Quo Vadis Trisakti, Semanggi I and II (TSS) case as a crime against humanity based on International Criminal Law perspective

Dellvin Sergio ^(a) Asmin Fransiska ^{(b)*} Tiffany Natania ^(c)

^(a,b,c) Faculty of Law, Atma Jaya Catholic University, Jakarta, Indonesia

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ABSTRACT

The Trisakti Semanggi I and II (TSS) occurred in 1998 and 1999 during the reformation movement towards democracy upholding in Indonesia. Several students and people have been killed and injured in those days. The National Commission on Human Rights (KOMNAS HAM) has investigated the case and concluded that the case has a gross human rights violation aspect. The documents have reached the General Attorney of the Republic of Indonesia. However, there are obstacles faced by the victims and their families, the legal debate on whether the TSS can be classified as a gross violation of human rights or not. The Attorney General stated this doubt in their meeting with the Indonesian House of Representatives. The government's political will has been examined through the Indonesian Constitution in this matter. This article explores the burden of sufficient proof to conclude the gross human rights violation in the TSS case. Under the thorough independent investigation done by KPP HAM, the Trisakti Semanggi I and II (TSS) fulfills the elements of past gross violation of human rights known as a crime against humanity. The TSS case has met elements ruled under the ICTY and ICTR Statute 14, such as Article 7 of the Rome Statute 15. The article will also provide current discourse in a legal argument between national institutions regarding the case and what should be done afterward. The research uses a qualitative method with case studies related to the crimes against humanity at the national and international levels.

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Introduction

During 1997, there was an Asian Financial Crisis striking around the world and Indonesia was one of the countries affected by the financial crisis, in such period along with the financial crisis, there was corruption, collusion and nepotism happening in the heart of the Indonesia government causing the rapid increase of living cost prior to the financial crisis, which eventually led to food shortage around Indonesia during 1998, in addition to the nepotism done by the former president in that period resulting in most of his family members to rule the country by granting them high positions in the government, he also issued a policy about Dual-Function of ABRI (*Dwi Fungsi ABRI*) allowing the military to obtain an authority both in politics as well as the military force, however eventually the policy causes a lot of deviation and was mostly used for the personal interest of the president (Permanasari, 2018; Zein & Alfian, 2018; Daud, 2016)

The former president-in-command insisted on running again for office, causing tension between the students and the former government since the student found the president to be unsuitable to rule the country due to his endless deviation for his own personal interest was unfavorable for the citizens. The students eventually initiated a movement to stop the president to run for office once more, but the People's Consultative Assembly still allowed him to continue his presidency, causing the students' movement to heat up and become more frequent than usual by heading out to the streets more often, until reaching its peak on March 1998 at the Trisakti

* Corresponding author.

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University, where the state apparatus started taking extreme measures to cease the movement by carrying out arbitrary shootings and excessive force, even having the sniper standing by the location at that moment which eventually led to the death of 4 students and many injuries of both students and the mass around Trisakti University and was commemorate now by the name of “Trisakti Tragedy” (Sujatmoko, 2019; Hendola, 2018).

After the excessive force done by the state apparatus, during 1998 the students started to aim not only to the president but also to the Dual-Function of ABRI to limit their role in politics and the impact done by the policy, causing more students throughout Indonesia to express their displeasure on both the government and the policy which then resulted in the start of another movement to stop the assembly done by both the Parliament and the People’s Consultative Assembly, where they appointed the former vice president to took over the president’s position in order to cease the dejection by the citizens of Indonesia. However, in return more death and injuries had been reported since the state apparatus also proceed with a similar approach of measures as to what they have done during the Trisakti Tragedy, hence this tragedy was then called the “Semanggi 1 Tragedy”. The Tragedy did not conclude there, and continue to happen once more for the second time during 1999 that was named as the “Semanggi 2 Tragedy” since the tragedy took place at Semanggi where the students went for another movement to express their displeasure and demand the parliament to took down the Draft of Law of Measures for Dangerous Circumstances (RUU PKB) as the draft legislation contains a few controversial articles that justifying the military to conduct military operation where both students and civilians fear the misuse of that article since the military has already been part of the politics, so that article would only grant the military more power and the justification of their actions despite the human rights violation done by the military. The draft legislation was eventually passed by the parliament that caused the biggest wave of movement which led to the crash between the students and the state apparatus that resulted in a lot of deaths and injuries both the students and the state apparatus, during that time what the state apparatus had done were similar to the previous Trisakti and Semanggi 1 Tragedy where they did the arbitrary shootings, the use of excessive force and the presence of sniper as well (Setiawan, 2020; Evanty, 2020).

