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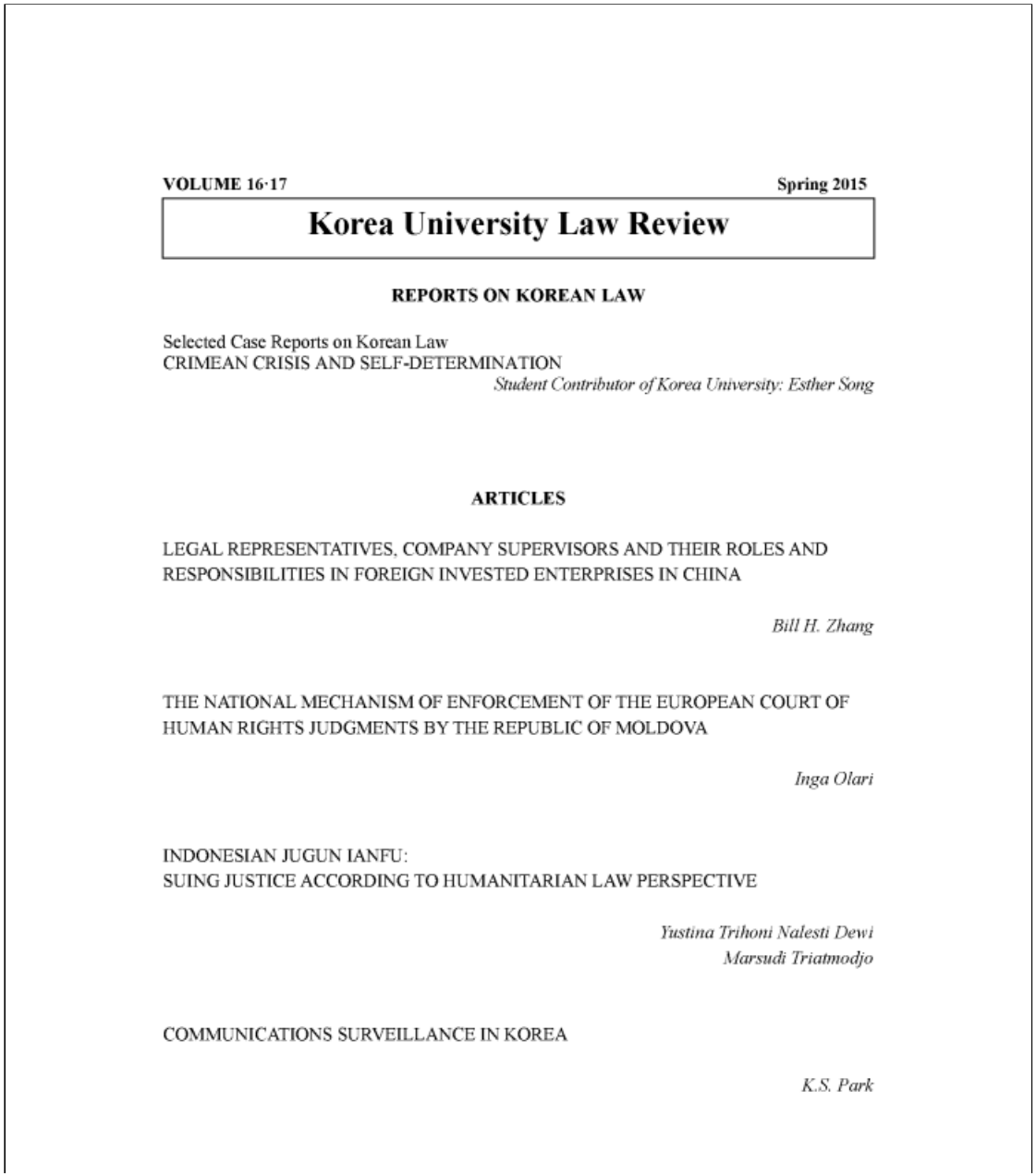

