

The Politics of Transitional Justice in Post-Suharto Indonesia

DISSERTATION

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By

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## Abstract

This study is an attempt to explain adoption and implementation of transitional justice mechanisms in post-Suharto Indonesia (1998–). In latecomer democracies, the internationalized context of transitional justice, working through international pressure and diffusion of ready-made norms and models, facilitates adoption of transitional justice mechanisms, such as trials and truth commissions, for certain categories of past political violence.

In Indonesia, where the international advocacy campaigns for the Santa Cruz massacre in East Timor (1991) gave rise to mechanisms for dealing with human rights abuses by the military before the transition, international pressure against the East Timor referendum violence in 1999 led to adoption of two comprehensive mechanisms as preemptive measures preferable to worse alternatives: a domestic ad-hoc human rights court system against an international court for East Timor, and a truth and reconciliation commission – truth-seeking combined with amnesty – against domestic ad-hoc human rights courts. In this process, Indonesian human rights activists or “domestic norm entrepreneurs” played an indispensable role in promoting norms, models, and repertoires of action related to transitional justice, and influenced adoption of the bills and their final forms. Rather than passively relying on international allies, these norm entrepreneurs actively introduced models from a wide range of sources through direct and indirect

linkages, and took initiative in reaching out to international allies to boost their campaigns.

Adoption and implementation of mechanisms are different processes, however. The Indonesian ad-hoc court mechanism was under-utilized, and the truth and reconciliation commission has never been established. In Aceh, where the decades-long conflict between the Indonesian government and the Free Aceh Movement (GAM) ended in 2005, additional guarantees for transitional justice mechanisms on the peace agreement and the autonomy law were abandoned too.

Through comparisons with South Korea and Taiwan, I explore the sources of sustainable pressure that motivate political elites to prioritize the transitional justice issue beyond the immediate transitional period. I propose that the politics of partisan memories – the presence of particular constituencies that would support transitional justice based on a shared identity with victims of human rights abuses – as a possible source of such pressure. In South Korea and Taiwan, the association of identity-based cleavages with the victimized groups encouraged politicians to implement and expand measures, while this partisan motivation was weak and inconsistent in Indonesia.

This study suggests that we should examine the political processes of transitional justice more closely, rather than simply blaming the “lack of political will.” It also suggests that, to make advocacy strategies sustainable and effective, it is necessary to prepare for the era after international pressure is largely gone.

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# **CHAPTER 1**

## **INTRODUCTION**

### **1-1. Research Question**

The international context of transitional justice has been greatly transformed in the last twenty years. If, in the late seventies, settling past accounts in transitional societies in Southern Europe – Greece, Spain, and Portugal – was almost exclusively a domestic process, latecomers to democracy were exposed to institutional innovations and pressure from abroad. The Nuremberg tradition of post-World War II was revived under the rubric of international criminal justice. The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994, respectively, were followed by the Rome Statute of the International Criminal Court (ICC), which was adopted in July 1998. Three months later, Augusto Pinochet was arrested in London, marking the beginning of resurgence of trials against human rights violations in domestic and foreign courts. The South African Truth and Reconciliation Commission (TRC) was set up in 1995, providing an innovative set of “tools” to societies undergoing transition to peace or democracy.

For policymakers of transitional societies, it is now much more difficult to ignore practices and models developed by predecessors and contemporaries, if not direct

pressure. Now human rights NGOs (nongovernmental organizations) and victims' groups have a larger pool of strategies, and some of them, such as litigation in foreign courts, have an explicit international dimension. Various bodies of the United Nations (UN) issued resolutions with regard to victims' rights in the aftermath of gross human rights violations, adding international legitimacy to national and local initiatives dealing with past abuses.<sup>1</sup> UN involvement in post-conflict territories usually accompanies some transitional justice policies (Olsen, Payne, and Reiter 2010, Chapter 7), and other countries are also often subject to pressure from donor governments, intergovernmental organizations, and international NGOs for introducing similar policies. Transnational networks, academic forums, books and the internet facilitate diffusion of variegated norms and models – anti-impunity, reconciliation, truth-seeking, healing, community justice, international criminal justice, etc.

Under these circumstances, it will be crucial to examine international influence on transitional justice in new democracies. Does internationalization of transitional justice lead to better practices in latecomer democracies? Does it mean that “international players” – NGO networks, intergovernmental organizations, and donor governments – assume a major role in deciding the course of transitional justice? Does multiplicity of options improve the probability of successful implementation of transitional justice policies? Or, if the international dimension is only a part of the explanation of the whole process, what will guide our understanding of transitional justice? Which actors deserve more attention, and what kind of motivations and principles move them?

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<sup>1</sup> See International Center for Transitional Justice (ICTJ), “Transitional Justice Legal and Policy References” <<http://ictj.org/transitional-justice-legal-and-policy-references>>.

## 1-2. The Argument

I argue that adoption and implementation of policies are two different processes involving different types of actors. Adoption of transitional justice models can be facilitated by international pressure. Human rights NGOs can play an active role as “norm entrepreneurs” – specialists who call attention to specific issues or even “create” issues by constructing frames (Finnemore and Sikkink 1998, 257; Ellickson 2005)<sup>2</sup> – in this stage by promoting relevant norms, such as anti-impunity, reconciliation, or more specifically anti-torture, anti-enforced disappearances, and so forth, and models, such as trials and truth commissions. Implementation and expansion of measures, however, require sources of sustainable pressure that can motivate domestic political elites to support them.

The timing of democratic transition plays a significant role in shaping trajectories of transitional justice in new democracies. Latecomer democracies have the advantage of choosing policies from a larger pool of models, references, and practices of transitional justice. Therefore, on the one hand, they have more policy options; “precedents” of reparations, fact-finding measures, quasi-judicial procedures of reconciliation, and trials in domestic, foreign, international, or hybrid court, with relevant technical procedures for each, are available for reference.<sup>3</sup> The process of learning from prior experiences is being facilitated as transitional justice becomes one of the established agenda of intergovernmental organizations, donor agencies, and major NGOs – the transnational

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<sup>2</sup> Ellickson’s emphasis lies on the difference of norm entrepreneurs with opinion leaders, who are generalists rather than specialists of specific issues.

<sup>3</sup> Foreign court means a national court used for transnational litigations, often, but not always, on the principle of universal jurisdiction. In contrast, international courts are those established by intergovernmental organizations.

infrastructure promoting democracy and human rights (Levitsky and Way 2010). Moreover, as supporters of transitional justice can resort to the increasing body of UN resolutions and guidelines to invoke victims' rights and states' duty of prosecution, leaders of transitional societies are less likely to blatantly deny the possibility of transitional justice by choosing a blanket amnesty or doing nothing, which may be regarded as a breach of international law. In sum, the changed international environment will lead latecomer democracies to avoid amnesty and inaction and to choose transitional justice models more easily from the tools made available by predecessors.

The international dimension is only a part of story, however. In promoting norms and models in transitional societies, the role of local norm entrepreneurs is significant. Domestic human rights workers are not only well-positioned to collect first-hand materials on abuses, as the boomerang pattern of political change (Keck and Sikkink 1998; Chapter 2 of this study) indicates. They are also in a better position to initiate and support various transitional justice initiatives and human rights norms. Their capacities for translating norms and models from abroad and interpreting them in the context of their own societies need to be underlined in studies of diffusion.

Domestic politics is even more important in the implementation stage. In latecomer democracies, transitional justice policies are more likely to be chosen by domestic political elites, who are afraid of their reputation in the international arena or even material risks, as a signal to the international community that they are not entirely ignoring the past human rights abuses. Adoption of policies does not guarantee full implementation of transitional justice measures, however. International pressure for



transitional justice does not stay long. Furthermore, by implementing transitional justice policies, political elites might alienate those who formerly perpetrated or supported human rights abuses. Therefore, in the absence of independent sources of pressure on the domestic level, policies induced by international pressure may remain hollow, merely as formality for the sake of foreign affairs.

The nature of domestic norm entrepreneurship may not be effective in preventing the failure of transitional justice initiatives in the implementation stage. Human rights NGOs resort to universal norms to promote their initiatives. While the universalist basis makes it possible to forge a coalition across different groups, at the same time, human rights NGOs cannot identify themselves with any particular group along political cleavages. The absence of particular constituencies that would support transitional justice policies based on a shared identity with victims of human rights abuses – through a process I call “partisan politics of memory” – means that political elites lose one of the potential sources of motivation to implement such policies.

### **1-3. What is Transitional Justice?**

In this section, I discuss the emergence and development of the term “transitional justice” and parallel ideas and practices that can be assimilated to the category of transitional justice.

Comparative study of transitional justice originates in the late 1980s and early 1990s, when Latin America, Central America, and then Eastern and Central Europe – as well as parts of East Asia and Southern Africa – underwent democratic transitions.

Arthur's micro-level examination (2009) illuminates the origin and development of the term transitional justice. International conferences that took place, respectively, in 1988, 1992, and 1994, facilitated exchange of ideas and experiences of practitioners and scholars from America, Europe, and, later, South Africa, forming the nascent field of transitional justice. In 1994, transitional justice was established as "a fully formed and rather well-understood set of practices," such as "commissions of inquiry, prosecutions, lustration or purges, and restitution or reparations programs" undertaken by emerging democracies in the context of democratic transition (Arthur 2009, 331). Terms indicating a similar set of measures, such as "retroactive justice" (Nino 1996), are not frequently used any more, and new terms aspiring to form an alternative conception of transitional justice, such as Desmond Tutu's "restorative justice," emerged.

Meanwhile, the development of international criminal justice from a series of ad-hoc tribunals, hybrid tribunals, and then the ICC blurred the boundary of transitional justice, as Teitel (2003, 91) observes; "what was historically viewed as a legal phenomenon associated with extraordinary... conditions now increasingly appears to be a reflection of ordinary times." After the major "wave" of democratic transition subsided, transitional justice came to be used more frequently as a synonym of post-conflict justice. Transitional justice and reconciliation are now applied to violent conflict of all sorts, including inter-group conflict without explicit involvement of the state or other political organizations (e.g. Bräuchler 2011).

Pinto (2010a, 340) explains that transitional justice is "a part of a broader 'politics of the past' in contemporary democracies" and "an ongoing process in which both elites

and society under democratic rule revise the meaning of the authoritarian past and act on its legacies in terms of what they hope to achieve in the present.” It includes multiple dimensions such as “political elites associated with authoritarian regimes, and human rights abuses associated with repressive institutions” (Pinto 2010a, 340). Possible dimensions of transitional justice are open to different legacies of the past, e.g. accountability for economic crimes like corruption (Carranza 2008) – in Indonesia, though Suharto successfully avoided the courtroom with his alleged health problems, his son Tommy Suharto was convicted for a land scam *and* murder of a judge who had convicted him in the land scam case<sup>4</sup> – or responsibility for the unconstitutional actions that created the authoritarian regime, as in the coup trials of Greece, South Korea, and recently Turkey. Though these dimensions are sometimes inseparable from more frequently discussed dimension of gross human rights violations, this study still focuses on the latter dimension, with special attention to “politically authorized abuses and killings” (Leebaw 2011, 3–4).

The term transitional justice is a recent invention. Nevertheless, earlier, parallel practices go back at least to the post-World War II period of Nuremberg and Tokyo tribunals and European domestic trials for punishing and purging collaborators of Nazism and Fascism (Nino 1996; Elster 2004). The international tribunals built important pillars of contemporary international justice with introduction of crimes against humanity (Nuremberg) and command responsibility (Tokyo). In contrast, the European domestic

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<sup>4</sup> The land scam conviction was reversed in the Supreme Court. The murder one was not, but an in-flight magazine had to pay up to 1.5 million dollars (12.5 billion Indonesian Rupiah) for describing him as “a convicted murderer,” who, according to the panel, in fact has a good reputation as a national and international businessman. See Heru Andriyanto, “Court Awards Tommy \$1.5 Million Damages for ‘Convict’ Article,” *Jakarta Globe*, May 24, 2011.

trials are less commonly put in the tradition of contemporary transitional justice because of the charges they used;<sup>5</sup> for instance, the French government divided offenses into three categories of treason, collaboration, and national indignity (Nino 1996, 12). Although the denazification process outside Germany does not belong directly to the tradition of “human rights” legalism, the practices may have influenced conceptions of transitional justice in, among others, democratized Southern and Eastern Europe.

Parallel practices existed during the period between the World War II and the Argentine junta’s fall. Germany’s efforts to come to terms with the past (*Vergangenheitsbewältigung*) with reparations, apologies, and commemoration have formed transitional justice’s framework “as much by its philosophy as by its form” (Hazan 2010, 21-22). In the 1970s, trials in Greece and Portugal – and the amnesty pact in Spain – set the initial models of post-authoritarian justice (Sikkink 2011). Thus, from the period the term transitional justice had not yet appeared, parallel ideas and practices that can be assimilated into the category of transitional justice existed.

Often, the boundary between transitional justice and international justice – or human rights legalism – is not clear. To a certain extent, it is unavoidable to impose observer’s category on actions, apart from actors’ own interpretations of their own actions. It is entirely possible for some human rights activists of transitional societies to understand their advocacy as a part of international criminal justice campaign for the sake of strengthening “human rights laws,” rather than transitional justice, which may sound like restorative justice or reconciliation in certain contexts. The reverse is also true –

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<sup>5</sup> An alternative possibility is the prevalence of unruly vengeance against former collaborators in places like Italy, which is far from the ideal rule-of-law procedures.

supporters of restorative justice might avoid identifying themselves as supporters of transitional justice, believing that it is a legalistic concept. If accountability measures against human rights abuses had existed before transition, the diverging point of such criminal justice of ordinary times and transitional justice may be hard to be pinned down. The continued abuses after transition also complicate the conception of transitional justice. In spite of these complications, as long as they take part in the processes of overcoming authoritarian legacies and associated political violence, I do not avoid discussing them as a part of transitional justice advocacy, not without giving attention to their own understandings.

Lastly, transitional justice is not limited to the immediate transitional period, though it was originally conceived as “justice in times of transition.” The transitional period is significant because the most enthusiastic debates on the previous authoritarian regime are likely to occur during such a time. Contrary to the earlier prediction that justice is not a sustainable issue beyond the immediate transitional period (Huntington 1991), however, delayed justice or post-transitional justice is commonly observed in recent times. There is no reason to exclude delayed justice from the analysis, as long as it constitutes a continuous process from the transitional period, as it mostly does.<sup>6</sup>

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<sup>6</sup> Elster (2004, 75–76) categorizes transitional justice into four groups, according to the temporal dimension. “In *immediate transitional justice*, proceedings begin shortly after the transition and come to an end within, say, five years... In *protracted transitional justice* the process starts up immediately, but then goes on for a long time until the issues are resolved... In *second-wave transitional justice*, we can distinguish three stages. After a process of immediate transitional justice, there is a latency period during which no action is taken, until, decades later, new proceedings are initiated... In *postponed transitional justice*, the first actions are undertaken (say) ten years or more after the transition.” Italics are original. Delayed justice indicates the latter three in Elster’s categories. Skaar (2011, 3) describes post-transitional justice as court proceedings “at least one electoral cycle after the transition to democratic rule.” Different conditions of post-transitional justice (more judicial independence and less threats from the status quo forces) as Skaar describes is a crucial one.

#### 1-4. The Case: Post-New Order Indonesia

To trace the process of transitional justice in the age of international human rights, I will use the case of post-authoritarian Indonesia after thirty-two years of General Suharto's military regime (1966–98), which is often dubbed as the New Order. The level of analysis here is the nation-state. Post-New Order Indonesia has been faced with multiple cases of past human rights abuses: the communist purge in 1965–66, extrajudicial killings of petty criminals in the eighties (“Petrus”),<sup>7</sup> shootings of protesters in Jakarta, internal armed conflict in Aceh, Papua, and now-independent East Timor.<sup>8</sup> One might be attracted to a case-by-case approach in the face of the gravity and complexity of the Indonesian past, though these “cases” are often enormous enough to include more than thousands of sub-cases in them. However, this study is focusing on *comprehensive* norms, models, and institutions of transitional justice and human rights, and thus the relevant level of analysis is the national, rather than the sub-national. The frequent use of the term “case” (*kasus*) reflects the way Indonesians approach the sets of human rights abuses, but it should not confuse the level of analysis of this study.

Indonesia makes an interesting case for those who are interested in the international dimension of post-authoritarian transitional justice. The 32-year-old rule of General Suharto ended in May 1998 in the middle of economic crisis and political violence. One

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<sup>7</sup> In an anti-gang campaign between 1983 and 1985, thousands of alleged criminals were executed summarily. This campaign is usually dubbed as “Petrus” (*penembakan misterius*). See Bouchier (1990) for more information.

<sup>8</sup> See Chapter 5 for Aceh. The western half of the New Guinea fell under Indonesian control after the UN-brokered 1962 agreement between the Netherlands and Indonesia. The province has experienced low-intensity conflict between the Indonesian armed forces and pro-independence armed factions. See ICG (2006) for a recent overview. The executive summary of CAVR (Commission for Reception, Truth, and Reconciliation in Timor-Leste) report, which covers human rights abuses between 25 April 1974 and 25 October 1999, is available on its website: <<http://www.cavr-timorleste.org/chegaFiles/1162273558-Chega!-Report-Executive-Summary.pdf>>.

legacy of Suharto's New Order regime was occupation of East Timor, which finally ended with a bloody referendum held in August 1999.<sup>9</sup> On the one hand, since what Indonesia has experienced is endogenous democratic transition, the case is comparable to earlier democratizers in Southern Europe, Latin America and Asia, where the context of political violence was military dictatorship – though in some parts of Indonesia, e.g. Aceh, authoritarian rule overlapped with armed conflict, which did not stop with the end of the New Order.

On the other hand, the timing of transition and the East Timor referendum added a stronger international dimension to Indonesian democratization. Norms and models of transitional justice, along with international criminal justice, were significantly developed during the years preceding Suharto's fall in May 1998, which almost coincided with the adoption of the ICC Rome Statute (July 1998) and Pinochet's arrest in London (September 1998). While some large-N studies approach Indonesian transitional justice entirely from the perspective of referendum violence in East Timor (e.g. Snyder and Vinjamuri 2003), it is incorrect to say that human rights abuses in Indonesia, or Indonesian attention to human rights abuses, were concentrated only in East Timor. East Timor was an international issue, but victims from other localities – Muslim protesters in Tanjung Priok, Jakarta (1984), kidnapped opposition activists (1997–98), student martyrs who were shot during their anti-Suharto protest at Trisakti University, Jakarta (1998) – shared, or had more of, the media spotlight in Indonesia.

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<sup>9</sup> See Robinson (2010) for the militia violence, backed by the Indonesian military, that killed more than 1,500 people in East Timor and destroyed the capital Dili. Dozens were already killed in February and March, immediately after Indonesian President Habibie's announcement of the referendum, but most killings occurred after the referendum on August 30, 1999.

Still, East Timor was a crucial catalyst in the development of human rights and transitional justice institutions in Indonesia, because of the international pressure it invoked. After the Dili (Santa Cruz) massacre in 1991,<sup>10</sup> the human rights situation in East Timor received international attention throughout the nineties, prompting Indonesia to build measures of accountability and inquiry even before democratization. Moreover, the militia violence during the UN-organized referendum in the land that had never been officially acknowledged by the UN as Indonesian territory made international pressure for accountability all the more natural and legitimate. In other words, the Indonesian case belongs to the category of “endogenous autocratic regime” and “endogenous transitional justice,” but a critical “exogenous” dimension intervenes in the process.<sup>11</sup> Therefore, Indonesia provides a good opportunity to examine the international influence on transitional justice without losing connection to earlier cases of democratization.

In appearance, post-New Order Indonesia has good comprehensive legal frameworks of transitional justice and human rights. In addition to the Law on Human Rights (1999) that lists sets of human rights to be protected by the state, the Law on Human Rights Court (2000), closely modeled on the Rome Statute of the ICC, specifies the judicial processes for crimes in the category of “gross human rights violations” (genocide and crimes against humanity) with a retroactivity clause; ad-hoc human rights courts (tribunals) for past abuses can be formed upon recommendation of the parliament (DPR; Dewan Perwakilan Rakyat) and the president. Furthermore, in 2004, the Law on

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<sup>10</sup> See Chapter 3 for Santa Cruz, or Dili, massacre in 1991. The massacre occurred at Santa Cruz cemetery in Dili.

<sup>11</sup> For endogenous and exogenous dimensions, see Elster (2004, 73-75).



Truth and Reconciliation Commission was passed, though this law was repealed by the Constitutional Court in 2006.

These comprehensive mechanisms, the ad-hoc human rights court system and the TRC, were adopted even though post-New Order Indonesia lacked the generally discussed preconditions for successful transitional justice. The course of the transition was controlled by the new President Habibie, who had been Suharto's vice-president, and General Wiranto, who was appointed military chief by Suharto. Suharto's New Order regime endured for more than thirty years, leaving strong authoritarian legacies on society and the state, including the judiciary. Further, although Suharto's family members amassed substantial wealth, some of them getting closer to political power in the last phase, the New Order rule was not Suharto's personalist rule.<sup>12</sup> The Indonesian armed forces were firmly behind the rule, and their power did not simply go away after the transition. Therefore, these comprehensive laws were adopted when other factors – nature of the transition, duration of the regime, quality of the judicial system, and the authoritarian regime type – were predicting the opposite, which gives us a good reason to pay attention to the impact of international influence.

The actual practices of transitional justice based on these comprehensive legal mechanisms were few, however. In fact, the most ambitious initiatives for truth-seeking on recent human rights abuses, e.g. the Joint Fact-Finding Team for the May 1998 riots (TGPF, 1998) and the Independent Commission for the Investigation of Violence in Aceh (KPTKA, 1999) were ad-hoc measures launched before the adoption of these two

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<sup>12</sup> For a discussion of the authoritarian regime type in relation to Indonesia, see Slater (2009).

comprehensive mechanisms.<sup>13</sup> Only three cases of human rights abuses were brought to the human rights court system, and all convictions were reversed upon appeal. In spite of the abundant time before and after the Constitutional Court decision, the TRC was never set up. Furthermore, both adoption and implementation of measures occurred within five years after the transition; expansion of measures in the later period was not observed. Why did Indonesia establish such legal mechanisms in the first place, instead of choosing amnesty laws or just nothing, and why did such mechanisms, combined with rather persistent advocacy of local human rights groups, fail to deliver actual practices of transitional justice? When do formal mechanisms of transitional justice languish without implementation and expansion?

The Indonesian situation highlights the difference between adoption and implementation of transitional justice models, as well as different actors involved in the processes. The Indonesian law on the human rights court, for example, can be explained by the international pressure for an international court punishing those who are responsible for referendum violence in East Timor. At the same time, the TRC bill was prepared, though the enactment came a few years later. The TRC, with its amnesty clause, was promoted through tangible linkages with international experts and practitioners.

The role of domestic norm entrepreneurs – national human rights organizations belonging to transnational networks – deserves special attention for their central role in

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<sup>13</sup> These commissions are not usually included as fact-finding measures or truth commissions in cross-national databases. What Backer (2008, 36) codes as a truth commission is an inquiry team for the East Timor referendum violence in 1999. This team was formed by the National Human Rights Commission (Komnas-HAM) as a case-by-case preparatory step for the human rights court (“*pro-justicia*” inquiry or KPP-HAM). Six more inquiry teams of the same kind produced reports, but they are not called truth commissions in Indonesia.

promoting norms and models for transitional justice. If not for their promotion of fundamentally new concepts such as enforced disappearances (*penghilangan paksa*), gross human rights violations (*pelanggaran HAM berat*), and truth and reconciliation commissions (*komisi kebenaran dan rekonsiliasi*), the formats of mechanisms adopted by the Indonesia government might have been substantially different.

While the impression that Indonesian transitional justice has failed to bring expected outcomes is largely shared by commentators, the reasons behind the failure are attributed to different factors. Clarke (2008) indicates the non-retrospectivity principle in the Indonesian Constitution as the barrier to securing justice for victims of human rights violations,<sup>14</sup> arguing that “legal technicalities regarding retroactive prosecution have overshadowed accountability mechanisms designed to address Indonesia’s violent past and have undermined the potential for development of the rule of law that may have otherwise occurred” (Clarke 2008, 431).

However, as he admits from observation of the ad-hoc human rights court for East Timor, the retroactivity issue hardly emerged during the trials. Also, the Constitutional Court reaffirmed the validity of the Law on Human Rights Court and its ad-hoc court provision. The retroactivity issue was never included in official reasons for non-follow-up of past cases by the Prosecutor General’s Office (*Jaksa Agung*). Moreover, this particular technicality problem does not explain the protracted process for forming the TRC, although it is true that legal technicalities in general make good excuses for

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<sup>14</sup> According to Amnesty International (2001), “retrospective” legislation is different from retroactive legislation, because it is “a procedure to investigate, prosecute and punish conduct which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations.” I mostly use the term “retroactivity” to indicate “retrospectivity” in this study.

shelving the inconvenient issues of justice and truth, as in the national versus local responsibility for the Aceh TRC (Chapter 5).

Agung (2009, 229) argues that the human rights court failed because the legal provisions are not robust. First, the parliament has undue authority in establishing ad-hoc human rights courts for the retroactive application of the law. Second, the basic weakness of the law originates in incorrect adoption of international human rights instruments. Then he goes on to point out wrong translations of the Rome Statute in the Indonesian law on the human rights court (Agung 2009, 229–31). However, as a senior human rights activist argues, “there is some weakness in the law, of course, but, if there is... a strong political commitment from the government, then the court can function and deliver the justice.”<sup>15</sup> In fact, the phrase “the lack of political will” is repeated three times in the 2011 report on Indonesian transitional justice by the International Center for Transitional Justice (ICTJ), a leading international NGO in the field of transitional justice promotion, and KontraS, a prominent Indonesian human rights NGO. If “the lack of political will” is the major factor that “derailed” (ICTJ and KontraS 2011) transitional justice in Indonesia, how can we explain it?

To be sure, party politicians are not the only actors who are involved in transitional justice. For example, to send a case to the human rights court, the Komnas-HAM (National Human Rights Commission) must produce a “*pro-justicia*” report that concludes the case is deemed to have elements of gross human rights violations. The *pro-justicia* report (*laporan penyelidikan*) is usually preceded by an internal study report

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<sup>15</sup> Author’s interview, April 8, 2010 (in English).

(*laporan pengkajian*) or, for an ongoing case of violence, monitoring report (*laporan pemantauan*) to evaluate whether the case is worth pursuing. To produce a *pro-justicia* report, the plenary session (*paripurna*) of the Komnas-HAM has to make decisions twice at the minimum – whether to form a *pro-justicia* inquiry team, based on the study or monitoring report, and whether to endorse the *pro-justicia* report and send it to the Prosecutor General. The commission produced a total of seven *pro-justicia* reports up to 2011 through this complicated internal decision-making process.

Nevertheless, the parliament and the president play the crucial role in establishing ad-hoc courts for retroactive cases and forming the TRC. After the simultaneous recommendation for East Timor (1999) and Tanjung Priok (1984) courts, the parliament issued only one recommendation in 2009 for the kidnapping of political activists (1997–98), upon which the president did not act. After the TRC law was passed in the parliament, President Susilo Bambang Yudhoyono did not form the body for two years until it was repealed in the Constitutional Court. Why are they not exerting the necessary political will for implementing transitional justice mechanisms?

I propose that one potential source for sustaining the attention of political elites is the link between partisanship and transitional justice. It may be hard to expect political elites to act on pure morality without strategic concerns, however vague, that transitional justice will be helpful in gaining – or not losing – votes. The absence of strategic concerns for political elites in Indonesia will be contrasted to two early democratizers in the region, South Korea and Taiwan, where the association of identity-based cleavages

with the victimized groups encouraged politicians to adopt and implement measures, even in the absence of international pressure.

### **1-5. Scope Condition**

Communal violence is not included in this study. On many occasions, riots, pogroms, and even gang fights have implicit or explicit political dimensions, in the sense that bureaucrats, soldiers, and politicians of various ranks are involved in the processes; in other cases, state-sponsored violence contains horizontal dimensions with mobilization of militias as proxies. However, as this study is primarily concerned with settling terms with authoritarian legacies, in particular state-sponsored and political violence, it does not examine inter-communal violence in various parts of Indonesia in the late 1990s and early 2000s and reconciliation (or lack thereof) among social groups in the aftermath of such violence (Braithwaite et al. 2010; Bräuchler 2011).<sup>16</sup>

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<sup>16</sup> A number of book-length studies on communal violence in Indonesia exist. For ethnic violence in West Kalimantan from a perspective going back to the communist purge in the 1960s, see Davidson (2008); for a case study of North Maluku, see Wilson (2008); for a variety of religious violence pinned on the identity of political Islam, such as anti-Chinese/anti-Christian pogroms, lynching, and terrorism, see Sidel (2006); for local political competition and communal violence in Outer Islands (Maluku, North Maluku, Central Sulawesi, West and Central Kalimantan), see Klinken (2007). Bertrand (2004) discusses riots, communal conflict, and nationalist movement in Aceh, East Timor, and Papua with an institutional model of the Indonesian nation. Also see useful review essays by Aspinall (2008a) and Davidson (2009b). While these authors discuss various political backgrounds of the killings, such as the legacy of state violence, electoral politics, decentralization, etc., none of them characterizes anti-Chinese riots (with the exception of the May 1998 riots; see Sidel 2006) and ethnoreligious conflict (with the exception of “secessionist” provinces) as state-sponsored violence. In this way, the scholars distance themselves from the claims that high-ranking military officers or the Suharto family engineered riots, bombings, and communal wars. The responsibility of the military is rather put on the failure to control communal violence, e.g. by not preventing the Laskar Jihad militia from heading to Ambon. For Maluku (Ambon), Braithwaite et al. (2010) conclude that “While there is no hard evidence that any Indonesian leader planned to create mass slaughter in Maluku, and perhaps none did, there were almost certainly elements in the military... who at least at certain points saw advantages, or ‘little harm’, in letting the situation escalate or deteriorate.”

In theory, the two comprehensive mechanisms in Indonesia, the human rights court and the TRC, can be used for cases of communal violence too, as long as prosecutors, judges, and commissioners decide they belong to the category of gross human rights violations. However, efforts to put these cases on the human rights court track have been rare, and inquiry teams on Maluku and Poso never published reports (ICTJ and Kontras 2011, 21-22). It is possible to discuss the absence of trials and truth commissions in the aftermath of communal violence as instances of the same “culture of impunity,” but punishing Pinochet and punishing a head of a local Christian gang in the North Maluku city of Tobelo present different sorts of risks for national political elites.<sup>17</sup> Post-conflict measures for communal tragedies that killed thousands of people in some provinces are discussed briefly only when they are relevant to the cases of this study, e.g. the parallels between compensation schemes in Poso and Ambon and *diyot* in Aceh.<sup>18</sup> Thus, the arguments presented in this study will be less successfully applied to post-conflict justice after communal violence.

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<sup>17</sup> For a detailed case study of criminal trials during the conflict in Central Sulawesi, see McRae (2007). He points out that the provincial capital of Central Sulawesi, Palu, was free from conflict, unlike in Maluku and North Maluku. Thus, the judicial system could work. More than 150 suspects stood trials, and three Christian fighters who had participated in the attack against Muslims during May and June 2000 were executed. The trials, however, inflamed enmities between Muslims and Christians, instead of calming violence, because of weak indictments, wrong arrests, mistreatment of suspects, and perceptions of unfairness. He argues that “it is reasonable to assume that court verdicts for conflict or post-conflict violence will always run the risk of displeasing some sections of affected communities” (McRae 2007, 116).

<sup>18</sup> Varshney, Panggabean, and Tadjoeddin (2004) report a total of 9,612 deaths from ethnocommunal violence between 1990 and 2003, compared to 105 deaths from state-community violence during the same period, from their new data based on local newspapers of fourteen provinces. The data do not cover state-sponsored violence in Aceh, Papua, and East Timor. The “top three” provinces, North Maluku (2,794), Maluku (2,046), and West Kalimantan (1,515), account for 56.9% of the total deaths. Aspinnall (2008a, 571, note 1) assesses that the figures “are likely to be a serious underestimate,” because newspapers tend to underreport deaths.

A large part of proposed causal mechanisms – the role of domestic norm entrepreneurs, partisan politics and political elites, etc. – assume a certain degree of political liberty, competitive electoral politics, and decision-making authority in the hands of national political elites. When these conditions are not present, for instance in failed states or territories under UN control, the arguments will be less relevant. Lastly, settling past accounts between states is not relevant to the proposed causal mechanisms here, and thus will be hard to explain with arguments of this study.

## **1-6. Research Methods**

A major strategy of this study is process-tracing, “a procedure for identifying steps in a causal process leading to the outcome of a given dependent variable of a particular case in a particular historical context” (George and Bennett 2005, 176). In this study, the use of process-tracing is particularly relevant because it will illuminate the role of actors and their ideas, specific decision-making processes, and timing. By closely examining decision-making processes, it will be shown that the adoption and then the absence of implementation are in fact the consequence of numerous actions, debates, and decisions – as well as inaction, silence, and non-decisions – by diverse actors, including victims’ groups, human rights NGOs, politicians, and bureaucrats.

The qualitative data were collected in Indonesia, primarily in Jakarta, for a period of more than twelve months during several trips between 2009 and 2011. This study draws on formal interviews with approximately seventy persons, including NGO workers, organized victims, and officials in relevant agencies, of which twelve were



conducted in Banda Aceh in November and December 2010.<sup>19</sup> In accordance with the Institutional Review Board (IRB) procedure, I do not reveal identities of the interviewees. Some of them were repeatedly interviewed, and a few interviews were conducted in a collective setting. Unless otherwise indicated, the Indonesian language was used for the interviews.

In addition, I observed more than thirty-five events of official agencies and NGOs, such as public hearings, press conferences, discussion sessions, exhibitions, and art performances. The fact that such public events – on the human rights court, the TRC, reparations, and memories – were still being frequently held more than ten years after Suharto’s fall means that the Indonesian case cannot be explained away simply as the absence of significant effort for transitional justice. The absence of effective measures is an outcome of lengthy struggles over the way past human rights abuses are to be handled, and such struggles cannot be understood properly without the ideas and institutions that framed them.

Interview and observation data were supplemented with analysis of key primary documents from relevant official bodies, especially the Komnas-HAM, and NGOs, in addition to secondary data such as newspapers. The materials for cross-national comparison are from secondary sources.

## **1-7. Contributions**

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<sup>19</sup> Unless indicated otherwise, the interviews were conducted in Jakarta.

This study will contribute to existing literature in the following ways. For Indonesian transitional justice, this study adds observations that had not been frequently discussed, such as the parliamentary debates for adoption of the two laws, the activities of the parliamentary committee for issuing recommendations for ad-hoc courts, and failed internal initiatives of Komnas-HAM for prosecution, e.g. monitoring activities in Aceh during the martial law period (2003) or “the Suharto case” (2002–03). These less well-known initiatives will help illuminate Indonesian transitional justice as a process consisting of intertwined decisions on various levels. Also, the wider time-frame going back to the 1970s will enhance understanding of the backgrounds to adopted transitional justice mechanisms.

For the literature of transitional justice, this study offers an illustration of, among others, the role of domestic human rights organizations in promoting relevant norms and models, as well as a view into the hitherto underexplored relationship between partisanship and transitional justice. As a single case study, this study does not aim at confirming or rejecting specific hypotheses. The comparison with South Korea and Taiwan also does not explicitly aim at testing theories – this study is more interested in generating theories rather than testing them. Recent large-N studies (e.g. Olsen, Payne, and Reiter 2010) criticize the excess of case studies without systematic hypothesis-testing in the field of transitional justice; I disagree. Aside from reports of human rights organizations, there is no book-length study on Indonesian – not Indonesia-East Timor – transitional justice published in English. While I acknowledge the usefulness of large-N cross-national comparisons, I suspect that hypothesis-testing without fuller understanding

of underlying causal mechanisms might result in “findings” without adequate interpretations. Case studies will contribute to richer interpretations of cross-national comparisons.

The phenomena covered in this study – a never-convened truth commission or a national court for international crimes – might not have been very common.<sup>20</sup> But the real-world practices of transitional justice are changing fast. Between 2009 and 2011, three countries established a special domestic court for international crimes (Bangladesh and Uganda) or tried to establish one (Kenya), when two of them, Kenya and Uganda, were under explicit threat of ICC prosecution.<sup>21</sup> Implications from Indonesian experiences with the human rights court and the related processes will be particularly helpful for policymakers, practitioners, and advocates working on transitional justice in the countries where national accountability and inquiry mechanisms are shaped as a response to the international pressure.

## **1-8. Structure of the Study**

The arguments presented above will be elaborated in the next chapter and examined against empirical chapters. Chapter 3 will offer backgrounds to the later development of the transitional justice mechanisms from 1999 by discussing the human rights campaigns against the New Order regime from the 1970s to 1998. The abuses in

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<sup>20</sup> Out of twenty-seven truth commissions established between 1974 and 2003 in Hayner (2011), only five did not complete reports.

<sup>21</sup> For Bangladesh, See International Justice Tribune, “Bangladesh Tribunal Starts,” *Radio Netherlands Worldwide*, November 21, 2011; “Bangladeshi Political Leader Jailed for War Crimes after 40 Years,” *The Daily Star*, January 12, 2012. The tribunal is for war crimes, crimes against humanity and genocide committed around the time of Bangladesh’s secession from Pakistan in 1971. For Kenya, see Okuta (2009); for Uganda, Keppler (2012).

East Timor came under international spotlight after the Santa Cruz (Dili) massacre in 1991. Combined with the rise of domestic opposition in the 1990s, the measures originally developed for the Dili massacre, such as inquiry teams and the military honor council, began to be used for cases that received less international attention. While they were thought to be better than nothing during the New Order, the continued use of the same measures after Suharto's resignation in May 1998 frustrated now-organized victims and human rights NGOs, shaping the debates about the new bills. By highlighting the *tapol* (*tahanan politik*, political detainees) campaign of the early 1970s, this chapter also shows that the human rights advocacy in the 1990s was not an entirely new phenomenon, and that wistful expectations of the norm internalization theory need to be reconsidered.

Chapter 4 explores the introduction of norms and models on transitional justice by domestic norm entrepreneurs. It begins with an observation that norm entrepreneurs are plural, as are norms and models. The transitional justice advocacy was mainly taken up by human rights NGOs, who brought forward specific ideas – for instance, “enforced disappearances” of Kontras. In addition to the crucial role of domestic human rights activists in promoting “international” models, this chapter also observes the way that political elites – especially parliamentarians – responded to various concerns, including the international pressure, in the course of adopting relevant provisions and laws, from scripts of parliamentary debates compiled by the DPR secretariat and the NGO Elsam (Institute for Policy Research and Advocacy).

If Chapter 3 and 4 move through both international and national levels, Chapter 5 goes down the ladder to see Indonesian transitional justice from a local perspective – the

westernmost province of Aceh. This chapter discusses transitional justice in Aceh as a part of the larger post-authoritarian process. The lack of prosecution in post-Helsinki Aceh is attributed to the dismal performance of the national human rights court system. Neither national nor local political elites were interested in the TRC, the mechanism guaranteed by both the peace agreement (2005) and the autonomy law (2006). In contrast, ad-hoc aid schemes, which were administrative measures without legal backing, were implemented for victims of conflict. This chapter has the advantage of being able to focus on the implementation stage, because the post-conflict period in Aceh began at a time when Indonesia had almost completed adoption of major transitional justice measures.

Chapter 6 illuminates Indonesian transitional justice as a whole from the perspective of national political elites, particularly the legislature. While human rights activists blame the DPR for inaction and “politicization” of human rights issues, I point out that the absence of implementation might be attributable to the absence of “politicization” or strong strategic concerns pressing politicians to take risky decisions, rather than an excess of politicization. With an analysis of key DPR decisions (and non-decisions) with regard to past human rights abuses, the chapter seeks a comparison of transitional justice in Indonesia, South Korea and Taiwan. The comparison modestly intends to contrast the situations in which political elites were motivated to implement and expand transitional justice policies to secure support from particular political groups with Indonesia, where such concerns were not present, as a way of showing the possible explanatory power of the suggested argument.

**CHAPTER 2**  
**MODELS AND MECHANISMS OF TRANSITIONAL JUSTICE:**  
**LITERATURE AND THEORY**

**2-1. Domestic and International Dimensions of Transitional Justice**

*2-1-1. “Third-Wave” Democratic Transitions: Actors and Assumptions*

It was with the “third-wave” democratization that comparativists began to be interested in transitional justice, which was called “settling the past account” by O’Donnell and Schmitter (1986, 28–32) and “the torturer problem” by Huntington (1991). Huntington argues that, first of all, the nature of the democratization process and distribution of political power during the transition decide the outcomes. When the past outgoing regime is strong enough to set the terms of transition, subsequent measures of justice will be minimal or absent, because members of the past regime are likely to make a deal to their advantage. Second, the lack of civilian control over the military after the transition, or the presence of authoritarian enclaves, will significantly limit the options available for new elites.

The transitology literature of comparative politics shared several ideas on transitional justice. First, it highlighted the tradeoff between justice and democracy. In

the context of post-military transitions, the greatest evil of authoritarian reversal is possible if justice is pushed too far. Second, relative power among domestic political forces is the crucial factor. Those who suggested other factors such as political leadership (Pion-Berlin 1994) and public demand (Skaar 1999) largely build on similar grounds. The careful approach was inherited by international relations scholars who work on conflict resolution, leading to peace versus justice debates. Snyder and Vinjamuri (2003) propose amnesty as the best solution for post-conflict societies where rule of law is underdeveloped and spoilers are strong.

Practices of transitional justice in Southern Europe were not centered on the human rights language. Portuguese transitional justice in the revolutionary atmosphere in 1974–75 “affected the institutions, the elite, and *collaborators*” (Pinto 2010b, 396)<sup>22</sup> rather than perpetrators of human rights abuses. In Greece, the protesters found a parallel between the junta and the Nazi collaborators or six Greek leaders who had been executed for treason after the loss of territory to Turkey (Sikkink 2011, 46–47). Sikkink (2011, 33) points out the distance between the slogans in Portugal and Greece and ideas of human rights: “Neither “Death to PIDE!” nor “All the guilty to Goudi!” is a human rights slogan. They hearken back to ancient cries of “Death to the King!” which were not about legal accountability... The people in the streets were calling for old-style political trials.”

In contrast, human rights was already a dominant idea in the Latin American transitions in the late 1980s and the early 1990s (Barahona de Brito, González-Enríquez, and Aguilar 2001, 22). Transitional justice was not a strictly domestic problem insulated

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<sup>22</sup> The italics are mine. The measures were extended to civil servants and even the private sector.

from international law and preceding models; country representatives shared experiences through international conferences, where they debated obligations to prosecute under international law and room for discretion (Henkin 1989; Arthur 2009). Nevertheless, international options, such as foreign trials and international trials, remained underdeveloped in this critical period. When Orentlicher (1991) discusses “the duty to prosecute human rights violations of a prior regime” under international law,<sup>23</sup> what she means is “the scope of *state*’s duties”<sup>24</sup> (Orentlicher 2007, 13). Her argument for universal jurisdiction does not anticipate international courts or the surge of foreign trials for human rights crimes in the near future. The responsibility belonged primarily to states, that is to say, transitional governments. Whether to prosecute or not was ultimately the choice of transitional leaders, under the condition of structural constraints imposed by power of the outgoing military regime.

The reasons for prosecution were framed in the language of societal goods like rule of law, democratic consolidation, deterrence of future crimes, and legal shaping of collective memory (Henkin 1989; Malamud-Goti 1989; Orentlicher 1991; Osiel 1995; Teitel 2000). Notably, one rarely comes across explanations of what would possibly motivate these leaders to proceed with prosecution, though the presence of risk is clear for all. When motivation is discussed at all, it is the personal dimension of “attitudes and beliefs” (Barahona de Brito, González-Enríquez, and Aguilar 2001, 14) or “leadership preferences” (Pion-Berlin 1994), rather than usual considerations of party politicians.<sup>25</sup>

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<sup>23</sup> In fact, in the earlier seminar at the Aspen institute, the participants generally had agreed on the point that there is no such obligation under customary international law (Henkin 1989, 4).

<sup>24</sup> Italics are mine.

<sup>25</sup> Perhaps it is because many of the executive leaders could not expect re-election with the single-term



As Pinto (2010a, 344–45) points out, “democratic consolidation is by definition dominated by parties... However, their role was underestimated by the early literature on transitional justice.” Nino (1996, 130) explicitly argues that it is the moral, rather than political, consideration that comes first; “if we take into account only political considerations, narrowly understood to mean self-interest, those opposed to trials clearly win, and there we would lack a strong reason to undertake retroactive justice during a transition process.” This picture of moral politicians who feel strong obligations to settle past accounts in spite of enormous risk is radically different from the assumptions of the mainstream political science literature.

In addition to the role of parties and party politicians, the early literature underspecified the role of human rights groups. The persistent demands for accountability from groups like Mothers of Plaza de Mayo were widely acknowledged in the literature, but the presence of such vocal groups – in the background – was largely taken-for-granted. There was little effort to discern different characteristics of the groups, such as locality (foreign, transnational, national, or local) or membership (victim-centered or not).

### *2-1-2. Norms and Networks Changing the World: International Norms Theory*

If the early literature in comparative politics emphasizes the role of transitional leaders, the international relations literature on human rights norms is centered on the role of transnational advocacy networks, especially international NGOs. This tendency is

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limit, as Pion-Berlin (1994) points out.

relevant to transitional justice as well, because many newly developed international norms are about transitional or international justice. While the attention to non-state actors, not taken-for-granted any more now, illuminates a crucial dimension of political process, it suffers from overly optimistic predictions and the neglect of the plurality of norm entrepreneurs and their interpretations of norms.

In the international norms literature, a large part of domestic political change is attributed to the role of transnational advocacy networks or northern NGOs. In the boomerang model, domestic opposition and NGOs bypass their own governments and seek help from international, or northern, NGOs, who then bring pressure on target states through intergovernmental organizations and, more importantly, Western powers (Keck and Sikkink 1998; Risse and Sikkink 1999). In the long term, the efforts of transnational advocacy networks for diffusion of international norms are expected to bring about norm internalization through the process of socialization, which means communication, argumentation, and persuasion between the international community and target states.

In the whole process called the spiral model, tactical concessions might be the dominant mode of the early phase, but the instrumental rationality will be ultimately replaced by habitualization through repeated rhetorical defenses and institutionalization (Risse and Sikkink 1999). A decade after the spiral model appeared in the book *Power of Human Rights*, Jetschke and Liese (2009) review critiques of the book and the model. First, the argument suffers from the problem of case selection. All cases studied emphasize the role of transnational advocacy networks associated with some political

change, giving little attention to cases without the visible role of transnational advocacy networks or significant concessions from target states.

