

“Rule-Bending” Accountability for Perpetrator Liability of Enforced Disappearances and Progressive Transitional Justice

“Rule-Bending” Pertanggungjawaban Pelaku Pelanggaran Hak Asasi Manusia Berat dalam Kasus Penghilangan Paksa dan Keadilan Transisi yang Progresif

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ABSTRACT: This paper examines how the implementation of liability for gross human rights violators in transitional justice contexts often involves "rule-bending." It focuses on the tension between legal norms and the interests of authorities, particularly in cases of enforced disappearances, concerning command responsibility. Taking into account the Indonesian case and comparing it to the implementation of the liability prosecution process in various countries, this research employed a socio-legal method and crime semiotics to deconstruct the law for analysis purposes. The research employed the rule of law theory by Lon Fuller as the grand theory, progressive law theory by Satjipto Rahardjo as the middle theory, and the liability theory of gross human rights violations, particularly in relation to Law No. 26 of 2000 as applied theory. The research results indicate that the rule-bending of processing the liability of gross human rights violators, particularly in the case of enforced disappearances, is associated with negative rule-bending, which involves a culture of autocratic legalism. The progressive law and transitional justice provide a solution to what this research indicates, which is the novelty of the research, as a transformative law model that covers the system of law and the individuals, particularly law enforcement officers, to be progressive: having compassion, empathy, and daring to prosecute the liability of past gross human rights violators.

ABSTRAK: Penelitian ini mengkaji bagaimana penerapan pertanggungjawaban bagi pelanggar HAM berat dalam konteks keadilan transisi seringkali melibatkan "pelanggaran aturan". Makalah ini berfokus pada ketegangan antara norma hukum dan kepentingan otoritas, khususnya dalam kasus penghilangan paksa, terkait tanggung jawab komando. Dengan mempertimbangkan kasus Indonesia dan membandingkannya dengan penerapan proses penuntutan pertanggungjawaban di berbagai negara, penelitian ini menggunakan metode sosio-legal dan semiotika kejahatan untuk mendekonstruksi hukum guna keperluan analisis. Penelitian ini menggunakan teori rule of law oleh Lon Fuller sebagai grand theory, teori hukum progresif oleh Satjipto Rahardjo sebagai middle theory, dan teori pertanggungjawaban pelanggaran HAM berat, khususnya terkait dengan Undang-Undang No. 26 Tahun 2000 sebagai teori aplikatifnya. Hasil penelitian menunjukkan bahwa pelanggaran aturan dalam proses pertanggungjawaban pelanggar HAM berat, khususnya dalam kasus penghilangan paksa, berkaitan dengan 'rule-bending' negatif, yang melibatkan budaya legalisme otokratis. Hukum progresif dan keadilan transisi memberikan solusi terhadap apa yang ditunjukkan penelitian ini, yaitu kebaruan penelitian, sebagai model hukum transformatif yang melingkupi sistem hukum dan individu, khususnya aparat penegak hukum, untuk bersikap progresif: memiliki rasa kasih sayang, empati, dan berani menuntut pertanggungjawaban para pelanggar hak asasi manusia berat di masa lalu.

Keywords:

gross human rights violations;
rule-bending;
rule breaking liability;
human rights court;
international criminal court

Kata Kunci:

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1. Introduction

Perpetrator liability in transitional justice centers on individual criminal accountability, but much of the literature argues that this is necessary yet often insufficient on its own. It is increasingly framed as one part of a broader accountability architecture that also includes state, societal, corporate, and sometimes collective responsibility. Because it is part of this broader architecture, the question arises of how perpetrators remain accountable for their crimes. In contrast, the offender can be a state representative who holds authority to issue regulations that may relate to their own interests rather than the public's. In this situation, the authority might bend the rule in their favor, which relates to the concept of rule-bending that the writers would like to research.

The term rule-bending describes the adaptation or adjustment to a set of rules to facilitate the achievement of a particular goal on a given occasion.¹ There are three objectives of law: justice, certainty, and utility² so the legal process should be undertaken to achieve these three objectives. Rule-bending can be done in efforts to achieve these legal objectives when the law is too rigid and formal, making it impossible to achieve the essence or substance of the legal objectives. This is called fluid law, which is very possible in progressive law.³ Krzysztof J. Plec gives an example of positive rule-bending when countries use exceptions in international trade agreements to address emergencies or unforeseen situations that would be detrimental to the country and its citizens. Meanwhile, an example of negative rule-bending is when countries or companies use legal loopholes to avoid tax obligations that are detrimental to the country.⁴ In Indonesian, rule-breaking, which has a positive value, is called a legal breakthrough,⁵ while negative values are interpreted as smuggling, bending, or violating the law. The discourse on rule-bending in academic literature has shown an increasing trend since 2000, mirroring that of transitional justice. Meanwhile, regarding gross human rights violations, this discourse has been widely discussed since the 1980s.⁶

In many countries where democratic backsliding has opened the door to competitive-authoritarian tendencies, the state's coercive apparatus remains only partially reformed and past abuses go unaddressed. Indonesia - having democratized after 1998 only to slide into significant regression since the mid-2010s - exemplifies this pattern: past gross human rights violations remain a dark stain on law enforcement.⁷ That these violations remain unredressed reflects a structural continuity rather than a lapse: alleged perpetrators have not been removed from the state's coercive apparatus but reincorporated into it, and now into the successor regime itself. Even the government's 2023 acknowledgment of twelve past gross violations - issued compensation without prosecution and channeled through a non-judicial team that expressly set aside criminal accountability - left this impunity intact, an outcome the subsequent rise of an alleged 1998 perpetrator to the presidency has only entrenched.⁸ One of the most prominent and yet unsolved cases is the enforced

¹ Rachel Augustine Potter, *Bending the Rules: Procedural Politicking in the Bureaucracy* (Chicago: The University of Chicago, 2019).

² Khotibul; Umam, Rimawati, and Suryana Yogaswara, *Filsafat Hukum Dan Etika Profesi* (Jakarta: Penerbit Universitas Terbuka, 2016).

³ Anthon F. Susanto, *Filsafat Dan Teori Hukum* (Jakarta: Kencana, 2019).

⁴ Krzysztof J. Plec, *Making and Bending International Rules* (New York: Cambridge University Press, 2016).

⁵ Syochibul Amar Ma'ruf, Safaruddin Harefa. "Penegakan Hukum di Indonesia dalam Perspektif Hukum Progresif." *Wijaya Putra Law Review* 2, no. 2 (2023): 204–219.

⁶ Based on Google Books Ngram Viewer in reviewing Rule-bending, Gross Human Rights Violations, dan transnational Justice.

⁷ On Indonesia's post-1998 backsliding as regression short of full autocracy, see Marcus Mietzner, "Elite Collusion in Indonesia: How It Has Both Enabled and Limited Executive Aggrandizement," *The Annals of the American Academy of Political and Social Science* 712, no. 1 (2024): 223–234; Thomas Power and Eve Warburton, eds., *Democracy in Indonesia: From Stagnation to Regression* (Singapore: ISEAS–Yusof Ishak Institute, 2020); and Jacqui Baker, "Reformasi Reversal: Structural Drivers of Democratic Decline in Jokowi's Middle-Income Indonesia," *Bulletin of Indonesian Economic Studies* 59, no. 3 (2023): 341–364. On the broader Southeast Asian pattern, see Marcus Mietzner, *Democratic Deconsolidation in Southeast Asia* (Cambridge: Cambridge University Press, 2021). On the persistence of impunity for security-force abuses under the Prabowo administration, see Human Rights Watch, *World Report 2025: Indonesia* (New York: Human Rights Watch, 2025).

⁸ On 11 January 2023, President Joko Widodo acknowledged twelve past gross human rights violations identified by the Non-Judicial Resolution Team for Past Serious Human Rights Violations (PPHAM), spanning 1965–2003; the government emphasized socio-economic reparation over criminal prosecution. See "Indonesia Acknowledges 12 Past Major Human Rights Violations," *Antara News*, 11 January 2023. On the incorporation of figures implicated in the 1997–1998 enforced disappearances into the current

disappearance of 13 pro-democracy activists in the 1997/1998 period. Enforced disappearances are classified as ongoing crimes. While the official executive summary declines to name perpetrators, civil society organizations such as KontraS and the ICTJ have named higher commander of the Kopassus Tim Mawar unit and eventually in the power position now accountable,⁹ the whereabouts of the victims remain unknown due to the state's lack of truth disclosure.

This situation causes psychological suffering for the victims' families and creates impunity, where perpetrators, particularly at the command level, have not been held liable. It is an unfinished reform agenda,⁹ which refers to the incomplete process of addressing past injustices and implementing comprehensive democratic reforms in Indonesia. Thus, the demand for justice is still continuing until now organized by civil society organization regularly every Thursday in front of the presidential palace which is called Aksi Kamisan.¹⁰ Even though the movement was considered a failure compared to Argentina, as argued by Setiawan,¹¹ this argument is irrelevant due to the underrepresentation of the victims' Perspective and the limited comparative scope. These would prevent the rigorous analysis of the complex dynamics of human rights protest movements across different post-authoritarian contexts and set aside the victim perspective that is deeply involved in the Aksi Kamisan.

As the 13 activists of 1997/1998 of enforced disappearances have not yet been resolved, another similar case in 2025 emerged, as indicated by Kontras, after the 2025 demonstration, during which about 23 persons disappeared.¹² This indicates the problem is in the deterrence effect when past gross human rights violations are not being properly remedied. Previous research on gross human rights violations has primarily focused on the normative aspects of transitional justice, command responsibility, and the politics of human rights law. Studies by scholars such as Suparman Marzuki and Arinanto have explored the politics of human rights law during Indonesia's reform era and the search for a conception of transitional justice as similarly indicated in the recent research by Kadir Katjong and Tri Yanuaria.¹³ It follows the work of Junaidi Saibih et al. on the analysis of transnational justice initiatives and the flaws in the prosecution of past gross human rights violations in Indonesia, focusing on the Tanjung Priok case. It identifies the flaw as in (1) positive legal approach, (2) weak prosecution, and (3) political interference.¹⁴

Those literatures relied predominantly on normative-doctrinal approaches, focusing on the legal substance of Law No. 26 of 2000, command responsibility doctrine, and transitional justice frameworks in isolation. These foundational works, while valuable, leave three significant gaps unaddressed: conceptual gap, theoretical gap, and empirical socio-legal gap. In regard to the conceptual gap, there is no prior study has applied the sociological concept of "rule-bending" as a structured analytical category to explain how and why impunity is systematically produced in Indonesia's human rights accountability process. Recent scholarship by

administration, and the persistence of impunity for security-force abuses, see Human Rights Watch, *World Report 2025: Indonesia* (New York: Human Rights Watch, 2025).

