KnE Social Sciences | The 5th International Conference on Governance, Public Administration, and Social Science: Policy and Development | KNE Publishing

Research Article

# The Gross Violations of Human Rights: Solving a Case in Banda Naira Island Middle Maluku District

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**Abstract.**
This study aims to analyze the pattern of resolution for serious human rights violations, specifically the 1621 genocide on Banda Naira Island, Central Maluku Regency, and to assess the role of the regional government in addressing these violations. Employing a normative legal research method complemented by empirical analysis, the research examines statutory provisions, historical records, and comparative studies of genocide cases in other countries. The findings reveal that the resolution of past gross human rights violations in Indonesia, including the Banda Naira genocide, has been hampered by limited legal action and insufficient government attention. The study underscores that both substantive and procedural aspects—guided by Law No. 26 of 2000 concerning Human Rights Courts—must be fulfilled to qualify an incident as a gross human rights violation (genocide). The procedural process involves a pro-justice investigation by the National Human Rights Commission (Komnas HAM), culminating in a plenary decision and potential referral to the Attorney General. The research highlights the importance of a reconciliation process that is community-driven and culturally rooted, involving truth-seeking, acknowledgment of victims, and reparations. The Central Maluku Regency government is urged to initiate comprehensive studies to officially document the genocide, which would facilitate further investigation and recognition by national authorities. In conclusion, resolving the Banda Naira genocide requires a collaborative approach integrating legal, governmental, and cultural mechanisms to ensure justice, truth, and reconciliation for victims and their descendants.

**Keywords:** genocide, human rights, violations, regional government roles

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**Published**: 17 July 2025

Publishing services provided by Knowledge E



Selection and Peer-review under the responsibility of the ICoGPASS 2024: Policy and Development Conference Committee.



## 1. INTRODUCTION

Munafrizal Manan explained that there are two types of human rights violations, namely human rights violations and serious human rights violations. The first type is only referred to as a human rights violation, while the second type is called a serious human rights violation because its character is different from the first type. The first type is usually called human rights abuse or human rights violation, while the second type is called gross violation of human rights or gross human rights violation. The adjective affix

"gross" to emphasize that an incident of human rights violation is not an ordinary human rights violation, but a human rights violation that is qualified as a very serious crime. [1]

Types of serious human rights violations are regulated in Article 5 of the Rome Statute of the International Criminal Court, namely crimes of genocide, crimes against humanity, war crimes and crimes of aggression. These four categories of serious human rights violations fall under the jurisdiction of the International Criminal Court (ICC). Human rights violations outside of these four violations of civil rights, political rights, economic rights, social rights and cultural rights are not referred to as serious human rights violations. Determining an event as a human rights violation or a serious human rights violation sometimes gives rise to different perspectives and even polemics. In the human rights legal regime, there are objective measures to determine them, the touchstones are the substantive and procedural aspects. [1]

Human Rights Law in Indonesia has defined an incident as a human rights violation in Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights (UU HAM). This provision defines human rights as a set of rights that are inherent in the nature and existence of humans as creatures of God and are His gifts which must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity. Meanwhile, serious human rights violations are regulated in Article 7 of Law Number 26 of 2000 concerning Human Rights Courts (UU No. 26 of 2000) which regulates in a limited manner serious human rights violations, namely crimes of genocide and crimes against humanity.

It is reasonable to suspect that the crime of genocide in the course of the Indonesian nation has also occurred on Banda Naira Island, Central Maluku Regency. History records that European trade activities had a big influence on Banda Neira. Nutmeg as an important commodity also brings historical scars to the Bandanese people, where because of nutmeg, during the colonial era, there was a genocide of the Banda Neira population by the Dutch colonialists. Miles describes a dramatic battle between a Dutch trading company and an English trading company in Banda in the 17th century as the "Nutmeg War". For Miles, the indigenous people of Banda were relatively passive victims of the genocide [2]

The genocide event occurred in 1621, General Vereenigde Oostindische Compagnie (VOC) at that time, Jan Pieterszoon Coen, succeeded in killing 40 influential people (rich people) and approximately 6,000 Bandanese people. The genocide of the Banda Naira people was recorded as the first genocide carried out by the Dutch colonialists against

the Indonesian people. The genocide left only a third of the people of Banda Naira behind and there was a process of people coming from various parts of the archipelago to be used as slaves on plantations. As a result, now the Banda Naira community is a society formed from various interactions and a mixture of various Nusantara ethnicities. [2]

