



HUMANITARIAN INTERVENTION: INSTITUTIONAL SUPPORT FROM THE MINISTRY OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA

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Accepted: 23-05-2022; Revised: 08-11-2022; Approved for Publishing: 17-11-2022

DOI: <http://dx.doi.org/10.30641/kebijakan.2022.V16.377-396>

ABSTRACT

Humanitarian intervention is an act of intervention using armed forces for humanitarian purposes. Indonesia as a country that has a role to participate in maintaining world security and order has the potential to carry out humanitarian interventions. The implementation of humanitarian intervention requires in-depth consideration and study. Therefore, this study tries to find out about the aspect of law and human rights institutions in the implementation of humanitarian intervention conducted by Indonesia. The method used is normative research, by reviewing existing regulations that are related to humanitarian intervention. The Ministry of Law and Human Rights based on its structure and function has a major role in the implementation of humanitarian interventions, both in the initial phase of initiation until the initiation of the intervention is approved for implementation. The role of the Ministry of Law and Human Rights needs to be encouraged to be fully involved in the implementation of humanitarian interventions.

Keywords: humanitarian intervention; international law; human rights

INTRODUCTION

Background

Indonesia, as part of the international community, participates in attaining world security, order, and peace. This is mentioned in the second principle of Pancasila which states that the state of Indonesia is based on just and civilized humanity. In order to realize this principle, it is certainly done from the smallest scope to the largest scope, namely the international community. This provision becomes a moral obligation for Indonesia as part of the international community in taking actions related to foreign affairs. As a country,

in realizing world security, order, and peace, the Government of Indonesia certainly has several options, namely through diplomatic channels and by deploying armed forces to ensure world order.

Matters related to the security, order, and peace of the international community are serious problems. Disruption to world security, order, and peace can have an impact on the stability of a region, and of course, it can also have an impact on surrounding countries. At some level, even disruption of security and order can result in disruption to all countries of the world.

In response to international security problems and frequent humanitarian crises, a conception of steps emerges to overcome these problems, namely humanitarian intervention, a term used globally to address humanitarian-related crises and problems. Humanitarian intervention is simply defined as an act of intervention by one country to another on humanitarian grounds to stop grave violations of human rights occurring in a country. The concept of humanitarian intervention is carried out by deploying the armed forces of a country with the aim of stopping humanitarian crises that occur in other countries.¹

Considering the development of security and order of the international community that is difficult to predict, it is not impossible that Indonesia will experience a situation that requires intervening against other countries on humanitarian grounds. In its history, Indonesia as an independent country has experienced intervention events. After independence, Indonesia experienced intervention from allies who are willing to be used by the Dutch to regain control of Indonesia. Indonesian military intervention in the East Timor region in 1975. This intervention leaves a negative image of Indonesia in the international community. Indonesia's intervention in East Timor is considered a violation of international law. It is even categorized as an act of territorial annexation. At its peak, the UN Security Council denounced and ordered Indonesia to withdraw its military forces from East Timor. In fact, Indonesia argued that this action is to prevent riots and bloodshed in East Timor due to power struggles. The case in East Timor should be a lesson for the Government of Indonesia in taking intervention actions aimed

at humanity. Therefore, it is necessary to know how the characteristics of humanitarian interventions that do not cause problems.²

The current event that could potentially result in humanitarian intervention is the alleged genocide against ethnic Rohingya in Myanmar. The Myanmar government's treatment of ethnic Rohingya has raised concerns to the international community and even data and studies show the Myanmar government has committed *genocide* and ethnic cleansing of ethnic Rohingya in Myanmar. Myanmar has a geographical location adjacent to Indonesia. Geopolitically, Myanmar and Indonesia are members of the same regional organization, namely ASEAN. It is not impossible for Indonesia or collectively with other ASEAN countries to carry out humanitarian intervention under the pretext of stopping the genocidal crimes committed by Myanmar against the Rohingya.³

If indeed in its development, Indonesia must take steps to carry out humanitarian intervention actions or participate in the initiation of humanitarian interventions carried out by other countries/ASEAN organizations, then its implementation needs to be done through careful actions. These careful actions are of course related to domestic and foreign affairs. Indonesia should not be involved in humanitarian interventions that are considered a violation of international law that harms Indonesia's reputation in the international community, repeating the mistakes of the intervention in East Timor. One of the important components of humanitarian intervention is carefulness related to the field of law and human rights. The Indonesian government in terms of law and human rights

1 Catherine van Offelen and M Smith, "Agonizing Choices: Tragedy and International Relations -A Tragic Vision of Humanitarian Intervention in the Bosnian War," *Review of International Studies*, Cambridge University Press 46, no. 4 (2020): 495-513.

2 Paul D. Elliott, "The East Timor Dispute," *The International and Comparative Law Quarterly* 27, no. 1 (2018): 241.

3 Haradhan Kumar Mohajan, "The Rohingya Muslims in Myanmar Are Victim of Genocide!," *ABC Journal of Advanced Research* 7, no. 2 (2018): 105.

has a Ministry that deals with these fields, namely the Ministry of Law and Human Rights (Kemenkumham).

Kemenkumham is a ministry that has duties and functions in the field of law and human rights. As one of the ministries that has a fairly broad scope, namely regarding law and human rights, Kemenkumham should have a considerable roles in the implementation of humanitarian interventions. Kemenkumham's roles cannot be ruled out, considering that humanitarian intervention requires a strong legal basis in its implementation and also requires an appropriate instrument in the field of humanity and human rights.

The implementation of humanitarian interventions, as new or rarely implemented in Indonesia's international policy, requires support in the field of law and human rights. The substance support, of course, based on relevant regulations is the *core business* of Kemenkumham. Based on Presidential Regulation Number 44 of 2015, especially in Article 2, it is explained that the Ministry of Law and Human Rights (Kemenkumham) has the task of organizing government affairs in the field of law and human rights to assist the President in organizing state government. Furthermore, it is stated that Kemenkumham carries out closely related functions in supporting the implementation of humanitarian interventions, namely the formulation, determination, and implementation of policies in the field of legislations, human rights, implementation of national legal guidance, implementation of research and development in the field of law and human rights, implementation of technical activities on a national scale, implementation of support that is substantive in law and human rights.