⁹ International Center for Transitional Justice, and KontraS. *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*. Jakarta: ICTJ and KontraS, 2011.

⁹ Jelita Sari Wiedoko, "The Silence that Screams: Enforced Disappearances and the Unfinished Reform Agenda." *The Journal of Indonesia Sustainable Development Planning* 6, no. 1 (2025): 138–143. <https://doi.org/10.46456/jisdep.v6i1.703>.

¹⁰ Benedicta Felecia Andries and B. S. Laksmono. "Aksi Kamisan as an Effort of Non-Governmental Organization in Constructing an Agenda for the Restoration of the Victims Rights of Past Gross Human Rights Violations: A Case Study of 1965–1966 Massacre in Indonesia." *International Journal of Arts and Social Science* 5, no. 12 (2022). <https://www.ijassjournal.com/2022/V5I12/414666222.pdf>.

¹¹ Kristy Maher Setiawan. "Struggling for Justice in Post-Authoritarian States: Human Rights Protest in Indonesia." *The International Journal of Human Rights* 26 (2022).

¹² KontraS (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan). *Laporan Tahunan Penghilangan Paksa di Indonesia 2022–2023*. Jakarta: KontraS, 2023. <https://kontras.org>.

¹³ Kadir Katjong and T. Yanuaria. "Bridge to Justice: Human Rights in Building Modern Legal System in Indonesia." *Journal of Law and Sustainable Development* 12, no. 3 (2024): e3310. <https://doi.org/10.55908/sdgs.v12i3.3310>.

¹⁴ Junaedi Saibih, Elwi Danil, Kurnia Warman, and Nani Mulyati. "The Analysis of Transitional Justice Initiatives and the Flaw of Prosecution on the Past Human Rights Violation in Indonesia (Tanjung Priok Case)." *Indonesian Journal of International Law* 20, no. 3 (2023). <https://scholarhub.ui.ac.id/ijil/vol20/iss3/5/>.

Charbonneau, Boisvert, and Bégin¹⁵ on rule-breaking and bending in public administration has advanced this concept considerably in public administration literature — yet neither study nor any Indonesian legal scholarship has applied this framework to transitional justice or gross human rights violation accountability. The understanding of transitional justice remains relevant, even after almost 30 years, because it is not a chronological view of time. Harison Citrawan argued that transitional justice should be understood as an experiential perspective that treats time and temporality as flux, a multiplicity of experiences from which we may grasp three salient features of experiential time (i.e., reflective remembrance, intense expectancy, and character alteration).¹⁶

In regard to theoretical gap, Shachar¹⁷, in the *International Review of the Red Cross*, updates the understanding of the reason to know standard in the doctrine of command responsibility, asserting that commanders cannot abdicate responsibility simply because there is no written order as long as they have effective control—an argument that directly refutes the practices seen in the Rose Team case and the Ad Hoc tribunals in Indonesia. Meanwhile, Reyes-Farbstein¹⁸, in the *Harvard Human Rights Journal*, analyzes efforts to harmonize legal approaches to enforced disappearances at the international level and highlights how evidentiary barriers in enforced disappearance cases—including the requirement for physical evidence of victims whose whereabouts are unknown—have consistently been challenges that must be addressed through more progressive and adaptive standards of proof. However, none of these findings integrates Lon Fuller's Rule of Law theory, Satjipto Rahardjo's Progressive Law theory, and international transitional justice frameworks into a single coherent analytical model applied specifically to enforced disappearance cases. As in regard to empirical socio-legal gap: previous research largely ignored the actual institutional realities — particularly the systemic failures between National Commission of Human Rights (NCHR/*Komnas HAM*) and the Attorney General's Office (*Kejaksaan Agung*) — treating accountability failures as legal-technical problems rather than as symptoms of autocratic legalism and entrenched legal culture. Most recently, Munif¹⁹ in *The Indonesian Journal of Socio-Legal Studies* analyzed the contestation surrounding the formation of the Team for the Non-Judicial Resolution of Past Gross Human Rights Violations (PPHAM Team)²⁰ and concluded that the mechanism constituted a form of state "washing hands" that perpetuated impunity. Pratomo et al.²¹ in *Cogent Social Sciences* asserted that the ad hoc court mechanism in the East Timor and Tanjung Priok cases failed due to procedural constraints and a lack of concrete evidence. Thamrin²² in the *Awang Long Law Review* further criticized Presidential Instruction No. 2 of 2023 as a regulation incapable of creating a deterrent effect or structural reform of the state apparatus. However, none of these studies explain the mechanisms behind this systemic failure—namely, how procedural politicking, autocratic legalism, and legal smuggling in instruments such as the PPHAM Presidential Decree work structurally as negative rule-bending to shield perpetrators from accountability. This gap is one of the original contributions of this study.

¹⁵ Étienne Charbonneau, Yves Boisvert, and Luc Bégin, "Rule Breaking, Bending, and Workarounds: Police Officers and Chiefs' Coercion-Discretion of Enforcing State Executive Orders," *Public Performance and Management Review* 46, no. 3 (2023): 536–62, <https://doi.org/10.1080/15309576.2022.2162940>.

¹⁶ Harison Citrawan. "Transitional (In)Justice as Duration." *Journal of Southeast Asian Human Rights* 6, no. 1 (2022): 107–136. <https://doi.org/10.19184/jseahr.v6i1.31523>.

¹⁷ Aaron Fellmeth and Emily Crawford, "'Reason to Know' in the International Law of Command Responsibility." *International Review of the Red Cross* 104, no. 919 (2022): 1223–1266.

¹⁸ Jimena Reyes, Susan H. Farbstein, Sabrina Ochoa, Rebecca Gore, Adriana Bones, Nitika Khaitan & Victoria Abut. "Harmonizing Legal Approaches to Enforced Disappearances." *Harvard Human Rights Journal* 37, no. 1 (2024): 169–206.

¹⁹ Abdul Munif. "Contested Actors around the Initiation of a Non-Judicial Settlement Mechanism for Past Gross Human Rights Violations: A Socio-Legal Study of the PPHAM Team." *The Indonesian Journal of Socio-Legal Studies* 3, no. 1 (2023). <https://doi.org/10.54828/ijsls.2023v3n1.1>.

²⁰ In Bahasa Indonesia, the abbreviation stands for the Tim Penyelesaian Non-Yudisial Pelanggaran Hak Asasi Manusia yang Berat Masa Lalu, established by Presidential Decree (Keputusan Presiden, Keppres) No. 17 of 2022. In English, it can be translated as the Team for the Non-Judicial Resolution of Past Gross Human Rights Violations. The Keppres itself shortens this to Tim PPHAM.

²¹ Suparman Marzuki and Mahruz Ali. "The Settlement of Past Human Rights Violations in Indonesia." *Law, Criminology and Criminal Justice* (2023). <https://doi.org/10.1080/23311886.2023.2240643>.

²² Thamrin, Husni. "Settlement of Past Gross Violations of Human Rights by the Jokowi Government." *Awang Long Law Review* 6, no. 2 (2024): 555–561. <https://doi.org/10.56301/awl.v6i2.1321>.

Despite these foundational studies, the document identifies significant gaps that the author's research aims to fill, particularly regarding the specific case of the 1997/1998 forced disappearances. A major gap is the absence of the sociological concept of "rule-bending" to analyze how law enforcement practically handles accountability, alongside a theoretical disconnect where previous studies failed to integrate transitional justice with the theory of Progressive Law. Furthermore, earlier research largely neglected the actual socio-legal conditions and institutional realities, such as the systemic back-and-forth failures between Komnas HAM and the Attorney General's Office, or the recent establishment of the Non-Judicial Settlement Team (Tim PPHAM). By shifting from a purely normative approach to a socio-legal one, the author's study addresses these unexamined systemic failures and adaptive legal practices surrounding past gross human rights violations.

Based on these realities, the main problems formulated in this research focus on three things: (1) the impact of rule-bending in the implementation of perpetrators' liability of past gross human rights violations (particularly the case of the enforced disappearance of activists in 1997/1998) on achieving the goal of criminal punishment, namely deterrence; (2) the role of legal culture in Indonesia in influencing rule-bending in the case of past gross human rights violations especially related to enforced disappearance; (3) the application of a transitional justice framework based on progressive legal theory as a comprehensive solution to the problem of rule-bending and the existing legal culture of impunity. To structure the analytical description of the findings, the discussion is divided into two categories: the method and the findings. The research methodology explains the socio-legal approach and the triangulation of data sources and time periods employed to examine the interaction between law and society in the settlement of past gross human rights violations in Indonesia. As for the findings of the research discussed in response to the problem of the research. The first discussion was about how the influence of rule-bending in the implementation of perpetrators' liability for past gross human rights violations created an impact on the deterrence effect. The second discussion was about what and why the legal culture in Indonesia influences rule-bending, particularly in cases of enforced disappearances. Lastly, the third finding on the application of a transitional justice framework grounded in progressive legal theory addresses the problem of enforced disappearance cases.

