LAW OF THE REPUBLIC OF INDONESIA NUMBER 26 OF 2000

ON

HUMAN RIGHTS COURT

BY THE BLESSINGS OF ALMIGHTY GOD

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering: a. that human rights constitute basic rights which is inherently inherent in humans, are universal and lasting, so that must be protected, honored, defended, and must not be ignored, lessen, or taken by anybody;

- b. that in order to participate in keeping world peace and guaranteeing the implementation of human rights and providing protection, certainty, justice, and a feeling of security to individuals or the public, a Human Rights Court must be immediately established to resolve massive human rights violations in accordance with the provisions of Article 104 section (1) of Law Number 39 of 1999 on Human Rights;
- c. that the establishment of the Human Rights Court to resolve massive human rights violations has been attempted by the Government based on Government Regulation in Lieu of Law Number 1 of 1999 on Human Rights Courts which are deemed inadequate, so that they are not approved by the Republic of Indonesia Parliament legislation, and therefore the Replacement Government Regulation of the Law needs to be repealed;

d. that based on the consideration as referred to in points a,
 b, and c, it is necessary to establish Law on Human Rights Court.

Observing

- : 1. Article 5 section (1) and Article 20 section (2) of the 1945 Constitution of the Republic of Indonesia;
 - 2. Law Number 14 of 1970 on Provisions of Principal of Judicial Power (State Gazette of the Republic of Indonesia of 1970 Number 74, Supplement to the State Gazette Number 2951) as amended by Law Number 35 of 1999 on Principal of Judicial Power (State Gazette of the Republic of Indonesia of 1999 Number 147, Supplement to the State Gazette Number 3879);
 - 3. Law Number 2 of 1986 on Public Court (State Gazette of the Republic of Indonesia of 1986 Number 20, Supplement to the State Gazette Number 3327);
 - 4. Law Number 39 of 1999 on Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to the State Gazette Number 3886).

With the Joint Approval of THE HOUSE OF REPRESENTATIVES

and

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To enact : LAW ON HUMAN RIGHTS COURT.

CHAPTER I GENERAL PROVISIONS

Article 1

In this Law:

1. Human Rights means a set of inalienable rights which is inherent to the nature and human existence creatures being of God Almighty and are the blessings from the Almighty that must be respected, upheld, and protected by the state, law, government and every person for the respect and protection of human dignity.

- 2. Massive Human Rights Violation means human rights violation as referred to in this Law;
- 3. Human Rights Court means special court of massive human rights violation;
- 4. Any Person means individual, group of people either civil, military, or police that are responsible individually;
- 5. Investigation means a series of investigator actions to find and find out whether there was an event that was alleged to be a massive human rights violation followed up with an investigation in accordance with the provisions regulated in this Law

CHAPTER II

STATUS AND LOCATION OF HUMAN RIGHTS COURT

Part One

Status

Article 2

Human Rights Court is a special court in Public Court.

Part Two

Location

Article 3

- (1) Human Rights Courts are located in regencies or municipalities of which jurisdiction cover the jurisdiction of related Public Court;
- (2) For Special Capital Region of Jakarta, the Human Rights Courts are located in each area of Public Court.

CHAPTER III SCOPE OF AUTHORITY

Article 4

The duties and authority of the Human Rights Courts are to examine and judge cases of massive human rights violations.

The Human Rights Courts also have authority to examine and judge cases of massive human rights violations committed by the Indonesian citizen beyond the border of the territory of Republic of Indonesia.

Article 6

The Human Rights Courts do not have the authority to examine and judge cases of massive human rights violations committed by persons under 18 (eighteen) year-old at the time of violation.

Article 7

Massive human rights violations cover:

- a. genocide;
- b. crimes against humanity;

Article 8

Genocide as referred to in Article 7 point a is any action committed with intent to destroy or annihilate in whole or in a part a national, racial, ethnic, religious group by:

- a. killing its members;
- causing massive physical or mental suffering to its members;
- c. creating living conditions that will result in destroy physically either to whole or partially;
- d. forcing actions with intent to prevent birth in the group;
 or
- e. forcibly transferring children out of the group to another group.