Those tragedies were then called the “TSS Tragedy”, all the tragedies happened in chronological order since the Asian Financial Crisis and the former presidential system, after occurrence of those tragedies, the government further composed a team called Joint Facts Finding Team (TPGF) (Purdey, 2006), with the duty to locate the real perpetrators behind those tragedies. TPGF have concluded that they discover the measures done by the state apparatus to the students, civilians and even the medical team were considered as inhumane violence which include assassination, persecution, rape and other forms of sexual harassment, forced to flee and deprivation of liberty and physical freedom, other than that the state apparatus also met the elements of crimes against humanity where they did a systematic attack towards the civilians, that was portrayed through their inhumane violence. Through the investigation done by the TPGF, during the Trisakti Tragedy the state apparatus in their attempt to disperse the crowd by attacking inside the campus, had violated the operation standard to disperse the crowd by using tear gas, excessive force and real rounds of a firearm which eventually led to indiscriminate shootings, that should have been started with rubber bullet gun and the use of firearms should not be excessive as well and even during the tragedy at that time, there were many students that was physically and sexually harassed by the state apparatus. In addition to the use of excessive force and firearms by the state apparatus, the minister of defense and security at that time also justified the actions of those state apparatus.

The military had also conducted operations called “*Operasi Mantap ABRI* (1997-1998) and *Operasi Mantap Brata* (1999)” where these also believed to have met the elements of crimes against humanity where the state apparatus had planned out a strategy to overcome the students and another element was where the state deployed a massive amount of state apparatus alongside with all the full violence equipment, not only that the attack was systematically planned, it was also happened to meet the elements of widespread where referring to the international human rights law, refers to the frequent attack and how the state apparatus directed their force against a multiplicity as well as the magnitude of the attack was sufficiently huge to be considered as crimes against humanity (Juwana, 2003).

The accountability of the perpetrators for the Trisakti Tragedy was later brought to the military court during 1998 which held the relevant state apparatus on field-duty for misconduct of procedure in dispersing the crowd, and there were no claim upon the crimes against humanity during the military court and there were no discussion at all about the chain of commands within the state apparatus, and most of the state apparatus were only given 2 - 10 months of serving time in prison (Kartika et al., 2020).

Literature Review

Although the International Human Rights Law, inspired in namely in Bill of Rights, tries to influence the member state to fulfill the human rights obligation, the human rights abuses happen, and to some extent, the states’ perpetrators are untouchable by law and court. The prevention and punishment regarding human rights abuses become the global calls. Human rights abuses occurred in many regions, especially when the State was authoritarian. In some states, the transition from authoritarian to democracy faces human rights issues, including Indonesia. Tsuitsui (2013) and Juwana (2003) describe the tension on Trisaksi Semanggi Case in 1998 (TSS I) and 1999 (TSS II).

Under international human rights law, gross human rights violations can be identified through the elements of crimes. Rome Statute establishes the International Criminal Court (ICC) to examine and try the human rights perpetrators deliver the element of crimes found in Article 5 until 8 of the Statute. Zerner (2014); Arnold (2004); Norman and Trachtman (2005) classified the elements of

crimes under Article 7 of the ICC regarding crimes against humanity, and those elements of crimes can be found in the TSS case. Based on Crawshaw and Holmström (2001), the character and element of crimes under ICC should be fulfilled in TSS case are (1) murder, (2) Persecution against identifiable groups or collectively on political grounds and other inhumane acts, (3) Attack directed against any civilian population, and (4) Widespread and Systematic.