2. Method

The research employed a socio-legal approach through an interdisciplinary perspective to examine the interaction between law and society on how the law on accountability for past gross human rights violations is applied and experienced in practice.²³ The research is organized as a case study of the enforced disappearance of pro-democracy activists in 1997/1998, examining three objects: (1) the legislative products governing state responsibility and individual and command responsibility (the 1945 Constitution, Law No. 39/1999, Law No. 26/2000, Law No. 27/2004 and its annulment by Constitutional Court Decision No. 006/PUU-IV/2006, Presidential Decision No. 17/2022, and Presidential Decision No. 4/2023); (2) the implementation of those products in the case under study; and (3) the requirements of legal reform through a progressive transitional justice framework.

Two forms of triangulation structure the study. Data-source triangulation draws on primary sources (legal instruments and in-depth interviews), secondary sources (official reports, including the Komnas HAM inquiry summary, the PPHAM report of 2023, and the DPR Special Committee recommendation of 2009, together with academic literature), and tertiary sources (archived reporting from established media). Time triangulation compares findings across four periods — 1997–1998 (the commission of the crimes), 1999–2004

²³ K. A. Ziegert, "Systems Theory and Qualitative Socio-Legal Research," in *Theory and Method in Socio-Legal Research*, ed. Reza Banakar and Max Travers (Oxford: Hart Publishing, 2005); Sulistyowati Irianto et al., *Kajian Sosio-Legal* (Denpasar: Pustaka Larasan, 2012).

(post-reform legislation), 2005–2015 (the KKR annulment and prosecutorial stagnation), and 2016–2024 (the PPHAM period) — in order to distinguish stable patterns from period-specific effects.²⁴

Interview data were collected from eleven informants, selected purposively on the criterion of their position or direct experience in relation to the case, and classified into three categories.²⁵ Key informants are officials of institutions, primary informants are members of victims' families, and expert informants are academics and practitioners with theoretical or technical expertise bearing on the research questions varied from national to international expert. Data were collected through semi-structured, in-depth interviews conducted between 2024 and 2025, in person and by video conference, guided by an interview protocol aligned with the three research questions and covering four aspects: rule-bending, the deterrent aim of punishment, legal culture, and progressive transitional justice. Interview transcribed material was coded against the operational indicators developed in this article, with the central categorization distinguishing positive from negative rule-bending and documentary data were analyzed through qualitative coding and thematic analysis. Power relations embedded in the legal texts examined as primary sources were analyzed through legal semiotics, employing the deconstructive reading proposed by Derrida.²⁶

3. Findings and Discussion

The analysis employs a triangulation of three legal theories to examine the phenomenon of "rule-bending" in the context of accountability for past gross human rights violations. As the Grand Theory, it utilizes Lon L. Fuller's Rule of Law Theory, which focuses on the morality of law to justify the application of transitional justice and retroactive laws in addressing past atrocities and preventing their recurrence.²⁷ This foundational concept is bridged by the Middle Theory, Satjipto Rahardjo's Progressive Law Theory, which asserts that the law must serve humanity; it encourages legal actors to interpret laws creatively and perform positive "rule-breaking" or "rule-bending" to escape rigid procedural constraints and deliver substantive justice for the victims.²⁸ As it is indicated by the recent journal on progressive law in resolving community criminal conflicts in Indonesia, emphasizing the limitations of traditional legal approaches that prioritize procedural legality over substantive justice.²⁹

Finally, the Applied Theory is the Theory of Criminal Accountability for Past Gross Human Rights Violations, which draws upon both national laws and international frameworks (like the Rome Statute) to practically analyze specific mechanisms of accountability, including Individual Criminal Responsibility, Joint Criminal Enterprise (JCE), and Command Responsibility. The findings and Discussion were divided into three categories, responding to the problem addressed in the introduction section.

3.1. Rule-bending in the Implementation of Perpetrators' Liability and the Impact to Deterrence as the Objective of Penal Law

Rule-bending is defined as the adaptation or modification of established rules or procedures to achieve a specific goal or outcome, often in a way that does not strictly adhere to the original intent of the rules.³⁰ It involves taking advantage of loopholes, ambiguities, or multiple possible interpretations within a regulation

²⁴ On triangulation of sources and of time in qualitative design, see Norman K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods*, 3rd ed. (Englewood Cliffs: Prentice Hall, 1989).

²⁵ On purposive (criterion-based) selection of informants, see Michael Quinn Patton, *Qualitative Research and Evaluation Methods*, 4th ed. (Thousand Oaks: SAGE, 2015).

²⁶ Anthon Freddy Susanto, *Semiotika Hukum: Dari Dekonstruksi Teks Menuju Progresivitas Makna*, 1st ed. (Bandung: PT Refika Aditama), 2005.

²⁷ Lon L. Fuller, *The Morality of Law* (Yale University Press, 1969).

²⁸ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Publishing, 2009); Anthon F. Susanto, *Filsafat Dan Teori Hukum* (Kencana, 2019).

²⁹ Mohd. Yusuf DM et al., "Peran Hukum Progresif dalam Menyelesaikan Konflik Pidana Masyarakat:" *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam* 10, no. 2 (2025): 125–142.

³⁰ Rachel Augustine Potter, *Op. Cit.*

without explicitly violating the law. In the context of public administration, it can be viewed as a "partial violation" (*pelanggaran sebagian*) of the law due to administrative autonomy thereby there is a judicial scrutiny process through judicial review to control it.³¹ Prior to that, there is a bureaucratic agent help to control “partial violation” of the law, but in developing countries, the possibility is small because of rare study of weak ex post and ex ante constraints which interact with mechanism of bureaucratic behavior agent control.³² One of them is ad hoc interventions by political authorities into bureaucratic decision making, including the use of emergency powers.

To analyze the perpetrators’ liability and the impact of deterrence, the comparative study was organized by comparing the due process of law in human rights violation courts in some countries, namely Argentina, Greece, Cambodia, Chile, and the possibility of innovative mechanisms held in the International Criminal Tribunals for Yugoslavia and Rwanda. Specifically for Rwanda, it looked into the participation of the grassroots model.

Rule-bending practices can be categorized into two types: positive and negative, clearly differentiated by their intent and impact. Positive rule-bending deliberately seeks to generate benefits, increase efficiency, or protect the public interest; for instance, exceptions in international trade agreements during the COVID-19 pandemic sped up vaccine and medical equipment procurement.³³ In stark contrast, negative rule-bending deliberately undermines regulations, leading to injustice or impunity.³⁴ Examples include multinational corporations exploiting legal loopholes to evade taxes (legal smuggling) or law enforcement officials prosecuting rule violators in unfair or biased ways. Rule-bending differs from rule-breaking and legal breakthroughs. Rule-bending involves subtly circumventing rules through ambiguous legal interpretation.³⁵ Rule-breaking is overt, direct defiance that constitutes a complete violation regardless of justification and/or with no public interest justification for the negative-rule breaking.³⁶ As for the rule-breaking positive, it indicated by Satjipto Rahardjo to break from the law that is cruel and inhuman, because the essence of law is for human and humanity.³⁷ Legal breakthroughs represent constructive rule-bending. Unlike negative rule-bending, legal breakthroughs are innovative, lawful strategies that leverage ambiguities in the law to achieve substantive justice or promote legal reform while remaining within legal boundaries:³⁸

In the context of criminal law, the practice of rule-bending is closely related to the use of discretion by law enforcement officials, such as the police, where formal rules are flexibly interpreted or partially ignored to accommodate situational or moral judgments.³⁹ The most common example is when a police officer chooses to issue a reprimand or warning to a rule-breaker instead of imposing a legally mandated fine. However, this discretion can become negative rule-bending if applied discriminatorily; for example, officers may take firm action against certain violators but let others off the hook simply because they are deemed "polite" or "nice," or because of their race ultimately creating systemic injustice where some people seem to receive a legal

³¹ Carelli, Daniel, and B. Guy Peters. "Autonomy by Decree: How Administrative Law Shapes Bureaucratic Autonomy in Four Administrative Traditions." *Administration & Society* (2024). <https://doi.org/10.1177/00953997241244500>.

³² Katherine Bersch and Francis Fukuyama. "Defining Bureaucratic Autonomy." *Annual Review of Political Science* 26 (2023): 213–232.

³³ Krzysztof J. Plec, *Making and Bending International Rules* (New York: Cambridge University Press, 2016).

³⁴ Ibid.

³⁵ Barry Bozeman, Jan Youtie, and Jung Jiwon, "Death by a Thousand 10-Minute Tasks: Workarounds and Noncompliance in University Research Administration," *SAGE Journals* 53, no. 4 (2020), <https://doi.org/https://doi.org/10.1177/009539972094799>.

³⁶ Étienne Charbonneau, Yves Boisvert, and Luc Bégin. Op.Cit.

³⁷ Nobertus Jegalus, *Hukum Kata Kerja: Diskursus Filsafat Tentang Hukum Progresif* (Grasindo, 2013).

³⁸ Discussions of rule bending, legal breakthroughs, and legal smuggling are often found in literature on business ethics, corporate law, and legal theory. Some relevant references for understanding these concepts include: (1) "The Theory of Corporate Finance" oleh Jean Tirole (2006); (2) "Ethics and the Conduct of Business" oleh John R. Boatright (2011); (3) "Corporate Governance and Ethics" oleh Zabihollah Rezaee (2009); (4) "Business Law: Text and Cases" oleh Kenneth W. Clarkson, Roger LeRoy Miller, dan Frank B. Cross (2021); (5) "The Path of the Law" oleh Oliver Wendell Holmes Jr. (1897); dan (6) "Tax Avoidance, Law and Morality: A Response to the Ethical Challenge of Tax Avoidance" oleh John Snape dan Dominic de Cogan (2022)

³⁹ Étienne Charbonneau, Yves Boisvert, and Luc Bégin, Op. Cit.

"discount."⁴⁰ The positive and negative aspects of discretion can arise, with the negative aspect being that discretion in law enforcement can lead to problems such as inconsistency, abuse of authority, and unfair treatment. Discretion allows law enforcement officers to make decisions based on their judgment, which can sometimes result in arbitrary or biased actions, undermining justice and public trust. In Indonesia, the use of discretion in law enforcement is generally viewed more negatively due to issues such as inconsistency and potential abuse of authority.⁴¹ However, there are also perspectives that see discretion as beneficial when applied appropriately to ensure fairness and context-sensitive decisions, which is ideally implemented for handling the complexity of social problems and resolving through restorative justice⁴² as required under the new Indonesia Criminal Code (Law No. 1 of 2023).

