

CHAPTER I

INTRODUCTION

1.1 Background

On 19 September 2020, pastor and Indigenous community leader Yeremia Zanambani was shot and killed by the Indonesian National Army (TNI) during a counterinsurgency operation in the vicinity of Hitadipa, Intan Jaya, Papua. The Independent Humanitarian Team for Intan Jaya conducted an investigation into this case and revealed the results of an investigation related to the alleged involvement of members of the TNI in this murder case.

There have been pre-conditions of violence before the shooting incident of Pastor Jeremiah Zanambani since September 17-19, 2020. Initially, shots were fired at TNI troops in Sugapa Lama on September 17, 2020, at around 12.00 WIT. The shooting resulted in the death of one member of the TNI and a long barrel belonging to the TNI was taken. As a result of this incident, the people of Hitadipa were summoned one by one, although not entirely. They were told that the weapons taken should be returned immediately. Without any evidence that the Hitadipa people is the ones who took the weapons, the message was accompanied by threats that if they were not returned it, the Hitadipa district would be bombed. This continued until the next day on September 18th.

On September 19, 2020, at 9.00 WIT and 12.00 WIT at the Hitadipa Preparation Koramil Headquarters and the Hitadipa Immanuel Church. At both

meetings, the deputy commander, Alpius Hasim Madi, told the residents about “enemies”, mentioning five names including Pastor Yeremia’s name. In the meetings, Alpius said the residents had to return rifles belonging to the TNI and according to witnesses, he used threats and intimidations. Scared, several residents cried at the meetings. An hour later, the TPNPB attacked the Hitadipa Preparatory Koramil, in which First Pvt. Dwi Akbar Utomo was killed. At the same time, an official house of a Health Agency officer in Taundugu was set on fire by TNI officers. Later, the shooting and the stabbing of Pastor Yeremia happened¹.

As a result of this incident, Pastor Jeremiah suffered a gunshot wound to the upper left hand which caused profuse bleeding. Based on the results of the investigation, Pastor Jeremiah was also stabbed by a military knife, a bayonet in the upper back of his body, and the back of his neck. Pastor Jeremiah was shot with a military standard firearm. The shooting was carried out for approximately one meter and hit his body with one bullet into his upper left hand. On the skin visible vertical straight slices ranging from 7-10 centimeters².

Pastor Yeremia Zanambani was a respected religious figure in Papua. He was a former head of Kemah Injil Indonesia Church (GKII) in Hitadipa district. He was also the headmaster of Theology Academy in Hitadipa and advisor for GKII in Region 3. He was a linguist as well, having translated the Bible from

¹ Jakob Siringoringo, Victor Mambor, "The Indigenous World 2021: Indonesia", International Work Group for Indigenous Affairs (IWGIA), <https://www.iwgia.org/en/indonesia/4224-iw-2021-indonesia.html>, accessed on 11 February 2022.

² Bangun Santoso, Ria Rizki Nirmala Sari, "Kronologi Lengkap Pembunuhan Pendeta Yeremia di Papua", suara.com, <https://www.suara.com/news/2020/10/29/135257/terungkap-ini-kronologi-lengkap-pembunuhan-pendeta-yeremia-di-papua>, accessed 12 February 2022.

Indonesian to Moni language, the language of Intan Jaya community³. The closeness of the pastor to the community is not just a religious bond, but has entered into customs and societies. Since the Dutch colonial era, the church has provided basic services for the Papuan people. They are providers, health education education services, they are involved in Papua. Therefore, the role of the pastor is very central to Papuan society. This closeness then formed an emotional connection, but when some pastors responded to the community's problems and anxieties to fight for the rights of the Papuan people, they were considered Pro-Papuan Independence⁴.

According to sources, Pastor Jeremiah was shot by the Tentara Nasional Indonesia (TNI). According to the source, who asked to be anonymous for security reasons, the shooting of Pastor Yeremia started from sweeping TNI troops into Hitadipa District as retaliation after Pratu Dwi Akbar from Infantry Battalion 711/RKS/Brigif 22/OTA was shot dead by the Tentara Pembebasan Nasional Papua Barat-Organisasi Papua Merdeka (TPNPB-OPM). The shooting of Pratu Dwi took place in Kali Hiabu on September 17. TNI officials accused residents of hiding OPM members. (In TNI-Polri terms, Papuan armed guerrillas are called 'Armed Criminal Groups'). The incident caused mutual accusations between OPM and TNI-Polri about who killed Pastor Jeremiah.