Article 9

Crimes against humanity as referred to in Article 7 point b is any action that is deliberately committed as part of a widespread or systematic attack directed against any civilian, in the form of:

- a. murder;
- b. annihilation;

- c. slavery;
- d. expulsion or deportation of residents by force;
- e. deprivation of liberty or arbitrary deprivation of other physical freedoms which violate (principles) the basic provisions of international law;
- f. torture;
- g. rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or other forms of sexual violence;
- h. persecution of a certain group or association based on the same political understanding, race, nationality, ethnicity, culture, religion, sex or other reasons that are universally acknowledged as being prohibited under international law;
- i. forced disappearance; or
- j. crime of apartheid.

CHAPTER IV PROCEDURAL LAW

Part One General

Article 10

In the event that is not regulated otherwise in this Law, the procedural law for cases of massive human rights violations is carried out based on the provisions of criminal procedural law.

Part Two

Arrest

- (1) The Attorney General as an investigator is authorized to make arrests for the purpose of investigating a person who is strongly suspected of committing massive human rights violations based on sufficient initial evidence;
- (2) The carrying out of the arrest duty as referred to in section (1) is conducted by the investigator by showing a

letter of assignment and giving the suspect an arrest warrant containing the identity of the suspect by stating the reason for arrest, the place of examination and a brief description of cases of accused massive human rights violations;

- (3) A copy of the arrest warrant as referred to in section (2) must be given to their family as soon as the arrest is made;
- (4) In the event of caught red handed, the arrest is carried out without a warrant provided that the arrester must immediately hand over the arrestee along with the evidence to the investigator;
- (5) The arrest as referred to in section (2) is carried out for not longer than 1 (one) day;
- (6) The arrest period is deducted from the sentence imposed.

Part Three Detention

Article 12

- (1) The Attorney General as an investigator and public prosecutor has the authority to detain or carry out further detention for the purpose of investigation and prosecution;
- (2) Judges of the Human Rights Court with their determination have the authority to detain them for the purposes of examinations in court;
- (3) Orders of detention or further detention are made against a suspect or defendant who is suspected committing massive human rights violations based on sufficient evidence, in the event that there is a situation that raises concerns that the suspect or defendant will flee, damage or eliminate evidence, and or repeat the massive human rights violations.

Article 13

(1) Detention for the purpose of investigation can be carried out for not later than 90 (ninety) days;

- (2) The period as referred to in section (1) may be extended for not later than 90 (ninety) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction;
- (3) In the event that the period as referred to in section (2) is exhausted and the investigation cannot be completed, the detention may be extended for not later than 60 (sixty) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction.

- (1) Detention for the purpose of prosecution can be carried out for not later than 30 (thirty) days;
- (2) The period as referred to in section (1) may be extended for not later than 20 (twenty) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction;
- (3) In the event that the period as referred to in section (2) is exhausted and the prosecution cannot be completed, the detention may be extended for not later than 20 (twenty) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction.

Article 15

- (1) Detention for the purpose of examination in the court of the Human Rights Court can be conducted for not later than 90 (ninety) days;
- (2) The period as referred to in section (1) may be extended for not later than 30 (thirty) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction.

- (1) Detention for the purpose of an appeal in the Provincial Court can be carried out for not later than 60 (sixty) days.
- (2) The period as referred to in section (1) may be extended for not later than 30 (thirty) days by the Chief Justice of the Provincial Court in accordance with its jurisdiction.

- (1) Detention for the purpose of an appeal to the Supreme Court can be carried out for not later than 60 (sixty) days;
- (2) The period as referred to in section (1) may be extended for not later than 30 (thirty) days by the Chief Justice of the Supreme Court.

Part Four

Preliminary Investigation

Article 18

- (1) Preliminary investigation of massive human rights violations is carried out by the National Commission on Human Rights;
- (2) The National Commission on Human Rights in conducting preliminary investigation as referred to in section (1) may form an ad hoc team comprising the National Commission on Human Rights and the public elements.