The National Human Rights Commission has investigated and concluded that the TSS case is a gross human rights violation under Human Rights Court Act No.26 the Year 2000. Komnas HAM established KPP HAM and TGPF to conduct the investigation and reported the result to the Attorney General. The unclear solution on this case to know gives the signal on how impunity in Indonesia is still haunting. Nainggolan and Katharina (2020) and Joseph in 2019 describe how impunity will lead to injustice for the victims of human rights violations. Galand (2019); Shahbazi et al. (2015), and Akande and Shah (2011) describe that the State has the obligation not only to punish the wrongdoer as the principle of justice but also as stated by Sujatmoko (2019) the State should give guarantee to non-repetition of the human rights and deliver the victims' rights.

Juridical review and case analytic

This research was conducted through qualitative research through juridical review and case analytic. The analysis of the Trisakti and Semanggi I and II case will be reviewed based on the international human rights law and the human rights judgment in international tribunal court. The research will focus on the element of crimes and state responsibility based on international criminal law and human rights law.

The State Obligation on the Human Rights Violation Based on International Treaties

In bringing such a case to justice, this paper has to *recall* which treaties Indonesia is bound to Through The ratification of the International Covenant on Civil and Political Rights under Law Number 12 Year 2005. Therefore, Indonesia has to fulfill every positive and negative obligation which are legally binding. After years of meticulous investigation consecrated in various investigations, writings, conferences, etc. Indonesia has yet recognized the TSS Case as a gross violation of human rights which inherently precluded the case in acquiring justice. Nevertheless, this paper has discovered several violations of ICCPR Articles which include the following:

- i. Article 1 (1) ensures rights to self-determination, specifically rights to determine their political status.
- ii. Article 2 (3)(a) ensures rights to administrative justice for those rights that has been violated to obtain effective remedies.
- iii. Article 6 (1) ensures the right to life constitute as one of the *non-derogable* rights in any circumstances.
- iv. Article 7 ensures that everybody shall not become subject to inhumane treatment.
- v. Article 19 (2) ensures freedom of expression in various kinds of media, orally, written, art, etc.

After such violations were discovered under the Articles of ICCPR, *recalling* article 53 (1) Law Number 24 of 2003 concerning administrative court, individuals or corporations who are deprived of their rights from a ruling of state administration, have the right to submit a lawsuit through domestic administrative court. This article is in line with Indonesian Constitution Article 27 (1) and Article 28D (1). Therefore, all individuals have the right to file a lawsuit using every legal effort, national or international when violations of human rights are present. *Emphasizing* that the state has an obligation and duties that is binding to fully respect, to protect and to fulfill human rights. To respect means that the state must never intervene with the enjoyment of human rights. To Protect means that the state has the responsibility to prevent third parties from intervening in the exercise of human rights. Lastly to comply, the state must have the right apparatus such as legislative, administrative, budgetary, judicial, promotional and other measures to ensure the realization of rights and to provide assistance in realizing those rights (facilitate and provide) (Tsutsui et al., 2013).

Recommends that state officials who have violated gross violation of human rights, crime against humanity concatenate Trisakti, Semanggi I and Semanggi II tragedies to be held accountable. Crime against humanity is stipulated in Article 7 Rome Statute of International Criminal Court, similarly in Indonesia's domestic law Article 9 Law Number 26 of 2000 concerning Human Rights Court:

- i. Murder;
- ii. Persecution against an identifiable group on political grounds;
- iii. Rape and other sexual violence;
- iv. Enforced disappearance; and
- v. Other inhumane acts causing great suffering, severely injuring physical or mental health.

Noting that the TSS tragedies crime against humanity to be granted the principle of retroactivity, where the principle of legality is narrowly interpreted merely as "principle of justice" (Galand, 2019). The principle of retroactivity will ensure legal certainty in limiting the chance of perpetrators become unpunished. Referring to the Nuremberg judgment that "principle of legality must be read

down when faced with the most serious crimes of concern to the international community". Whereas *nullum crimene sine lege praevia* was trampled by the need to ensure substantive justice to penalize acts that have deeply harmed the society. The judgment takes into account by noting that those who attack are in full realization of the wrongdoing. Therefore, it is essential to punish the wrongdoings of attackers (Shahbazi et al., 2015).