³ Victor Mambor, "Intan Jaya conflict (2): Civilians become victims of TNI-TPNPB war", <https://en.jubi.co.id/intan-jaya-conflict-2-civilians-victims-of-tni-tpnpb/>, accessed on 11 February 2022.

⁴ Muhammad Irham, "Misteri tewasnya Pendeta Yeremias Zanambani di Papua: Pemerintah RI bentuk tim gabungan pencari fakta, pegiat HAM pesimistis", BBC.com, <https://www.bbc.com/indonesia/indonesia-54271207>, accessed on 21 February 2022.

Written in BBC News Indonesia, Rode Zanambani, son of Pastor Yeremia Zanambani, demanded that this case be carried out in a human rights court. "We strongly disagree if the legal process for the murder of our father is carried out in a military court, because we do not believe that the military court can reveal the truth and punish the perpetrators according to their actions and provide justice for us"⁵. The TNI response to the request of Pastor Yeremia's family, Head of the TNI Information Center Major General Achmad Riad said that his party is still waiting until the investigation process is complete, and rejects the allegation that the perpetrator is a TNI person. On November 2, 2020, KOMNAS HAM revealed the alleged involvement of TNI members in the murder of Pastor Yeremia Zanambani, in Hitadipa District, Papua. Previously, the Coordinating Minister for Political, Legal and Security Affairs Mahfud MD also mentioned that based on the findings of the Joint Fact-Finding Team (TGPF), there were allegations of involvement of elements of the apparatus as well as third parties. However, the results of TGPF are not pro justitia in nature, but are used as material for law enforcers. Therefore, the findings of TGPF have been submitted to the police and prosecutors for further investigation. Investigations revealed that prior to the shooting of Pastor Yeremia, the TNI had gathered local residents to look for firearms that were seized by the Tentara Pembebasan Nasional Papua Barat-Organisasi Papua Merdeka (TPNPB-OPM). In the mass gathering, Jeremiah and five other

⁵Achmad Nasrudin Yahya, "Komnas HAM Bersedia Terlibat Otopsi Jenazah Pendeta Yeremia", Nasional Kompas <https://nasional.kompas.com/read/2021/02/15/12004091/komnas-ham-bersedia-terlibat-otopsi-jenazah-pendeta-yeremia?page=all>, accessed on 21 February 2022.

people were labeled as enemies of a member of the Koramil in Hitadipa District. The KOMNAS HAM report also revealed that the victim before dying revealed the identity of the perpetrator to two witnesses. There are also recorded testimonies from other witnesses who saw the TNI member in the vicinity of the TKP at the time of the incident along with three or four other members⁶.

Protecting and enforcing human rights in Indonesia have been thought of by the founders of the Indonesian nation, everything is stated in the preamble to the 1945 Constitution and the contents of the 1945 Constitution. Human rights are specifically regulated in article 28 A-J describes human rights as regulated in the 1945 Constitution, human rights arrangements are also regulated in Law Number 39 of 1999 concerning Human Rights.

In reality, the figures who are responsible for upholding, respecting and protecting human rights are not only limited to the state alone, but also citizens, although Article 28 I paragraph (4) of the 1945 Constitution states that protection, advancement, enforcement and fulfillment of human rights humans are the responsibility of the state, especially the Government. However, human rights violations are not only committed by the state against its people, but also by the people against its people, so even though Indonesia is a state based on law as written in Article 1 Paragraph (3) of the 1945 Constitution which explains that the Indonesian State is based on law (*rechtsstaat*), not based on

⁶ BBC News, "Pendeta Yeremia tewas ditembak di Papua, keluarga menuntut pelakunya diadili di pengadilan HAM, TNI sebut 'proses penyelidikan masih berlangsung'", BBC.com, <https://www.bbc.com/indonesia/dunia-54883234>, accessed on 21 February 2022.