In addition to the law enforcement stage in the field, rule-bending can also occur in the courtroom when the court bends strict procedural rules of evidence in order to accept evidence deemed vital to justice. Criminal liability for perpetrators of past gross human rights violations is specifically regulated (*lex specialis*) and heavily influenced by the international criminal law framework, which in Indonesia is implemented through Law Number 26 of 2000 concerning Human Rights Courts. Accountability for these extraordinary crimes overrides several limitations of general criminal law by applying specific principles, such as the absence of a statute of limitations, the denial of immunity to perpetrators regardless of their official status, and the principle of complementarity. This principle of complementarity emphasizes that the primary responsibility for prosecuting perpetrators rests with the national justice system, but if a state is proven "unwilling" or "unable" to carry out a genuine trial (for example, by deliberately protecting the perpetrator), then international mechanisms such as the International Criminal Court (ICC) have jurisdiction to take over the case.

Technically, the law establishes several forms of criminal liability that can be imposed on perpetrators. The first is Individual Criminal Responsibility, where individuals—not just institutions or states—can be held accountable for their direct actions in committing crimes. The second is Command/Superior Responsibility, which allows military commanders or civilian leaders to be punished for the crimes of their subordinates if those superiors fail to prevent, stop, or punish violations that occur under their effective control (based on the theories of negligence/omission and strict liability). Finally, the law also accommodates collective liability through the concept of Joint Criminal Enterprise (JCE), supported by the provisions of Article 41 of Law No. 26 of 2000, where perpetrators can be punished if they act as part of a group that attempts, conspires, or assists in planning or executing gross human rights violations.

Based on Law No. 26 of 2000, the Ad Hoc Human Rights Court is established within the General Courts system specifically to examine and adjudicate gross human rights violations that occurred before the law's enactment. Originally, Article 43 of the law stipulated that the process of establishing this ad hoc court required a formal proposal or recommendation from the House of Representatives (DPR RI) regarding a specific event, which would then be formalized through the issuance of a Presidential Decree (Keppres). However, this establishment process underwent a crucial change following the Constitutional Court (Mahkamah Konstitusi/MK) Decision No. 18/PUU-V/2007. The MK declared the DPR's requirement for the court's establishment invalid, arguing that parliamentary involvement in the judicial realm contradicted the principles of judicial independence and the right to justice. Consequently, the current legal process no longer requires a proposal from the DPR; the establishment of an Ad Hoc Human Rights Court now depends entirely on the President's political prerogative to issue a Presidential Decree (Keppres). The process starts with the investigation conducted by the Human Rights Commission (Komnas HAM) and is followed by the investigation conducted by the Attorney General's Office. If the investigation is completed, the office can pass the process to the President with a recommendation, and the President will issue the Keppres.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Antonius Faebudodo Gea. "Hukum Progresif Dalam Penanganan Masalah Sosial Oleh Kepolisian." *Jatiswara* 37, no. 3 (2022).

The Ad Hoc Human Rights Court is closely related to the goal of the penal law, namely deterrence. The deterrence effect is the primary objective of criminal punishment: holding perpetrators of gross human rights violations accountable and serving as a stern warning to prevent similar tragedies in the future.⁴³ Within the framework of transitional justice, law enforcement against perpetrators aims to break the cycle of violence and safeguard the rule of law, ensuring its continued upholding beyond political regime change.⁴⁴ By imposing concrete punishment, the state signals that extraordinary crimes will not be tolerated, thereby creating a sense of security for the public and ensuring that the law has effective deterrent power against potential future state repression.

However, this deterrence effect has not been achieved in the case of past gross human rights violation in Indonesia due to negative rule-bending practices and procedural politicking that hinder the legal process. Rather than producing justice, the legal process is often trapped in "transactions of impunity," such as the Attorney General's repeated return of Komnas HAM investigation files on technical grounds that are difficult to satisfy. When law enforcement is deliberately stalled, the threat of punishment for perpetrators becomes less credible, ultimately undermining deterrence and leaving the risk of repeated human rights violations wide open due to the lack of firm legal consequences for past violators. "Rule-bending" in the implementation of accountability for past gross human rights violations in Indonesia is analytically categorized as negative rule-bending. It involves the manipulation of legal procedures (procedural politicking) and autocratic legalism to protect the authorities' interests, ultimately leading to impunity and failing to achieve the penal goal of deterrence. The latest research of the Indonesian culture of law enforcement indicated that the shifting of the substantive justice based on authentic community values becomes formal justice produced by positivistic law, including: legal education factors; cultural factors, economic downturn and ideological struggles, politics and the influence of the ruling regime, dependence on foreign investment and aid, and low nationalism.⁴⁵

A prominent example of rule-bending in the implementation of the perpetrator of past gross human rights violations is the government's failure to fully implement the recommendations issued by the Special Committee (Pansus) of the House of Representatives (DPR) on September 28, 2009. The DPR recommended four actions: forming an Ad Hoc Human Rights Court, searching for the 13 missing activists, providing rehabilitation and compensation, and ratifying the Anti-Enforced Disappearance Convention. Rule-bending occurs here, as the establishment of the Ad Hoc Court requires a Presidential Decree (Keppres), which the President has simply not issued, effectively halting the judicial process while technically not breaking a direct textual mandate. In the specific case of the 13 pro-democracy activists, rule-bending is evident through several interconnected elements:

1. Related to PPHAM (Non-Judicial Settlement Team)

Rule-bending occurred through the issuance of Presidential Decree (Keppres) No. 17 of 2022, which established the PPHAM. Article 3 of the decree states that the team's task is to conduct "*pengungkapan*" (disclosure), but it intentionally omits the word "*kebenaran*" (truth). In the context of transitional justice, truth-seeking is an essential right for victims.⁴⁶ By omitting the word "truth," the state engages in legal smuggling (*penyelundupan hukum*). It creates a mechanism that serves as a "political accessory," creating the illusion that the state is taking responsibility, while in reality it perpetuates impunity and fails to guarantee non-recurrence.

⁴³ Eddy O.S. Hiarij, *Hukum Pidana*, 2nd ed. (Jakarta: Universitas Terbuka, 2022).

⁴⁴ Ruti G Teitel, *Keadilan transisi: Sebuah Tinjauan Komprehensif, Pertama* (Jakarta: Elsam, 2004).

⁴⁵ Any Farida. "Faktor-Faktor Yang Mempengaruhi Pergeseran Nilai-Nilai Otentik Keindonesiaan Ke Hukum Positivistik Dalam Sistem Hukum Nasional." *JPeHI (Jurnal Penelitian Hukum Indonesia)* 4, no. 2 (2023): 1–14.

⁴⁶ Harison Citrawan. *Op. Cit.*

2. Related to the Lack of a Court Until Now

The absence of an Ad Hoc Human Rights Court means there is no judicial mechanism to enforce accountability, particularly "command responsibility," against the high-ranking officials involved. This delay tactic ("justice delayed is justice denied") prevents the perpetrators from facing legal consequences, severely undermining the deterrence effect required for transitional justice.

3. Related to the Lack of Clarity on the Current Stage of the Process

Because enforced disappearance is a "continuing crime," the lack of clarity regarding the victims' status (whether they are alive or dead) inflicts ongoing psychological trauma on the families and complicates civil matters, such as inheritance. Furthermore, there is no transparency for the public or the victims regarding where the legal accountability process currently stands. The constant back-and-forth of case files between institutions obscures the status of the investigation.

4. Related to the Attorney General's Decision on the Investigation Result

After Komnas HAM's ad hoc team completed its pro Justitia inquiry (1 October 2005–30 October 2006) and transmitted the dossier on the 1997–1998 enforced disappearances to the Attorney General in 2006, the Attorney General's Office repeatedly returned it. Since then, based on Komnas HAM report, the dossier were passed back and forth 1 (one) to 6 (six) times and have been going on for 13 (thirteen) years.⁴⁷ The Attorney General cited incomplete formal and material requirements, such as demanding concrete evidence like a *visum* (autopsy/medical report) for victims whose physical whereabouts are completely unknown.⁴⁸ This is a profound form of procedural politicking.⁴⁹ According to Article 21, paragraph (3), of Law No. 26 of 2000, if the Attorney General finds the investigation incomplete, they have the authority to form an Ad Hoc Investigator team (*penyidik Ad Hoc*) comprising government and societal elements to complete it. Instead of utilizing this legal breakthrough, the Attorney General chose to bend the rules by applying the strict ordinary Criminal Procedure Code (KUHP) to an extraordinary crime, purposely stalling the prosecution. It creates injustice to society, which demands accountability from the justice sector, particularly the Attorney General, and could break social cohesion due to tension between the status quo and those who demand justice. This is only possible because of the normative legal positivist approach and the rigid view of law. On the other hand, the application of progressive law as a strategic instrument to strengthen social cohesion through a substantive justice approach that respects legal certainty and prevents the delayed justice, as is the case of enforced disappearances now.⁵⁰

The struggle to enforce liability is closely associated with negative rule-bending, whereby authoritarian or transitional governments manipulate legal procedures to shield perpetrators and secure impunity. Military juntas in Argentina and Chile engaged in procedural politicking by enacting self-amnesty laws to protect their officials from prosecution for torture and enforced disappearances.⁵¹ In Guatemala, former dictator Efraín Ríos Montt exploited parliamentary immunity to delay his arrest and trial for genocide; as Laura Iesue observes, present-day violence there remains rooted in wartime atrocities committed by state military and police forces,

⁴⁷ In Komnas HAM's book report titled "Merawat Ingatan Menjemput Keadilan" (Jakarta, 2020), it describes 13 years without an exact year reference from when to when. Since the book was published in 2020, the author predicts it will be from 2007 to 2020, which means right after the Attorney General returned it to Komnas HAM in 2006, Komnas HAM returned the dossier to the Attorney General in 2007, and the situation is back and forth until Komnas HAM issued the report in 2020. It all remains 13 years of back-and-forth between Komnas HAM and the Attorney General's Office.