The VOC's arrival in Banda certainly had the aim of controlling Banda. Coen, a VOC governor general, directly led the Banda expedition in 1621, he made several attempts to occupy Banda. Coen thought that to control Asian trade, it had to be done by force or military means. Thus, in 1621, genocide occurred, which killed approximately 2,500-6,000 people. [3]

Another problem that emerged as a result of the genocide on Banda Island was the cultural narrative about Bandanese identity which carries the history of existence and legacy, whose authenticity is questioned by other Maluku people. According to them, the residents of Banda Neira after the genocide by the Dutch in the 1600s were immigrants, because authentic Bandanese took refuge, one of them, in Banda Ely. This claim of identity and origins is very important because it is related to who is considered most entitled to the pattern of reconciliation in resolving gross human rights violations on Banda Island. This argument is a real example of the practice of debating based on metaphysical ties. [4]

Currently, the legal politics of resolving cases of serious human rights violations (genocide) in Banda Naira are also increasingly complicated, because they do not receive support from the central or regional government. Based on records of past cases of serious human rights violations in Indonesia, it only focuses on cases such as in Aceh, Tmor-East (now the East Timorese State), "Tanjung Periuk", the attack on the Office of the Central Leadership Council of the Indonesian Democratic Party (DPP PDIP), Trisakti and riots. May 1998, and G30SPKI. [5] The Maluku government, through the Maluku Regional Office of the Ministry of Law and Human Rights, also does not seem interested in looking seriously at the issue of gross human rights violations on Banda Naira Island, this can be seen from the non-inclusion of this case in the 2022 Annual Report of the Maluku Ministry of Law and Human Rights Regional Office. Based on the description the previous background, the legal issues raised for research are as follows: What is the pattern of resolving serious human rights (genocide) on Banda Naira Island, Central Maluku Regency? What is the role of the Regional Government of Central Maluku Regency in resolving serious human rights cases (genocide) on Banda Island?

# 2. THEORETICAL STUDY

## 2.1. The concept of serious human rights violations (Genocide)

Genocide is a successful attempt by a dominant group, which has formal authority and/or has greater access to the overall resources of power, to reduce the number of a minority group by means of coercion or lethal violence, whose extermination is considered desirable and useful and whose their respective vulnerabilities were a major factor contributing to the decision to commit genocide. Therefore, genocide requires at least two polar elements, namely perpetrators and victims whose power relations are conflicting but different, giving rise to the vulnerability of the victim group compared to the dominant group, and as a result can also influence the pattern of genocide victimization as a way of resolving the conflict. Therefore, the level and type of inequality in power relations is seen as a potential matrix that allows various types of genocide to occur. [6]

Understanding human rights in Indonesia as values, concepts and norms that live and develop in society can be traced through a study of the years, and before the human rights court was formed, cases of serious human rights violations were tried by competent general courts. One manifestation of human rights protection is that a person who commits serious, cognizable human rights violations must be tried and if proven must be punished according to the legal sanctions that are threatened. This is as regulated in Article 104 of the Human Rights Law which determines:

1) To adjudicate serious human rights violations, a Human Rights Court shall be established within the general judiciary;

2) The court as intended in paragraph (1) is established by law for a maximum period of 4 (four) years;

3) Before the Human Rights Court is established as intended in paragraph (2), cases of human rights violations as intended in paragraph (1) are tried by the competent court.

As an implementation of the provisions of Article 104 of the Human Rights Law, on November 23, Law no. 26 of 2000 concerning Human Rights Courts, namely to create world peace and guarantee the implementation of human rights, as well as providing protection, certainty, justice and feelings of security to individuals and society. As a consequence of the enactment of this law, the government has an obligation to establish a Human Rights Court.

For cases of serious human rights violations committed before Law Number 26 of 2000, a special Ad Hoc Human Rights Court was established. This specificity is an exception to adhering to the retroactive principle. As a realization, on April 23 2001 the Presidential Decree of the Republic of Indonesia Number 53 of 2001 concerning the Establishment of an Ad Hoc Human Rights Court at the Central Jakarta District Court was promulgated. [7]

Article 104 further regulates human rights courts as follows: To adjudicate serious violations of human rights in the form of a court in paragraph (1) established by law within a maximum period of 4 years before the formation of a human rights court as intended in paragraph (2) tried by a competent court. Furthermore, Article 104 paragraph (1) of the Human Rights Law states that the authority to judge serious human rights violations is the human rights court.