There is not any literature that specifically discusses the role of Kemenkumham regarding the implementation of Indonesian humanitarian interventions. This issue is a novelty being discussed in this paper. In

addition, there is not much literature that discusses humanitarian intervention in the Indonesian context. Some literature that reviews humanitarian intervention in the Indonesian context is in the form of journals and theses, including: *Implementation of the Principle of Humanitarian Intervention Responsibility to Protect (R2P): A Case Study of Indonesia's Assistance to the 2015 Nepal Earthquake*, A Nurshabrina's thesis in 2017 which discusses humanitarian intervention in the Indonesian context related to natural disasters that occur in other countries⁴; *Indonesia and the Rohingya Humanitarian Tragedy* journal article by A Pujayanti 2017 that discusses the urgency of implementing humanitarian interventions that Indonesia needs to urgently resolve the Rohingya humanitarian crisis in Myanmar⁵; *The Principle of Responsibility to Protect (R2P) in the Israeli-Palestinian Conflict: What is Indonesia's Attitude?* journal article by S Widagdo and R Kurniaty 2021 discussing Indonesia's role in the international community related to the humanitarian tragedy that occurred in Palestine⁶; *Mechanisms for the Implementation of Humanitarian Intervention in Indonesian National Law*, a journal article by H Nasution and F Nurangga 2020 that discusses the general mechanism regarding the implementation of humanitarian intervention by Indonesia⁷; *Non-Intervention*

4 Alya Nurshabrina, "Implementasi Prinsip Intervensi Kemanusiaan Responsibility to Protect (R2P) : Studi Kasus Bantuan Indonesia Kepada Gempa Nepal Tahun 2015" (Universitas Katolik Parahyangan, 2017).

5 Adirini Pujayanti, "Indonesia Dan Tragedi Kemanusiaan Rohingya," *Majalah Info Singkat Hubungan Internasional*, Pusat Penelitian Badan Keahlian DPR RI IX, no. 17 (2017): 1–8.

6 Setya Widagdo and Rika Kurniaty, "Prinsip Responsibility to Protect (R2P) Dalam Konflik Israel-Palestina: Bagaimana Sikap Indonesia?," *Jurnal Arena Hukum* 14, no. 2 (2021): 314–327.

7 Hilmi Ardani Nasution and Nurangga Firmanditya, "Mekanisme Penerapan Intervensi Kemanusiaan Dalam Hukum Nasional Indonesia," *Jurnal De Jure* 20, no. 2 (2020): 189–204.

Attitudes of Indonesia and Other ASEAN Countries in Dealing with the Rohingya Crisis, a thesis by Ratnaningrum 2021 that discusses Indonesia's obligations as part of the international community related to the Rohingya crisis.⁸ This research is more specific than the previous paper and there is no literature specifically discussing the role of Kemenkumham in terms of humanitarian intervention. Therefore, this study has a novelty that is trying to be conveyed through this paper.

Research Question

Humanitarian intervention is an international-scale policy that involves various state institutions in its implementation. One of the institutions that is involved in this issue is the Ministry of Law and Human Rights (Kemenkumham) which has a *core business* in the field of law and human rights. Therefore, the research question in this study will be how is the role of Kemenkumham in the implementation of humanitarian intervention by the Republic of Indonesia within the framework of applicable legislations. The scope discussed in this study is still limited to the roles carried out by the Kemenkumham. It is because other roles may be performed by other ministries/institutions that can be further researched by other researchers.

Objectives

This study aims to find the role of Kemenkumham as one of the institutions that play a role in the implementation of humanitarian interventions initiated by the Republic of Indonesia. The discovery of this role is expected to provide input to stakeholders related to the implementation of humanitarian interventions and also as an attempt to enrich the scientific treasures

of international law, especially related to humanitarian interventions.

Research Methods

1. Approach

This research is normative legal research that used primary legal material data with a qualitative approach to obtain and utilize information related to the role of Kemenkumham in the implementation of humanitarian interventions by the Indonesian government.

2. Characteristic

This research is descriptive, in order to obtain an overview of Kemenkumham's role in the implementation of humanitarian interventions by the Indonesian government within the framework of legislations in Indonesia.

3. Data Collection Techniques

The data were obtained through literature studies consisting of primary legal materials in the form of legislations. They include Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights and Regulation of the Minister of Law and Human Rights Number 41 of 2021 concerning the Organization and Work Procedures of the Ministry of Law and Human Rights. In addition, the international instruments used are the Rome Statute for the International Criminal Court 1998 and the UN Charter 1945. Secondary legal materials are in the form of books, research results, and journals related to research topics.

4. Data Analysis Techniques

Data analysis in this research is a descriptive analysis carried out according to the scope of the discussion, namely regarding Kemenkumham's role related to the implementation of humanitarian interventions by the Indonesian government.

⁸ RatnaningrumAnakAgung Istri Mas Ratnaningrum, "Sikap Non-Intervensi Indonesia Dan Negara-Negara Asean Lainnya Dalam Menghadapi Krisis Rohingya" (Universitas Atma Jaya Yogyakarta, 2021).

DISCUSSION

A. Humanitarian Intervention and Its Implementation by the Republic of Indonesia

Humanitarian intervention is defined as an action by a state that intervenes in the sovereignty of another country with a humanitarian purpose, more specifically preventing or ending crimes against humanity or grave violations of fundamental human rights without the consent of the state concerned.⁹ It is used to describe coercive actions aimed at changing political policy decisions in other countries with a view to ensuring respect for the most fundamental human rights.¹⁰ Humanitarian intervention is understood as a joint action carried out by a group of states or by an international organization, such as the United Nations, within the boundaries of another country with the aim of ending human rights violations related to a humanitarian emergency.¹¹ In accordance with the provisions of the UN Charter Article 42 which states that intervention is one of the actions allowed to maintain peace and security. Under the UN Charter's arrangements, humanitarian intervention can be implemented if it is deemed that there has been a threat to peace and a threat to world security. Even in its development, humanitarian intervention is possible to be carried out in a broader context that concerns humanitarian affairs and with good reason, for example, the responsibility of a country regarding environmental protection that can

have an impact on humanity.¹²

Humanitarian intervention is carried out in events that are considered at the extreme case level that result in the loss of many people's lives. The characteristics of extreme cases can be judged by whether there have been serious human rights violations such as genocide, crimes against humanity, crimes of aggression, or war crimes, as mentioned in the Rome Statute then the crime already falls into the category of widespread and systematic.¹³ It may refer to Rome Statute CHAPTER II, Articles 6, 7, 8, and 9. There are several criteria for humanitarian intervention to be justified, namely: the act of intervention has the right intention; intervention is the final step; interventions are proportionate to threatening matters; and the intervention is carried out with proper consideration to stop the suffering.¹⁴ In the context of humanitarian intervention, the sovereignty of a state is no longer interpreted as an absolute right of a state to its territory and its inhabitants, but also interpreted as an obligation for a state to protect its inhabitants and an obligation to the international community.¹⁵