- (1) In carrying out the preliminary investigation as referred to in Article 18, preliminary investigators are authorized to:
 - carry out preliminary investigation and examination of occurrence arising in public based on their nature or scope may be presumed to have massive human rights violations;
 - receive reports or complaints from a person or group of people about the occurrence of massive violations of human rights, as well as seek information and evidence;
 - summon the complainant, the victim, or the party complained for their testimony to be requested and heard;
 - d. summon witnesses for their testimony to be requested and heard;
 - e. review and collect information at the scene and other places deemed necessary;

- f. summon the related party to provide written information or submit the required documents in accordance with the original;
- g. on the order of the investigator may take action in the form of:
 - 1) letter check;
 - 2) search and seizure;
 - local inspection of houses, yard, buildings, and other places occupied or owned by a particular party;
 - 4) bring expert in relation to the preliminary investigation.
- (2) In the event that preliminary investigators begin to investigate an event that allegedly constitutes massive human rights violations the preliminary investigator informs the investigator.

- (1) In the event that the National Commission on Human Rights holds that there has been sufficient evidence of occurrence of massive human rights violations, conclusion of the preliminary investigation is submitted to investigator;
- (2) Not later than 7 (seven) work days after the conclusion of the preliminary investigation is submitted, the National Commission on Human Rights hand over all results of the preliminary investigation to investigator;
- (3) In the event that the investigator holds that the investigation as referred to in section (2) is still incomplete, the investigator immediately return the results of the preliminary investigation to the investigator with instructions to be completed and within 30 (thirty) days as of the date of receipt of the result of preliminary investigation, the preliminary investigator must complete the shortcomings.

Part Five

Investigation

Article 21

- (1) Investigation of massive human rights violations is carried out by the Attorney General;
- (2) Investigation as referred to in section (1) does not include the authority to receive reports or complaints;
- (3) In carrying out the duties as referred to in section (1) the Attorney General may appoint ad hoc investigators comprising elements of government and/or public;
- (4) Before carrying out their duties, ad hoc investigators swear an oath or promise according to their respective religions;
- (5) Elements to be appointed as ad hoc investigators must fulfill the following requirements:
 - a. citizen of the Republic of Indonesia;
 - b. at least 40 (forty) years and at most 65 (sixty-five) years old;
 - c. undergraduate of law major or equal degree of other subject with expertise in the legal field;
 - d. physically and spiritually healthy;
 - e. authoritative, honest, just, and qualified;
 - f. loyal to Pancasila and the 1945 Constitution; and
 - g. have the knowledge and care in the field of human rights.

- (1) Investigation as referred to in Article 21 section (1) and section (3) is required to be completed at least 90 (ninety) days from the date of the investigation results received and declared complete by the investigator;
- (2) The period as referred to in section (1) may be extended for a maximum period of 90 (ninety) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction;
- (3) In the event that the period as referred to in section (2) is exhausted and the investigation has not been resolved,

- the investigation may be extended for a maximum period of 60 (sixty) days by the Chief Justice of the Human Rights Court in accordance with its jurisdiction;
- (4) If within the period as referred to in section (1), section (2), and section (3) of the investigation results is not obtained sufficient evidence, it is required to issue cessation warrant of investigation by the Attorney General;
- (5) Upon issue of cessation warrant of investigation, the investigation may only be re-opened and extended if there are other grounds and evidence complementing the proceedings to be prosecuted;
- (6) In the event of termination of the investigation as referred to in section (4) cannot be accepted by the victim or their family, the victim, the blood or the semen in a straight line up or down to a third degree are entitled to pre-trial to the Chief Justice of the Human Rights Court with its jurisdiction and in accordance with the provisions of prevailing legislation.

Part Six

Prosecution

- (1) The prosecution of massive human rights violations is done by the Attorney General;
- (2) In the performance of duties as referred to in section (1) the Attorney General may appoint ad hoc public prosecutor consisting of elements of government and or public;
- (3) Before performing his/her duties ad hoc public prosecutor swears or promises according to his/her own religion;
- (4) To be admissible to be ad hoc public prosecutor must be eligible:
 - a. citizen of the Republic of Indonesia;
 - b. at least 40 (forty) years and at most 65 (sixty-five) years old;

- c. undergraduate of law major and experienced as public prosecutor;
- d. physically and spiritually healthy;
- e. authoritative, honest, just, and qualified;
- f. loyal to Pancasila and the 1945 Constitution; and
- g. have the knowledge and care in the field of human rights.