⁴⁸ Halili, "Pengadilan Hak Asasi Manusia Dan Pelanggaran Budaya Impunitas," *Jurnal Civics: Media Kajian Kewarganegaraan* 7, no. 1 (2010).

⁴⁹ Rachel Augustine Potter. *Op. Cit.*

⁵⁰ Agus Muchtarom and Arief Budianto. "Progressive Legal Reform as an Effort to Address Inequality in Law Enforcement and Strengthen Social Cohesion in Indonesia." *Jurnal Greenation Sosial dan Politik* (2025). <https://greenationpublisher.org/JGSP/article/view/508>.

⁵¹ Borzutzky, Silvia, 2007, "The Politics of Impunity: The Cold War, State Terror, Trauma, Trials and Reparations in Argentina and Chile", *Latin American Research Review*; hlm. 177.

underscoring the need for approaches attentive to vulnerable groups such as women.⁵² Cambodia likewise offered amnesties to Khmer Rouge cadres and stalled the formation of a hybrid tribunal for decades, sharply limiting accountability.⁵³

In several of these contexts, negative rule-bending was eventually overcome by positive rule-breaking - "legal breakthroughs" that dismantled rigid, unjust barriers. In Argentina, liability was finally enforced when a judge declared the amnesty laws unconstitutional and subordinate to international jus cogens, paving the way to imprison top commanders⁵⁴ - a landmark of the country's transitional-justice process, albeit one now tested by the far-right resurgence that brought Javier Milei to power in late 2023.⁵⁵ In Greece, because the penal code lacked specific statutes criminalizing torture, prosecutors successfully utilized positive rule-bending by creatively applying indirect charges, such as "abuse of authority," to try perpetrators. Even though the process itself left room for insufficient punishment, as indicated by Amnesty International,⁵⁶ it still helped hold the perpetrators accountable. Rwanda integrated traditional Gacaca community courts into the formal justice system to process an overwhelming caseload, demonstrating that legal frameworks must sometimes transform beyond conventional texts to deliver substantive justice.⁵⁷ Cambodia's own trajectory eventually shifted from negative to positive once it established a hybrid tribunal - consistent with Sikkink's finding that human rights prosecutions are associated with a decline in repression over time⁵⁸ - even as the Extraordinary Chambers in the Courts of Cambodia (ECCC) drew criticism over the role of forensic anthropology and expert-witness testimony.⁵⁹

3.2. Delimiting Rule-Bending: Conceptual Boundaries and Operational Indicators

Because "rule-bending" travels alongside several adjacent concepts, its boundaries must be fixed before it can carry analytical weight. As used in this study, rule-bending denotes the strategic manipulation of legal procedure, sequence, timing, or wording by actors who remain *within*, or act under the colour of, the formal legal framework. This follows Potter's account of "procedural politicking," in which decision-makers exploit the discretion embedded in procedure to protect their own interests against competing claims,⁶⁰ and DeHart-Davis's treatment of rule-bending as selective deviation that stops short of outright violation.⁶¹ Rule-bending is therefore distinct from four neighboring concepts with which it is sometimes conflated. *Rule-breaking* involves a departure from the legal framework itself: the act is committed outside the rules, not through them.⁶² *Maladministration* is the failure of a public body to act in accordance with a rule or principle binding upon it, typically through negligence, incapacity, or inefficiency rather than political strategy.⁶³ *Maladministration* is the failure of a public body to act in accordance with a rule or principle binding upon it, typically through

⁵² Vamika Jain. "Extraordinary Chambers in the Courts of Cambodia: An Extraordinary Success or an Ordinary Failure?" *The Gettysburg Historical Journal* 20 (2021). <https://cupola.gettysburg.edu/ghj/vol20/iss1/6>.

⁵³ Vamika Jain. "Extraordinary Chambers in the Courts of Cambodia: An Extraordinary Success or an Ordinary Failure?" *The Gettysburg Historical Journal* 20 (2021). <https://cupola.gettysburg.edu/ghj/vol20/iss1/6>.

⁵⁴ Kathryn Sikkink, *The Justice Cascade*, 1st ed. (New York: W. W. Norton and Company, 2011).

⁵⁵ Gonzalez Narvarro, Maria Elena et al. "Never Again? The Institutionalization of Far-Right Negationism and Shrinking Space in Argentina: Impacts on Transitional Justice Trials and Memory Politics." *International Journal for Crime, Justice and Social Democracy* (2025). <https://www.crimejusticejournal.com/article/view/3934>.

⁵⁶ Amnesty International. *Torture in Greece*. London: Amnesty International, 1977.

⁵⁷ Rwanda Ministry of Justice, "Rwanda Experience with Transitional Justice: The Case of Gacaca Court" (Ugali: Ministry of Justice/Attorney General, 2012), 1–50.

⁵⁸ Alexander Laban Hinton. *Anthropological Witness: Lessons from the Khmer Rouge Tribunal*. Ithaca, NY: Cornell University Press, 2022.

⁵⁹ Valeria Vegh Weis and Sebastián Alejandro Rey. "Argentina's Commitment to International Criminal Justice to Address the Crimes of the Last Dictatorship (1976–1983)." *International Criminal Law Review* (2024): 1–14.

⁶⁰ Rachel Augustine Potter. *Op. Cit.*

⁶¹ Leisha DeHart-Davis, "The Unbureaucratic Personality," *Public Administration Review* 67, no. 5 (2007): 892–903.

⁶² *Ibid.*

⁶³ United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 (29 November 1985), para. 18.

negligence, incapacity, or inefficiency rather than political strategy.⁶⁴ Legal loophole exploitation — what McBarnet and Whelan call “creative compliance,” escaping the spirit of the law while respecting its letter — is best understood as one technique through which rule-bending may be executed, not as a synonym for it.⁶⁵ In the remainder of this article the four terms are used only in these delimited senses, and “rule-bending” is reserved for conduct that satisfies the first indicator set out below.

Rule-bending and rule-breaking are not intrinsically negative. Public administration scholarship shows that both may be prosocial — undertaken to serve the public or to correct unjust or obsolete rules — or antisocial, undertaken to entrench the interests of power-holders.⁶⁶ What separates the two poles is, in Fuller’s terms, the internal morality of the officials who operate the system: the same procedural discretion can be deployed toward or against the law’s external morality of substantive justice.⁶⁷ Following Satjipto Rahardjo, the meaning of law examined here is not confined to its conventional doctrinal sense but extends to “the legal meaning of public policy and politics,” so that the value of a bending act is judged by its orientation toward justice rather than by its formal validity alone.⁶⁸

On this basis, an act is categorized in this study as *negative rule-bending* only when five operational indicators are cumulatively satisfied:

1. **Formal-legality retention.** The act is executed through existing legal instruments, institutions, or procedures, so that it cannot be prosecuted as a plain violation. This indicator separates rule-bending from rule-breaking and from abuse of power in its actionable form.
2. **Procedural manipulation.** Discretion over venue, sequence, timing, jurisdiction, or statutory wording is deployed strategically rather than exercised in good faith — Potter’s procedural politicking. This indicator separates rule-bending from maladministration, which lacks the strategic element.
3. **Adverse orientation of the enforcer.** The law-enforcement structure displays no intention of delivering justice to vulnerable groups, in particular victims; in Friedman’s terms, the defect lies in the *structure* component of the legal system.⁶⁹
4. **Power-protective beneficiary.** The principal beneficiary of the act is the incumbent power-holder, whose interests the legal framework is redirected to serve — the signature of autocratic legalism, in which legal form is used to hollow out democratic substance.⁷⁰
5. **Objective-defeating outcome.** The act frustrates the declared objectives of the legal system — accountability, truth, the deterrent aim of punishment, and the guarantee of non-recurrence — and thereby sustains impunity.⁷¹

Indicators one and two concern the *substance* and operation of legal rules, indicator three the *structure* of enforcement, and indicators four and five the *legal culture* and systemic outcome, so that the test tracks Friedman’s three components of a legal system rather than isolated acts.

Applied to the enforced disappearances of 1997/1998, the test yields consistent results. The substitution of the Officers’ Honour Council — an ethics forum — for criminal command responsibility; the omission of the word “truth” after “disclosure” in Article 3 of Presidential Decision No. 17 of 2022; the shuttling of the

⁶⁴ European Ombudsman, Annual Report 1997 (Strasbourg: European Ombudsman, 1998), where maladministration is defined as occurring “when a public body fails to act in accordance with a rule or principle which is binding upon it.”

⁶⁵ Doreen McBarnet and Christopher Whelan, “The Elusive Spirit of the Law: Formalism and the Struggle for Legal Control,” *Modern Law Review* 54, no. 6 (1991): 848–873.

⁶⁶ Leisha DeHart-Davis. *Op. Cit.*

⁶⁷ Lon L. Fuller. *Op. Cit.*

⁶⁸ Satjipto Rahardjo, *Ilmu Hukum: Pencarian, Pembebasan, dan Pencerahan* (Surakarta: Muhammadiyah University Press, 2004), 32.

⁶⁹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 14–16.

⁷⁰ Kim Lane Scheppele, “Autocratic Legalism,” *University of Chicago Law Review* 85, no. 2 (2018): 545–583.