The Republic of Indonesia has historically intervened against another country, namely East Timor, which at that time was part of the sovereignty of the Portuguese state. The Indonesian government in its intervention into

9 Offelen and Smith, "Agonizing Choices: Tragedy and International Relations -A Tragic Vision of Humanitarian Intervention in the Bosnian War," 10.

10 Mark Swatek-Evenstein, *A History of Humanitarian Intervention* (Cambridge: Cambridge University Press, 2020), 12.

11 Laura Herta, "The Solidarist Discourse and Humanitarian Intervention. Revisiting Sovereignty, Responsibility and Morality in Global Politics," *8th International Conference Redefining Community in Intercultural Context RCIC'19* 8, no. 1 (2019): 206.

12 Luxi Jiang and Shuying Zhang, "Intervention and Sovereignty in Environmental Protection: The Disputation of the Developing Countries' Role," *Proceedings of the 2021 International Conference on Public Art and Human Development (ICPAHD 2021)* 638 (2021): 554.

13 Hilmi Ardani Nasution, "Islam and Trans-Border Humanity: Humanitarian Intervention in the Perspective of Islam," *HIMMAH Jurnal kajian Islam Kontemporer* 3, no. 149–159 (2019): 152.

14 Michael P Scharf, "Striking a Grotian Moment: How the Syria Airstrikes Changed International Law Relating to Humanitarian Interventions," *Chicago Journal of International Law* 19, no. 2 (2019): 14.

15 Pak K. Lee and Cecilia Ducci, "No Humanitarian Intervention in Asian Genocides: How Possible and Legitimate?," *Third World Quarterly* 41, no. 9 (2020): 9.

East Timor used humanitarian reasons to prevent riots and bloodshed, because at that time in 1974 there was a Rose Revolution in Portugal which resulted in fundamental changes socially, economically, regionally, demographically, and politically in Portugal and the Portuguese colony.¹⁶ Although such actions can be categorized as humanitarian interventions from an Indonesian perspective, Indonesia's interventions against East Timor have come under fire from the international community. UN considers Indonesia to have carried out an invasion resulting in prolonged violence.¹⁷ Therefore, Indonesia's international policy of intervening in East Timor is detrimental to Indonesia's reputation in the international community. More concretely, the Americans even imposed an embargo on Indonesia as a result of human rights violations that occurred due to Indonesia's occupation of East Timor.¹⁸ The events that have occurred in East Timor are a lesson for Indonesia, in addition to political affairs, the East Timor events can be used as lessons for Indonesia to pay attention to important matters related to humanity.

There are no specific regulations in Indonesia that regulate humanitarian interventions. Although not specifically explained, humanitarian intervention has similarities with the declaration of war which has the main criterion of deploying armed forces to an area that is the sovereign territory of another country to carry out actions of a military nature. Under the framework of legislation, the deployment of armed

forces needs to go through a long process involving institutions that have interests. Indonesia's regulatory framework governing the deployment of armed forces to carry out military actions to other countries is as follows:

1. The Constitution of the Republic of Indonesia of 1945, Article 11 paragraph 1:

The President, with the approval of the House of Representatives, declares war, and makes peace and treaties with other countries.

2. Law Number 37 of 1999 concerning Foreign Relations, Article 6 paragraph 1:

The authority for the implementation of Foreign Relations and the implementation of Foreign Policy of the Government of the Republic of Indonesia is in the hands of the President. Meanwhile, in terms of declaring war, making peace, and treaties with other countries, the approval of the House of Representatives is required.

3. Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD Article 71, the authority of the DPR point (g):

The President with the approval of the House of Representatives declares war, makes peace and treaties with other countries.

4. Law Number 34 of 2004 concerning the Indonesian National Army Article 17 paragraph (2):

In the event of the deployment of The Indonesian Army (TNI) forces as referred to in paragraph (1), the President must obtain the approval of the House of Representatives.

5. Law Number 3 of 2002 concerning State Defense Article 14 paragraphs (1) to (4):

In the case of the deployment of the strength of the Indonesian National Army to deal with armed threats, the authority of the President as referred to

16 Nasution and Firmanditya, "Mekanisme Penerapan Intervensi Kemanusiaan Dalam Hukum Nasional Indonesia," 191.

17 Zulkarnain and Aos Yuli Firdaus, "Australia Foreign Policy Effect On Indonesia Post Independence of Timor Leste," *Britain International of Humanities and Social Sciences (BloHS) Journal* 4, no. 2 (2022): 285.

18 Ira Rizka Aisyah Lubis, "Diplomasi Koersif Amerika Serikat Terhadap Indonesia Melalui Embargo 1991-2005," *PERSPEKTIF* 11, no. 2 (2022): 763.

in paragraph (1) must be approved by the House of Representatives.

Based on the regulatory framework, the institutions that play an important role in the deployment of armed forces for humanitarian intervention are the President and the House of Representatives (DPR RI). In this case, the initiation is carried out by the President and then submitted to the House of Representatives of the Republic of Indonesia for approval in accordance with the legislations.

Humanitarian interventions initiated by the government are closely related to the field of law, namely regarding the procedural basis of law and human rights, namely a strong argument about stopping crimes against humanity as *just the cause* of intervention.¹⁹ From the beginning of the initiation to the initiation of humanitarian interventions approved by the House of Representatives (DPR). The substance of the law and human rights is very important. At the beginning of the initiation, legal considerations related to international law and human rights considerations are needed to analyze humanitarian aspects in the implementation of humanitarian interventions. After the initiation is approved by the DPR, humanitarian intervention requires legal support, especially within the framework of legislation that is useful as a legal basis for the government to mobilize its organs in the participation of humanitarian interventions.