Recognizing that Indonesia's domestic law has failed to incorporate relevant international human rights norms. Therefore, to be granted the "possibilities judicial enforcement which takes place in international courts that includes the human right tribunals, quasi-judicial bodies to handle state responsibilities and international criminal tribunal to execute penal responsibility of individuals" (Akanke & Shah, 2011). It is only fair for the TSS Case to be brought to justice by utilizing international means as a subsidiary approach. This paper will also seek to apply international customs that have been often referred to as state practice in various States enacting the principle of *Jus Cogens*. *Jus cogens* is also known as peremptory norms/customs concerning all States and States have the obligation in protecting such customs and is recognized by the international community that such norms are protected from derogation. Those fall under peremptory norms includes unlawful use of force, torture, genocide and crime against humanity (Koh, 2004). Whether state members are in consonance with the treaty or not, the state has the obligation to accept the rule under the provisions of Customary International Law (Norman & Trachtman, 2005). The obligations of "*erga omnes*" of international customs that are applicable towards all and States are obliged in protecting crimes against humanity.

TSS Tragedy as Crime Against Humanity towards Past Gross Violation of Human Rights.

Under the thorough independent investigation done by KPP HAM, it can be concluded that the tragedy of Trisakti, Semanggi I and Semanggi II (TSS) had met the elements of past gross violation of human rights known as a crime against humanity (Zerner, 2014). The TSS case has met elements ruled under the ICTY and ICTR (Arnold, 2004) Statute which is similar to those in Article 7 of the Rome Statute. The fulfillment of these aspects (I) includes (a) there must be an attack, (b) the act of perpetrators must be part of the attack, (c) the attack directed against any civilian population, and (d) widespread and systematic. This paper will also seek to discuss (II) individual and State Responsibilities post-tragedy by law enforcement officials.

The movement of TSS that is under the supervision of The Head of Regional Police (*Kapolda*) and *Panglima Jaya* has concretely shows an attack to both students and civilians (Juwana, 2003). These attacks include, as follow:

i. Murder

Tensions that rose within the demonstration caused the use of excessive force of firearms (Steyr and SS-1) which then led to arbitrary shootings/indiscriminate shootings done by law enforcement officials. It is mandatory to point that the use of firearms is only authorized if it less dangerous, meaning is not practicable and limited to a minimum extent only (Crawshaw and Holmström, 2001). Firearms should only be used in self-defense or to defend others against threat of death or serious injury to prevent serious crime involving grave threat to life. Hence, the use of firearms in the TSS tragedy was unproportionate since the act of demonstration done by unarmed students cannot be deemed as a threat to one's life (Crawshaw and Holmström, 2001).

The placement of unarmed students and civilians as a threat were unproportionate to the use of firearms against them as it showed unlawful interpretation. The use of firearms against these "threats" did not qualify as a last-resort method, especially when there is no clear action from the law enforcement officials in pursuing non-lethal alternatives. Therefore, law enforcement officials have the obligation to carefully calculate the amount of force used in responding to the "threats" and it may not exceed the momentum of the "threats" itself. The brutal force used by law enforcement officials covers both physical and mental suffering which fall under the category of inhuman treatment. Such brutal force constitutes corporal punishments. Referring to the judgement of *Tyler v. the United Kingdom* judgment. Corporal punishment means the involvement of a human being inflicting physical violence upon other human being on the basis of an attack against one's dignity and physical integrity. The application of the judgement towards the case implies that civilians met with brutal force were objects in the power of authorities.

The practice of arbitrary shootings executed by law enforcement officials has led to the act of depriving one's life which violates International Covenant Article 6 and Article 7 of ICCPR which protect the Right to Life and freedom from inhuman and degrading treatment. The same rights are stipulated in Indonesia Domestic law Article 28A Indonesia's constitution and Article 4 & 9 Law Number 39 Year 1999 concerning Human Rights. Arbitrary shootings which result in the death of students and civilians done by law enforcement officials will be further elaborate in the acts of the perpetrator.

The use of firearms also had been falsely abused to restrict the freedom of expression and assembly of these students. The restrictions of using firearms are deemed as inappropriate tactical tools with the purpose to policing and dispersing assemblies. The use of firearms is only necessary if less threatening methods were ineffective (Crawshaw and Holmström, 2001).

The arbitrary shootings towards civilians and volunteers indicate that law enforcement officials have failed to provide warning when firearms were to be discharged. Hence, law enforcement officials portray lack of transparency in communicating with students and civilians (Crawshaw and Holmström, 2001).

ii. Persecution against identifiable groups or collectively on political grounds and other inhumane acts.

