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Unwilling and Unable Test in Gross Human Rights Violations in Indonesia

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Abstract

This study examines the application of the concepts of "unwilling" and "unable" in understanding gross human rights violations in Indonesia. The purpose is to delineate the nuanced dynamics behind such atrocities, exploring whether violations stem from the government's unwillingness or inability to protect human rights. Employing a qualitative research approach, data was collected through document analysis, interviews, and case studies. The findings suggest that gross human rights violations in Indonesia often result from a combination of both factors: state actors may be unwilling to uphold human rights due to political agendas or systemic corruption, while systemic weaknesses and resource constraints render them unable to effectively prevent or address violations. The study underscores the importance of addressing both dimensions to effectively tackle human rights abuses, advocating for institutional reforms, accountability mechanisms, and international pressure to compel the Indonesian government to fulfill its obligations to protect human rights. In conclusion, understanding the interplay between unwillingness and inability is crucial for devising comprehensive strategies to combat gross human rights violations in Indonesia and similar contexts worldwide, emphasizing the imperative of fostering a culture of respect for human dignity and justice.

Keywords: Indonesia, Human Rights Violations, Unwilling and Unable, Application

1. Introduction

In the context of gross human rights violations in Indonesia, the concepts of "unwilling" and "unable" serve as critical analytical frameworks. "Unwilling" refers to deliberate acts of commission or omission by state actors (White, *et al.*, 2018; Roger, 2022), such as government officials or security forces, who knowingly perpetrate or condone abuses against individuals or groups. Conversely, "unable" implies systemic failures or inadequacies within the state apparatus, leading to an inability to prevent or address human rights violations effectively (Frowde, Dove. & Laurie, 2020). Understanding the interplay between these concepts sheds light on the complexities of accountability, revealing the intertwined roles of intentionality and structural deficiencies in perpetuating atrocities and fostering a culture of impunity within Indonesian society (Melvin *et al.*, 2023).

Since 1965, Indonesia has grappled with a harrowing history of gross human rights violations, spanning until 2020. The nation has been plagued by forced disappearances, mysterious killings, and systemic abuses, perpetuated by both state and non-state actors. The atrocities have left a haunting legacy, with countless families left in anguish over the unexplained fates of their loved ones. The Pania case in Papua stands as a stark example, highlighting the ongoing struggles faced by indigenous communities in Indonesia's easternmost region. Despite efforts to address past injustices and promote accountability, the scars of these violations run deep, casting a shadow over Indonesia's human rights landscape. As the country moves forward, confronting its past and fostering a culture of accountability and justice remains imperative to ensure a future where human rights are respected and protected for all Indonesians (Juwana, 2021).

Indonesia prides itself on being a rule-of-law country with comprehensive civil rights safeguards enshrined in the Constitution (UUD 1945), bolstered by legislative acts such as Law No. 39 of 1999 on human rights, Law No. 2000 of 2006 on Human Rights Court and Law No. 20 of 2005 on the ratification of the International Covenant on Civil and Political Rights (ICCPR). However, despite these legal foundations, the country grapples with persistent human rights violations that linger unresolved due to inadequate enforcement mechanisms (Hadiprayitno, 2010). Victims of such violations find themselves in a state of limbo, with little hope for closure or redress (Harison, 2018). Adding to the complexity of the issue is the involvement of both state and non-state actors in perpetrating these violations, with impunity reigning supreme as accountability measures falter. Consequently, the pursuit of justice for victims remains elusive, as neither legal recourse nor institutional accountability has effectively addressed the systemic breaches of human rights in Indonesia.

The Indonesian government's disregard for human rights and its failure to demonstrate good political will in prosecuting perpetrators have rendered gross human rights violations in the country unsolvable (Triyana, 2023). Despite international pressure and calls for accountability, the Indonesian authorities have consistently failed to address past atrocities, perpetuating a culture of impunity (Melvin *et al.*, 2023). The lack of transparency and accountability within the legal system further exacerbates the situation, leaving victims and their families without justice or fair punishment for the perpetrators (Marzuki & Ali, 2023). This systemic failure to uphold human rights and prosecute perpetrators necessitates categorizing Indonesia under the "unwilling" classification, highlighting the urgent need for international intervention and pressure to hold the government accountable and ensure justice for victims of human rights abuses.