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Indonesian *Jugun Ianfu*:
Suing Justice According to Humanitarian Law Perspective

By:

Yustina Trihoni Nalesti Dewi

Marsudi Triatmodjo

Abstract

During World War II, as estimated, 5000 to 20.000 women in Indonesia were forced to be sexual slaves. They, who were still under age, experienced extremely inhumane treatment at army barracks. Furthermore, they survived until nowadays who have to keep a secret pain, shame, stigma, and guilt. They face emotional and physical impact, on the other side, Japanese players can freely granted. The systematic sexual slavery began to seize public attention when women's groups Including the Korean Women's Association demanded an official apology, thorough investigation and proper compensation to the Japanese government in May 1990. Meanwhile, the Japanese government stated that neither the government nor the military was involved with the Comfort Women issue and it was operated by private entrepreneurs. For many years though still too slow of realization, Indonesian comfort women are fighting for their rights for truth telling and reparations as they neglected and denied of justice by the Indonesian government in exchange for the state's political interests and economic relationship with the Japanese government. International Humanitarian Law provide a set of rules that guarantees women's rights in the time of armed conflict. However, there must be a political will from Indonesian Government to have a role in supporting the Indonesian comfort women to seek justice. Nowadays, it is perhaps something had been forgotten by history, but it is still remain in victim's missery. The historical evidence will be lost if it is not disclosed.

Keywords: Sexual Slaves, *Jugun Ianfu*, Justice, Humanitarian Law, War Crimes

1. *Jugun Ianfu* (Comfort Women) - A Portrait of War Crime Victims

Jugun Ianfu is a portrait representing a group of women that have miserable experiences and were easily degraded by war. As miseries experienced by the other women in the armed conflicts, they beared the burden that they have never done or involved. Ironically, the various forms of human rights violations that occurred against these women were not coincidential or accidental but they were deliberately desired. The violence and abuse were considered as part of the violence of the war itself which were always found in every armed conflict and it was systematically used as a weapon to terrorize, humiliate, or destroy the entire community.

In a war situation permissive rape, forced prostitution, and sexual slavery are regarded as excesses of the war. The conflicting parties have plenty of justification to create and allow extraordinary and prolonged women's sufferings as victims. The reason used, most often, is the military's interest in achieving the declared aim of the war, as soon as possible. Likewise the Indonesian *Jugun Ianfu* had suffered. Sexual violence and forced prostitution occuring in almost all parts of the Dutch East Indies, on a broad scale,[1] especially at the early arrival of the Japanese army in 1942, had brought comfort women as sexual violence victims. It was even undertaken as part of war tactic to the soldiers' spirit in fighting.

When Japan surrendered to the Allied Forces, forced prostitution was justified as a war crime in the Tokyo Trial in 1945 that was organized by the Allied Forces. However, the crime covered the sexual violence committed by the Japanese army to Dutch and other European women whereas it was hard to recognize that the victims were Indonesian women.[2] This suggests that there was a racial discrimination done by the Dutch military authority that was not able to understand the seriousness of this type of crime against women unless it dealt with Dutch and other European women. Discriminatory treatment was also performed by other Allied countries which have failed to prosecute Japanese soldiers who committed war crimes against a number of other Asian women despite the evidences of the crime happening in other places.[3]

There are two exceptional cases saying that the victims were Indonesian women who were performed by the Dutch Military Authorities in relation with enforced prostitution committed to non-Dutch women. The first case was the trial of Nakazaburo Ishibashi, brothel managers in Balikpapan, Indonesia who was accused of kidnapping a number of Indonesian women and forcing them to be prostitutes. However, the victimized Indonesian women brought to the trial as witnesses even precisely expressed gratitude to Ishibashi because she had provided a good life during the war. Ishibashi, therefore, was declared not guilty. There was no detailed record of the trial but such a happening could not be a justification to what Japanese military had done the comfort women. During the time of war, in general, people were experiencing social and economic difficulties and such condition had forced women to take over the heavy duty in supporting children and other members of their families while the men were busy in the