Second, predictions of the spiral model were never realized, even in democracies like Indonesia, Israel and Turkey. States made tactical concessions, but practices indicating internalization, like “government... no longer denouncing criticism as ‘interference in internal affairs,’ and engaging in a dialogue with their critics” (Risse and Sikkink 1999, 29), were never observed. Third, norm contestation received little theoretical attention, though norms may have ambiguous or disputed meanings and thus allow different interpretations.

Thus, the spiral model leaves room for alternative possibilities. In many countries, improved human rights situations or new legal and institutional frameworks for human rights might have little to do with the efforts of northern NGOs. Instead, domestic factors like efforts of domestic opposition groups, democratic consolidation, military reform, and electoral politics might have more effects on such changes. Or transnational advocacy, donor’s criticism, and sanctions against “norm-violating” states over a lengthy period may strengthen such states’ strategies of countering criticism. They may be able to learn how to play donors against each other, how to make small concessions in one area to continue human rights abuses elsewhere, how to denounce the hypocrisy of western states, etc. Critically, they may learn how to make preemptive policies or empty promises as a way of assuaging criticism. The latter possibility of preemptive policies in the face of international pressure will be examined in more detail later.

The ambiguity of norms and different possibilities of interpreting norms have direct relevance to adopting and implementing transitional justice policies. Norm contestation might occur not only between the norm-violating states and human rights-oriented circles, but also among human rights groups. For example, there might be little contestation over the necessity to stop gross human rights abuses such as massacres, concentration camps, and tortures, but strategies to stop abuses might vary. In transitional justice strategies, even goals can vary. For some, the ultimate goal of transitional justice might be peace and reconciliation; for others, it is the end of impunity through judicial prosecutions. Advocates of different goals would in turn support different models of transitional justice. If norms are plural, then norm contestation cannot be reduced to a simple disagreement between “norm-affirming” and “norm-violating” actors.

### *2-1-3. International or Transitional Justice? Transnational Advocacy Networks*

Recent studies commonly observe the growing importance of international justice, or the international dimension of transitional justice. With the establishment of the ICTY and ICTR, transitional justice, which “had previously been studied in comparative context,” was “increasingly seen as a matter of international concern and a target for increased international involvement” (Leebaw 2011, 51). This internationalization of transitional justice through pressure, diffusion, and intergovernmental mechanisms is a crucial context for late democratizers like Indonesia.

The main actor in the international justice arena is established human rights organizations rather than leaders of transitional polities. Zalaquett (1989, 24) observes

that human rights organizations put an increasing emphasis on “human rights issues related to political transitions” in the 1980s, contrary to their previous focus on current abuses. With post-Cold War multiplication of ethnic conflicts (Hazan 2010), major NGOs like Human Rights Watch and Amnesty International bypassed the governments and instead called for international war crimes tribunals to the audience of the international community, using humanitarian law as the basis of their claims (Sikkink 2011, 106–08). Since domestic political elites were deeply involved in the conflict, it was not reasonable to expect that they would launch judicial processes fair enough to meet international standards.

The problem of state capacities lay at the heart of the increasing reliance on international law claims and transnational advocacy for foreign and international courts (Roht-Arriaza 2001; 2005). If the international law claims, centered on the duty to prosecute, were originally understood as one of the “weapons” to be used by human rights groups in transitional countries to confront amnesty laws and concerns over the military backlash, a decade or so after, activists began to bring cases to venues beyond borders, invoking the principle of “universal jurisdiction” for crimes against humanity (Lutz and Sikkink 2001). Transnational criminal litigation or the use of foreign courts maximized the power of the small number of individuals in transnational advocacy networks, because it allowed them “to upset whatever deals have been struck, and to do it after the deal was agreed to” (Roht-Arriaza 2001, 50–51), without a national consensus in the country where the crimes occurred or even an international consensus from states, a requirement for international tribunals (Roht-Arriaza 2005, 204–05).

International ad-hoc tribunals are not being established after the ICTY and ICTR. The ICC, without the retroactivity provision, is taking up cases of recent human rights abuses. To save huge costs for ad-hoc tribunals and to respond to criticism that the tribunals, held thousands of miles away from the location where victims and perpetrators reside, are not leaving institutional legacies on post-conflict societies, hybrid tribunals – trials organized on the initiative of international organizations but incorporating domestic human and institutional resources to a significant extent – were formed in Kosovo (2000), East Timor (2000), Sierra Leone (2002), Cambodia (2003), Bosnia and Herzegovina (2005), and Lebanon (2009).<sup>26</sup> For transnational litigations, Spain and Belgium added further criteria like the citizenship of victims for transnational litigation after cases, especially those against leaders of the Bush administration, flooded in (Roht-Arriaza 2005).

The peak moments of international justice in the late 1990s and early 2000s may have gone, but two interconnected processes of diffusion and pressure still exert critical influence over transitional justice around the globe. The trend is that a standardized “tool kit” of interventions – namely immediate criminal trials and truth commissions – is commonly applied to different post-conflict societies, particularly where international forces are involved in conflict resolution (Fletcher, Weinstein, and Rowen 2009). International NGOs take a leading role in propagating standardized models (Subotić 2012), monitoring tribunals and criticizing discrepancy between national legal frameworks and “internationally accepted” practices. Creating pressure for international

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<sup>26</sup> For hybrid courts, see OHCHR (2008).

investigation into human rights abuses by lobbying states and UN offices and mobilizing international public opinion is, as before, an integral part of their job.

Critics of the transnational advocacy argument, which emphasizes the central role of international activists, suggest that the effects of transnational initiatives are exaggerated (Collins 2006) or that international justice compliance may lead to perverse domestic effects under “conditions of low domestic demand and strong international pressures” (Subotić 2009b, 365). Similarly, Grodsky (2009) observes that truth commissions in Serbia and Croatia were merely compromise policies devised to placate both international constituencies, demanding compliance with the ICTY, and domestic constituencies, a majority of whom being against the ICTY. Therefore, they did not serve the goals they were supposed to fulfill.

Lastly, the international law approach is criticized for erasing the dimension of history and memory. Hazan (2010, 51) argues that “The NGOs stage the victim and his executioner... [who] exist only through the criminal act. They have neither past nor future. History, except for that of the crime, does not exist. The political and social causes are mere backdrop, all but insignificant.” In a similar vein, Leebaw (2011, 16) maintains that “human rights legalism has analyzed and understood political violence primarily as a problem of ‘impunity’... regardless of the historical context and dynamics that shape abuses or atrocities.” The framework excludes “agency, protest, refusal, and solidarity” from legitimate concerns of transitional justice and thus leads to depoliticization of the problem (Leebaw 2011, 17–18). The international law approach was successful in

building new institutions and facilitating trials, but there was something being lost in the meantime, these critics argue.

## **2-2. Who Brings Models In? The Role of Domestic Norm Entrepreneurs**

If the transnational advocacy network was so successful, what was the role of domestic norm entrepreneurs – those who belong to the network but are in the “target states”? In the boomerang model (Keck and Sikkink 1998), domestic human rights groups seek out international allies and provide them first-hand information of abuses. After this first stage, however, they do not play a key role. It is northern NGOs and Western states who engage in dialogues with target states to induce change. In fact, “it follows from the boomerang model that domestic demand for transitional justice is unlikely to influence state decisions without the role of international forces” (Olsen, Payne, and Reiter 2010, 83). Is it true that the domestic NGOs are simply research assistants of international NGOs? If not, what initiatives can they possibly take? Who are these domestic human rights groups, and what are their characteristics?

The relationship between international and domestic human rights groups in advocacy networks – or the “sending” and “receiving ends” of international human rights campaigns (Hertel 2006) – is turning out to be more complex than depicted in the boomerang model. Domestic human rights activists take initiatives to use international institutions and allies for their campaign. In a pattern called “insider-outsider coalitions,” domestic activists are capable of doing all legal and political work for political change and of soliciting help from international allies when they see it fit. They keep the



international avenue as a complementary option in addition to their domestic campaign, rather than as a major route (Sikkink and Walling 2006).

In transitional justice, the possibility of varied relationships among groups at different localities in transnational advocacy networks is diverse, as are characteristics of these groups (Backer 2003; Boesenecker and Vinjamuri 2011). In this study, I focus on a specific set of groups that are primarily dedicated to change in a particular country, i.e. domestic human rights organizations, and their role in introducing and promoting norms and models of transitional (and international) justice. These organizations are usually led by lawyers, professionals, and staffs with higher educational backgrounds in major urban areas. They typically lack an organized constituency and tend to be sensitive to concerns of donors (de Waal 2003). However, it does not automatically follow that human rights organizations lack legitimacy in domestic politics as De Waal asserts.

Human rights norms are powerful because of their universality – human rights workers take advantage of this fact. For them, victims are just victims, not left-wing terrorists or radical Islamists. They are serious about generating Western pressure, because they know it works well, but the extent to which they rely on Western powers varies across contexts. A large part of their activities is directed towards local constituencies – they provide legal services to survivors of violence, offer human rights training for students, and lobby their government. International activists cannot replace their domestic counterparts in these essential parts of human rights activism and transitional justice advocacy, even in cases where foreigners assume the dominant role, as in the monitoring of the Khmer Rouge tribunals (Sperfeldt 2012).

In a non-negligible number of cases, these human rights groups also play a crucial role in promoting norms and models for transitional justice. The initial points of introduction differ – norms and models may be taken up by political elites under international pressure or out of desire for higher reputation; major international NGOs and donor agencies may encourage their counterparts to promote them; or domestic activists can take the initiative in introducing them and then seek out international allies to boost their campaign. In any case, domestic norm entrepreneurs are essential intermediaries between the international and the local.

Merry (2006) also observes that these intermediaries at the national level are typically educated elites rather than “grassroots” leaders. By relying on international law and human rights language, advocates “gain access to international expertise, funding, and political pressure that may influence decisions at home” (Merry 2006, 165). Their capacities lie in making human rights vernacular. In her view, vernacularization of human rights consists of appropriation – importing the human rights language and transplanting institutions and programs – and translation – adjusting the messages and programs in light of the local context. Contrary to an earlier finding that norms from outside are accepted most likely when they resonate with the existing norms in the receiving society (Acharya 2004), she finds that the basic approach is surprisingly similar across societies and rights language is never fully indigenized.<sup>27</sup> Indeed, she argues, it is the unfamiliarity of these ideas that makes them effective, because it brings forth radical possibilities (Merry 2006, 178).

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<sup>27</sup> Human rights, as legal principles, offer less room for creative re-interpretation than principles of regional security (Acharya 2004) or, most notoriously, democracy.

Her major case is women's rights in Asia-Pacific countries, but her characterization of vernacularization fits well into transitional justice in late democratization. All sorts of transitional justice mechanisms – courts, truth commissions, reparations schemes, and even the idea of local reconciliation through indigenous rituals – have been “profoundly influenced by learning from earlier efforts elsewhere” (Roht-Arriaza 2001, 43). The spread of ideas through transnational linkages is, however, close to impossible without the presence of intermediaries or translators. Above all, these translators are those who are capable of using the vernacular, literally, and thus of engaging in public debates by writing polemical op-eds in local newspapers in local languages, making themselves available for commenting on contemporary issues in radio and TV programs, and so forth. Many countries have their own share of polemicists from overseas who are fluent in the national language,<sup>28</sup> but they are usually no more than a small minority. Local academics and NGO workers, rather than UN representatives or spokespersons of international NGOs, are far more likely to write a piece in newspapers most widely read by concerned citizens.

Merry reports that she “saw little evidence of pressure by other nations” (2006, 88) and it was the [national] human rights advocacy that is “generating international pressure on one's own government” (2006, 165). Pressure for women's rights and pressure for political violence have different characteristics, however, and it is equally true that pressure often comes from donor governments, intergovernmental bodies and

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<sup>28</sup> Not all countries use “indigenous” languages as the language of the public sphere. Spanish is the vernacular of the public sphere in Latin America, and many former British or American colonies use English along with indigenous languages, forming double, or more, public spheres.

international NGOs before domestic NGOs move. However, such pressure rarely takes the form of complete bills, unless the territory is under the control of international forces. In general, international pressure is no more than an urge to adopt *some* transitional justice policies based on international norms. Concrete policy measures are adopted by national political elites, and it is the role of national NGOs to intervene in the policymaking process to set the direction and target of policies, to import models and interpret them in their own national context and to reject problematic clauses in relevant bills based on their understanding of international norms – what Merry calls “translation” of human rights.

International conferences and shared academic works are the major mechanisms of diffusion in Merry’s cases. However, there is an older mechanism for the spread of ideas, namely piracy (Anderson 2006). Books, newspapers, TV, and more recently, the internet make new ideas and modes of action available for norm entrepreneurs without direct contact with “copyright holders” or predecessors who experimented with the ideas or models first.

As nationalism and constitutionalism spread in this way, so did models of democracy and democratization. Uhlin (1997) shows how Indonesian pro-democracy activists were influenced by ideas and models from overseas on how to break down authoritarianism, democratic alternatives, and how to establish democracy. The fact that Indonesian political activists put forward Northern Europe, Poland, the Philippines, South Korea, or Iran as the model did not necessarily mean that they had personal contacts with activists of these countries, though such linkages sometimes existed. Books and mass

media were crucial for the fundamental influence of inspiring activists – “the encouraging notion that change is possible” (Uhlin 1997, 207) – and lesson-drawing exercises from positive and negative models.

There are numerous roles domestic human rights groups can play, such as lobbying, assisting victims of violence, and filing lawsuits on behalf of victims. In this study, I focus on their role as norm entrepreneurs or “translators” of international human rights norms. The initiatives do not always come from their international counterparts; they often embrace norms through direct and indirect channels to boost their domestic campaign. By examining this process, the mechanism of diffusion and internal dynamics of transnational advocacy networks will be better illuminated.

### **2-3. What are the Options?**

Official transitional justice measures can be broadly divided into judicial measures (trials and amnesties), inquiries (“truth-seeking”), administrative sanctions (purge and lustration), reparations (including compensation, restitution, and rehabilitation), and memorialization. These options are not mutually exclusive, and different measures can be applied to different sets of past abuses – for example, trials for the most recent human rights abuses and truth commissions for others. Moreover, as time passes, delayed justice or “post-transitional” justice may emerge to replace the initial policies with new ones. As it is impossible to list all of the cases, I will limit my discussion by excluding administrative sanctions, memorialization, and non-material reparations.

### 2-3-1. *Amnesty*

Retroactive amnesty was a popular option in Latin American transitions. Amnesty laws were enacted in Argentina, Brazil, Chile, El Salvador, Guatemala, Honduras, Peru, and Uruguay, as well as a few African countries, although none of these amnesty laws was as stringent as the Spanish pact (Elster 2004). In Chile (1978), Brazil (1979), Argentina (1983), Guatemala (1986), and Peru (1995), the outgoing junta (or the autocrat in Peru) prepared a self-amnesty law for themselves; in Uruguay (1986) and El Salvador (1992/93), supposedly on the basis of the transitional pact, the incoming government enacted amnesty laws for the past state crimes (Popkin and Bhuta 1999; Elster 2004).<sup>29</sup> In Uruguay, the law was upheld by a referendum. The amnesty decrees are usually read as a sign of the strength of the outgoing regime (e.g. Huntington 1991; Skaar 1999). However, self-amnesty laws also show that the dictators have a good reason to seriously worry about the prospect of prosecution, because of the strong pressure from human rights groups and the examples offered by the neighboring countries. In East and Southeast Asia, the outgoing regimes rarely felt the need to make such a provision. Democratic transitions in the Philippines (1986), South Korea (1987), and Taiwan (1990–) did not involve amnesty laws for state agents.<sup>30</sup>

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<sup>29</sup> The 1996 National Reconciliation Law is more important in present-day Guatemala. See Acuña (2006) for the zigzag path of Argentina.

<sup>30</sup> See Chapter 6 for the process of democratization in Taiwan. In Thailand, the king, not the junta leader, issued an amnesty decree in 1992 in the aftermath of bloody pro-democracy protests in Bangkok. Post-civil war Cambodia induced surrender of the remaining Khmer Rouge cliques with amnesty, which was not a self-amnesty (Neou and Gallup 1997). Only recently, the junta in Myanmar (Burma) inserted an amnesty clause for members of government in the 2008 constitution. See ICTJ (2009) and Aung Linn Htut, “Than Shwe, the Trembling Dictator,” *Irrawaddy*, March 5, 2011.

The rise of transnational options undermined the appeal of blanket amnesty significantly. When the Guatemalan genocide case was dismissed in the Spanish Supreme Court in 2000, one of the major considerations was that the amnesty law in Guatemala did not cover torture, genocide, and disappearances (Popkin and Bhuta 1999). Thus, the absence of prosecution in Guatemala was regarded as *de facto* impunity, rather than *de jure* impunity as in countries with blanket amnesty laws, which rendered it inappropriate for the Spanish court to intervene for the reason that the Guatemalan judicial system was unable or unwilling to act on the crimes when not enough time had passed since the transition (Roht-Arriaza 2005). If foreign and international courts are working on the principle of subsidiarity or complementarity,<sup>31</sup> a blanket amnesty law is an inconvenient burden, which is even worse than inaction or doing nothing in that regard.

Furthermore, the possibility of foreign prosecutions dubbed as “the Pinochet effect” (Roht-Arriaza 2003; Pion-Berlin 2004), along with the radically weakened power of the armed forces as a political actor (Acuña 2006) and the strengthened independence of the judiciary (Skaar 2011), apparently facilitated the reversal of amnesty laws in many countries. Popkin and Bhuta (1999) point out that Latin American governments never accepted the rather consistent recommendations from the Inter-American Commission on Human Rights against amnesty clauses. During the next decade, however, many amnesty laws were either rendered ineffective by progress of prosecutions, or formally overturned, as the trials in Argentina, Chile, and Peru dramatically showed recently. Uruguay and

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<sup>31</sup> The ICC is clearly working on the principle of complementarity, while “foreign courts” are not. See Roht-Arriaza (2005, Chapter 7) for further discussion.

Guatemala made it clear that their amnesty laws do not cover genocide and crimes against humanity.<sup>32</sup>

In sum, official amnesty laws are not as popular as they were before. Both inaction and amnesty are vulnerable to accusations from human rights groups that states are failing to adhere to the “duty to prosecute,” but blanket amnesty adds an unnecessarily clear sign of unwillingness to prosecute, opening the way for intervention from foreign and international courts in worst cases. UN and regional human rights bodies support the international law claims that genocide and crimes against humanity cannot be covered by blanket amnesty decrees. The old promise lingers in Spain and Brazil;<sup>33</sup> in general, however, blanket amnesty for state agents as an option has not been appealing since the late 1990s.

### 2-3-2. *Truth Commission*

The prototype of contemporary truth commissions is Argentina’s CONADEP (National Commission on the Disappearance of Persons), which was set up in 1983 (Hayner 2011, 10).<sup>34</sup> The name “truth commission” was first used by Chile (1990,

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<sup>32</sup> The Uruguayan Parliament adopted a law allowing independent judicial investigation into the crimes against humanity committed during the military regime for a “tacit derogation” of the amnesty law, and Guatemala is moving out of *de facto* impunity with a series of sentences against soldiers who participated in civil war massacres and prosecution against former President Rios Montt (1982–83). Recently, the court ruled that the 1996 National Reconciliation Law does not protect Rios Montt.

<sup>33</sup> For development in Spain, see Eduardo González, “Spain Declares Itself Powerless,” ICTJ <<http://ictj.org/news/spain-declares-itself-powerless>>. In Brazil, a judge blocked the request from prosecutors to charge an army officer over the kidnapping of five guerillas in the 1970s. See Bradley Brooks, “Brazil Judge Blocks Charges for Junta-Era Kidnaps,” *Associated Press*, March 16, 2012. Brazil launched a TRC recently.

<sup>34</sup> Two similar commissions – Commission of Inquiry into the Disappearance of People in Uganda since the 25th January, 1971 (Uganda 1974) and National Commission of Inquiry into Disappearances (Bolivia 1982) – preceded the CONADEP. The Bolivian commission did not complete report. See Backer (2008)



National Commission on Truth and Reconciliation) and El Salvador (1992, Commission on the Truth for El Salvador). Hayner (2011, 11) argues that truth commissions are different from commissions of inquiry because of “their intention of affecting the social understanding and acceptance of the country’s past, not just to resolve specific facts.” This understanding seems to be widely shared among the human rights groups and policymakers. In reality, however, the boundary between truth commissions and commissions of inquiry is blurry. As truth commission became a vogue term, commissions of inquiry with neither transition nor mandates broad enough to change social understanding of the country’s past – e.g. commissions into recent assassination attempts – are increasingly named as truth commissions, amplifying confusion.

The background to the Chilean truth commission was Pinochet’s self-amnesty law and the perceived failure of trials in Argentina. Faced with the strong military and strong demand from civil society, Chile’s new democratic government decided to set up a commission dealing with deaths during the military regime. As such, the truth commission was regarded as an inferior substitute for trials.

The Truth and Reconciliation Commission (TRC) in South Africa (1995) transformed this understanding of truth commissions radically. Transitional South African was similar to Chile in that trial was not a practical option. Amnesty was an agenda item in the direct deal between the National Party and the African National Congress; the amnesty deal was struck in the most elitist manner (Wilson 2001a). The earlier meaning of “reconciliation” was no more than an amnesty law (Wilson 2001b),

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and Hayner (2011, appendix 2) for lists of truth commissions.

but later, Bishop Desmond Tutu, the chair of the South African TRC, added a long-lasting philosophical legitimacy to reconciliation, by indigenizing the concept with *ubuntu* or rejection of revenge on the basis of humanity.

Since the South African TRC, restorative justice has emerged as a positive choice and prominent alternative to legalism, rather than its substitute (Hazan 2010, 33; Leebaw 2011, 14). The South African TRC left crucial conceptual and institutional legacies on transitional justice with its innovative emphasis on “healing the nation” and cathartic public testimonies of victims and perpetrators. The partial amnesty, exchanged for the perpetrators’ confession, was a critical innovation as well, but it did not enter the TRC package in most cases. The South African TRC has been the only one with the power to grant amnesty to specific individuals (Wiebelhaus-Brahm 2010, 156; Hayner 2011, 13).

The cost of the TC or TRC is not negligible. “Naming” of individual perpetrators is relatively rare (Wiebelhaus-Brahm 2010), but newly excavated “truths” or even compilation of widely known facts can bring embarrassment to individuals and groups involved in unpalatable events of the past. Doing nothing or inaction is the best option for those who might be identified as perpetrators, former supporters of the torturers, or political elites who do not want to alienate them. The great variety of truth commission practices helps reluctant policymakers, who can establish a truth commission as a way of responding to the external pressure and later make it virtually ineffective. Another reason why opponents of justice might welcome a truth commission is its association with amnesty through the world-famous model of South African TRC.

### *2-3-3. Prosecution and Trials*

In discussions of transitional justice through the court, as well as other mechanisms, the focus has long been put on the executive. The post-authoritarian judiciary was regarded as a part of authoritarian legacies because of the collusion in the regime (Skaar 2011). The executive leaders can choose to proceed with trials by simply ordering prosecution of suspects or, with the legislature, by making and unmaking laws relevant to prosecution, such as the amnesty provision. Past human rights abuses are special because these old crimes have been neglected by the law enforcement and prosecution agencies for a long time (Skaar 2011) – a situation necessitating intervention of “political will.” The “will” also influences critical concerns of post-authoritarian trials such as the venue and the scope. Whenever given a chance, the armed forces will insist that the crimes be dealt with in the military court, which, almost without exception, guarantees ineffectiveness of trials, as in Alfonsín’s Argentina (Nino 1996). Under the condition of a weak and corrupt judiciary with a history of subservience to the dictator, a special system dealing with human rights abuses might be considered as an option. As I showed in the previous chapter, however, in spite of the confusing label of “human rights” trials,<sup>35</sup> a great majority of domestic trials occur in non-military, non-special settings using the existing criminal law, sometimes with the help of international law and earlier decisions of foreign, regional, and international courts.

In terms of the “target,” prosecution of soldiers who directly participated in killings and tortures would be relatively easier for securing evidence. However, it might generate

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<sup>35</sup> See Kim and Sikkink (2010) and Sikkink (2011) for their definition of human rights prosecution.

widespread discontent among the concerned population and invite accusations of “scapegoating.” Light sentence is another factor that makes them conclude the trials are no more than whitewashing, as Sikkink (2011, 51–55) shows with the forgotten trials of the political police (PIDE) in Portugal. For symbolic and other purposes, exemplary prosecutions – those “focusing... on those who appear to bear principal responsibility for systematic atrocities or on individuals believed to have committed notorious crimes that were emblematic of a regime’s depredations” (Orentlicher 2007) – are perhaps the best strategy.

Transitional trials bear the greatest cost of controversies and affect specific individuals’ lives most tangibly, compared to truth commissions or reparations. Trial is not a practical option where the amnesty law stands firm, but it does not mean that the absence of amnesty laws automatically leads to transitional trials. The presence of a worse possibility – e.g. the imminent threat of an international tribunal – may force reluctant transitional leaders to take initiatives for trials.

#### *2-3-4. Reparations*

Reparations can be combined with trials or truth commissions, but can also be a stand-alone administrative policy. Reparations are victim-oriented, rather than perpetrator-oriented. As long as compensation is disbursed by the state, not by the private parties, it involves little cost on the side of the outgoing regime or perpetrators, although there might be opposition to symbolic reparations of granting the victim status to, say, “enemies of the nation.” Victim-orientedness of reparations does not mean that victims

always welcome the policy. If strong demands from victims in the face of strong resistance from status-quo forces result in stand-alone compensation, victims might denounce such compensation as whitewashing and demand judicial or truth-seeking measures that acknowledge their sufferings. Still, stand-alone administrative compensation has the advantage of prompt implementation without having to wait for implementation of a truth commission or criminal trials, which may or may not lead to compensation.

#### **2-4. Adoption of Transitional Justice “Preemptive Policies”**

One major argument of this study is that transitional justice mechanisms are often adopted as a preemptive policy by reluctant political elites who want to block international pressure to deal with human rights abuses. In the section above, I outlined how the transformed international environment influences the choice of leaders in transitional polities. As Roht-Arriaza (2006, 8–9) puts it, with an increasing consensus that “some kind of transitional justice measures were needed... by and large, for successor governments the no-action option was no longer either desirable or viable.” Blanket amnesty for state and non-state agents at all levels is not an appealing option either.

The cost of setting up truth commissions or opening the national court for past human rights abuses is still high, but reluctant transitional leaders might consider that the cost of external pressure, such as international judicial venues for “their own” human rights abuses or threats of aid cut, is higher than the former and then decide to adopt some

mechanism – truth commission, trials, or a combination of the two. In this way, the material and symbolic pressure “has succeeded in framing the states’ choice as one of which model of justice to adopt, not whether any should be adopted at all” (Subotić 2009a, 22), and more states became “instrumental adopters” (Subotić 2009a) of transitional justice mechanisms.

Their choice will take account of the proposed alternative. If the concern of transitional leaders is primarily about reputation, a commission of inquiry or truth commission without teeth is more likely to be established. If the threat of foreign or international court is imminent, prosecution will be an appropriate response.

The effectiveness of such mechanisms is not guaranteed, however. As Levitsky and Way (2010, 19) explain the origin of competitive authoritarianism in the post-Cold War era:

If the post-Cold War international environment undermined autocracies and encouraged the diffusion of multiparty elections, it did not necessarily bring democracy. External democratizing pressure was limited in several ways. First, it was applied selectively and inconsistently... Second, external pressure was often superficial. In much of the world, Western democracy promotion was “electoralist”... In short, the post-Cold War international environment raised the minimum standard for regime acceptability, but the new standard was multiparty elections, not democracy... Even in the post-Cold War international environment, therefore, full democratization often required a strong domestic “push.”

Similarly, transitional justice mechanisms adopted as a preemptive policy may be neglected rather than implemented. The “compliance gap” of human rights treaties has been a focus of academic debates (Hafner-Burton and Ron 2009; Dai 2011), and transitional justice is also often discussed in the context of human rights enforcement

(e.g. Hadiprayitno 2010), although there might be disagreement over whether transitional justice is merely a subset of enforceable international law or more than that.

By preemptive policies, I mean policies adopted by reluctant transitional leaders in the face of worse alternatives, without intention to fully implement the adopted policies.<sup>36</sup> Transitional justice is similar to democracy and human rights in that mere adoption of some mechanism can be regarded as a signal of compliance with pressure. External pressure from donors or Western powers is usually selective, superficial, and ephemeral. The transitional period is not infinite, and donors' attention moves from one transitional polity to another, along with external assistance for norm promotion, after a certain period. Therefore, reluctant transitional leaders have strong incentives to adopt a formal mechanism for transitional justice and then wait and see until the external pressure goes away.<sup>37</sup>

The hollowness of preemptive policies may be exacerbated by the presence of plural mechanisms of justice to be played against one another. The “holistic” approach of transitional justice combining multiple institutions has long been there since democratic

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<sup>36</sup> Adoption of preemptive policies does not necessarily indicate that the domestic constituencies are hostile to transitional justice (cf. Grodsky 2009).

<sup>37</sup> Non-implementation or under-implementation of specific mechanisms can take a variety of forms. As expectations for truth commissions are “often much greater than what these bodies can in fact reasonably achieve” and “some of these expectations are simply not realistic” (Hayner 2011, 5–6), the level of disappointment victims and human rights groups may feel at the bodies would not be the best indicator for judging non-implementation. However, “protracted and extremely slow proceedings in investigative sessions” (Matthews 2009, 593), as in the 2006 Presidential Commission of Inquiry in Sri Lanka, is a sign that the commission is not likely to produce a report. Similarly, trials with due process may result in acquittal, because of the lack of evidence and other reasons. Many victims feel alienation and dissatisfaction with domestic and international trials, and prosecution cannot practically cover all past human rights abuses. However, if all trials end up with acquittals and prosecution is generally so weak as to make it very difficult to lead to conviction, then there are enough reasons to conclude that the trials are close to non-implementation. In sum, knowledgeable observers should be able to detect the absence of implementation a certain period after the formal adoption of mechanisms.

transitions in Bolivia and Argentina, but the standardized ‘tool-kit’ approach made such a choice more frequent.

Recently, the scholarly debate on transitional justice shifted from the question of “truth versus justice” to “truth *and* justice” (Skaar 2011, 7–8). In spite of concerns on tradeoffs between different goals of different policies (e.g. Gutmann and Thompson 2000), many now argue that prosecutions and truth commissions are not incompatible in principle and in practice. Hayner (2011, 92, 104) maintains that “complementary nature of non-judicial and prosecutorial approaches... is now accepted,” although “because of South Africa, there has been misunderstanding of the relationship between truth commissions and amnesty.” From observing Latin American countries with both truth commissions and prosecutions, Sikkink (2011, 144) concludes that “there is simply not a trade-off between truth and justice; to the contrary, the countries in the region that held more prosecutions were also more likely to have a TC than countries that held fewer prosecutions.” Among the major international NGOs, ICTJ, focusing on lessons of the South African TRC, had taken an approach different from the prosecutorial approach of Human Rights Watch and Amnesty International; however, ICTJ recently turned to a ‘packaged’ approach, emphasizing trials as much as alternative strategies (Subotić 2012, 108, 120).<sup>38</sup>

The simultaneous existence of different mechanisms may result in “tensions, duplications, and gaps,” as “they must navigate issues of evidence- and witness-sharing,

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<sup>38</sup> The ICTJ maintains that four pillars of transitional justice are criminal prosecutions, truth commissions, reparations, and security sector reform. See ICTJ, “What is Transitional Justice?” <<http://ictj.org/about/transitional-justice?>>



division of labors, sequencing, and the similarities and differences in the narratives they produce” (Roht-Arriaza 2006, 9–10).<sup>39</sup> The recent rise of holistic approach would make domestic norm entrepreneurs less hesitant with promoting different mechanisms based on rather contradictory principles without sufficient coordination among themselves. If the simultaneous existence of multiple mechanisms of truth and justice lacks minimal coordination and separation of jurisdictions, the unintended consequences might include a deliberate neglect of one mechanism in favor of an alternative, which may or may not be realized.

What I am not arguing in terms of the phenomenon of preemptive policies is that the original intention of policymakers wholly decides the later course of policies.

Reluctant introduction of policies does not mean that implementation is doomed to fail.

Rather,

If an initial accountability policy led to the creation of institutions specially designed to address past legacies of one kind or another, then, given the tendency for institutions to gain a dynamic of their own, policies may be given continuity in spite of governmental or social indifference and even hostility. In so far as such actions are institutionally sustained, they may generate new demands and opportunities. Thus, if human rights secretariats or compensation commissions are established, compensation policies may be extended to increasing categories of victims; new suits may then be filed against repressors as new information is dug up by institutions established to determine the fate of victims. (Barahona de Brito, González-Enríquez, and Aguilar 2001, 21)

Thus, the reason why and how certain preemptive policies languish instead of creating a virtuous circle of an initial measure begetting an advanced mechanism requires additional

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<sup>39</sup> Kelsall (2005) notes that truth-telling in Sierra Leone TRC was discouraged by the simultaneous presence of the hybrid court.

explanations. One of the possibilities may be found in the nature of pressure that sustains introduced mechanisms.

## **2-5. What Moves Political Elites? Partisanship and Transitional Justice**

I propose a potential mechanism of sustaining pressure for transitional justice through a “partisan” route, where the presence of social groups who identify with direct victims motivates political elites to prioritize the issue. In doing so, I reject the claim that “politicized” or strategic use of transitional justice issue is destined to hurt desirable implementation of related measures. The collective memory of past human rights abuses – or persecution – is one of possible sources that work against efforts to hollow out transitional justice measures or to put a hasty closure. This source of pressure, however, is not in accordance with the way human rights NGOs, the main protagonist of transitional justice campaign in many parts of the world, approach the problem.

For some, the strategic use of transitional justice policies by domestic political elites is pathology. The “hijacked justice” – “the use of international norms for political purposes such as getting rid of domestic political opponents or obtaining material and reputational benefits in the international stage” – is a major factor undermining transitional justice projects “in that it greatly reduces the effectiveness of international justice projects, jeopardizes their legitimacy, and does not bring about the profound social transformation that countries coming out of violent conflict require” (Subotić 2009a, 6). In contrast, Nalepa (2010) explains that the strategic decision of political elites to use

lustration policy for blocking opponents' career was the most significant motivation behind adopting delayed justice policies.

Do strategic decisions of political elites ruin transitional justice? To answer this question, it is important to sort out different types of strategic concerns and their effects at different stages of transitional justice. It is easy to note that Subotić discusses the effectiveness of transitional justice projects, while Nalepa does not. The reason behind this difference partly lies in that, for Nalepa, there was no reason to doubt whether lustration policies would be actually implemented. If the primary concern is strategic interaction between domestic actors such as undermining career of opponents, as in Central and Eastern Europe, it is not a reasonable option to just introduce transitional justice policies and then abandon them. On the contrary, if the strategic concern was primarily to placate international pressure, as in Balkan, it makes sense to adopt some formal mechanisms without implementing them rigorously. Thus, the problem of hollow transitional justice measures is that they are rooted in a particular strategic concern of countering international pressure without an additional motivation to sustain implementation of such measures, not the strategic use of transitional justice itself.

What are the possible additional motivations to sustain implementation? The strength of victims' associations and human rights groups is perhaps one of the frequently discussed conditions. They maintain public attention to the issue by lobbying the government and filing suits in domestic and foreign courts. While such activities would be preconditions of domestic transitional justice in the absence of international pressure, however, they might be insufficient to induce reluctant governments to work.

First of all, political victims are usually less densely organized than other pressure groups such as trade unions or veterans' associations. Not all victims identify themselves as political victims, and organized victims are even fewer in number. What organized victims exert is moral, rather than numerical, power.

On the other hand, victim identity is not a monopoly of organized victims. It can be shared by a significant portion of the population which is linked to direct victims through preexisting identities. Such populations are called collective victims by Huyse (2003), who explains that violence targeted at a specific ethnic, ideological, or religious group effectively victimizes that population. Nino (1996) argues that social identification with victims is a contributing factor to transitional justice, while the absence of such connections predicts fewer efforts for transitional justice. If the memory of atrocities and, accordingly, collective victim identity – or social identification with victims – are stronger in certain populations, it can be a potential source of pressure on strategic political elites.

Specifically, I argue that pressure is sustainable when political cleavages overlap with the boundaries of collective victim identities, i.e. when transitional justice is a partisan issue in competitive electoral settings. For a number of reasons, partisanship and voting behavior do not appear very often as potential factors influencing transitional justice. Human rights advocates abhor the equation of transitional justice with political trials, which might imply that the trials are unfair “victor’s justice.” Further, it is generally assumed that voters do not have strong preferences over transitional justice issues, as Nalepa (2010) argues with lustration policies in Central and Eastern Europe. In

the framework of human rights legalism, transitional justice is primarily a judicial matter, and thus not a matter of political judgment (Leebaw 2011). Also, there might have been fear that a certain tension between democracy and human rights would be apparent once we begin to discuss voters' attitudes transitional justice, as the 1988 amnesty referendum in Uruguay, where the voters upheld the amnesty provision, showed.

Recent studies illuminate the partisan nature of the transitional justice issue. In Spain, the most consistent predictors of attitudes towards truth commission and trials are religiosity, ideology, the political side of one's family during the Civil War, victimization experiences of one's family, and region (Basque and Catalonia). Interestingly, after the family side factor is incorporated into the model, victimization variables lose statistical significance in explaining attitudes towards trials (Aguilar, Balcells, and Cebolla-Boado 2011). In Zimbabwe, partisanship strongly shapes preferences too. Support for opposition parties and victimization experiences turn out to be the most significant factors explaining support for retributive justice (Bratton 2011). Apparently, the evidence does not indicate that strong partisanship leads to adoption of transitional justice measures – both Spain and Zimbabwe do not have trials or truth commissions.<sup>40</sup> At the minimum, it does show that the relationship between partisanship and transitional justice is worth exploring further.

If attitudes towards transitional justice are closely associated with deeply ingrained political identities, it would be more problematic to neglect measures once they are

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<sup>40</sup> Earlier in 1983, Zimbabwe had a commission of inquiry into Matabeleland Disturbances (1981), but it never published a report. See United States Institute of Peace, "Commission of Inquiry: Zimbabwe," in Truth Commissions Digital Collection, <<http://www.usip.org/publications/commission-inquiry-zimbabwe>>.

adopted. With comparative case studies of Chile, El Salvador, South Africa, and Uganda, Wiebelhaus-Brahm (2010, 147) concludes that governments are “more likely to enact truth commission recommendations when politicians can be held accountable for failing to do so.” In Chile, where transitional justice remained as a mobilizing issue for the Left, the issue was not abandoned in spite of initial stalemates. In contrast, the dominant African National Congress (ANC) in South Africa felt little pressure to follow up recommendations, although the issue was potentially partisan. In Uganda, under the uncompetitive political system, it was easy to abandon recommendations (Wiebelhaus-Brahm 2010).

Although what is being explained by Wiebelhaus-Brahm (2010) is implementation of commission recommendations, rather than implementation of adopted mechanisms as in this study, a similar mechanism is working. Even in societies where the public attention to past human rights abuses was great in the immediate transitional period, that attention gets more and more strenuous as time passes. If human rights alone is too weak to mobilize voters, the issue can remain alive by getting aligned with preexisting political cleavages, with partisans, even those without direct victimization experiences, exerting pressure on political elites to implement adopted policies.

The partisan theory proposed here does not imply that framing of the issue as a politically neutral human rights problem will always fail to sustain political elites’ attention. Partisanship is one of the potential sources of sustaining political pressure rather than an exclusive source. Human rights advocacy and partisanship are two different sources of pressure that can work separately or together. The agents are different,

however. The transnational advocacy networks and domestic human rights NGOs – norm translators as described in the section above – cannot assume the role of *partisan* advocates of transitional justice. Keck and Sikkink (1998, 15) explain that rights organizations are distinguished from solidarity committees because they were “committed to defending the rights of individuals regardless of their ideological affinity with the ideas of the victim.”<sup>41</sup> Political neutrality is crucial for building moral leverage for rights organizations, and they cannot easily abandon it just because its leverage turns out to be insufficient.<sup>42</sup>

From the perspective of this type of human rights organizations, a victim of human rights abuses is just that, and not a leftist fighter or a member of a certain ethno-religious group, whose identity can be mobilized for partisan politics of memory. As long as rights organizations assume an exclusive role in transitional justice advocacy, therefore, identity-based politics as a potential source of sustaining pressure will not be activated. The universality and partisan neutrality of human rights norms, though helpful for preventing polarization and getting rid of stigma for victims, may not contribute to keeping the social pressure alive through this particular path.

## **2-6. Democracy, Peace, and Transitional Justice: Does One Lead to Another?**

Adoption and implementation of transitional justice measures have been discussed as dependent variables so far. What are the impacts of transitional justice measures as an

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<sup>41</sup> It is critical to not put all human rights groups under the same rubric. Victims’ associations may have a certain political leaning, and identity-based groups – e.g. religious and ideological groups – may embrace human rights as the main cause. Still, rights organizations are a particular type of human rights groups, working on distinctive principles.

<sup>42</sup> In addition, foreign funding might restrict human rights organizations from taking partisan positions.

independent variable? Impacts of transitional justice measures have long been discussed in macrosocial terms, with the emphasis on their positive influence on the advance of democracy, human rights, and peace.

This assumption of positive contribution is being challenged by recent studies. Mendeloff (2004) argues that, in post-conflict contexts, assumptions and causal mechanisms sustaining claims that transitional justice measures bring forth healing, reconciliation, deterrence, democracy, etc., are mostly problematic. A few existing large-N cross-national studies on such macrosocial effects show mixed findings; while Wiebelhaus-Brahm (2010) finds out truth commissions have no statistically significant relationship with democratic developments and have negative impacts on human rights, Kim and Sikkink (2010) maintain justice is not irrelevant to democracy and human rights, with findings that prosecution improve scores of both. Interestingly, Olsen, Payne and Reiter (2010) find out that combination of amnesty and trials is associated with higher Polity scores, though individual measures do not have statistically significant impacts on democracy.

In sum, it is premature to conclude the macrosocial impacts of transitional justice measures; in the meantime, evaluation of impacts in terms of moderate goals, such as implementation of truth commission recommendations and diffusion of mechanisms will be a promising path. As Hayner (2011) suggests, the original goals of truth commissions are usually about establishing truth and assisting victims – effects on democracy and human rights are at best secondary. The same can be said about trials. Strong independent impacts of trials and truth commissions on democracy, peace, and human rights would, if



revealed, legitimize donors' spending and boost pro-transitional justice claims, particularly in situations where skepticism towards transitional justice for a handful of victims is prevalent. However, there is no strong evidence suggesting that individual transitional justice measures have such great leverage, and they are certainly not preconditions to democracy and peace as many post-transitional polities illustrate. In my view, the association of democratic development and transitional justice is primarily conceptual, linked through core principles such as rule of law and equality before the law, which are forceful enough by themselves.

I will not discuss the independent effects on transitional justice on democratic development or peace-building. Nevertheless, the claims on transitional justice impacts are not entirely irrelevant to discussion of adoption and implementation, as they shape the ideas and calculations held by reflexive actors (Oren 2006). What domestic norm entrepreneurs read and translate is not limited to legal provisions; they are also inspired by diverse sources, including political science works, which in turn they mobilize to support their arguments. Such reflexive appropriation can occur with case studies and causal arguments in both directions.

## **2-7. Conclusion**

In this chapter, I specified the role of actors and associated mechanisms of transitional justice. The structure of the following chapters corresponds to different periods that some actors are most likely influential and others are not.

The international advocacy will be the focus of the New Order responses to human rights abuses. As a review of international human rights report during the late New Order era (Liddle 1995) points out, it is not likely that the international human rights advocacy can facilitate wholesale democratic reform, eradication of human rights abuses and fully sincere measures for accountability and inquiries into the abuses. At best, the response will be a series of strategic concessions to placate the international pressure. Such concessions should not be downplayed – they can change fates of a number of individuals in a significant way. At the same time, however, the power of international advocacy alone cannot replace all existing explanations that comparativists have attempted to offer for the phenomena of democratization and, to a lesser extent, political violence for decades.

In the transitional period, domestic norm entrepreneurs – human rights NGOs – will dominate the campaign for human rights and transitional justice in a liberalized political setting. The creative agency of domestic norm entrepreneurs will not be limited to responding passively to the proposals of external counterparts in transnational advocacy networks, e.g. international NGOs and donors. One of the implications from the active role of domestic NGOs is that norm entrepreneurs are plural, as are norms themselves. If political elites are less interested in coordinating transitional justice strategies than in preempting international and domestic pressure by adopting some transitional justice measures, the plurality might become a source of avoiding implementation by playing one measure against another.

This study is based on an understanding that adoption and implementation of transitional justice measures are two different processes. In many cases, implementation also requires “political will” or the political process of decision-making, perhaps more so if the measures were initially adopted as preemptive policies against ephemeral threats. While the existing literature emphasizes the role of political elites in the immediate transitional period, I believe they are even more important in post-transitional period, when the public is not shocked with fresh revelation of human rights abuses any more. What can possibly sustain pressure for transitional justice, and what motivates political elites to put past human rights abuses on the list of prioritized political agenda?

I characterize political elites as party politicians with strategic motives, rather than moral figures committed to sincere beliefs in advancing human rights principles in spite of possible risks. One of the potential sources of sustained pressure is association of the past violence with a major political cleavage through partisan identities and memories, i.e. the presence of wider groups of indirect victims. If non-partisan human rights NGOs are the only source of pressure, it means this particular source will not be helpful.

**CHAPTER 3**

**JUSTICE BEFORE AND AFTER TRANSITION:  
LEGACIES OF HUMAN RIGHTS ADVOCACY  
IN POST-NEW ORDER INDONESIA**

**3-1. Introduction**

For the past several decades, international human rights advocacy has been successful to various degrees in persuading states and international organizations to take actions against human rights abuses, inducing responses from states deemed responsible for abuses. In New Order Indonesia, political detainees (*tapol*) who remained in jail several years after the 1965 “coup attempt” became a focus for advocacy by the new human rights group Amnesty International.<sup>43</sup> The Santa Cruz (Dili) massacre in 1991 brought the small territory called East Timor under the international spotlight, at a time when extrajudicial killings were attracting more and more attention internationally. As donor governments threatened aid cuts in relation to human rights abuses, the Indonesian

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<sup>43</sup> In the morning of October 1, 1965, six high-ranking generals were assassinated, and a group of military officers, calling themselves the September 30th Movement, announced that they had preempted a coup by a Council of Generals, who were allegedly attempting to overthrow President Sukarno. However, General Suharto gained control of Jakarta the same evening, and the coup attempt failed. See Crouch (2007) and Roosa (2006) for “theories” about the coup and evidence supporting those theories. It was widely suspected that PKI (Indonesian Communist Party) leaders were involved in the coup, but the military regime and civilian enemies of communists condemned the party as a whole and all members of the party and its mass organizations, even the members of the party’s high-school organization. Subsequently, many of them were summarily killed, detained, and/or deprived of jobs and properties. Sukarnoists of the nationalist PNI (Partai Nasional Indonesia) became targets of purge too.

government responded by taking relevant actions. What was the nature of these responses from the New Order regime? What legacies did they leave on transitional justice after democratization?