On October 8 1999, Government Regulation in Lieu of Law (Perppu) No. 1999 concerning the Human Rights Court which is tasked with resolving cases of serious human rights violations. However, Perppu no. 1 of 1999 was deemed inadequate, so it was not approved by the House of Representatives of the Republic of Indonesia (DPR RI) to become law and therefore the Perppu was revoked. On November 23 2000, Law no. 26 of 2000 concerning Human Rights Courts as a replacement for Perpu no. 1 of 1999.

The Human Rights Court is tasked with resolving cases of serious human rights violations, in this case the crime of genocide, namely the destruction or extermination of all or part of a national group, race, ethnic group, religious group by committing acts of killing members of the group which results in severe physical and mental suffering to the members community groups. Creating living conditions aimed at causing the group to perish. Imposing actions aimed at births within the group. Forcibly moving children from certain groups to other groups. [8]

The concept of resolving serious human rights contained in the law adopts some of the concepts of serious human rights violations contained in the Rorna Statute. According to Law no. 26 of 2000, serious human rights settlements include:

1) the crime of genocide;

2) crimes against humanity.

According to the Human Rights Court Law, genocide is defined as any act committed with the intention of destroying or exterminating all or part of a national group, race, ethnic group, religious group, by means of:

1) killing group members;

2) causes serious physical or mental suffering to group members;

3) creating conditions for the group's life that will result in its physical destruction in whole or in part;

4) imposing measures aimed at preventing births within the group; or

5) forcibly moving certain children and groups to other groups.

The definition of genocide contained in article 8 of Law no. 26 of 2000 is almost the same as the definition of genocide contained in article 6 of the Rome Statute.[9] The Human Rights Court Law defines crimes against humanity as any act committed as part of a widespread or systematic attack where it is known that the attack is directed directly against the civilian population, in the form of:

1) murder;

2) extermination;

3) slavery;

4) forced eviction or displacement of residents;

5) deprivation of liberty or other arbitrary deprivation of physical liberty which violates the basic provisions of international law;

6) torture;

7) rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;

8) persecution of a particular group or association based on political, racial, national, ethnic, cultural, religious, gender or other reasons that have been universally recognized as prohibited under international law;

9) forced disappearance of people; or

10) the crime of apartheid.

The definition of crimes against humanity as stated in Article 9 of Law no. 26 of 2000 is clearly the same as the definition of crimes against humanity as formulated in article 7 paragraph i of the Rome Statute. Neither article 9 of the Human Rights Courts Law nor article 7 paragraph 1 of the Rome Statute explains the meaning of widespread or systematic attacks as formulated by these two articles. The definition of a widespread or systematic attack is formulated by the court that tries and adjudicates cases of crimes against humanity. [9]

## 2.2. Patterns of Settlement of Past Cases of Human Rights Violations

Lawrence M. Friedman explained that there are two benchmark factors that make the effects of a government's legal political behavior relative, namely: First, the existence of legal regulations which must require that behavior to be easily seen and observed; Second, there are possible consequences if the legal rules are not implemented. [10] Montesquieu added that the principle or life of government in a democratic country can be measured based on the political will of the government to love its homeland, protect and enforce the human rights of its people for the common welfare which implies a combination of private and public interests, this concept is almost similar to what was conveyed Rousseau. Montesquieu further saw no conflict between the interests of individual citizens and democratic government. [11]

Benjamin Nathan Cardozo's sociological legal thinking reveals that law must adapt to changes in society. The standards recognized by society and the pattern of objective values form a unity and consistency in the law, even though there are subjective decisions from judges. Social forces have an instrumental influence on the formation of law (logic, history, custom, utility, moral standards). Cardozo's view is quite appropriate to use to understand the problem of resolving cases of past gross human rights violations which have political, social and historical dimensions. [12]

Regarding this opinion, the Indonesian State through the 1945 Constitution has been required to be responsible for respecting and recognizing human rights. [13] Furthermore, in the Human Rights Law, Article 6 paragraphs (1) and (2) of Law no. 39 of 1999 concerning Human Rights explains that: "In the context of upholding human rights, differences and needs within customary law communities must be considered and protected by the law, society and the Government. Article 47 of Law No. 26 of 2000 concerning Human Rights Courts: (1) Serious human rights violations that occurred before the enactment of this Law do not preclude the possibility of resolution by the Truth and Reconciliation Commission; (2) The Truth and Reconciliation Commission as intended in paragraph (1) is established by law.