Indonesian institutions, in terms of law and human rights, certainly refer to the applicable legislations. This statement is based on Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights,

Article 2 states: *The Ministry of Law and Human Rights has the task of organizing government affairs in the field of law and human rights to assist the President in organizing state government.* The role of the Ministry of Law and Human Rights (Kemenkumham) in the field of law, especially in the field of legislation, is also strengthened by Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations Article 21, 23, 26, 47, 49, 54, and 99A which mentions the authority to form legislations is in the Ministry or Institution that organizes government affairs in the field of forming legislations, in this case, the Ministry of Law and Human Rights. In the field of human rights, based on Law Number 39 of 1999 concerning Human Rights, it is stated in Article 8: *The protection, promotion, enforcement, and fulfillment of human rights are primarily the responsibility of the Government.* In terms of humanitarian intervention which is an attempt to protect and promote human rights, in this case, it is implemented by Kemenkumham as a representative of the government in the field of human rights in accordance with Presidential Regulation Number 44 of 2015.

Based on the background above, Kemenkumham as a ministry that has a *core business* in the field of law and human rights has an important role in implementing Indonesia's humanitarian intervention.

B. The Role of the Ministry of Law and Human Rights of the Republic of Indonesia in the Implementation of Humanitarian Interventions

In terms of nomenclature, the Ministry of Law and Human Rights (Kemenkumham) certainly has a tremendous role in all matters related to legal affairs and human rights. Humanitarian intervention is an action aimed

¹⁹ Fernando R. Teson and Bas Van Der Vossen, *Debating Humanitarian Intervention Should We Try to Save Strangers?* (Oxford: Oxford University Press, 2017), 39.

at stopping the continuation of crimes against humanity that are closely related to human rights. The implementation of humanitarian interventions also requires a strong legal basis from both international legal instruments and national legal instruments.

In addition to the provisions in President Number 44 of 2015 which emphasizes Kemenkumham's role in the field of law and human rights, humanitarian intervention is in line with the Kemenkumham's 2020-2024 Strategic Plan (Renstra) in the implementation of the formulation, determination, and implementation of policies in the field of legislations and human rights. Humanitarian intervention in this regard is closely related to the function of forming legislations and promoting human rights. The relationship between Kemenkumham and humanitarian intervention in terms of the formation of legislations is related to the Strategic Plan which mentions Kemenkumham's role in the formation of good legislations. In the field of human rights, Kemenkumham's role in the Strategic Plan is in optimizing the respect, protection, and fulfillment of human rights by carrying out the role of preparing recommendations with a human rights perspective.²⁰ In addition, there is also a ministerial regulation instrument that explains more detail related to the duties and functions of Kemenkumham, namely the Regulation of the Minister of Law and Human Rights (Permenkumham) Number 29 of 2015 concerning the Organization and Work Procedures of the Ministry of Law and Human Rights of the Republic of Indonesia which has been amended three times by Permenkumham Number 6 of 2016, Permenkumham Number 30 of 2017, and Permenkumham No. 24 of 2018. The Ministry of Law and Human Rights

has an Echelon I unit which has a close role with the implementation of humanitarian interventions, of course, related to the field of law and human rights. These units include the Directorate General of Legislations (Ditjen PP), the National Legal Development Agency (BPHN), the Directorate General of Human Rights (Ditjen HAM), and the Legal and Human Rights Research and Development Agency (Balitbangkumham). Based on the legislations that have been mentioned, as well as the 2020-2024 Strategic Plan of the Ministry of Law and Human Rights which mandates the establishment of quality regulations and the promotion of human rights, the duties and functions of the Ministry of Law and Human Rights have a considerable role in the process of humanitarian intervention, in supporting the President as the initiator of humanitarian interventions that are closely related to affairs in the field of law and human rights.

The role in the field of law and human rights by the Ministry of Law and Human Rights can detect all potential problems that will occur as a result of humanitarian intervention policies. One example as a case of the continued impact of the intervention policy is the Kosovo intervention by NATO. Kosovo intervention was the catalyst for the conflict between ethnic Albanians and the Macedonian government in 2001. Intervention policy not just means a policy that only considers short-term or small-scope impacts, but also long-term and broad-scope impacts. Therefore, the Ministry of Law and Human Rights in this case has an important role in ensuring that the humanitarian intervention policy becomes the best policy for Indonesia and the international community.²¹ Concretely, the Ministry of Law and Human Rights helps provide the formulation and basis of legal and human rights arguments that are

20 Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, *Rencana Strategis 2020-2024 Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia* (Jakarta: Kementerian Hukum dan HAM RI, 2020).

21 Jaume Castan Pinos, *Kosovo and the Collateral Effects of Humanitarian Intervention* (New York: Routledge, 2019), 160.

certainly scientific and based on the review process with existing evidence and facts. In the process of implementing humanitarian interventions, the Ministry of Law and Human Rights produces a series of legislations to support the regulatory framework for the implementation of humanitarian interventions.

Until now, after the intervention in East Timor, there has been no initiation of humanitarian intervention by Indonesia against other countries. It is because humanitarian intervention is an action that is categorized as *an extraordinary* action. When Indonesia last intervened in the East Timor, the new order government ruled and certainly is different from the government now. The deployment of armed forces cannot only be with the approval of the President, it needs approval from the DPR RI as one of the main stakeholders in the Indonesian constitution. So far, the Ministry of Law and Human Rights has always been involved in all matters related to law and human rights, including in the discussions of law involving other countries. As an example, the formulation of Mutual Legal Assistance with other countries involved several echelon I units of the Ministry of Law and Human Rights, including Balitbangkumham and the Ditjen PP .

The Ministry of Law and Human Rights (Kemenkumham), as the acting President in the field of law and human rights, in line with humanitarian intervention policies, certainly cannot work alone. Humanitarian intervention policy is a policy that involves various sectors that are supported by various ministries. Therefore, in this case, the Ministry of Law and Human Rights synergizes with other ministries in humanitarian intervention policies, in this case in the field of law and human rights at the level of initiation and implementation.

Law Number 3 of 2002 concerning State Defense, in Article 15 states:

- (1) In establishing the general policy of national defense as referred to in Article 13 paragraph (2), the President is assisted by the National Defense Council.
- (2) The National Defense Council as referred to in paragraph (1), serves as an advisor to the President in establishing the general policy of defense and the deployment of all components of the country's defense.