⁷¹ United Nations Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005), Principles 1, 19, and 23.

investigation file between Komnas HAM and the Attorney General’s Office without a determinable procedural status; and the narrowing of the ad hoc Human Rights Court’s *locus* and *tempus* by Presidential Decision No. 96 of 2001 each proceed through valid legal instruments (indicator 1), deploy procedural discretion strategically (2), operate without a victim-oriented enforcement intention (3), shield those in or allied with power (4), and defeat deterrence and the guarantee of non-recurrence (5). They are therefore classified as negative rule-bending, not as maladministration or mere loophole exploitation. By contrast, the Argentine judiciary’s progressive rulings that reopened prosecutions notwithstanding the *Ley de Pacificación Nacional* fail indicators three to five and exemplify the positive pole — what Rahardjo terms a legal breakthrough — and thus fall outside the category that this article critiques.⁷²

The relationship between negative rule-bending and its three neighboring concepts can now be stated precisely. Legal loophole exploitation supplies its *technique*: the omission of “truth” after “disclosure” in Presidential Decision No. 17 of 2022, the discretionary gap opened by Constitutional Court Decision No. 18/PUU-V/2007, and the *locus/tempus* narrowing of Presidential Decision No. 96 of 2001 all operate through creative compliance with the letter of formally valid instruments. The appearance of maladministration supplies its *cover*: the shuttling of the case file between Komnas HAM and the Attorney General’s Office resembles bureaucratic incapacity, but more than two decades of “dysfunction” that resolves invariably in favor of the implicated commanders discloses strategy, not negligence, and thereby fails the good-faith element that defines maladministration. Its *substance* is abuse of power in the administrative-law sense of *détournement de pouvoir* — authority conferred to enable the prosecution of gross violations exercised so as to defeat that very purpose — yet, because formal legality is retained at every step, the abuse subsists only at the level of the pattern and can never be actioned as such.⁷³ Negative rule-bending is thus abuse of power laundered into legal form and insulated from the remedies that overt abuse would trigger. What it produces, accordingly, is none of the three neighboring conditions but their systemic product: impunity, the defeat of the deterrent aim of punishment, and the absence of any guarantee of non-recurrence, consolidated over time into autocratic legalism as the operative legal culture.

Table 1: Operational Indicators of Negative Rule-Bending

No.	Indicator	Guiding question	Evidence in the 1997/1998 case
1	Formal-legality retention	Is the act executed through, not outside, valid legal instruments?	DKP forum; Presidential Decisions No. 96/2001 and No. 17/2022
2	Procedural manipulation	Is procedural discretion deployed strategically?	File shuttling between Komnas HAM and the AGO; refusal of witnesses pending an ad hoc court decree
3	Adverse orientation of the enforcer	Does the enforcement structure lack a victim-oriented intention?	AGO disclaimer of competence; unexecuted 2009 DPR recommendation
4	Power-protective beneficiary	Does the act principally serve incumbent power?	Command-responsibility process halted while implicated officers advanced
5	Objective-defeating outcome	Are deterrence and non-recurrence frustrated?	No ad hoc court; thirteen victims still unaccounted for; recurrence risk unaddressed

Source: Developed by Author⁷⁴

⁷² Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

⁷³ On *détournement de pouvoir* — the exercise of an administrative power for a purpose other than that for which it was conferred — see L. Neville Brown and John S. Bell, *French Administrative Law*, 5th ed. (Oxford: Clarendon Press, 1998); the equivalent ground of “misuse of powers” is codified in Article 263 of the Treaty on the Functioning of the European Union.

⁷⁴ It is developed by the author from the literature cited in this section. See Amaritasari, “Rule-Bending’ Implementasi Pertanggungjawaban Pelaku Pelanggaran Hak Asasi Manusia Berat Masa Lalu,” Chapter 5, p. 304-308.

3.3. The Rule-Bending on the Implementation of Perpetrators' Liability of Past Gross Human Rights Violations and Legal Culture in Indonesia

The Indonesian human rights court process for gross violations is often mired in a vortex of "procedural politicking" and "negative rule-bending" that makes it difficult for those in command to face justice. Procedurally, Law No. 26 of 2000 separates the inquiry (*penyelidikan*) conducted by the National Commission on Human Rights (Komnas HAM) from the investigation (*penyidikan*) conducted by the Attorney General's Office; in practice, however, this division of labor is manipulated through the repeated return of case files on technical grounds that are impossible to satisfy—most starkly in the 1997/1998 enforced-disappearance dossier discussed above, where the demand for a *visum et repertum* for victims who remain missing typifies the tactic. This legal culture remains heavily shaped by the colonial legacy of a rigid, legalistic-formalistic Rechtsstaat,⁷⁵ in which law is understood as a tool of power (rule by law) to preserve state stability rather than to limit power or protect human rights. Law-enforcement officials thus tend to practice "autocratic legalism" - a concept developed by Kim Scheppele to describe how authoritarian leaders and regimes use laws and legal procedures to entrench their power⁷⁶ - the repeated return of investigative files — without exercise of the statutory option under Article 21(3) of Law No. 26/2000 to appoint ad hoc investigators — produced the outcome Scheppele's autocratic-legalism framework predicts: "procedural compliance with no prosecutorial output." The unused statutory option is the load-bearing fact; state it and let the framework do the interpreting.

This culture is most visible in the treatment of command accountability, where superiors are consistently either unpunished or acquitted through manipulation of the judicial system. In the Tanjung Priok case, command-level defendants convicted at first instance were collectively acquitted on appeal and cassation, illustrating how all command-level defendants convicted at first instance were acquitted on appeal or cassation; no first-instance conviction of a commanding officer survived review.⁷⁷ Likewise, in the Tim Mawar military tribunal, field-level soldiers were convicted while criminal responsibility was never extended to the superiors who exercised effective control. The Tanjung Priok and East Timor Ad Hoc Human Rights Courts together reveal a recurring pattern in which military defendants are acquitted on appeal. Of the eighteen defendants tried before the ad hoc court for East Timor, all were ultimately acquitted at trial or on appeal, and in Tanjung Priok no first-instance conviction of a command-level defendant survived review. Contemporaneous assessments characterized this record in converging terms: the ICTJ's trial-monitoring study concluded that the proceedings were "intended to fail,"⁷⁸ identifying the absence of political will to prosecute and to accept the outcome of the legal process as the underlying defect, and the UN Commission of Experts found the prosecutions "manifestly inadequate," attributing this primarily to a lack of commitment on the part of the prosecution, together with deficient investigations and inadequate presentation of inculpatory evidence at trial.⁷⁹ The outcome is a "transaction of impunity," rationalized by a claim in tension with documented Indonesian legal cultures: Acehnese *Peulara Damèe* pairs peace with truth about past violence, and the Minangkabau maxim *rajo adia rajo disambah, rajo zalim rajo disanggah* conditions a leader's legitimacy on justice."

The establishment of the Team for the Non-Judicial Resolution of Past Gross Human Rights Violations (PPHAM) marks the latest turn in this strategy: a shift from judicial to transactional, non-judicial channels. The establishing decree's mandate extends to *pengungkapan* (fact-finding) but not *pengungkapan kebenaran* (truth disclosure); on its text, the Team is not tasked with establishing perpetrators or causation, the elements transitional-justice doctrine treats as the core of truth-telling. From a transitional-justice perspective the non-

⁷⁵ Kim Lane Scheppele, "Autocratic Legalism," *The University of Chicago Law Review* 85, no. 2 (2018): 622–33.

⁷⁶ *Ibid.*

⁷⁷ Mira Maulidar. "Korelasi Filosofis Antara Restorative Justice dan Diyat dalam Sistem Hukum Pidana Islam." *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 13, no. 2 (2022): 143–155. <https://doi.org/10.47498/tasyri.v13i2.856>.

⁷⁸ David Cohen, *Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta*, ICTJ Occasional Paper Series, ed. Paul Seils (New York: International Center for Transitional Justice, 2003).

⁷⁹ United Nations, *Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999*, UN Doc. S/2005/458 (26 May 2005), para. 17

judicial route should bridge toward, not substitute for, judicial accountability; PPHAM's design instead invites the criticism of "legal smuggling," resolving the matter without uncovering the perpetrators and a design that diverges from Principles 19 and 23 of the UN Updated Set of Principles, which require truth-seeking to complement rather than replace prosecution, and from the reparative preferences victims' families expressed in interviews.⁸⁰

Yet the "harmony" invoked to excuse this impunity does not reflect Indonesia's actual legal cultures, many of which demand accountability from those in power. In Aceh, customary tradition emphasizes justice for victims through *diyat*⁸¹ and the acknowledgment of wrongdoing, while still insisting on truth about past violence in the spirit of *Peulara Damèe* ("nurturing peace").⁸² In Minangkabau, the maxim "*Rajo adia rajo disambah, rajo zalim rajo disanggah*" holds that leaders are honored only while just and forfeit their legitimacy when tyrannical.⁸³ In Papua, customary legal culture stresses the full repair of historical wounds and the recognition of violated dignity. Elites who cite the Javanese tale of Ken Arok to portray Indonesian culture as uniformly harmonious therefore distort it: Indonesia is not reducible to a single Javanese narrative, and the customary orders of Aceh, Minangkabau, and Papua uphold justice for the oppressed. The "culture of harmony" argument is, in the end, a shield for command-level impunity.

The failure to hold perpetrators accountable is thus not a legal technicality but a question of political will; a legal culture that tolerates impunity and rule-bending for the sake of short-term stability has stalled Indonesia's transformation into a state that genuinely respects human rights.⁸⁴ Reversing this trajectory requires a legal culture that reclaims authentic justice values—such as those of the Minangkabau—and the courage to break with colonial legacies. Amid the pressures of the post-truth era, what is needed is law enforcement that does not merely adhere to the text but dares to make legal breakthroughs to counter injustice—the orientation the next section develops through the transformative legal model.

3.4. The Legal Progressive of Transitional Justice Framework as Solution to the Rule-Bending Situation

Progressive Legal Theory is used as a tool to counter the legal culture of law enforcement trapped in "formalistic legalism" or autocratic legalism. In cases of enforced disappearances, law enforcement often uses rigid rules of evidence (such as requiring a physical examination of the missing victim) to dismiss cases. Progressive Law demands that law enforcement not be "slaves to the law" but rather dare to make legal breakthroughs for substantive justice. The law must serve people and humanity, so the lack of physical evidence should not be an excuse to perpetuate impunity. The Transitional Justice Framework is positioned as a comprehensive strategy that relies not only on judicial channels but also on truth-telling, reparations for victims, and institutional reform. This solution is offered to address the "transactions of impunity" that frequently occur in Indonesia. With this framework, the state is compelled to honestly acknowledge past crimes (the right to truth) and ensure that those in command are no longer protected by corrupt power structures.