Quoting Nurkholis' opinion, the alternative is to resolve past gross human rights violations through national reconciliation. The non-judicial route remains tied to the basic principles of resolving cases of serious human rights violations that impunity is not justified, with four important pillars, namely the right to justice, the right to truth, the right to reparation and guarantees of non-repetition, disclosure of perpetrators

and responsible choices and the obligation to provide compensation, restitution and rehabilitation to the victim/heirs of the victim's family is the responsibility of the state. The offer to resolve cases of past gross human rights violations through out-of-court settlement is an option to remember. One of the essences of a solution is how to reveal the truth and provide compensation to the victim and/or the victim's family as well as build reconciliation for the integrity of the nation, according to principles that are considered realistic to be used as a guide which, even though it does not satisfy all parties, is considered the most realistic solution.[12]

In resolving serious human rights violations in the past, there are four patterns that can generally be chosen. As a spectrum, the four options move from side to side:

1) Never to forget, never to forgive;

2) Never to forget but to forgive;

3) To forget but never to forgive;

4) To forget and to forgive. [14]

This process includes investigative steps to help the public understand the practice of abuse of power which results in many serious human rights violations. Disclosure of the truth in question can be revealed by carrying out various investigation processes related to human rights violations that have occurred. The investigation carried out was of course not carried out by the victims or the perpetrators, but the investigation was carried out by a truth commission, as mentioned by Hayner. Apart from the reconciliation pattern by a truth commission, reconciliation can also be carried out using a reconciliation pattern starting from the smallest communities in society. The proposed reconciliation process is implemented and supported by the community. Apart from that, the role of culture and traditional ceremonies is important as a binding element for reconciliation. [15]

These elements must be interconnected as Dewey said, collection, collection and inventory. The same opinion is also expressed implicitly in Emery and Trist's definitions that a system is a group of interrelated elements. A system (usually) is considered to be a set of interrelated parts that form a whole that is complicated and complex but is a single unit. Almost all theorists refer to one main condition. There are two ideas in this structure:

1) This relationship must form a network where each element is connected to each other either directly or indirectly;

2) The network must form a pattern to produce structure in a system. While others stated that the second idea was a requirement. [16]

### 2.2.1. The Role of Regional Government

The 1945 Constitution of the Republic of Indonesia explains that the Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into districts and cities, where each province, district and city has a regional government regulated by law. This assertion is intended to further clarify the division of regions within the Unitary State of the Republic of Indonesia which includes provincial areas and within provincial areas there are districts and cities. [17]

The Unitary State in the 1945 Constitution of the Republic of Indonesia means that in the context of the form of the state, even though the Indonesian people chose a unitary state, within it a mechanism is implemented that allows the growth and development of diversity between regions throughout the country. Natural and cultural riches between regions must not be homogenized within the structure of the Republic of Indonesia. [18] One manifestation of this division is that regions will have a number of government affairs either on the basis of submission or recognition or left as regional household affairs. [17]

The division of affairs into regions is carried out not only to ensure the efficiency of government administration. Nor does it just accommodate the reality of a vast country, large population and many islands. More than that, regional autonomy is the basis for expanding the implementation of democracy and an instrument for realizing general welfare. No less important, regional autonomy is a way to maintain a unitary state. [19]

Observing Law Number 23 of 2014 concerning Regional Government, there are three authority relationships between the center and the regions. First, Decentralization, namely the handover of Government Affairs by the Central Government to autonomous regions based on the Principle of Autonomy; Second, deconcentration, namely the delegation of some Government Affairs which are the authority of the Central Government to governors as representatives of the Central Government, to vertical agencies in certain regions, and/or to governors and regents/mayors as those in charge of general government affairs. What is then meant by Vertical Agencies are ministerial apparatus and/or non-ministerial government agencies which manage Government Affairs which are not handed over to autonomous regions in certain areas in the context of deconcentration; Third, Assistance Tasks, namely assignments from the

Central Government to autonomous regions to carry out some Government Affairs which are the authority of the Central Government or from provincial Regional Governments to regency/city Regions to carry out some Government Affairs which are the authority of provincial Regions.

The relation to the role of regional governments in human rights is that the constitution through Article 28I paragraph (1) of the 1945 Constitution explains that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. It is further emphasized in Article 8, Article 71 and Article 72 of Law No. 39 of 1999 concerning Human Rights which basically states that the Government is obliged and responsible to respect, protect, uphold and promote human rights as regulated in this Law, regulations. Other legislation, and international law regarding human rights accepted by the Republic of Indonesia.