In this chapter, I will trace three sets of cases during the New Order – the *tapol* campaign (1970–79), the Santa Cruz massacre, and post-Santa Cruz measures such as military trials and independent inquiries in the 1990s – to answer these questions. Post-*reformasi* military trials and inquiries in the immediate aftermath of transition (1998–99) will also be examined. The reason why *tapol* and the Santa Cruz massacre in East Timor, and not others, were picked is because they produced rare moments when concerted donor pressure led to substantial concessions from the Indonesian government. The failure of human rights advocacy or donor pressure is not extensively discussed, because the main concern of this chapter is not explaining factors deciding success or failure of such pressure. Between December 1993 (the month that Komnas-HAM was established) and May 1998 (when Suharto stepped down), all major cases of extrajudicial killings that were handled either by open military tribunals or Komnas-HAM were covered. For the transitional years, the military disciplinary measures against activist kidnapping and the joint fact-finding team for the May riots were used as illustrative examples, partly because they were the greatest media sensations.

The international norms literature suggests a possible effect of human rights advocacy against authoritarian regimes, namely “norm socialization.” Risse (2000) discusses human rights advocacy for East Timor in the 1990s as one of the cases. The fact that President Suharto and the “norm-violating” New Order state took steps to

respond to international pressure is regarded as a sign indicating that the Indonesian state was already in a stage of “tactical concessions,” from which repeated dialogues with international critics would finally lead to its embracing of international human rights norms and transforming state identity (Risse and Sikkink 1999). Discussing the *tapol* campaign of the 1970s will enable me to examine such arguments with a longer time-frame. In my view, it is entirely possible that a round of tactical concessions leads to repeated rounds of tactical concessions without fully embracing human rights norms or transforming state identity. Indeed, a qualitative study of the New Order and post-New Order Indonesia (Jetschke 2011) failed to find evidence to support the norm socialization argument, as norm contestation did not die out until the end of the period covered by her research.<sup>44</sup>

Rather, as I will show in this chapter, international human rights advocacy, by producing donor pressure, led to a set of state measures or “institutional tools” (Honna 2003, 106) against human rights abuses during authoritarian rule, which influenced the ways such abuses were handled in the immediate transitional period. The Santa Cruz massacre left two crucial institutional legacies, the Komnas-HAM inquiries and military disciplinary measures, especially tribunals for *oknum* – a term roughly meaning individuals who injured the image of a certain group, usually the state apparatus, by inappropriate or illegal behavior (“rogue actors”). With the growing domestic opposition, these measures, originally developed to satisfy international pressure, became a standard

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<sup>44</sup> Instead, Jetschke (2011, 282) asks “what will happen if governments learn over time how to deal effectively with transnational human rights pressures and use rights to counter these moves?” – though the question remains unanswered.

expectation following cases of well-publicized extrajudicial killings (Honna 2003), even for cases in which donors were less interested. The presence and the flawed nature of these measures, taken when the regime's grip on power was secure, mattered during the *reformasi* period in at least two significant ways – by providing basic models of justice and truth-seeking to the state, and by encouraging human rights activists to consider alternative models.

## **3-2. Human Rights Advocacy under the New Order**

### *3-2-1. The “Tapol” Campaign*

During the 1970s, the most salient human rights problem of Indonesia was “*tapol*” – *tahanan politik* or political detainees.<sup>45</sup> In the aftermath of the 1965 “coup attempt,” several hundreds of thousands of individuals were arrested on charges of direct and indirect participation in the coup. In reality, those who were officially charged were only a small minority of the prisoners. The Kopkamtib, an army security body originally aimed at tracking down the communist supporters (Crouch 2007, 222–23), had a system of classification for these prisoners. Only prisoners who belonged to the A group – those “who were clearly involved directly” in the coup, or high-level cadres – were subject to judicial proceedings.<sup>46</sup> Prisoners other than the-thousand-or-so A group were detained without a chance to stand trial in court. As early as 1968, the government decided to

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<sup>45</sup> Often *tapol* is contrasted with *napol* or political criminals (*narapidana politik*). When these two words are used together, *tapol* indicates those who were detained without trial, while *napol* means those who were convicted with criminal charges. However, *tapol* is used for all groups of political prisoners too, particularly those who are in jail with political charges such as subversion.

<sup>46</sup> Many of them were tried in the Extraordinary Military Tribunals or *mahmilub*, which were “uniformly unfair” according to Amnesty International (Amnesty International 1997).

release the C-group, and most of them were freed by the early 1970s. However, the B-group prisoners, whose number amounted to about 40,000 by the official statistics, were detained without either trials or release plans. The official reasoning was that they could not be brought to court because there was insufficient evidence to prove their involvement, but, at the same time, they were deemed too dangerous to be put back in their communities. About ten thousand of them were transported to penal colonies on Buru Island in Eastern Indonesia, where they had to labor to feed themselves (Amnesty International 1977; Fealy 1995; Glasius 1999).<sup>47</sup> It was for the release of these B-group prisoners that the interactions among international advocacy campaigns, donor governments and the Indonesian government were most intense.

Thus, the New Order regime was familiar with accusations of human rights violations from Western governments and NGOs from early on, though not exactly from the very beginning. Why were there no effective protests against the extralegal detention of prisoners and the massacres of hundreds of thousands of alleged communists in the late 1960s from inside or outside the country?<sup>48</sup> In Indonesia itself, the widespread fear

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<sup>47</sup> For the official criteria for this grouping, see Appendix I of Amnesty International (1977); for different numbers of detainees, see Fealy (1995).

<sup>48</sup> In Java, the massacres were usually conducted by religious groups, especially the Islamic organization NU (Nadhlatul Ulama), and backed by the army. Fealy and McGregor (2010, 48–49) explain: “The dynamics of this communal violence were highly complex and varied markedly from region to region... In some districts, NU members were involved in all aspects of the PKI’s elimination... In other districts, the military carried out the roundup and “trials” itself, leaving NU and other civilian groups to conduct the executions. The killings in these areas would usually be supervised by the army, which frequently also provided transport and weapons. This was particularly the case in Central Java, where a shortage of reliable non-communist units obliged the RPKAD (Resimen Parakomando Angkatan Darat, Army Para-Commando Regiment) commander, Colonel Sarwo Edhie, to train civilian groups, including Ansor [an NU youth group], to undertake the mass executions.” The number of massacre victims is not well established. Sarwo Edhie once claimed that three million were killed, but three million may well be an exaggerated number. Scholars usually pick a number between five hundred thousand and one million, but these numbers do not come from research based on a large number of sample areas. For a general discussion of the killings, see Crouch (2007) and Cribb (1990). Studies focused on specific regions also exist, such as Hefner (1993,



generated by the bloody purge prohibited outright opposition. There were a few exceptions – President Sukarno resisted the massacres and the purge in public speeches, but he was soon sidelined (Crouch 2007); anti-communist student leader Soe Hok-Gie (1942–69) wrote publicly about the fates of *tapol* and their families (Anderson 1970); and in 1969, a human rights group called LPHAM (Institute for the Defense of Human Rights) openly challenged the government by protesting alleged murders in Purwodadi, Central Java (Abdul Hakim 1996, 17). However, most of the civilian forces who did not fear being purged did not make objections to such practices, as a human rights activist of the 1990s pointed out:

The slaughter of masses of supposed PKI [Communist Party of Indonesia] sympathizers and the dissolution of the party and sympathetic organizations... took place almost without a protest, opposition, or even efforts at prevention from non-PKI political circles, lawyers' organizations, journalists' groups, KAMI (Indonesian Student Action Front) or KAPPI (Indonesian Student and Youth Action Front)... On one side, the Indonesian middle class – lawyers, intellectuals, educated groups – that were united within KAMI and KAPI (Indonesian High-school Student Action Front) and non-PKI political groups or other non-leftist groups demanded a legal state that would be democratic and protective of human rights. On the other side a large part of the middle-class remained absolutely silent and did nothing when the state carried out, without due legal process, the dissolution of organizations, arrests and detentions of people related to the PKI or their sympathizers. (Abdul Hakim 1996, 15–16).

In fact, student groups and the Islamic mass organizations, as important civilian allies of the army in construction of the New Order, participated in the purge enthusiastically (Fealy and McGregor 2010). For Western governments like the US, Britain, and the Netherlands, there was no reason to be unhappy with the fall of Sukarno.

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Chapter 7) on Pasuruan and Tengger highlands in East Java, Robinson (1995) on Bali, and Webb (1986) on primarily Christian outer islands such as Flores, Sumba, and Timor.

Because of the scale of the communist purge, it was not easy to ignore the events entirely. It was certainly covered by the Western public media, but the response was generally less than moral outrage, as seen in “Time magazine’s description of the PKI’s suppression as ‘the West’s best news for years in Asia’” (Cribb 1990, 5).

As for the killings, such silence was at least partly attributable to the timing, as much as to the logic of the Cold War. As “one of the earliest examples of political killing on a wide scale after World War II” (Clark 2001, 102), roughly coinciding with the death squad operations in Guatemala and preceding well-known large-scale massacres such as the one conducted by the Khmer Rouge, the killings did not benefit from the international attention that has become more prevalent in recent decades. Amnesty International, the major “human rights” group established in 1961,<sup>49</sup> was still focusing on its early mandate of adopting prisoners of conscience. It was only in the early 1980s that the group and the UN began to develop special procedures for extrajudicial executions (Clark 2001, 101–10). The lack of reliable data on the killings might have contributed to the silence as well.<sup>50</sup>

For political prisoners, the situation began to change in the early 1970s. Sean McBride, the chair of the international executive committee of Amnesty, visited

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<sup>49</sup> In its early days, Amnesty International did not promote itself self-consciously as a “human rights” organization. The founder Peter Benenson preferred the term “civil liberties” to “human rights,” and Sean MacBride, the first chair of its international executive committee, said Amnesty should be “a humanitarian organization that would do for political prisoners what the Red Cross did for prisoners of war” (Hopgood 2006, 57, 68).

<sup>50</sup> Former US ambassador Marshall Green (1990, 57) recalls: “by late 1965, rumors and unverified reports began to abound of massive killings of communists (or alleged communists) in various parts of Indonesia, especially in rural areas of Java and in Bali. No one on our staffs in Jakarta, Surabaya, or Medan had seen any bodies, nor had any of our diplomatic colleagues, although there were reports from some foreign missionaries of killings near their hospitals.” There might have been other reasons for Green to be silent about the massacres, but the lack of reliable data for the massacres is a persistent problem until now.

Indonesia in 1970, and a special report on Indonesia was published in 1973 by its Dutch section (Amnesty International Dutch Section 1973). In the same year, Amnesty sent its first communication on Indonesian human rights to the UN (Glasius 1999, 46). Political prisoners became an issue in the Dutch-Indonesia relationship in 1971 when the Dutch foreign minister discussed the problem with his Indonesian counterpart. In the Netherlands, the center-left cabinet, set up in 1973, began to mention human rights as an integral part of its foreign policy. Dutch Minister for Development and Cooperation Jan Pronk (1973–77, 1989–98), as a chair of the IGGI (Inter-Governmental Group on Indonesia), allowed Amnesty to be present at IGGI meetings, where major donor countries discussed developmental aid to Indonesia.<sup>51</sup> At the same time, he made a concrete threat by stating that Dutch aid would be reconsidered if the prisoners' situation failed to improve in four years. At the May 1975 meeting of the IGGI, he actually announced a cut in Dutch aid to Indonesia. Britain reversed a similar decision at the last minute (Glasius 1999, 42–43, 56–58; Baehr 2000, 70–71; Berg 2001, 230–35). The *tapol* question was also raised in the UN Human Rights Commission and ILO meetings, with the focus being on forced labor in the Buru camp in the latter. (Fealy 1995, 15, 27; Glasius 1999, 45).

Far more crucial than these developments were the new initiatives in the US Congress to link foreign aid with human rights. Under the leadership of Congressman Donald M. Fraser, who chaired the Subcommittee on International Organizations and

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<sup>51</sup> IGGI, established in 1967, consisted of governments of the US, Japan, Australia, and Western Europe. The Netherlands acted as chair until 1992, when IGGI was transformed into CGI (Consultative Group on Indonesia) without the Netherlands after the Santa Cruz massacre. But the US and Japan provided about two-thirds of the aid. The aid was essential for, above all, getting rid of the (at the time) vast debt (\$2.4 billion) inherited from the Sukarno era. (Crouch 2007, 320, 338).

Movements from 1973 to 1978, the congressional monitoring for human rights conditions strengthened and a series of amendments to the foreign assistance legislation were passed. Among them, a 1974 amendment to the Foreign Assistant Act, banning – except under extraordinary circumstances – security assistance to governments with gross human rights violations, was particularly important (Salzberg 1986, 14–18). Through various channels, American diplomats warned the Indonesian government of possible repercussions from this amendment (Newsom 1986).

It was against this backdrop that Indonesian officials announced plans to release some prisoners in June and October 1975. On December 1, 1975, five days before US President Ford and Secretary of State Henry Kissinger visited Jakarta, 1309 detainees were released (Fealy 1995, 21–27). Indonesian officials have denied overseas influence – especially the aid conditionality on human rights – as a factor behind the *tapol* releases (Fealy 1995, 30), but the timing of the pressure, the release, and the worsened economic situation after the Pertamina crisis makes such denial doubtful.<sup>52</sup>

With pressure not waning after the initial release, on December 1, 1976, the government released 2,500 B-group prisoners and announced its plan to free all the remaining 29,173 by the end of 1979. Over the next two years, it finally gave up the earlier plan to resettle B-group prisoners in remote regions as a part of the official transmigration program – which threatened the prospect of the World Bank aid for the larger transmigration scheme (Fealy 1995, 29, 33–34). Buru prisoners and other B-group detainees went back home by the end of 1979.

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<sup>52</sup> Indonesia relied less on foreign aid after the oil boom in 1973, but the 1975 liquidity crisis of the state oil company Pertamina imposed a huge burden on its economy again (Crouch 2007, 327–28).

The *tapol* campaign shows that newly emerging international norms on political prisoners and forced labor did matter, when they were combined with aid conditionality. The policy changes in the US and the Netherlands towards strengthened linkages between developmental aid and human rights were crucial for the *tapol* releases. At the same time, there is no evidence that the release indicated “norm socialization” of the Indonesian government. The invasion of East Timor and subsequent abuses coincided with *tapol* releases.<sup>53</sup>

The *tapol* campaign was primarily international, without parallel advocacy campaigns by Indonesian counterparts. The surviving civil society forces such as the student movement or political Islam were either indifferent to the sufferings of detainees or explicitly hostile to them. This dissonance became more visible in the 1980s, when no Western governments or intergovernmental forums responded to what political Islam regarded as unjust government repression of them, such as the Tanjung Priok killings, political trials of Muslim activists, or the Talangsari incident,<sup>54</sup> while the European Community (EC) and the Dutch government were condemning the executions of A-group prisoners between 1985 and 1990 (Berg 2001, 266–87).

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<sup>53</sup> US President Ford and Carter, while expressing concerns for the political detainees, offered a vast amount of military aid, which was then used for the invasion of East Timor (Fealy 1995). The *tapol* release in 1975 was considered to be a move to secure military aid from the US, in particular for operations in East Timor.

<sup>54</sup> On September 12, 1984, about twenty-four of protesters were shot to death by the military in the Tanjung Priok port district of North Jakarta, during a night demonstration demanding release of their fellow residents who had been arrested after protesting soldiers’ sacrilege in a local mosque. After the shootings, a number of residents were arrested for instigating violence, and a crackdown on Muslim preachers and semi-opposition figures followed. See Amnesty International (1986) for information on these prisoners. In the mid-eighties, dozens of alleged Islamists were arrested for subversion, attempt to create an Islamic state, and bombing and arson attacks in Jakarta and elsewhere. The bloody crackdown on a village in Talangsari, Lampung (1989) was also seen as an attempt to suppress the Islamist movement.

### *3-2-2. The Santa Cruz Massacre and East Timor*

The human rights advocacy and Western government responses to accusations of abuses continued through the late 1970s and 1980s. The US Congress held hearings on East Timor, and the Netherlands responded to the executions of A-group prisoners, the “Petrus” affair, and the situation in Irian Jaya. However, these responses were intermittent at best, and did not involve serious threats of aid cuts until the return of Dutch development minister Jan Pronk in 1989, who suspended a special aid agreement in relation to the executions (Schulte Nordholt 1995, 135–41; Glasius 1999, 114–18; Berg 2001, 299). But there were no concerted moves among donors. The US was not interested in campaigns against the death penalty and executions, and the Dutch policy on East Timor remained “neutral.”

The situation began to change in 1991 with the infamous Santa Cruz massacre in Dili, East Timor. The Santa Cruz massacre (or Dili massacre) may well be recorded as one of the most important events in the politics of human rights in Indonesia, as it left long-lasting institutional legacies. In the morning of November 12, 1991, in the excited political atmosphere in Dili after the cancellation of a Portuguese representatives’ visit, a group of East Timorese youths marched to the Santa Cruz cemetery, where one of their comrades, killed weeks earlier in a crackdown on “anti-integration” groups, was laid. When the procession reached the gate of the cemetery, the military began to shoot protesters (Schwarz 1994, 210–12). The shootings at the cemetery were witnessed by a number of foreign journalists, and footage of the massacre was aired on British television. International uproar over brutality of the Indonesian regime ensued.

Donor governments responded to the massacres quickly. The European Community issued a condemnation on November 13, and later the US Congress and Japanese Diet demanded a thorough inquiry into the event. Within weeks, the Dutch, Canadian, and Danish governments announced suspension of aid (Schwarz 1994, 213; Schulte Nordholt 1995, 152; Glasius 1999, 252–53). On November 14, two Japanese diplomats were sent to East Timor for investigation of the event (Glasius 1999, 263). Indonesian ambassadors in Britain, the US, Canada, Australia, and Japan were summoned by their host governments, who expressed concern about the massacre (Berg 2001, 317). Donor governments demanded reliable investigation and judicial accountability (Glasius 1999, 265).

One week after the massacre, President Suharto announced establishment of the National Commission of Inquiry (KPN, Komisi Penyelidikan Nasional), consisting of seven commissioners with various backgrounds.<sup>55</sup> On the one hand, the New Order government did not forsake the old habit of punishing protestors for creation of the “chaos.” A number of East Timorese youths were arrested and allegedly tortured by the security forces. Among them, thirteen East Timorese youths were put on trial and sentenced to prison terms up to nine years. Indonesian human rights activists who attempted to enter East Timor for independent inquiry were put under house arrest, and human rights organizations were forced to suspend their activities.<sup>56</sup> On the other hand, however, the establishment of the KPN, the military honor council (DKM, Dewan

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<sup>55</sup> For personal backgrounds of these commissioners, see Glasius (1999, 257).

<sup>56</sup> “The Killing Fields of East Timor,” *TAPOL Bulletin* 108 (November 1991), 3.

Kehormatan Militer), and trials in military court distinguished the state response to the Santa Cruz massacre from the previous pattern.

It is hard to see the KPN as a genuine attempt to reveal the truth of the massacres. The controversy over the number of casualties clearly shows that the measure was Suharto's compromise approach between the hardline stance of the military and the donor pressure. On November 13, in Jakarta, ABRI (Indonesian Armed Forces) Commander Try Sutrisno said that "at the most" fifty Timorese were killed. On November 14, at a press conference held in Dili, Major General Sintong Panjaitan presented the number of nineteen deaths – eighteen East Timorese and one New Zealander. Then, on November 27, at a parliamentary session, Try Sutrisno returned to the official army number of nineteen deaths. The KPN chair Djaelani also told the press that the team found no evidence that the death toll was higher than the army figure. Then, after discussion of its findings with Suharto, the KPN announced the death toll of fifty (Schwarz 1994, 213–14; Glasius 1999, 257). Glasius (1999, 257) concludes that "it is plausible that this figure was chosen because it was... the lowest figure that would be internationally acceptable." Except for the New Zealand student who was studying in Australia, no identity of the victims was provided in the KPN report. It was only after continued demands from the US, the EC and UN Commission of Human Rights that the Indonesian government gave the names of ten missing persons in 1993 (Glasius 1999, 258–60).

The KPN report concluded that the incident had nothing to do with policies of the government or the military. According to the report, the demonstration contained an element of planned provocation by the "anti-integration" group and the pro-independence



party Fretilin; the shootings were a spontaneous reaction of field soldiers for self-defense, without guidance from the commanders (Hendro 2009, 404–05).

Although the KPN did not acknowledge the responsibility of the commanders for the shootings, two days later, Suharto discharged Rudolf Warouw, the military commander of East Timor, and his superior, the Kodam (Regional Military Command) commander Sintong Panjaitan, from their positions.<sup>57</sup> He also ordered Army Chief of Staff Edi Sudrajat to convene a military honor council.<sup>58</sup> At a press conference on February 27, 1992, the nine-member council headed by Army Commander Feisal Tanjung announced that it had questioned nineteen officers and soldiers. Of the nineteen, eight – the field commanders and soldiers – were sent to military court, three officers were honorably discharged from the military, and other three remained in the military but were removed from their positions.<sup>59</sup> In effect, the honor council eliminated all territorial commanders from Kodam to Kodim. The military court for ten indictees, nine soldiers and one police corporal, opened on May 29, 1992, and spent eight days for completing the trials. The nine soldiers were sentenced to up to eighteen months in jail, having been found guilty of disobeying or exceeding orders by firing on demonstrators, failing to

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<sup>57</sup> “Pangti ABRI Mengganti Pangdam Udayana Dan Pangkolakops Timtim,” *Kompas*, December 29, 1991. Kodam is the highest level of the territorial system of the Indonesian army, which parallels the civilian bureaucracy. Each Kodam contains four to six Korem (Sub-Regional Command); there are lower-ranking units such as Kodim (District Military Command) and Koramil (Sub-District Military Command). Koramil commanders are not military academy graduates. See Kammen and Chandra (2010) for more information on the territorial system.

<sup>58</sup> See Al Araf et al. (2007, 11–17) for the basic structure of the military honor council (DKM or DKP, Dewan Kehormatan Perwira).

<sup>59</sup> “Tindak Lanjut Penelitian DKM: KSAD: 19 Anggota ABRI Ditindak Sesuai Golongan Kesalahannya.” *Kompas*, February 28, 1992. See Asia Watch (1992) and Hendro (2009, 409–10) for details about the six officers who were discharged either from the military or their positions. Warouw and Sintong were among the six. Rudi Warouw was honourably discharged from the military. Sintong Panjaitan lost his position temporarily and left for the US to study business at Harvard, where he was faced with lawsuits from the parents of the dead New Zealand student. Later he came back on duty as Habibie’s military advisor.

prevent their subordinates from firing, and assaulting wounded demonstrators; the policeman was charged with assault (Asia Watch 1992). Asia Watch (1992, 8) commented that “it is difficult to avoid the conclusion that the courts-martial were stage-managed for international consumption.”<sup>60</sup>

Still, The *Tapol Bulletin* assessed that “the installation of the DKM to investigate and take disciplinary action in the army was unprecedented in the twenty-six years of Suharto's rule” and “Suharto risked open revolt in the army” by removing the entire top echelon in East Timor and disciplining the rank-and-file.<sup>61</sup> Honna also observes that “it was the first time in the New Order period that officers of the rank of general had been held responsible for the shooting of civilians and also one of the rare cases where soldiers were court-martialled” (Honna 2003, 92).

The Santa Cruz massacre coincided with the internationally growing awareness on extrajudicial killings. Atrocities in El Salvador and elsewhere made extrajudicial killings one of the most important agenda for solidarity movement and human rights activism. At the same time, in the Western media, the situation in East Timor was being compared to the Baltic states under Soviet rule and Kuwait under Saddam Hussein (Simpson 2004, 458). The presence of Western journalists at the scene of the shootings was crucial, but

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<sup>60</sup> Many found the courts-martial disappointing because it did not reveal the puppet-master (*dalang*) behind the scene – a repeated theme following bloody events in Indonesia. The Santa Cruz massacre was suspected to be a by-product of military factional struggles, more specifically Prabowo Subianto's deliberate attack against Rudolf Warouw's career, because Warouw conducted disciplinary measures against over three hundred soldiers in East Timor, charging them with shadowy dealings with the local mafia. It was widely believed that Prabowo was deeply involved in such dealings. Moreover, Warouw, a Christian, was close to Benny Moerdani, a Catholic general and Prabowo's rival. Syafrie Syamsuddin, Prabowo's close friend, was then in charge of an intelligence unit of the Kopassus (Special Forces) in East Timor (Honna 2003, 246, note 13).

<sup>61</sup> “The Military Trials and the Truth behind the Dili Massacre,” *TAPOL Bulletin* 112 (August 1992), 10.

the quick and strong condemnations of the massacres cannot be explained without this background.

Donor governments generally welcomed the KPN, and thanks to adroit moves of the Indonesian Foreign Minister Ali Alatas, Indonesia successfully isolated the Netherlands' call to sanctions and secured aid from other donors (Schulte Nordholt 1995, 153–54). Santa Cruz was hardly an issue in the IGGI meeting in 1992, and the amount of aid actually increased (Leo 1996, 58). Still, the human rights abuses in East Timor remained a thorny issue, as the 1992 suspension of the International Military Educational and Training (IMET) program between the US and Indonesia, an early success of the newly formed East Timor Action Network (ETAN), showed (Simpson 2004, 460).

### **3-3. Post-Santa Cruz Responses to Extrajudicial Killings**

The massacre also raised awareness of the situation of East Timor in other parts of Indonesia. Student groups in Java joined solidarity protests against human rights abuses in East Timor for the first time in history; human rights groups in Jakarta such as Infight (Indonesian Front for the Defense of Human Rights) and LPHAM joined demonstrations of East Timorese students in Jakarta, forming an initial basis for the relationship between Indonesian and East Timorese groups (George 2000, 249–51; Wilson 2010, 99, 226).

More importantly, the internationally growing awareness of human rights problems in East Timor and Indonesia coincided with the growth of political opposition in Indonesia from the late 1980s. By then, many established Indonesian NGOs were relying on aid from developmental agencies abroad. In 1985, the International NGO Forum on

Indonesian Development (INGI) was established in parallel with the IGGI, as a joint forum of Indonesian NGOs such as the Legal Aid Institute (LBH) and NGOs from donor countries.<sup>62</sup> Making human rights a basis of developmental strategies was the central concern of the forum.<sup>63</sup> Successful campaigns by the NGOs for land, labor, and environmental issues were “couched in general human rights language” (Aspinall 2005a, 97). Student protest increased from late 1988, often in solidarity with farmers affected by developmental projects such as dams and golf courses (Aspinall 2005a; Uhlin 1997).

It was against this backdrop of international pressure and domestic opposition in the name of human rights that Suharto set up Komnas-HAM (Komisi Nasional Hak Asasi Manusia; National Commission of Human Rights) in 1993, just one week before the UN Conference on Human Rights in Vienna. The Ministry of Foreign Affairs was behind the birth of the commission, as the commission Vice Chair Miriam Budiardjo put it (“*Deplulah orang tua kandung Komnas HAM*”; Tjiauw 1999, 18).<sup>64</sup> In the first year, the commission received almost ten times more letters from abroad than from Indonesia – 23,342 letters compared to 2,360 (NCHRI 1995, 12).<sup>65</sup> The newly-born commission soon proved that it could challenge the army and the government on high-profile political

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<sup>62</sup> LBH was founded in 1970 by Adnan Buyung Nasution and PERADIN (Indonesian Bar Association). It became Legal Aid Foundation (YLBHI) in 1980. As the most prominent legal aid institution in Indonesia, it provided legal aid and advocacy for land, labor, housing cases, among others. Many human rights activists built their careers at local LBH branches and YLBHI. For its early years, see Lev (1987); for its oppositional stance, see Aspinall (2005a).

<sup>63</sup> The forum changed its name to INFID in 1993. More outspoken groups such as LPHAM and Inflight, which made clear their opposition to the East Timor massacre in 1991, did not take part in INGI/INFID, criticizing them for “playing within the rules of the authoritarian regime” (Uhlin 1997, 103, 111–12).

<sup>64</sup> The Vienna Conference facilitated the founding of the Indian human rights commission too (Merry 2006). The Indonesian government held the first seminar on the idea of a national human rights commission in January 1991, though the “most serious turning point” was the Santa Cruz massacre (Billah 2009, 55).

<sup>65</sup> Half of the international letters were for the Marsinah case, with East Timor coming second. No record of foreign letters is included in Komnas-HAM reports after 1994.

cases. In 1994, commissioners visited a prison in Lhokseumawe and discovered extrajudicial detention of prisoners in Aceh. In the same year, it conducted an investigation of the Marsinah case, in which the local army command was suspected of having murdered a young female labor activist named Marsinah. The arrests and torture of civilian suspects, who confessed to the murder, were publicly condemned as a violation of human rights by the commission (Jones 1994, 128–35; NCHRI 1995). Also, the commission issued a statement on the ban of three magazines, criticizing the unclear criteria used by the state to justify its control of the media (NCHRI 1995).

For the first two years of the commission's life, three categories of human rights abuses stood out: land disputes, labor disputes and "what we [the commission] officially call transgressions of human rights by the state apparatus, which means soldiers, police."<sup>66</sup> In addition to cases receiving national attention, the commission responded to individual complaints from citizens, and often mediated successfully between parties of the disputes. The backgrounds of the commissioners – the majority came from the establishment, with nine out of twenty-seven from the military and civilian bureaucracy, six from political parties, and only one from NGOs<sup>67</sup> – may have facilitated the relatively swift working of the commission (Tjiauw 1999, 25; Sudirman 1999a, 52).

The third category of abuses most clearly shows that the legacy of the Santa Cruz KPN was inherited by Komnas-HAM. Sidney Jones of Human Rights Watch commented that the commission was "deliberately modelled" on the KPN (Jones 1994, 124). On the

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<sup>66</sup> Marzuki Darusman's comment in "Human what?" *Inside Indonesia* 46 (Mar 1996) <<http://www.insideindonesia.org/content/view/full/953/29/>>.

<sup>67</sup> Asmara Nababan, who founded INFID and Elsam, joined the Komnas-HAM, when many of his colleagues were skeptical of it.

initiative of Komnas-HAM, a set of measures that appeared in the aftermath of the Santa Cruz massacres was repeated for cases of extrajudicial killings in the mid-1990s, with or without pressure from overseas. The measures, combining independent inquiry, trials in military court and/or other disciplinary measures, did not exactly imitate the measures for Santa Cruz – no Kodam commander was transferred, for example – but still included its major elements.

The first case was the killing of six civilians in Liquisa (Liquiçá), East Timor, on January 12, 1995. As the human rights situation in East Timor was still an internationally hot issue, at least five countries expressed concern about the killing.<sup>68</sup> Komnas-HAM reportedly learned about the tragedy from the foreign media and announced the launch of an inquiry team on February 8.<sup>69</sup> The military establishment responded to the move promptly, forming a military honor council (DKP) and an internal fact-finding team at the end of the month. The Komnas-HAM press conference revealed the use of torture and unlawful shootings by the soldiers;<sup>70</sup> the honor council followed by announcing its findings that there was procedural violation against orders not to kill unarmed people, deviant behavior (*perlakuan yang menyimpang*) against prisoners, and a failure to report the problem to superiors.<sup>71</sup> Military tribunals sentenced two soldiers, First Lieutenant Jeremias Kasse and Private Rusdin Maubere, for four-and-a-half and four years in jail

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<sup>68</sup> “Australia Sambut Hangat Penanganan Kasus Timtim,” *Kompas*, February 10, 1995.

<sup>69</sup> “Komnas HAM akan Selidiki Kebenaran Kasus Liquisa,” *Kompas*, February 9, 1995.

<sup>70</sup> “Temuan Komnas HAM dalam Kasus Liquisa. Terdapat Intimidasi, Penganiayaan, dan Kesembronoan,” *Kompas*, March 2, 1995.

<sup>71</sup> “Temuan Tim DKP dalam Kasus Liquisa: Terjadi Penyimpangan Prosedur,” *Kompas*, April 4, 1995. The Liquisa DKP (military honor council) did not punish high-ranking officers. The East Timor (Korem) commander Kiki Syahnakri was replaced by Mahidin Simbolon in May, but the Kodam commander said the transfer had nothing to do with the Liquisa case. “Pangdam Udayana: Pergantian Danrem Timtim Bukan Keanehan,” *Kompas*, May 28, 1995.

respectively, dismissing both from the service.<sup>72</sup> Both of them were blamed for blemishing the international image of Indonesia.<sup>73</sup>

The Komnas-HAM findings from on-site investigation of the Liquisa massacre were “surprisingly tough given its official position,” and openly challenged investigations carried out by the military (Honna 2003, 98). The success with the Liquisa massacre led to a similar initiative for the “Freeport area” in Irian Jaya (now Papua) later in the same year. In this case, the commission learned about the abuses from a visit of five Indonesian NGOs. Based on a human rights report compiled by a Catholic bishop, the NGOs demanded an inquiry into five cases of extrajudicial killings in the area between December 1994 and May 1995. The commission immediately accepted the request.<sup>74</sup> After two field trips to Timika and nearby areas in Irian Jaya, Komnas-HAM revealed that there were tortures, disappearances, and extrajudicial killings. It also demanded compensation for victims.<sup>75</sup> The military did not respond to accusations as quickly as for the Liquisa killings; a DKP was not formed, and only one case of extrajudicial killings was sent to the Kodam-level military court. When journalists asked whether the difference was because East Timor was an international issue, the Army Chief of Staff denied it.<sup>76</sup>

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<sup>72</sup> “Sidang Kasus Liquisa: Lettu (Inf) Jeremias Kase Dihukum 4 Tahun 6 Bulan,” *Kompas*, June 20, 1995; “Sidang Kasus Liquisa. Giliran Maubere Divonis 4 Tahun,” *Kompas*, June 21, 1995.

<sup>73</sup> “Sidang Lanjutan Kasus Liquisa: Pratu RM Dituntut 8 Tahun Penjara,” *Kompas*, June 14, 1995; “Sidang Lanjutan Kasus Liquisa. Lettu (Inf) JK Dituntut 6 Tahun 9 Bulan Penjara,” *Kompas*, June 15, 1995.

<sup>74</sup> “Komnas HAM: Laporan Pelanggaran HAM di Timika Segera Diteliti,” *Kompas*, August 15, 1995.

<sup>75</sup> “Komnas HAM tentang Timika: Perlu Dikaji Ulang Kebijakan dalam Menanggulangi Keamanan,” *Kompas*, September 23, 1995.

<sup>76</sup> “KSAD: Tidak Perlu Bentuk DKP,” *Kompas*, September 23, 1995.

The international concern about abuses in the area was not as extensive as about East Timor. The United States was not exactly in a position to voice concern, when the major target of the NGOs – the operator of the largest gold mine in the world, Freeport – was an American company.<sup>77</sup> Australian Prime Minister Paul Keating declined to make sensitive comments on the issue.<sup>78</sup> Still, a military court sentenced four soldiers – Second Lieutenant Mardjaka and Privates Titus Kopogau, R.H. Renyaan and La Ode Zahnudin – to jail terms ranging from sixteen months to three years. While the latter three were convicted of murder and as accomplices to murder, Mardjaka was convicted of giving false testimony that ten victims, instead of the army’s figure of three, were killed in Hoesa village (Amnesty International 1996).<sup>79</sup> The local groups protested irregularities of the tribunals,<sup>80</sup> and the promise of tracking down perpetrators of other cases was never fulfilled, though the Irian Jaya command distributed a human rights manual to soldiers as a preventive measure.<sup>81</sup>

If Komnas-HAM was successful in making human rights abuses in Irian Jaya a public issue largely without foreign pressure, military court was opened for a case of extrajudicial killings largely without the involvement of Komnas-HAM. In September

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<sup>77</sup> “Lima LSM tentang Kasus Timika. Komnas HAM Belum Investigasi Keterlibatan PT Freeport.” *Kompas*, September 29, 1995. The NGOs pointed out that several abuses took place in Freeport facilities, supposedly with the company’s knowledge.

<sup>78</sup> “Presiden Soeharto – PM Keating tak Menyinggung Pembakaran Bendera,” *Kompas*, September 18, 1995. Before the meeting, the Australian foreign minister had sent a letter to his counterpart Ali Alatas demanding an inquiry into the massacre in Timika. “PM Keating akan Berupaya Memulihkan Lagi Hubungan,” *Kompas*, September 15, 1995.

<sup>79</sup> The bishop’s report and the Komnas-HAM findings, which largely endorsed the report, record eleven victims.

<sup>80</sup> “Kilasan Hukum: Kasus Timika,” *Kompas*, February 23, 1996. They argued witnesses were brought from a different village with the same name.

<sup>81</sup> “Kodam Trikora Terus Selidiki Kasus di Timika,” *Kompas*, June 24, 1996; “Military Human Rights Manual in Irian Jaya,” *Inside Indonesia* 46 (March 1996).



1993, before Komnas-HAM was established, four villagers were killed by local security forces in a demonstration against the construction of the Nipah dam on Madura island in the province of East Java. Students, NGOs and Muslim leaders invoked the precedent of the Santa Cruz massacre to demand investigation and prosecution of those who were responsible. The public condemnation was so strong that “virtually every *kyai*...on the island of Madura signed a petition” (Jones 1994, 117).<sup>82</sup> The local army and parliament conducted their own inquiries, and, within a month, at least three local military and police commanders were transferred upon the order of the army commander Feisal Tanjung (Jones 1994, 109–10, 117).

The Nipah dam killings received public attention again when surveyors returned to the area to resume their work in January 1996. Bambang Widjojanto from the YLBHI argued that the measures for the Nipah dam killings were inconsistent with those for the Liquisa and Timika killings, for which Komnas-HAM sent a fact-finding team to the field and perpetrators were tried.<sup>83</sup> The new Kodam commander, Imam Utomo, announced that an intensive two-year investigation finally revealed the involvement of soldiers in the killings, and that they would be sent to military court.<sup>84</sup> Three soldiers and a police officer, including the Koramil commander at the time of the killings, were arrested and sentenced to an average of two years in jail.<sup>85</sup> Aside from the villagers’ visit to Jakarta in 1994, the role of Komnas-HAM was minimal.

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<sup>82</sup> *Kyai* is the Javanese equivalent of *ulama* (religious teacher and scholar). This term is widely used for the heads of Muslim boarding schools called *pesantren*.

<sup>83</sup> “LBH Protes Pelanggaran Kesepakatan Soal Nipah,” *Kompas*, January 23, 1996.

<sup>84</sup> “Pangdam V/Brawijaya: Enam Oknum ABRI Terlibat Kasus Nipah,” *Kompas*, February 17, 1996.

<sup>85</sup> “Vonis Kasus Nipah: Empat Oknum ABRI Dihukum Penjara dan Dipecat,” *Kompas*, April 30, 1996.

The conspicuousness of the critical stance of Komnas-HAM culminated in the aftermath of the July 27 affair. At a time when Megawati Sukarnoputri's popularity as an opposition leader was rapidly rising, on July 20, 1996, a PDI congress was held in Medan to remove her from the party leadership.<sup>86</sup> Megawati and her supporters challenged the legitimacy of the Medan congress and Suryadi's new leadership, and the PDI headquarters was turned into a public forum denouncing authoritarian rule itself. The PDI crisis became a catalyst for the wave of mass demonstrations that swept urban centers of the country that month, which peaked during the week after the Medan congress (Aspinall 2005a, 185). In the early morning of July 27, 1996, a gang attacked the PDI headquarters in Jakarta to evict Megawati supporters from the building. After the violent operation, protesters gathered in nearby areas of Central Jakarta and clashed with the police. Late in the afternoon, the protests were transformed into full-scale riots, with buildings and cars burned on several major streets. The July 27 affair was a political crisis posing a threat to the very center of power, in a way that fallen victims in Liquisa, Timika, or Nipah could never do.

The fact-finding team (TPF) of Komnas-HAM challenged the government claims on crucial points. Against the claim that a small left-leaning group called PRD (People's Democratic Party) was behind the July 27 affair, the team made it clear that no such puppet master existed. Also, it revealed that those who attacked the headquarters were a paid gang recruited from the urban poor of Jakarta. The team's number of casualties – 5

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<sup>86</sup> From the mid-seventies, only three parties were allowed to compete in elections – Golkar or functional groups, the *de-facto* government party; PPP (Partai Persatuan Pembangunan; United Development Party), an amalgamation of four Muslim parties; PDI (Partai Demokrasi Indonesia), a descendant of the PNI of former President Sukarno, Megawati's father, plus some small Christian and secular parties. After the crisis, Megawati faction did not acknowledge Suryadi's PDI and formed PDI-P (PDI-Perjuangan/struggle).

dead, 149 wounded and 74 missing – was also different from the government announcement of 5 dead, 26 wounded and no missing persons, though the death toll “happened” to be the same.<sup>87</sup> The report blamed the government and the security apparatus in strong language, stating that the operations reflected political and security policies of the government with certain continuity, to such an extent that the blame could not be put merely on individuals on the ground (Komnas-HAM 1996, 31–41; ISAI and AJI 1997; Sudirman 1999b, 145–51). Komnas-HAM could not, however, change Suharto’s decision to arrest the PRD activists with the charge of masterminding the crisis. Megawati supporters, PRD activists, and others were arrested, kidnapped, and tortured by the security forces in the subsequent crackdown that put as many as 136 persons in jail. But the fact-finding team irritated President Suharto enough to make him comment that the commission should provide evidence for its findings. The Komnas-HAM’s principled challenge contributed to the deepening of the cracks in the New Order in this struggle for legitimacy and power.

In sum, the Santa Cruz massacre gave birth to the late-New Order state responses to well-publicized cases of human rights abuses, consisting of military disciplinary measures (military honor council and/or military trials) and independent inquiries (later as Komnas-HAM fact-finding teams). These measures, initially taken by the regime to counter criticism from major donor governments, provided a new tool to the growing

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<sup>87</sup> The number of “missing” persons went down to twenty-three in a final statement issued in October (Komnas-HAM 1996, 65). At the time of investigation, the team members got an impression that their activities were being closely monitored by the security forces to “match” the number of casualties. When the team found three deaths, the next day it was announced that the security forces had found three dead victims – this pattern was repeated when the team changed the death toll to four, and then to five (Sudirman 1999b, 149–50). If there was indeed a “leak” of information from the Komnas-HAM team to the security forces, then the official death toll would have been lower without the team activities.

human rights NGOs and soon became the standard expectation for cases of extrajudicial killings, including cases which did not benefit from concerns of foreign governments or NGOs (Honna 2003).

What was the nature of these military trials? Without exception, those put on trial were low-ranking soldiers and officers, and sentences were short. Their charges were mostly procedural ones such as disobeying orders, which implied that the extrajudicial killings were conducted contrary to government policies and intention of the military as an institution. The soldiers on trial faced charges such as “defying orders from his superior officer and giving an order to kill in breach of procedures and making a false report of the incident” or “failing to carry out orders.”<sup>88</sup> The military trials show that a certain form of punishment is possible without explicitly embracing “human rights norms.” In the military, human rights was discussed primarily “as a trend in the era of globalization” (Honna 2003, 104) rather than an internalized value. The presence of half-hearted justice measures side by side with the repressive measures had been characteristic of the Indonesian situation since the early 1990s.

The four events were by no means a complete list of grave human rights abuses or extrajudicial killings that took place between the Santa Cruz massacre and the breakdown of the New Order. The outstanding absence on the list was Aceh; in Irian Jaya, only one case of killings on the bishop’s list was sent to the court. The trials were only for recent and selective cases of extrajudicial killings. Predictably, the approach also fell short of a comprehensive reflection on the pattern of repression under the New Order regime as a

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<sup>88</sup> “Liquisa Soldiers Punished,” *TAPOL Bulletin* 130 (August 1995), 20.

whole. What we could not expect from such trials, dominated by the military under a reluctant authoritarian regime, was the acknowledgement of systematic patterns of human rights abuses and associated policies – the usual focus of a comprehensive transitional justice strategy.

The birth of Komnas-HAM may have been a foreign-affairs project, a move to counter international pressure on the East Timor issue. However, “over time it developed more than we expected,” as Indonesian sociologist Arief Budiman put it.<sup>89</sup> The commission issued bold statements concerning transgression on civil liberties and human rights abuses by the security forces in a way that no official New Order institutions did, although it lacked power to force other state institutions to carry out its recommendations. With its limited resources (Sudirman 1999a), it went beyond their capacities to unearth little-known human rights abuses or to conduct intensive inquiries into cases of abuses over a long term, but its fact-finding teams undoubtedly did a better job than the Santa Cruz KPN, which was regarded as its predecessor. Komnas-HAM was no substitute for a thorough transitional justice commission, just like parallel national human rights commissions in other countries, which usually stand apart from transitional justice bodies. But when it came to recent and already publicized human rights abuses, it was the only body with authority to conduct some independent inquiries and challenge the findings of the security forces themselves.

The Indonesian approach to extrajudicial killings in the 1990s was a product of partial liberalization by the regime in a “world-time” of human rights (Risse and Sikkink

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<sup>89</sup> Arief Budiman’s comment in “Human what?” *Inside Indonesia* 46 (Mar 1996) <<http://www.insideindonesia.org/content/view/953/29/>>.

1999). At the same time, for human rights groups, it was a model to overcome when the time was right.

### **3-4. *Reformasi*, Violence and the Old Model**

The Asian financial crisis and a series of student demonstrations finally ended Suharto's thirty-two year rule. When Vice President Habibie came to power, he introduced "fundamental liberalizing reforms" such as "the lifting of restrictions on the press, the release of political prisoners, the formation of new political parties, the relaxation of labor controls and eventually a free general election and, most remarkably of all, the later referendum on the future of East Timor – the military felt powerless to stand in the way" (Crouch 2010, 132). Military leaders were not in a position to overthrow or control Habibie easily; they "feared that any attempt on their part to restore the military's predominance would only provoke even bigger demonstrations and further exacerbate military disunity" (Crouch 2010, 131). Military abuses became a popular topic of the press. However, the principle that military personnel must be tried in military court, confirmed by the 1997 law on military courts, did not go away, and Komnas-HAM lacked capacities to resolve recent or past human rights abuses independently. The existing measures, formed in the late-New Order period, did not satisfy the popular anger against the military and military-associated abuses, which failed to find a proper institutional channel.