The TSS tragedy has indicated persecution against identifiable groups, in this case students with their political stance as enshrined in Article 9(h) Law No. 26 year 2006. Students and those who were actively involved in a resistance movement may qualified as victims of crimes against humanity (Arnold, 2004). The persecution done by law enforcement officials were in the form of excessive beating (baton), kicking, rubber bullets, bite from sniffer dogs and tear gas (Billah, 2009). These forms of excessive violence most likely be applied to handle unproportionate conflicts in which students, civilians including volunteers joined were unarmed (without protective gear). These inhumane acts resulted in physical, mental harm and death. Aside from the misuse of firearms, law enforcement Official has violated the right to life and the unproportionate use force with other measures such as rape, enforced disappearance and depriving of one's physical liberty.

According to the Human Rights Standards and Practice for the Police, it is mandatory for law enforcement officials to be held accountable for the use of force and firearms. Law enforcement officials do not only comply with those who stand on the field the day of the tragedy but also those who are in command – Superior officials. The actions executed by the subordinate of The Head of Regional Police dan *Panglima Jaya* are not based on self-arbitration but must have the incentive of those who are superior and in command. Therefore, Superior officials to be held accountable. Through the usage of wide interpretation, superiors can be held accountable by being an *Uitlokkings*. *Abusing their authority in hegemonizing subordinates to use excessive force under the disguise of "authority order". It is mandatory for both preparators, both Uitlokkings and Medeplegen to be held liable for their action – Individual criminal responsibility.*

Those who greatly affiliate with the military must also be held accountable. Former president of Indonesia Soeharto and his vice president, B.J. Habibie regime led the implementation of dual function military doctrine (Juwana, 2003). This dual function was greatly opposed by society and students, since this regime has violated human rights – rights to take part in the conduct of public affairs (directly or through freely chosen representatives). Dual function military doctrine was not a democratic act as it did not represent the aspirations of Indonesian people rather the aspirations of Soeharto himself.

iii. Attack directed against any civilian population

Civilian populations can be defined as those who do not take any active part of the hostilities (Arnold, 2004). The TSS tragedy has caused hundreds of civilians to be the victims of arbitrary shooting which resulted in death. The attack upon civilians constitute as a crime against humanity under article 7 Rome Statute. Whether it is civilian or not, law enforcement officials have violated article 28(c) UU 34/2004 and article 19 para. 1 UU 2/2002, which explicitly state that law enforcement officials (Indonesian National Army and Head of Indonesian National Police) have the obligation to uphold human rights. However, the attack against civilians through indiscriminate shootings shows the violation of human rights, more specifically the Right to Life.

iv. Widespread and Systematic

According to the report of KPP HAM, tragedy TSS was the result of a plan in the face of the wave of demonstrations done by students and society. This plan was formally set on policy "Operasi Mantap Abri (1997-1998) and "Operasi Mantap Brata (1999). Plans that have been finalized are then implemented by forming operations on different areas that hold the demonstration. Besides having a formal plan, KPP HAM states that this plan was an action in upholding Soeharto's and B.J. Habibie regime (Billah, 2009).

TSS tragedy is a crime against humanity as it also fulfills the elements of the widespread of the frequency of attacks and the number of victims. TSS were 3 different tragedies happening in three different times, this repetition of this tragedy, magnitude and the similar use of force has proofed the widespread of the case. The sole fact that this tragedy occurred three times indicates Indonesia's minimum effort in upholding the principle of legal certainty. Domestic law has failed in anticipating this variant of this case; therefore, this case keeps repeating itself.

Individual and State Responsibilities Post the Human Rights Violation by law enforcement officials and Human Rights Reform in Indonesia

Based on the above, it has explicitly delineated the responsibility to hold those who directly perpetuate the crime against humanity. However, it is important to make sure law enforcement officials and the state will put the maximum effort in granting multiple remedies for victims through non-judicial and judicial methods that are to be carried by competent authorities (Article 2 (c) ICCPR) (Crawshaw and Holmström, 2008). Remedies are interpreted as the right to find justice, in a form of accessibility and reflected in domestic law. Effective remedies are required to ensure the right to justice of victims and to be done by Law Enforcement officials (Article 28D UUD 1945).