The President in the deployment of the defense component of the country is assisted by the National Resilience Council. The National Resilience Council is also a forum for the President to ask for consideration in defense-related policies. The National Resilience Council has a function in providing a review of defense-related policies. Presidential Regulation Number 101 of 1999 concerning the National Resilience Council states that the membership of the National Resilience Council consists of ministries related to defense, foreign affairs, and the Minister of Justice (Minister of Law and Human Rights). The Ministry of Law and Human Rights' membership in the National Resilience Council is certainly an element of complementing the needs of defense-related studies in the field of law and human rights.

The President in initiating humanitarian interventions needs to discuss comprehensively on various substantive matters before they are submitted for approval by the House of Representatives. Kemenkumham in this initiation has the right structure in arranging the formulation of the initiation with a background in the field of law and human rights. Balitbangkumham and Ditjen HAM as structures within the Ministry of Law and Human Rights have a role in formulating, analyzing, and providing recommendations that are enriched with

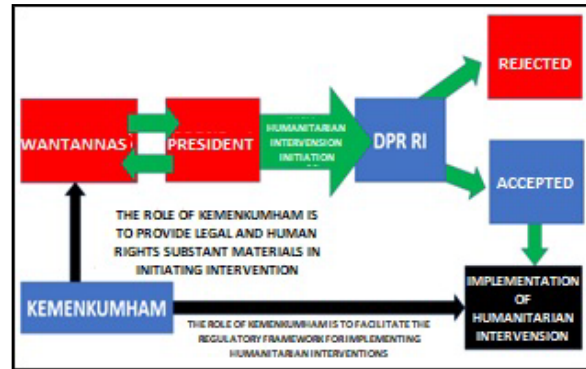
legal and human rights considerations. The involvement of structures that have competence in the field of law and human rights, with the support of comprehensive considerations will be a strong reference for the government in the implementation of humanitarian interventions.

Convincing the international community of Indonesia's policy of humanitarian intervention is certainly a tremendous role of the Ministry of Foreign Affairs. The involvement of the structure of the human rights field is a step to convince the international community that the humanitarian intervention policy initiated by Indonesia is solely aimed at humanity, to stop an extreme crime against humanity in the country to which the intervention is intended. The Ministry of Law and Human Rights synergizes with the Ministry of Foreign Affairs to provide human rights reviews based on international instruments.

After the initiation of humanitarian interventions has been approved by the DPR, at the level of implementing interventions, the Ministry of Law and Human Rights has a role in building a national regulatory framework that will be used as a formal foundation for the government. BPHN and the Ditjen PP, which is a structure within the Ministry of Law and Human Rights, have an important role in preparing supporting regulations. The Ministry of Law and Human Rights through BPHN and the Ditjen PP synergizes with relevant Ministries/Institutions in order to meet the regulatory needs of Ministries/Institutions. By doing so, the implementation of humanitarian interventions is expected to avoid the lack of a formal foundation. A strong formal foundation will ensure legal certainty in the implementation of humanitarian interventions and avoid issues that can be categorized as *unlawful* in governance. In order to make it easier to understand the important position of Kemenkumham's role in the implementation of humanitarian interventions by Indonesia,

the illustration below depicts the role of the Ministry of Law and Human Rights:

Figure 1
The Role of the Ministry of Law and Human Rights in the Process of Humanitarian Intervention



Source: Legislations

Based on the illustration above, the Ministry of Law and Human Rights (Kemenkumham) has a role in the initiation process of humanitarian intervention and after the initiation is accepted by the DPR RI. Kemenkumham's role is in the field according to its nomenclature, namely law and human rights. Humanitarian intervention with all its risks requires a strong legal foundation in terms of international law and national law and it also requires the substantial support of human rights. The support of the substance aims to make humanitarian interventions into interventions that the international community sees as actions that have a clear purpose and have an impact on international peace in accordance with the Preamble to the 1945 NKRI Constitution to participate in carrying out world order based on independence, lasting peace and social justice. Humanitarian intervention can be categorized as an act with little foundation and minimal consideration in the field of human rights if it is carried out without a strong content of substance. There is little basis for humanitarian intervention when the reasons for humanitarian intervention are not based on international instruments. These instruments are international human rights instruments such as the Rome Statute, the

General Declaration of Human Rights, and the UN Charter. Humanitarian intervention with little basis can also be occurred because it is not supported by national regulatory instruments at the initiation level or in at the implementation itself.

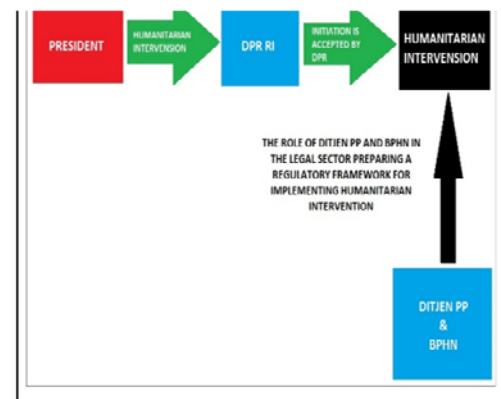
1. The Role of the Ministry of Law and Human Rights in the Field of Law by the Directorate General of Legislations and the National Legal Development Agency

The Directorate General of Legislations (Ditjen PP) and the National Legal Development Agency (BPHN) in the field of law is the center of legislations. Being the structure that carry out duties and functions in the field of legislation in Kemenkumham, Ditjen PP and BPHN play a role in realizing the formation of good quality legislation based on Kemenkumham's 2020-2024 Strategic Plan.