Progressive Law, initiated by Prof. Satjipto Rahardjo, is the antithesis of positivistic-formalistic legal thinking. According to Satjipto, the essence of law is "law for humans," not the other way around.⁸⁵ Law is not simply a dead text or a set of regulations to be blindly obeyed (not "humans for the law"). In this view, law must be dynamic, have a conscience, and always seek liberating substantive justice, especially when formal

⁸⁰ Amaritasari. *Op Cit.* Chapter III.

⁸¹ Aceh Truth and Reconciliation Commission (Komisi Kebenaran dan Rekonsiliasi Aceh). *Peulara Damèe: Nurturing Peace — Report on Findings of the Aceh Truth and Reconciliation Commission*. Banda Aceh: KKR Aceh, 2023.

⁸² M. Yanis Saputra, "Undang-Undang Dan Adat Minangkabau," *Jurnal Cerdas Hukum* 3, no. 1 (2024).

⁸³ Human Rights Watch. "Indonesia: No Accountability for Past Atrocities." *World Report 2024*. New York: Human Rights Watch, 2024. <https://www.hrw.org/world-report/2024/country-chapters/indonesia>.

⁸⁴ Satjipto Rahardjo, *Op. Cit.*

⁸⁵ Satjipto Rahardjo, *Op. Cit.*

legal rules actually become obstacles to truth and human rights.⁸⁶ In this research, Progressive Law theory is a crucial means of addressing the practice of "negative rule-bending" (bending the rules for impunity). If law enforcement officials in Indonesia are currently trapped in a formalistic legal culture that uses administrative procedures as a weapon to protect perpetrators, Progressive Law demands the opposite: "positive rule-breaking" to secure justice.

Formalistic law often dismisses human rights violation cases due to a "lack of formal evidence," such as the absence of a written warrant or the absence of the victim's body. Law enforcement in Indonesia currently hide in the legal formalistic and ignore justice value in society which create impact of having no solution to legal problem and tends to delay justice for the vulnerable group particularly victims.⁸⁷ Progressive law rejects this logic. In cases of enforced disappearances, progressive law enforcement will not stop simply because the administrative file is incomplete according to the Criminal Procedure Code (KUHP) standards. Instead, they will examine the substance of the crime: the fact that a systematic disappearance occurred by a state actor. Substantive justice here means the courage to accept circumstantial evidence or systemic patterns as valid evidence in order to uncover the truth for the victims' families. "Bending the rules" is used to exonerate superiors on the grounds of "no direct orders." Progressive law would make a breakthrough to achieve substantive justice,⁸⁸ in this case by substantively applying the principle of Command Responsibility for speed up the process of having investigation for the human rights court. A commander cannot absolve himself simply because there is no written order, if he has "effective control" over his subordinates who committed the crime. Progressive law views power relations and military hierarchy as concrete evidence of complicity, not simply seeking a piece of paper.

Satjipto Rahardjo often emphasized that the law must have a "heart."⁸⁹ In the 1997/1998 cases, the current legal culture tends to be "cold" and administrative—considering victims merely as "files" to be returned or ignored. Progressive law demands that law enforcers empathize with the victims' suffering.⁹⁰ If formal law (the Human Rights Court Law) stalls due to politicization, then progressive law enforcers will strive to integrate other mechanisms (such as truth-telling and reparations) so that victims' rights are not simply forfeited. This kind of model is the novelty of the research, which is called a transformative legal model that adopts progressive legal theory; transitional justice requires a progressive system and individuals, in this case, law enforcement. As the novelty of the correspondence author's dissertation research, the description of the model is presented in the diagram below. Transitional justice is impossible to achieve without these two conditions, as evidenced by examples from several countries.

While the Human Rights Court Law is considered to contain deliberate loopholes designed to protect perpetrators, Progressive Law provides room for judges or prosecutors to implement "legal breakthroughs." A concrete example of this is using international norms (jus cogens or international statutes) as the primary reference, even if national law does not specifically regulate them or even hinders them. Progressive judges will not allow "procedural formalities" to become an excuse to acquit serious human rights violators, as that would be a betrayal of humanity by the law. Progressive Law is key to breaking the chain of impunity. It transforms the law from a mere "tool of power" (used by perpetrators to bend the rules for self-protection) to a "tool of liberation" (used by victims to demand justice). If our law enforcers are currently merely passive "robots of the law," Progressive Law demands that they become "human beings with reason and conscience" who dare to break procedures for the sake of substantive truth. Progressive law rejects the rigid attachment to the literal text of legal rules, refusing to allow the law to be weaponized as a "tool of power" by those who manipulate procedural formalities for self-protection. Instead, progressive law places human behaviour and

⁸⁶ Nobertus Jegalus, Op. Cit.

⁸⁷ Faishal Taufiqurrahman, Efendi Ibnuusilo, dan Monika Melina, "Pergeseran Penegakan Hukum yang Positivistik Menuju ke Penegakan Hukum yang Progresif," *Journal Equitable* 8, no. 1 (2023).

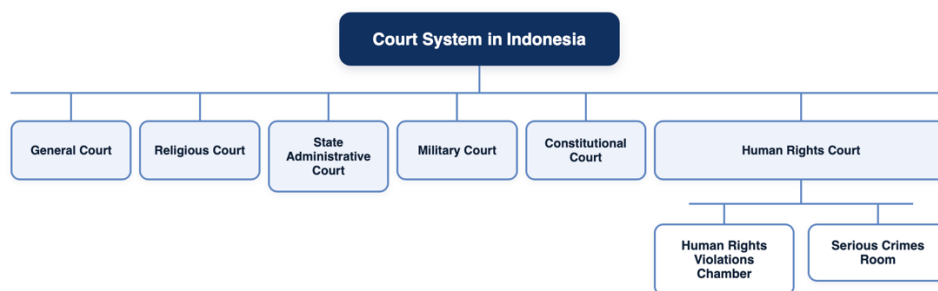
⁸⁸ Nobertus Jegalus, Op. Cit.

⁸⁹ Satjipto Rahardjo, Op. Cit.

⁹⁰ Nobertus Jegalus, Op. Cit.

human dignity at its center, giving rise to what is known as interactional or substantive law — a living framework that serves people rather than controls them.⁹¹ In this liberating sense, progressive law does not confine itself to a purely dogmatic understanding of the legal system. It equally embraces the empirical dimensions of social behavior, enabling the law to see and respond to human problems in their entirety. This holistic vision transforms the law into a genuine "tool of liberation," one that victims can wield to demand the justice they deserve, rather than a rigid structure that shields perpetrators from accountability.⁹² In order to do so, the Human Rights Court should independently construct equally with general court, not under the general court. The reference to gacaca is deliberately selective. What the model borrows is the Rwandan process's community-participation logic—its capacity to generate grassroots evidence, local ownership, and social legitimacy—not its wholesale procedural design, which drew sustained criticism for compromising fair-trial standards, above all through the exclusion of legal counsel. The transformative model proposed here retains professional judges alongside community-representative judges, guarantees defence counsel, and preserves ordinary evidentiary safeguards, so that popular participation strengthens rather than displaces the accountability function of the Human Rights Court. The Human Rights Court in the Transformative Legal Model is independent with no subordinate from the general justice system.

Picture 1: The Human Rights Court in Transformative Legal Model



Source: Prepared by the Corresponding Author⁹³

Progressively, prosecutors should use "judicial conviction" and secondary evidence (survivor testimony, military operation patterns) to prove crimes against humanity. Progressive law requires that, for extraordinary crimes, the standard of proof itself be extraordinary rather than bound to the rigid thresholds of ordinary offences. The Greek prosecutors' creative use of the "abuse of authority" provision, discussed above, exemplifies this interpretive posture, and the same logic should be encouraged in the Indonesian context for prosecuting the offender with extraordinary measure. It happens to corruption case, and it is likely possible for gross human rights violation. The findings of research on The Relevance of Progressive Law in Legal Reasoning in Indonesia affirm that progressive law creates a necessary and just paradigm shift by empowering judges and legal practitioners to look beyond rigid legal texts and engage meaningfully with the social realities surrounding each case.⁹⁴ This interpretive freedom enables legal reasoning to bridge the long-standing divide

⁹¹ Dewi Asri Yustia, Randi Kurnia Abdulgani, and Lilis Wahyu Mulyani. "Progressive Legal Perspective in Providing Legal Protection for Educators." *Indonesian Journal of Law* 10, no. 2 (2024).

⁹² *Ibid.*

⁹³ Figure prepared by the corresponding author. The existing court structure follows the design of judicial power under Article 24(2) of the 1945 Constitution of the Republic of Indonesia and Article 18 of Law No. 48 of 2009 on Judicial Power, under which the Human Rights Court operates as a special court (pengadilan khusus) established by Law No. 26 of 2000 on the Human Rights Court. The Human Rights Violations Chamber and Serious Crimes Room are the author's own proposed additions, developed as part of the corresponding author's doctoral research; see Amaritasari, "Rule-Bending' Implementasi Pertanggungjawaban Pelaku Pelanggaran Hak Asasi Manusia Berat Masa Lalu," Chapter 5, p. 368.

⁹⁴ Vincentius Patria Setyawan, "The Relevance of Progressive Law in Legal Reasoning in Indonesia," *Noblesse Oblige Law Journal* 2, no. 1 (June 2025): 150–227.

between law as written and law as lived, producing decisions that genuinely reflect society's needs and uphold the true spirit of justice. By embracing progressive law, the Indonesian legal system gains the flexibility and moral grounding needed to respond dynamically to evolving societal demands, rather than being constrained by outdated or overly technical legal standards.