[1] GEORGE HICKS, THE COMFORT WOMAN: SEX SLAVES OF JAPAN'S IMPERIAL FORCES 100 (1995)
[2] YUKI TANAKA, JAPAN'S COMFORT WOMAN: SEXUAL SLAVERY AND PROSTITUTION DURING WORLD WAR II AND US OCCUPATION 61-63 (2002)
[3] *Id.* at 83

battlefield. The second case was about rape and forced prostitution against five Indonesian women in Pontianak. From October 1943 to June 1944, about 1,500 Indonesian, China and Indian civilians were arrested as rebels and most of them were tortured and even killed. During that period of time their wives were raped by the Japanese and were forced to work in navy's brothels for about eight months. Relating with this crime, Captain Toshiharu Okajima and 12 other soldiers were punished guilty. Okajima and two of his members were sentenced to death.[4]

In 1948 – 1949 a war crime court was also held by the Dutch Military in Batavia against 12 Japanese military members on the case of brothels in Semarang. Some were sentenced by 5-20 year imprisoned, some were sentenced to death, and some even conducted suicide. However, again, the court just said Dutch women as the victims. One of the verdicts stated that Lt. Gen. Seiji Nozaki, head of the military academy, was judged as the most responsible one for the case of forced prostitution and he was sentenced 12 year imprisoned. Nozaki's statement that was written in the examination notes expressed just regrets for his soldiers' shameful conducts. Therefore, forced prostitution that was actually to be one of the most serious crimes but it was only recognized as a shameful act, not a serious violation against humanity.[5]

2. The Protection of International Humanitarian Law to Sexual Violence in A War Situation

Sexual violence in armed conflict situation is a form of war crime that is often committed against women although it sometimes occurs against men. An example of sexual violence against men was the former Yugoslav's case (International Criminal Tribunal for former Yugoslavia/ICTY) that accused Dusco Tadic on his participation to force the prisoners of war to bite the other POW's testicles to drop. [6] However, sexual violence against men is not as much as against women.

War and war crime are apparently very familiar in our daily discussions. A war that is to be a stage of crime is never separated from the dynamics of human history and civilization and, therefore, the discourse of war crime always will live from time to time. A war euphemized as armed conflict is indeed an enmity or a conflict using armed forces that occurs between nations,

[4] *Id.* at 78 - 79
[5] *Id.* at. 76-77
[6] ROY GUTMAN & DAVID RIEFF, CRIMES OF WAR 326 (1999)

states, rulers, or citizens in one nation or one country.[7] From this understanding, the term of war then could be broadly interpreted, it does not only cover a war between states but it could also mean, among others, a war of national liberation,[8] that is situations where nations fight against colonial domination or foreign occupation or racist regime in order to exercise their right of self-determination. The nations' struggle of gaining self-determination is within the framework of a lawful act, meaning that the nations have the rights to seek and receive supports in accordance with the principles and objectives set out in the UN Charter.[9] From this definition we can conclude that what happened around the year 1945 in the Dutch East Indies could be put in the context of armed conflict.

War situation does not make the law stop working. In an emergency situation in which human dignity is at stake, humanitarian law (the law of war) would act to protect and to preserve the fundamental rights of the victims and those who potentially to be victims. Any serious violations against the laws and customs of war that is committed by the conflicting parties will be declared as a war crime. Normatively, any form of human right violation against women in armed conflict situation is prohibited. Various instruments of human rights and humanitarian laws have provided arrangements to protect women in war situations. The principles of humanitarian law provide protections in general and in particular meanings. Protection in general meaning is a form of protection for women as civilians, not as those involved in the war or as a combatant. On the other hand, protection in particular meaning due to a woman's position as a woman that is based on the idea that a woman is always in greater danger than a man as associated with her sexual status as a female. Both types of the protection are outlined in two principles, namely the principle of non-discrimination which implies that women are entitled to non-discriminatory general protection for both combatants and civilians. For those reasons, the distinction based on sexual difference is prohibited as long as it is not profitable. In addition, women also have the right to a distinctive gender-specific protection form, so that the conflicting parties should have duty to differentiate because of the women's physical and psychological conditions that make them vulnerable in war situation and because of the women's particular

