her effective command and control, and for any such criminal action by troops under his or her effective command and control arising from improper control of these troops, namely:
 - a. a military commander or aforementioned person acknowledges, or under the prevailing circumstances ought to acknowledge that these troops are perpetrating or have recently perpetrated a gross violation of human rights; and
 - b. a military commander or aforementioned person fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.
- (2) Both police and civil leaders are held responsible for gross violations of human rights perpetrated by subordinates under their effective command and control resulting from a failure on the part of the leader to properly and effectively control his or her subordinates, namely:
 - a. the aforementioned leader is aware of or deliberately ignores information that clearly indicates his or her subordinates are perpetrating, or have recently perpetrated a gross violation of human rights; and
 - b. the aforementioned leader fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.
- (3) Actions as referred to in clause (1) and clause (2) shall be liable to the same penal provisions set forth in Article 36, Article 37, Article 38, Article 39, and Article 40.

CHAPTER VIII AD HOC HUMAN RIGHTS COURTS

Article 43

- (1) Gross violations of human rights occurring prior to the coming into force of this Act shall be heard and ruled on by an ad hoc Human Rights Court.

- (2) An ad hoc Human Rights Court as referred to in clause (1) shall be formed on the recommendation of the House of Representatives of the Republic of Indonesia for particular incidents upon the issue of a Presidential Decree.
- (3) An ad hoc Human Rights Court as referred to in clause (1) is within the context of a Court of General Jurisdiction.

Article 44

Hearings in an ad hoc Human Rights Court and their judicial procedure shall be in accordance with the provisions set forth in this Act.

CHAPTER IX TRANSITIONAL PROVISIONS

Article 45

- (1) From the date this Act comes into force, establishment of Human Rights Courts as referred to in Article 4 shall begin in Central Jakarta, Surabaya, Medan and Makassar.
- (2) The judicial territory of Human Rights Courts as referred to in clause (1) shall correspond to the judicial territory of the District Court in:
 - a. Central Jakarta, which encompasses Greater Jakarta, and the Provinces of West Java, Banten, South Sumatra, Lampung, Bengkulu, West Kalimantan, and Central Kalimantan;
 - b. Surabaya, which encompasses the Provinces of East Java, Central Java, Special District of Yogyakarta, Bali, South Kalimantan, East Kalimantan, West Nusa Tenggara, and East Nusa Tenggara;
 - c. Makassar, which encompasses the Provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku, North Maluku, and Irian Jaya;
 - d. Medan, which encompasses the Provinces of North Sumatera, the Special District of Aceh, Riau, Jambi, and West Sumatera.

CHAPTER X CONCLUDING PROVISIONS

Article 46

For gross violations of human rights as referred to in this Act no lapse provisions shall apply.

Article 47

- (1) Resolution of gross violations of human rights occurring prior to the coming into force of this act may be undertaken by a Truth and Reconciliation Commission.
- (2) The Truth and Reconciliation Commission as referred to in clause (1) shall be established by an Act.

Article 48

Inquiry, investigation and prosecution of gross violations of human rights that have been or are currently being undertaken in accordance with Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts shall remain in effect insofar as they do not contravene the provisions set forth in this Act.

Article 49

Provisions concerning the authority of Superiors Entitled to take Punitive Action and Submitting Officers as referred to in Article 74 and Article 123 of Act No. 31 of 1997 concerning Military Tribunals are deemed no longer in effect with regard to the examination of gross violations of human rights in accordance with the provisions set forth in this Act.

Article 50

With the coming into force of this Act, Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts (State Gazette No. 191 of 1999, Supplement to the State Gazette No. 3911) is revoked and deemed no longer in effect.

Article 51

This Act comes into force on the date of its enactment.

For the public to be informed, it is ordered that this Act be promulgated in the State Gazette of the Republic of Indonesia.

**Ratified in Jakarta,
(date).....**

**PRESIDENT OF THE REPUBLIC
OF INDONESIA**

ABDURRAHMAN WAHID

**Enacted in Jakarta
(date)**

SECRETARY OF STATE OF THE REPUBLIC OF INDONESIA

DJOHAN EFFENDI

**STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF (year)
NUMBER...**

**NOTES
TO
ACT NUMBER ...OF...
OF THE REPUBLIC OF INDONESIA
CONCERNING
HUMAN RIGHTS COURTS**

I. GENERAL

That human rights as set forth in the 1945 Constitution, the Universal Declaration of Human Rights, Decree of the People's Legislative Assembly No. XVII/MPR/1998, and Act No. 39 of 1999 concerning Human Rights, must be executed with a full sense of responsibility in accordance with the philosophy embodied in Pancasila the 1945 Constitution and the principles of international law.