mere power (*machtsstaat*), but in reality the law itself is still controlled by power mere. That is the biggest factor that makes upholding human rights arguably still a concern in Indonesia, even though there are many factors that cause human rights enforcement in Indonesia to be inadequate, such as political issues, regulations that are not in accordance with human rights. principles, the imbalance in the strength of human rights protection policies, and the low compliance of officials in respecting and protecting human rights. The National Commission on Human Rights (KOMNAS HAM) as an independent institution at the same level as other state institutions, functions to carry out studies, research, counseling, monitoring and mediation regarding human rights. According to Law No. 39 of 1999, Indonesian National Human Rights Commission is also authorized to conduct investigations into gross human rights violations with the issuance of Law No. 26 of 2000 against the Human Rights Court. Based on Law No. 26 of 2000 on Human Rights Courts, Indonesian National Human Rights Commission is the institution with the authority to investigate gross human rights violations. In conducting this investigation, Indonesian National Human Rights Commission may form an ad hoc team consisting of the Human Rights Commission and elements of the community. In carrying out its functions, duties and powers in order to achieve its objectives, Indonesian National Human Rights Commission uses it as a reference for instruments related to human rights, both nationally and internationally.

Human Rights Watch (HRW) in the World Report 2020 noted that in 2019 Indonesia faced serious problems in the field of human rights enforcement. One of them that was recorded was President Joko Widodo's decision to appoint Prabowo Subianto as Minister of Defense despite the fact that he had been involved in a number of human rights violations. Based on HRW data, there are several aspects of human rights that have experienced a crisis in Indonesia, such as freedom of religion, freedom of expression and association, rights of women and children, rights of persons with disabilities, as well as the incidents of Papua and West Papua.

The consequences of this matter is a burden that falls on the state and its culture. Since May 1, 1963, it has been exactly 57 years that the Papua problem has become a problem of the state and the Indonesian nation that has not yet been resolved, it can even be said to be longer and almost forgotten. Of the various problems that exist regarding Papua, the worst one is the issue of human rights⁷. The Indonesian government has suffered many human rights violations, either in secret or openly, ironically, this government's closure is commonplace for most of society. All these violations have never been resolved, even the National Commission on Human Rights has not been able to resolve cases of human rights violations that occurred in Papua. In general, these cases were committed by military personnel against indigenous Papuans. Until now, cases of human rights violations in Papua have not been resolved

⁷ Neles Tebay, *Dialog Jakarta-Papua: Sebuah Perspektif Papua* (Jayapura: Sekretariat Keadilan dan Perdamaian, Keuskupan Jayapura, 2011 (cetakan kedua), p. 1.

optimally, and this is what has triggered the root of conflict between the indigenous Papuan people and the Indonesian government.

Papua, located at the eastern tip of Indonesia, has a wealth of natural resources and land containing mineral resources, gold, gas, uranium, and the sea which contains a lot of beauty and extraordinary fish species, a very rich forest with various types of trees which are expensive and also have extraordinary herbal properties as well as animals and bird species, some of which are not found in other regions and even in other countries, not to mention the customs of various ethnic Papuans which number approximately 253 ethnicities. Since the beginning of Papua officially becoming part of Indonesian territory, the government chose and used a security approach (military) on the pretext of upholding state sovereignty, eroding the separatist movement that had been nurtured before the Dutch left Papua. In fact, this approach is also being implemented by the central government to deal with a number of civil society movements that are critical of the government and resistance from groups in Papua that from the beginning have rejected the peaceful integration of Papua into Indonesia. In reality, the handling of the Papua conflict has not changed even though the regime has changed several times. This can be seen in the absence of clear changes to central policy after more than 50 years of Papuan integration into Indonesia. The fact is that the

security and military approaches are still being maintained and used because of threats to security and state sovereignty⁸.

