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INDONESIAN GOVERNMENT RESPONSIBILITIES AGAINST THE STATUS OF FORMER EAST TIMOR INDEPENDENCE FIGHTERS AT EAST NUSA TENGGARA IN HUMAN RIGHTS PERSPECTIVE

East Timor which has now become an independent and sovereign State of Timor Leste in 2002 still leaves humanitarian problems namely human rights violations related to the claims of former East Timor independence fighters who still become refugees at East Nusa Tenggara (NTT) after helping the Indonesian government fight under their leader, Eurico Guterres since integrated with Indonesia by means of Balibo Declaration in 1976 and hence Indonesia succeeded to make the East Timor region as the 27th Indonesian province. The issue that arises now is about the status of former East Timor independence fighters at NTT and the responsibility of the Indonesian government according to human rights law. This paper aims to find out the citizenship status of former East Timor independence fighters at NTT and what should be the responsibility of the Indonesian government toward their claims. The research method used is normative juridical with case and human rights law approaches based on qualitative analysis.

Based on the results of the discussion, it was concluded that in the system of modern human rights law that has been practiced by the United Nations, the Indonesian government as the duties bearer has 5 (five) obligations, namely the obligation to respect, protect, fulfill the human rights of the people, promote human rights and punish everyone who violates human rights. Having that former East Timor independence fighters had ever given advantage to Indonesia, the government should fulfill their human rights claims by means of providing facilities for the former East Timor independence fighters to obtain Indonesian citizenship status. Indonesia should also asked apologize to Timor Leste and work together to ask United Nations Organization to abolish the 403 names of former East Timor independence fighters from the black list of human rights serious crimes. The Indonesian government is also expected to immediately give compensation to 13.000 of the former East Timor independence fighters and let their children to become members of army, police and civil servant in Indonesia.

Keywords: responsibility; Indonesian government; former East Timor fighters; human rights.

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Зобов'язання уряду Індонезії щодо надання колишнім учасникам війни за звільнення південної провінції Східного Тимору Нуса Тенгара статусу борців за права людини

У Східному Тиморі, який у 2002 р. нарешті здобув незалежність і став суверенною державою Тимор-Лешті, все ще існують гуманітарні проблеми, пов'язані з порушеннями прав людини. Про це заявляють колишні учасники боротьби за незалежність Східного Тимору, які воювали в партизанських загонах під керівництвом Еуріко Гутерріша. Однак після переходу їх лідера на бік індонезійських урядових військ і приєднання в 1976 р. Східного Тимору за Декларацією Балибо до Індонезії, в результаті чого він став її 27-ю провінцією, вони знайшли притулок у провінції Східний Нуса Тенгара (НТТ).

Мета статті – з'ясувати статус громадянства колишніх борців за незалежність Східного Тимору в НТТ і відповідальність уряду Індонезії за порушення їх прав. При цьому автор використовує нормативно-правовий і прецедентно-правовий методи дослідження прав людини, засновані на якісному аналізі. У результаті зроблено висновок, що в системі сучасного права в галузі прав людини, яка практикується Організацією Об'єднаних Націй, уряд Індонезії, як носій зобов'язань у галузі прав людини, має виконати 5 зобов'язань, а саме зобов'язання поважати, захищати, дотримуватися прав людини, забезпечувати їх реалізацію і карати всіх, хто порушує права людини. З огляду на те, що колишні борці за незалежність Східного Тимору колись виступали на боці Індонезії, уряд має виконувати свої зобов'язання щодо прав людини, надавши їм можливість отримати статус індонезійського громадянства. Індонезія також повинна вибачитися перед Тимор-Лешті та спільно звернутися до Організації Об'єднаних Націй з проханням виключити 403 імені колишніх борців за незалежність Східного Тимору з списку серйозних злочинів проти людства. Очікується також, що уряд Індонезії негайно виплатить компенсацію 13000 колишніх борців за незалежність Східного Тимору і дозволить їх дітям стати військовослужбовцями, поліцейськими та державними службовцями в Індонезії.

Ключові слова: відповідальність; уряд Індонезії; колишні борці Східного Тимору; права людини.

Introduction. East Timor which has now become an independent and sovereign State of Timor Leste in 2002 still leaves humanitarian problems namely human rights violations related to the claims of former East Timor independence fighters who still become refugees at East Nusa Tenggara (NTT) after helping the Indonesian government fight under their leader, Eurico Guterres since integrated with Indonesia by means of Balibo Declaration in 1976 and hence Indonesia succeeded to make the East Timor region as the 27th Indonesian province¹.

The issue that arises now is about the status of former East Timor independence fighters at NTT and the responsibility of the Indonesian government according to human rights law. This paper aims to find out the citizenship status of former East Timor independence fighters at NTT and what should be the responsibility of the Indonesian government for their claims.