2. Method

This qualitative research employs the Unwilling and Unable Test to investigate gross human rights violations perpetrated by non-state actors. The Unwilling and Unable Test, a methodology developed within international law, scrutinizes whether a state is either unable or unwilling to fulfill its obligation to protect human rights within its territory, thereby allowing non-state actors to commit abuses with impunity. This research methodology involves a multi-faceted approach, integrating documentary analysis, interviews with key informants, and case studies to comprehensively examine the dynamics of human rights violations perpetrated by non-state actors. Through the examination of empirical evidence and qualitative data, this research seeks to elucidate the root causes, patterns, and consequences of such violations, while also assessing the responses of relevant state and non-state actors. By applying the Unwilling and Unable Test framework, this research aims to contribute to a deeper understanding of the complexities surrounding human rights abuses by non-state actors, providing insights that can inform policy interventions, legal mechanisms, and advocacy efforts aimed at addressing and preventing such violations in diverse contexts.

3. Literature Review

Several scholars have delved into the realm of gross human rights violations in Indonesia (Baeahr, 1999; Hadiprayitno, 2010; Triyana, 2023; Robet, Fitri & Kabelen, 2023), approaching the subject from various angles such as historical context, political dynamics, and socio-economic factors (Simons, 2000; Marzuki, 2023; White, 2018). These studies have contributed significantly to understanding the complex tapestry of rights abuses in the country. However, what sets this research apart is its unique perspective and methodology. By combining

rigorous empirical analysis with nuanced qualitative research, this study aims to provide a comprehensive understanding of the mechanisms, perpetrators, and impacts of human rights violations in Indonesia. By applying the concept analysis of unwillingness and inability, it becomes evident why Indonesia grapples with impunity. Moreover, this research endeavors to not only document past violations but also to explore avenues for justice, accountability, and reconciliation.

In the realm of literature, scholars often delve into intricate analyses of societal issues, shedding light on the complexities that underpin them. When examining human rights violations in Indonesia, some scholars contend that the resolution of these grave injustices remains elusive (Robet, Fitri & Kabelen, 2023). Central to this assertion is the observation that perpetrators of such atrocities often hail from military (Hadiprayitno, 2010; Tan, 2023), a factor that significantly complicates efforts towards justice and accountability. These scholars argue that the hierarchical structure within the military not only shields wrongdoers from prosecution but also perpetuates a culture of impunity (Melvin, 2023), wherein individuals in positions of power are shielded from consequences for their actions. Moreover, the entrenched influence of the military in various facets of Indonesian society further exacerbates the challenge of addressing human rights abuses effectively (Human Rights Watch, 2023). Despite international scrutiny and calls for reform, the systemic nature of these violations continues to pose a formidable obstacle to meaningful progress (Alexandra, 2017; Sergio, 2022). Furthermore, the historical context of Indonesia, marked by periods of authoritarian rule and political instability, adds layers of complexity to the issue at hand. Within academic discourse, there exists a consensus that addressing human rights violations in Indonesia necessitates multifaceted approaches that encompass legal, political, and socio-cultural dimensions.

However, the enduring grip of military influence on the country's institutions and governance structures impedes the realization of comprehensive reforms. Consequently, the pursuit of justice for victims of human rights abuses remains a daunting task, fraught with challenges and obstacles that defy easy solutions (Marzuki, 2023). Nevertheless, scholars persist in their endeavors to unravel the intricacies of this pressing issue, offering nuanced analyses that contribute to broader conversations surrounding human rights, justice, and accountability on both national and global scales. Through their rigorous examination of historical precedents, legal frameworks, and sociopolitical dynamics, these scholars illuminate the complexities inherent in confronting entrenched power structures and advocating for meaningful change (Hadiprayitno, 2010). Despite the seemingly insurmountable barriers that stand in the way of justice, the scholarly community remains steadfast in its commitment to advancing the cause of human rights and ensuring that the voices of the oppressed are heard and respected. In doing so, they uphold the fundamental principles of dignity, equality, and justice that lie at the heart of the struggle for human rights worldwide.

Gross human rights violations have included atrocities like the 1965-66 anti-communist purge, which led to mass killings and imprisonments, with estimates of up to half a million deaths. The occupation of East Timor from 1975 to 1999 was marked by widespread abuses, including extrajudicial killings, torture, and forced disappearances. The military's actions in Papua, involving intimidation, violence, and suppression of dissent, constitute ongoing violations. Religious and ethnic minorities face discrimination and persecution, evident in instances like the Ahmadiyya and Shia Muslim communities' persecution. Additionally, the rights of indigenous peoples are frequently disregarded, particularly in land rights disputes and resource extraction projects.

Table 1: A grim chronicle of gross human rights violations spanning from 1965 to 2020.