The Argentine breakthrough discussed above—where a judge subordinated national amnesty law to *jus cogens*—illustrates how domestic courts can align national and international human-rights standards. A comparable calibration between state authority and universal norms operates in the European regional system through the doctrine of the margin of appreciation⁹⁵ and the Siracusa Principles,⁹⁶ so that local publics share an equal understanding in the interpretation of law and human rights. Equal understanding is intended to break the limited legal access, especially for disadvantaged and vulnerable groups such as indigenous people. Research on socio-legal dynamics that influence the position of indigenous communities on land rights highlights that the implementation of Land Management Rights (HPL) in the field often weakens the bargaining position of indigenous communities due to limited legal access, the absence of substantive participation mechanisms, and the dominance of state and investor interests in the decision-making process. In addition, regulations regarding timeframes, cooperation mechanisms, and ecological protection still do not provide adequate legal certainty.⁹⁷ As for the case of vulnerable group, the law enforcement officers are in urgent needed to have legal understanding and interpretation using progressive legal approach especially when facing people living in poverty⁹⁸ as indicated in Nenek Minah⁹⁹ case.

The development of systemic equality in the Human Rights Court that aligns universal, national and local values – taking into account the implementation at the international level of the European Court of Human Rights and the ICTY/ICTR – will allow for the existence of chambers in this court that are divided into serious crimes that contain jurisdictions contained in the Rome Statute and/or the Human Rights Court Law and human rights violations that handle violations committed by states related to human rights that are not categorized as serious crimes.

In the transformative legal model for demanding criminal accountability for past gross human rights violations, judges' independence and courage are required in deciding cases, guided by interpretation as a tool for assessing the state's implementation of human rights. This interpretation tool, implemented in countries like Norway and Germany, is also aided by community representatives, who in Norway can serve as Lay Judges.

⁹⁵ The "margin of appreciation" is a legal doctrine primarily used by the European Court of Human Rights (ECtHR) to grant national authorities discretion in interpreting and applying the European Convention on Human Rights (ECHR). This doctrine recognizes that different countries have different legal and cultural traditions and, therefore, may have different understandings of how human rights apply in specific contexts. See: Matthew Saul, "Judicial Methodology for the Application of International Human Rights Law" in the book title *International Human Rights and Local Court* edited by Aksel Tomte and Eko Riyadi, published by Taylor and Francis in 2024. The European Court of Human Rights is not intended to prosecute serious crimes because it is based on a human rights regime, while the ICTY and ICTR are based on international criminal law.

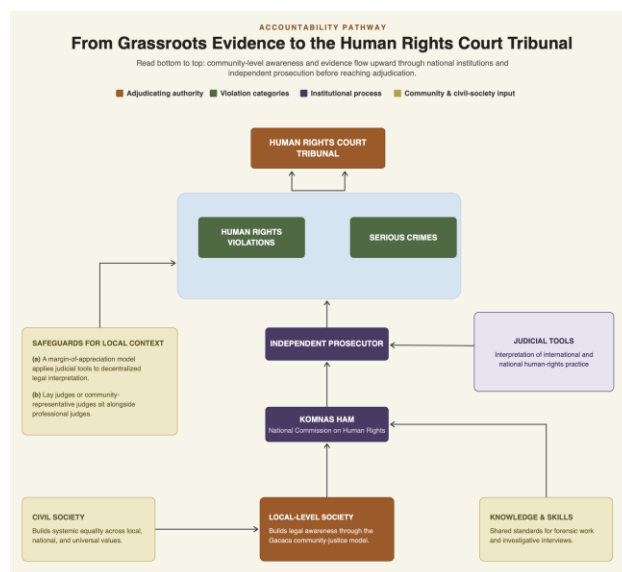
⁹⁶ In 1984, the United Nations Economic and Social Council (ECOSOC) adopted the Siracusa Principles, which state that restrictions on human rights must meet the standards of legality, necessity, and proportionality. States must use the least restrictive means available when implementing measures restricting human rights.

⁹⁷ Lenny Husna, Muskibah Muskibah, and Dwi Suryhartati, "A Model for Utilizing Common Land for Investment Through HPL that Strengthens the Position of Indigenous Communities," *Journal of Adat Recht* 2, no. 5 (January 2026), <https://doi.org/10.62872/5cwc268>.

⁹⁸ Andre Fernando Situmorang, Azka Afdhalul Rizqullah, Fraja Mulya Dwi Bakti, and Bintang Alfath Richard Hukum, "Peran Hukum Progresif dalam Mencari Keadilan Menurut Satjipto Rahardjo," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora* 3, no. 1 (June 2025): 1–15

⁹⁹ Nenek Minah was a 55-year-old farmer who picked three cacao pods belonging to PT Rumpun Sari Antan (RSA) while harvesting soybeans on her own plot of land. She went through trial at the Purwokerto District Court without legal counsel. She was charged under Article 362 of the Criminal Code (KUHP) for theft of three cacao pods weighing approximately 3 kilograms, valued at around Rp 2,000 per kilogram. The case was recorded as Verdict No. 247/PID.B/2009/PN.Pwt. was elderly and had no intention of stealing, she was still subjected to the full force of Indonesia's criminal law. Legal certainty was prioritized over humanity and the sense of justice felt by society. Law enforcers chose a judicial approach rather than a humanitarian one.

Picture 2: Human Rights Court in The Transformative Legal Model



This solution seeks to replace the legal culture of "false harmony" that protects those in power with one of accountability. From a Progressive Law perspective, local values from Acehnese, Minangkabau, or Papuan cultures that demand accountability from leaders must be upheld to counter elite narratives that often misuse the term "Indonesian culture" to secure impunity. Progressive Law encourages law enforcement to have conscience and morality in addressing the suffering of the families of missing persons. As also indicated by M. Yasin Al Arif about the perspective of progressive law in enforcing the law, there are at least three advantages of using the progressive law, based on his socio-legal research method, of using progressive law for enforcing the law.¹⁰¹ First, M. Yasin Al Arif states that progressive law serves as a practical and just alternative to conventional law enforcement, offering solutions that genuinely reflect society's values of justice. Second, according to M. Yasin Al Arif, progressive law empowers legal actors to move beyond strict legal formalism, granting them the freedom and responsibility to pursue true justice rather than just procedural compliance. Third, M. Yasin Al Arif highlights that, through the principle of 'using conscience in law enforcement,' progressive law ensures that moral judgment and human sensitivity remain central to every legal decision. The progressive implementation of Transitional Justice demands reform of law enforcement institutions to eliminate negative rule-bending practices. This involves eliminating the bureaucratic silos between the National Commission on Human Rights (Komnas HAM) and the Attorney General's Office, which for decades have provided a loophole for shifting responsibility. This framework offers a more holistic resolution mechanism, using the law to restore victims' dignity and ensure that similar extraordinary crimes never recur.

¹⁰⁰ Figure prepared by the author; the model is the author's own synthesis, developed as part of the corresponding author's doctoral research. See Amaritasari, "Rule-Bending' Implementasi Pertanggungjawaban Pelaku Pelanggaran Hak Asasi Manusia Berat Masa Lalu," [Chapter 5, page 370]. Its components draw on identifiable sources: the grassroots community-justice layer adapts Rwanda's gacaca courts (see Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* [Cambridge: Cambridge University Press, 2010]); the "safeguards for local context" adapt the margin-of-appreciation doctrine of the European Court of Human Rights (see George Letsas, "Two Concepts of the Margin of Appreciation," *Oxford Journal of Legal Studies* 26, no. 4 [2006]: 705–32); and the institutional pathway situates the National Commission on Human Rights (Komnas HAM) and the Human Rights Court within their statutory bases, Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on the Human Rights Court. The overall accountability pathway and adjudicatory design are the author's original proposal.

¹⁰¹ M. Yasin al Arif, "Penegakan Hukum dalam Perspektif Hukum Progresif," *Undang: Jurnal Hukum* 2, no. 1 (2019): 169–192, <https://doi.org/10.22437/ujh.2.1.169-192>.

4. Conclusion

This research reaches three principal conclusions. First, rule-bending in the implementation of accountability for perpetrators of past gross human rights violations—particularly the Enforced Disappearance of Pro-Democracy Activists of 1997/1998—has a detrimental effect on achieving the criminal law objective of deterrence, as it produces impunity. This rule-bending is negative in character because it delays justice for victims (justice delayed is justice denied) without any adequate enforcement mechanism, since its resolution depends on the will of those in power and law enforcement officials. The impunity manifests in the absence of truth disclosure that would confirm the whereabouts of victims and establish command responsibility; the lack of clarity regarding the process after the case file was returned between the Attorney General's Office and Komnas HAM; and the obstruction of inheritance settlement and the unresolved trauma of victims' families.

Second, legal culture influences this condition of impunity. A vertical, feudal, and repressive legal culture—inherited from the colonial era and authoritarian rule—combined with autocratic legalism, procedural politicking, and post-truth influences, preserves the status quo and obstructs legal progressivity. A positivistic-analytical mode of legal reasoning confined to statutory text, together with a centralistic and hierarchical bureaucracy—especially within the Attorney General's Office—leaves abuse of power unchecked, and progressive rulings are frequently overturned at the appellate and cassation levels. Public unawareness, particularly among Gen Z, further threatens the pillar of guarantees of non-recurrence.

Third, a transitional justice framework grounded in progressive legal theory offers a solution in the form of a transformative legal model, which constitutes the novelty of this research. This model positions law as an instrument continually transforming toward social justice and the empowerment of oppressed groups, embodying values that are progressive (siding with marginalized groups), responsive (opening space for public participation), and structural (addressing systemic inequality). This transformative model is evidenced in international practice in Argentina, Yugoslavia, and Rwanda, and aligns with local practices in Minangkabau, Papua, Badui, and Aceh, which demand accountability from unjust leaders. A culture of impunity is unknown in either universal or local values, as it erodes the rule of law and destroys public trust in government and law enforcement.

Accordingly, a just resolution requires a shift in legal substance, structure, and culture toward what is progressive and transformative, so that the accountability of perpetrators—particularly command responsibility—can be enforced without depending on the will of those in power.

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