Rather than investigating human rights violations, Indonesian authorities tended to raise an issue about separatists. When Papuans set a protest that they are concerned about human rights in their place, it is not new the story is built up that the protesters were mobilized by separatists. Indonesia also denied that there were human rights violations or discrimination in Papua as it claims that under Indonesian law, all citizens are treated equal and have equal rights. This is of course speculation with no base of empirical evidence. Indeed, there has been ample evidence on violence and hate crimes with Papuans as the victims. So why Indonesian authorities are negligent about this? On 1 December 2020 the UN asked the Indonesian government to prevent further violence in Papua and West Papua. One of the officials at the Presidential Staff Office said the handling of cases of human rights violations in Papua was not optimal due to the impact of the COVID-19 pandemic, which the researchers said was an "absurd" reason. On the other hand, the Indonesian government claims to have paid attention to human rights issues in Papua and West Papua. This is stated in the Presidential Instruction No.9/2020 concerning the Acceleration of Welfare Development in Papua and West Papua Provinces⁹. The Presidential Instruction mentions the steps taken by the government in dealing with human

⁸ Tsaqif Nur Ikhsan, "*Studi Kasus Pelanggaran Hak Asasi Manusia di Papua*", academia.edu, 2014, p. 1.

⁹ Presidential Instruction of the Republic of Indonesia Number 9 Year 2020 concerning Acceleration of Welfare Development in Papua Province and West Papua Province.

rights issues, including opening space for dialogue. Papuan human rights activists believe that cases of violence in Papua and West Papua continue to occur because of the absence of a human rights court as mandated by the 1945 Constitution.

Based on the above mentioned, the identification of the problems here is a violation of human rights. The main focus and discussion of this thesis will be the violations of human rights that occurred in Papua and how they were enforced by the Indonesian government. Based on the aforementioned cases, it is evident and proven that there have been human rights violations by the military apparatus in Papua. This violation is blatantly violating Article 4 of the Human Rights Law Number 39 of 1999¹⁰:

" The right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever."

“Hak untuk hidup, hak untuk tidak disiksa, hak kebebasan pribadi, pikiran dan hati nurani, hak beragama, hak untuk tidak diperbudak, hak untuk diakui sebagai pribadi dan persamaan dihadapan hukum, dan hak untuk tidak dituntut atas dasar hukum yang berlaku surut adalah hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun dan oleh siapapun”

Based on the provision stipulated above, a person has the right to life, the right to be recognized as a person and equality before the law. The provision stipulated above also stated human rights which cannot be reduced under any circumstances and by anyone.

¹⁰ Law No. 39 Year 1999 concerning Human Rights.

However, the wording of Article 4 of the Human Rights Law Number 39 of 1999 is pretty clear and no ambiguity in it, it is a straightforward article.

There is also the principle of fair trial, which in the criminal justice process in Indonesia regulates the protection of the nobility of human dignity and has been stated in Law No. 48 of 2009 concerning Judicial Power. According to the principle of fair trial, cases are tried through an independent and impartial judicial process, with reference to procedural law which guarantees an objective examination by an honest and fair judge, the goal is to obtain a fair and true verdict¹¹.

The author hypothesizes that if there is no moral awareness from the Indonesian government of human rights violations in Papua, then human rights violations in Papua will continue. Likewise other problems between Papua and the Indonesian government, because the root of the "war" between the Indonesian government is ignorance of the right to live, the right to develop and grow, the human rights of Papuans are often underestimated by the central government. If this is allowed to happen, it will not only prolong and worsen the relationship between Papua and the central government, but also Indonesia, which claims to be a rule of law, can be questioned for its integrity. Law without morality will create new problems in the law itself, never to let the law go from the aspect of morality. In 2020, Amnesty International Indonesia recorded 5 unlawful killings with 8 victims in Papua. The total of unlawful

¹¹ Mulad, *Hak Asasi Manusia (Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat)*, (Bandung, PT. Refik Aditama, 2005), p. 99.

killings in Papua throughout 2020 reached 15 cases with a total of 22 victims. Most of these human rights violations involved the Indonesian police and military¹². Indonesia has ratified many international human rights laws that protect the right to life, particularly the International Covenant on Civil and Political Rights (ICCPR). The Prime Minister of Vanuatu, Bob Loughman, on human rights violations (HAM) in Papua, at the 75th UN General Assembly Session, Amnesty International Indonesia's Executive Director, Usman Hamid, stated: "All cases of extrajudicial killings have never been completely resolved. If Indonesia's human rights commitment is carried out well, there will be no critical questions from anywhere, from the UN Human Rights Council or from other countries such as Vanuatu. Protection of human rights does not stop with the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), or the Convention against Torture (CAT). The state must guarantee all the rights protected in this regulation, including for Papuans. If indeed the Indonesian government is committed to resolving human rights violations as stated in the UN session, then all perpetrators of human rights violations that have occurred in Papua will immediately be brought to justice. Prove that Indonesia is a rule of law and a country that respects human rights everywhere. Both in Indonesia and in