These obligations and responsibilities include effective implementation steps in the legal, political, economic, social, cultural, national defense and security fields and other fields. This responsibility is in line with the concept of international human rights accountability which views the state as a single entity, regardless of its unitary or federal nature and the administrative divisions within countries, in this case represented by the central government. [19]

## 3. METHODS

This research uses a normative legal research type and is assisted by empirical legal research. According to Peter Mahmud Marzuki, legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. Normative legal research was carried out to examine legal concepts related to the pattern of resolving serious human rights (genocide) on Banda Naira Island, Central Maluku Regency. Empirical research in order to assist normative analysis related to the role of the Regional Government of Central Maluku Regency in resolving serious human rights cases (genocide) on Banda Naira Island based on statutory provisions. The juridical approach in this research is based on the provisions contained in statutory regulations as a normative basis and procedures used to solve problems by first examining existing secondary data/materials then continuing with research on primary data in the field accompanied by also with comparisons with cases of genocide in other countries. [20]

# 4. RESULTS AND DISCUSSION

## 4.1. Pattern of Resolution of Cases of Serious Human Rights Violations

### 4.1.1. Resolving Cases of Serious Human Rights Violations in Indonesia

More than 20 nations have tried to create institutions for resolving serious human rights in their countries. The institutions that are formed are expected to be able to seek the truth, carry out reconciliation in order to achieve justice for victims and/or families of victims of serious human rights violations. The search for truth should be the task and responsibility of the human rights commission (Komnas HAM). Through reconciliation, communities that have been victims of repressive acts must recover from the terrible and painful experiences in their past, and reach agreement on the terms for a substantial resolution of the conflict and chaos that has occurred. [5]

The experience of resolving cases of gross human rights violations in the past in Indonesia through the courts for the East Timor case in 1999 and the Tanjung Priok case in 1984 is believed to be not optimal and ineffective, especially since the defendants in these three cases were decided “acquitted”, regardless of the juridical aspect of the evidence. Considering the difficulty of obtaining and collecting sufficient evidence to shed light on the occurrence of past gross human rights violations and the defendants as the perpetrators. [12] Reflecting on this experience, to resolve the genocide case on Banda Island, the most important thing is how to reveal the truth of the incident and the real victims and providing compensation to the victims and/or the victims’ families is deemed appropriate as a way out.

The above view is in line with that expressed by Rahma Temarwut, Head of the History Education Study Program, Faculty of Teacher Training and Education, Banda Naira University (FKIP UBN), who is also a descendant of the 21st generation of native Banda Naira residents. Rahma explained that from the seminars that had been held and the results of discussions with the King and the people of Banda Ely, they really hoped that the government would officially carry out studies, so that the genocide incident in Banda Naira in 1621 would find legal certainty. So that the victim’s family, who at that time were expelled from their native land, received recognition from the government that they were originally from Banda Naira.

### 4.1.2. Patterns of Genocide Occurrence in Tasmania, California, Namibia and Banda

Genocide is a complex process, in that each genocide is temporally different, which means we need to think carefully about the different phases such as initiation, escalation, and routinization and the transition from one event to another and synthesize them into a broader picture. Determining the incidence of genocide must be carried out based on comparative research, focusing on relevant aspects and juxtaposing similar dimensions. Factors that can explain cases of genocide include the personal desires of local power holders at the time, geographical conditions, the behavior of local social elites, ideological popularity, and structural factors such as proximity to borders, social stratification, population of victim groups, conditions of state power. That existed before, and so on. Only through the systematics of their comparison can we understand which combination of factors determines the type of variation in the genocidal process. [21]

Genocide is the denial of a people's right to exist and efforts or success in exterminating them, using various means, genocide is a combination of various acts of persecution or destruction, ranging from physical annihilation to forced disintegration of political and social, cultural, linguistic, national institutions. a society of sentiment and religion. Therefore genocide is a process, not an action. [22]

The general background patterns that led to the beginning of the genocide as well as the colonial army's self-justification in the extermination of indigenous peoples was the economic conflict between indigenous and colonial peoples. Land issues and access to resources (Pala in Banda, for example) were the main factors in the genocide in several countries, such as Tasmania, California and Namibia. Territories that are inherently limited in terms of area and resources fuel competition for access and control of these fundamental resources for survival and wealth. The attitude of the colonialists who were not interested in sharing power and did not respect the human rights of indigenous peoples became a pattern for genocide. The resistance of indigenous peoples adds fertile seeds of violence that threatens the existence of local communities, so that the colonialists choose to commit genocide as an operational solution to a difficult war. [23]