Decree of the People's Legislative Assembly No. XVII/MPR/1998 concerning Human Rights charges leading state agencies and all government apparatus with the task of respecting, upholding, and disseminating information on human rights to all members of the public, and with ratifying various United Nations instruments concerning Human Rights insofar as these do not contravene Pancasila and the 1945 Constitution.

Providing protection of human rights may be achieved by the establishment of a National Commission on Human Rights and Human Rights Courts, and by the establishment of a Truth and Reconciliation Commission.

To execute the mandate of Decree of the People's Legislative Assembly No. XVII/MPR/1998 concerning Human Rights, Act No. 39 of 1999 concerning Human Rights was established. Establishment of this Act constitutes a realisation of the Indonesian nation's responsibility as a member of the United Nations. In addition, establishment of the Act concerning Human Rights involves a mission to execute a moral and legal responsibility to hold in the highest esteem and implement the Universal Declaration of Human Rights drawn up by the United Nations, as well as provisions set forth in several other legal instruments governing matters pertaining to human rights which have been ratified and/or approved by the state of the Republic of Indonesia.

The approach to developing law can be viewed from the national interest or from the international interest, and so to resolve cases of gross violations of human rights and to restore security and peace in Indonesia it is necessary to set up Human Rights Courts, which are

special courts for dealing with gross violations of human rights. To realise the establishment of these Human Rights Courts, it is necessary to set forth provisions in an Act concerning Human Rights.

The basis for establishment of an Act concerning Human Rights Courts is as set forth in Article 104 clause (1) of Act No. 39 of 1999 concerning Human Rights.

It is hoped that the Act concerning Human Rights Courts can protect the human rights of both the individual and society, and provide a basis for law enforcement, legal certitude, justice, and a sense of security of both the individual and society with regard to gross violations of human rights.

Establishment of an Act concerning Human Rights Courts is based on the following considerations:

1. Gross violations of human rights are extraordinary crimes and have a broad national and international impact. They do not constitute crimes governed under the Criminal Code and they give rise to both material and non-material loss arising from a feeling of insecurity of the individual or society. Therefore it is necessary to immediately restore legal supremacy in the interests of realising peace, order, calm, justice, and prosperity for all the people of Indonesia;
2. Gross violations of human rights require inquiry, investigation, prosecution, and hearing of a specific nature.

With regard to the specific approach to dealing with gross violations of human rights:

- a. it is necessary to establish an ad hoc team, ad hoc investigator, ad hoc public prosecutor, and ad hoc judges to inquire into gross violations of human rights;
- b. it is necessary to establish that inquiry into gross violations of human rights may be conducted only by the National Commission on Human Rights, and that contrary to provisions set forth in the Criminal Code, the investigator is not authorised to receive any reports or complaints;
- c. it is necessary to set forth provisions concerning the time constraints for conducting investigation, prosecution and court hearings;
- d. it is necessary to set forth provisions concerning the protection of victims and witnesses;
- e. it is necessary to set forth provisions establishing the non-expiry of gross violations of human rights.

Concerning gross violations of human rights such as genocide and crimes against humanity, for which provisions in international law apply retroactively, provisions concerning the obligation to waive restrictions set forth in legislation shall apply, as set forth in Article 28 J clause (2) of the 1945 Constitution, which reads: "In executing the

rights and freedoms of every person it is necessary to waive any restrictions set forth in law for the sole purpose of guaranteeing the recognition and of upholding the rights and freedoms of another person, in the interests of justice and in consideration of moral and religious values, security, and public order in a democratic society". In other words, the principle of retroactivity is in effect for the protection of human rights themselves based on Article 28 J clause (2) of the 1945 Constitution. Therefore, this Act also sets forth provisions governing ad hoc Human Rights Courts to hear and rule on cases of gross violations of human rights perpetrated prior to the coming into force of this Act. Ad hoc Human Rights Courts, which are within the context of a Court of General Jurisdiction, are set up on the recommendation of the House of Representatives for certain incidents upon the issue of a Presidential Decree.

In addition to ad hoc Human Rights Courts, this Act also mentions a Truth and Reconciliation Commission as referred to in Decree of the People's Legislative Assembly No. V/MPR/2000 concerning of Consolidation of National Unity and Integrity. The Truth and Reconciliation Commission will be established under an Act as an extra-judicial agency charged with establishing the truth by discussing past misuse of authority and violations of human rights, in accordance with prevailing law and legislation, and with undertaking reconciliation in the common interest of the nation.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory

Article 2

Self-explanatory

Article 3

Self-explanatory

Article 4

The meaning of "hear and rule on" in this provision includes resolving the relevant case by providing compensation, restitution, and rehabilitation in accordance with prevailing law.