¹² Admin Jubi, "Amnesty International: Ada 15 kasus penembakan di luar hukum yang terjadi di Papua", <https://jubi.co.id/amnesty-international-ada-15-kasus-penembakan-di-luar-hukum-yang-terjadi-di-papua/>, accessed on 21 February 2022.

Myanmar and Palestine. Once again, the issue of human rights is a universal problem”¹³.

Human rights is a universal problem. That is why it is so important and urgent that the issue of human rights in Papua requires a serious and good response from the Indonesian government to fix the problem. However, in this thesis the author will focus on violations of human rights in Papua and how the respond, handling and integrity of the Indonesian government to it.

1.2 Formulation of Issues

In regard to the topic of this thesis, the Author will discuss the following formulation of issues:

1. Why human right’s violation is committed to Pastor Jeremiah Zambani, even though there was already Law No. 39 of 1999 which enforced the human rights of all Indonesians?
2. The murder case of Pastor Jeremiah Zambani was carried out in 2020, during the past 2 years what has been done by KOMNAS HAM to uphold justice for Pastor Jeremiah Zambani?

1.3 Research Purposes

The Author’s purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

¹³Amnesty International, "Isu HAM di Papua Masalah Serius", Amnesty.id, <https://www.amnesty.id/isu-ham-di-papua-masalah-serius/>, accessed on 21 February 2022.

1. To find out why human rights violations happened to Pastor Jeremiah Zambani, even though the law on human rights violations in Indonesia is very clearly stated in Law No. 39 of 1999 to protect every human right of the Indonesian people, including Pastor Jeremiah Zambani.
2. To answer why KOMNAS HAM is not functioning well in solving the case of the murder of Pastor Jeremiah which has been going on for almost 2 years?

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, the Author hopes that this research can provide information and different perspectives regarding the enforcement of human rights in Indonesia based on Law Number 39 of 1999. With all the injustice of human rights that occurred in Papua, the author hopes that this research will succeed in increasing awareness of the human rights of our brothers and sisters in there, which have been neglected and forgotten. Overall, the authors hope that this research can provide and inspire the spirit of *Bhinneka Tunggal Ika* and the spirit of *Pancasila* which is the basis of the Indonesian nation, as well as remind us of the importance of upholding human rights in Indonesia as a state. law.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can be a benefit for many people, to the general public, lawyers, notaries, and other officials who are directly or indirectly related to the enforcement of human rights in Papua, so case like this will not happen again in the future. Finally, this research also aims to overcome confusion and obscurity regarding issues that occur in Papua, because things that happen in Papua are rarely in the media spotlight so that there are many rumors and hoaxes that are spread among the Indonesian people, so that there was labeling of Papuans from several circles of Indonesian society.

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER I: INTRODUCTION

This chapter consists of the introduction, which is further divided into five parts, which are background, research question, research purpose and research benefits.

CHAPTER II: LITERATURE REVIEW

In the literature review chapter, the Author will be divided into two further sub-chapters and each sub-chapter. First, the Author will determine the Theoretical Framework of human rights law

in Indonesia. Second, the Author will determine the Conceptual Framework of human rights law in Indonesia.

CHAPTER III: RESEARCH METHODS

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problems along with its solution. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the respective research question as stipulated in chapter two of this thesis. The first sub-chapter will consist of analysis on how the system and authority work for enforcing human rights violations in the Indonesian legal system. The second sub-chapter will analyze a case study of violations of human rights in Papua.

CHAPTER V: CLOSING

In this last chapter, the Author will explain the conclusion as an answer to the issues that have been analyzed in chapter four. Aside from giving a conclusion, the Author will also give suggestions and recommendations towards these issues in

regards to upholding human rights in Papua, thus providing legal certainty and protection for all Indonesia people.