#### *3-4-1. "Missing Persons" and Military Court*

The cases of kidnappings (*penculikan paksa*), “missing persons” (*orang hilang*), or more formally enforced disappearances (*penghilangan secara paksa*) of political activists in 1997–98 emerged when a group of activists reported the disappearance of two activists, Pius Lustrilanang and Desmond J. Mahesa, to Komnas-HAM on February 10, 1998.<sup>90</sup> When the kidnapping of Andi Arief – the leader of SMID (student wing of the PRD) – was reported late in March, the case of missing activists attracted greater attention. While the military denied its involvement in the activist kidnappings,<sup>91</sup> the LBH revealed that a number of activists in the PRD/SMID circle had been reportedly missing as well.

Three weeks after his release, Pius came back to Jakarta, accompanied by a Komnas-HAM commissioner, for his high-profile press conference at Komnas-HAM on April 27. In the public testimony, he described his experiences in the cell, including a list of other “inmates” he communicated with during his two-month stay (Pius and Siagian 1999). The US and Australian governments immediately criticized the kidnappings in strong language, the parliament demanded a thorough inquiry, and the armed forces formed an internal fact-finding team. In the months leading to the fall of Suharto, the activist kidnappings galvanized public anger against the human rights abuses of the regime. Public testimony by the activists associated with the PRD/SMID circle followed in June, after Suharto’s resignation on May 21.

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<sup>90</sup> “Sekelompok Pemuda Mengadu ke Komnas HAM,” *Kompas*, February 12, 1998. The visitors were led by Ratna Sarumpaet, coordinator of SIAGA (Solidaritas Indonesia untuk Amien dan Mega). SIAGA was formed in January 1998, and Pius was its secretary-general.

<sup>91</sup> “Pemerintah Harus Jelaskan ‘Hilangnya’ Sejumlah Mahasiswa,” *Kompas*, March 31, 1998.

The fact-finding team of the armed forces (TPF-ABRI) continued to examine scores of people – both victims and soldiers – until mid-July, when they suddenly arrested seven soldiers of the army’s Special Forces, Kopassus, as suspects. On the next day, it was reported that “the seven suspects’ testimony might lead to the interrogation of former Kopassus commanders” including Lieutenant General Prabowo Subianto, Suharto’s son-in-law. The DKP was formed in a month, producing a recommendation that Prabowo and Muchdi PR, the new Kopassus commander,<sup>92</sup> should be subjected to administrative sanctions or brought to military court. Late in August, Prabowo was discharged from the military, while another two high-ranking officers, Major General Muchdi PR and Colonel Chairawan – the latter was regarded as the commander of the operation – were demoted. The DKP concluded that what went wrong was the former Kopassus commander’s problematic interpretation of orders – his superiors, the ABRI commanders General Feisal Tanjung and General Wiranto,<sup>93</sup> were completely unaware of such kidnappings. Prabowo declared that he would take responsibility for what his protégés did and then left the country, moving to Jordan.

The DKP handled the most high-ranking generals since the Santa Cruz massacre, and did “naming and shaming” of the highest intensity in Indonesian history until then. During the months when *reformasi* fever was at its peak, activities of the fact-finding team and the honor council received extensive media coverage, not least because of the

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<sup>92</sup> Muchdi PR was appointed Kopassus commander on March 21, 1998, when Prabowo took the position of Kostrad commander.

<sup>93</sup> Wiranto was appointed the new ABRI commander on March 16, 1998. ABRI (Angkatan Bersenjata Republic Indonesia, Armed Forces of the Republic of Indonesia) was subsequently renamed TNI (Tentara Nasional Indonesia, Indonesian National Army), after the police was separated from the institution. TNI is also the name identified with the army during the national revolution.



well-known rivalry between Wiranto and Prabowo. Compared to the Santa Cruz DKM, which simply dismissed the officers in the chain of command without revealing information about who actually ordered them to shoot, the DKP in 1998 at least revealed the presence of a Kopassus team, called “the rose team” (*tim mawar*), in charge of the kidnapping operation.

Still, the DKM could not assuage suspicion that one of his superiors – possibly Suharto himself – was behind the operation (Ikrar, Cahyono and Tyas 1999, 170; Luhulima 2001, 93) or, at the very least, Wiranto did not want to risk “a negative exposure of the ABRI’s systemic culture of violence, which could snowball uncontrollably just at the time when its image nosedived to its lowest ebb” (Tatik 2006, 74). The military court for Prabowo or other high-ranking officers was never realized, although the possibility of summoning Prabowo as a witness or defendant had not been firmly excluded until the last minute.<sup>94</sup>

The trials of eleven soldiers of *tim mawar* began early in January. The difference with the New Order period was that the victims now openly questioned the legitimacy of the trials. Among nine survivors of the kidnappings, only Nezar Patria served as a witness. Pius and Andi Arief refused to attend the trials because of the absence of high-ranking officers in the courtroom and solidarity with missing victims.<sup>95</sup> The latter was a crucial problem for victims’ family members, who actively participated in public protests and petitions coordinated by a new NGO Kontras (Commission for the Disappeared and Victims of Violence). They boycotted the trials, because the charges covered the

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<sup>94</sup> “KSAD Jamin Prabowo Masih Berjiwa Patriot,” *Kompas*, January 9, 1999.

<sup>95</sup> “Nezar Patria: Saya Disetrum dan Dipukuli,” *Kompas*, January 9, 1999.

kidnapping of nine survivors only, excluding the fates of those who were still missing. Their view that the procedure was rather closed to victims, giving an impression that the goal of the whole process was to protect those who were responsible, was supported by Komnas-HAM, which demanded cancellation of the trials.<sup>96</sup>

In the three-month trials, the soldiers admitted that they had kidnapped nine activists on the order of Bambang Kristiono, the team leader, who claimed that the whole responsibility of forming the team and conducting kidnapping operations lay solely on him, and not on his superiors.<sup>97</sup> In April, the eleven defendants were sentenced to twelve to twenty-two months in jail, and five of them were dismissed from the military. The sentences in courts of appeals were not disclosed to the public. Eight years later, Kontras revealed that four among the eleven, including two soldiers who were then dismissed, were actually promoted to strategic positions in the army (Kontras 2009, 70–71).

What began as a breakthrough case in the human rights abuses of the military ended up as business as usual. Just like military trials after Santa Cruz, they were quick measures to assuage public anger, effectively diverting the blame to low-ranking soldiers. The fact that activist kidnappings were a well-planned operation by a specific branch of the army made it harder to convincingly characterize the abuses as an “excess” or a procedural violation by field soldiers, exacerbating doubts over the trials. Similar military trials for other recent cases of human rights abuses, such as the trials of two police

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<sup>96</sup> “Menkeh Soal Sidang Penculikan: Prabowo, Muchdi, dan Hartono Harus Didengar Keterangannya,” *Kompas*, January 8, 1999.

<sup>97</sup> “Tim Mawar Akui Culik 9 Korban,” *Kompas*, February 17, 1999; “Hakim Harus Panggil Kolonel (Inf) Chairawan,” *Kompas*, February 25, 1999.

officers for the Trisakti shooting and the trials for military abuses in Aceh,<sup>98</sup> were also not so much different from prior events.

Now, after a year in vain, victims and NGOs concluded that such military trials would not fulfill their sense of justice. But questions remained: if military trials as usual were not satisfactory, what would be the alternative venue for those who seek judicial remedies for human rights abuses? When demands for improving practices of the existing military court were not met, what else could they hope for? As we will see in the following chapter, these questions will be answered with the East Timor referendum violence in 1999 and the 2000 law on the human rights court.

#### *3-4-2. Joint Fact-finding Team on May Riots (TGPF) and Komnas-HAM*

The role the Komnas-HAM was expected to play did not decrease after Suharto's resignation. The moments of transition were full of bloody incidents; if the student occupation of the parliamentary complex, which finally pushed Suharto to announce his decision to resign, was peaceful, it was largely because the preceding events were bloody enough. Jakarta was burning for three days following the shooting of protesting students in front of Trisakti University on May 12, 1998, and similar riots swept other major cities. Although it was not for the first time that riots targeted Chinese properties in Indonesia (Ariel 1999; Purdey 2006),<sup>99</sup> the scope of riots was unprecedented. Gory

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<sup>98</sup> The Trisakti trials in June, which sentenced two police officers to four and ten months respectively, did not attract much attention because fact-finding missions were still going on. See Chapter 5 for military trials in Aceh. ICG (2001) is a good source of military trials between Suharto's fall and publication of the report; Agung (2009) covers several cases of military trials by 2008.

<sup>99</sup> Ariel (1999, 327) notes that "state-sponsorship of major anti-Chinese riots was more of a standard practice than exception."

stories of rape of Chinese females were circulated, and hospital yards were filled with corpses of hundreds of those burnt to death in shopping malls in the middle of looting. The security forces conspicuously failed to stop the riots.<sup>100</sup> A group called Volunteer Team for Humanity (Tim Relawan untuk Kemanusiaan) claimed that deadly arson was not a natural consequence of looting but organized actions by groups of non-locals, who also encouraged the masses to loot in a similar manner at different locations (Tim Relawan untuk Kemanusiaan 1998a; 1998b). Komnas-HAM issued two statements, on June 2 and July 9, urging thorough investigation into riots and sexual violence and state acknowledgment that such violence had actually occurred. The number of casualties quoted in the Komnas-HAM statements and the belief that organized groups led the lootings echoed the previous reports of the Volunteer Team (INCHR 1998, 64–69).<sup>101</sup>

The Joint Fact-finding Team on the May 13-15, 1998 Riots (TGPF, the Joint Team) was formed on July 23. The Joint Team was not a Komnas-HAM fact-finding team, but its chair Marzuki Darusman was a deputy chair of Komnas-HAM, and three more Komnas-HAM members were on the team. The nineteen members included military and civilian bureaucrats (three and five members, respectively), NGO activists (five, but one among them quit from the beginning), and two others – one from the Muslim organization NU, another from the state-sponsored Chinese-Indonesian

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<sup>100</sup> Even later, the police could identify only thirty-six rioters (Purdey 2006, 152).

<sup>101</sup> According to Sandyawan Sumardi of the Volunteer Team, he debated issues such as the number of casualties and the way victims died (his claim was that they were intentionally burnt to death) with Komnas-HAM members. One of them made an objection, saying that the Volunteer Team's death toll (1,193 deaths) was too high and that they might have been accidentally burnt. When Sandyawan urged him to prove his claims with alternative data, however, he could not do so, because Komnas-HAM had not conducted its own investigation. "Father I. Sandyawan Sumardi, SJ: 'It was a Holocaust...!'" Sandyawan's interview with *D&R*, undated (June 1998).

organization Bakom-PKB (TGPF 1998). Participation of NGO members in an official fact-finding team was something new. When Sandyawan Sumardi offered humanitarian assistance to victims of the July 1996 affair, he was indicted for harboring masterminds of the riot;<sup>102</sup> now he was as a key member of the official fact-finding team, and his Volunteer Team stood as the foremost source of data.<sup>103</sup> The team collected testimonies both from victims of violence and key figures of the security forces and the government such as Prabowo, Major General Syafrie Syamsuddin (commander of Kodam Jaya, a territorial command overseeing Jakarta), Sutiyoso (Jakarta governor), and Major General Hamami Nata (Jakarta police commander).

In the final report, the Joint Team concluded that “provocateurs” incited the masses to loot and some members of the security forces – as well as local criminals – were involved, just as the Volunteer Team had claimed, in an effort to create an emergency situation. The security forces were also deemed responsible because of their failure of effective control over the riot. The number of casualties from different sources had not been reconciled until the last moment; accordingly, different numbers from different sources (e.g. 1,217 deaths from the Volunteer Team and 288 deaths from the Jakarta Government in Jakarta riots) were listed side by side.<sup>104</sup> It was confirmed that sexual

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<sup>102</sup> The Jesuit priest claimed that he was perplexed when he was approached by the PRD activists who were seeking a place to hide, but brought them to his brother’s place out of humanitarian concern that they might be tortured if arrested (Sandyawan 1996).

<sup>103</sup> The Joint Team had five “sources of data”: The Volunteer Team, Bakom PKB, Komnas-HAM, YLBHI, and the police. The YLBHI was a source of information on kidnappings at the time of the riots, and Bakom PKB was devoted to data on sexual assaults, which were allegedly to be mainly against Sino-Indonesian women. Three others – the Volunteer Team, Komnas-HAM, and the police – were in charge of riot victims in general (TGPF 1998, 4–5). It is likely that the Komnas-HAM data largely originated from the Volunteer Team data, which were made public as early as May 22, 1998. Sandyawan’s team also helped the Komnas-HAM team after the July 27, 1996 incident at PDI headquarters (Sandyawan 1996).

<sup>104</sup> For a number of internal disputes over the TGPF findings, see Tatik (2006, 79–86) and Purdey (2006,

violence occurred, though it could not be made clear whether the violence was coordinated. Finally, the team recommended uncovering Prabowo's role and questioning Syafrie Syamsuddin further (TGPF 1998; cf. Fadli 2004).<sup>105</sup> Although the October 1998 report failed to provide evidence of the link between "provocateurs" on the street and high-ranking military officials, the team's investigation was "the most ambitious attempt at public truth seeking... in Indonesia's history" (Purdey 2002, 608). Thirteen years later, an NGO report recalls that "the fact that the team was able to conduct a credible, independent investigation that did not whitewash military accountability – so soon after Soeharto's resignation – was a remarkable achievement that stimulated grand hopes for the future" (ICTJ and Kontras 2011, 19).

If the TGPF was relatively successful, however, it only illuminated the fading glory of Komnas-HAM. The power of the TGPF to summon high-ranking generals and acquire data from key government bodies came from the fact that it was a "joint" fact-finding team with government ministries, rather than a stand-alone Komnas-HAM team.<sup>106</sup> Such power formed a striking contrast to the fact-finding capacities of Komnas-HAM, which relied on NGOs such as the Volunteer Team for data. Komnas-HAM was generally

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142–61). The most controversial was the "truth" on sexual violence. Even Bambang Widjojanto from the YLBHI made an objection to a subteam's finding that sexual violence was planned (Purdey 2006, 146). Tatik (2006, 84–85) reports that several points, such as the number of confirmed rape cases, were inserted by some members into the draft of the assistance team, and it was no wonder that the final report remained without the signatures of many members.

<sup>105</sup> The later Komnas-HAM *pro-justicia* inquiry team – an inquiry team as a preparatory step for the human rights court, often called KPP-HAM – on the May riots did not name Prabowo or Syafrie (Tim Ad Hoc Mei 2003). According to Tatik (2006, 86), the team "concluded that Prabowo could not be held responsible for the riots because, as the commander of Kostrad at the time, he had no direct command over troops." In 1999, the State Secretary Muladi also replied to Komnas HAM's query about the follow-up to the TGPF report stating that "further government investigation had found no evidence to implicate Prabowo in the May 1998 riots" and "Commander of Jakarta Regional Army Command, Major-General Sjafrie Sjamsoeddin [Syafrie Syamsuddin], had performed his duty as required" (Tatik 2006, 85).

<sup>106</sup> Author's interview with a team member, June 17, 2010.

sidelined in inquiries into violent events at the time of transition, because it lacked independent investigative power. For the Trisakti shooting, the Komnas-HAM team was only one of five fact-finding teams established by different authorities, such as Trisakti University, the armed forces, and the police (Dijk 2001, 242). The activist kidnappings were taken up by NGOs such as LBH and Kontras. For Aceh, its short field trip in August certainly made a media sensation with the exhumation of mass graves and the data of victims for the past ten years, but neither exhumation nor compilation of data would have been possible without prior preparation by, presumably, local NGO workers.

What was transformed was primarily the political context, rather than the capacities of Komnas-HAM. Its confusion with the re-orientation of its activities was apparent in a self-evaluation on its conventional “politics of statements”; “it appears that statements issued by the National Commission of Human Rights are effective only in voicing hidden truth,” which “confirmed what the public believed, and thus empowered them to urge the government to investigate” relevant events (INCHR 1999, 75). This approach worked for the Marsinah case and the July 27 affair, bringing popularity and legitimacy to the commission under the New Order. However, it was insufficient in the post-transition context. Now NGOs, organized victims, and others demanded thorough inquiries into human rights abuses in the present and the past, rather than moral support by short statements based on week-long field trips. “Ultimately,” it was noted, “the creativity of the NCHR will be put to the test” (INCHR 1999, 75).

Komnas-HAM’s proposal of a truth and reconciliation commission (TRC) for past human rights abuses was not accepted. It was only with the East Timor referendum

violence in 1999 that Komnas-HAM came to assume another official role in fact-finding with its “*pro-justicia*” inquiry teams, an initial step for opening the human rights court, and that the TRC proposal was revived (Chapter 4).

### **3-5. Conclusion**

This chapter offered necessary background for understanding the emergence of comprehensive transitional justice mechanisms in the aftermath of the East Timor referendum violence. From early on, Suharto’s New Order regime engaged in repeated dialogue with Western donor countries and international organizations over its human rights abuses, most prominently extra-legal detention of communists and communist sympathizers. With strengthened demands for judicial accountability, late-New Order Indonesia developed a pattern of individual accountability measures as a response to international pressure over the infamous Santa Cruz massacre in East Timor.

The military disciplinary measures and the fact-finding mission developed for Santa Cruz were soon taken by Indonesian activists as a set of demands for cases of extrajudicial killings, including cases less well-known internationally. Komnas-HAM, a human rights commission launched primarily as a foreign affairs project, added an additional platform through which such demands for accountability could be channeled. The trials of those involved in extrajudicial killings in military court were unprecedented in Indonesian history; however, the military-dominated trials punishing individual low-ranking soldiers with light sentences – a pattern established under a reluctant



authoritarian regime – only disappointed vocal NGOs and victims’ groups in a newly liberalized setting after Suharto’s fall in 1998.

Were there no changes in the military disciplinary practices after Suharto’s fall? The case of activist kidnappings shows that such measures could implicate a military man as powerful as Suharto’s then-son-in-law Prabowo. However, Prabowo’s case ended with an administrative measure taken by the military honor council, and the military court for the activist kidnapping cases returned to the previous pattern of punishing low-ranking soldiers only. As the chain of command of this kidnapping operation was already revealed in the media coverage of the military honor council, the anger and disappointment with the military court intensified.

In the *reformasi* era, military courts have tried soldiers for various cases of human rights abuses, such as torture and kidnappings, but the basic pattern of these trials has remained unchanged. The new initiative of the joint military-civilian (*koneksitas*) court by the Wahid administration failed to be recognized as a viable alternative, as we will see later in Chapter 5.<sup>107</sup> The attempts to revise the laws on military courts so that soldiers could be sent to the civilian court languished.<sup>108</sup> The military court remains the sole channel of judicial measures against recent individual cases of human rights abuses like the Papua torture trial in 2010, because the new human rights court only deals with systematic or widespread violations.<sup>109</sup>

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<sup>107</sup> As far as I know, the *koneksitas* court was used only twice – for the Bantaqiah killings in Aceh and for the July 27 Affair. The latter put two soldiers and two civilians on trial in the Central Jakarta district court, where all but one civilian were acquitted. The convicted person was sentenced to two months. “Soldiers Acquitted in 1996 PDI Headquarters Attack,” *The Jakarta Post*, December 31, 2003.

<sup>108</sup> See Mietzner (2009) and Al Araf et al. (2007) for military court reform.

<sup>109</sup> The Papua torture outrage in 2010 began with video clips of Papuan villagers being tortured – among a

Similarly, the Komnas-HAM-centered fact-finding or truth-seeking missions remain more or less the same. The innovations in the *reformasi* era, such as invitations to outsiders, mostly NGO workers and academics, to participate in the fact-finding teams, are now absorbed into the pool of repertoires, but there is nothing much that the commission can do about recent individual cases of human rights abuses aside from forming inquiry teams and visiting sites to attract media attention. The new mandate of forming *pro-justicia* teams as a preparatory step for a human rights court did not particularly strengthen the commission. As we will see in later chapters, other state institutions usually ignored the reports produced by such teams, and the commission itself often took a cautious approach in sending cases to the prosecutor's office.

The international advocacy movement played a critical role in revealing human rights abuses under the repressive military regime and helped improve the human rights situation, when the demands of the advocacy movement were translated into concerted donor pressure. With the *tapol* campaign, aid conditionality based on human rights concerns began to influence Indonesia for the first time. For the several past decades

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variety of abuses, burning a victim's genitals was also included – by several men. The Indonesian government admitted that the perpetrators were military men, adding that there were reasons for soldiers to believe those they captured were dangerous. Karishma Vaswani, "Indonesia Confirms Papua Torture," *BBC News*, October 22, 2010; Camelia Pasandaran, "Indonesian Military Admits Torture in Papua," *Jakarta Globe*, October 23, 2010. This "rare break from tradition" led to another set of military trials over disciplinary charges, where three soldiers were sentenced to five months and a commanding officer to seven months in jail. "TNI Penyiksa di Papua Divonis 5 Bulan Bui," *Vivanews*, November 11, 2010. After that, there were familiar exchanges of opinions; some elements of the military claimed that this was just a disciplinary violation rather than a human rights violation, while the Komnas HAM rejected such a claim (Mahardika Satria, Amirullah, and Dwi Winaya, "TNI Anggap Kekerasan di Papua Bukan Pelanggaran HAM," *Tempo Interaktif*, January 2, 2011). Poengky Indarti, the director of the human rights NGO Imparsial, went even further, suggesting that the case should be sent to the human rights court or a foreign court ("Poengky: Pelakunya Diadili di Sini atau di Negara Lain," *Tempo Interaktif*, January 2, 2011). Notwithstanding further debates, however, the institutional measures ended with the disciplinary trials in military court.

since then, there has been no lack of dialogue over human rights issues between Indonesia and the concerned parties. Former and current state officials clearly care about criticism from foreign NGOs and governments and follow the recent trends of international justice.<sup>110</sup> However, nothing shows that such moves go beyond strategic concerns. The role played by the militias in the East Timor referendum violence in 1999 indicates that top army officials learned how to adapt themselves strategically to the new environment, rather than the opposite.

International pressure after the Santa Cruz massacre introduced innovations of accountability and fact-finding measures under an authoritarian regime. These measures became legacies because domestic groups kept using them. They were not, however, full-fledged “transitional justice” measures. Apparently, they were formed in a pre-transition setting, reflecting the unfavorable political conditions of the day. Individual soldiers or *oknum* were blamed for recent individual wrongdoings, but the measures fell far short of looking back at repressive policies of the regime as a whole. These measures were all Indonesia had for the purpose of dealing with human rights abuses in 1998, when new ideas of more comprehensive mechanisms were just emerging.

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<sup>110</sup> The military was not an exception. In 2008, more than a hundred retired officers, including Try Sutrisno, Sutyoso, and Wiranto, came together to promote correct understanding of gross human rights violations. Wiranto explained that shootings of protesters and activist kidnappings should not be considered gross violations of human rights, because they were not so widespread and systematic. “Purnawirawan TNI/Polri Bahas Pelanggaran HAM Berat,” *ANTARA News*, April 24, 2008.

**CHAPTER 4**  
**PLURAL JUSTICE:**  
**INDONESIAN NORM ENTREPRENEURS AND MODELS OF JUSTICE**

**4-1. Plural Models, Plural Norm Entrepreneurs: An Overview**

The first months of *reformasi* were full of accusations of human rights abuses under the New Order, from recent cases like the activist kidnapping, the Trisakti shooting, and the May riots to older memories of Tanjung Priok and Talangsari. Now Indonesians had to choose what to do with these revealed abuses. The East Timor referendum hastened the schedule for adopting comprehensive transitional justice mechanisms. What concerns did Indonesian elites and NGO activists have regarding different options? What drove the adoption of the human rights court system and the truth and reconciliation commission in their final forms? If international pressure is not sufficient to explain the introduction of these mechanisms, what else can help our understanding of the diffusion of transitional justice models?

In this chapter, I will show that Indonesian norm entrepreneurs or human rights activists played an indispensable role in disseminating the models or, at least, modifying the adopted mechanisms into their final forms. Not all mechanisms were introduced by NGOs – for instance, the idea of a human rights court was proposed by the Ministry of

Justice, and adopted as a preemptive measure against an international court for East Timor referendum violence – but they made efforts to shape the mechanism as they would be able to use it for past abuses.

The chapter is divided into three sections: “enforced disappearance” and the Argentine model, the human rights court which was much influenced by the international criminal justice model, and the TRC and South African model. Although, strictly speaking, “enforced disappearance” is a category of internationally acknowledged human rights violations rather than a transitional justice model, I include it in the chapter because the way Kontras introduced the Argentine model gives us a larger, and related, picture of the diffusion of ideas. If Kontras used elements of the Argentine model for their campaign, Elsam chose the South African model of amnesty, reconciliation, and truth and campaigned for adoption of the model. These two NGOs were not the only norm entrepreneurs of the period – other human rights NGOs and victims’ groups existed. Nevertheless, both were most influential sources of transitional justice advocacy, and a large part of their influence came from the way they used these foreign models creatively.

A few characteristics of transitional justice advocacy campaigns by domestic norm entrepreneurs will be detected in an examination of NGO roles. First, although domestic NGO activists are inspired by international norms and models, it is they, rather than transnational experts, who take the initiative of conducting a campaign. Indonesian activists used the international norms and models – international law, the repertoire of collective action, as well as political science theories – to boost their campaign, threatened that they would resort to international mechanisms, and sought out

international allies. In the liberalized setting of *reformasi*, their relationship with the international arena was close to an “insider-outsider” coalition, where domestic activists reach out to international instruments and networks as a complementary option for their domestic campaign (Sikkink and Walling 2006), rather than the “boomerang model,” where they rely on international allies for their campaigns. They even rejected advice from major international experts when they found it inappropriate for the Indonesian situation as they saw it.

Second, norms are plural, and norm entrepreneurs are plural too. The amnesty versus justice debate in the Indonesian human rights community shows us that norm contestation does not always occur between transnational advocacy networks, which support international norms, and norm-violating regimes, which oppose such internationally recognized norms. Rather, the debate occurred between like-minded groups who support two different international models of transitional justice: international criminal justice and reconciliation through amnesty. International norms and models are not monolithic; they are inherently plural, so that domestic norm entrepreneurs can choose what they see most relevant for their campaign from the vast pool of norms, models, and theories. The diverse mechanisms of diffusion – piracy or indirect contact through reading, in addition to direct contacts – contribute to the plurality too.

The parliamentary debates over the two bills on the human rights court and the TRC also show the way Indonesian government and political elites used the plural mechanisms as preemptive alternatives to less palatable transitional justice options. With

the tangible threat of an international court, they did not hesitate to adopt a human rights court system which incorporates elements of international criminal justice. At the same time, the government, supported by almost all major political parties, prepared a TRC bill to close the avenue of ad-hoc human rights tribunals for more cases. Ultimately, both mechanisms were adopted to frustrate stronger threats.

#### **4-2. “Enforced Disappearances”: Kontras and the Argentine Model**

The attention devoted to the 1998 activist kidnapping case was helped by a number of factors: testimonies of survivors, the army internal conflict between Wiranto and Prabowo, and, above all, the anti-military sentiment in the newly democratized setting. Still, if not for the campaign of the new NGO Kontras, the arbitrary detention and torture of nine political activists and the disappearance of ten or so persons might have disappeared from the public eye much earlier, e.g. when the nine survivors came back. In my view, the successful campaign of Kontras can be attributed to both the conceptual and organizational elements of the “pirated” Argentine model. Kontras promoted the international norm against the new category of human rights abuses, enforced disappearances, and organized families of the disappeared to become agents of their campaign.

The global awareness over enforced disappearances emerged in the aftermath of the 1973 Pinochet coup in Chile, though the attention on the Chilean human rights situation was generally centered on torture.<sup>111</sup> It was with the Argentine coup in 1976 that

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<sup>111</sup> This paragraph is largely based on Clark (2001, Chapter 4).

the phenomena of disappearances were put in the spotlight. The scale of disappearances – 8,961 documented in Argentina, of which more than 85 percent occurred between 1976 and 1978, compared to 957 in Chile – was huge, and the Mothers of the Plaza de Mayo started the famous weekly demonstrations in 1977. In a few years, the Argentina campaign grabbed international attention. In 1980, the Working Group on Enforced or Involuntary Disappearances (WGEID) was created by the UN Commission on Human Rights,<sup>112</sup> and the UN General Assembly adopted a declaration on enforced disappearances in 1992. The Inter-American Convention on enforced disappearances was adopted in 1994.<sup>113</sup> The Rome Statute of the ICC also criminalizes enforced disappearances, widening the scope of the crime to those perpetrated by political groups, in addition to state agents.<sup>114</sup>

There is no sign that Indonesian NGOs used the UN mechanism of WGEID actively before 1998. A majority of the 485 cases of reported disappearances until 1997 occurred in East Timor (WGEID 1998), and eleven or so took place in Aceh.<sup>115</sup> The 1993 WGEID report mentions that “the majority of newly reported cases of disappearance were submitted by Amnesty International.” The disappearances in the July 27 Affair in 1996 or the Freeport area in Irian Jaya, for example, were not reported to the WGEID, although the Komnas-HAM had compiled data on missing persons. It was with the 1998

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<sup>112</sup> “Working Group on Enforced or Involuntary Disappearances”

<<http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>>.

<sup>113</sup> “Inter-American Convention on Forced Disappearance of Persons”

<<http://www.oas.org/juridico/english/treaties/a-60.html>>.

<sup>114</sup> “General Comment on the Definition of Enforced Disappearance”

<[http://www.ohchr.org/Documents/Issues/Disappearances/disappearance\\_gc.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/disappearance_gc.pdf)>.

<sup>115</sup> WGEID (1993a) and WGEID (1993b) report seven and four disappearances in Aceh for 1992 and 1993, respectively. In 1994, one of the reported cases seems to be from Aceh (WGEID 1994).



activist kidnapping that the disappeared (*orang hilang*) became one of the major keywords of Indonesian politics of human rights, to an extent that the NGO Kontras and Munir, the first coordinator of Kontras, became “two political icons” of the Indonesian human rights movement in the transitional era (Priyono 2004, 491).

Kontras was born amid the increasing opposition against President Suharto and his regime. In 1996, five NGOs formed a network called KIPP-HAM (Independent Monitoring Commission for Human Rights Violations, a.k.a. KIP-HAM) to collect data on violence and human rights abuses. After the disappearance of two political activists surfaced with their colleagues’ visit to Komnas-HAM in February (Chapter 3), more cases were reported to NGOs. On March 20, 1998 – ten days after the MPR (Majelis Permusyawaratan Rakyat, People’s Consultative Assembly) appointed Suharto as the president for another term – KIPP-HAM changed its name to Kontras, which appears as KontraS, where the capitalized S symbolizes the opposition against both the security approach of the regime (contra-security) and Suharto’s power (contra-Suharto). Ten existing NGOs and two student organizations joined to form Kontras (Stanley 2006), launched as a working group rather than an independent NGO. In the early months, it appears, Kontras was largely Munir’s one-man business.<sup>116</sup> This earlier period is crucial in understanding how domestic norm entrepreneurs introduce models.

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<sup>116</sup> Personal communication, January 6, 2012. Though Munir devoted much of his time to Kontras, he maintained his position at the Indonesian Legal Aid Foundation (YLBHI) until 2001.

|                       | Last seen on  | Active in     | Note                                       |
|-----------------------|---------------|---------------|--|
| Yani Afri (Ryan)      | Apr. 26, 1997 | PDI supporter | Suspected with bomb blast in Kelapa Gading |
| Sonny                 | Apr. 26, 1997 | PDI supporter | Suspected with bomb blast in Kelapa Gading |
| Dedi Umar Hamdun      | May 29, 1997  | PPP supporter | Business competition?                      |
| Noval Said Alkatiri   | May 29, 1997  | PPP supporter | Dedi Hamdun's colleague                    |
| Ismail                | May 29, 1997  | None          | Dedi Hamdun's driver                       |
| Suyat                 | Feb. 12, 1998 | PRD/SMID      | Suspected with bomb blast in Tanah Tinggi  |
| Herman Hendrawan      | Mar. 12, 1998 | PRD/SMID      |  |
| Bimo Petrus Anugerah  | Mar. 13, 1998 | PRD/SMID      | Called home on Mar. 28                     |
| Wiji Thukul           | 1998          | PRD           | Called home in Feb.; seen around in Apr.   |
| Ucok Munandar Siahaan | May 14, 1998  | None          |  |
| Hendra Hambali        | May 14, 1998  | None          |  |
| Yadin Muhidin         | May 14, 1998  | None          |  |
| Abdun Naser           | May 14, 1998  | None          |  |

Table 1. The disappeared, 1998 activist kidnapping (source: IKOHI 2010, TPOSP 2006)<sup>117</sup>

<sup>117</sup> Some victims' names appear variably across sources as Yani Afrie/Yanie Afrie (Yani Afri), Sony (Sonny), Deddy Omar Hamdun (Dedi Umar Hamdun), Yidin Muhidin/Yadin Muhyidin (Yadin Muhidin), Abdun Nasser (Abdun Naser), etc. I follow IKOHI (2010), because this source is more consistent than TPOSP (2006).

| Name                       | Date Kidnapped            | Date Released from Kopassus | Active in                     | Notes  |
|----------------------------|---------------------------|-----------------------------|-------------------------------|--|
| Desmon J. Mahesa           | Feb. 3, 1998              | Apr. 3, 1998                | LBH-Nusantara                 |  |
| St.                        | Feb. 12, 1998             | Apr. 1998                   | GMNI (Suyat's friend)         | Place not clear; kidnapped in Solo                   |
| Pius Lustrilanang          | Feb. 14, 1998             | Apr. 2, 1998                | SIAGA                         |  |
| Haryanto Taslam            | Mar. 8, 1998              | Apr. 17, 1998               | PDI                           |  |
| Faisol Reza                | Mar. 12, 1998             | Apr. 25, 1998               | PRD/SMID                      |  |
| Raharja Waluya Jati        | Mar. 12, 1998             | Apr. 26, 1998               | PRD/SMID                      |  |
| Mugiyanto                  | Mar. 13, 1998             | Mar. 15, 1998               | PRD/SMID                      | Transferred to the police; released on June 7, 1998  |
| Aan Rusdianto              | Mar. 13, 1998             | Mar. 15, 1998               | PRD/SMID                      | Transferred to the police; released on June 7, 1998  |
| Nezar Patria               | Mar. 13, 1998             | Mar. 15, 1998               | PRD/SMID                      | Transferred to the police; released on June 7, 1998  |
| Andi Arief                 | Mar. 18, 1998             | Apr. 16, 1998               | PRD/SMID                      | Transferred to the police; released on July 14, 1998 |
| Lucas da Costa             | ?                         | ?                           |                               |  |
| Leonardus 'Gilang' Nugroho | Last seen on May 21, 1998 | Found dead on May 23, 1998  | PRD/union of street musicians | Found in Solo  |

Table 2. Survivors and the dead, 1998 activist kidnapping (source: TPOSP 2006)<sup>118</sup>

<sup>118</sup> Faisol Reza's name appears as Faisol Riza in TPOSP (2006), but the former is more frequently used. Raharja Waluya Jati's name often appears as Rahardjo Waluyo Jati.

The activist kidnapping (*penculikan aktivis*) in 1997–98 consisted of two groups of victims – those who came back alive after brief detention and those who disappeared.<sup>119</sup> The survivors are six PRD student activists and three non-PRD political activists (Table 2). The three non-PRD activists – Pius, Desmond, and Haryanto Taslam – stayed in the Kopassus cells for forty to sixty days before they were released in April 1998. The leftist PRD, People’s Democratic Party, originated from student movement; SMID (Student Solidarity for Democracy in Indonesia) was its student wing, but core PRD activists were university students too. After being scapegoated as the “puppeteer” of the July 27 Affair in 1996, PRD cadres were hunted down by the authorities, and their activities were even more closely monitored after a bomb explosion in Tanah Tinggi, Jakarta, in January 1998. Among the six PRD survivors, three spent two nights at the Kopassus cells and then were handed over to the police. According to Munir, who represented PRD activists as a lawyer, police arrest warrants for the other three – Faisol Reza, Raharja Waluya Jati and Herman Hendrawan – were out too, but these warrants were never used.<sup>120</sup> Five survivors and Herman Hendrawan entered the cells on March 12 and 13. Lastly, the SMID leader Andi Arief, who had been on the wanted list since 1996, was taken near his home in Lampung, South Sumatra, on March 28.

Table 2 shows three more victims other than these nine political activists.

Leonardus ‘Gilang’ Nugroho was a young street musician, who was found dead in Solo

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<sup>119</sup> As seen in Chapter 3, the military tribunal acknowledged only the cases of those who came back, which is called *penculikan*, and Kontras campaigned for missing persons (*orang hilang*) primarily. But these two terms were used interchangeably in the media.

<sup>120</sup> “Koordinator Kontras Munir: Tak akan Mundur apa pun Risikonya,” *Bisnis Indonesia*, July 19, 1998.

late in May.<sup>121</sup> Because he was a member of the street musicians' union of the PRD, his mysterious death usually appears together with the disappeared. He is also listed as a victim in the Komnas-HAM *pro-justicia* team (hereafter TPOSP) report (TPOSP 2006). In contrast, the other two – Lucas da Costa and “St.” – are not usually mentioned as kidnapping victims along with others. The case of “St.” appears on the TPOSP list, but not on the lists published in 1998. He was active in the Solo branch of GMNI, a Sukarnoist student organization, but his detention and interrogation was because of his friendship with Suyat, the disappeared PRD activist and suspect in the Tanah Tinggi bomb explosion. Unlike the nine survivors, who stayed at the Kopassus cells in East Jakarta however briefly, his place of detention is not clear (TPOSP 2006).

The last case of Lucas da Costa is interesting, because he clearly stayed in one of the Cijantung cells with other survivors. In public testimony, one of the survivors describes him as an anonymous “lecturer of higher education in Surabaya who is originally from East Timor.”<sup>122</sup> A foreign journalist lists Lucas da Costa with other activists in a report on Indonesia's ‘disappeared,’<sup>123</sup> but his name almost never appears in Indonesian newspapers, whose lists of the disappeared usually follow those of Kontras.<sup>124</sup> Did Kontras want to “Indonesianize” the *orang hilang* case? The TPOSP report mentions

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<sup>121</sup> Right after mass demonstrations against Suharto in May 21–22, Gilang visited parents' home and said he was leaving for Madiun, a city in East Java, to meet a friend. His body was found on May 23. See IKOHI (2010, 29).

<sup>122</sup> “Rahardjo Waluyo Jati: Saya Ditidurkan di atas Balok Es,” *Kompas*, June 5, 1998.

<sup>123</sup> Allan Nairn, “Indonesia's ‘Disappeared’,” *The Nation*, June 8, 1998.

<sup>124</sup> The Kontras lists appear on, among others, “Keluarga Orang Hilang Tuntut Tanggung Jawab Pemerintah,” *Kompas*, June 23, 1998; “Dan Sesko ABRI Letjen TNI Prabowo Subianto: Kita Mengabdikan Demi Kejayaan Bangsa,” *Bisnis Indonesia*, July 19, 1998; and IKOHI (2010, 5). The earlier lists contain different names, but Lucas da Costa's name is missing in a consistent manner.

his name, but not as a victim of human rights abuses. It acknowledges his suffering in the background section, not in the main section (TPOSP 2006, 17).

The thirteen missing persons have more diverse backgrounds (Table 1). The two cases in 1997 – Yani Afri (Ryan) and Sonny were taken together, as well as Dedi Hamdun, Noval Alkatiri, and Ismail – were revealed after Pius’s public testimony in April 1998. Yani Afri and Sonny were young bus drivers. When they talked to Pius in the cell, Yani Afri said they had been interrogated about a bomb explosion in Kelapa Gading.<sup>125</sup> Survivors reported that these two went out of the cells in March 1998, but they never came back home. Unlike the disappearance of the two bus drivers, Dedi Hamdun’s disappearance, along with his colleague and driver, was covered in the media in 1997, because his wife, a well-known actress, sought her husband’s whereabouts publically.<sup>126</sup> According to Pius, Yani was with Dedi Hamdun in the cells; Andi Arief’s interrogators mentioned Dedi Hamdun’s name too.<sup>127</sup> The link between Dedi Hamdun’s political activities and his disappearance is not clear. He was reportedly a PPP supporter, as Yani Afri was a PDI supporter, but it is difficult to say conclusively that he was kidnapped *because of his partisanship*.<sup>128</sup> The five victims from 1997 are grouped together as victims of *activist* kidnappings because of their former presence in the Kopassus cells.<sup>129</sup> Family members of Dedi Hamdun and Noval Alkatiri were active in the KontraS

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<sup>125</sup> Yani Afri talked to Desmond Mahesa and Faisol Reza too.

<sup>126</sup> “Deddy Hamdun, Suami Eva Arnaz Belum Juga Pulang,” *Kompas*, June 7, 1997; “Nama dan Peristiwa: Eva Arnaz Mengadukan Kasus Hilangnya Suami ke Komnas Ham,” *Kompas*, July 4, 1997.

<sup>127</sup> “Andi Arief: ‘Penculikan itu Karena Takut Koalisi Kaum Oposisi,’” *SiaR*, July 23, 1998. He was told that “you should provide good answers, so that you do not become like Dedi Hamdun (*di-Dedi Hamdun-kan*).”

<sup>128</sup> IKOHI (2010, 17) points out a possibility that his elimination was because of business competition.

<sup>129</sup> TPOSP (2006) does not acknowledge Ismail, Dedi Hamdun’s driver, as a victim, but IKOHI booklet (2010) does.

campaign during the early period; Ibu Tuti Koto, Yani Afri's mother, is a living symbol of Kontras.

Among the remaining eight, four were PRD activists. Suyat, who had been closely monitored by the authorities after the Tanah Tinggi explosion in January, disappeared near his hometown Solo in February. Herman Hendrawan was with Raharja Waluya Jati and Faisol Reza on March 12, 1998.<sup>130</sup> He stayed in the Cijantung cells for a day and a night, talking to Pius, but he never appeared again. Nor was his arrest warrant ever used. The third, Bimo Petrus, called his parents on March 28 with exalted voice but never came back afterwards. As Waluya Jati and Faisol Reza were interrogated about his whereabouts, "it makes sense to conclude that Bimpet [Bimo Petrus] became one of the targets of the kidnapping [operations]" (IKOHI 2010, 20).

The fourth PRD activist who disappeared in 1998 is Wiji Thukul.<sup>131</sup> Wiji Thukul, a revolutionary poet and militant grassroots organizer (IKOHI 2010, 24), headed the artists' organization of the PRD and was active in Solo. He went into hiding after the 1996 crackdown, moving to different cities. He met his wife and a friend for the last time in December 1997. His name was not in the 1998 Kontras list of missing persons – it was only in March 2000 that his wife registered with Kontras and his brother reported Thukul's disappearance to the police. Unconfirmed sightings of Thukul for the past two years made his friends and family members believe that he was still hiding himself somewhere. After 2000, he earned a status as a martyr-hero to the extent that "it is only

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<sup>130</sup> "Rahardjo Waluyo Jati: Saya Ditidurkan di atas Balok Es," *Kompas*, June 5, 1998.

<sup>131</sup> For more on Wiji Thukul, see Curtis (2000); Febriansyah (2010); Abdul Qowi Bastian, "Wiji Thukul and the Search for Justice," *Jakarta Globe*, October 5, 2011.

Munir who can beat his popularity as a symbol of human rights in the activist circle” (Febriansyah 2010, 15). Thukul received the 2002 Yap Thiam Hien award for people who contributed to the advance of human rights, which was given to KontraS in 1998.

As for the four other missing persons, it is hard to identify them as political activists. Ucok M. Siahaan, Hendra Hambali, and Yadin Muhidin went missing during the chaos of the May riots in Jakarta, and they were not involved in political activities before. Muhammad Yusuf, a teacher who went missing in May 1997, was in KontraS lists of 1998, but not in later lists.<sup>132</sup> In 1999, Abdun Naser was added to the list of missing persons. Like the other three, he went missing during the May riots, and had no political background before. Why were these missing persons – they were not the only missing persons in the May riots, during which more than hundreds lost their lives – without political backgrounds put together on the same list with leftist PRD activists?

Before answering this question, let us consider the “founding myth” of KontraS. As of April 2012, KontraS has two different stories about its birth. Both trace the origin of KontraS back to KIPP-HAM in 1996. While the English version has only NGO workers and kidnapped political activists in the story, the Indonesian version explains that “a woman, whose name is Ibu Tuti Koto, suggested a special body for the disappeared.”<sup>133</sup> Interestingly, two newspaper articles in July 1998 explain – based on interviews with Munir – that it was PRD activist Faisol Reza’s mother, Ibu Haji Alawiyah, who first

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<sup>132</sup> Mugiyanto (2009) includes him in the list of victims, explaining that his family reported his case to KontraS on June 8, 1998. The list also includes a person named Triyono, who went missing during the May riots.

<sup>133</sup> “*Pada saat itu seorang ibu yang bernama Ibu Tuti Koto mengusulkan dibentuknya badan khusus tersebut [orang hilang].*” “Profil KontraS” <<http://www.kontras.org/index.php?hal=profile>>. The English version is available at <<http://kontras.org/eng/index.php?hal=profile>> (last accessed on May 23, 2012).



suggested a special body for the disappeared, though one of the two mentions that Ibu Tuti Koto, the bus driver Yani Afri's mother, made the same suggestion.<sup>134</sup> Should this inconsistency be attributed to the carelessness of Kontras staff, or to something else?

The founding myth of Kontras and the list of missing persons may be better illuminated with the following evaluation of Kontras by a fellow Indonesian NGO activist. A.E. Priyono (2004, 498) wrote that "KontraS' successes have put it in the league with Latin American commissions in Argentina, Bolivia, Uruguay, El Salvador and Chile. However, while the Latin American commissions were established by the government... KontraS is unique for having been created by the civil society, namely NGO activists." Why does he characterize an NGO created by NGO activists as something *unique*? Kontras was successful with campaign and advocacy, but why should the success put Kontras in the same league as Latin American commissions?

A part of the answer lies in the fact that Munir viewed his organization in a similar way. As a former Kontras worker says:

I, at Kontras, and Munir were very much inspired by CONADEP [National Commission on the Disappearance of Persons], thus Munir even launched the truth commission (*komisi kebenaran*), eh, this commission for the disappeared (*komisi orang hilang*). Actually, the names are similar. From the beginning Munir used to say, "Our power (*kekuatan*) lies in victims. Can we push for the power of victims as in Latin America, in Argentina, the Mothers of Plaza de Mayo – or not?"<sup>135</sup>

Munir, inspired by the struggles for human rights in Argentina, wanted to follow the Argentine model with his new organization. In a creative way, he extracted the two

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<sup>134</sup> "Ihwal Pembentukan Kontras," *Detik*, July 14–20, 1998; "Munir SH, Koordinator Pokja Kontras: 'Tidur pun Saya Pernah Mimpi Diculik Orang'," *Suara Merdeka*, July 17, 1998. *Detik* mentions ibu Tuti Koto, but not KIPP-HAM.