Methodology. This paper aims to find out the citizenship status of former East Timor independence fighters at NTT and what should be the responsibility of the Indonesian government for their claims. The research method used is normative juridical with case and human rights law approaches. Data collected from literatures study, browsing internet as secondary data and with descriptive analysis

Former East Timor independence fighters. Eurico Guterres, a leader of former East Timor independence fighters supported by around 13.000 people at East Nusa

¹ Indonesia. Department of Foreign Affairs and Department of Information. *The Province of East Timor: Development in Progress*. Jakarta: Department of Information, Republic of Indonesia, 1981.

Tenggara claims Jokowi, as the President of the government of Indonesia about the status of former East Timor independence fighters who become refugees and live without having legal protection. Even Eurico Guterres has been a citizenship as Indonesian but his status is still recorded in the list of the 403 people involved in serious human rights crimes so that he cannot go abroad even only to Timor Leste for visiting his family there. According to Eurico, there are some claims of former East Timor independence fighters toward the government of Indonesia. First, political certainty of the Indonesian government in relation with citizenship status. Second, legal certainty related to 403 people in which their names are included in the list of serious crimes to gross human rights violations during the 1999 East Timor opinion poll. Third, claim for compensation for 13.000 East Timor independence fighters including widows and orphans who remain loyal to the Republic of Indonesia. Fourth, the claim for awarding a certificate of appreciation to 13,000 East Timor independence fighters. Fifth, the Government is also asked to provide facilities and opportunities for the sons and daughters of East Timor independence fighters to become members of the TNI, Police, and Civil Servant or PNS. Sixth, ask the Indonesian government to settle the assets of Indonesian citizens left behind in the entire territory of Timor Leste and Seventh, ask the Indonesian government to remove the bodies of Indonesian heroes who died in East Timor into Indonesian jurisdiction¹.

Human rights perspective.

Human Rights definition.

Human rights according to Law Number 39 of 1999 concerning Human Rights is a set of rights inherent in humans as creatures of God Almighty and is a gift that must be respected, upheld and protected by the State, Law and Government and everyone for honor and protection of human dignity².

Article 1 of the United Nations General Declaration of Human Rights in 1948 emphasized that: Every human being is born free and equal in his honor and rights. They are given logic and awareness and must treat each of them in a fraternal spirit. Based on this article, human beings have freedom from fear, freedom from torture, freedom from slavery, for the survival of their rights of life and in the field of economy can demand equality. But in the context of human rights there are rights that can be limited by natural means reduced such as civil and political rights as regulated in the International Covenant on Civil and Political Rights in 1966 and also in the field of social and cultural economics as regulated in the International Covenant on Economic Rights the social and cultural aspects of 1966 and the limitation or reduction of these rights are usually in the form of the conditions given for obtaining such rights, for example the right to elect and be elected to State officials or legislative members of the people³.

¹ [http://regional.kompas.com/read/2017/09/28/Mantan Milisi Timor-Leste Ingin Dihapus dari Daftar Hitam PBB](http://regional.kompas.com/read/2017/09/28/Mantan_Milisi_Timor-Leste_Ingin_Dihapus_dari_Daftar_Hitam_PBB).

² Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia dan Undang-Undang Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia.

³ Isplancius, Konsep Dasar Hukum Internasional, UPT Unsoed, 2011.

Human Rights Principles

The universal principle is that all people, in all parts of the world, no matter what their religion, their citizens, what language, what ethnicity, regardless of their political and anthropological identity, and regardless of their disability status, have the same rights as humans. The undivided principle is defined as all human rights are equally important and therefore not permitted to issue certain rights or certain categories of rights from the division. The Equality Principle is considered a very fundamental human rights principle. Equality is interpreted as equal treatment, where in the same situation must be treated equally, and where in different situations with little difference treated differently. Equality is also considered an absolute prerequisite in a democratic country while equality before the law, equality of opportunity, equality of access to education, equality in accessing a fair trial, equality of belief and worship in accordance with their beliefs and others are important in fulfilling human rights. As for the principle of non discrimination occurs when everyone is treated or has an unequal opportunity such as inequality before the law, inequality of treatment, or education opportunity, and others. The principle of human dignity aims to ensure that all people can live in dignity. All people must be respected, treated well, and considered valuable. Therefore if someone has rights, that means he can live a life with dignity. The State Responsibility Principle explains that the fulfillment, protection and respect of human rights are the responsibility of the State. So the main actor who is burdened with the responsibility to fulfill, protect and respect human rights is the State through its government apparatus. This principle is written throughout international covenants, human rights conventions and domestic regulations.¹

Responsibility of Indonesian Government.

Fulfillment, protection and respect for human rights are the responsibility of the State. The main actor who is burdened with responsibility to fulfill, protect and respect human rights is the state through its apparatus. This principle is written throughout the international covenants and human rights conventions and national or national regulations of a country. In Indonesia, this State obligation is explicitly recognized in Article 8 of Law No. 39 of 1999 concerning Human Rights states that: Protection, promotion, enforcement and fulfillment of human rights are primarily the responsibility of the government.²

Article 71 of Law Number 39 of 1999 concerning Human Rights states that, the Government is obliged and responsible to respect, protect, enforce and promote human rights as regulated in this law, legislation others, and international law on human rights accepted by the Republic of Indonesia. This principle can also be found in the consideration of the Universal Declaration of Human Rights which reads: Member States pledge to achieve progress in the promotion and general respect for human rights and fundamental freedoms, through collaboration with the United Nations³.