Post tragedy – Indonesia attorney general, who has the right to investigate and prosecute gross violation of human rights independently, impartially, promptly, thoroughly, effectively, credible and transparent. The obligations under article 2 and 3 ICCPR that investigation and prosecutions aimed to hold those responsible accountable, preventing impunity and justice for victims (Joseph, 2019). However, Indonesia's attorney general has failed to investigate and prosecute the TSS tragedy with the "legal" ground cited from the third commission of DPR RI. The ground attorney general has used as a reason to discontinue the process of investigation further proof of the violation of AAUPB enshrined in Article 8 Law Number 30 Year 2014 concerning Government Administration, principle of prudence and principle of professionalism. Violation happened because the attorney general took into their account to stop the investigation process based on the commission III DPR RI which included zero legal basis (Judgment, MA RI No.213

K/TUN/2007). Attorney general action contradicts Article 2 para.3. ICCPR which allows victims to access remedy through a competent authority with the possibility of judicial path. With a mere judgment done with zero legal basis, the attorney general has prevented the TSS tragedy from receiving its treatment as a gross violation of human rights. Besides the accountability of the attorney general, states must also fulfill its obligations to ensure the justice of victims of past gross violation of human rights.

The case was eventually brought to the house of representatives, where they concluded that there were no gross violation of human rights during the TSS Tragedy, the house of representatives can be considered to have no authority in deciding whether a case have or have not violated the gross violation of human rights since it was based solely on the vote during the Commission III meeting in the House of Representative and they were not an investigator by law but a political group which made them not eligible to vote upon the tragedy, which made their judgment to be questionable (Nainggolan and Katharina, 2020).

The Attorney General at that time also had no intention to find justice for the victims and the victim's family since they concluded the report done by Komnas HAM didn't meet the formal provisions required in KUHAP, whereas Komnas HAM role as an inquiry doesn't required to follow the KUHAP formal provisions, which eventually made the case to face no justice.

From the thorough research backed with KPP HAM and TGPF we have concluded that the TSS tragedy was a gross violation of human rights – crime against humanity. This case has violated both national and international law on human rights law. Therefore, it is very important to hold every individual responsible, directly or indirectly to bring justice to both victims and effective remedies in the form of restitution, Compensation, Rehabilitations, and Guarantees of non-repetition.

- i. Restitution should be the victim's and it is family right to get a fair restitution by the perpetrators or the third party which is the government in this context, in the form of replacement which should include the return of one's right or a settlement on the suffering or loss, replacement of cost incurred as a result of victimization as well as provision of service and restoration of rights. Restitution was an option for the choice of sentencing, besides the criminal sanctions. *The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms*).
- ii. Compensation was part of state responsibility if the perpetrators wasn't able to compensate fully their responsibility
- iii. Rehabilitation was a form to provide education, medication and other forms of service as well as protection for the victim's and their families in order for them to lead their life as before the tragedy, and will be eventually protected by the country.
- iv. Guarantees of non-repetition was a form to attempt a correction and to identify the wrongdoings inside the law system, so that eventually later on there will be no similar case that happened as well as no repetition for the victims, for example the case of *Herrera Ulloa v Costa Rica* where the court takes the legislative measure which was the guarantees of non-repetition and have resulted in the change of Costa Rica Domestic Legal System.

Based on the State Obligation under international human rights law, TSS case should be solve by judicial foreclosure. 20 years have passed but there is still no justice served for victims and victim's families. Until today, the accountability of perpetrators lacks "the mind" behind these widespread and systematic crimes that still roam freely. Those who directly conduct shootings during the TSS tragedies were judged using military court that shows the national law on human right can't be used upon them twice because of the *ne bis in idem* principle, meanwhile there is no trial for them who commanded the shooting to be done. Under the human rights instruments, Indonesia has to ensure the protection of victims and witnesses who are willing to speak up about the TSS tragedies. One of rape victim from the aftermath of the TSS case was killed a week before she delivered her testimony on the united nation and all the evidence she's been collecting about the rape that happened during the riot was destroyed completely by some groups that was remain unidentified till this day.