<sup>135</sup> Author's interview, January 6, 2011.

most famous, but very different, elements from the Argentine model and melded them into one. The CONADEP is an official truth commission of post-transition Argentina, and Mothers of the Plaza de Mayo is a voluntary association of families of the disappeared who struggled to find the whereabouts of their children. It seems that the idea was to make Kontras into CONADEP and the Mothers of Plaza de Mayo at the same time.

The four-or-so non-activist missing persons are on the Kontras list because their family members reported the disappearances to Kontras – Kontras as CONADEP – rather than to other NGOs.<sup>136</sup> Kontras put newspaper ads to recruit family members whose loved ones were missing. A father, whose son has been missing since the May riots, remembers when he visited Kontras for the first time – he could not contact his son since May 14, 1998, and reported the disappearance to the police and the army, but got no useful response. As soon as he read the Kontras ad in a newspaper, he visited the Kontras office to register his son on the list.<sup>137</sup> He met family members of other missing persons – the family members could be wives, mothers, fathers, etc., though male ones would not become symbols, according to the model – through Kontras and has participated in various activities since then.

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<sup>136</sup> As mentioned in Chapter 3, the May riots data primarily came from another group, TRK (Tim Relawan Kemanusiaan; Volunteers for Humanity), who also assisted victims' groups. Not all victims' groups were organized by NGOs, however. On the Tanjung Priok victims, Fadjar (2010) argues that "NGO activists claim that the idea of organising the victims came directly from the Tanjung Priok people, a claim I found rather hard to accept." But I do not find it very hard to accept. Political prisoners of the Tanjung Priok case had a preexisting network going back to 1984 or before. Author's interview, October 22, 2010. A victim-activist who did not have a preexisting connection with this "alumni" group recalls that she visited the September 12 Foundation (Yayasan 12 September), headed by Amir Biki's wife, after reading a newspaper ad in 1998. Author's interview, August 11, 2010. Family members of Amir Biki, the protest leader on the fatal night of September 12, 1984, have played a central role in the victim group.

<sup>137</sup> Author's interview, October 20, 2010.

These family members were recruited for the human rights campaign, by the Kontras strategy of turning an Indonesian CONADEP to an Indonesian Mothers of Plaza de Mayo. It is true that nine survivors, especially Pius, contributed to the campaign significantly by offering public testimony on their experiences courageously. However, they were political activists, and thus were very busy with their own political activities in the crucial period of transition. It was the family members of the disappeared, with or without political backgrounds, who carried pictures of their loved ones to the street, government agencies, and international bodies to dramatically accuse the government of human rights abuses and demand to know the whereabouts of the missing persons – Kontras as the Mothers of the Plaza de Mayo. Then it is no wonder that those at Kontras wanted to attribute the birth of their organization to one of the “mothers.” As Faisol Reza was released from the cells early in 1998, the proper symbol should be Ibu Tuti Koto, rather than Faisol Reza’s mother.

Why did Munir find inspiration from the Argentine model, instead of, say, the South African one? The answer to this question may be found in his personal background. Born in 1965 into an Arab-Indonesian family in Malang, East Java, Munir was active in HMI (Himpunan Mahasiswa Islam; Islamic Students’ Association) during his university days.<sup>138</sup> Upon graduation in 1985, he began his career as a human rights lawyer at the LBH branch of Malang and then moved to Surabaya. For the next ten years, he built his career as a labor rights advocate, organizing workers and representing them in court.<sup>139</sup> A

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<sup>138</sup> I thank Jeon Je Seong who provided a large part of information on Munir’s personal background to me.

<sup>139</sup> See Ford (2009) for the role played by NGO activists in the labor movement. On Munir, Ford (2009, 104) explains that “LBH Surabaya’s labour division was soon established by the Malang branch under Munir, who was to become one of Indonesia’s best-known labour activists. LBH Surabaya first began to

close family member says that he felt like “cut from the roots” when he moved to Jakarta in 1995 to work at the LBH foundation (YLBHI), and found his roots again organizing the family members of the disappeared at Kontras.<sup>140</sup> A colleague at Kontras recalls that Munir believed in the power of the masses to change the political structure, and thought that it was necessary to organize and mobilize victims for that purpose.<sup>141</sup>

In other words, Munir organized victims of violence just as he had organized workers before – as agents of struggle for human rights and, further, of structural transformation of politics. When asked about Munir, a victim of Tanjung Priok shootings in 1984 affirms that Munir was a hero for victims. After Munir approached the Tanjung Priok group, she went to the Kontras office every day to read books and learn about laws and rights. Munir always encouraged victims and families, saying that “victims have power, victims are valuable (*korban punya kekuatan, punya nilai*)” and “there is no need to be afraid.”<sup>142</sup> Again, it becomes clear that Munir saw victims as agents of struggle, rather than those who need healing.<sup>143</sup> The spirit of struggling Argentine mothers seems to have impressed Munir, who had been interested in people’s movements throughout his career.

To be sure, Kontras and the family members of the disappeared did not mark the first instance that family members of victims stood up for rights in Indonesia. After the

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organise worker groups in 1989-90 and then played a key role in the campaign that followed the murder of worker-activist Marsinah... Under the leadership of Munir, its labour division undertook advocacy, litigation and case documentation in addition to grassroots organising. With the help of his offsider, Poengky Indarti, Munir brought LBH Surabaya to the forefront of the alternative labour movement’s struggle against the New Order in the mid-1990s.”

<sup>140</sup> Author’s interview, July 24, 2010.

<sup>141</sup> Author’s interview, January 6, 2011.

<sup>142</sup> Author’s interview, August 11, 2010.

<sup>143</sup> It does not mean healing and empowerment cannot go together. They are in fact IKOHI (Indonesian Association of Families of the Disappeared)’s two major areas of activities.

1996 crackdown, mothers of PRD activists often protested at state agencies for their children.<sup>144</sup> Also, families of political prisoners from various backgrounds demanded the release of prisoners in the early *reformasi* period. The loose and largely spontaneous association of political prisoners' families was, however, soon to be disbanded with the release of all political prisoners by the Habibie administration, leaving different "alumni" organizations of various "cases," e.g. the 1965 communist purge and the Tanjung Priok affair, behind. In contrast, the families of *orang hilang* were, for the first time, self-consciously organized upon an "international" model.

In the case of the Argentine model, the mode of diffusion was piracy. There is no evidence showing that the Argentine Mothers – or Western activists in the transnational advocacy networks, for that matter – actively propagated any elements of the model, whether the legal norms against the enforced disappearance or the organizational innovation of associations of victims' families, to their Indonesian counterparts. Indonesian activists imported the model through indirect means. When asked where the knowledge of the Latin American model came from, Munir's former colleague at KontraS answered without hesitation: reading books. Specifically, activists in the LBH circle used to read the series of *Transitions from Authoritarian Rule*, translated into *Transisi Menuju Demokrasi* (transitions towards democracy) in Indonesian; "certainly all human rights activists of that era read the book," he said.<sup>145</sup> Indonesian activists took lessons from the transitology and other works through a reflexive process (Whitehead 1998) to empower themselves.

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<sup>144</sup> Personal communication, September 29, 2010.

<sup>145</sup> Author's interview, January 6, 2011.

Rather than recruited by transnational networks, Kontras sought out international allies after they adopted the norm against enforced disappearances. Kontras invoked the threats of international pressure quite often, though it is not clear whether the activists seriously anticipated that the international options would help them resolve the problem of *orang hilang*. At the very least, the new international connections boosted the domestic campaign. Kontras reported the disappearance of activists to the WGEID, and then was invited to Geneva in return. In September 1998, the family members of the fourteen disappeared organized themselves into an association called IKOHI (Ikatan Keluarga Orang Hilang Indonesia; Indonesian Association of Families of The Disappeared), a parallel with victims' groups in Argentina and other countries, before making a trip to Geneva.

Also, the NGO joined a new regional network called AFAD (Asian Federation against Involuntary Disappearances), although some activists were more excited about the possibility of inviting representatives from Argentina and Bolivia through the AFAD network than about sharing experiences with Asian neighbors.<sup>146</sup> Victims and families continued to offer public testimonies abroad; Ibu Tuti Koto visited Australia in 1999 for a campaign tour, and Raharjo Waluya Jati went to Hong Kong in the same year (IKOHI and Wilson 2006, 14). With the pre-existing category of enforced disappearances, they could interpret their own experiences as one of the parallel practices of human rights abuses perpetrated in many countries around the world.

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<sup>146</sup> Author's interview, January 6, 2011.

After the early years, however, the international campaign seems to have become a part of everyday activities, rather than new opportunities. The WGEID annual reports show that only a few cases from Aceh and West Timor were brought to the body between 1999 and 2004. Only in 2005, when Kontras activists lost confidence with settling the past human rights abuses through domestic mechanisms, did they begin to send “new” cases from the past: the 2001 killing of a Papuan leader Theys Eluay, where his driver disappeared (WGEID 2005); Bachtiar Johan, who disappeared during the Tanjung Priok affair in 1984 (WGEID 2005); eight Jakarta residents whose bodies were not found after the May 1998 riots (WGEID 2005); five persons whose whereabouts were not confirmed after their arrests during the 1965–66 purge (WGEID 2009a; 2009b). For Indonesian activists, the international body was there only as a weak, complementary option, though they would never reveal that to the Indonesian media.

From mid-1998, Kontras established itself as a leading human rights organization concerning a broad range of violence and human rights issues throughout the country, beyond the original *orang hilang* case. With the launch of Kontras Aceh in June 1998, Kontras began to take up the Aceh campaign, accusing the government of responsibility for the killings, displacement, and disappearances taking place in the region. Kontras also represented the Tanjung Priok victims as legal counsel after the case was sent to the prosecutor’s office by the Komnas-HAM inquiry team. Its newsletters illuminated the ongoing violence in Poso, Maluku, and Papua, as well as police brutality against protesters in various corners of the country.

It seems that Kontras did not have the identity of a *transitional justice* advocacy organization in the early period. It was born out of urgency over the fate of kidnapped activists, and the focus has consistently been on urgent cases of ongoing violence. As time passes, however, recent violence of a few years ago became human rights abuses of the past; at the same time, Kontras paid due attention to a new judicial platform for recent abuses and for outstanding cases of the past, such as the Tanjung Priok affair (1984) and the military operation in Talangsari (1989). In doing so, they also broadened the scope of *orang hilang*, reinterpreting the 1965 communist purge and the 1998 May riots as a part of enforced disappearance.<sup>147</sup> The WGEID reports are good examples of broadened application; a Komnas-HAM team by a former Kontras member M.M. Billah (Tim Pengkajian Penghilangan Orang Secara Paksa 2004) is another example of applying the concept of enforced disappearances to a wide range of past human rights abuses, though only the 1997-98 activist part proceeded to the next stage of *pro-justicia* inquiry.<sup>148</sup>

The inspiration from Argentina continues to be detected in the later course of the 1997-98 *orang hilang* case. For example, Kontras hesitated to discuss the possibility of the deaths of the disappeared,<sup>149</sup> in a way reminding us of Argentine mothers' refusal to

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<sup>147</sup> Those outside Kontras also enthusiastically applied the buzzword *orang hilang* to a broad range of past human rights abuses under the New Order. See LBH Ampera-Bogor and ISAI (1999), for example.

<sup>148</sup> The report covers "PKI (Partai Komunis Indonesia)" case (1965–66), "Petrus," Tanjung Priok-Talangsari, Aceh and Papua, the July 27 affair, "*tim mawar*" (activist kidnapping) and the May riots. For a recent English text with this broader approach, see Mugiyanto (2009).

<sup>149</sup> In contrast, fellow activists like Pius and Andi Arief never hesitated to mention such a possibility. "Pius Yakin Enam Aktivis Sudah Meninggal," *Berita Buana*, September 11, 1998; "Andi Believes Fellow Activists Already Dead," *Jakarta Post*, February 21, 2000. In fact, it was reported that Munir also believed that the kidnapped activists were already dead, but Munir denied it after a few days, saying Kontras would never regard the victims as dead as long as official sources did not reveal their fates. "14 Aktivis yang Diculik Telah Meninggal," *Berita Buana*, August 18, 1998; "Kontras Yakin Korban Penculikan Masih Hidup," *Kompas*, August 19, 1998. In a 2005 meeting with the TPOSP, Wiranto made a remark that "they are not there anymore." When IKOHI announced it in a press conference, Kontras opposed the plan.



accept the possibility of their children's deaths (Nino 1996). Most recently, in November 2011, as a consequence of the Kontras and IKOHI campaign, Komnas-HAM granted certificates of status to victims of abduction and enforced disappearances to the family members of the 1997–98 missing persons<sup>150</sup> – again, an idea originated from the 1994 Argentine law granting certificates of forced disappearance to families (Hayner 2011).

In 2009, two members of the Mothers of the Plaza de Mayo-Founding Line visited the Indonesian *kamisan*, a new weekly tradition launched by Munir's widow Suciwati with victims of other human rights cases, after, in 2004, Munir was murdered in an airplane on his way to the Netherlands.<sup>151</sup> Just as Argentine Mothers march around the Plaza de Mayo every Thursday afternoon, Suciwati and her allies silently hold black umbrellas every Thursday afternoon in front of the Indonesian Presidential Palace, demanding that the government settle the past human rights cases in Indonesia.<sup>152</sup>

In sum, Munir and Kontras took up the Argentine model creatively to boost their domestic campaign. Sikkink (2011) also puts an emphasis on the importance of the Argentine model for transitional justice. For her, however, the Argentine model is largely about prosecutions for individual criminal accountability, as opposed to models of impunity (immunity) and state responsibility. The individual criminal accountability is

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Author's interview, October 6, 2010.

<sup>150</sup> "A Statement from The Commission for the Disappeared and Victims of Violence (KontraS) and The Indonesian Association of Families of the Disappeared (IKOHI) forwarded by the Asian Human Rights Commission," November 4, 2011 <[http://www.afad-online.org/issues/kontras\\_nov2011.htm](http://www.afad-online.org/issues/kontras_nov2011.htm)>.

<sup>151</sup> "Sosok: Aurora dan Taty, Berbagi Harapan," *Kompas*, April 27, 2009. Pollycarpus Priyanto, a former Garuda Indonesia pilot, was convicted for poisoning Munir. It was suspected that Muchdi PR, whose career was damaged by the 1998 military honor council decision, had ordered the murder, but he was acquitted. For more information, visit the website of Kasum, a solidarity committee for Munir, at <<http://sahabatmunir.com/>>.

<sup>152</sup> Suciwati got inspiration for *kamisan* from the Mothers when she met them in a 2005 New York event awarding her after Munir's murder. This time, diffusion came from a transnational network. Author's interview, July 24, 2010.

indeed an important element of the Argentine model, but the Argentine model as Kontras and I see it is much broader than individual criminal prosecution. In addition to the CONADEP and the norm against enforced disappearance, it also contains the repertoire of collective action (Tarrow 1998), i.e. the way the human rights movement is organized. The symbolic power of the Argentine Mothers inspired activists like Munir in many corners of the world, even without direct transnational linkages. Indonesian activists pirated norms and organizations from the Argentine model and then reached out to international allies.

The success of Kontras in grabbing public attention, however, did not mean that satisfactory answers were offered to the families of the disappeared. As shown in the previous chapter, the existing military court repeated the previous pattern of convicting field soldiers with light sentences.

### **4-3. The Indonesian Human Rights Court and the International Criminal Court Model**

#### *4-3-1. Law on Human Rights and the Human Rights Court Provision (February – September 1999)*

When the *tim mawar* trial was heading to the end, the human rights court option was emerging as an alternative for the military court option. A brief human rights court provision appeared in the draft law on human rights for the first time, although details of the proposed court were not elaborated. The parliamentary debates over the bill began in February 1999 and ended in early September, and most of the substantive debates

occurred between April and August 1999 (Sekjen DPR-RI 2001a). As its original name – *Rancangan Undang-undang tentang Hak Asasi Manusia dan Komisi Nasional Hak Asasi Manusia* – shows, the major goal of the bill was building the legal base of the Komnas-HAM, which had been formed by a presidential decree, rather than a law, as well as codifying major elements of human rights into the Indonesian legal system.

When the parliamentary debates began, two sets of military trials for *tim mawar* and the Gedung KNPI torture center in Aceh had just finished, failing to secure popular support. The Habibie administration was acutely aware of the need of some new judicial platform for human rights abuses. Muladi's basic idea of a human rights court was that it would be an ad-hoc court – not a permanent court – dealing with gross human rights violations such as torture and kidnapping, but it was a vague idea without details.<sup>153</sup> Nor was it clear whether the Habibie administration, having rejected the TRC idea, actually intended to form the new institution of a human rights court or believed it would not hurt to have some future-oriented mechanism on paper.

The law does not seem to have been specifically aimed at countering international pressure on the human rights problem in East Timor in the beginning; President Habibie sent the draft law to the DPR well before major attacks against “pro-independence forces” in East Timor began. The goal of improving Indonesia's international image is

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<sup>153</sup> Government (*pemerintah*, in this case Muladi), Rapat Panitia Kerja, July 27, 1999 (Sekjen DPR-RI 2001b, 727–28). The human rights court was proposed as one of the follow-up measures to the Komnas-HAM investigation (*pemeriksaan*). In Article 125-1-b of the original draft, it was mentioned that Komnas-HAM can “give recommendations so that the relevant case is handled in the human rights tribunal, which will be formed by a law (*memberikan rekomendasi agar kasus yang bersangkutan diadili oleh Pengadilan Hak Asasi Manusia, yang akan dibentuk dengan Undang-undang*).” The explanation on this specific clause was not attached (“*cukup jelas*”).

mentioned several times during the discussion.<sup>154</sup> However, political party caucuses – or “factions,” including the ABRI – and the Ministry of Justice did not limit the discussion to human rights abuses in East Timor. Announcing the official opinion (*pemandangan fraksi*) on the original bill, PPP mentioned the Tanjung Priok killings (1984) and the Talangsari killings (1989), as well as DOM in Aceh, East Timor, and Irian Jaya; PDI mentioned Marsinah, Udin,<sup>155</sup> land disputes, and kidnappings.

The draft law, prepared by Muladi’s Ministry of Justice, was one of the political reform packages, along with new laws regulating elections and party politics.<sup>156</sup>

Seemingly, the composition of the DPR, elected under the New Order, was not greatly beneficial to such an idea. Out of 499 members of the DPR, 75 were from ABRI, and 323 were members of Golkar; PPP had 89 seats, and PDI had only 10, because of the election boycott by the Megawati group. Out of thirty-five regular members of the special committee for discussion of this bill, only eight (seven PPP and one PDI) came from the opposition. Some political observers worried that these “old elements” might protect the interests of the New Order regime, arguing that the debate should be delayed until new blood enters the DPR.<sup>157</sup>

However, the ministry successfully sought support from all parliamentary factions except the ABRI, which consistently opposed the human rights court provision. The

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<sup>154</sup> For example, Masyhur Effendi from Golkar argued that this human rights court would have the international impact of enhancing the image of Indonesia. Rapat Panitia Kerja, July 27, 1999 (Sekjen DPR RI 2001b,766).

<sup>155</sup> Udin, a journalist at Yogyakarta daily *Bernas*, is another martyr-hero of the late Suharto period. He was murdered in 1996 after publishing a series of reports on corruption of local authorities.

<sup>156</sup> “DPR serta Pemerintah Perlu Prioritaskan Pembahasan UU,” *Kompas*, April 12, 1999.

<sup>157</sup> “RUU HAM dan Komnas HAM: Jangan Hapuskan Pelanggaran HAM Orba,” *Kompas*, June 28, 1999. This commentator was Hamid Awaludin, who would become the Minister of Justice in the Yudhoyono administration and the head of the Indonesian delegation team for the Helsinki peace talks.

technical ground of the ABRI opposition was that it would not be appropriate to insert a provision based on a hypothetical state institution into the law; after the possibility of making another law about the human rights court was raised, however, an ABRI parliamentarian argued rather frankly that “transitional problems will perhaps last five years or so,” and a law might not be necessary for such problems.<sup>158</sup> Golkar, the ruling party, mostly agreed with the plan of the Habibie administration.

Human rights NGOs influenced the parliamentary debates inside and outside the DPR. They delivered their opinions to the opposition party PPP, but their pressure in the public sphere was more critical. The NGO pressure focused on the proposed five-year limit to the authority of the Komnas-HAM to make inquiries into past human rights abuses, though the plenary session of the Komnas-HAM would be able to make exceptions. The NGOs strongly opposed the limit, arguing that such a limit would bury the past human rights abuses under the New Order regime.<sup>159</sup> The Ministry of Justice argued that rules and practices of national human rights commissions in other countries also had similar limits, and ABRI parliamentarians supported a stronger limit of eliminating the authority of the plenary session to decide on exceptions. It is worth noting that a PPP parliamentarian admitted that their view against the five-year limit was not originally their opinion – they were just delivering inputs from KontraS and other

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<sup>158</sup> Hendi Tjaswadi, ABRI, Rapat Panitia Kerja, July 27, 1999 (Sekjen DPR-RI 2001b, 770–71).

<sup>159</sup> See “Pelanggaran HAM Masa Lalu Harus Diatur dalam UU HAM,” *Kompas*, June 21, 1999; “Rancangan Undang-undang HAM: Melindungi Rezim Orde Baru,” *Kompas*, June 25, 1999; “RUU HAM dan Komnas HAM: Jangan Hapuskan Pelanggaran HAM Orba,” *Kompas*, June 28, 1999.

NGOs.<sup>160</sup> Although such an opposition was far from the majority opinion, the committee finally decided to get rid of the five-year limit.

In sum, the human rights court was already a hot issue in the parliamentary debate on the Law on Human Rights. The initiative came from the government, rather than NGOs, though the view of NGOs could not be easily disregarded when it ignited the sensitive question of human rights abuses under the New Order. The debate proceeded largely without direct foreign pressure, though the parliamentarians understood that the human rights court was relevant to foreign affairs. In the face of the ABRI's recalcitrance, the ministry assured that there would be no need to hurry with the new court.<sup>161</sup> The law merely stipulates that the court would be formed within four years. When the parliamentary debates ended in early September, however, the situation in East Timor made the human rights court an imperative for the government.

#### *4-3-2. East Timor and the Human Rights Court Option (September 1999 – February 2000)*

With the overwhelming support for independence of East Timorese people announced on September 4, 1999, militia violence swept the territory. On September 13, UN High Commissioner for Human Rights Mary Robinson met President Habibie in Jakarta, urging accountability for military personnel and cooperation with an international inquiry team. On September 20, the UN Commission of Human Rights (UNCHR) decided to hold a special session on East Timor; on the same day,

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<sup>160</sup> H. Ghazali Abbas Adan, PPP, Rapat Panitia Kerja, July 20, 1999 (Sekjen DPR-RI 2001b, 303).

<sup>161</sup> Government (Muladi), Rapat Panitia Kerja, July 27, 1999 (Sekjen DPR-RI 2001b, 749).

multinational forces arrived in East Timor. Three days later, Habibie issued a presidential instruction for a national inquiry team. On October 8, President Habibie issued Perpu (Government Regulation in Lieu of Law) No. 1 on the Human Rights Court.

International pressure for accountability was strong during the period between the East Timor referendum and the announcement of KPP-HAM findings on January 31, 2000. It was clearly stated that the formation of KPP-HAM was related to the UNCHR special session, which issued a resolution demanding Indonesian accountability for human rights violations (KPP-HAM 2000, 13–14; Cohen, Nababan and Lipscomb 2007, 12). Based on interviews with KPP-HAM members, Mizuno (2003) showed that they felt direct pressure from overseas, especially from the parallel investigation by the UNHCR team, International Commission of Inquiry on East Timor (ICIET). TNI did not obstruct KPP-HAM activities, out of concern for the prospect of an international tribunal in case the KPP-HAM results would not satisfy the international audience (Mizuno 2003, 136).

Among Indonesian inquiry teams from the Santa Cruz KPN to post-*reformasi* ad-hoc teams, KPP-HAM for East Timor had perhaps the strongest capacity and will for collecting and analyzing evidence. Prominent civil society figures like Munir participated in the team too.<sup>162</sup> The Expert Advisory Report for the Commission for Truth and Friendship (CTF) concludes that the KPP-HAM report effectively indicated the massiveness of violations, the occurrence of attacks against a civilian population, and military involvement “in the recruitment, training, organizing, and operational direction of the militias” (Cohen, Nababan and Lipscomb 2007, 28). By closely examining more

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<sup>162</sup> In contrast, the inquiry team for Tanjung Priok (KP3T) consisted exclusively of Komnas-HAM members.

than thirteen cases of violence between January and September 1999, the KPP-HAM report contains evidence for a total of 394 fatalities, indicates institutional responsibility of the Indonesian government, and puts the events of 1999 in the context of crimes by, for example, pointing out pre-existing patterns of cooperation between the militia and the Indonesian military (Cohen, Nababan and Lipscomb 2007, 48–49). The report also named individuals who were deemed to have perpetrated crimes against humanity and those who must be investigated further, implicating high-ranking military men like Major General Zacky Anwar Ibrahim and General Wiranto (KPP-HAM 2000, 43–45), then the coordinating minister of politics and security under President Abdurrahman Wahid, who succeeded Habibie in late October.

In contrast, Habibie's *perpu* for the human rights court was generally not welcomed and was officially rejected by newly elected parliamentarians in March 2000.<sup>163</sup> The most apparent problem of the *perpu* was that it lacked retroactivity. Thus, it could not be used as a legal basis for the militia violence in East Timor, most of which occurred before October 8, 1999. Moreover, various groups and bodies criticized the *perpu* for different reasons. Komnas-HAM commissioners complained that the *perpu* gave the authority of investigation (*penyidikan*) and prosecution (*penuntutan*) to the prosecutor's office, rather than to Komnas-HAM, as they wished. Criticisms were also directed against too-obvious foreign influence.<sup>164</sup> The DPR did not even begin discussion on the *perpu* until February 2000.

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<sup>163</sup> To be effective, a *perpu* needs to be approved by the parliament.

<sup>164</sup> See Mizuno (2003) and "Terbitnya Perpu No 1/1999: Pelecehan Terhadap DPR," *Kompas*, October 14, 1999.



The problem of the judicial platform for the East Timor referendum violence did not stop at the 1999 case. Many Indonesians were reluctant to openly admit that the proposed human rights court was about international pressure for East Timor. Moreover, as long as the Law on Human Rights (No. 39/1999) had the human rights court provision, the new institution could not stand separately from the existing domestic law. Some Indonesian human rights activists also supported the idea of a comprehensive national court to deal with gross human rights violations in East Timor and elsewhere. An international court for East Timor would deal with East Timor referendum violence only, while the possibility that the international community would lend support for further prosecutions in the cases of Tanjung Priok killing, Talangsari killing, or the massacres of 1965–66 was very low.<sup>165</sup>

It is not clear whether the Habibie and Wahid administrations actually intended to set up a human rights court for East Timor or planned to keep the option only until the international attention faded away. Interestingly, although new Minister of Justice Yusril Ihza Mahendra decided to replace Habibie's *perpu* with a new draft law because of the absence of retroactivity in the *perpu*, the draft, written in November 1999, also lacked a retroactivity clause – it stipulated that all past human rights abuses would be sent to a TRC. It seems that the retroactivity debate was revived only when Netherlands Minister of Foreign Affairs Jozias van Aarsten raised the issue, questioning the prospect of

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<sup>165</sup> Author's interview, April 8, 2010 (in English).

following up the KPP-HAM report in the absence of a retroactivity clause in the draft law.<sup>166</sup>

In contrast, Munir and Kontras consistently supported a comprehensive human rights court, which would deal not only with East Timor but also other cases, specifically human rights abuses in Aceh. Although it was still murky what an actual human rights court would be like, the basic ideas of the model as suggested by major advocates, such as Kontras, were more or less consistent. Having emerged as a response to troublesome dualism between the military court and the public court, the idea of the human rights court system was not simply to deprive the military court of the authority on human rights abuses and to give it to the public court (Munir 2000, 112). Rather, it was to put a sort of imported international criminal justice system on top of the existing judicial system. It was believed that the notion of command responsibility and crimes of omission could increase possibilities of punishing high-ranking generals and decision-makers; elements outside the existing judiciary – “ad-hoc” members – could participate in various stages from preliminary inquiry to ruling so that the court performance would be improved.

The final draft of the law on the human rights court did not have a limitation for retroactive application, largely out of NGO efforts. Even after the Netherlands foreign minister’s protest, many felt that no limitation on retroactivity was too much. A parliamentarian proposed to set the limit to the year Komnas-HAM was formed;<sup>167</sup> Muladi, the former minister of justice who inserted the human rights court provision to

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<sup>166</sup> “Draf RUU Pengadilan HAM Dipertanyakan,” *Kompas*, January 21, 2000.

<sup>167</sup> “Agar Bisa Diperbaiki: DPR Harus Menolak Perpu No 1/1999,” *Kompas*, January 28, 2000.

the law on human rights, suggested January 1999.<sup>168</sup> Asmara Nababan of Komnas-HAM said the limit for retroactivity was open for negotiation, adding Komnas-HAM supported fifteen years.<sup>169</sup> Yusril disapproved the absence of a limit too;<sup>170</sup> the next day, however, Munir, in the capacity of a drafting team member, announced that there would be no limit for retroactivity in the bill.

In sum, the direct pressure from overseas was the major contributing factor to the human rights court bill and the retroactivity clause, but NGO participation in the debate decided the final form of the bill. The pressure from the UN and member countries focused on the accountability for East Timor referendum violence. Thus, setting a limit for retroactivity as suggested by Komnas-HAM or Muladi would have been sufficient to assuage international pressure. Eliminating an arbitrary limit for retroactivity was important for opening the venue for other cases of past human rights abuses, which mattered for Indonesians but received less international attention. The NGO activists successfully used the opportunity of international pressure to make a comprehensive judicial platform for past abuses.

*4-3-3. The Law on the Human Rights Court: The Parliamentary Debate (June – November 2000)*

The legislation of the human rights court law is an interesting case of codifying principles of international law without ratification. The parliamentarians were aware that

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<sup>168</sup> “Pengadilan HAM Baru akan Dibentuk setelah Ada UU,” *Kompas*, February 3, 2000.

<sup>169</sup> “Draf RUU Pengadilan HAM Dipertanyakan,” *Kompas*, January 21, 2000. It seems that Komnas-HAM considered the Tanjung Priok killing of 1984.

<sup>170</sup> “Pengadilan HAM Baru akan Dibentuk setelah Ada UU,” *Kompas*, February 3, 2000.

there were very few comparable domestic human rights courts for gross human rights violations in the world, but they accepted the establishment of the court to avoid the worse alternative of an international court. If the bill that entered the DPR “quietly” adopted the principles of the international law,<sup>171</sup> the final law explicitly imitated the Rome Statute for the ICC.

The discussion of the bill began in June 2000, two months after the Office of the President sent it to the DPR. Four civil society groups – Kontras, Elsam, Carmel Budiardjo from the British NGO Tapol, and experts from University of Indonesia (UI) – were officially invited to a “public hearing meeting” (*Rapat Dengar Pendapat Umum*, RDPU) session on July 12, 2000. Again, strong protest from Kontras to inserting a limit for retroactivity seems to have influenced the DPR, because TNI-Polri and Golkar had opposed the unlimited retroactivity before.<sup>172</sup> However, a few other proposals from Kontras, such as giving the authority to form ad-hoc courts to the Supreme Court – rather than the DPR and the president – and widening the jurisdiction of the court to non-gross violations,<sup>173</sup> were not accepted.

Other groups suggested that the definition of gross human rights violations must follow internationally accepted definitions more closely. Elsam criticized the definition

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<sup>171</sup> The government (Rapat Kerja, July 13, 2000, Sekjen DPR-RI 2009a, 276) explains that the law is about adopting internationally acknowledged provisions in a quiet manner: “*ini kita mengadopsi beberapa ketentuan-ketentuan yang secara internasional telah diakui, katakanlah di dalam KUHP kita tidak dikenal genocide misalnya. Tetapi itu dalam Statuta Roma pembentukan Tribunal Rwanda, bekas Yugoslavia yang secara diam-diam kita adopsi dalam draft RUU tentang Pengadilan HAM ini.*”

<sup>172</sup> “Pemandangan Umum Fraksi TNI/Polri atas Rancangan Undang-undang tentang Pengadilan Hak Asasi Manusia” (Sekjen DPR-RI 2009a, 105); “Pemandangan Umum Fraksi Partai Golongan Karya DPR-RI terhadap Rancangan Undang-undang Republik Indonesia tentang Pengadilan Hak Asasi Manusia” (Sekjen DPR-RI 2009a, 152). TNI-Polri is a new name of the ABRI faction after separation of the military and the police. Alternatively, Mizuno (2003) believes that the constitutional guarantee against retroactivity, introduced several months before the enactment of the human rights court law, assured skeptics.

<sup>173</sup> For Kontras’s opinion, see RDPU, July 12, 2000 (Sekjen DPR-RI 2009a, 169–76).

of genocide in the bill, because it was not exactly the same with the understanding of the international community – that is, the bill stipulated genocide as destruction of groups having a certain skin color (*warna kulit*), gender, age, and disabilities, in addition to the ethnic, racial (*ras*), religious, and national groups as in the Genocide Convention. Elsam proposed to erase the additional criteria for the sake of avoiding retroactive legislation.<sup>174</sup> Also, Elsam argued that the inclusion of discrimination in the category of gross violations would complicate the judicial process. Carmel Budiardjo suggested comparison between the bill and the ICC Rome Statute.<sup>175</sup>

The team from the UI Faculty of Law made a specific proposal that gross violations must have “widespread or systematic” (*meluas atau sistematis*) elements as in the ICTR definition. The initial bill had defined gross violations as a set of individual violations such as genocide, extrajudicial or arbitrary killings, enforced disappearances, torture, etc.<sup>176</sup> As the ICC Rome Statute also defines gross violations as widespread or systematic ones, parliamentarians would have discovered the crucial difference soon through suggested comparison, but it was the UI experts who proposed this specific revision for the first time. In the internal session the following day, the TNI/Polri faction enthusiastically supported adding the words “systematically performed” (*yang dilakukan secara sistematis*) to the bill,<sup>177</sup> and the government representative immediately agreed.<sup>178</sup>

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<sup>174</sup> Elsam, RDPU, July 12, 2000 (Sekjen DPR-RI 2009a, 177–81). The exceptional retroactivity – i.e. retrospectivity – for gross violations is justified from the presence of the international law, for example the Genocide Convention, at that time. On the other hand, Elsam also argued that it would not be necessary to limit the mandates of the new court to gross human rights violations.

<sup>175</sup> RDPU, July 12, 2000 (Sekjen DPR-RI 2009a, 183).

<sup>176</sup> RDPU, July 12, 2000 (Sekjen DPR-RI 2009a, 186).

<sup>177</sup> Rapat Kerja, July 13, 2000 (Sekjen DPR-RI 2009a, 286).

<sup>178</sup> Rapat Kerja, July 13, 2000 (Sekjen DPR-RI 2009a, 298).

Discussing international pressure seems to have been deliberately avoided during earlier months. However, after three UN humanitarian workers were murdered by the Timorese militia in Atambua, West Timor, the justice and human rights minister frankly acknowledged the international context in which the bill was being discussed. He explained that the UN resolution against the Atambua killings affirmed that gross human rights violations and violations of international law had been perpetrated there and that a judicial process for this case, with UN involvement, might be immediately launched. The ministry of foreign affairs had successfully lobbied UN member countries to block an international tribunal for East Timor, and UN High Commissioner Mary Robinson finally agreed on giving Indonesia a chance to handle the East Timor case in a domestic court – however, this Atambua resolution can bring up the plan for an international tribunal again.<sup>179</sup>

After this session, the strategy of “referring to” the Rome Statute of the ICC was reiterated, and the committee focused on translating the Rome Statute of the ICC correctly. A parliamentarian made an objection to the inclusion of apartheid in the bill, arguing the clause must be somehow adapted to the Indonesian context; however, his objection was not accepted.<sup>180</sup> The strategy of translating the Rome Statute directly for the definition of gross human rights violation was well-conceived. International commentators focused primarily on the existing gaps between the Rome Statute and the

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<sup>179</sup> Government/Ministry of Justice and Human Rights, Rapat Kerja, September 12, 2000 (Sekjen DPR-RI 2009a, 897–903).

<sup>180</sup> The principle of adjusting details in accordance with the Rome Statute was previously confirmed by the government early in September. Rapat Kerja, September 4, 2000 (Sekjen DPR-RI 2009a, 699). For the “translation workshop,” see Rapat Panitia Kerja (Panja), October 16, 2000 (Sekjen DPR-RI 2009b, 27–210). The apartheid debate appears at pp. 115–24.

human rights court law. Linton (2006, 213) notes that “much of the criticism by the Commission of Experts for East Timor of the Law on Human Rights Courts is based on the extent to which it differs from that of the Rome Statute.” Amnesty International (2001) welcomes the use of the Rome Statute as the basis for the definitions, while pointing out some incorrect translations.

The parliamentary debate ended without much disagreement. A parliamentarian protested the lack of subpoena power to Komnas-HAM inquiry teams, to which the government answered that such power was already implicit.<sup>181</sup> Most factions, especially TNI-Polri and PDI-P, strongly supported the TRC as an institution to deal with past human rights abuses later.<sup>182</sup> The composition of the DPR changed dramatically after the 1999 parliamentary election. Golkar (26% of the seats) and TNI-Polri (7.6%) remained strong, as well as PPP (12.6%); however, PDI-P won 33.1% of the seats, forming the largest bloc in the DPR, and other new parties such as Wahid’s PKB (National Awakening Party) and Amien Rais’s PAN (National Mandate Party) also won 11% and 7.4% of the seats respectively.<sup>183</sup> However, the parliamentary debate between “old forces” and “new forces” was not particularly fierce. Most of the parties largely agreed with the government proposal.

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<sup>181</sup> Aisyah Aminy (PPP), Rapat Panja, November 2, 2000 (Sekjen DPR-RI 2009b, 706–07). Aisyah Aminy had been a Komnas-HAM commissioner since 1993. This lack of subpoena power caused a number of problems to Komnas-HAM investigation later.

<sup>182</sup> These two supported the TRC at the end of the parliamentary debate on the human rights court law. PBB (Partai Bulan Bintang), PKB (Partai Kebangkitan Bangsa), and PPP also supported a TRC in their official opinions at the beginning of the debate. See Sekjen DPR-RI (2009a; 2009b).

<sup>183</sup> Abdurrahman Wahid of NU and Amien Rais of Muhammadiyah were prominent political figures in the transitional period. Although both NU and Muhammadiyah (a modernist Muslim mass organization founded in 1912) were Muslim mass organizations, PKB and PAN were not Islamist parties.

As a response to the UN threat of an international tribunal for East Timor, the Indonesian government chose to put the human rights court system, incorporating norms of international criminal justice, on top of the existing system, rather than strengthening the existing public court system. This option was firmly supported by human rights NGOs too. To avoid criticism from abroad on the gap between the proposed court and international standards, the government and parliamentarians later decided to translate the definition of gross violations in the Rome Statute word-by-word, replacing the earlier human rights law version.<sup>184</sup> The ad-hoc tribunals, however, were not the exclusive mechanism for the past human rights abuses – the law stipulated that past abuses could be settled through a TRC, soon to be founded by a law, which was being prepared along with the human rights court law.

#### **4-4. Truth, Reconciliation, and Amnesty: The South African Model**

Unlike the Argentine model, the TRC model – or the South African model – was diffused through tangible linkages, rather than piracy. The promotion of the South African model was led by Elsam, a “policy advocacy” NGO,<sup>185</sup> and assisted by transitional justice experts and aids from overseas. However, the foreign assistance does not explain the final form of the 2004 TRC law or the adoption of the law itself. The role of Indonesian NGOs and politicians was decisive – some NGO activists thought amnesty for truth-seeking would be the most practical transitional justice mechanism in the

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<sup>184</sup> War crimes are not covered by Indonesian human rights court law, however.

<sup>185</sup> See Ifdhal Kasim’s foreword for Abdul Manan (2008). A former Elsam worker explained that debates over the litigation-centered approach in the LBH led to the birth of Elsam, which supported policy-centered approach, on the one hand; and, on the other hand, the birth of PBHI, which supported litigation-centered approach. Author’s interview, April 30, 2010 (in English).



Indonesian context, while a TRC meant an effective preemptive measure to ad-hoc human rights tribunals for many political elites.

#### *4-4-1. A Practical Alternative? Promotion of the TRC (1998–2000)*

The South African model emerged in Indonesia a few months after President Suharto stepped down. In August, the NU leader Abdurrahman Wahid proposed an independent truth-seeking commission for national reconciliation.<sup>186</sup> Wahid's proposed commission was specifically for the recent Muslim-Chinese relationship in Indonesia, rather than for past human rights abuses of the preceding regime. Nor did he exclusively refer to the South African model, unlike the one proposed by Abdul Hakim Garuda Nusantara of Elsam in the same month.<sup>187</sup> Adnan Buyung Nasution's proposal of a national reconciliation committee for past human rights abuses, explicitly incorporating formats of the South African TRC such as public hearings with victims, soon followed after his meeting with Bishop Desmond Tutu.<sup>188</sup>

The idea was immediately discussed in a meeting between President Habibie and Komnas-HAM commissioners, where commissioners proposed setting up an informal team for national reconciliation.<sup>189</sup> Responses soon followed. Agum Gumelar, the head of the armed forces' think-tank Lemhanas (National Resilience Council), responded to the

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<sup>186</sup> "Gus Dur Prakarsai Komisi Rekonsiliasi," *Kompas*, August 27, 1998.

<sup>187</sup> "Lebih Jauh Dengan: Abdul Hakim Garuda Nusantara," *Kompas*, August 16, 1998. Abdul Hakim's proposal, for example, included three subcommittees just as in South Africa.

<sup>188</sup> "Perlu Dibentuk, Komite Rekonsiliasi Nasional," *Kompas*, September 1, 1998. Adnan Buyung Nasution is a senior human rights lawyer who established the LBH.

<sup>189</sup> "Tim Rekonsiliasi Nasional Terbentuk," *Republika*, September 5, 1998; "Hasil Pertemuan Komnas HAM dengan Habibie: Segera Dibentuk Tim Rekonsiliasi Nasional," *Merdeka*, September 5, 1998. Former Komnas-HAM commissioners and staff members made it clear that the idea originated from the commission and was delivered to President Habibie in September after a plenary session decision. Author's interview, April 8, 2010; August 16, 2010.

proposal positively, with a suggestion to replace the word *rekonsiliasi* with *rembuk* (consultation) in order to avoid an impression that Indonesia was on the verge of disintegration.<sup>190</sup> Franz Magnis-Suseno, a Catholic priest-academic, welcomed the idea, emphasizing that all truths regarding the disappearance of activists, the Trisakti shooting, the May riots, Aceh, Tanjung Priok, Lampung, and Dili must be revealed,<sup>191</sup> while Hendarji, an NGO activist at PBHI (the Legal Aid and Human Rights Association), warned against impunity.<sup>192</sup> Therefore, the presence of varied perspectives on reconciliation, as truth, impunity, and/or national integration, was clear from the beginning.

The idea of reconciliation was put under the media spotlight again at the end of the transitional year. This time, “national dialogue” (*dialog nasional*) replaced the term *rembuk*, but the general vagueness of the idea remained the same. President Habibie openly rejected the idea of a consultation body comprising prominent political figures, saying consultation should be done in official bodies like DPR and MPR.<sup>193</sup> Meanwhile, promotion of the South African model continued. Komnas-HAM discussed the TRC model in a workshop with Indonesian Ministry of Foreign Affairs and Australian Human Rights and Equal Opportunity Commission, where Glenda Wildschut, a commissioner of the South African TRC, was invited.<sup>194</sup> Elsam also supported the TRC for past human

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<sup>190</sup> “Agum Gumelar: Lebih Tepat Rembuk Nasional,” *Kompas*, September 8, 1998.

<sup>191</sup> Franz Magnis-Suseno, “Rekonsiliasi,” *Kompas*, September 19, 1998.

<sup>192</sup> “Bukan Rekonsiliasi jika Turunkan Habibie,” *Suara Merdeka*, September 8, 1998.

<sup>193</sup> “Habibie Tolak Ide Agum Soal Rembuk Nasional,” *Merdeka*, December 8, 1998. For Agum Gumelar’s ideas, see his “Rembuk Nasional,” *Media Indonesia*, November 30, 1998. For a comparison of varied ideas of reconciliation and dialogue, see “Kronologi Dialog Nasional”; “Silakan Pilih, Mau Dialog Nasional Model Siapa?” *Merdeka*, December 29, 1998.

<sup>194</sup> “Tanpa Rekonsiliasi Kehidupan Bangsa Akan Semakin Tercabik-cabik,” *Suara Pembaruan*, December 3,

rights abuses, arguing that amnesty for perpetrators can be recommended but should be preceded by acknowledgment of wrongdoings.<sup>195</sup>

Why did the South African model spread in Indonesia so quickly? The recent transition in South Africa, especially the ongoing process of the TRC, received media attention widely in 1998 and before. Nelson Mandela had visited Jakarta in 1997 and met the East Timorese national leader Xanana Gusmão. In addition to the media coverage, Indonesian elites could get inspiration from face-to-face meetings with South Africans, often through funded trips. Moreover, it was not very difficult to use the norm of reconciliation as a common denominator among varied groups.

The diffusion through linkages was not sufficient to create a TRC, however. The TRC plan of September 1998 was shelved after Marzuki Darusman of the Komnas-HAM met with core cabinet members such as Wiranto, only to confirm their different perceptions of reconciliation;<sup>196</sup> Komnas-HAM argued for reconciliation combined with truth, while cabinet members agreed only with the former.<sup>197</sup> President Habibie never approved the TRC plan, in spite of repeated proposals from Gus Dur (Wahid) and Komnas-HAM.<sup>198</sup> It was only with Habibie's *perpu* in September 1999 that the TRC rose to be a strong alternative. As mentioned above, the plan to send all past human rights abuses to the TRC, rather than the human rights court, was abandoned at the last minute.

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1998.

<sup>195</sup> "Pernyataan Akhir Tahun Elsam: Sarankan Bentuk Komisi Kebenaran dan Rekonsiliasi," *Kompas*, December 26, 1998.

<sup>196</sup> "Rekonsiliasi Nasional Terancam Gagal," *Merdeka*, September 19, 1998.

<sup>197</sup> Author's interview, August 16, 2010, with a staff member who was present at the meeting.