¹ Ibid.

² Eko Riyadi, *Hukum Hak Asasi Manusia, Perspektif Internasional, Regional dan Nasional*, PT Raja Grafindo Persada, Depok, Rajawali Pers, 2018, hal 31.

³ Universal Declaration of Human Rights 1948.

The State of Indonesia on one side and Indonesian citizens or people on the other side in the context of the modern legal regime which is fully facilitated by international legal mechanisms that are technically carried out by the United Nations categorizes Human rights into two, namely first, rights holders are individuals or groups of both citizens and non-citizens, while the duty bearer/holder is the State. Respect for the human rights law system has a different capacity, namely the State as duty holder/bearer while the people as rights holder. Being the duty bearer/holder raises at least 5 (five) State obligations, namely the State is obliged to respect people's rights (obligation to respect), obligation to protect, obligation to fulfill, obligation to promote human rights to the people, and the obligation to punish a person or group of people or legal entities such as a corporation (obligation to punish) so that a sense of justice for the people is fulfilled. Instead people have human rights that must be respected, protected, fulfilled, given promotion / socialization of human rights, and given a sense of justice by the State.¹

Closing. Based on the results of the discussion, it was concluded that in the system of modern human rights law that has been practiced by the United Nations, the Indonesian government as the duty holder/bearer has 5 (five) obligations, namely the obligation to respect, protect, fulfill the human rights of the people, promote human rights and punish every one who violates human rights. Given that former East Timor independence fighters have given advantage to Indonesia, the government should at least fulfill their human rights claims by providing facilities, as follows: First, there must be political certainty of the Indonesian government in relation with citizenship status. Second, legal certainty related to 403 people in which their names are included in the list of serious crimes to gross human rights violations during the 1999 East Timor opinion poll. Third, claim for compensation for 13,000 East Timor independence fighters including widows and orphans who remain loyal to the Republic of Indonesia. Fourth, the claim for awarding a certificate of appreciation to 13,000 East Timor independence fighters. Fifth, the Government is also asked to provide facilities and opportunities for the sons and daughters of East Timor independence fighters to become members of the TNI, Police, and Civil Servant or PNS. Sixth, ask the Indonesian government to settle the assets of Indonesian citizens left behind in the entire territory of Timor Leste and Seventh, ask the Indonesian government to remove the bodies of Indonesian heroes who died in East Timor into Indonesian jurisdiction. The Indonesian government is expected to immediately form a special team to resolve the cases of citizens of former East Timor independence fighters who are still fighting for their human rights claims at NTT.

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Ответственность правительства Индонезии за предоставление бывшим борцам за освобождение южной провинции Восточного Тимора Нуса Тенгара статуса борцов за права человека

В Восточном Тиморе, который в 2002 г. наконец обрел независимость и стал суверенным государством Тимор-Лешти, все еще существуют гуманитарные проблемы, связанные с нарушениями прав человека. Об этом заявляют бывшие участники борьбы за независимость Восточного Тимора, сражавшиеся в партизанских отрядах под руководством Эурико Гутерриша. Однако после перехода их лидера на сторону индонезийских правительственных войск и присоединения в 1976 г. Восточного Тимора по Декларации Балибо к Индонезии, в результате чего он стал ее 27-й провинцией, они нашли убежище в провинции Восточная Нуса Тенгара (НТТ).

Цель статьи – выяснение статуса гражданства бывших борцов за независимость Восточного Тимора в НТТ и ответственности правительства Индонезии за нарушение их прав. При этом автор использовал нормативно-правовой и прецедентно-правовой методы исследования прав человека, основанные на качественном анализе. Сделан вывод, что в системе современного права в области прав человека, которая практикуется Организацией Объединенных Наций, правительство Индонезии как носитель обязательств и обязанностей в области прав человека имеет 5 обязательств, а именно обязательства уважать, защищать, соблюдать права человека, обеспечивать их осуществление и наказывать всех, кто нарушает права человека. Учитывая, что бывшие участники борьбы за независимость Восточного Тимора когда-то выступали на стороне Индонезии, правительство должно выполнять свои обязательства в области прав человека, предоставив бывшим борцам за независимость Восточного Тимора возможность получить статус индонезийского гражданства. Индонезия также должна извиниться перед Тимор-Лешти и совместно обратиться в Организацию Объединенных Наций с просьбой исключить 403 имени бывших борцов за независимость Восточного Тимора из списка серьезных преступлений против человечества. Ожидается также, что правительство Индонезии немедленно выплатит компенсацию 13000 бывших борцов за независимость Восточного Тимора и позволит их детям стать военнослужащими, полицейскими и государственными служащими в Индонезии.

Ключевые слова: ответственность; правительство Индонезии; бывшие борцы Восточного Тимора; права человека.

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