The pattern of genocide as described above was also reflected in the events in Banda 1621, after Governor General Jan Pietersoon Coen returned to Banda carrying a sense of revenge for his predecessor's failure to conquer the spice-producing region. For Coen, the Banda region should be conquered with military force and destroy the people who do not want to submit to colonial power. The death of Admiral Verhoeven

was particularly traumatic for Jan Pieterszoon Coen, who survived the attack by the Bandanese people. The VOC planned to establish a Loji as an office as well as a warehouse used to collect spices, ammunition and a residence that even functioned as a fortress made of concrete. The influential people (rich people) and the people of Banda thought that Admiral Verhoeven did not have good intentions after the establishment of the lodge. The VOC intended to control and monopolize the nutmeg commodity, the Banda people had full rights over the amount of production and selling value of nutmeg, as well as the economic system and felt colonized. The Banda people then entered into an agreement with the VOC. After Admiral Verhoeven, Jan Pieterszoon Coen and Dutch troops arrived, instead of negotiations, there was an attack by the people of Banda which killed Admiral Verhoeven. [3]

## 4.2. The Concept of Justice for Victims of Serious Human Rights Violations on Banda Naira Island

### 4.2.1. Demands to Fulfill the Sense of Justice of the Indigenous People of Banda Naira, Victims of Genocide

The genocide event on Banda Island cannot be separated from the history of the existence of the Banda Naira population before and after the genocide. Based on the inscription on the Parigi Chain Monument, it records the victims of the genocide carried out by the VOC through the orders of Geburner General Jan Pieterszoon Coen between in 1602-1621. Approximately 6,000 native Bandanese people died, 789 people were exiled to Batavia/Jakarta, and 2,000 other people fled to Banda Eli and Seram Island in Maluku. The victims of the massacre also included 44 influential people known as “Riches” on May 8, 1621. They were massacred and mutilated by Japanese Ronin hired by the VOC, with their heads displayed on stakes, while their bodies were buried in a well near Fort Nassau. This incident reflects the cruelty and genocide experienced by the indigenous people of Banda Naira. [4]

Postgenocide, according to Rahma Temarwut, explained that the people of Banda Naira Pascagenocida were not native Bandanese, they were descendants of people brought by the VOC from Java and Sumatra plus immigrants from Buton, Bugis and Maluku. In fact, currently 80% of Banda’s population comes from Buton and 30% comes from Java, Bugis, Sumatra and Maluku. Ade Susanti Karmen, a resident of Banda with Javanese and Sumatran blood, also expressed similar sentiments. A slightly different

opinion was expressed by Husni Ang who argued that the Banda Postgenocide people were also native to Banda, because they had existed for more than 400 years, therefore they were called native residents and had the right to land in Banda.

The anxiety of losing land, culture and ancestors expressed by Husni Ang and several Bandanese people today is very natural. Indeed, reconciliation should not result in further human rights violations. Banda Subdistrict Secretary Taib Selano also hopes that if reconciliation is held it will not lead to the taking back of land that is currently owned by the Banda community. The researchers also asked Kasman Renyaan, Dean of FKIP UBN, about the concerns of Husni Ang and the residents of Banda and the regional government. Kasman explained that from several seminar activities and capturing the aspirations of the King and the people of Banda Ely, they only wanted the government to officially recognize that the genocide against their ancestors was true. Happened, without asking for the return of their ancestral lands, and asking the Indonesian government to immediately carry out reconciliation by involving various parties, such as the Netherland Government, the Banda Naira community, and the Wandan Community (mentioned for the original Banda residents in the Kertagama book who exuded to Banda Ely, Ternate and Spooky). A similar opinion was also expressed by Soeleman Baranyanan, Lecturer at the Faculty of Law, Pattimura University.

Revealing the truth can be done through a series of investigative processes related to the genocide that occurred on Banda Island. The investigation carried out was of course not carried out by the families of the victims or perpetrators of the genocide, but was carried out by a truth commission formed by the government through the National Human Rights Commission. Apart from the reconciliation pattern by a truth commission, reconciliation can also be carried out with a reconciliation pattern starting from the smallest communities in society and simple studies have actually been carried out. The reconciliation process should be implemented and fully supported by the community. Apart from that, the cultural role and regional customary ceremonies must be used as a binding element for reconciliation. [15] The objective measure to determine this or the touchstone is the substantive and procedural aspects of the determination that a genocide event in Banda Naira can be said to be a serious human rights violation or not necessarily fulfilled.