<sup>198</sup> "Gus Dur Minta Lee Kuan Yew Duduk di Komisi Rekonsiliasi," *Kompas*, January 7, 1999; "Komnas HAM Usulkan Komite Rekonsiliasi," *Suara Merdeka*, March 5, 1999. Komnas-HAM also suggested a TRC for Aceh (Chapter 5).

The government set up a drafting team for the TRC before the DPR discussion on the human rights court law begins. In May 2000, the team, including NGO activists like Munir and Ihdhal Kasim of Elsam, was already discussing the fourth version of the draft law.<sup>199</sup>

Elsam took a leading role in promoting the TRC model between 1999 and 2003. The TRC promotion by Elsam and the government could benefit from direct international linkages, such as transitional justice experts and funding from overseas, as well as indirect sources like theories and cases from academic discourses. In addition to participating in the official drafting team, Elsam prepared its own version of the draft. Abdul Hakim (2000) explains that the difference between the Elsam version and the government team version lies in the period the commission should cover – while Elsam’s idea was to cover human rights abuses of the New Order, the government defined “the past” in a legalistic way, as the period before the enactment of the human rights court law. In any case, the core mechanism of amnesty was common to both versions.

Three transitional justice experts – Douglass Cassel, Priscilla Hayner, and Paul van Zyl – gave written comments to an earlier version of the TRC bill on behalf of the Ford Foundation (Cassel, Hayner and Zyl 2000), suggesting to improve the bill by referring to existing laws in South Africa and Sierra Leone.<sup>200</sup> Most importantly, they warned against the amnesty provision, pointing out factors that might necessitate amnesty were not applicable to the Indonesian transition (Cassel, Hayner and van Zyl 2000).<sup>201</sup> Minor

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<sup>199</sup> “Masih Jauh dari Harapan...,” *Kompas*, May 3, 2000.

<sup>200</sup> I do not have the February draft, on which the three experts commented. The only draft bill of this period that I possess is Elsam version of May 2000 (Abdul Hakim 2000).

<sup>201</sup> First, amnesty will not facilitate a transition to democracy, because transition has already occurred.

suggestions seem to have been accepted, but the one against the South-African-style amnesty provision was never accommodated. Still, their expertise was respected. Later in the year, Hayner and van Zyl visited Indonesia for a session of a series of public discussion funded by the USAID-Office of Transition Initiatives and coordinated by Elsam and the Ministry of Human Rights (Elsam and Eks. Kantor Menteri Negara Urusan Hak Asasi Manusia 2001).

Elsam also held discussion sessions with victims and published materials for public education. Among numerous books and papers on the TRC, two briefing papers by Elsam's executive director Ifdhal Kasim – “What is the ‘Truth and Reconciliation Commission’?” (Ifdhal 2000a) and “Facing the Past: Why Amnesty?” (Ifdhal 2000b) – deserve our brief attention because of the way they go beyond the South African model by extensively using cross-national comparisons from political science, before going back to the model.

In the first paper, Ifdhal acknowledges that two modes of transitional justice (*keadilan transisional*), the TRC and the court, can be conflicting, and then shows that the TRC is generally more desirable. He borrows from Huntington's pessimism on the prosecution of human rights abuses:

However, in actual practice, why some states [*negara*] choose settling the past with a TRC and why others do not are, in the end, determined by the political arena, the nature of the democratization process, and the distribution of political power during

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Second, consolidation of a fragile democracy is not relevant – “it is not clear whether the military is currently playing a disruptive role in Indonesia... furthermore, if elements within the security forces are playing a destabilizing role, it does not seem that the central motivation for doing so is a fear of prosecution” (Cassel, Hayner and Zyl 2000, 15). Third, threat of prosecution is not sufficient to encourage perpetrators to come forward and reveal information. Fourth, amnesty does not always promote reconciliation.

and after the transition. It is not so much influenced by moral and legal considerations. According to Samuel P. Huntington's observations, among the countries democratized before 1990, only in Greece a sufficient number of officials of the authoritarian regime were tried and sentenced in a meaningful way. Most of them chose settling through the Truth and Reconciliation Commission (Ifdhal 2000a, 7).

The way that the TRC is discussed here is interesting; the TRC was not a common option in the 1980s, and Huntington discussed the TRC only in the context of the Chilean transition. What Huntington recommended for transitional elites was to forget the past through amnesty and pardon.<sup>202</sup>

Does a TRC primarily mean granting amnesty, rather than truth-seeking, for Ifdhal? In the second paper, the answer becomes clear – in general, transitional societies must choose amnesty, following, again, Huntington's advice. Amnesty is a necessary evil for transitional societies (Ifdhal 2000b, 4):<sup>203</sup>

Faced with the question of saving democracy before anything, transitional societies [*masyarakat-masyarakat*] finally choose the amnesty policy rather than proceeding to trials... the amnesty policy is a *necessary evil* which must be taken by new governments to fulfill the greater purpose of protecting still-fragile democratic stability – at any time, the political system can be reversed to the direction of the original authoritarian one. Giving amnesty can thus be viewed as a special measure in the context of settling transitional problems. Therefore, it will be proper to say that amnesty is already an important aspect of transitional processes.

After explaining the necessity of amnesty in a generalized tone, the author goes on to introduce Zalaquett's criterion of rejecting 'bad' amnesties: blanket amnesty, amnesty

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<sup>202</sup> The index of the book does not even have words like truth commission, truth and reconciliation commission, or reconciliation, while amnesty is there, preceding Amnesty International.

<sup>203</sup> Italic originally in English.

for crimes against humanity and genocide, and self-amnesty.<sup>204</sup> The paper ends with introducing the amnesty in the South African transition.

In the two papers, a political science work becomes a self-fulfilling prophecy, promoting amnesty through the perspective of an NGO leader of a transitional society who reads the existing literature avidly. If Munir and the Argentine model came out of inspiration from a case study, Ifdhal's South African model was derived from generalized theoretical implications. In another publication (Ifdhal 2003), Ifdhal also makes use of Nino (1996) and Skaar (1999), among others, to support his claim, translating Skaar's truth commission as a TRC (*komisi kebenaran dan rekonsiliasi*). He suggests "the third way" of his own, which means different measures complementary to each other, without showing how they can work complementarily without clear demarcation. This time, the argument against prosecution discusses the Indonesian situation, where the main political forces of the New Order like the Golkar party and the military still possess great influence in the political system – the Greek way will clearly invite strong resistance from forces of the old politics (Ifdhal 2003, 32–33).

In sum, the promotion of the South African model was helped by tangible international linkages, which also contributed to coordination between NGO activists and the government. The indirect linkage worked as well, this time through explicit quotation rather than piracy. When introducing norms and models from overseas, domestic norm entrepreneurs did not blindly follow advice from international experts – the experts' opinion against amnesty was ignored, for example.

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<sup>204</sup> Apparently, it does not mean that Elsam or Ifdhal agrees with Zalaquett, as Ifdhal's criticisms against the TRC bill did not mean he would not accept the bill.

It does not mean that Indonesian norm entrepreneurs gave up correct translation of international norms. There were so many different, and often conflicting, norms, models, and advice out there that domestic norm entrepreneurs could choose from the vast pool what to translate. Among them, Elsam and supporters of TRC bet on the South African truth-amnesty swap and Huntington's warnings.

#### *4-4-2. TRC Legislation for Debate: Amnesty v. Justice (2003–04)*

The idea of reconciliation lingered around for the following years. Especially, President Abdurrahman Wahid contributed to opening up proposals of rehabilitation for 1965 *tapol* and victims of massacres by reminding the public of his apology, in the capacity as NU head, to them.<sup>205</sup> Wahid also visited South Africa and met President Thabo Mbeki to discuss the prospect of an Indonesian TRC. However, after the law on the human rights court was enacted, the progress of the TRC legislation was slow. The fifteenth version of the draft bill had been shelved by the State Secretariat for a long time.<sup>206</sup> In May 2003, two years after the drafting team made the final version, the bill was finally sent to the DPR, and the special committee for discussion of the bill was formed in July.<sup>207</sup> Why did the bill enter the parliament at this particular time?

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<sup>205</sup> "Terhadap Korban G30S/PKI: Gus Dur: Sejak Dulu Sudah Minta Maaf," *Kompas*, March 15, 2000. He also met exiles during his stopover in Europe, promising to return civil rights to former political detainees (Zurbuchen 2002).

<sup>206</sup> It is not clear exactly when the bill entered the State Secretariat. According to Ifdhal, it was under the Wahid administration, i.e. before July 2001. "Ifdhal Kasim: RUU KKR Masih Berada di Sekretariat Negara," *Kompas*, August 13, 2002. But Yusril said he had sent the bill six months before March 2003, that is, late in 2002. "Reconciliation Bill Held up in State Secretary: Yusril," *The Jakarta Post*, March 18, 2003. In any case, the drafting process seems to have ended by July 2001.

<sup>207</sup> "Kronologis Perjalanan RUU KKR di DPR." I thank Simon for giving me this document and others.



There are several possibilities. First, President Megawati of PDI-P may have wanted to recover her reformist credentials for the 2004 presidential election. Ifdhal's accusation of the "old political forces" such as Golkar and the military as obstacles to the TRC law was not entirely without grounds. Megawati and PDI-P had accommodated the view of conservative allies, but they may have felt it necessary to distinguish themselves from their allies for the upcoming election. Second, the visit of South African Minister of Justice Panuell Mpapa Maduna to Jakarta reinvigorated the media attention to the TRC. In a meeting with Maduna, Indonesian Minister of Justice and Human Rights Yusril Ihza Mahendra, a long-time supporter of the TRC as an alternative to tribunals, reiterated potential benefits of a TRC for Indonesian society.

Yusril admired Nelson Mandela and his supporters, who forgot about revenge to build a new nation after twenty-seven years of suffering in jail.<sup>208</sup> In his view, communists were not the only victims of the New Order – communists also victimized Muslims of Masyumi, NU, and Muhammadiyah.<sup>209</sup> Therefore, the TRC should be about forgiving each other.<sup>210</sup> Yusril's position was different with Megawati's vice president, Hamzah Haz of PPP, who openly opposed reconciliation with former communists.<sup>211</sup> If, in 1998, it had been possible to talk about reconciliation without mentioning the tragedies of 1965–66, it was no longer the case after the Wahid presidency and the emergence of 65 victims' groups in 1999 and 2000. Hamzah Haz's refusal to reconcile with

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<sup>208</sup> "Menkeh dan HAM: Jangan Selesaikan Masa Lalu dengan Dendam," *Kompas*, March 14, 2003.

<sup>209</sup> Masyumi is an Islamic party, founded in 1945 and banned in 1959 by Sukarno.

<sup>210</sup> "RUU KKR Masih Tertahan di Presiden," *Kompas*, March 18, 2003.

<sup>211</sup> "Rencana Rekonsiliasi Nasional: Wapres Tak Setuju Memaafkan Kesalahan PKI," *Sinar Harapan*, March 20, 2003.

communists was certainly not exceptional, as the huge unpopularity of Wahid's moves towards rehabilitation of 1965 victims had indicated (Zurbuchen 2002).

Through the series of media coverage over the South African delegation, it was revealed that the State Secretariat had been shelving the bill. Thus, the South African delegation provided an opportunity to revive the bill, which was sent to the DPR within two months after the official visit.

Third, in the first half of 2003, the threat of ad-hoc human rights court still existed. New Komnas-HAM commissioners began their five-year terms in the latter half of 2002. Among initiatives of the new commissioners, M.M. Billah's Suharto team was the most comprehensive one in terms of the scope and ambition. The study team,<sup>212</sup> whose task was to make inquiries into human rights violations during the Suharto era, was first proposed at the plenary session on October 3, 2002.<sup>213</sup> The proposal was approved in December, and the list of four commissioners and eleven ad-hoc members was announced on January 9, 2003.<sup>214</sup> Although the TRC was not an immediate alternative when the team was formed, team members were certainly aware of the TRC bill. It seems that different concerns existed – some commissioners believed that an ad-hoc court

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<sup>212</sup> Though KPP-HAM for East Timor or KP3T for Tanjung Priok were one-shot inquiry teams of Komnas HAM, a new procedure of pre-*pro-justicia* inquiry team, called variously as “study team” or “monitoring team,” was added after the early *reformasi* period.

<sup>213</sup> Asvi Warman Adam, “Penyelidikan Pelanggaran HAM Berat Soeharto (1),” *Jawa Pos*, February 17, 2004.

<sup>214</sup> To qualify as team members, they were required to have no prior government career under the Suharto regime or experiences of victimization by the regime. Anggoro Gunawan, “Komnas HAM Bentuk Tim Pengkaji Pelanggaran HAM Berat Soeharto,” *Koran Tempo*, December 19, 2002. As we saw in Chapter 3, many Komnas-HAM commissioners had had careers in Golkar or the (civil and military) bureaucracy. Although some of the new commissioners were from NGO and academic sectors, including new chair of Komnas-HAM Abdul Hakim Garuda Nusantara, they could not dominate the plenary session.

should be established regardless of the TRC legislation, while others intended to put pressure for the TRC legislation or to establish some facts before the TRC was formed.<sup>215</sup>

A complete report, compiling findings of five sub-teams on the Buru detention camp, “Petrus,” Tanjung Priok, military operations (DOM) in Aceh and Papua, and the July 27 affair, came out in August (Tim Pengkajian Pelanggaran HAM Berat Soeharto 2003). The Suharto team was the first official inquiry into the communist purge, and thus it kept low-profile to prevent violent attacks from anti-communist groups.<sup>216</sup>

The Komnas-HAM plenary session spent six months for confidential discussion of the follow-up measures to the study team (INCHR 2004, 177–78). It turned out that Komnas-HAM members were generally cautious about making a *pro-justicia* inquiry team with the report. Several of them interpreted the Buru camp issue not as a case of gross human rights violation but as self-defense against the cruelty of communists (Amidhan 2004; Ruswiati 2004).<sup>217</sup> Some argued that the TRC, rather than an ad-hoc

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<sup>215</sup> See a *Kompas* interview with Nursyahbani Katjasungkana, the new Komnas-HAM commissioner and Suharto team member. “Perlu Reinterpretasi Sejarah Orba,” *Kompas*, January 22, 2003. On the goal of the team, she explains: “this team will conduct historical reinterpretation of human rights violations... Until now, there has never been clarification on the G30S incident. The second is to enforce justice. Thirdly, [the result will be used] as a material for considering the urgency of establishing the TRC.” To the question whether the findings should be directed towards the TRC or the court, she answers “both,” and adds that the findings will be important materials for the TRC to consider. “G30S” indicates the communist purge in 1965-66, because it began with the failed coup attempt of a group which called itself “Gerakan 30 September” (September 30th Movement).

<sup>216</sup> Early in 2003, a group of about two hundred people occupied the Komnas-HAM meeting room, urging that investigation into the Buru camp be stopped.

<sup>217</sup> Among opinion papers (or “legal analysis”) of seven commissioners that I have, only the one written by Enny Soeprapto supports the *pro-justicia* inquiry (Enny 2004). Amidhan, Djoko Soegianto and Ruswiati Suryasaputra believed that the study team report was inappropriate because it contained a political analysis for the background of the Buru camp. Komnas-HAM should deal with only human rights problems and not political backgrounds, they argued. Four of them (Amidhan 2004, Djoko 2003, Koesparmono 2004, and Taheri 2004) proposed to make a team on the wrongdoings of PKI. A Komnas-HAM study team on PKI abuses, headed by Amidhan, was in fact founded. The team produced a report, compiling events between 1947 and 1968, intended as a material for the future TRC (Tim Pengkajian Pelanggaran HAM oleh PKI 2005, 64).

court, would be an appropriate mechanism for past human rights abuses (Djoko 2003; Amidhan 2004). Moreover, even former supporters of prosecution changed their minds, as the parliamentary debate on the TRC bill was revived. In February 2004, after voting, the plenary session decided to not proceed with *pro-justicia* inquiries.<sup>218</sup> It is not impossible that this ambitious, though less well-known, initiative influenced the decision of the Megawati administration to revive the TRC bill, at a time the threat of ad-hoc courts remained, however tenuously.<sup>219</sup>

The parliamentary special committee on the TRC bill held an extensive series of public hearings with NGOs, experts,<sup>220</sup> stakeholders, and other social groups between September and December 2003. This period is marked by the intensified truth versus justice debate in the Indonesian NGO community. An Elsam staff member recalls that the debate between Elsam and Imparsial-Kontras goes back to 1999<sup>221</sup> – “we sat on the same table, shook hands, but did not regard each other as friends.”<sup>222</sup> At a time that “activists largely agreed... that prosecutions were the best way to handle past cases of violence” (Hilmar and Simarmatra 2004, vi), the proposed TRC – “a mechanism of individualized

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<sup>218</sup> Author’s interview, July 8, 2010. What the Komnas-HAM annual report shows us is that the plenary session decided to make four new non-*pro-justicia* teams on Buru, Petrus, PKI abuses, and defamation as PKI (Komnas-HAM 2004). Among them, the third team was active, as we see in the note above. The Buru team leader, Salahuddin Wahid, later quit Komnas-HAM to run as a vice-presidential candidate.

<sup>219</sup> The inquiry team into the May riots was elevated into a *pro-justicia* team in March 2003. Komnas-HAM was also trying to revive the Trisakti-Semanggi (1998–99) shooting case, which was blocked by the DPR in 2001 (Chapter 6).

<sup>220</sup> In addition to NGOs, think-tanks, and historians, the special committee invited ambassadors from Germany, Argentina, and South Africa. In May 2004, the committee members also made a study trip to South Africa.

<sup>221</sup> Imparsial (The Indonesian Human Rights Monitor) is an NGO, founded in 2003 for monitoring and doing research on human rights problems. At the time of DPR discussion of the TRC bill, Munir was at Imparsial.

<sup>222</sup> Author’s interview, August 27, 2010 (in English). In 2001, it was noted that “controversy over the TRC bill has not ended in Indonesia,” indicating the presence of the controversy over amnesty before 2001 (Sadli et al. 2001, 5).

out-of-court settlements exchanging amnesties for reparations” (González 2005) – infuriated many human rights activists. Moreover, once amnesty is granted to perpetrators, the possibility of opening an ad-hoc human rights court for the case in concern is to be permanently closed.<sup>223</sup> Its function as an alternative to prosecution stood out explicitly from the fact that the TRC was designed to deal with the same set of cases – genocide and crimes against humanity that had occurred before the enactment of the human rights court law – with ad-hoc courts, and nothing more.

Although Elsam criticized the problematic clauses in the bill, it still supported the TRC. In the parliamentary hearing with Kontras and Elsam, Amiruddin from Elsam urged the parliamentarians not to lose the momentum.<sup>224</sup> Kontras did not agree; Usman Hamid reminded the audience of international law principles against impunity, and Munir argued that the priority of the parliamentarians should be to strengthen the existing judicial mechanism, e.g. by issuing recommendations for ad-hoc courts, rather than to make a new law.<sup>225</sup> The firm stance of organized victims fueled the polarization of the NGO community further. With an initiative called *temu korban*, Elsam had discussed strategies for resolving past human rights abuses with various victims’ groups over the past years, promoting the advantages of a TRC approach among them.<sup>226</sup> However, in the

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<sup>223</sup> According to the law, amnesty is granted by the president upon recommendation from the TRC. The commissioners have the authority of making recommendations for amnesty even if victims do not provide an apology to the perpetrator(s). Amnesty is the precondition of compensation, though amnesty does not automatically guarantee compensation.

<sup>224</sup> “Transkrip Rapat Dengar Pendapat Umum Pansus RUU KKR Dengan Elsam-LPHSN-Kontras, Tanggal 18 September 2002” (Elsam version).

<sup>225</sup> “Transkrip Rapat Dengar Pendapat Umum Pansus RUU KKR Dengan Elsam-LPHSN-Kontras, Tanggal 18 September 2002” (Elsam version).

<sup>226</sup> The larger goal of the *temu korban* program was to form networks of victims across cases and regions (Hilmar and Simarmatra 2004). See Fadjar (2007) for a detailed description of the culminating national event in May 2003. But it was also about the TRC campaign: “it took three years to get them lined up

DPR public hearing, almost all victim representatives strongly opposed the proposed TRC bill. Representatives from the Trisakti shooting, the Semanggi shootings,<sup>227</sup> the May riots,<sup>228</sup> Tanjung Priok,<sup>229</sup> Talangsari, and activist kidnappings made their support for the prosecution approach clear – only the representative from one of the “65” groups indicated his conditional support for the TRC bill.<sup>230</sup> Organized victims even visited party headquarters to ask parliamentarians to oppose the bill.<sup>231</sup>

The opposition from victims and other participants in public hearings was, apparently, not sufficiently strong to obstruct the legislation.<sup>232</sup> Special committee members approved the bill in September 2004, as one of the last bills approved by the outgoing parliamentarians whose term was soon to end. Although there were attempts to make revisions to the proposed bill – for example, the TNI/Polri faction had once suggested to change the name of the commission to a reconciliation commission, deleting the “truth” part – all major parties gave final support to the bill. In particular, the Golkar faction welcomed the amnesty clause and the closure of the ad-hoc court path through the

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behind the TRC.” Author’s interview, August 27, 2010 (in English).

<sup>227</sup> Semanggi I and Semanggi II indicate the physical clashes during student demonstrations at the Semanggi intersection in Jakarta, which killed eighteen and eleven people respectively in November 1998 and September 1999. The ad-hoc tribunal for Tanjung Priok was soon to open in September 2003.

<sup>228</sup> The organized victims representing the May group are the urban poor of Jakarta, many of whom lost family members in flames.

<sup>229</sup> The majority of Tanjung Priok victims had already signed private settlements with Try Sutrisno (the former regional military commander in 1984 and later vice president) and other military figures, while fourteen families refused the settlement called *islah*. Here the Tanjung Priok group indicates the latter.

<sup>230</sup> Witaryono S. Reksoprodjo from the Advocacy Team (Tim Advokasi dan Lembaga Perjuangan Rehabilitasi Korban '65) supported the TRC – the group opposed only Article 27, which links amnesty with compensation. See “Undang-undang Komisi Kebenaran & Rekonsiliasi Untungkan Pelanggar HAM,” *Berita Kontras* No.05/IX-X/2004. It does not mean that all 65 victims supported the TRC, though they were clearly more interested than other groups.

<sup>231</sup> “RUU KKR dari Kota ke Kota,” *Buletin IKOHI: Kembalikan! Suara Korban Pelanggaran HAM*, Edisi 02/III/2004.

<sup>232</sup> A number of Islamic organizations also opposed the TRC. Hutagalung and Simon (2004) compile the list of pro-TRC and anti-TRC groups (and individuals) among those invited to the DPR public hearings.

TRC settlement. President Megawati signed the bill the following month, after her defeat by Susilo Bambang Yudhoyono, as one of her last tasks as the outgoing president.

Under the new administration, the process of establishing the TRC made very slow progress. According to the law, commissioners were supposed to take their oaths in April 2005, but the committee for commissioner selection was formed only on March 28, 2005. Then, in August 2005, the list of forty-two candidates was sent to the president, who had to select twenty-one from the list. The activities of the selection committee coincided with, perhaps by accident, the Helsinki peace process between the Indonesian delegation and GAM (Free Aceh Movement).<sup>233</sup>

Two weeks after the list was submitted to the president, Minister of Justice and Human Rights Hamid Awaludin made public that the future human rights court for Aceh would not have a retroactivity clause (Chapter 5), rejecting a possibility that abuses during the Aceh conflict would be brought to Aceh-specific special court. For the next sixteen months, until the Constitutional Court annulled the TRC law, President Susilo Bambang Yudhoyono never proceeded to the next phase of commissioner selection.<sup>234</sup> NGOs were patient observers in the beginning. It was only in March 2006, eighteen months from the enactment of the law and seven months from completion of the candidate list, that almost all human rights NGOs, including Elsam, filed a constitutional review together with victim representatives. Specifically, they requested the Constitutional Court to review Article 27 (compensation and rehabilitation... may be

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<sup>233</sup> Both the Helsinki peace process and completion of the candidate list were the responsibility of the Ministry of Justice and Human Rights.

<sup>234</sup> Selection of twenty-one commissioners by the president was not the final stage. The list was then to be sent to the DPR, where candidates could be rejected and replaced with additional candidates from the original list.

awarded when a request for amnesty is granted), Article 44 (the case of gross violations of human rights that has been resolved by the commission cannot be brought before the ad-hoc human rights court), and Article 1(9) on amnesty (Tim Advokasi Kebenaran dan Keadilan 2006). In December 2006, the Constitutional Court made a decision to annul the whole law, rather than these specific clauses.

It seems that the calculation of the TRC promoters, who believed that the amnesty provision of the South African model would help persuade “old political forces,” was more or less correct. It is not clear whether the TRC would have received widespread support among major parties, particularly Golkar and TNI/Polri, without the amnesty provision. However, reconciliation as a common denominator did not work for other human rights NGOs and victims’ groups. While the parliamentary debate on the bill was rather smooth, the truth v. justice debate outside the parliament was fierce. Furthermore, the adoption of the TRC law did not guarantee actual implementation of the law. The TRC had not been founded for two years before the Constitutional Court decision, and it has still not been founded for another five years after the decision. It is now virtually an abandoned idea.

#### **4-5. Conclusion**

Indonesia’s moment of *reformasi* came after similar transitional experiences in Europe, America, and Africa had been accumulated in numerous books, theories, and international legal norms. Indonesian NGO activists, as essential intermediaries between the international and the local, interpreted their own situation and proposed solutions with



the help of preexisting concepts and categories – *transisi* (transition), *pelanggaran HAM berat* (gross human rights violations), *penghilangan secara paksa* (enforced disappearances), *komisi kebenaran* (truth commission), *rekonsiliasi* (reconciliation), *keadilan transisional* (transitional justice), etc. They also imported repertoires of collective action, such as family associations of human rights victims modeled on the Argentine Mothers of Plaza de Mayo. These ideas profoundly influenced the way these entrepreneurs constructed their campaigns for human rights, accountability, and transitional justice. International linkages such as funding, direct contacts, and expert advice helped boost their campaigns, but domestic initiatives generally preceded the creation of these thicker linkages.

Adoption of key transitional justice measures, the (ad-hoc) human rights court system and the TRC, was a natural concern for domestic norm entrepreneurs in transition. International pressure against militia violence in East Timor contributed decisively to the adoption of the human rights court law of 2000, but the pressure did not shape the details of the law. Many human rights NGOs, still vocal and influential, regarded the law as an opportunity for seeking justice for past abuses during the New Order. The government had to find a persuasive alternative to an international court for East Timor. NGOs believed that principles of international criminal justice would improve the functioning of the judicial system, so that cases of human rights cases could be dealt with appropriately in court. The final product of legislation, incorporating definitions of gross human rights violations as in the Rome Statute of the ICC and the ad-hoc court provision for past

human rights abuses without limiting the period, reflected concerns from both the government and the NGOs.

In the end, however, the “holistic” approach to transitional justice ended with adoption of two comprehensive mechanisms, but without their implementation, except for ad-hoc tribunals for East Timor (1999) and Tanjung Priok (1984). The TRC legislation in 2003–04 was a compromise reflecting two different goals of its protagonists. While, for its NGO advocates, it meant a practical way of truth-seeking through guaranteeing amnesty, it is likely that the government and many parliamentarians embraced the TRC because they preferred amnesty to the slim possibility of prosecution in ad-hoc human rights tribunals. When the momentum of transition ebbed, anti-impunity groups among NGOs and victims could not shape the law as they wanted, but had to rely on the Constitutional Court to do so. The Constitutional Court decision annulling the TRC law was a crucial blow, but nondecision-making of the Yudhoyono administration before and after the Constitutional Court decision was critical as well. Amnesty, combined with truth, was not enough to break the reluctant silence on the past without threats of prosecution.

## CHAPTER 5

### AN INDONESIAN TRANSITION: POST-CONFLICT JUSTICE IN ACEH

#### 5-1. Introduction

The end of conflict in Aceh came after the adoption of two comprehensive transitional justice mechanisms – the ad-hoc human rights court and the truth and reconciliation commission – in Jakarta. The Helsinki peace process and the signing of a Memorandum of Understanding (MoU) by the Indonesian government and the Free Aceh Movement (GAM) in August 2005 ended the decades-long conflict in the region, and the product of the final round of renegotiation was confirmed by the Law on Governing Aceh (LoGA) in 2006. Therefore, post-Helsinki Aceh, by its timing of the transition to peace, offers a good example of the way the adopted mechanisms worked in the implementation stage.

This does not mean that the post-authoritarian period was not important in Aceh. Aceh was perhaps the one Indonesian province in which past human rights abuses by the authoritarian regime became the major political issue after May 1998, to an extent that new ad-hoc mechanisms, such as the *koneksitas* court, were specially developed for Aceh. Still, violence in Aceh had continued through the post-*reformasi* period, until it dropped dramatically with the successful peace process. The Helsinki peace process removed

independence of Aceh from the valid political agenda, providing a context in which discussion of transitional justice in a *post*-conflict situation finally makes sense.

The post-conflict arrangement in Aceh includes mechanisms explicitly and directly relevant to past human rights abuses. The Helsinki MoU stipulates that “A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures,” and the LoGA confirms it in Article 229: “To seek the truth and reconciliation, a Truth and Reconciliation Commission shall be established in Aceh by virtue of this Law.” However, along with the future-oriented Aceh Human Rights Court, the Aceh TRC clause remains unfulfilled, even after more than eighty percent of the Helsinki agreement came into force. Why was this particular part of the peace settlement neglected? Why was the TRC as a path to resolving past human rights issues introduced legally, but not implemented in practice?

This question on post-conflict justice in Aceh will be best answered when it is put in the context of a larger question on implementation of adopted transitional justice mechanisms in Indonesia. In my view, the key to understanding post-conflict transitional justice measures in Aceh is to see the ways the double transition of Aceh – post-authoritarian transition in 1998, and post-conflict transition in 2005 – has been embedded in the general development of transitional justice processes in Indonesia. Explanations narrowly focused on the peace process of Aceh itself do not fully account for the absence of standard mechanisms of truth and justice. The nature of the peace process does not

fully explain the Aceh-specific compensation measures either, as their origins go back to the post-*reformasi* period.

In the following sections, I will show that the ebbs and flows of the national transitional justice processes, closely intertwined with local political dynamics, provide the indispensable context for explaining the outcome of transitional justice mechanisms in Aceh and that, to a certain extent, the double transition in Aceh is an inseparable part of Indonesian transition in general. I will first discuss the background of the Aceh conflict and post-authoritarian politics of human rights in Aceh, which ended with the distrust over the existing judicial system and escalation of conflict. The 2005 Helsinki peace talks and the subsequent non-implementation of the TRC and the human rights court will reveal the familiar chain of preemptive measures, beginning with an international court and ending with “nothing” through a national court and TRC, again. Then I proceed to trace the implementation of compensation measures in light of legacies of post-authoritarian politics and the efficacy of comprehensive legal mechanisms.

## **5-2. The Military Operation Zone: Aceh Before Helsinki**

### *5-2-1. Violence and Silence: Aceh Before 1998*

Aceh was not entirely free from violent conflict before the so-called DOM (*Daerah Operasi Militer*) period.<sup>235</sup> The anti-colonial revolution in Aceh involved a purge of the traditional aristocratic elite which collaborated with the Dutch power.<sup>236</sup> The Darul Islam

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<sup>235</sup> For clarification on the widely-used term DOM, see Bambang and Kammen (2000).

<sup>236</sup> Reid (2006, 107) describe this process as “the most profound social revolution anywhere in the Archipelago.”

rebellion of the 1950s, a part of regional movements to make Indonesia an Islamic state, was accompanied by large-scale military violence against civilians (Aspinall 2006). Also, thousands were killed during the communist purge in 1965–66. The elimination of the largely non-Acehnese followers of the PKI, sanctioned by religious leaders and the military, was conducted in a spirit perhaps more intense than anywhere in the archipelago (Crouch 2007; Kell 1995; McGibbon 2006; Reid 2006).

The founding of GAM goes back to 1976, when its leader Hasan di Tiro came back to Aceh after a long exile. Before GAM grew up to be full guerilla forces, the authorities hunted down its cadres in an effective campaign. GAM members have surrendered or been killed, and a few of them, including di Tiro, fled overseas (Kell 1995). In a book published in 1984, an observer commented that “although one or two of the top leaders are still in the jungles, there is little sign of any further activities” (Nazaruddin 1984, 114).

The surge of violence followed the return of GAM trainees from Libya in 1989. For counter-insurgency operations, combat commands from outside the region were sent, marking the beginning of the DOM era. By late 1991, the GAM forces were gravely damaged, but still retained capabilities to harass the authorities from time to time. Even after the peak months of military operations, people suffered from continuing harassment by soldiers, while the trials of GPK (*Gerakan Pengacau Keamanan* [gang of security disruptors], as the government called rebels) created another source of abuses.

The military operations of this period were notorious for terrorizing methods. Violent abuses were unrestrained, involving public spectacles such as dismembered corpses on roadsides and open secrets such as rapes and torture centers (Robinson 2001,

232; Aspinall 2009, 112). The total number of deaths between 1989 and 1991 was estimated to be about two thousands (Kell 1995, 75). Field investigation by a local NGO Forum Peduli HAM documented 1,321 deaths, 1,985 disappearances, 3,439 torture victims, and 128 rapes for the DOM era as a whole (1989–98).<sup>237</sup>

However, the DOM violence, concentrated on rural areas of three DOM districts – Pidie, North Aceh, and East Aceh – failed to draw great attention under Suharto’s rule. On the timing of the DOM violence, Robinson (2001, 232–33) points out that “international criticism of the New Order’s human rights record had reached a low ebb,” as shown in the scarcity of international responses to killings of Muslim villagers in Lampung in February 1989. The Santa Cruz massacre occurred after the situation in Aceh had more or less abated. GAM leaders overseas struggled to bring the atrocities to the attention of the United Nations, largely to no avail (Barber 2000, 78). Human rights NGOs like Amnesty International, Asia Watch and Tapol published reports on abuses in Aceh, but they did not lead to an independent inquiry team or military honor council.

The Komnas-HAM was established in 1993, again, a few years after the peak of the counter-insurgency campaign in Aceh. In its annual reports from 1994 to 1997, Aceh does not look very different from other provinces in Indonesia. No special section was devoted to the situation in Aceh, unlike East Timor (NCHRI 1995; Komnas-HAM 1995; 1996; INCHR 1997). Aside from a surprise visit to Lhokseumawe, Aceh, to inspect a detention center (Jones 1994, 128–29), there is no sign that the new institution paid

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<sup>237</sup> Hendra and Asiah (2009, 10). Additionally, 81 cases of sexual assault, 597 burned houses and 16,375 orphaned children were recorded. Komnas-HAM data from 1998 record 781 deaths, 163 disappearances, 368 tortures, 3,000 widows, and 15,000–20,000 orphans.

special attention to Aceh. In Jakarta, a YLBHI (Indonesian Legal Aid Foundation) publication on GAM trials was banned by the prosecutor's office.<sup>238</sup> Although several human rights NGOs were formed in Aceh in the early 1990s (Farid and Simarmatra 2004, 92), a human rights activist of the *reformasi* era recalls, it was with *reformasi* that the silence on human rights abuses of Aceh finally broke.<sup>239</sup>

#### *5-2-2. Lost in Transition: Responses to Human Rights Abuses in the Reformasi Era*

The *reformasi* movement and the subsequent fall of Soeharto in May 1998 changed the context of violence in Aceh in a very short time. Student activism blossomed, and new local human rights groups were soon formed. Kontras Aceh was founded on June 26;<sup>240</sup> on July 17, fifteen NGOs in Aceh created another association, FP-HAM, and soon began to collect data from victims. Immediately after Soeharto's resignation, several DOM widows, accompanied by an Acehnese NGO activist, travelled all the way to Jakarta to file complaints to the Komnas-HAM.<sup>241</sup>

Local and national politicians jumped on the human rights bandwagon too. The PPP was especially active in capitalizing on the human rights abuses (Djik 2001, 220, 225–26). H. Muchtar Aziz, a PPP parliamentarian from Aceh, mocked the government: “Imagine that around three thousand soldiers are deployed to confront twenty-seven GKP.

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<sup>238</sup> “LBH Indonesia Memprotes Larangan Kejaksaan Agung,” *Kompas*, September 4, 1992; “Jaksa Agung: Larangan Buku RHOPKA Suatu Saat Bisa Dicabut,” *Kompas*, September 7, 1992.

<sup>239</sup> Author's interview, November 16, 2010 (Banda Aceh). Aspinall (2009, 124–25) observes that, before Suharto's fall, the NGO movement in Aceh took only feeble roots and tended to avoid sensitive issues. Siapno (2002, 30) noted that “when I first began doing research in Aceh in 1992, the only organized, openly confrontational resistance movement was GAM.”

<sup>240</sup> “Profil KontraS Aceh,” <<http://www.kontrasaceh.org/profile-3.html>> (posted on April 27, 2011).

<sup>241</sup> “Forum LSM Minta Operasi Militer Aceh Dihentikan,” *Kompas*, June 5, 1998.



That is excess.”<sup>242</sup> The DPR and Komnas-HAM sent fact-finding teams in July and August. In late July, when the DPR team made a weeklong visit to local councils of three conflict-ridden districts, victims, NGOs, student groups, and other individuals gathered to meet them, to report their experiences and opinions, and to submit compiled lists of victims (DPR-RI 1998b). In August, Komnas-HAM made a three-day trip to witness the excavation of mass graves.<sup>243</sup> The peak of the series of dramatic events was a surprising move by General Wiranto, who made an apology to the people of Aceh and announced withdrawal of “non-organic” forces from the region on August 8.<sup>244</sup>

By September 1998, proposals from the official teams included almost all elements of standard transitional justice measures and more – to put decision-makers and perpetrators of the abuses on trial and investigate abuses thoroughly, to provide aid or compensation to victims and their families, to grant amnesty to political prisoners, and to adjust allocation of revenues from natural resources between national government and provincial government.<sup>245</sup> Similar recommendations from different bodies, such as the MPR (People’s Consultative Assembly) and Habibie’s Presidential Advisory Team on

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<sup>242</sup> “Penghapusan DOM di Aceh Harus Diikuti Peningkatan Kesejahteraan,” *Harian Pelita*, August 10, 1998.

<sup>243</sup> In 1998, Komnas-HAM made two visits to Aceh June and August (INCHR 1998, 39), but the first one was not much publicized.

<sup>244</sup> The territorial structure of the Indonesian army extends to the village level, much like the civilian bureaucracy. “Non-organic” troops mean “troops from other territorial commands or combat troops from the army’s Strategic Reserves (Kostrad) and Special Forces (Kopassus)” (Kammen 2003).

<sup>245</sup> DPR-RI (1998a); National Commission on Human Rights, “Statement of the National Commission on Human Rights Concerning Violation of Human Rights in Aceh While Designated a Military Operations Zone,” September 2, 1998 (INCHR 1998, 74–76). Two lists of recommendations that came out in September are very similar. Both recommended trials for human rights abuses, although only the Komnas-HAM recommendation made explicit that “the hierarchy of policy decision-makers” must be brought to court. Komnas-HAM used the term compensation (in English), while the DPR team used the term *santunan* (aid/assistance). Only the DPR list mentioned the problem of political prisoners.

Aceh in 1999 (KPK 2007, 26; Miller 2009, 34), were repetition of the earlier proposals, whether these bodies were aware of it or not.

However, the short moments of hope passed quickly. The inquiry teams of the DPR and Komnas-HAM were more like a beginning of official inquiries into the DOM violence rather than a conclusion, as the teams themselves acknowledged. But further breakthrough measures did not come, while the late-New Order methods such as a military court for recent abuses – the Gedung KNPI trial, for example<sup>246</sup> – and Komnas-HAM visits did not work. Furthermore, before serious official responses to DOM violence ever began, the nature and intensity of violence changed. Aceh was relatively free from violence during the first several months of the *reformasi* that preceded Wiranto’s apology. Revenge killings against pro-government spies began soon, however, and pro-GAM rallies and arson attacks on government facilities became frequent. The Idi Cut incident on February 3, 1999 was one of the tragedies that resulted in military shootings to a crowd of villagers. Another large-scale shooting occurred on May 3, 1999 at an intersection near the Kraft Paper factory (“Simpang KKA”) in Lhokseumawe, where forty-six people perished.<sup>247</sup>

On June 3, 1999, Komnas-HAM met President Habibie and proposed an independent commission for inquiries into human rights abuses from the DOM period,

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<sup>246</sup> On January 9, soldiers attacked a detention house (Gedung KNPI) under the police guard and beat the detainees savagely, causing several deaths. The tribunal for five soldiers opened immediately, convicting one major and four soldiers (ICG 2001). See also “ABRI Malu atas Penyerbuan di Lhokseumawe,” *Kompas*, January 16, 1999; “Sidang Penyerbuan Tahanan: Mayor Bayu Memukul, karena Emosional,” *Kompas*, January 17, 1999; “Empat Tamtama Dipecat,” *Kompas*, February 23, 1999.

<sup>247</sup> Komnas HAM sent another team of two commissioners for a four-day trip (May 10–13) to investigate the Simpang KKA incident and concluded that “there had been provocation on both sides” (INCHR 1999, 67).

but the Ministry of Justice rejected the idea and instead proposed a monitoring commission for ongoing violence.<sup>248</sup> A fact-finding mission on recent sins, an eight-year-old tradition since the Santa Cruz massacre, could be allowed, while a comprehensive transitional justice strategy was not. It was with the killing of Teungku Bantaqiah and more than fifty of his pupils on July 23, 1999 in West Aceh that a new compromise policy between the two proposals came out.<sup>249</sup>

### *5-2-3. Sense of Justice Unfulfilled: Investigation Commission and the Koneksitas Trial*

President Habibie immediately established the KPTKA (Independent Commission for the Investigation of Violence in Aceh). The commission of twenty-seven members was given six months for investigation into backgrounds, perpetrators, and impacts of violence in Aceh, without a limit on the period under investigation. The KPTKA and the following *koneksitas* trial were the last serious approaches by the Indonesian government to resolve state violence through ad-hoc investigation teams and ordinary criminal trials, rather than via newly emerging standard comprehensive options such as the TRC or human rights court.

If human rights and military abuses were the defining issues of the early *reformasi* period in Aceh, after President Habibie's announcement of the East Timor referendum in

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<sup>248</sup> There was no sign of a new commission for more than a month, and then Komnas-HAM demanded a truth commission for Aceh, which covers the DOM period. This statement was issued on July 22, 1999, and Muladi responded to the proposal the next day, reaffirming a plan to form a monitoring commission but rejecting a TC. "Soal Aceh: Komnas Desak Pemerintah Bentuk Komisi Kebenaran," *Kompas*, July 23, 1999; "Mensesneg: Belum Ada Rencana Bentuk Komisi Kebenaran," *Kompas*, July 24, 1999.

<sup>249</sup> The event is also called "Beutong Ateuh." Bantaqiah, one of the few independent Islamic scholars, had been set free as a result of the recent amnesty. Aspinall (2009, 99) notes that "soldiers, who apparently believed the stories of Bantaqiah's invulnerability, used high-powered weapons and explosives to kill him."

January 1999, the Acehnese civil society turned to promoting a similar referendum for Aceh. University students, who went into rural villages to collect data on human rights abuses in 1998, began to put up banners demanding a referendum and held district meetings in early 1999 (Aspinall 2009). On November 8, hundreds of thousands of people came down to the streets for the largest protest Aceh had ever seen – KPTKA findings were released the very next day, ahead of schedule. As the KPTKA members met on August 19 for the first time, it meant that the team announced findings and recommendations within less than three months, in the middle of its first six-month term.

Acknowledging thousands of human rights abuses in Aceh, the team strategically focused on five priority cases: a rape case in 1996, a torture center called *Rumoh Geudong*, the Idi Cut incident, the Simpang KKA incident, and the Bantaqiah killings. The five cases encompassed different types of abuses that occurred in different districts (Pidie, North Aceh, East Aceh, and West Aceh), though collection of evidence was largely limited to four years from 1996 to 1999.<sup>250</sup> Although the KPTKA is now viewed as one of the “dramatic achievements that gave rise to hopes for an end to the longstanding impunity” (ICTJ and Kontras 2011, 2), at that time, it was criticized harshly. Human Rights Watch (1999) argued that “if accountability is to have any meaning, the Indonesian government will have to conduct a comprehensive investigation going back to 1989, and going all the way up the military chain of command.... this crisis is not going to be defused unless there is a sense in Aceh that justice has been done, and not just for a handful of cases.”

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<sup>250</sup> “Komisi Independen Aceh: Lima Kasus Siap Diproses Hukum,” *Kompas*, November 10, 1999. Its 484-page report came out in December.

President Wahid had a meeting with KPTKA members on November 10, where he encouraged them to keep up investigation into recent abuses and passed their findings directly to the new Prosecutor-General Marzuki Darusman. With political support from the president, prosecution proceeded in a relatively prompt manner. The *koneksitas* trial for the Bantaqiah killings opened on April 19, 2000 in Banda Aceh, with a thousand soldiers on guard. Twenty-five defendants, twenty-four soldiers and a civilian, were charged with premeditated murder, but the two commanding officers of the operation were not indicted, to say nothing of their superiors. On May 17, 2000, all of them were convicted of the secondary charge of individually and collectively committing murder (Drexler 2009, 148). They received sentences from eight-and-a-half to ten years in jail.<sup>251</sup>

In terms of public support, the trial was a total failure. Drexler (2009, 142) noted that “most Acehnese I spoke with at that time told me they were not interested enough to listen to the radio broadcasts. NGOs and students protested the decision to conduct the trial as a *connexitas* [*koneksitas*], rather than a human rights, trial.” The *koneksitas* court, or combination of military court and public court, was a result of compromises among multiple goals and models. There was a broad agreement on the point that the Santa-Cruz-style military tribunal could not be the answer. Amran Zamzami, the chair of the KPTKA, proposed the *Mahmilub* (Extraordinary Military Tribunal), which was used for alleged coup-makers after the 1965 coup attempt, as the judicial format. Marzuki Darusman immediately opposed the proposal and said that the cases should go to public,

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<sup>251</sup> The jail terms were longer than the demands of prosecutors. “Sidang Kasus Bantaqiah: 25 Terdakwa Dituntut 6-10 Tahun,” *Kompas*, May 5, 2000.

rather than military, court.<sup>252</sup> With participation of civilian prosecutors and judges in the *koneksitas* trial, on the one hand, the major disadvantages of the military court such as exclusive dominance by the military hierarchy could be avoided. On the other hand, if the goal of an anticipated human rights court on East Timor was to satisfy the international audience by holding trials according to international standards within a reasonable time, the goal of the Aceh trials was to satisfy the Acehnese “sense of justice” as soon as possible to assuage the demand for referendum. Thus, waiting for a new human rights court law to be passed was not a very strategic option for the government.