The demand the ratification of Rome Statute by Indonesia government also should be considered to ensure the responsibility to the wrongful acts of crime against humanity. Ratification was an opportunity to help Indonesia to build an effective system of justice that would ensure the human right protection for people around the world and to have a review on the national law to investigate and prosecute crimes especially the one that violate human rights and to appeal the case to the International Criminal Court. Ratification was an opportunity to help Indonesia to build an effective system of justice that would ensure the human right protection for people around the world and to have a review on the national law to investigate and prosecute crimes especially the one violating human rights and to appeal the case to the International Criminal Court. (Indonesia and the International Criminal Court, 1999, *Indonesia's statement to the Sixth Committee of the United Nations General Assembly Sixth Committee*)

One of the concepts of non-repetition also enshrined in the ideas of the establishment of the Commission of Truth and Reconciliation (KKR) around the world when the formal legal or legal proceeding are hindered to be able to bring the criminals of human rights past abuses before the court. The establishment of KKR could be an alternative solution to ease Komnas HAM role on disclosing and reporting the truth about the human right violation that was related with certain political factors or the response to the authoritarian power.

Based in the International criminal liability, the crimes against humanity should be held accountable for the official states when by the individuals that committed the killings or murder. Thus, those of the individuals that was responsible for supervising the military and the police force in the location had the ability to limit the force used by the troops in the location but they did not also hold responsible. The individuals that had the higher rank obviously have the control over the whole military and the police force, and

have the authority to command a certain job to be done by their subordinates since both the military and the police force was operating on the command operation.

The reformation of Tribunal on The Gross of Human Rights bill also should be proposed. One of the weakness of this bill is the limitation role of Komnas HAM. Komnas HAM wasn't able to bring their findings of investigation to justice, since the Attorney general find it to be not fitted as the formal provision, hence it was a dead end for the Komnas HAM since the only one that can bring the case to the court was the Attorney general, that's why there should be a bill for Komnas HAM to be able to bring their findings to justice.

Ratification was an opportunity to help Indonesia to build an effective system of justice that would ensure the human right protection for people around the world and to have a review on the national law to investigate and prosecute crimes especially the one that violate human rights and to appeal the case to the International Criminal Court. (Indonesia and the International Criminal Court, 1999, *Indonesia's statement to the Sixth Committee of the United Nations General Assembly Sixth Committee*).

A legal action should be taken for criminals of the human rights violation who did the obstruction of justice. Many high-ranking officials at that time refused to provide their statement upon what happened during those tragedies that made the investigation being obstructed. Hence, there was no law that regulated it, to prevent the suspect of the human rights crime refuse to testify or give truth before the official tribunal. Therefore, many governments or military official tended to avoid it or just did not speak the truth and give the clear evidence about the human rights cases.

Conclusions

Based on those arguments, the Indonesian government should be responsible for the human rights violation in TSS Case. Under International human rights law, Indonesia government should protect and fulfil human rights to the victims of human rights and hold all the wrongdoer before the independent and impartial court or human rights tribunal.

According to the elements of crimes that has been elaborated above, it is apparent that Trisakti, Semanggi I and Semanggi II (TSS) Case had met the elements of past gross violation of human rights known as crime against humanity. The TSS case has met the elements ruled under the ICTY and ICTR. Furthermore, the crimes also fulfil the elements stipulated in Article 7 of the Rome Statute. The fulfillment of these aspects includes firstly (a) there must be an attack, (b) the act of perpetrators must be part of the attack, (c) attack directed against any civilian population, and (d) widespread and systematic.

In TSS case, Indonesia government which are unwilling to present before the court the main actors of the human rights abuses have violated the peremptory norms include unlawful use of force, torture, genocide and crime against humanity. Whether Indonesia conform with the treaty or not, Indonesia has the obligation to accept the rule under the provisions of Customary International Law. The obligations of "*erga omnes*" as a part of international customs applies towards Indonesia and Indonesia as a state of the international human rights law who obliged the government to prevent and punish the wrongdoers to ensure the protection of all people from crimes against humanity.

KPP HAM and TGPF have concluded that the TSS tragedy was a gross violation of human rights on crime against humanity. Based on the finding of Komnas HAM, this case has violated both national and international law on human rights law. Therefore, it is very important to hold every individual responsible, directly or indirectly to bring justice to both victims and effective remedies in the form of restitution, compensation, rehabilitations, and guarantees of non-repetition.

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