The prosecution as referred to in Article 23 section (1) and section (2) is required to be executed not later than 70 (seventy) days from the date the investigation is received.

Article 25

The National Commission on Human Rights may at any time request written information to the Attorney General regarding the progress of the investigation and prosecution of massive human rights violations.

Part Seven Oath

Article 26

The adjudicator's oath and ad hoc Public Prosecutor as referred to in Article 21 section (4) and Article 23 section (3), the words read as follows:

"I swear/solemnly promise that I carry out this task, directly or indirectly, by the use of any name or any means, without giving or promising anything to any person".

"I swear/promise that I, to do or not to do something in this task, will never receive any promise or gift directly or indirectly from any person".

"I swear/promise that I will be loyal to and will defend and practice Pancasila as the basis of the state, the 1945 Constitution and the legislation applicable to the Republic of Indonesia".

"I swear/promise to always carry out this task honestly, carefully and objectively by not discriminating people, and will

uphold the ethics of the profession in executing my duty as best and as just as it would be for an officer who kind and honest in upholding law and justice".

Part Eight Examinations at Court Hearings

Paragraph 1 General

Article 27

- (1) The massive human rights violation is examined and decided by the Human Rights Court as referred to in Article 4;
- (2) The examination of the massive human rights violation as referred to in section (1) is conducted by a panel of 5 (five) judges of Human Rights Court, consisting of 2 (two) judges in the respective Human Rights Court and 3 (three) ad hoc judges;
- (3) The panel of judges as referred to in section (2) is led by the judge of the respective Human Rights Court.

Article 28

- (1) The ad hoc Judge is appointed and dismissed by the President as the Head of State on the motion of the Chairperson of the Supreme Court;
- (2) The number of ad hoc judges as referred to in section (1) is at least 12 (twelve) persons;
- (3) The ad hoc judge is appointed for a period of 5 (five) years and may be reappointed for 1 (one) term of office.

Paragraph 2 Ad Hoc Judge Appointment Requirements

Article 29

To be appointed as an ad hoc Judge must be eligible:

- 1. citizen of the Republic of Indonesia;
- 2. be faithful to Almighty God;

- 3. at least 45 (forty-five) years and at most 65 (sixty-five) years old;
- 4. undergraduate of law major or equal degree of other subject with expertise in the legal field;
- 5. physically and spiritually healthy;
- 6. authoritative, honest, just, and qualified;
- 7. loyal to Pancasila and the 1945 Constitution; and
- 8. have the knowledge and care in the field of human rights.

Ad hoc judges appointed as referred to in Article 28 section (1) prior to performing their duties are obliged to swear in accordance with their respective religion which they read as follows:

"I swear/solemnly promise that I carry out this task, directly or indirectly, by the use of any name or any means, without giving or promising anything to any person".

"I swear/promise that I, to do or not to do something in this task, will never receive any promise or gift directly or indirectly from any person".

"I swear/promise that I will be loyal to and will defend and practice Pancasila as the basis of the state, the 1945 Constitution and the legislation applicable to the Republic of Indonesia".

"I swear/promise to always carry out this task honestly, carefully and objectively by not discriminating people, and will uphold the ethics of the profession in executing my duty as best and as just as it would be for an officer who kind and honest in upholding law and justice".

Paragraph 3 Inspection Procedure

Article 31

The massive human rights violation, examined and resolved by the Human Rights Court within a maximum of 180 (one hundred and eighty) days from the date of the matter was passed to the Human Rights Court.