Article 5

Provisions set forth in this Article are intended to protect Indonesian citizens who perpetrate gross violations of human rights outside the geographical territory of Indonesia, in the sense that they will be prosecuted in accordance with the provisions set forth in this Act concerning Human Rights Courts.

Article 6

A case of gross violation of human rights committed by a person under the age of 18 (eighteen), shall be heard and ruled on by a District Court.

Article 7

“The crime of genocide and crimes against humanity” in this provision are in accordance with “The Statute of The International Criminal Court” (Article 6 and Article 7).

Article 8

Letter a

A “group member” means one or more members of a group.

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Letter e

Self-explanatory

Article 9

“direct attack on civilians” means an action taken against civilians in follow up to policy of an authority or policy related to an organisation.

Letter a

The meaning of “killing” is as defined in Article 340 of the Criminal Code.

Letter b

The meaning of “extermination” encompasses deliberate action taken to cause suffering, including action to obstruct the supply of food and medicines that causes the extermination of a part of a population.

Letter c

The meaning of “enslavement” in this provision includes trade in humans, particularly the trading of women and children.

Letter d

The “enforced eviction or movement of civilians” means the enforced movement of people by eviction or other enforced action from their official place of residence, except for reasons permitted by international law.

Letter e

Self-explanatory

Letter f

“torture” in this provision means deliberately and illegally causing gross pain or suffering, physical or mental, of a detainee or person under surveillance.

Letter g

Self-explanatory

Letter h

Self-explanatory

Letter i

The meaning of “enforced disappearance of a person” is the capture, detention, or kidnap of a person by or with force, sanctioned or approved by the state or by the policy of an organisation, followed by a refusal to recognise this appropriation of freedom or to provide information regarding the fate or location of the person involved, with the intention of denying him or her legal protection for a long period of time.

Letter j

The meaning of “the crime of apartheid” is inhumane action of a nature corresponding to the crimes referred to in Article 8 perpetrated in the context of an oppressive and authoritative institutional regime by a particular racial group on another racial group or other racial groups, for the purposes of upholding that regime.

Article 10

Self-explanatory

Article 11

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

Clause (4)

Self-explanatory

Clause (5)

The meaning of “1 (one) day” is within 24 (twenty-four) hours from the time the suspect is arrested.

Clause (6)

Self-explanatory

Article 12

Self-explanatory

Article 13

Self-explanatory

Article 14

Self-explanatory

Article 15
Self-explanatory

Article 16
Self-explanatory

Article 17
Self-explanatory

Article 18
Clause (1)
Only the National Commission on Human Rights has the authority to conduct inquiries in order to preserve the objectivity of inquiry findings since the National Commission on Human Rights is an independent organisation.

Clause (2)
The meaning of “public constituent” is public figures and members of the public who are professional and dedicated, of high integrity, and who have full comprehension of matters pertaining to human rights.

Article 19
Conducting an “inquiry” in this provision means a series of actions taken by the National Commission on Human Rights in line with its pro-justiciary scope.

Clause (1)
Letter a
Self-explanatory
Letter b
The meaning of “receive” is to receive, record, and register a report or complaint concerning the occurrence of a gross violation of human rights along with accompanying evidence.

Letter c
Self-explanatory

Letter d
Self-explanatory

Letter e
Self-explanatory

Letter f
Self-explanatory

Letter g
The meaning of “order of the investigator” is a written order issued by the investigator on the request of the inquirer. The investigator shall issue the

aforementioned order immediately upon receiving the request from the inquirer.

Item 1)
Self-explanatory

Item 2)
“Search” in this provision includes body and or house searches.

Item 3)
Self-explanatory

Item 4)
Self-explanatory

Clause (2)
Self-explanatory

Article 20

- Clause (1)
- In this provision the meaning of “sufficient preliminary evidence” is preliminary evidence to sufficient to suspect a criminal action has been perpetrated by a person by reason of his/her actions or condition, and that based on the preliminary evidence it is appropriate to suspect that person is a perpetrator of a gross violation of human rights.
 - During an inquiry, to respect the principle of presumption of innocence, the findings of inquiry are closed (not made public) insofar as with regard to the names of those suspected of perpetrating gross violations of human rights, in accordance with Article 92 of Act No. 39 of 1999 concerning Human Rights
 - The meaning of “follow up” is to conduct an investigation.