[7] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1093 (6th ed 1991)
[8] JEAN S PICTET, COMMENTARY TO THE I GENEVA CONVENTION: FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIRELD 364 (1995)
[9] GPH. HARYOMATARAM, HUKUM HUMANITER 119-22 (1984)

variety of needs. This is done with the intention that women will have equal rights as men in conflict situations.[10]

Beside the legal principles, women are also protected by international customary law prevailing in armed conflict that says, among others, that sexual violence such as rape, sexual slavery, forced prostitution, forced pregnancy and sterilization are categorized into war crimes.[11] In 1945, when the war crime rules had not appeared in international treaty law, the role of international customary law in protecting women could provide an adequate legal basis. Moreover, as it is widely recognized that the principles applicable in armed conflict are still governed by customary international humanitarian law.[12]

In treaty international law, the rules providing protection against forced prostitution is the 1907 Hague Convention which guarantees respects to family's honor and rights.[13] This provision along with customary international law had become the basis of criminal charges for sexual violence crimes in the Tokyo and Nuremberg Trial in 1945, though many referred the court as 'Victor's Justice'[14] (justice for the winner of the war) and there was a controversy accompanying the war crime tribunal establishment. How come? The example was the Soviet soldiers who committed rape during their trip in Berlin at the end of World War II did not make Soviet's judges, gaining honor at Nuremberg Tribunal, punish the Soviet's soldiers.[15]

Today, protection for women of war crime is increasingly governed by treaty international law as a result of the tendency of states to make international agreements in building relationships among them. The role of customary international law is gradually replaced by treaty international law. Nevertheless, the existence of customary international humanitarian law is still needed and will remain playing an important role as a dynamic source of protection of women in armed conflict situations that always have progresses. Several international agreements that provide protection for women in armed conflict include the Geneva Conventions of 1949 which mentions the prohibition, of knowingly, that causes great suffering, or serious

[10] C. DE ROVER, TO SERVE AND TO PROTECT: HUMAN RIGHTS AND HUMANITARIAN LAW FOR POLICE AND SECURITY FORCES 307 (1998)
[11] JEAN-MARIE HENCKAERTS & LOUIS DOSWALD BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 592 (2005)
[12] JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW 21 (2005)
[13] The Hague Convention of 1907 ART. 46
[14] TIMOTHY L.H. MC CORMACK & GERRY J. SIMPSON, THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES 5 (1997)
[15] BVA ROLING & ANTONIO CASSESE, THE TOKYO TRIAL AND BEYOND 5 (1993)

injury to body and health,[16] prohibition of outraging against the human dignity, particularly the treatments of humiliating and degrading the dignity and the prohibition of attacks against the honor of women, in particular against rape, forced prostitution, or other forms of sexual assault. Forced prostitution is categorized as a violation against the above prohibitions. Beside the Geneva Conventions, the Rome Statute of 1998 which used to be the basis of the establishment of the International Criminal Court in The Hague also said that sexual violence such as rape, sexual slavery, forced prostitution, forced pregnancy and sterilization are war crimes. This provision is an affirmation of the customary international law which is now used as the basis for prosecution in some cases of rape and sexual slavery in Central Africa and Sudan. Massive sexual violence against women such as arrest and rape massively committed, organized, and widespread against women are regarded as a threat to international peace and security as recognized by the UN Security Council resolution in December 1992 in the case of Bosnia.[17]

Although sexual violence suffered by *Jugun Ianfu* occurred around 1945 and therefore there was only very limited humanitarian law that could provide protection, the principles of humanitarian law recently developed has strengthened international acknowledgment saying that what had happened to them was a war crime. This recognition would reveal the hidden history that hopefully could slightly ease the burden and the pain that they must bear all this alone. Although it was probably somewhat late, the sympathy of the international community would cleanse them from social life reproach they were facing. The assertion in the international law development on the cruel treatment of the war against the *Jugun Ianfu* should invite the support of Indonesian Government to help them make lawsuit and allow them to get restitution and compensation.