- (1) In the event of a massive human rights violation being appealed to the Provincial Court, the case is examined and decided within a period of 90 (ninety) days as from the case submitted to the Provincial Court;
- (2) The examination of the case as referred to in section (1) is conducted by a panel of 5 (five) judges comprising 2 (two) judges of the Provincial Court concerned and 3 (three) ad hoc judges;
- (3) The number of ad hoc judges in the Provincial Court as referred to in section (2) is at least 12 (twelve) persons;
- (4) The provisions as referred to in Article 28 section (1) and section (3), Article 29, and Article 30 also apply to the ad hoc adjudication of the Provincial Court.

- (1) In the event that a massive human rights violation is appealed to the Supreme Court, the case is examined and decided within a maximum 90 (ninety) days from the date the matter is submitted to the Supreme Court;
- (2) The examination of the case as referred to in section (1) is conducted by a panel of judges comprising 5 (five) persons comprising 2 (two) Supreme Judges and 3 (three) ad hoc judges;
- (3) The number of ad hoc judges in the Supreme Court as referred to in section (2) is at least 3 (three) persons;
- (4) The ad hoc judges in the Supreme Court are appointed by the President as the Head of State on the proposal of the House of Representatives of the Republic of Indonesia;
- (5) The ad hoc judges as referred to in section (4) are appointed for one term of 5 (five) years;
- (6) To be admissible as an ad hoc judge on the Supreme Court must be eligible:
 - a. citizen of the Republic of Indonesia;
 - b. be faithful to Almighty God;
 - c. at least 50 (fifty) years old;
 - d. undergraduate of law major or equal degree of other subject with expertise in the legal field;

- e. physically and spiritually healthy;
- f. authoritative, honest, just, and qualified;
- g. loyal to Pancasila and the 1945 Constitution; and
- h. have the knowledge and care in the field of human rights.

CHAPTER V

VICTIM AND WITNESS PROTECTION

Article 34

- (1) Every victim and witness in massive human rights violation are entitled to physical and mental protection from threats, harassment, terrorism and violence from any party.
- (2) The protection as referred to in section (1) is required to be carried out free of charge by law enforcement officers and security forces.
- (3) Provisions on the protection of victims and witnesses are further regulated by Government Regulation.

CHAPTER VI

COMPENSATION, RESTITUTION, AND REHABILITATION

- (1) Every victim and witness in massive human rights violations and or their heirs may obtain compensation, restitution and rehabilitation;
- (2) Compensation, restitution and rehabilitation as referred to in section (1) are included in the ruling of the Human Rights Court;
- (3) Provisions regarding compensation, restitution and rehabilitation are further regulated by Government Regulation.

CHAPTER VII CRIMINAL PROVISIONS

Article 36

Every person commits actions as referred to in Article 8 point a, point b, point c, point d, or point e are sentenced with capital punishment or imprisonment for life or imprisonment for a maximum of 25 (twenty-five) years and a minimum of 10 (ten) years.

Article 37

Every person commits action as referred to in Article 9 point a, point b, point d, point e, or point j are sentenced with capital punishment or imprisonment for life or a maximum imprisonment of 25 (twenty-five) years and a minimum of 10 (ten) years.

Article 38

Every person commits action as referred to in Article 9 point c are sentenced with a maximum imprisonment of 15 (fifteen) years and a minimum of 5 (five) years.

Article 39

Every person commits action as referred to in Article 9 point f, are sentenced with a maximum imprisonment of 15 (fifteen) years and a minimum of 5 (five) years.

Article 40

Every person commits action as referred to in Article 9 point g, point h, or point i are sentenced with imprisonment of not longer than 20 (twenty) years and a minimum 10 (ten) years.

Article 41

Experiments, conspiracy, or assistance to commit violations as referred to in Article 13 or Article 9 are punished with the same sanctions as the provisions as referred to in Article 36, Article 37, Article 38, Article 39, and Article 40.