Ditjen PP, as a structure in the field of law, has a role in designing legislations that will become the legal basis in the implementation of humanitarian interventions. Meanwhile, BPHN, as a structure in the field of national legal development, is a place for regulatory planning that will be used as a legal basis in the implementation of humanitarian interventions by Indonesia. The two structures in Kemenkumham have a large role in providing a legal basis so that the implementation of humanitarian intervention by Indonesia to other countries is not considered a formally flawed act. Optimizing Kemenkumham's role in the field of law which is in line with the development of national law is done by strengthening and prioritizing the function of national legal analysis and evaluation, improving the quality of planning and forming national legislation, and utilizing human resources in the field of law in the Ministry of Law and Human

Rights.²² In order to make it easier to understand the important position of Ditjen PP and BPHN's role in the legal field related to the implementation of humanitarian interventions by Indonesia, the following is an illustration of their role:

Figure 2
The Role of the Directorate General of PP and BPHN in the Legal Sector in the Implementation of Humanitarian Intervention



Source: Legislations

Based on this illustration, Ditjen PP and BPHN play a role after the initiation of humanitarian intervention is received by the DPR RI. Ditjen PP and BPHN play a role in preparing a regulatory framework for the implementation of humanitarian interventions. Regulatory framework provides a legal basis for the implementation of humanitarian interventions.

Ditjen PP has the task of organizing the formulation and implementation of policies in the field of legislations in accordance with the provisions of legislations. The role that can be taken by Ditjen PP is to provide help in terms of designing legislations to support the legal basis of the implementation of humanitarian interventions initiated by the President. Based on Permenkumham

22 Muhammad Agung Adiputra, "Pola Efektif Pembangunan Hukum untuk Meningkatkan Keberhasilan Pembangunan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 41.

Number 24 of 2018 Article 141, Ditjen PP has a scope of duties in the fields of design, harmonization, promulgation and publication, litigation of legislations, facilitation of drafting legislations. Based on their duties and functions, there are two Directorates that are closely related to the implementation of humanitarian interventions, namely the Directorate of Legislative Drafting and the Directorate of Harmonization of Legislations I.

Ditjen PP also has competent human resources such as drafting legislations that oversee the formation of legislations starting from the stages of Planning, Preparation, Discussion, Ratification/determination, and promulgation. Designers who have strong competence in the field of legislations, especially in the language of law, are needed so that the legislations result in becoming norms which are easy to understand and do not cause various interpretations.²³ The support of Ditjen PP is very important as a legal basis for the implementation of humanitarian interventions. Even if necessary, Ditjen PP supports the President to the stage of issuing a Regulation in Lieu of Law (Perppu) if it is needed. This means that the Ditjen PP's role is as the backbone of humanitarian intervention implementations in the legal field, the role of the Ditjen PP is very important as a support for the legal basis for the implementation of humanitarian interventions.²⁴

The Directorate General of Legislations (Ditjen PP) carries out its duties and functions when the initiation of humanitarian intervention has been

approved by the DPR. Ditjen PP prepares all forms of statutory instruments that will be used as a legal basis for implementing humanitarian interventions. Ditjen PP also plans and prepares draft laws that will be discussed again with the DPR, plans and makes drafts of implementing regulations such as government regulations, presidential regulations, and draft of government regulations in lieu of laws related to the implementation of humanitarian interventions that have been approved by the DPR.

The National Legal Development Agency (BPHN) has an important task in fostering the national legal system in an integrated and comprehensive manner from planning to evaluation step. BPHN has the task of carrying out national legal guidance in accordance with legislations. BPHN organizes the implementation of legal analysis and evaluation, legal planning, counseling and legal assistance, as well as documentation and legal information networks and the implementation of other functions provided by the Minister. Based on this function, it means that BPHN has an important role in planning a national law, in general, to realize the goals of national legal development which includes the development of legal substance, legal structure, and legal culture.²⁵

Humanitarian intervention is an action that has legal consequences with impacts that affect national and international scale. Therefore, planning in the implementation of humanitarian intervention is important. In terms of legal planning, BPHN has a structure called the the National Regulation Planning Center (Pusren) based on its function to carry out the role of BPHN as the center of national legal planning. Pusren

23 Nurul Qamar and Hardianto Djanggih, "Peranan Bahasa Hukum Dalam Perumusan Norma Perundang-Undangan," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 346.

24 Taufik H Simatupang, "Peran Perancang Peraturan Perundang-Undangan Kantor Wilayah Kementerian Hukum Dan HAM Dalam Rangka Harmonisasi Peraturan Daerah," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 1 (2017): 17.

25 Marzuki, Husni Djalil, and Mujibussalim, "Kedudukan Badan Pembinaan Hukum Nasional Dalam Menjalankan Fungsi Legislasi," *Syiah Kuala Laq Journal* 1, no. 3 (2017): 69.

compiles a national legislation program involving all ministries and institutions in Indonesia even at the regional level. BPHN has an important role in the field of law, particularly in the implementation of humanitarian interventions as a structure within Kemenkumham. BPHN initiates the establishment of a legal basis in the implementation of humanitarian interventions. The academic text of the legal basis for humanitarian intervention is compiled and harmonized so that the legal basis used in the formal implementation of humanitarian intervention has good quality reasons. Before the preparation of the legal basis, there must be a plan and academic manuscript prepared by BPHN so that the legal basis used is in accordance with applicable rules based on regulations related to the formation of legislations.

The role of BPHN in the field of law is also related to legal counseling. BPHN is obliged to provide information and explanations regarding legal policies taken by the government in this case regarding humanitarian intervention. BPHN is obliged to provide communicatively counseling. It means that BPHN must be able to communicate and create a climate and atmosphere in such a way as to create a conversation that is intimate, open and reciprocal, and also accommodating which must be able to contain and provide understanding that is easily understood by the community.²⁶

Ditjen PP and BPHN, in the humanitarian intervention policy carried out by Indonesia, can provide input related to the legislative framework for humanitarian intervention policies. Considering that humanitarian interventions are closely related to other matters and aspects, Ditjen PP and BPHN can provide regulatory formation

options using the Omnibus Law method. The Omnibus Law method is widely carried out by countries that adhere to the common law/ Anglo Saxon system. Indonesia itself has applied the Omnibus Law method to the Job Creation Law. Laws with the omnibus law method reach many other statutory materials, although they are not commonly carried out in the civil law tradition but if they are seen as well-intentioned and can be practiced subsequently.²⁷ Omnibus Law is a draft law that has the scope of various aspects combined into one law. Omnibus law is complex because it contains a lot of material.²⁸ In terms of building a regulatory framework for humanitarian intervention policies, the application of the omnibus law method needs to involve various related parties, in order to make the establishment of a legal protection regarding humanitarian intervention does not arouse various resistances from related parties and the community.²⁹

2. The Role of the Ministry of Law and Human Rights in the Field of Human Rights by the Directorate General of Human Rights and the Research and Development Agency of Law and Human Rights

The Directorate General of Human Rights (Ditjen HAM) and the Research and Development Agency of Law and Human Rights (Balitbangkumham) as structures within the Ministry of Law and Human Rights have a large role

26 Adiputra, "Pola Efektif Pembinaan Hukum Untuk Meningkatkan Keberhasilan Pembangunan Hukum," 45.

27 Ahmad Ulil Aedi, Sakti Lazuardi, and Ditta Chandra Putri, "Arsitektur Penerapan Omnibus Law Melalui Transpantasi Hukum Nasional Pembentukan Undang-Undang," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 4.