3. Justice Lawsuit for the Indonesian *Jugun Ianfu*

Sexual violence against the *Jugun Ianfu* was categorized as a war crime and in the international law concept it has the character of *jus cogens* (enforcing characters). By such a character it is to be all states' responsibility (obligations *erga omnes* obligations) to fulfill. This state's responsibility can vary, which is not only an alternative but often cumulative, namely the

[16] CHARLOTTE L.C., FLORENCE T. HOLST-RONESS & LETITIA ANDERSON, ADDRESSING THE NEED OF WOMEN AFFECTED BY ARMED CONFLICT 26 (2004)
[17] JUDITH G. GARDAM & MICHAEL JARVIS, WOMAN, ARMED CONFLICT AND INTERNATIONAL LAW 148 (2001)

responsibility to punish, to seek, to extradite the perpetrators, and to cooperate with other countries in the context of criminal law. Equally important, the state's responsibility should also appear to seek reparations for the victims. If the state does not take the responsibility of what it should do, the state, according to the customary and treaty international laws, had violated the provisions/norms of the prevailing international law.

War crime is one of the international crimes violating fundamental rules. Adequate legal basis has stated that war crime is part of international crimes. The legal basis includes (a) an international decision reflecting a recognition that war crime is to be considered as part of the customary international law, (b) as expressed in the preamble or other provisions of the international treaties indicating that war crime has a high threat status towards international community and law, (c) a number of countries have ratified international treaties relating to war crime, and (d) *ad hoc* international investigation and prosecution to the criminals have done.[18] Based on the law described above, impunity of the war crime perpetrators and the fact of non-compliance of the right to reparation is a state's rejection towards human solidarity for the victims.

Obligations e*rga omnes* are consequences of a certain international crimes such as war crimes that are violation against the rules in relation with basic human rights. War crimes should be established in the category of obligations *erga omnes* so that, as the consequence, universal jurisdiction should be applied to it.[19] The concept of obligations *erga omnes* derived from the contemporary international law principles that is intended to provide protection for important values of human rights, [20] by enhancing the law enforcement prospect as the legal consequences of a violation, the treatment is a norm of *jus cogens*, and it is to be the whole international community's responsibility in terms of punishment and reparation fulfillment.[21] These obligations are primarily intended not to extend the chain of impunity of perpetrators of crime, by an affirmation to abolish the statute of provision limitation and without regarding to where the crime committed, who committing the crimes, including the head of the state, to any category of

[18] CHRISTINA PELLANDINI, *National Measures to Repress Violatons on International Humanitarian Law (Civil Law Sistem)*, in THE REPORT ON THE MEETING OF EXPERTS 38 (2000)
[19] *Id.* at 36
[20] Christian Tomuschat and Jean M Thouvenin (editor), *The Fundamental Rules of International Legal Order: Jus Cogens And Obligations Erga Omnes* 129 (2006)
[21] ANDRE DE HOOGH, OBLIGATIONS ERGA OMNES AND INTERNATIONAL CRIMES 8 (1996)

the victims, and do not consider the situational context, both in peaceful or war situations. This obligation is not an optional right of a certain country because, if so, it will not be binding rules for all countries.