- (1) A military commander or someone who effectively acts as a military commander can be held accountable for criminal acts that are within the jurisdiction of the Human Rights Court, which are carried out by troops who are effective in their command and control, or under effective control and power, and the crime is a result of improper control of the troops, namely:
 - a. the military commander or someone knows or on the basis of the current circumstances should know that the force is committing or has just committed a massive violation of human rights; and
 - b. the military commander or someone does not take appropriate action and is required in the scope of his power to prevent or stop the act or to give the perpetrator to the competent authority for investigation, investigation and prosecution.
- (2) A superior, both police and other civilians, is criminally responsible for the massive human rights violations committed by their subordinates under their effective power and control, because the superior does not properly control his or her subordinates, that is:
 - a. the supervisor knows or consciously ignores information that clearly shows that subordinates are committing or have just committed gross human rights violations; and
 - b. the superior does not take appropriate action and is required within the scope of their authority to prevent or stop the act or to give the perpetrator to the competent authority for investigation, investigation and prosecution.
- (3) The actions as referred to in section (1) and section (2) are threatened with the same sanctions as referred to in Article 36, Article 37, Article 38, Article 39, and Article 40.

CHAPTER VIII AD HOC HUMAN RIGHTS COURT

Article 43

- (1) Massive human rights violations that occurred prior to the promulgation of this Law, were examined and decided by the ad hoc Human Rights Court;
- (2) An ad hoc Human Rights Court as referred to in section(1) is formed at the proposal of the House of Representatives of the Republic of Indonesia based on certain events with a Presidential Decree;
- (3) The ad hoc Human Rights Court as referred to in section(1) is within the Public Court.

Article 44

Examinations at the ad hoc Human Rights Court and their legal remedies are carried out in accordance with the provisions of this Law.

CHAPTER IX

TRANSITIONAL PROVISIONS

- (1) For the first time when this Law comes into force, the Human Rights Courts as referred to in Article 4 are established in Central Jakarta, Surabaya, Medan and Makassar;
- (2) The legal area of the Human Rights Court as referred to in section (1) is in the District Court in:
 - a. Central Jakarta which covers the Special Capital Region of Jakarta, Provinces of West Java, Banten, South Sumatra, Lampung, Bengkulu, West Kalimantan, and Central Kalimantan;
 - Surabaya which includes the provinces of East Java,
 Central Java, Special Region of Yogyakarta, Bali,
 South Kalimantan, East Kalimantan, West Nusa
 Tenggara, and East Nusa Tenggara;

- Makassar which includes the provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku, North Maluku, and Irian Jaya;
- d. Medan which includes North Sumatra Province,
 Special Region of Aceh, Riau, Jambi, and West Sumatra.

CHAPTER X CLOSING PROVISIONS

Article 46

For massive human rights violations as referred to in this Law there is no provision for expiration.

Article 47

- (1) Massive human rights violations that occurred prior to the enactment of this Law did not rule out the possibility of settlement by the Commission of Truth and Reconciliation;
- (2) The Commission of Truth and Reconciliation as referred to in section (1) is constituted by the Law.

Article 48

Preliminary investigation, investigation, and prosecution of massive human rights violations that have carried out or are being carried out under Government Regulation in Lieu of Law Number 1 of 1999 on Human Rights Court are still effective insofar not contrary to this Law.

Article 49

Provisions on the authority of the Superior Court Judge and the Subpoena of the Subpoenas as referred to in Article 74 and Article 123 of Law Number 31 of 1997 on Military Justice are declared ineffective in the examination of massive human rights violations under this Law.

With the enactment of this Law, Government Regulation in Lieu of Law Number 1 of 1999 on the Human Rights Court (State Gazette of the Republic of Indonesia of 1999 Number 191, Supplement to State Gazette Number 3911) is repealed and declared ineffective.

Article 51

This law comes into effect on the date of its enactment.

In order that every person may know hereof, it is ordered to promulgate this law by its placement in the State Gazette of the Republic of Indonesia.

> Enacted in Jakarta, on 23 November 2000

PRESIDENT OF THE REPUBLIC OF INDONESIA

signed

ABDURRAHMAN WAHID

Promulgated in Jakarta, on 23 November 2000

STATE SECRETARY OF THE REPUBLIC OF INDONESIA,

signed

DJOHAN EFFENDI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2000 NUMBER 208

Jakarta, 5 September 2019

Has been translated as an Official Translation on behalf of Minister of Law and Human Rights of the Republic of Indonesia

DIRECTOR GENERAL OF LEGISLATION,

WIDODO EKATJAHJANA