Clause (2)
Self-explanatory

Clause (3)
In this provision the meaning of “insufficient” is not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation.

Article 21

Clause (1)
Self-explanatory

Clause (2)
Self-explanatory

Clause (3)

In this provision the meaning of a “public constituent” is a political organisation, public organisation, non-government organisation, or other public organisation such as an institute of higher education.

The word “may” is used in this provision to allow appointment by the Attorney General of an ad hoc investigator as deemed necessary.

Clause (4)
Self-explanatory

Clause (5)
Self-explanatory

Article 22
Self-explanatory

Article 23
Clause (1)
Self-explanatory

Clause (2)
An ad hoc public prosecutor from among public constituents shall first and foremost be appointed from among former public prosecutors in a Court of General Jurisdiction or from among prosecuting attorneys in Military Courts.

Clause (3)
Self-explanatory

Clause (4)
Self-explanatory

Article 24
Self-explanatory

Article 25
Self-explanatory

Article 26
At the time of taking the oath/pledge, certain words shall be uttered in accordance with the person’s religion. For example, followers of the Islamic religion shall say “I swear by God” before reading the oath, and Christians/Catholics shall say “So help me God” after reading the oath.

Article 27
Clause (1)
See notes for Article 4
Clause (2)

The purpose of the provisions set forth in this clause is to ensure that the judges' panel always comprises an odd number of judges.

Clause (3)
Self-explanatory

Article 28

Clause (1)
"Ad hoc judge" is a judge who is not a judge by career and who meets the requirements of being professional, dedicated, and of high integrity, and having a full understanding of the characteristics of a welfare state founded on justice, and respect for human rights and human obligations.

Clause (2)
Self-explanatory

Clause (3)
Self-explanatory

Article 29

Item 1
Self-explanatory

Item 2
Self-explanatory

Item 3
Self-explanatory

Item 4
The meaning of "expertise in law" includes among others, a degree in syariah law or a degree from a Tertiary Police Academy.

Item 5
Self-explanatory

Item 6
Self-explanatory

Item 7
Self-explanatory

Item 8
Self-explanatory

Article 30

See notes for Article 26

Article 31

Self-explanatory

Article 32

Self-explanatory

Article 33

- Clause (1)
 - Self-explanatory
- Clause (2)
 - Self-explanatory
- Clause (3)
 - Self-explanatory
- Clause (4)
 - Self-explanatory
- Clause (5)
 - Self-explanatory
- Clause (5)
 - Letter a
 - Self-explanatory
 - Letter b
 - Self-explanatory
 - Letter c
 - Self-explanatory
 - Letter d
 - Self-explanatory
 - Letter e
 - Self-explanatory
 - Letter f
 - Self-explanatory
 - Letter g
 - Self-explanatory
 - Letter h
 - Self-explanatory

Article 34

Self-explanatory

Article 35

- The meaning of “compensation” is compensation provided by the state because the perpetrator is unable to provide compensation in full as is his or her responsibility.
- The meaning of “restitution” is compensation provided a victim or a victim’s family by the perpetrator or a third party. Restitution may constitute:
 - a. returning property
 - b. paying compensation for loss or suffering; or
 - c. covering the cost of a particular action.
- The meaning of “rehabilitation” is restoration of the previous position, for example of honour, good name, office, or other right.

Article 36
Self-explanatory

Article 37
Self-explanatory

Article 38
Self-explanatory

Article 39
Self-explanatory

Article 40
Self-explanatory

Article 41
The meaning of “plotting” is when 2 (two) or more people agree to perpetrate a gross violation of human rights.

Article 42
Self-explanatory

Article 43
Clause (1)
Self-explanatory
Clause (2)
The House of Representatives of the Republic of Indonesia may recommend the setting up of an ad hoc Human Rights Court based on suspicions that a gross violation of human rights has occurred subject to certain locus and tempos delicti conditions prior to the enactment of this Act.
Clause (3)
Self-explanatory

Article 44
Self-explanatory

Article 45
Self-explanatory

Article 46
Self-explanatory

Article 47

The purpose of provisions set forth in this Article is to provide an alternative method of reconciliation of gross violation of human rights, outside a Human Rights Court.

Article 48
Self-explanatory

Article 49
This provision is meant to apply only to gross violations of human rights, and its jurisdiction applies to both civilians and military personnel.

Article 50
Self-explanatory

Article 51
Self-explanatory

**SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF
INDONESIA NUMBER.....**