There is no reason to believe that the whole process was a conspiracy to cover the truth or to prevent human rights abuses in Aceh from being brought to a human rights court, just as there is no guarantee that a KPP-HAM and ad-hoc human rights court would have produced more satisfactory outcomes. However, as long as the possibility of human rights tribunals for Aceh existed as an alternative, the *koneksitas* trial was regarded as an inferior measure to the human rights court for East Timor and thus discrimination against Aceh. From today’s perspective, the popularity of human rights tribunals might be hard to understand, after all three such tribunals failed to deliver expected outcomes. At that time, the expectations put on the new system were very high, as is apparent in an NGO publication on Aceh, for instance:

This court would have powers to consider charges of violations of crimes against humanity which are not included in the Indonesian Criminal Code, giving powers to try suspects for a much broader range of crimes in accordance with international humanitarian law. Properly constituted adhoc human rights courts would ensure the appointment of respected judges whose integrity with regard to human rights is

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<sup>252</sup> “Bureaucracy ‘Hampers’ Swift Trial on Aceh,” *Jakarta Post*, December 14, 1999.

unimpeachable and would be served by prosecutors and pre-trial investigators of similarly unimpeachable integrity (Barber 2000, 109).

What really worried human rights groups in Jakarta was perhaps the possibility that the *koneksitas* court would become the permanent format for all past human rights abuses. The retroactivity issue of the new human rights court system was not fully resolved when the Bantaqiah trial was being prepared. Among various proposals, Minister of Human Rights Hasballah M. Saad's idea that all such cases could be sent to *koneksitas* court was included.<sup>253</sup> To those who supported ad-hoc human rights tribunals without limitation of retroactivity, it might have been acceptable to try out the *koneksitas* court for this specific occasion, but using it as a comprehensive solution was not.<sup>254</sup>

The manner in which the judicial process was managed heightened distrust of the process in general. In February 2000, when the trial was still being prepared for, it was revealed that a key suspect, Lieutenant Colonel Sujono, had disappeared. His disappearance was a crucial blow to the *koneksitas* trial<sup>255</sup> – human rights groups condemned the trial openly and severely. Kontras almost boycotted the trial. On the day the trial opened, Munir commented that “the trial is only to show that there is already a trial, while it ignores substantive demands of Acehnese people who want justice, not just a court.”<sup>256</sup> In a press conference on May 10, Munarman, the new coordinator of Kontras,

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<sup>253</sup> “Hasballah M Saad: Coba Dulu Peradilan Koneksitas, Baru Dievaluasi,” *Kompas*, December 11, 1999.

<sup>254</sup> For this reason or another, the human rights NGOs labeled the *koneksitas* court Hasballah's project for his personal merits and blamed him for bringing the halfway measure forward. See, for example, Munir (2000, 123).

<sup>255</sup> The theory that the military “engineered” his disappearance was widely embraced, while the possibility that he might have chosen to hide as the sole senior officer to be charged was also raised.

<sup>256</sup> “Sidang Kasus Bantaqiah Diwarnai Protes Mahasiswa,” *Kompas*, April 20, 2000.

criticized the trial as just “public relations of elite politics.” Munarman commented that the trial must be stopped immediately and instead a KPP-HAM should be formed.<sup>257</sup>

Squeezed between NGOs with the maximalist position and conservative cliques of the military, the Wahid administration went nowhere with human rights abuses in Aceh. Follow-up measures to the KPTKA findings ended with the Bantaqiah trial. A military tribunal was opened for the rape case in Medan, but there were no trials for three other priority cases, in spite of Marzuki’s earlier statement that the *Rumoh Geudong* trial was being prepared along with the Bantaqiah trial.<sup>258</sup> The KPTKA kept working and announced findings on five new cases, only to be ignored by both the authorities and NGOs who insisted on a KPP-HAM. Immediately after the Bantaqiah trial, the new reformist Kostrad commander Agus Wirahadikusuma made public apology to the families of victims for involvement of Kostrad soldiers in the killings. Further, he announced that the soldiers took orders from their superiors and that Kostrad was responsible for the tragedy. However, Aceh NGOs did not accept the apology; they just commented that the apology showed there were more to be punished.<sup>259</sup> Agus’s repeated comments that the commander of the armed forces must take responsibility for the abuses merely angered his conservative rivals.

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<sup>257</sup> “Keluarga Korban Minta Pengadilan Koneksitas Aceh Dihentikan,” *Kompas*, May 11, 2000. One of Bantaqiah’s wives and the secretary of the Bantaqiah Foundation also attended the press conference and requested to discontinue the trial, as witnesses were being threatened by grenades. How a KPP-HAM would solve such security concerns was not clear.

<sup>258</sup> “Peradilan Kasus Bantaqiah Digelar di Sabang,” *Kompas*, January 4, 2000. Marzuki later admitted that the judicial process on the abuses in Aceh was slow, because of the prolonged interrogation of high-ranking officers within the military. “Penanganan Kasus Pelanggaran HAM Aceh: Jaksa Agung Akui Ada Kelambatan,” *Kompas*, December 14, 2000.

<sup>259</sup> “Panglima Kostrad Memulai Hal Baru,” *Kompas*, May 23, 2000.



Two years after the end of DOM, settling human rights abuses disappeared from the agenda of Indonesian government policies on Aceh. In May 2003, “unanimously supported by Parliament and the vast majority of the public, Megawati declared martial law and launched one of the largest military campaigns in Indonesian history” (Mietzner 2006, 38).

### **5-3. Peace on the Table: The Helsinki Talks and Post-Conflict Transition**

The Indian Ocean tsunami in December 2004 brought the two parties, the Indonesian government and GAM, to the negotiation table from January to July 2005. In addition to the scale of the natural disaster, the reduced strength of the GAM by ruthless operations since proclamation of martial law contributed to the success of the talks (Aspinall 2005b). Instead of independence, GAM received a special provision allowing local political parties in the region, along with amnesty for political prisoners and reintegration funds.

The debate on human rights was serious, but it was a secondary issue, ultimately. The GAM delegation raised the issue of a referendum in the first round of talks; after it became apparent, as expected, that Indonesian government would never make a concession, the issue of human rights abuses was brought to the table. Some GAM negotiators, particularly the former political prisoner Nurdin Abdurrachman, strongly argued that all offenders must be brought to an international court and investigation should be conducted by an independent international organization (Hamid 2009). After the third round, however, human rights disappeared from the agenda, and the new agenda

of local political parties began to be discussed seriously. Aspinall's research (2008b, 17) suggests that "GAM negotiators and their advisers agreed that any court established in Aceh would not be effective."

The position of the Indonesian government delegation was firm; they sought "reconciliation through amnesty" – coupled with economic integration – from the very beginning. Minister of Justice and Human Rights Hamid Awaludin claimed that "the history of Indonesia is a history of amnesty from time past to the present" (Hamid 2009, 114). The Indonesian delegation opposed any idea of international participation, and repeatedly pointed out that GAM also perpetrated human rights abuses, apparently warning that an international court would be dangerous to the rebels as well. The usual chain of arguments is clear in Hamid's own recollection. When a possibility of an international court was raised, he argued that Indonesia had a domestic human rights court (Hamid 2009, 124). Later, it slipped to an argument that human rights abuses must be settled through a TRC rather than a court (210). Then a basic principle that human rights is "a matter for the future and not a matter of the past" (229) was reiterated. Both the human rights court and the TRC were used to trump less palatable measures.

The final MoU, signed in August 2005, was drafted into a bill to be discussed in the national parliament. Acehnese politicians from all parties, as well as academics from major universities in Aceh, met in the Forbes Damai (Joint Forum for Peace).<sup>260</sup> The provincial parliament (DPRD) formed a special committee, which produced a draft

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<sup>260</sup> Forbes Damai is a forum for various stakeholders such as the central government, GAM, civil society in Aceh, and international actors. It was formed two weeks after the signing of the MoU. Author's interview, November 15, 2010 (Banda Aceh).

through four-month discussion (Rusdiono and Mujiyanto 2009, 305–06; Crouch 2010, 307–08). The bill was sent to the Ministry of Home Affairs in Jakarta, and then to the DPR. The bill was unanimously passed in August 2006, to become the Law on Governing Aceh (LoGA). Although the making of LoGA went through multiple and separate levels of discussion – the Helsinki talks, the Aceh DPRD and, finally, the ministry and the DPR in Jakarta – the provisions on human rights did not change much.<sup>261</sup>

The Aceh Monitoring Mission (AMM), an unarmed international team mandated to monitor implementation of the MoU, did not actively attempt to bring up the human rights issues, when neither of the parties showed interest. The role of international actors was generally limited, and the AMM believed that pressing the past human rights abuses might hinder the peace process at an early stage (Barron and Burke 2008, 31). AMM once responded positively to a proposal of the local army commander to use the traditional *adat* mechanism for reconciliation, but the response from the Acehnese society was negative (Avonius 2009). International agencies working in Aceh tended to take a narrow approach focusing on specific programs, well knowing the “allergic” response of

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<sup>261</sup> Crouch (2010, 310) criticizes the LoGA, saying that “the MoU’s provisions on human rights were virtually abandoned by the DPR,” primarily because the human rights court provision in LoGA banned retroactivity, whereas the one in the MoU does not have such limitation. However, an academic who was in charge of the human rights section in the DPRD version of the LoGA confirmed that changes were largely “matters of paraphrasing.” Author’s interview, November 16, 2010 (Banda Aceh). The retroactivity issue of the proposed human rights court for Aceh seems to have been one of implicit agreements between GAM and the Indonesian government, as I will explain below. Moreover, as long as the Law on Human Rights Court is there, there is always a way to prosecute past human rights abuses. It seems that the civil court provision for military crimes in the MoU was eliminated because a similar amendment was already proposed to the DPR – the jurisdiction of civil (public) court and military court was a national problem, rather than a problem specific to Aceh. Lastly, it is true that there is no timetable for formation of Human Rights Court in the LoGA, but timetables for similar institutions were usually not duly observed anyway, only brewing disappointment.

the Indonesian government to foreign meddling in human rights issues (Barron and Burke 2008).

The BRA (Aceh Integration Board), established by the governor upon instruction of the central government, took up coordination among stakeholders and “socialization” of the Helsinki MoU,<sup>262</sup> incorporating the USAID-funded Forbes Damai into its structure. In the MoU, the reintegration schemes targeted three groups: former combatants, political prisoners and affected civilians. Later, pro-Jakarta militia were added as a recipient group. In addition to distribution of reintegration funds, the body is in charge of reintegration and reconciliation in general, including plans for the human rights court and the TRC.

Post-Helsinki Aceh did not return to the violent past, and local power was transferred to the newly elected governor (elected in 2006) and DPRA (Aceh Parliament) members (elected in 2009), through local elections arranged according to the Helsinki agreement. As of November 2010, only thirteen among seventy-one articles of the Helsinki MoU remained unfulfilled.<sup>263</sup> The two major institutions for human rights of the past and the future, the Human Rights Court and TRC for Aceh, belong to the thirteen unfulfilled promises.

#### **5-4. Human Rights Court: An Abandoned Path**

The human rights court for Aceh as in the LoGA and the MoU was never established. Meanwhile, there was no prosecution of the human rights abuses that occurred in Aceh during the conflict. These are two separate phenomena that require

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<sup>262</sup> “Sejarah BRA,” 2007, <<http://www.acehforum.or.id/archive/index.php/t-10208.html>>.

<sup>263</sup> “Martti Memang Perlu Terus Memantau Aceh,” *Serambi*, November 15, 2010.

different explanations. In principle, human rights abuses after the enactment of the Law on Human Rights Court can be prosecuted in the permanent court of human rights located in four cities throughout Indonesia, including Medan in neighboring North Sumatra, upon *pro-justicia* inquiry of Komnas-HAM. Similar abuses that took place before November 2000 can be sent to an ad-hoc human rights court, established by the president upon recommendation from the DPR.

Why was the existing national human rights court system not used for Aceh? Certainly, there was consideration of the implicit agreement in Helsinki that it would be better not to prosecute past abuses. Only a few days after the Helsinki MoU, Hamid made it clear that “using retroactive principles when setting up a human rights tribunal in the province would open old wounds and disrupt the peace-building process” and “we have decided to look forward,” to which no serious objection from GAM seems to have been raised.<sup>264</sup>

Although the government opposed prosecution in a human rights tribunal, an explicit amnesty for crimes perpetrated during the conflict was not given. During the DPR debate, a PDI-P representative protested the absence of amnesty for Indonesian soldiers, while GAM was granted amnesty. Indeed, Jakarta was generous with amnesty and pardons for GAM and other political prisoners. Amnesty for political prisoners was one among the clauses of the MoU that were fulfilled before anything else. About 500 prisoners were released on August 17, 2005, and a total of more than 1400 prisoners were pardoned. A Swedish judge was appointed by the Aceh Monitoring Mission (AMM) to

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<sup>264</sup> Hera Diani, “Aceh Rights Tribunal to Skip Past Cases: Govt,” *Jakarta Post*, August 20, 2005.

resolve the remaining disputed cases, finally giving pardons to most of them (Aspinall 2008b, 19–20; Barron and Burke 2008, 25; Jeffery 2012).

The absence of an amnesty clause for state agents can be explained in two ways. First, the Indonesian government knew the international law claims against impunity well, and did not want to include such a controversial provision in the MoU.<sup>265</sup> Second, if an Aceh TRC were established by the 2004 national TRC law, amnesty would have been granted to perpetrators and the path of human rights court would have been accordingly closed, at least for crimes before November 2000. Therefore, an amnesty provision would have been redundant.

What about recent abuses that occurred between November 2000 and the peace talks? Komnas-HAM did not neglect Aceh altogether, but a *pro-justicia* team or KPP-HAM for Aceh was never established, except a short-lived one for the Bumi Flora killings in August 2001.<sup>266</sup> When new commissioners started their term in November 2002, Komnas-HAM formed a monitoring team, which was to become the Ad-hoc Team for Aceh (*Tim Ad Hoc Aceh*) with the declaration of the military emergency in May 2003. In a situation in which access of foreign NGOs and journalists to the region was extremely restricted and the local human rights community was practically paralyzed, the Ad-hoc Team under M.M. Billah compiled seventy cases of gross human rights

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<sup>265</sup> Amnesty for GAM and Acehese political prisoners cannot be interpreted as amnesty for crimes against humanity.

<sup>266</sup> See Human Rights Watch (2002) and Komnas-HAM (2003, 124–29) for the Komnas-HAM response to the Bumi Flora massacre. In August 2001, thirty-one people were shot by a group of armed men on the Bumi Flora plantation in East Aceh. Upon request from the regional office, Komnas-HAM formed an inquiry team on the Bumi Flora killings, but the decision to create a *pro-justicia* team was postponed several times, after an official letter from the governor of Aceh asking to stop inquiries for a while arrived. The KPP-HAM was finally formed in April 2002, but stopped activities only with a recommendation for further inquiries.

violations in the face of physical threats. However, the plenary session decided to shelve the report, instead of forming a *pro-justicia* team as recommended (Tim Ad Hoc Aceh 2004, xxviii-xxx).<sup>267</sup>

Like AMM, Komnas-HAM was concerned about dilemma between the peace and justice.<sup>268</sup> However, if peace talks had been conducted in the early *reformasi* period, or in late 2002 when Komnas-HAM commissioners just began their new term, abandoning the process altogether would have been much more controversial. The absence of a *pro-justicia* inquiry will be fully explained only when we take account of the weaknesses of the national human rights court system itself and the timing of the transition to peace in Aceh in the context of the (un-)development of the prosecutorial approach at the national level.

By late 2005, the failure of the human rights court was apparent. Only two ad-hoc human rights courts were ever formed – one for referendum violence in East Timor and another for Tanjung Priok. The permanent human rights court was used only once, for a case in Abepura, Papua. The records of all these courts were disappointing to former supporters of the new court system. Indictments for ad-hoc tribunals were very weak, almost guaranteeing acquittals in spite of some judges' attempts to make conviction (Cohen 2003; Cammack 2010). Only two were prosecuted in the Abepura case, and both were acquitted in September 2005. The ad-hoc courts made several convictions, only to

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<sup>267</sup> The team continued activities until February 2004. The plenary session of the Komnas-HAM did not approve the recommendation for the *pro-justicia* inquiry, and instead decided to make four new teams on different categories of abuses – which is synonymous with disapproval of a *pro-justicia* inquiry team (plenary session decisions, March 31, 2004, in Komnas-HAM 2004). Observing the situation in Aceh for the remaining period was assigned to the monitoring division and the Banda Aceh representative office.

<sup>268</sup> It was one of the considerations of the 2007–12 Komnas-HAM. Author's interview, January 7, 2011.

be overturned upon appeals. At the end of August 2005, the month the Helsinki MoU was signed, the only conviction that had not yet been reversed was East Timorese militia leader Eurico Guterres's. He was finally set free in March 2008.

Meanwhile, new *pro-justicia* reports from Komnas-HAM were ignored by the prosecutor's office and neglected by the parliament and the president whenever their recommendations were necessary. The 2002–07 Komnas-HAM commissioners produced several *pro-justicia* inquiry reports and submitted them to the prosecutor's office.<sup>269</sup> These inquiry reports were never followed up by the prosecutor's office, embarrassing Komnas-HAM and its commissioners; neither were political elites interested in forming more ad-hoc courts. Therefore, when Aceh finally achieved negotiated peace, Komnas-HAM commissioners were not in a mood to lose face again by producing another report doomed to fail.

New commissioners, who began their terms in 2007, were also generally cautious with *pro-justicia* inquiries. The Suharto team report was reviewed by new commissioners (2007–12) on a case-by-case basis, and a team for Aceh (*Tim Pengkajian Kekerasan di Aceh*) was formed in 2008 along with other teams on "Petrus" and the 1965 communist purges. Before the commission announced its findings on "Petrus" and 1965 communist purges late in July 2012,<sup>270</sup> when their term almost ended, only one *pro-justicia* report on the crackdown on Islamists in Talangsari (1989) was quietly sent to the prosecutor's

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<sup>269</sup> The one on the May 1998 riots was submitted in September 2003, and another on a non-retroactive case for Papua ("Wasiar/Wamena"), which does not require recommendations by the legislature and the executive, followed in September 2004. Both were ignored. There was the Trisakti/Semanggi case, which was sent by the former commissioners but blocked by the parliamentarians (1999–2004), too.

<sup>270</sup> Margareth S. Aritonang, "1965 Purge a Gross Violation of Human Rights," *The Jakarta Post*, July 24, 2012; Aditya Revianur, "Komnas HAM: Petrus Termasuk Pelanggaran HAM Berat," *Kompas.com*, July 24, 2012.



office during their term. As the Aceh team inherited the Suharto team's approach, it initially covered the DOM period only, but widened its scope to the pre-DOM era (from 1976) and the post-DOM era (from 1998 to 2003) later. Still, the team wrapped up its activities by merely suggesting “the third way”<sup>271</sup> – allegedly combination of the human rights court and the TRC, but practically abandonment of the human rights court track – for a mechanism of settling past abuses in Aceh (Asiah et al. 2010, 21–23), instead of making a *pro-justicia* team.

This time, Aceh was even discriminated compared to “Petrus” and the 1965 communist purge, because *pro-justicia* teams – “KPP-HAM” – were made for these two cases. The Komnas-HAM records show that the commission has been more hesitant with recommending human rights tribunals for massive human rights violations than with, for example, the Trisakti shooting (four student martyr-heroes) or the activist kidnapping (see Chapter 4). Komnas-HAM commissioners appear to have been fearful of dealing with massive abuses, because abuses on a massive scale are politically more sensitive. It took four years for 2007–12 commissioners to conclude that the Buru camp and summary executions of thousands of alleged criminals have elements of gross human rights violations, and more recent military operations of DOM Aceh or martial law Aceh were excluded again.

In sum, although the human rights court as in the 2000 law always existed as a possible option for Aceh, Komnas-HAM commissioners never made a decision to use the option. Meanwhile, the human rights court as in the LoGA was not established either –

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<sup>271</sup> Ifdhal Kasim is the head of Komnas-HAM (2007–12).

nobody has a stake in a court for the post-Helsinki era only.<sup>272</sup> Instead, the institution expected to assume a major role in settling past accounts in Aceh was the second half of the “third way” – the TRC, to which now we turn our attention.

### **5-5. Truth and Reconciliation Commission: The Permanent Alternative**

One rarely observes open and serious objections to the idea of an Aceh TRC, during the Helsinki talks or thereafter. How can we explain its absence then? This question can be divided into two parts; first, why was the national TRC, of which the Aceh TRC should be an inseparable part, not established; and second, what were the strategies from Aceh to counter the legal vacuum?

The TRC was a reality to come in the near future from the perspective of participants in the Helsinki talks and the legislation of LoGA, although its coming was a slow and protracted process, as we have seen. It was four months after the LoGA was enacted that the Constitutional Court annulled the TRC law as a whole. In Aceh, there are generally two positions on the future of the Aceh TRC in the face of the Constitutional Court decision. Some believe that the Aceh TRC must be formed under a properly established national TRC, because the LoGA stipulates that the Aceh TRC is an inseparable part of the national TRC. Others support an independent Aceh TRC as soon as possible. Unlike the Helsinki MoU, which stipulated that the Aceh TRC should be formed by the national TRC, Article 229 (1) of the LoGA – “to seek the truth and

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<sup>272</sup> Nor was its authority and relationship with the existing national human rights court system discussed seriously. Sepriadi Utama, the head of Komnas-HAM representative office in Banda Aceh, argues that the jurisdiction over genocide and crimes against humanity should remain in the national human rights court, while the Aceh court will assume general arbitration on human rights, like the European Court for Human Rights (Asiah et al. 2010, 19–20). But whether his idea is widely shared is not clear.

reconciliation, a Truth and Reconciliation Commission shall be established in Aceh by virtue of this Law” – already established the Aceh TRC. The legal-technical question has been a weighty one for transitional justice in Aceh.

Governor Irwandi Yusuf firmly defended the former position after his inauguration in 2007. For him, the formation of the Aceh TRC should be a policy of the national government (Asiah et al. 2008, 83); he explained that “we will continue to wait for the central government to pass the national TRC law, because the conflict that took place was not between Acehnese people, but between the central government and Aceh.”<sup>273</sup> He also suggested that the Aceh government would not be able to fund the TRC and subsequent reparations to numerous victims (Asiah et al. 2008, 88). If the budget problem is actually a secondary one,<sup>274</sup> it represents a greater question of assigning responsibility. His fear is that the central government might take its hands off the past human rights abuses once an Aceh TRC is formed without a connection to an existing national TRC (Asiah et al. 2008, 88). If it was central government policies that resulted in such great pain, loss and suffering, then there is no reason for the provincial government to assume responsibilities to victims or risks that might complicate the relationship with the central government and elements in Aceh.

Throughout 2007 and 2008, the TRC was actively discussed in various forums, centered on donor programs of the Forbes Damai. The Aceh Peace Resource Center (APRC), a USAID-funded think-tank of the BRA, made a draft of the TRC *qanun*

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<sup>273</sup> “Gubernur: KKR di Aceh Butuh Biaya Besar,” *Serambi*, August 18, 2010.

<sup>274</sup> The Governor’s point does not seem to literally mean that there will be serious financial implications of a TRC on the budget of the provincial government, as it soared more than four times after the Helsinki process. Author’s interview, November 23, 2010 (Banda Aceh).

(provincial bylaw) and conducted focus group discussions as one of its USAID-funded programs (Ari et al. 2009, 87–94). In 2008, the APRC also coordinated a forum called CoSPA (Commission on Sustaining Peace in Aceh), where representatives of “stakeholders” such as the Aceh government, TNI, and the police discussed a variety of topics, particularly peace and reconciliation, in the presence of international observers from the US and the European Union (EU).<sup>275</sup> Another task of the APRC was to form a team for discussion of the TRC *qanun* (Tim Pra-Raqan KKR), consisting of forty experts.<sup>276</sup> However, it seems that these efforts were largely based on the national-TRC-first strategy. The CoSPA discussed the TRC, but it was mostly about “socializing” the TRC bill from Jakarta and urging Jakarta to pass the TRC law as soon as possible. The CoSPA participants agreed on that “discussion of draft of TRC Qanun (Regional Regulation/bylaw) in Aceh should be done after the TRC Law is passed by DPR RI [the national parliament]. It is impossible for Aceh Parliament (DPRA) to pass TRC Qanun (by law) first, because the regulation of the Bylaw may be conflicting with the National TRC Law.”<sup>277</sup> The APRC team never submitted its *qanun* to the Aceh parliament.

The national-TRC-first position was further strengthened by the slow but positive progress in Jakarta. The Directorate-General of Human Rights, an office under the

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<sup>275</sup> USAID Indonesia, “Success Story: Laying the Foundation for Peace,” <[http://www.ird.or.id/index.php?option=com\\_content&view=article&id=75%3Alaying&catid=54%3Ass&Itemid=81&lang=en](http://www.ird.or.id/index.php?option=com_content&view=article&id=75%3Alaying&catid=54%3Ass&Itemid=81&lang=en)> (last access on May 23, 2012); CoSPA, “Press Release – 1st CoSPA Meeting,” February 16, 2008 <[http://www.aceh-eye.org/data\\_files/english\\_format/peace\\_process/peace\\_process\\_cospa/cospa\\_meeting/cospa\\_meeting\\_2008\\_02\\_16\\_01.pdf](http://www.aceh-eye.org/data_files/english_format/peace_process/peace_process_cospa/cospa_meeting/cospa_meeting_2008_02_16_01.pdf)>; CoSPA, “Press Release – 2nd CoSPA Meeting,” March 14, 2008 <[http://www.aceh-eye.org/data\\_files/english\\_format/peace\\_process/peace\\_process\\_cospa/cospa\\_meeting/cospa\\_meeting\\_2008\\_03\\_14\\_02.pdf](http://www.aceh-eye.org/data_files/english_format/peace_process/peace_process_cospa/cospa_meeting/cospa_meeting_2008_03_14_02.pdf)>.

<sup>276</sup> Fery Kusuma, “Amanat MoU yang Terbaikan,” *Serambi*, May 16, 2012. Two of them were German.

<sup>277</sup> CoSPA, “Press Release – 3rd CoSPA Meeting,” April 16, 2008 <[http://www.aceh-eye.org/data\\_files/english\\_format/peace\\_process/peace\\_process\\_cospa/cospa\\_meeting/cospa\\_meeting\\_2008\\_04\\_16\\_03.pdf](http://www.aceh-eye.org/data_files/english_format/peace_process/peace_process_cospa/cospa_meeting/cospa_meeting_2008_04_16_03.pdf)>.

Ministry of Law and Human Rights, formed a drafting team in 2007, which produced an “academic draft” of the new TRC law early in 2008.<sup>278</sup> Throughout 2009 and 2010, public hearings for the new bill were held several times in Jakarta and Banda Aceh, to which representatives of the Aceh government were invited. Also, teams from Aceh made UNDP-sponsored visits to Jakarta to discuss the TRC, and officials like Director-General of the Human Rights Harkristuti Harkrisnowo and Minister of Law and Human Rights Patrialis Akbar made visits to Banda Aceh. The progress of the legislative plan was confirmed in every such meeting.

In reality, the progress was extremely slow. The draft was indeed submitted to the president in July 2010, and entered the 2011 National Legislation Program (*Prolegnas*). As an op-ed in local newspaper put, however, “even if it enters as a priority to 2011 program, the national TRC will then be formed in 2012, and as for the Aceh one, in 2013 at the earliest. Then acknowledgement and reparations to victims will be postponed again, at least for three or four years.”<sup>279</sup> This author is not a skeptic at all. To avoid controversy, the new TRC bill eliminated all substantive contents on the institution. All that remains in the brief bill is general principles and technical procedures on recruitment and funding. The bill does not even specify the period it covers. Thus, except for general principles and common sense (“*Tentu saja kita harus realistis, jangan nanti ada wacana “Oh, jaman Hayam Wuruk, Gajah Mada”*”),<sup>280</sup> the bill itself offers little guidance to future

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<sup>278</sup> Indah Nurmasari, “Dirjen HAM Sepakat Tidak Berikan Amnesti,” *VHR news*, February 4, 2008.

<sup>279</sup> T Banta Syahrizal, “Pentingnya KKR di Aceh,” *Serambi Indonesia*, May 3, 2010.

<sup>280</sup> Comment by Director-General of Human Rights Harkristuti Harkrisnowo, *Dialog Rancangan Undang-Undang Komisi Kebenaran dan Rekonsiliasi*, Dirjen HAM, April 6, 2010, Jakarta. It means “of course we have to be realistic; discourses like “oh, [let’s go back to] the age of Hayam Wuruk and Gajah Mada” should not appear later.” Hayam Wuruk was a king of the Javanese “empire” Majapahit in the fourteenth

commissioners. The amnesty provision is not in the bill, but it does not mean that amnesty will not be provided by a future TRC; it can be decided by the commissioners themselves.<sup>281</sup> Commissioners would spend a long time to determine substantive, and perhaps controversial, details. Most importantly, the bill does not specify a role for the local TRCs such as the Aceh one. Therefore, the timeline described in the op-ed is in fact a very optimistic one. Now we see that even this timeline was an empty hope, because the national parliament never began discussion of the new TRC bill, as of May 2012.

In Jakarta, the momentum of transition has long gone. The TRC bill is not a prioritized agenda as in Aceh. The coalition of human rights groups, KKPK (Coalition for Justice and Truth Recovery), is more like a monthly forum for communication among relevant NGOs than a coherent advocacy group. As a director of a major human rights NGO puts it, “the only possible communication in KKPK is to share strategies and to avoid conflicts” like the previous truth v. justice debate.<sup>282</sup> Skepticism toward effectiveness of such a truth-seeking body still lingers, because major problems remain unclarified. A Kontras activist did not hide her suspicion toward the 2011 legislation program (Prolegnas), listing the new TRC bill and an amendment of the Law on Human Rights Court together:

The reason why the previous TRC was abolished was because it negates (*menegasi-kan*) the court. There, it was said that if [a case] went through the TRC mechanism, it cannot be brought to the court mechanism again.... In human rights principles, they must be complementary to each other, not abolishing

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century; Gajah Mada was a chancellor of Majapahit, who served Hayam Wuruk.

<sup>281</sup> Comment by Director-General of Human Rights Harkristuti Harkrisnowo, *Dialog Rancangan Undang-Undang Komisi Kebenaran dan Rekonsiliasi*, Dirjen HAM, April 6, 2010, Jakarta. According to her, however, amnesty should not be a precondition of compensation, as in Article 27 of the 2004 law.

<sup>282</sup> Author’s interview, August 27, 2010 (in English).

(*menghapuskan*) each other, but the tendency seems to be inclined towards abolishing ... I worry that in the legislation program [they might] become tools for abolishing one with another, because the Prosecutor General's Office and the DPR said several times, "Wait for the TRC" (*Nanti tunggu KKR*). *Lho*, so if the TRC is already there, then is it not allowed to have trials?<sup>283</sup>

Instead of the TRC bill or amendment of the Law on Human Rights Court, she said, a hope is put on a new alternative, namely an administrative commission that will offer reparations and official apology from President Yudhoyono to victims of past human rights abuses. The possibility of a fast-track solution has been in the air since 2009, when the DPR recommended follow-up measures to the activist kidnappings of 1997–98.<sup>284</sup> The human rights community in Jakarta is not making concerted efforts to back the new TRC bill, particularly in the presence of the "fast-track" alternative.<sup>285</sup> One of the human rights workers who previously led the TRC campaign said:

About the TRC bill, in fact, I personally feel now it is not so necessary to submit the bill. Why? Because it is like giving... an alibi to the state for not handling past violations in a prompt manner. Because they can say this bill is now being discussed. The bill is still in the process of discussion, so wait for the bill to be finished. Because of that, they are able to do nothing during the period the law is being made. So, we are like giving time for the government or the state to avoid

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<sup>283</sup> Author's interview, December 20, 2010.

<sup>284</sup> It was revealed as a concrete proposal to organized victims from Jakarta area in March 2010. Thus, all relevant groups are at least aware of the proposal. During the first half of 2010, it seemed that the new alternative overshadowed any support for the future TRC, and the situation has not changed dramatically afterwards.

<sup>285</sup> The conversation between a presidential special staff member and an NGO leader began immediately after the DPR recommendations in September 2009, but nothing came out of the proposal. NGO representatives were informed that the president planned to offer apologies on the anniversary of the *reformasi* movement in May 2010, which did not happen. They were then notified that the apology would come with the celebration of national independence in August, which was not realized again. It was postponed until the anniversary of the President's inauguration in October, and then until the human rights day in December. But an apology has not yet come. Comment by Mugiyanto, chair of the victim organization IKOHI, at *Temu Korban Pelanggaran HAM dan Sosialisasi RUU KKR*, by Aliansi untuk Kebenaran, Keadilan dan Rekonsiliasi (AKKAR Banyumas), KKP, ICTJ Jakarta, and Syarikat, October 14, 2010, Purwokerto.

responsibility, get away from responsibility – this is a sort of alibi. However, making of this law will take a long time... I believe, politically, it is not so urgent to discuss this bill now. What is more urgent is that the current government must find a pragmatic policy to resolve these past cases, so that Indonesian society is not burdened with history of the past cases. So, there must be a political exit for the past cases, and it is not necessarily to form a truth commission by making a law – enough if the president can issue a government regulation or a presidential decree, establish a commission, and this commission is assigned to clarification of what happened in the past, and the government gives apologies and also rehabilitation and compensation to victims. Case closed, so that one does not keep being brought to the past... Without something like this, I believe Indonesia will just spin around (*saya kira Indonesia ini berputar-putar*).<sup>286</sup>

Are the DPR members ready to pass the TRC bill then? In an Elsam survey of nine individual legislators from all major political parties, seven respondents – except those from Golkar and Wiranto’s new party Hanura – indicated their support to the TRC (Wahyudi 2011). However, nominal support from legislators may in fact conceal complex layers of political positions, or none thereof. A legislator from the ruling Democratic Party, comparing the court strategy and the TRC strategy, gave support to the latter: “I think it is not necessary to bring them [cases of past human rights abuses] to court... [because] our court system is bad and corrupt... therefore, the TRC is more likely to guarantee the processes that are more fair, and outputs are more likely to fulfill the sense of justice, *close to fair justice*.”<sup>287</sup> But, later, when asked a question on willingness of the government to push for the new TRC, his answer was rather different:

The problem is, *what is the relevance, what is the significance* ... also, it seems like the bill does not get support of the society [*masyarakat*], and the society is not concerned with it any more... that is, what I want say is, there must be a process of public pressure towards the government, DPR, and the president, to accelerate

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<sup>286</sup> Author’s interview, January 7, 2011.

<sup>287</sup> Author’s interview, January 4, 2011. Italics originally in English.



discussion of this bill. I believe this bill lost its legitimacy... If you talk about that [transitional justice], it is not solely to be seen through a form of the TRC law, for me the TRC law is, please go ahead [*silahkan saja*], [but] not necessary, no.<sup>288</sup>

If it is safe not to take nominal responses from DPR members at face value, then, the strategy of waiting for the national TRC is not very promising.

The second strategy, creating the Aceh TRC first, is supported by human rights NGOs, victim organizations, and the student movement in Aceh. International human rights NGOs, which demanded thorough inquiries into past human rights abuses previously, generally hesitated to make a similar demand. The current international concern on human rights in Aceh is primarily about *jinayat*, the Syariah criminal law, especially introduction of stoning as a measure of punishment. Neither the Aceh government nor the Aceh parliament will be blamed for their inaction with the TRC *qanun* as long as they disapprove *qanun jinayat*.<sup>289</sup>

Jakarta NGOs contributed to making a proposal of TRC *qanun* in the early post-conflict period. A coalition of NGOs in Jakarta and Aceh published a bilingual pamphlet (KPK 2007), offering a detailed proposal on the local TRC. The proposed TRC assumes almost zero contributions from the central government.<sup>290</sup> This commission is designed to

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<sup>288</sup> Author's interview, January 4, 2011. Italics originally in English. In his view, abolition of old repressive laws, like the electoral law that had banned *ex-tapol* from assuming political office, should be considered transitional justice.

<sup>289</sup> The revised *qanun*, introducing stoning, was passed by the former DPRD members, who were elected before local political parties were allowed in Aceh. Irwandi never signed the bill. GAM is a secular nationalist group, and Aceh Party representatives in the Aceh parliament are strongly against the revised bylaw. Adi Warsidi, "Acehnese DPRD to Revise the Qanun on Jinayat," *Tempo Interactive*, October 21, 2009.

<sup>290</sup> The primary source of funding, including reparations to victims, is expected to be from the provincial budget, and testimonies of key decision-makers in the central government are not even a part of the proposal. Instead, "to request documents required from state institutions and related organizations" and "to demand the handover of documents requested from state institutions and other related organizations" are a

focus on community reconciliation for minor crimes, and the primary tool for such reconciliation is local hearings. Since then, the initiative of advocacy has been in the hands of Aceh counterparts. In December 2008, Aceh NGOs and victim organizations submitted a TRC bill to the DPRA and provincial government.<sup>291</sup>

Human rights NGOs and victims' groups in Aceh were not very active during the national TRC debates, which culminated in 2003 and 2004, because full-fledged debates coincided with martial law in Aceh. Free from unpleasant memories associated with the former episode, such as antagonism in the human rights community and foot-dragging on the part of the government, they are less hesitant in supporting the TRC. The human rights community in Aceh retains a capacity for mobilization, unlike its counterpart in Jakarta. In December 2010, around four hundred demonstrators occupied the Aceh parliament (DPRA) building overnight, demanding the local TRC bill to be passed. The DPRA speaker promised that it would take an initiative if the central government does not take action before February 2011.<sup>292</sup> The bill entered the local legislative program in February, but it stopped there.

A final question with the Aceh TRC remains: what motivated the new political elites in Aceh to choose a national-TRC-first strategy? In addition to the general caution to avoid risk and responsibility, there may have been other possible considerations. First,

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crucial part of the proposed truth-seeking power, which does not assume voluntary cooperation from Jakarta at all – the commission shall demand intervention of the district courts to subpoena such documents.

<sup>291</sup> The bill is available at <<http://spkpham-aceh.blogspot.com/search/label/Rancangan%20Qanun%20KKR%20Aceh>>. This bill proposes no amnesty for perpetrators of crimes against humanity. The outgoing provincial parliamentarians put it in the 2009 legislation program, but it was missing in the 2010 program of newly elected members.

<sup>292</sup> "Demonstran Duduki DPRA," *Serambi Indonesia*, December 9, 2010.

these nationalist elites are likely to conceive the idea of reconciliation in collective terms, rather than in individual terms. When I asked an Aceh parliamentarian what he thought of reconciliation in Aceh – reconciliation among whom? – he answered that it should be between Indonesia and Aceh.<sup>293</sup> If reconciliation is primarily between the Republic of Indonesia and Aceh nationalists, which takes place through autonomy deals rather than specific transitional justice measures for individual victims, such reconciliation is realized in air-conditioned meeting rooms by representatives, not in numerous dusty yards where villagers meet one another, exercising more than a single Acehese identity. In this model of reconciliation, TRC as the NGOs propose would not be very significant.

Second, former GAM cadres among them might have concerns about the possibility of their members being put in an awkward position. Schulze (2006, 226) accuses GAM of “increasing criminalization of some of its rank and file as well as its ethnically and politically motivated targeting of civilians,” ranging from attacks against immigrants from Java, employees of foreign (“multinational”) corporations, civil servants, teachers, judges, district council members, village heads, etc. In the absence of stronger threats, “nothing” is always preferable to TC for those who might be blamed as perpetrators.

Local politics in post-Helsinki Aceh is dominated by the Aceh Party of the former GAM. Among six local parties that contested the 2009 legislative election, the Aceh Party was the most successful, winning 33 of 69 seats in the DPRA (Tapol 2009; Barter

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<sup>293</sup> Author’s interview, December 1, 2010 (Banda Aceh).

2011).<sup>294</sup> Governor Irwandi Yusuf was a former GAM negotiator, who won the first post-Helsinki election with his running mate Muhammad Nazar, a former SIRA (Aceh Referendum Information Center) activist, against a candidate backed by the exiled GAM leadership (Mietzner 2007). Irwandi ran again as an independent candidate in the April 2012 election, but he was solidly defeated by Aceh Party candidates, who won 56% of total votes.<sup>295</sup> In his bitter pre-election conflict with the Aceh Party, Irwandi revealed that GAM eliminated figures such as human rights activist Jafar Sidiq and IAIN (National Islamic Institute) rector Safwan Idris upon orders from the exiled leadership.<sup>296</sup> His statement failed to facilitate further truth-seeking initiatives, however. Considering his cautious approach to the TRC during his incumbency, it is not likely that political competition between Irwandi and GAM would lead to outbidding of truth-seeking.<sup>297</sup>

In sum, transition to peace in Aceh has proceeded without major truth-seeking initiatives. However, the absence of a TRC does not mean utter indifference to conflict victims in post-Helsinki Aceh. Without narratives, the number of conflict victims entered the administrative system through the BRA records.

## **5-6. What Do the Numbers Tell Us? Aid for Civilian Victims in Aceh**

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<sup>294</sup> Four parties failed to get a seat, and the Partai Daulat Aceh (*ulama's* party) gained only one seat.

<sup>295</sup> Irwandi got only 29% of the votes.

<sup>296</sup> "Pernyataan Gubernur Petunjuk Baru Pengungkapan Kematian Safwan Idris," *Harian Aceh*, July 4, 2011.

<sup>297</sup> Moreover, Aceh Party candidates won a landslide victory in former GAM heartlands, where the scale of human rights abuses was the greatest. Zaini Abdullah and Muzakir Manaf from Aceh Party won 77.13% of total votes in East Aceh, 76.32% in North Aceh, and 74.66% in Pidie. In contrast, Irwandi was most successful in places like Central Aceh, where Aceh nationalism is weaker.

The BRA statistics put the sufferings of civilians in Aceh during the conflict in clear numbers. The reintegration program consists of two parts. By 2009, the economic aid (*bantuan ekonomi*) was distributed to 38,575 civilian victims of the conflict (*masyarakat korban konflik*), the sixth category of recipients along with former GAM members, political prisoners and militias. The total number of target recipients is 62,000, of whom 23,425 victims were still waiting for the aid as of the end of 2009.<sup>298</sup> Meanwhile, the social aid (*bantuan sosial*) has three categories of targets – housing, *diyat* aid for those who lost family members, and scholarship for war orphans.<sup>299</sup> The civilian deaths are estimated to be 30,128, and 29,292 family members have received various amounts of *diyat*, a number far surpassing the existing estimates of the death toll during the conflict. The target of the housing aid is 29,378 units (Ketua BRA 2010, 7).

Compared to the absence of the human rights court and the TRC, the implementation of aid for civilian victims is impressive. For sure, these measures were stipulated in the Helsinki MoU, but there are other MoU clauses such as the TRC that were never implemented. There is no consensus on the meaning of these funds. For a

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<sup>298</sup> The number of “civilian victims” is very slippery. Not all aid was distributed to individuals, because block grants for villages through the Kecamatan Development Program were also disbursed from this scheme. It seems that these block grants are somehow aggregated into this number. The BRA statistics at the end of 2007 (Asiah et al. 2008: 17-18) describe the number of recipients as 67 *kecamatan* (2006), 1,059 people (2007-I), and 10,000 persons (2007-II), with the remainder of 0 *kecamatan*. This table has both economic aid for civilian victims and social aid for victims of disability. In the latter scheme, 1,550 people have benefited by then, and the target is about fifteen thousand. But this category disappears in the “realized program” part of the 2009 report (Ketua BRA 2010, 7). In contrast, a table made by the BRA office in East Aceh with statistics by July 2007 has a category of “aid for victims of disability” but not the economic aid (Iskandar et al. 2009: 60). While the budget for *diyat* and the housing program is consistently separate from the economic aid for civilian victims, the aid for victims of disability seems to have been once integrated into the economic aid scheme.

<sup>299</sup> An NGO worker explained that *diyat* is distributed to torture victims (victims of disability?) as well. Author’s interview, November 26, 2010 (Banda Aceh). Again, categories come and go – scholarship for war orphans appears only in some statistics. But *diyat* and the housing program appear consistently in all tables describing the BRA spending.

BRA official with GAM background, measures such as *diyat* are war compensation – because the Indonesian government lost the war with GAM, the government must pay.<sup>300</sup> For human rights NGO workers, the schemes fall short of reparations because of a lack of political or legal acknowledgment, and real reparations based on international human rights principles will come only after the TRC. Governor Irwandi denied the interpretation of *diyat* as an alternative conflict resolution. “Aid for conflict victims” (*santunan korban konflik*), he said, should be the proper description of the program.<sup>301</sup> Still others believe that these schemes are nothing other than compensation, if we understand the term in an economic sense. In other words, these are ad-hoc administrative measures, rather than a result of formal acknowledgment of wrongs through judicial or non-judicial state bodies.

Moreover, economic compensation to civilian victims has not been generally available to other groups of victims of state violence in the country. Indonesia incorporated a large part of recently developed international human rights trends into domestic laws, and reparations for victims of human rights abuses were also introduced by the Government Regulation on Compensation, Restitution, and Rehabilitation for the Victims of the Gross Human Rights Violation in 2002 (*Peraturan Pemerintah No. 3/2002*), in conjunction with the Law on Human Rights Court. Until now, however, all convictions by the (ad-hoc) human rights courts were reversed, and the absence of identifiable perpetrators was a ground for the refusal of compensation. Meanwhile, the BRA distributed social and economic aid to civilian victims, bypassing the legal labyrinth

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<sup>300</sup> Author’s interview, November 20, 2010 (Banda Aceh).

<sup>301</sup> “Santunan Korban Konflik Tetap Diperjuangkan,” *Serambi*, September 30, 2010.

of the national system. How can we explain this notable divergence from the national pattern? Why are BRA aid schemes being implemented unlike the TRC and the human rights court, in spite of the contested meanings and the ad-hoc nature?

I argue that aid schemes could be implemented precisely because of their contested meaning and ad-hoc nature. The reason why victims of the Tanjung Priok shootings, May riots, and activist kidnappings could not receive reparations is not because relevant legal clauses were lacking. The legal framework was not useful when it could not create convictions, while tens of thousands in Aceh could benefit from aid schemes because these schemes bypassed such a legal framework.

The *diyat* and the housing project began as an initiative of the local government at a time that its members were struggling to win the minds and hearts of disgruntled and vocal electorates. Although, as conflict escalated, local politicians were being marginalized as irrelevant collaborators, they had new resources such as the special autonomy funds in their hands (McGibbon 2006). It is worth noting that disbursement of aid to civilian conflict victims in Indonesia originally came from post-DOM Aceh. The idea travelled to sites of communal violence such as Poso and Maluku, and then came back to Aceh.