The examples of international courts set out in the beginning of this paper suggest that the individuals are responsible for war crimes they themselves committed or they commanded or they helped others to commit the crimes. It means that those who are bound to be criminally responsible are not only those committing the crimes but also those who ordered to do the crimes. Responsibility among them has jointly been determined, however, there is no provision mentioning about responsibility for those who fail to prevent crime.[22] None of this individual criminal responsibility shall eliminate or reduce the state's responsibility in the case of war crimes because beside individual responsibility concept, in the case of *Jugun Ianfu* is also known state's responsibility concept. This state's responsibility comes from humanitarian law imposed to the state. State's responsibility could be restitution, which means the recovery as the original state; compensation that is compensation payment for any physical or mental loss suffered; rehabilitation that is a form of medical and psychological treatments; satisfaction that is apology and guarantee that the crime would not repeat. If restitution which aims to improve the original state is not possible, the compensation payment for a number of losses should be given.[23] Compensation should usually be negotiated because there are no principles to calculate the amount to be paid. As the compensation principle, it is also important to make a public apology of Japanese Government to the *Jugun Ianfu*, mentioning a promise that such crimes will never be done anymore to any woman even in an armed conflict situation.

Humanitarian law provides the legal basis for restitution and compensation claims stating that the state is responsible for any violation of humanitarian law committed by its organs including the armed forces or by those who act on behalf of the state,[24] which therefore to raise liability for the damages and reparations. In the case of *Jugun Ianfu*, customary international law ensures restitution and compensation. In particular, the issue of restitution for the *Jugun Ianfu* is difficult to achieve but the problem of compensation under international law has been carried out

[22] JEAN S PICTET, DEVELOPMENT AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN 364 (1985)
[23] Carla Ferstman, Mariana Goetz, & Alan Stephens (Editor), *Reparations for Victims of Genocide, War Crimes and Crimes Against humanity: System in Place and System in the Making 38 – 39* (2009)
[24] The Hague Convention (IV) of Tahun 1907 Art. 3, Additional Protocol I of 1977 art. 91, and Rome Statute of 1998 art 75

over a number of sexual violence during armed conflict cases. For example, Kuwait demanded compensation for their women's suffering as a result of rape committed by Iraq's soldiers during the Desert War (1990-1991). The Security Council established the United Nations Compensation Commission (UNCC) to provide compensation for damages caused by the Iraqi invasion to Kuwait, including to ensure that Kuwait women would receive adequate compensation.

When sexual violence was committed by other countries as it did to *Jugun Ianfu*, the demands of reparations and compensation procedure could be done either through the interstate agreements mechanism, through a unilateral declaration of responsible states, and through the demands of the *Jugun Ianfu* as the victims themselves. Even though the negotiations between the states to make compensation demand are represented, the party that should directly benefit to any refund of compensation is the individuals of *Jugun Ianfu*.[25] This was ever confirmed by the U.S. Parliament Resolution 2001 saying that the *Jugun Ianfu* should receive compensation as victims directly. A similar claim was also raised by the UN General Assembly in the case of Yugoslavia.[26]

Despite it has been long-standing; the talks on the *Jugun Ianfu* issues did not become stale and outdated. In other similar cases, on 14 September 2011 the Court of The Hague ruled that the Dutch government should apologize and provide compensation of 20,000 euros, or about 243 million rupiahs per-person to nine (9) Rawagede massacre widows. Rawagede case, now called Balongsari, occurred on December 9, 1947, when about 300 Dutch troops led by Major Alphons Wijnen tried to catch Captain Lukas Kustaryo, Siliwangi Division commander. In search operations, the Dutch troops committed genocide against the men over the age of 14 years' This operation resulted a mass killing of about 431 residents in the village of Rawagede although the Dutch government recognized only 150 people killed. Quantity issue is not essential in proving whether gross (war crimes) had occurred because it is not relevant to provide minimum requirements for the number of victims of such crimes evidence. Although the Dutch government never punished even one of the soldiers involved in the massacre, the official report of the Dutch government in 1968 acknowledged the "excessive force" and argued that the action was carried out by the Dutch troops to quell guerrilla warfare and terror attacks. The Dutch was increasingly cornered to recognize the massacre as a documentary film on Rawagede incident