28 Supriyadi and Andi Intan Purnamasari, "Gagasan Penggunaan Metode Omnibus Law Dalam Pembentukan Peraturan Daerah," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 260–261.

29 Zaka Firma Aditya and Abdul Basid Fuadi, "Konseptualisasi Omnibus Law Dalam Pemindahan Ibukota Negara," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 161.

in the field of human rights regarding the implementation of humanitarian interventions. Ditjen HAM formulates the implementation of humanitarian interventions and prepares for the needs occurred from its implementation, especially related to the substance of human rights. This is in accordance with the 2020-2024 Strategic Plan of the Ministry of Law and Human Rights (Kemenkumham) related to policies that encourage the promotion of human rights. Ditjen HAM prepares policy recommendations with a human rights perspective for stakeholders and Balitbangkumham which produces recommendations used in policy formulation in the field of human rights. Humanitarian intervention in this case is in line with the duties of the two institutions, considering that humanitarian intervention is a policy that is closely related to human rights.³⁰

Balitbangkumham as one of the supporting units of the Ministry of Law and Human Rights in the field of research became a think tank or a policy institute in humanitarian intervention policies. Balitbangkumham actually has two roles in humanitarian intervention, namely the role of law and the role of human rights. Balitbangkumham, which is supported by functional researchers, can carry out substance (legal material) processing in the field of law and human rights. Balitbangkumham can synergize with Ditjen PP and BPHN in forming legislations related to humanitarian interventions. On the other hand, it can synergize with Ditjen HAM in preparing materials and conducting assessments in the implementation of humanitarian interventions. In order to make the role of Dijen HAM and Balitbangkumham

easily understood, the illustration of their function is as follows:

Figure 3
The Role of the Directorate General of Human Rights and Balitbangkumham in the Implementation of Humanitarian Interventions



Source: Legislations

Based on the illustration, Ditjen HAM and Balitbangkumham play a role in the initial process of initiation of humanitarian intervention. Kemenkumham with its structure, namely Ditjen HAM and Balitbangkumham, can provide material on substance in the field of human rights. Dijen HAM conducts assessments related to the importance of implementing humanitarian interventions, while Balitbangkumham which is a research unit helps in providing input on scientifically based studies.

Ditjen HAM has a role in the implementation of humanitarian interventions initiated by the President to become supporters in the field of human rights. Humanitarian Intervention is closely related to human rights because it aims to stop the occurrence of crimes against humanity. Crimes against humanity or the basis for the need to implement humanitarian interventions require human rights studies. It is because humanitarian intervention is a form of humanitarian response, therefore it is necessary to carry out a Common Needs Assessment.

Common Needs Assessment (CNA) is a time-bound, multi-sectoral, multi-stakeholder process in collecting, analyzing, and interpreting to assess

30 Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, *Rencana Strategis 2020-2024 Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia*, 231.

needs and inform decisions about policies related to humanitarian affairs (humanitarian response). CNA is carried out by involving various related units, coordinating by combining data, concepts, operational data sets and joint planning. The CNA carried out, in this case, is coordinated by the Ministry of Law and Human Rights (Kemenkumham) through the Directorate General of Human Rights (Ditjen HAM). CNA is a form of rapid step to provide comprehensive decisions related to humanitarian interventions, as it is carried out by appropriate agencies and involves various relevant parties.³¹ CAN can be used as the main element for recommendations of Ditjen HAM with a human rights perspective in humanitarian intervention policies.

Ditjen HAM can act as a coordinator of the basic formulation that will be used as a foundation for human rights in the implementation of humanitarian interventions. Ditjen HAM makes formulation based on applicable international rules. It determines whether there have been crimes against humanity that require action to stop the crimes in the country to which humanitarian intervention is targeted. Ditjen HAM has an important role in providing the basis for human rights in the implementation of humanitarian interventions.

Ditjen HAM's role starts at the beginning of the initiation of humanitarian intervention by the President. The President involves the Ministry of Law and Human Rights (Kemenkumham) in the early stages of initiation. At this stage, Kemenkumham needs to include Ditjen HAM. Ditjen HAM with its duties and functions prepares the human rights substance materials needed by the President at the initiation stage. The human rights substance material

is needed to make humanitarian intervention an act that is truly aimed at humanity and in accordance with human rights rules. Ditjen HAM conducts human rights assessments of humanitarian interventions. It also considers existing international human rights conventions that are in accordance with the needs of substance material. For example, considering that humanitarian intervention is an act to prevent crimes against humanity in a country, Ditjen HAM needs to prove in substance human rights that the events occur in a country are crimes against humanity based on existing evidence and facts.

The assessment carried out by Ditjen HAM will then be used by the President. The assessment has two benefits: *first*, as material that will strengthen the reasons for the implementation of humanitarian interventions before the House of Representatives of the Republic of Indonesia as a government agency that needs approval in the implementation of humanitarian interventions. *Second*, as a substance material that will be conveyed to the international community that humanitarian interventions are really needed to be implemented. Reassuring the international community is important considering that the act of humanitarian intervention is a violation of the sovereignty of a country but with a noble humanitarian goal.

Balitbangkumham has the task of carrying out research and development in the field of law and human rights. Balitbangkumham as one of the units in Kemenkumham acts as a think tank, which plays a role in making policy recommendations generally in the scope of law and human rights and is especially related to the functions of the Ministry of Law and Human Rights.³²

31 Richard Garfield, *Common Needs Assessments and Humanitarian Action* (London: Humanitarian Practice Network, 2011), 3.