### 4.2.2. The Role of the Indonesian Government in Resolving the Genocide on Banda Naira Island

The search for a conception of transitional justice to resolve genocide must be carried out by each country, because the past conditions of one country may be different from those of other countries. Therefore, of course cases of serious human rights violations are also different. It is in this context that researchers see the importance of formulating a conception of transitional justice that is appropriate to the Indonesian nation and the people of Banda Naira. [5] For this reason, the role of the regional government of Central Maluku Regency in revealing the truth and reconciling the genocide case on Banda Naira Island is very important. Apart from that, Article 28I paragraph (1) of the 1945 Constitution emphasizes that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. Article 8, Article 71 and Article 72 of Law No. 39 of 1999 concerning Human Rights also require the government to be responsible for respecting, protecting, upholding and advancing human rights.

These obligations and responsibilities include effective implementation steps in the legal, political, economic, social and cultural fields related to justice and reconciliation of victims and/or families of genocide victims on Banda Island. This responsibility is in line with the concept of international human rights accountability which views central and regional governments as one unit.[5] According to Kasman Renyaan, in the last 3 years the initial steps in revealing truth, justice and reconciliation have actually been started by the community, specifically initiated by FKIP UBN which also involved the Banda Muda Association ("Perbamu" formerly formed by Sjahrir and Hatta) by implementing various activities, such as seminars, joint prayers and other ceremonial activities every May to commemorate the genocide. Soeleman Baranyaan added that in May 2021 the "Remaph Route: Glorifying the Past for Future Prosperity" activity was held and in 2022 "Spice Route, Cultural Route, and Spice Route Cultural Goodwill" by the Ministry of Education and Culture of the Republic of Indonesia in collaboration with other stakeholders by inviting The King of Banda Ely and his traditional apparatus came to Banda Island.

It turns out that this initiative from various parties was not enough to force the Central Maluku Regency government to immediately carry out scientific and comprehensive studies to reveal the truth of the genocide cases that have occurred, so that the victims and/or the victims' families receive justice. Head of Banda Subdistrict, Kadir Sarilan, explained that the regional government had not received accurate data and requests

from the community in Banda or the families of victims outside Banda Island. Kadir added that almost all the original Banda clans/families after the genocide no longer existed, only 6 to 7 people remaining on the island of Banda were the Nurbati clan. Kadir asked the public to be more proactive in encouraging the regional government to immediately conduct a study regarding the genocide incident. According to him, without community government, local governments cannot do it. Taib Selano added that Komnas HAM had come to Banda, but only carried out outreach activities related to human rights in general, and did not specifically study the 1621 genocide on Banda Island.

Departing from the explanation above, the actual pattern of resolving serious human rights violations after the Constitutional Court decision no. 006/PUU-IV of 2006 concerning review of Law no. 27 of 2004 concerning the Truth and Reconciliation Commission (UU KKR), especially serious human rights violations in the past can be resolved through reconciliation. One important element in reconciliation is revealing the truth of the genocide incident. Disclosure initiatives can come from the community, central government or regional government. The process can be carried out after the fall of an authoritarian regime or after a genocide case occurs. [15] The objective measure for determining whether an event is considered genocide as a serious human rights violation can be seen from two aspects, namely the substantive aspect and the procedural aspect.

#### 4.2.2.1. Substantive Aspects of the Settlement of Genocide Cases on Banda Neira Island

Genocide as a case of gross human rights violation is regulated by Law 26 of 2000 concerning the Human Rights Court. Article 7 of Law 26 of 2000 regulates gross human rights violations in a limited manner, namely the crime of genocide and crimes against humanity. An event is qualified as a gross human rights violation if it is one or both of these crimes. Conversely, an event cannot be qualified as a gross human rights violation if it is not a crime of genocide or a crime against humanity.

Furthermore, Article 8 of the a quo Law states that the crime of genocide is “any act committed with the intention of destroying or exterminating all or part of a national group, race, ethnic group, or religious group”. In substance, these elements must be met to declare an event as a crime of genocide. To ensure this, a special investigation is needed regarding the gross human rights violations (genocide).

#### 4.2.2.2. Procedural Aspects of Genocide Case Resolution on Banda Naira Island

With the revocation of the KKR Law by the Constitutional Court. The revocation of the KKR Law has the consequence of stopping the idea of resolving human rights issues through the KKR. [24] Therefore, the important procedural aspects for determining serious human rights violations (genocide) have also changed. An event cannot be categorized as a serious human rights violation without going through the established procedures. Law 39 of 1999 mandates the Indonesian National Human Rights Commission (Komnas HAM) to handle cases of human rights violations. Meanwhile, the procedures for handling cases of serious human rights violations are regulated in Law 26 of 2000. To carry out this mandate, Komnas HAM has standard operating procedure (SOP) regulations as technical guidelines for handling cases of human rights violations and serious human rights violations. [1]