[25] HENCKAERTS, *supra note* 11, at. 541
[26] *Id*

was shown in 1995. Ten years later then the Dutch Foreign Minister, Ben Bot, expressed regret over a series of attacks by the Dutch troops in several regions in Indonesia in 1947. In court, the arguments put forward by the Dutch Attorney for Rawagede was an out of dated case. According to the prosecutors, it was too late to prosecute the Dutch soldiers accused massacre at Rawagede because the Dutch law regulates that to punish acts of crime, even a gross case, it is just in 24 years after the crime occurred. It seems that in this case, the Netherlands set a double standard because the Dutch government had to prosecute the perpetrators of war crimes against victims of Dutch citizens during World War II without considering out of dated reasons. Meanwhile, in the case of the Dutch soldiers as the perpetrators and Indonesians as the victims, the reason of time limit appeared.

The idea to set a time limit (statute of limitations) for the prosecution of crime is common in the legal systems of the world, but specific problems are differently implemented in relation with gross human rights violations. Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1964 and the European Convention on the Non-applicability of Statutory Limitations to Crimes against Humanity and War Crimes (Inter-European) in 1971 and the Rome Statute 1998 stated are not subject to restrictions on any terms (time limit). The provision the time limit is a statute of limitations is usually imposed by a state's national law. The prohibition of time limit provision by reason of serious human rights violations has remained grief and deep anguish for millions of people and also shows the low morality of the actors. Therefore, legal confidence of conscious men will be shaken if there is no any reaction to the crime.

In some countries domestic laws do not set expiration or time limit for war crimes. Even the Netherlands has revoked the provisions regarding the time limit (the statute of limitation) issue on serious crimes against humanity by the Act dated on 8 April 1971, Stb 210, as well as by Article 3 of Implementation Law of the Genocide Convention. Revocation was conducted as a consequence of the UN Convention on the time limit or statute of limitation dated on 26 November 1968.[27] Other countries, such as Germany, enforces revocation time limit. The ineffectiveness of time limit enactment apparently ha now become part of customary

[27] JAN REMMELINK, HUKUM PIDANA 435 (2003)

international law.[28] In the Act of Indonesian Human Rights Court the provisions of the ineffectiveness of time limit or statute of limitation is mentioned in Article 46 saying that: "For gross human rights violations as defined in this Act shall not apply the provisions of the time limit or statute of limitations"

Seeing the facts mentioned above, it seems that the argument regarding the statute of limitations is to be no longer valid. Likewise, the verdict of the Court of the Netherlands in the case of Rawagede, was finally consistent with several decisions of international and regional courts. In the 80's European courts began to seek the prosecution of Nazi members who are still alive, especially those who were at the intermediate level in the chain of command, considering that the high officials/senior at the top level had been tried before or had died. A number of prosecutions showed that the statute of limitations or time limit provisions on war crime cases were also ignored by some countries in Europe. For example, in 1984, France judged a Gestapo leader, Klaus Barbie, in Lyon on charges of torture against prisoners of war and orders to deport thousands of Jews. For the war crimes he had done, Barbie was sentenced to life imprisonment by the Court of France, and he died four years after the verdict when he was at the age of seventy-seven years.[29]

In the case of the former *Jugun Ianfu*, the state's functions that should fight for the reparation fulfillment was not going well because the state has not shown the struggle of reparation compliance in the perspective of the victims' interests. Similarly, in the case of Rawagede, the widows and other survivors are only accompanied by Dutch Honorary Debts Committee (KUKB) and several other foundations in a series of lawsuits. 1156 the former *Jugun Ianfu* have to fight only with the Legal Aid of Yogyakarta without any assistance from the Government to obtain the justice. Even the Indonesian government considered that the issue was over after receiving a grant from the Japanese Government through the Asia Women's Fund (AWF) that was established in 1995. This organization was indeed a political vehicle of the Japan Government to relinquish its responsibility of the Asian *Jugun Ianfu* issue. It is very different from what was experienced by South Korean women. Kim Hak Soon, in 1992, opened up the Japanese military cruelties against her, and she got full support from her government.