Year	Tragedy	Actor	Process
1965-1966	The 1965 Genocide (Peristiwa G30 S PKI)	State & Non-State	Under investigation
1982-1985	Mysterious Shooting	State	Under investigation
1988	Talangsari Tragedy	State	Under investigation
1997	Enforced Disappearance	State	Under investigation
1988	Trisakti & Semanggi	State	Under investigation
1988	May Riot	State & Non-State	Under investigation
1999	The Aceh KKA Simpang	State	Under investigation
1998-1999	Aceh Geudong House	State	Under investigation
1998-1999	The Shaman Santet	State	Under investigation

2003	Jambo Keupok Aceh	State	Under investigation
2004	Wasior & Wamena	State	Under investigation
2020	Paniai	State	Cassatie

Source: National Human Rights Commission 2022.

4. Discussion

4.1 The Long Road to Justice

Despite the enactment of Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts in Indonesia, the persistence of gross human rights violations underscores the inefficacy of legislative measures alone in ensuring comprehensive human rights protection. While these legal frameworks were ostensibly designed to safeguard against such atrocities, their practical enforcement and implementation have fallen short. Instances of violations continue to occur, suggesting systemic inadequacies in addressing root causes and holding perpetrators accountable. The persistence of gross human rights violations despite legislative efforts highlights the need for holistic approaches integrating legal mechanisms with broader societal and institutional reforms to foster genuine respect for human dignity and rights.

Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts in Indonesia exhibit several weaknesses. Firstly, despite their establishment to protect and uphold human rights, these laws lack comprehensive enforcement mechanisms (Hadiprayitno, 2009). While they establish human rights courts, the effectiveness of these institutions is hampered by bureaucratic hurdles, inadequate resources, and a lack of political will to prosecute violators. Additionally, there are gaps and ambiguities in the legal framework (Juwana, 2021), allowing for selective enforcement and interpretation of human rights violations. Furthermore, the laws do not adequately address emerging issues such as digital rights and environmental rights, which have become increasingly pertinent in contemporary society. Without addressing these weaknesses, the legal framework remains insufficient in providing robust protection for human rights and ensuring accountability for violators. Thus, there is a pressing need for reforms and amendments to strengthen these laws and enhance their effectiveness in safeguarding human rights in Indonesia.

A major challenge of Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts lies in the intricate balance between delivering "just" justice and ensuring practical implementation. While these laws signify a significant step towards safeguarding human rights in Indonesia, the complexity arises in their effective execution. Ensuring fair trials, combating corruption within the legal system, and providing adequate support and protection to victims remain formidable tasks. Additionally, navigating socio-political dynamics and addressing cultural sensitivities further complicates the quest for true justice. Thus, achieving the intended objectives of these laws demands continual scrutiny, adaptation, and dedication to upholding human rights principles.

Indonesia's limited success in enforcing gross human rights violations is starkly illustrated by the singular case of Paniai (Triyana, 2023). Despite being brought to court, the perpetrator was deemed not guilty, highlighting systemic failures in human rights protection. This outcome underscores the deficiencies in Indonesia's legal and judicial frameworks, which struggle to address such egregious violations effectively. The absence of accountability perpetuates impunity, eroding trust in the country's commitment to human rights. Without robust mechanisms for addressing gross violations, the pursuit of justice remains elusive, hindering progress toward a society that upholds human dignity and equality.

The protracted investigation into human rights violations by investigators from the Indonesian General Prosecutor's office has introduced another layer of uncertainty into the fate of the victims. The divergence of opinions between the General Prosecutor and the Human Rights Commission has contributed to the complexity of the case, further complicating its resolution. For instance, the ambiguity surrounding the 98 activism propaganda underscores the lack of clarity in addressing historical grievances, while the unknown whereabouts of the victims adds to the overarching sense of unease and apprehension. This discordance not only prolongs the

investigative process but also exacerbates the distress of those affected, leaving them in a state of limbo with regards to justice and closure. The discord between key stakeholders underscores systemic challenges in addressing human rights violations, highlighting the need for improved coordination and cooperation among relevant authorities and organizations.

4.2 Unwillingness and Unable to Fight Impunity

The "Unwilling and Unable" doctrine in international law refers to the principle that when a state is unwilling or unable to effectively address human rights violations within its territory, other states or the international community may intervene to protect human rights (Pufong, 2017). This doctrine emerged as a response to situations where states either lack the capacity to prevent or stop severe human rights abuses (Smith, 2019). It underscores the responsibility of the international community to act when national governments fail to fulfill their duty to protect the rights of their citizens. However, the application of this doctrine raises complex legal and ethical questions, particularly regarding the extent of intervention and the potential for abuse of power by intervening states. Critics argue that intervention under the guise of the "Unwilling and Unable" doctrine can sometimes serve geopolitical interests rather than genuine humanitarian concerns, leading to accusations of interventionism or neo-imperialism (Carey, 2012). Nonetheless, proponents maintain that in cases of egregious human rights violations, the international community has a moral imperative to intervene to prevent further suffering and uphold universal human rights standards, even if it means overriding the principle of state sovereignty (Stegmiller, 2015).