According to the National Human Rights Commission Regulation Number 4/KOMNAS HAM/XI/2017 concerning Amendments to the National Human Rights Commission Regulation Number 002/KOMNASHAM/IX/2010 concerning the Procedures for the Implementation of Monitoring and Investigation, the meaning of investigation is a series of actions to seek and find data, facts and information to determine whether or not there are human rights violations. Furthermore, based on the National Human Rights Commission Regulation Number 002/KOMNAS HAM/IX/2011 concerning the Procedures for the Implementation of Projudicial Investigations of Serious Human Rights Violations, what is meant by serious human rights violations are human rights violations as referred to in Law Number 26 of 2000 concerning the Human Rights Court, namely the crime of genocide and crimes against humanity. In some cases, investigations into human rights violations can be upgraded to projudicial investigations of serious human rights violations in order to ensure whether or not the incident was a serious human rights violation. The mechanism is through the approval of the Commissioners in a Plenary Session. [1]

From a procedural aspect, investigations into gross human rights violations have different characteristics from investigations into human rights violations. Investigations into gross human rights violations are pro-justice in nature and Komnas HAM is positioned as a pro-justice investigator. This means that investigations are conducted based on the law in a law enforcement and justice scheme that results in legal sanctions. Investigations into gross human rights violations are bound by the law of evidence in

criminal law. The format of letters and minutes includes the word “pro-justice”. This is an important characteristic of investigations into gross human rights violations. Because the investigation is pro-justice in nature, Komnas HAM is required to submit a Letter of Notification of Commencement of Investigation (SPDPP) to the Attorney General of the Republic of Indonesia as an authoritative official who has the authority to investigate and prosecute gross human rights violation cases based on the results of Komnas HAM investigations. [1]

To conduct a pro-justice investigation of serious human rights violations, Komnas HAM through a decision of the Plenary Session formed an ad hoc Team. A complete report of the results of the pro-justice investigation was submitted to the Plenary Session of Komnas HAM to be decided whether or not to accept it. The complete report was discussed and tested in the Plenary Session, especially by the Commissioners who were not members of the ad hoc Team, before a final decision was made as a serious human rights violation or not. [1]

If the results of the proyustisia investigation are accepted by the Plenary Session, Komnas HAM officially declares the incident as a gross human rights violation. It then submits it to the Attorney General for follow-up according to the Attorney General’s authority. If it is not accepted by the Plenary Session, the incident is not a gross human rights violation. Whether or not the complete report is accepted in the Plenary Session is largely determined by the quality of the results of the investigation and the ability of the ad hoc Team to convince the Commissioners. [1]

## 5. CONCLUSION

The pattern of resolving the genocide incident on Banda Naira Island, Central Maluku Regency must be based on the substantive and procedural aspects as guidelines in conducting investigations into alleged gross human rights violations (proyustisia). Determining whether an incident is genocide or not must be ensured through a proyustisia investigation based on Law 26 of 2000 and referring to a special SOP on it. The substantive and procedural aspects of the proyustisia investigation must be fulfilled first before reaching a conclusion, so that it can be ascertained as a gross human rights violation (genocide) or not. The pattern of resolving genocide cases can be carried out through a reconciliation process that is implemented and fully supported by the government and society. The culture and customs of Banda and Maluku must be made the main elements in reconciliation. The Central Maluku Regency Government can play an active role in

resolving the genocide case on Banda Island, by immediately conducting an initial study to reveal the truth about the genocide incident. The initiative of the local government to conduct initial studies on the genocide on Banda Island is very necessary, in order to produce an official document, which will then be submitted to Komnas HAM to conduct a pro-justice investigation into serious human rights violations. With the hope that the genocide on Banda Naira in 1621 will find legal certainty, so that the victims/families of the genocide victims receive recognition from the government. For this reason, in the future, further comprehensive research is needed, especially regarding the tracing of who were the victims who were killed and who were forced/compelled to leave Banda Island in the genocide and their descendants who are still alive.

## ACKNOWLEDGEMENTS

Thanks are given to the Rector of Pattimura University through the Institute for Research and Community Service of Pattimura University who has funded this research. Dean of the Faculty of Law of Pattimura University, Head of District and Secretary of the Head of District of Banda, Central Maluku Regency. Dean of the Faculty of Teacher Training and Education, Banda Naira University and Head of the History Education Study Program, Faculty of Teacher Training and Education, Banda Naira University, and other resource persons.

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