[28] WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 93 (2007)

[29] Ellen L. Lutz and Caitlin Reiger (editor), *Prosecuting Heads of State 32* (2009)

Former South Korean *Jugun Ianfu* strictly refused and humiliated to the Japan Government's AWF strategy to dodge the responsibility for the sins during the Asia-Pacific War. Similar attitude was shown by the Taiwan government that made initiative to provide direct aid to the Taiwan victims in order to prevent the AWF intervention against the *Jugun Ianfu* in Taiwan. The subsequent developments was then, *Jugun Ianfu* issue was uncovered and the victims of the various countries, one by one, spoke out so that in 2000 there was a Tokyo Tribunal[30] demanding Emperor Hirohito's responsibility and Japan's military on sexual slavery during the Asia-Pacific war. In 2001 The Hague Tribunal issued a decision and international pressure to Japanese government continues. There are three principal demanded by the victims, namely (1) The Japan government should formally acknowledge and apologize that sexual slavery was deliberately conducted by Japan during the Asia-Pacific War 1931-1945, (2) the victims were given compensation as war victims for their lives that had been destroyed by the Japanese military, (3) requires the inclusion of a dark history of *Jugun Ianfu* into the school curriculum in Japan so that the Japanese younger generations will understand the truth of the Japanese history.[31]

When the state does not carry out the task properly, then the victims or the group of victims could file its own claim for reparations. The progressive development of international human rights law provides legal standing to individuals, even at the international forum. Victims may submit their claims on their own behalf and do not have to rely on government's goodwill. This consideration was taken by the United Nations Compensation Commission (UNCC) as an immediate justice for the victims who do not have citizenship and have no government that can act on their behalf.

The victims' attempts to obtain the reparation are usually done through a class action lawsuit. The class action lawsuit is also known in Indonesian law but it is only for civil lawsuit and defendants are individuals, not the state. In the case of war crimes, if the class action is done in those conditions above, the model of this lawsuit could as if divert the blame to an individual

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[30] Anonim, *The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery*, http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/whatstribunal.html

[31] Runi Sakamoto, *The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: A Legal and Feminist Approach to the Comfort Woman Issues*, NEW ZEALAND JOURNAL OF ASIAN STUDIES 3, 1 (June, 2001): 49-58. http://www.nzasia.org.nz/downloads/NZJAS-June01/Comfortwomen.pdf, didownloaded 16 June 2012

scapegoat so that the state's responsibility for gross human rights violations could therefore be ignored. Of course, this would be contrary to the universal principles and human values stating that the responsibility carried by individuals does not eliminate the state's responsibility to the victims.

Actually the class action is a form of struggle that is most suitable to the characters of war crimes and other gross human rights violations that usually bring a lot of victims. Seeing that gross human rights violations cause law breaking that simultaneously harm a lot of people. It is not effective and efficient if law breaking settlement having simultaneous harm to the mass of the people, who have facts, legal basis, and even the same defendant, should be filed and resolved individually. Based on this premise, the existing rules on the class action lawsuit would be a positive support for the struggle of the war crime victims. By emphasizing the fact that the state's responsibility to the victims should not disappear when the perpetrators have given their responsibility for their actions. The basic rules of the class action can be utilized and assisting if they are expressly stated in the Act of Human Rights Court and its implementing regulations. A similar lawsuit had ever been filed based on the Civil Code towards the five Presidents of Indonesia on December 17, 2004 by a NGO that acted on behalf of seven victims of anti-PKI in 1965.

State should not waste the opportunity to present in the struggle of the former *Jugun Ianfu*. The absence of the state's role should be revised immediately revised unless the state is judged ignoring its duty. Reparation is a right of the victim that should be fulfilled by the Government of Indonesia. The role of the State can be manifested in strengthening of political efforts having strength and determination of the Indonesian Government to fight for the victims although there are concerns about the possible worsening of diplomatic relations between the states involved and the possibility of other interests' exclusion. The struggle for the victims should be seen as a struggle for self-respect and nation dignity as a whole.

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