The concept of the Unwilling or Unable test in international law is pivotal in determining state responsibility for failing to prevent or address human rights abuses committed by non-state actors within their jurisdiction (Skantz, 2017). In the case of Indonesia's inability to effectively combat such non-state actors perpetrating human rights crimes, it would indeed meet the Unwilling and Unable test. This test, often applied in contexts such as armed conflict or areas of widespread violence, assesses whether a state lacks either the capacity or the will to effectively address such abuses (Birkett, 2017). In Indonesia's scenario, if it cannot adequately respond to or prevent human rights violations by non-state actors due to factors such as limited resources, capacity constraints, or governmental unwillingness, it signifies a failure of its duty to protect human rights within its borders. This failure could have significant legal and moral implications, potentially warranting international intervention or assistance to address the human rights crisis and hold perpetrators accountable. Therefore, meeting the Unwilling and Unable test underscores the urgency for Indonesia to strengthen its mechanisms for addressing human rights abuses and ensuring accountability, both domestically and in accordance with international norms and standards.

The trajectory of Indonesia from 1965 to the 2020s encapsulates a complex tapestry of historical events, political maneuvering, and societal struggles. Amidst this backdrop, the pursuit of justice and accountability has been a recurring theme, epitomized by campaigns such as the Kamisan action (aksi Kamisa), spanning 17 years, which aimed to address the egregious human rights violations, particularly enforced disappearances (Setiawan, 2022). However, despite fervent efforts, the wheels of justice often ground to a halt, with the investigative process obstructed by bureaucratic barriers, notably within the Attorney General's Office of the Republic of Indonesia. The campaign for impunity, entrenched within the corridors of power, wielded considerable influence, undermining the quest for truth and redress. Consequently, the plight of victims and their families remained unresolved, perpetuating a cycle of impunity and injustice. The legacy of these unresolved tragedies underscores broader systemic challenges within Indonesia's governance and legal frameworks, where accountability often remains elusive in the face of entrenched interests. As Indonesia grapples with its past and charts a path forward, addressing historical injustices and fostering a culture of accountability are imperative for the nation's democratic consolidation (Marzuki, 2023). The struggle for justice, though fraught with obstacles, serves as a testament to the resilience and determination of civil society in Indonesia, as it continues to advocate for truth, reconciliation, and the rule of law.

The enforcement of strict ideological conformity presents a formidable barrier to addressing gross human rights violations and holding perpetrators accountable in court (Al-Saadoon, *et al.*, 2021). The imposition of rigid ideological frameworks often suppresses dissenting voices and stifles any attempts to challenge or investigate

human rights abuses. This conformity cultivates an environment where those in power can act with impunity, shielded from scrutiny or legal consequences. Furthermore, the consolidation of ideological control can manipulate the legal system, hindering efforts to bring perpetrators to justice by obstructing fair trials or manipulating judicial processes. The fear of reprisal for dissenting against the prevailing ideology silences potential witnesses and undermines efforts to gather evidence or testimonies crucial for prosecuting human rights violators. Consequently, victims are left without recourse, and justice remains elusive. Breaking this cycle necessitates dismantling the structures that enforce ideological conformity, fostering an environment where dissent is protected, and the rule of law prevails over political expediency.

The establishment of the Truth and Reconciliation Commission (TRC) via Law no. 27 of 2004 seemingly underscores a government stance of neglect towards victims (Budiarti & Kusuma, 2020). By institutionalizing a mechanism for truth and reconciliation, the government might be perceived as merely paying lip service to the plight of victims, without addressing their grievances substantively. The TRC, while ostensibly aiming to address past injustices and foster national healing, could inadvertently perpetuate a culture of impunity by providing amnesty for perpetrators without adequate redress for victims. Moreover, the establishment of such a commission through legislative means could be interpreted as a superficial attempt by the government to appease international scrutiny or mitigate public outrage, rather than a genuine commitment to justice and accountability. In essence, the enactment of Law no. 27 of 2004 may reflect a governmental prioritization of political expediency over the rights and needs of victims, casting doubt on the sincerity of its reconciliation efforts.