32 Willy Wibowo, "Hubungan Peneliti Dan Analisis Kebijakan Dalam Pembuatan Rekomendasi Kebijakan Pada Badan Penelitian Dan

In the implementation of humanitarian interventions initiated by the President, each policy must be based on the results of research and studies. Therefore, the policy is right on target and provides great benefits. Balitbangkumham can carry out its duties and functions as a body that conducts research and studies in the field of law and human rights.

Balitbangkumham can be a supporting agency in the field of human rights related to the task of Ditjen HAM in making human rights-based assessments for the implementation of humanitarian interventions. Balitbangkumham, as a support unit of Ditjen HAM and Ditjen PP, is important to be involved in policymaking related to humanitarian interventions. It is because regarding the human resources, only Balitbangkumham has researchers who will certainly be very helpful in supporting the substance of research related to humanitarian interventions. In addition to researchers, Balitbangkumham is also strengthened by human resources policy analysts who can synergize with researchers according to their respective roles. Researchers work with their competence to collect data and analyze problems. Then, the policy analysts are tasked with strengthening the policy topic with policy studies, and the output of the synergy is a policy manuscript in this case related to humanitarian interventions.³³

In accordance with its nomenclature, the role of Balitbangkumham falls in two aspects, namely law and human rights. The human rights aspect is done by providing substantial assistance to Ditjen HAM in conducting human rights assessments on the implementation of humanitarian interventions. The human

rights assessment needs the support of Balitbangkumham, considering that the assessment will be submitted and discussed together with the House of Representatives of the Republic of Indonesia (DPR RI). The substance of the assessment must have a strong reasonings, with actual evidence and have a strong foundation of human rights rules. Thus, the initiation of humanitarian interventions can be approved by the DPR RI. Furthermore, in the legal aspect, Balitbangkumham can help the legal substance when humanitarian interventions have been approved by the DPR RI, namely when preparing the legal basis to be used in humanitarian interventions. Balitbangkumham can provide legal substance support to BPHN and Ditjen PP in preparing the legal basis for implementing humanitarian interventions. The legal basis for the implementation of humanitarian intervention must pay attention to all aspects, especially human rights and law. Balitbangkumham with its function can meet the needs of a stronger substance for the legal foundation.

In connection with the government's policy to integrate agencies that carry out research, development, study, and application functions into the National Research and Innovation Agency (BRIN), it will have an impact on the Balitbangkumham institution. BRIN integrates research activities in all agencies and R&D units in agencies to improve the quality and quantity of research in Indonesia.³⁴ The research and development function, and of course, the researcher's human resources will be transferred to BRIN as a result of implementing an integration policy. Although the researcher's R&D

Pengembangan Hukum Dan HAM," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 76.
33 Ibid., 79–80.

34 Nurul Jannal Lailatul Fitria, "Pembentukan Badan Riset Dan Inovasi Nasional Sebagai Upaya Menuju Good Governance Dengan Prinsip Reformasi Birokrasi," *Jurnal Wacana Publik* 15, no. 02 (2021): 108–109.

and human resources functions shifted to BRIN, Balitbangkumham's role during the development of BRIN's integration policy needs to be replaced by a new institution in the Ministry of Law and Human Rights. This new institution has the same function, namely related to the formulation of legal and human rights policies in Indonesia, especially related to humanitarian interventions. By doing so, the implementation of policies based on legal and human rights considerations can still be implemented by Kemenkumham.

In addition, from the HR aspect, the function of researchers can be replaced by functional officers of Policy Analysts who have the same function of conducting studies. In line with the changing institutional functions, existing human resources need regulatory support in the implementation of their duties, synchronous regulations (not overlapping) to equalize perceptions in the implementation of functions in accordance with competencies and needs.³⁵ In addition, policy analysts involved in humanitarian intervention policies must have expertise and capabilities, and in the future, human resources policy analysts need to include technical trainings to meet policy needs in the field of law and human rights.³⁶

CLOSING

Conclusion

Kemenkumham's role in the implementation of humanitarian interventions can be divided into two important roles. They are the role in the field of law and in the field

of human rights. Kemenkumham's role in the field of human rights arises in the initial process of initiating the implementation of humanitarian interventions, namely before being submitted to the House of Representatives of the Republic of Indonesia for approval. Kemenkumham's role in the field of human rights can be carried out by the Ditjen HAM and Balitbangkumham by preparing substance material related to the initiation of the implementation of humanitarian interventions, namely the Common Needs Assessment (CNA). CNA is a form of assessment with various human rights considerations in accordance with the functions of Dijen HAM and Balitbangkumham in producing recommendations with a human rights perspective so that interventions get their validity to be implemented. Kemenkumham's role in the field of law is carried out by Ditjen PP and BPHN as a structure that plays a role in terms of drafting legislations in accordance with the strategic role in realizing good quality legislations. The role in the field of law becomes crucial when the initiation of humanitarian intervention by the President has been accepted and approved by the DPR RI. In this case, Ditjen PP and BPHN is in charge of preparing a regulatory framework for the implementation of humanitarian interventions as a legal basis for its implementation.

Suggestion

Based on this research, there are several suggestions and recommendations. First, the Ministry of Law and Human Rights (Kemenkumham), as a state ministry in the field of law and human rights, has a structure that can support Indonesia's humanitarian intervention policy. Kemenkumham as part of the state cabinet has an important role in a teamwork between institutions at the stage of initiation and implementation of humanitarian intervention policies.

35 Ahmad Sanusi, "Pengembangan Kompetensi Jabatan Fungsional Di Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 3 (2021): 443.

36 Nizar Apriansyah, "Evaluasi Pola Karir Di Lingkungan Kementerian Hukum Dan Hak Asasi Manusia," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 1 (2017): 55.

Second, the Government through Kemenkumham needs to create a legal and human rights instrument that can be used as a tool to assess Indonesia's foreign and international policies.

Third, a special regulation is needed that can be used as a legal basis in the implementation of humanitarian interventions that regulate the role of government agencies involved and as a standard operating procedure. Regulation is not only a legal basis, but also as a step forward in the development of science in Indonesia, especially in the field of international law.

ACKNOWLEDGMENT

The author would like to express gratitude to the fellow researchers who have morally supported the author so that this research and writing can be done. The author's gratitude is also expressed to Hilmi Ardani Nasution who has accompanied the research and writing process, from the beginning of formulating ideas, concepts, data collection and analysis, until all stages can be completed properly.

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