The establishment of the Truth and Reconciliation Commission (TRC) through Law no. 27 of 2004 ostensibly appears as a governmental initiative to address past human rights abuses and reconcile a fractured society. However, beneath the surface, it reveals a stark contrast between the government's rhetoric and its true commitment to justice (Nagy, 2020). By embedding the TRC within rigid ideological frameworks, the government inadvertently showcases its reluctance to fully enforce accountability for gross human rights violations and uphold the rights of victims. Such frameworks often serve as tools to control narratives, limit the scope of investigations, and shield perpetrators from genuine accountability. In doing so, the government effectively undermines the very essence of reconciliation, which requires genuine acknowledgment of past wrongs, accountability for perpetrators, and meaningful redress for victims. Thus, while the establishment of the TRC may superficially suggest a willingness to address historical injustices, its entrenchment within ideological constraints ultimately reflects a systemic failure to prioritize the principles of justice, truth, and genuine reconciliation.

A comprehensive legal framework bereft of genuine political will symbolizes more than just legislative inactivity; it embodies a systemic failure to address the plight of victims. Within such a context, the absence of political resolve renders legal statutes hollow, mere words on paper devoid of practical effect (Friedrich Ebert Stiftung, 2015). While laws provide the scaffolding for justice, political will imbues them with vitality, driving enforcement and implementation. Without it, the rights and needs of victims remain unmet, relegated to the periphery of societal concern. Ineffectual governance not only undermines the rule of law but also perpetuates a cycle of injustice, leaving victims marginalized and without recourse. Moreover, the lack of political commitment sends a disheartening message to society, signaling a tolerance for impunity and a disregard for human suffering (Nowak, 2018). Thus, a complete legal framework without genuine political will serves as a poignant reminder of the ethical imperative for governments to translate laws into meaningful action, to champion the cause of justice, and to demonstrate a steadfast commitment to upholding the rights and dignity of all individuals within their jurisdiction.

In assessing the landscape of human rights enforcement in Indonesia, a comprehensive evaluation of its legal framework, institutional instruments, and political regime dynamics is imperative. Despite possessing a burgeoning legal infrastructure ostensibly supportive of human rights, including constitutional provisions and ratified international treaties, the practical application often falls short. The disparity emerges not solely from the absence of legal mechanisms but rather from the intersection of political will and institutional capacity. Indonesia's political climate, characterized by a delicate balance of power dynamics and historical legacies, shapes the government's inclination and ability to enforce human rights effectively (Mihir, 2023). Persistent

challenges such as corruption, bureaucratic inertia, and socio-political complexities impede the translation of legal mandates into tangible rights protections. Moreover, entrenched interests and historical injustices frequently intersect with governance priorities, diluting the government's commitment to prioritizing human rights enforcement.

Under Article 51 of the United Nations Charter, which delineates the inherent right to self-defense, the case of Indonesia's alleged inability and unwillingness to prevent gross human rights violations perpetrated by non-state actors is complex (Tanamal, 2024). While Article 51 acknowledges the inherent right of individual or collective self-defense in the face of armed attack, it also mandates that such actions be reported to the Security Council, which holds the primary responsibility for maintaining international peace and security. Indonesia's purported inability to prevent human rights violations may stem from various factors, including logistical constraints, resource limitations, and challenges in enforcing law and order in certain regions. Additionally, the unwillingness to intervene could be influenced by political considerations, concerns about sovereignty, or complexities related to internal conflict dynamics. However, the extent to which Indonesia could have reasonably prevented these violations, particularly by non-state actors operating within its borders, remains subject to scrutiny and interpretation within the framework of international law and human rights norms.

5. Conclusion

In conclusion, the Unwilling and Unable Test serves as a crucial mechanism in assessing gross human rights violations perpetrated by non-state actors in Indonesia. Through its application, we have gained insights into the complexities surrounding accountability and responsibility when state institutions are either unwilling or unable to address such violations. However, while the test offers a framework for evaluating state response, its efficacy relies heavily on the willingness of international bodies and state actors to enforce its findings. Therefore, to effectively address human rights abuses by non-state actors in Indonesia, it is imperative for the international community to exert pressure on the Indonesian government to fulfill its obligations in protecting and promoting human rights. Additionally, investing in capacity-building initiatives within Indonesia to strengthen domestic mechanisms for addressing such violations is essential. Moreover, fostering partnerships between the government, civil society organizations, and international stakeholders can facilitate the implementation of comprehensive strategies to prevent and address human rights violations effectively. Furthermore, promoting dialogue and cooperation between the state and non-state actors is crucial in fostering a culture of respect for human rights and accountability. Ultimately, a multifaceted approach that combines international pressure, domestic capacity-building, and collaborative efforts is necessary to ensure the protection of human rights and the accountability of all actors involved in Indonesia.

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