One of the first aid schemes was a housing program in 2000 or before, when hundreds of DOM victims were given Rp. 15 million each.<sup>302</sup> When a peace negotiation team led by then Coordinating Minister for People's Welfare Jusuf Kalla arrived in

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<sup>302</sup> "Proyek Rumah DOM Telantar," *Serambi*, June 6, 2000.

Malino, Central Sulawesi, they had the housing project in Aceh in mind.<sup>303</sup> The rehabilitation measures included, among others, housing aid of Rp. 5 million for each family and Rp. 2 million for those who lost family members.<sup>304</sup> Later, in February 2002, the Jusuf Kalla team led another peace accord called Malino II for communal violence in Maluku, and implemented similar rehabilitation packages for victims of conflict.<sup>305</sup>

The origin of *diyāt* in Aceh goes back to 2002, when Vice-Governor Azwar Abubakar launched the program with the new special autonomy budget (UNDP and Bappenas 2006, 38). It is not clear whether Azwar Abubakar was aware of the similar program for victims of communal violence in Poso and Maluku, but the Rp. 2 million aids in eastern parts of Indonesia preceded the introduction of *diyāt* in Aceh, though it was not called *diyāt* in those regions of Christian-Muslim conflict. The idea was to pay Rp. 0.5 million every month, until the total amount reaches Rp. 50 million (Azhari and M. Jafar 2003, 3). In reality, only Rp. 3 million reached thirty-four hundred recipients in 2002, because the local parliament approved only a part of the budget plan.<sup>306</sup>

The *diyāt* program was allegedly rooted in the Islamic tradition – the punishment for murder according to *qisas (qishash)* is the death penalty, but victims’ families and the perpetrator may reach a settlement through an alternative process, in which the families forgive the perpetrator and accept compensation amounting to a hundred camels (Azhari

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<sup>303</sup> Immediately after the Malino Declaration on December 20, 2001, Coordinating Minister for Economic Affairs Dorodjatun Kuntjoro-Jakti said that “the method of rehabilitation for Poso will be more or less the same with the one we used in Aceh.” “Menko Perekonomian Kirim Tim ke Poso Pekan Depan,” *Kompas*, December 22, 2001.

<sup>304</sup> “1.000 Korban Tewas Poso Disantuni Rp 2 Juta per Orang,” *Kompas*, December 27, 2001.

<sup>305</sup> In Aceh, the housing scheme was repeatedly implemented. In 2003, a plan to rebuild 6,000 houses for Aceh refugees, with funds from both central government and local government budgets, was announced. “Akan Dibangun 6.000 Rumah Pengungsi Aceh,” *Kompas*, September 5, 2003.

<sup>306</sup> “Santunan Korban Konflik Tetap Diperjuangkan,” *Serambi*, September 30, 2010.



and M. Jafar 2003, 5–13). According to this interpretation, *diyāt* involves acknowledgement of responsibility from the perpetrator. Whether the *diyāt* program means acknowledgement of state responsibility in civilian deaths was, however, far from clear in practice. Although *ulama* in Aceh may have interpreted *diyāt* in this way, Jakarta was silent on the point.

Moreover, if we take the interpretation seriously, it has implications for the strategy of NGOs and victims' groups, because the payment of "blood money" must be preceded by an act of victims' families granting forgiveness to the perpetrators. In other words, for victims, receiving *diyāt* is equivalent with a promise that they will not bring the case in concern to court – a promise reminding us of the annulled TRC law. Again, this meaning of *diyāt* does not seem to have been widely shared among victims in Aceh. The contrast with the *islah* scheme for Tanjung Priok illuminates the ambivalent meaning of *diyāt*. When two parties reached the settlement for Tanjung Priok following the allegedly Islamic peace process, a ceremony was held in a mosque, where representatives and witnesses signed a document called the *Islah Charter* (Widjiono 2003, 200–12). The victims' community was severely torn between pro-*islah* and anti-*islah* groups. The latter did not receive compensation, making their intention to go to court clear. When the ad-hoc human rights court finally opened, the former group showed up to obstruct trials with "I love *islah*" t-shirts.

In Aceh, there was no equivalent ceremony or signed agreement; nor did victims' communities in Aceh experience internal disputes with *diyāt*.<sup>307</sup> The recipients tended to

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<sup>307</sup> Avonius (2012, 230) argues that "civil society activists advocating justice for past human rights abuses,

dismiss the idea of alternative Islamic conflict resolution through *diyāt* (Clarke et al. 2008, 23). Then, for conflict victims in Aceh, there would be no contradiction between receiving *diyāt* and demanding justice for the perpetrators. If a court for the past human rights abuses is opened, the recipients will not appear with “I love *diyāt*” t-shirts to support the defendants. For the state and the victims alike, the *diyāt* program is just another ad-hoc aid scheme.

Since 2005, Department of Social Affairs in Jakarta had taken up the *diyāt* program and channeled the budget through its local office, and then BRA, but the budget was eliminated with the end of major reintegration programs. The amount of money that reached the 29,292 recipients in the BRA statistics varies, because some benefited from the program only once, and others received money more than once.<sup>308</sup> Meanwhile, a larger portion of reintegration funds for civilian victims was dedicated to the housing project. The amount of aid per house increased from Rp. 35 million to Rp. 40 million; the target seems to have decreased from about forty thousands to thirty thousands, and the project is still going on, with budget both from Jakarta and Banda Aceh. In addition, the BRA distributed Rp. 10 million for victims of disabilities (*korban cacat*).<sup>309</sup> Considering

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as well as family members of victims, have particularly criticized and turned down *diyāt*, claiming that its purpose is to maintain impunity.” It is true that NGOs and victims have criticized *diyāt*, but they did not discourage victims from receiving *diyāt*. In 2007, KontraS and several victims’ organizations issued a statement, announcing that “victims and victims’ families reject the aid disbursement if it means ‘money for silence’ (*Korban dan keluarga korban menolak pemberian bantuan jika bermuatan “uang diam”*). KontraS, KontraS Aceh, Federasi KontraS, SPKP HAM, K2HAU and KKP HAM, “Pernyataan Bersama tentang Penyelesaian Pelanggaran Berat HAM di Aceh,” November 26, 2007. It seems to follow that as long as *diyāt* is not clearly ‘*uang diam*,’ it is okay to receive it. If they had actively tried to discourage victims from receiving the money, it would certainly have split victims’ groups.

<sup>308</sup> The implementation of *diyāt* seems to have been irregular. Hendra and Asiah (2009, 18) reports that victims in East Aceh received smaller amounts of money as the number of victims increased during the conflict: Rp. 3 million in 2002, Rp. 2.5 million in 2003, and Rp. 1 million in 2005.

<sup>309</sup> On economic aid for 62,000 civilian victims, see ICG (2007) and Rusdiono and Mujiyanto (2009). At

that political prisoners and anti-independence militia also received Rp. 10 million from reintegration funds, the amounts of compensation for civilian victims are not small.

Aid schemes for civilian victims in post-Helsinki Aceh belong to enduring legacies from the tumultuous post-DOM politics. Nevertheless, these schemes are not radically different from those in areas of communal conflict – or, perhaps, rehabilitation programs designed for victims of natural disaster.<sup>310</sup> The schemes do not give us a clue on the backgrounds to the sufferings, nor the narratives of victims – not even an accurate description of aggregated number of damages. For now, however, these numbers are all that post-Helsinki Aceh added to what we officially know about the decades-long conflict.

## 5-7. Conclusion

The Helsinki peace process occurred seven years after *reformasi* and the rise of the human rights issue in Aceh. Apologies from presidents and military leaders have long evaporated, as well as recommendations by various official teams dispatched to Aceh, especially those on justice and truth.

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first, the BRA decided to fund individual livelihood projects based on proposals and put an advertisement on local newspapers, encouraging victims to apply. The nine categories of eligible victims include those who suffered from deaths, disappearances, disabilities, physical illness, mental illness, etc. (Rusdiono and Mujiyanto 2009, 257–58) However, when more than 48,000 proposals arrived at BRA offices, the officials felt overwhelmed and scrapped the program. For the disbursement of the 2006 budget, the World Bank's Kecamatan Development Program (KDP) replaced the individual livelihood projects. Block grants, instead of individual grants, were distributed to villages, selected by a World Bank-generated conflict index. Later, Nur Djuli, the new head of the BRA, returned the scheme to an individual-based one.

<sup>310</sup> Duncan (2008, 212) criticizes the fact that displaced persons in Maluku were handled by the Department of Social Affairs, i.e. “the government agency that dealt with victims of natural disasters,” which lack special concerns or knowledge on conflict victims.

Post-conflict transition in Aceh was an Indonesian transition, and transitional justice in post-Helsinki Aceh was conditioned by the rise and fall of two comprehensive national models of transitional justice – the human rights court and the TRC. The current situation in Aceh, described as “peace without justice” (Aspinall 2008b) or “non-truth and reconciliation” (Braithwaite et al. 2010), cannot be explained away by the lack of international human rights norms and models in Indonesia. The parties of the Helsinki talks knew about international norms and models well enough to put relevant clauses in the agreement accordingly. As the adoption of comprehensive models – based on principles of international criminal justice and experiences of South Africa – did not bring about expected outcomes, however, the provisions for transitional justice in the Helsinki MoU and LoGA did not mean implementation of the mechanisms on paper.

The lack of prosecution in post-Helsinki Aceh can be primarily attributed to the dismal performance of the national human rights court system. If the “pact” between the two parties to shelve past abuses was the major factor hampering prosecution in Aceh, we can expect that the possibility of prosecution will increase as time passes by. However, the problem of justice in Aceh is not simply to be understood by the logic of post-conflict justice, where the major obstacle to justice is presumably potential spoilers. As long as the national human rights court system remains paralyzed without new breakthroughs, justice will not be delivered for many years to come (if ever), unlike some post-authoritarian Latin American countries where the promises of amnesty eventually wore out.

Did post-authoritarian activism in Aceh create nothing but disappointment over the judicial system? In fact, the vibrant civil society in post-DOM Aceh produced many pieces of “truth” on the past human rights abuses in post-authoritarian Aceh. The extensive fieldwork of the Acehnese NGOs created basic data on the DOM era. The independent inquiries of the KPTKA, the DPR fact-finding team, as well as monitoring and study teams from Komnas-HAM produced thousands of pages on human rights abuses in Aceh.<sup>311</sup>

These initiatives were made possible primarily because of the pressure for an independence referendum. Those hundreds of thousands of demonstrators who flooded the streets demanding a referendum pushed the government to counter the demands with the KPTKA and the *koneksitas* trial. In this regard, the pressure for a referendum in Aceh worked like the pressure for an international court for East Timor, creating preemptive measures. While, for East Timor, the international pressure was assuaged after the KPP-HAM and the promise of a domestic human rights court, in increasingly nationalist Aceh, the KPTKA and the *koneksitas* trial were totally rejected, only raising the sense of discrimination and dissatisfaction. Such strong demands from post-authoritarian Aceh – the KPP-HAM and human rights tribunal – were, however, sidelined in post-Helsinki Aceh where Aceh nationalists won power and resources.

Furthermore, allies have weakened as the momentum of transition ended in Jakarta. Donors and foreign governments learned a lot about the attitude of the Indonesian

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<sup>311</sup> After the MoU, Komnas Perempuan (National Commission on Violence against Women) also published a report on experiences of female refugees during the conflict (Komnas Perempuan 2006), and international organizations conducted surveys, while NGOs and victims’ groups were developing unofficial truth-telling programs (Rhodes 2011).

government on the international pressure for human rights. As a result, they provided funds for discussion of peace and reconciliation, but nothing more. Today, international human rights groups are focusing more on the Syariah criminal law, the new source of abuses. Jakarta NGOs lost almost all confidence over the prospect of official transitional justice mechanisms, as the KPK proposal for the TRC, which assumes no contribution from the central government, shows. Human rights groups in Aceh lowered their goal to a local TRC, primarily based on local hearings, but even this modest proposal is not received positively by local elites.

The pursuit of standard comprehensive legal frameworks for transitional justice has, so far, brought no tangible outcomes. Still, less comprehensive but more practical alternatives have yet come. Post-Helsinki transitional justice in Aceh stopped at the point at which the Indonesian delegation brought to the negotiation table – amnesty for political prisoners and reintegration funds. Civilian victims also received a share of the reintegration funds through various programs, some of which originated from the post-DOM period. Such schemes could be implemented precisely because of their ambiguous meaning, which does not involve explicit acknowledgment of state wrongdoing. This is the state of transitional justice in post-conflict Aceh – which reflects the situation of transitional justice of post-authoritarian Indonesia as a whole.

**CHAPTER 6**

**POLITICAL PROCESS OF TRANSITIONAL JUSTICE:  
COMPARISONS WITH SOUTH KOREA AND TAIWAN**

**6-1. Introduction**

In the preceding chapters, I examined the adoption of transitional justice measures and some records of their implementation. I also argued that the processes of adoption do not fully explain the implementation of measures or lack thereof. Regardless of the intentions behind adopting measures, they can generate unexpected outcomes, or be replaced with improved measures afterwards.

Moreover, the Indonesian ad-hoc human rights court system and the TRC proposal were not entirely intended as countermeasures to external pressure. They also reflected concerns of Indonesian norm entrepreneurs, who were vocal and influential at the time of transition. Even though the reason they were ultimately accepted can be found in their value as preemptive measures, the “insincere” motives provide only partial explanation. The absence of the TRC more than five years after its annulment by the Constitutional Court requires additional explanation. So does the absence of ad-hoc courts for any case of New Order abuses since the parliamentary/presidential decision for the Tanjung Priok

court, packaged with the East Timor (1999) court, in 2001. Why has the ad-hoc court not been utilized for a decade, and why has the TRC proposal not been resurrected? Why are new initiatives for transitional justice rarely seen in the post-transitional politics of Indonesia?

To offer an explanation to the declining trajectory of transitional justice in Indonesia, I attempt a comparison of post-New Order Indonesia with two post-authoritarian countries: South Korea and Taiwan. A cross-national study finds that Asia as a region has a significantly lower number of transitional justice measures than other regions (Olsen, Payne, and Reiter 2010). By examining Asian neighbors, I can exclude the distinctively Asian culture of impunity from the pool of potential hypotheses. These three countries similarly lack a liberal democratic tradition; the Polity IV data show that, except for one year (1961) in South Korea, all regimes in three countries could not be described as democracies before the year of transition (Figure 1).<sup>312</sup> However, all of them have remained stable democracies since transition. All three experienced anti-communist authoritarian regimes. In Indonesia, the Communist Party of Indonesia was a legitimate political force during Sukarno's rule, but communists were eliminated during the 1965–66 purges at the beginning of the New Order regime. The state identities of South Korea (formally Republic of Korea) and Taiwan (Republic of China) cannot be explained without anti-communism.

Through the comparison, I propose an explanation based on wider social and political contexts. When the collective memory of violence is closely related to the

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<sup>312</sup> Taiwan experienced relatively gradual transition, but its score rose quickly from the year 1992.



identity of a social group, it makes a source of political pressure that party politicians – political elites in new democracies – cannot easily ignore. In particular, the association between political cleavage and wider social groups who identify themselves with direct victims of violence provides a context in which party politicians prioritize the issue. The “politicized” or “partisan” route towards transitional justice is one of the mechanisms that sustain the pressure in post-transitional periods, even without initiatives from an independent judiciary or from transnational advocacy networks. It helps to explain why some politicians exert political will persistently and others do not, with or without additional factors such as the leadership style.

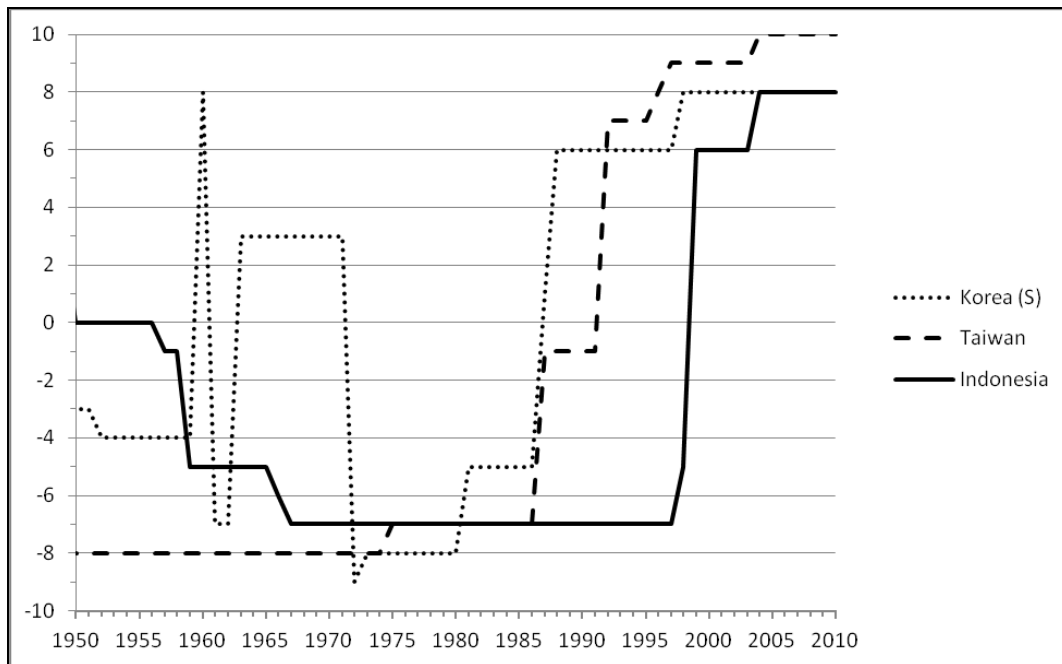


Figure 1. Annual Polity scores of Indonesia, South Korea, and Taiwan (polity2, 1950-2010)

The chapter proceeds as follows. First, I introduce a brief background on trajectories of transitional justice measures in South Korea and Taiwan. Second, I show that the major difference of trajectories between two early democratizers and Indonesia is the pattern of post-transitional justice, or protracted justice beyond the immediate transitional period, in addition to different characteristics of measures due to the timing of transition. Third, I examine specific decisions made by political elites in Indonesia and South Korea for the Tanjung Priok ad-hoc court, the special law for the Gwangju massacre, and the activist kidnapping ad-hoc court. Then I attempt to explain the fragile will of Indonesian political elites with the configuration of post-New Order Indonesian politics.

## **6-2. Earlier Transitions in East Asia**

### *6-2-1. South Korea*

Transitional justice in South Korea began with demands for justice and truth regarding the Gwangju (Kwangju) massacre in May 1980. During the Korean War and the rule of three autocratic presidents – Rhee Syng-man (1948–60), Park Chung-hee (1962–79), and Chun Doo-hwan (1980–88)<sup>313</sup> – inhumane abuses by state authorities occurred frequently in various forms, ranging from torture to large-scale massacres.<sup>314</sup> Victims of extrajudicial killings during the Korean War period (1950–53) raised their voices in the short period of democratization in 1960, but were soon jailed for their

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<sup>313</sup> Rhee Syng-man was a civilian leader, who ruled a “competitive authoritarian” regime from the pre-Korean War period. Park Chung-hee’s military coup in 1961 did not lead to abolition of elections, but he replaced the existing constitution with a draconian one in 1972. After Park was assassinated in 1979, Chun Doo-hwan staged a coup. See Figure 1 for the democratic trend.

<sup>314</sup> See TRC ROK (2010) for one of the most comprehensive data.

activities under Park's "reformist" military regime.<sup>315</sup> During the following decades, public advocacy concerning state violence was effectively suppressed.

After Park Chung Hee's death in 1979, the military coup led by Chun Doo-hwan's clique and the ensuing crackdown on demonstrators in Gwangju – usually dubbed as "May 18" – cultivated opposition to military rule. Gwangju citizens' resistance to Chun's rule left the feeling of indebtedness on the pro-democracy movement as a whole, along with stigma for Gwangju as the land of rebellion.<sup>316</sup> As historian Chung Hyun-back puts, "the slogan of student movement and pro-democracy movement between 1980 and 1987 was about recalling memories of Gwangju May 18 and demanding truths. Therefore, the pro-democracy movement in the 1980s itself had the characteristics of 'struggle of memory'" (Chung 2010, 82). Torture and "suspicious deaths" of student activists had also been a persistent issue throughout Chun's seven-year rule. Finally, faced with demonstrators who accused the government of hiding truths behind the death of a tortured university student, Chun stepped down and direct presidential elections began in 1987.

Immediately after the transition, several measures for the Gwangju massacre were launched. Established early in 1988, the Committee for Promoting National Reconciliation,<sup>317</sup> an advisory committee appointed by President-elect Roh Tae-woo,

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<sup>315</sup> For Geochang, see Seo (2010, 395–96); for Jeju, see Suh (2000, 52). These two regions got their own commissions in 1996 and 2000 respectively before the Korean TRC was established for general investigation into civilian massacres during the Korean War period.

<sup>316</sup> The 1980 Gwangju massacre began with bloody repression of student protestors, but the situation was transformed into an armed uprising as troops continued shooting demonstrating masses. Between May 21 and May 26, Gwangju was effectively ruled by autonomous citizen committees, until 25,000 soldiers entered the city to reclaim the provincial office.

<sup>317</sup> Here "reconciliation" is translation of "*hwahap*"; recently, "*hwahae*" is more frequently used for

made recommendations including redefinition of the event and aid for victims.<sup>318</sup> Judicial accountability and truth-seeking were not considered by the committee, however. In the same year, the newly elected National Assembly formed a special committee for inquiries into the Gwangju May 18.<sup>319</sup> The series of hearings drew huge attention when aired on TV,<sup>320</sup> with Chun's appearance on December 31, 1989, where he did not offer an apology, practically marking a half-hearted closure of committee activities. The National Assembly then passed a law on compensation for Gwangju victims in August 1990. Based on the law, the government provided compensation for more than four thousand victims and families as of 2008.<sup>321</sup>

Demands for judicial accountability did not subside, however. The Gwangju issue revived after inauguration of the first civilian president in decades, Kim Young-Sam. Social groups formed an umbrella organization to demand prosecution of two former presidents, Chun and Roh, and other high-ranking officials responsible for the coup and massacre (Lee and Park 2004, 72, 81). In particular, the Seoul District Public Prosecutor's Office's decision that they had no authority to prosecute with regard to the Gwangju massacre led to a series of street demonstrations (Han 2005, 1005–06; Cho 2007, 581–82). The move toward prosecution was accelerated by a new scandal revealing

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translation of the term reconciliation.

<sup>318</sup> Significantly, it reinterpreted Gwangju as “one in the series of democratization movements [*minjuhwaundong-ui ilhwan*],” rather than “Gwangju incident [*satae*]” as it was officially named before.

<sup>319</sup> Its full name was “Special Committee for the Investigation of the Truth of the May 18 Gwangju Democratization Movement.” Another special committee on the fifth republic (Chun's rule), which focused on corruption scandals, proceeded along with the Gwangju committee.

<sup>320</sup> In addition to public hearings, the committee also had power to seize documents and subpoena power.

<sup>321</sup> The total number of registered victims is: deaths 155, disappearances 77, injury and imprisonment 4,957. Categories can be overlapped. As of 2006, the net number of recipients was 4,362. See Han (2005, 1031–34) for detailed compensation system and subsequent revision of the law. Later, Gwangju victims could also become eligible for benefits as “persons of national merit,” along with war heroes and anti-colonial fighters.

former President Roh's hidden assets. Trials were soon held. Among the high-ranking officials put on trial, Chun Doo-hwan was first sentenced to death and then, on appeal, to life imprisonment for treason (the coup) and killing for the purpose of treason (the massacre). He stayed in jail until new President-elect Kim Dae-jung pardoned him late in 1997.

With Kim Dae-Jung's coming to power, a number of truth-seeking measures on other events of "past history" were launched. A commission for rehabilitation of Geochang and other victims, established in 1998, covered massacres of civilians during the Korean War in three regions. A national committee for the Jeju 4.3 events was formed in 2000, following the local-level truth-seeking initiatives which had already identified 14,504 victims (Kim 2009). Triggered by a communist uprising against the 1948 general election in South Korea, the six-year massacre is presumed to have resulted in about 25,000-30,000 deaths or elimination of ten percent of the total population of the entire island.<sup>322</sup> In the same year, two other commissions for pro-democracy activists – on investigation of "suspicious deaths" and on rehabilitation and compensation – were established.

More than twenty official mechanisms for truth-seeking, rehabilitation, and compensation have been created since the nineties. A majority of them were formed in 2003 and after, because the number of truth-seeking or investigative commissions increased dramatically under President Roh Moo-hyun. Historical events covered by such mechanisms went further into the past; four of them dealt with the Japanese colonial

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<sup>322</sup> The figures are from Seo (2010, 408), based on the official report of the commission.

period, and one covered a peasant rebellion in the nineteenth century. The police, the intelligence service, and the Ministry of Defense had to form their own “past history” commission. In addition, special groups of victims, such as those who were classified as “criminal elements” and put into a detention camp, got their own commission as well.

The Truth and Reconciliation Commission (2006–10) can be regarded as a closure to the patchwork of truth-seeking mechanisms for twenty years after Chun’s fall. Originally initiated as an attempt to investigate large-scale massacres during and before the Korean War primarily, the commission was given a broad mandate to make inquiries into six categories of incidents, including civilian massacres and human rights violations.<sup>323</sup> The commission had authority to make recommendations for state apologies, memorial services, and re-trials for judicial fabrication by state authorities. The (still ongoing) re-trials, in turn, may lead to reparations from the state for past wrongs.<sup>324</sup>

#### *6-2-2. Taiwan*

Unlike Korea, Taiwan (Republic of China) did not experience a full-scale war. However, the society could not avoid fallout from the Cold War. The earlier tension between the anti-communist Kuomintang (Nationalist Party) regime, which retreated to Taiwan after its defeat on the mainland, and Taiwanese people, who had originally

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<sup>323</sup> The commission also has mandates for investigation of “nationally glorious” moments, e.g. anti-colonial movements in Korea and overseas. “Human rights violations” mean torture and related abuses under the dictatorship. Massacres of civilians during the Korean War period belong to two categories distinguished from the “human rights violations” category, divided into two by the perpetrator parties (South Korea and the US/“the enemy forces”).

<sup>324</sup> Re-trials and reparations can be grounded on other official truth-seeking mechanisms, such as the truth commission on suspicious deaths.

resided on the island,<sup>325</sup> was most violently manifested by the February 28 uprising and the following massacres in 1947. It marked the beginning of harsh repression against enemies of the regime, known as the “White Terror.”

Martial law, proclaimed in 1947, lasted forty years until Chiang Ching-kuo, the Kuomintang leader and son of the former dictator Chiang Kai-shek, lifted it on July 14, 1987. This was within a month after Chun Doo-hwan promised a direct presidential election on June 29, 1987 in South Korea. In spite of the long interval between the democratic transition and the gravest tragedies – a scholar commented that “90 percent of the violations of human rights in Taiwan occurred before 1970” (Wu 2007, 107) – the mutually reinforcing dynamics of democratic transition and transitional justice was similarly observed (Suh 2000, 58). Early in 1987, when Taiwan was still under martial law, leading figures in the pro-democracy circle formed an “illegal” association for the purpose of promoting February 28 as a day for peace. On February 28, 1987, they publicly called for truth-seeking, reparations and rehabilitation for the victims, memorial monuments, etc. (Shih and Chen 2010,107; Chi and Doong 2009, 237)

When Lee Teng-hui assumed the presidency upon Chiang Ching-kuo’s death in 1988, his new government responded to such demands. On February 28, 1991, cabinet members and legislators rose to pay silent tribute to victims of the incident. In the same year, the cabinet formed a research team to investigate the February 28 incident, which published a report three years later. Lee apologized to victims in the next year, and the legislature passed a law on reparations for victims of February 28 (Wu 2007, 103–04;

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<sup>325</sup> Former residents consist of “natives” and Chinese immigrants who had moved to Taiwan in the previous centuries.

Shih and Chen 2010, 108). Among 2,152 victims approved by the February 28 (228) Memorial Foundation, 858 persons were victims of execution and disappearance, while 1,294 were subjected to imprisonment (Wu 2007, 104)<sup>326</sup>. Suh (2000, 28–29) argues that, though judicial accountability was absent, the practices of Taiwan’s government with regard to reparations, rehabilitation, and memorialization were laudable.

The White Terror by the Kuomintang refers generally to severe political repression against political dissidents, primarily those allegedly loyal to Communist China. Despite the different nature of the two sets of abuses, truth-seeking and reparations for the White Terror proceeded similarly. Truth-seeking efforts began on the “local” level, when the Provincial Council of Taiwan made a resolution in 1994. The Historical Records Committee of the council visited five provinces to collect testimonies, which published a series of reports on the “historical agenda of the fifties” (Suh 2000). As major politicians such as President Lee and Taipei Mayor Chen Shui-bian expressed their interests in resolving the fifties issue, another foundation in charge of distributing reparations to the White Terror victims was established, based on a national regulation passed in 1998. A total of 6,022 victims, with 699 among them victims of execution, received reparations for abuses and restitution for lost property (Wu 2007, 104).<sup>327</sup>

The reparations did not put closure on new developments. After President Chen Shui-bian was elected as the first president from the opposition (Democratic Progressive Party), in 2006, the February 28 Memorial Foundation published a new report

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<sup>326</sup> Wu points out that the number of recipients is far below the actual number of victims, for many victims were young people who have not yet married and not all of their parents survived.

<sup>327</sup> Those who proved to be rebels or spies are, however, not eligible for reparations (Suh 2000).



questioning the responsibility issue. The 1994 report had already raised the question of Chiang Kai-shek's responsibility, but avoided "giving a clear answer by saying that Chiang was too busy in the civil war with the Chinese communists at that time to closely look into the problem," although it did point out that Chiang failed to punish his subordinates (Wu 2007, 103). Some found the report unsatisfactory because it did not specify the role played by Chiang and Kuomintang leaders. The new report accommodated such a view, identifying Chiang as a figure who bore the largest responsibility for the massacre and indicating that he was clearly aware of the situation by information he received (Shih and Chen 2010, 109).

### *6-2-3. Characteristics of Earlier Transitional Justice*

The timing of the transition and the availability of international norms at the time may help explain the characteristics of transitional justice mechanisms used by two early democratizers. The global timing of democratization in Taiwan and South Korea, as well as the absence of internationally mediated armed conflicts during the transitional period, contributed to the internally-driven processes of transitional justice in a number of ways. Foreign criminal trials against perpetrators of human rights abuses or international criminal tribunals of the UN were virtually unheard of. In any case, when South Korea and Taiwan enacted their first reparation laws, the countries were not even UN members. No international pressure for transitional justice was present.

This period coincided with the series of international conferences on transitional justice, which shaped the nascent field. Among the participants of three conferences

discussed in Arthur (2009), the only Asian was Dr. Paik Nak-chung, a literary critic from South Korea, who attended the 1988 Aspen Institute conference.<sup>328</sup> Asians were entirely absent in the 1992 Salzburg conference and 1994 Western Cape conference. It meant state officials and civil society actors from South Korea or Taiwan could not get opportunities to interact with practitioners from Latin America and Eastern Europe through such conferences. Relative isolation from the “third-wave” transitional justice scene shaped transitional justice trajectories in the two countries.<sup>329</sup>

The mechanisms used in these two societies may seem peculiar to practitioners of transitional justice nowadays. Reference to international law was conspicuously absent in these earlier measures, and international human rights norms exerted oblique influence at best. The criminal trials against Chun and his subordinates were primarily about treason (and secondarily about corruption), not “human rights” abuses. In addition, the term “human rights” is nowhere to be found in the full names of some twenty special commissions established in South Korea. A majority of special commissions for reparations and truth-seeking in South Korea were not truth commissions as defined by Hayner (2011): a temporary official body investigating a pattern of abuses over a period in the past rather than a specific incident. Earlier commissions were established as a permanent, rather than temporary, institution. The Korean TRC was more like a sequel to earlier truth-seeking measures in South Korea, rather than a sibling of contemporary

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<sup>328</sup> For his brief profile in English, see <<http://www.changbi.com/author/content.asp?pAID=0051>>. See also a special issue of *Inter-Asia Cultural Studies* (11:4, December 2010) dedicated to him. He is more interested in reconciliation of two Koreas than justice and reconciliation of the South Korean society.

<sup>329</sup> Recently, the Taiwan Foundation for Democracy (2007) and the Korean TRC (2009) held large international conferences on the topic, only after almost all cases in their own countries were closed.

TRCs around the globe. It did not conduct emotional public hearings as in South Africa, Peru, and Timor Leste.

Taiwan did not have a typical truth commission either. Only a commission of inquiry which was clearly not a truth commission – its mandate was to investigate a recent assassination attempt – was named such;<sup>330</sup> actual truth-seeking tasks into the past were given to (non-temporary) memorial foundations or teams under permanent state institutions. Suh (2000) notes that the lobbying efforts by the Historical Records Committee of the Provincial Council of Taiwan facilitated official investigation into the human rights abuses in the fifties. The committee, having gained more budget and publicity with its investigation into the February 28 incident, was eager to begin another similar project to maintain its status.

What distinguishes Indonesia from South Korea or Taiwan is the frame of transitional justice, namely clear reference to international law, human rights norms, and new models (particularly the TRC). The distinctive characteristics of earlier transitional justice in two East Asian countries indicate that the timing of democratization and international influence shapes frames of transitional justice. As long as all three countries dealt with authoritarian legacies and political violence with specially adopted measures for that purpose, however, I believe trajectories of transitional justice in these countries are parallel, thus comparable, phenomena.

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<sup>330</sup> Special Commission for the Investigation of the Truth about the March 19 Shooting was formed to investigate the shooting of President Chen Shui-bian and Vice President Lu by a gunman on March 19, 2004.

#### *6-2-4. Contrasting Patterns of Timing: Languishing Justice in Indonesia*

But what shall be the basis of comparison? Comparing measures for judicial accountability directly might be problematic. In Taiwan, prosecution was not adopted as a way of settling past accounts of human rights abuses. The major part of human rights abuses occurred decades before the transition there. Indonesia and Korea had trials, but the approaches – whom to prosecute and what charges to file against them – were very different.

The conviction of Chun Doo-hwan and his clique with charges of “treason” and “murder for the purpose of treason” was certainly exceptional, considering the prevalence of impunity with regard to crimes of top national leaders in Asian societies, unless the charge is corruption.<sup>331</sup> However, judicial accountability was not the major mechanism of transitional justice in South Korea, though the symbolic power of trials was huge. There were no more trials of perpetrators, whether for Gwangju or for other incidents. The charge of “killing for the purpose of treason” in the Gwangju trials conveniently excluded the possibility of convicting low-ranking officers and soldiers in the field. Legal justice was partially achieved through alternative means – victim-oriented re-trials for getting rid of the stigma of victims and making grounds for reparations.

If the Gwangju trial belongs to the rank of older patterns before the age of human rights, namely collaborator trials in post-Nazi Europe, Indonesian human rights trials accommodated legal norms from post-Cold War international criminal justice. The East

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<sup>331</sup> A number of former state leaders had been convicted for corruption so far: Chen Shui-bian (Taiwan), Joseph Estrada (Philippines), Chun and Roh (South Korea), and Thaksin Shinawatra (Thailand). Many of them were democratically elected.

Timor and Tanjung Priok trials were based on the law on the human rights court, which made genocide and crimes against humanity, as in the Rome Statute of the ICC, domestic crimes. As explained in Chapter 4, this indirect accommodation of international crimes into the domestic legal system originated partly in the disappointment with the legacies of military tribunals, which convicted field soldiers only. By convicting regional commander Adam Damiri, the ad-hoc human rights court for East Timor distinguished itself from the Santa-Cruz-style military trials.

Former President Suharto never stood in court. Although efforts to prosecute him with corruption charges had been rather persistent until Suharto's death in 2008, he successfully avoided the court with his alleged health problems. Accusations of human rights abuses during his reign did not join the corruption charges, and it seems that human rights activists made the link between human rights abuses and corruption only in the last phase.<sup>332</sup> The initiative for ad-hoc human rights court for Suharto was, as we have seen, terminated in the plenary session of Komnas-HAM. The 2007–12 Komnas-HAM returned to the case-by-case approach when they reopened the Suharto case file.

The different nature of trials in the two countries makes direct comparison difficult, but timing of trials might be comparable. In Indonesia, two ad-hoc human rights courts began proceedings in March 2002 and September 2004 respectively (Table 3). In other words, these two sets of trials were launched within five years after transition. There was one more human rights tribunal for a recent case in Papua, and it was launched before the

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<sup>332</sup> In 2006, human rights activists and intellectuals founded an alliance called People's Movement to Try Soeharto (Gemast; Gerakan Masyarakat Adili Soeharto) and protested the 2006 SKP3 – Order to Stop Prosecution – for the Suharto corruption case. “Adili Soeharto!” *Berita Kontras* No.03/V-VI (May-June)/2006; “Appeal in Soeharto Case Rejected,” *Tempo Interactive*, September 28, 2006.

five-year period ended as well – all of them, including the clearly post-authoritarian case of Tanjung Priok, belong to the category of immediate transitional justice. Komnas-HAM made several *pro-justicia* reports, but they have been shelved in the prosecutor's office, the parliament, or the president's office, waiting for follow-up measures. For the next seven years, the human rights court system remained paralyzed. In contrast, South Korea began the trials in 1995, eight years after the direct presidential election in 1987. It was a case of delayed or protracted transitional justice, if we use the five-year rule.

The contrasting pattern of timing is apparent in non-judicial initiatives as well. In South Korea and Taiwan, the mechanisms for truth-seeking and reparations began with resolving one historically and politically significant event and then expanded in an ad-hoc way, unlike the comprehensive South African and (non-existent) Indonesian TRC. Overall, in Taiwan, both material and symbolic reparations followed the truth-seeking mechanism, while in South Korea victims of extrajudicial killings before the end of the Korean War received symbolic reparations such as monuments and apologies only.

|                                      |                     | Occurred in | Report published in | DPR decision | Trial began in |
|--------------------------------------|---------------------|-------------|---------------------|--------------|----------------|
| Joint team (TGPF)                    | May riots           | May 1998    | Oct 1998            | n.a.         | n.a.           |
| Independent commission (KPTKA)       | Aceh                | 1996–99     | Nov 1999            | n.a.         | n.a.           |
| KPP-HAM<br>(“ <i>pro-justicia</i> ”) | East Timor          | 1999        | Jan 2000            | Mar 2001     | Mar 2002       |
|                                      | Tanjung Priok       | 1984        | Jun 2000            | Mar 2001     | Sep 2003       |
|                                      | Abepura (Papua)     | 2000        | May 2001            | n.a.         | May 2004       |
|                                      | Trisakti/Semanggi   | 1998–99     | Mar 2002            | Jul 2001     | n.a.           |
|                                      | May riots           | 1998        | Sep 2003            | not yet      | n.a.           |
|                                      | Wasior (Papua)      | 2001        | Sep 2004            | n.a.         | not yet        |
|                                      | Activist kidnapping | 1997–98     | Nov 2006            | Sep 2009     | not yet        |
|                                      | Talangsari          | 1989        | Sep 2008            | not yet      | n.a.           |

Table 3. Truth-seeking and pre-trial measures in Indonesia, case-by-case (1998–2011)<sup>333</sup>

<sup>333</sup> Two Komnas-HAM *pro-justicia* reports for Petrus and the 1965 purge (Chapter 5, note 270) were published after this study was finally approved. It is to be seen whether this last-minute announcement by the outgoing commissioners can become a catalyst of post-transitional justice.

|                             |   |   |
|-----------------------------|---|---|
| 1988-93<br>(Roh Tae-woo)    | Gwangju (1980)<br>Gwangju (1980)  | Committee for Promoting National Reconciliation (1988)<br>Law on Compensation (1990)  |
| 1993-98<br>(Kim Young-sam)  | Gwangju (1980)<br>Geo-chang (1951)  | Special Law Concerning Statute of Limitation (1995)<br>Law on Rehabilitation (1996)   |
| 1998-2003<br>(Kim Dae-jung) | Jeju (1948–54)<br>Pro-democracy activists (1964–)<br>Suspicious deaths of pro-democracy activists | Law on Truth-seeking and Rehabilitation (2000)<br>Law on Rehabilitation and Reparation (2000)<br>Law on Truth Commission (2000)                           |
| 2003-2008<br>(Roh Mu-hyun)  | Samcheong camp (1980)<br>No-gun Ri (1950)<br>Korean TRC   | Law on Rehabilitation and Reparation (2004)<br>Law on Rehabilitation (2004)<br>Law on (Straightening up) Past History for Truth and Reconciliation (2005) |

Table 4. Major transitional justice measures, South Korea (1998–2010)

Table 4 shows major laws relevant for transitional justice, as in the Korean TRC report (TRC ROK 2010).<sup>334</sup> For the first ten years, transitional justice in Korea was primarily about Gwangju. The Geo-chang commission was a small initiative without material reparations or large-scale truth-seeking efforts. Truth-seeking and reparations beyond Gwangju largely began with the inauguration of long-time opposition politician Kim Dae-jung as president of Korea. He pardoned former Presidents Chun and Roh, but new initiatives for victims of Jeju and former pro-democracy activists emerged during his term. Later in 2004, victims of Samcheong training camp – a concentration camp where

<sup>334</sup> The original table includes more laws, but I show only laws relevant to the Republic of Korea (1948–), excluding measures for the colonial period or before.



39,742 alleged criminals were detained for five months in 1980 – received reparations and rehabilitation too. The remaining cases went to the Korean TRC, which published its report in 2010 after making inquiries into 11,172 cases.

Therefore, it took more than twenty years for South Koreans to come to terms with their troubled past. Re-trials for victims of judicial abuses, primarily torture and fabrication of spy cases, are ongoing. In Taiwan, truth-seeking measures were implemented over decades too. The February 28 Memorial Foundation was founded in 1991, and the one for White Terror was formed in 1998; the revised report for February 28, assigning greater responsibility to Chiang Kai-shek, came out in 2006. What we see from South Korea and Taiwan is delayed or protracted justice, where the processes start immediately after transition and continue to deal with more cases, or the same cases with different – usually strengthened – measures.

In contrast, Indonesian initiatives for transitional justice were concentrated on the five-year transitional period, and then languished. In Table 3, I show major Indonesian truth-seeking initiatives for human rights abuses, including the Komnas-HAM “*pro-justicia*” inquiry reports. Although these reports were preparatory steps for the ad-hoc human rights tribunals, rather than truth-seeking measures for their own sake, they can be put in parallel with truth-seeking efforts in other countries – they compile preliminary evidence and then affirm that elements of gross human rights violations are found in certain cases. Beginning with the East Timor report, published in January 2000, Komnas-HAM has published eight such reports until 2011. Two of the cases – Tanjung Priok

(1984) and Talangsari (1989) – occurred during the heydays of New Order,<sup>335</sup> and three – the activist kidnapping (1997–98), the May riots (1998), and Trisakti/Semanggi (1998–99) – occurred during the transitional period, while the other three deal with human rights abuses after 1998.

The pattern of timing is clear again. The independent commissions for the May riots and Aceh were both formed by President Habibie. Among the eight *pro-justicia* inquiries, six were formed within five years after the transition. Or, the 1998–2002 commissioners published four *pro-justicia* reports; the 2002–07 commissioners published three, and only one report was produced between 2007 and 2012.<sup>336</sup> In addition, relevant laws – the law on human rights (1999), the human rights court (2000) and the TRC (2004) – were also passed within five years.

In sum, all three began transitional justice measures immediately after (or during) transition, but the frequency of Indonesian measures dropped after the first five years – what I call a languishing trend of transitional justice. While the phenomena of delayed justice are found in many countries, Indonesia is confirming Huntington’s (1991) prediction that the torturer problem will go away after the immediate transitional period.

#### *6-2-5. Similar Starting Points: Discussion of Alternative Explanations*

How can we explain this divergent pattern? Why did transitional justice measures languish in Indonesia after five years, while South Korea and Taiwan took new initiatives

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<sup>335</sup> Now “Petrus” (mid-1980s) and the 1965 purge were added to the Komnas-HAM list of gross human rights violations under the New Order.

<sup>336</sup> Again, by publishing *pro-justicia* reports on “Petrus” and the 1965 purge in July 2012, Komnas-HAM commissioners almost completed the Suharto case file, carried over from the 2002–07 commissioners, except military operations in Papua (before *reformasi*) and Aceh.

beyond the immediate transitional period? Put differently, what sustains the momentum for transitional justice in new democracies?

The starting point – the nature of transition – was more or less similar in three countries. The absence of amnesty measures in South Korea and Taiwan is perhaps a sign that the possibility of prosecution was very low. The dictators did not prepare amnesty laws because it did not occur to them they might spend a long time in jail, and their expectation was not radically wrong.<sup>337</sup>

No Alfonsín emerged in the immediate transitional period. In Indonesia, Vice President Habibie succeeded Suharto upon the latter's resign. Taiwan's political transition was led by the Kuomintang's Lee Tung-hui, who succeeded Chiang Ching-kuo upon his death. Direct presidential elections were not introduced until 1996, when Lee won his third term as president. In South Korea, the first direct presidential election in decades was held in 1987, but the candidate from the ruling Democratic Justice Party Roh Tae-woo – a former military general who played a key role in Chun's coup and his seven-year rule – was elected president. Kim Young-sam, Roh's successor, was formerly one of the opposition political leaders, but his party merged with Roh's Democratic Justice Party in 1990. Thus, in all three countries, the ruling party of the authoritarian regime remained in power for more than a year in the immediate transitional period. In

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<sup>337</sup> Klinken (2008, 370) suggests that “No formal impunity laws were passed as the New Order era ended in 1998, but the failure to convict anyone... suggests that similar guarantees were indeed made behind the scenes.” There is no reason to believe that an overarching pact on impunity existed at the time of transition, although a series of similar backroom deals for different cases and different individuals might have existed. In any case, I believe it is possible to explain the near-impunity without assuming backroom deals, which I cannot prove.

fact, compared to South Korea and Taiwan, Indonesian opposition figures Abdurrahman Wahid and Megawati rose to power rather quickly.

Duration of the preceding regime is frequently discussed as an important starting point for transitional justice. Elster (2004, 75) supposes that “when the predemocratic regime has been of short duration, memories of wrongdoing and suffering tend to be vivid and... emotions correspondingly strong.” South Koreans had two important interruptions of authoritarian rule in 1960 and 1980, and the 1980 one worked as the catalyst of transitional justice with the tragedy in Gwangju. In general, however, all three remained staunchly authoritarian before transition (Figure 1). Suharto’s 32-year rule was long, but the Kuomintang rule in Taiwan persisted for more than four decades.

The similar starting points also mean that the three countries do not exhibit radical differences in the liberal culture supporting the rule of law. Against earlier scholars’ deep distrust of transitional judiciaries that had served authoritarian rule, Skaar (2011) discusses the possibility that independent judiciaries would facilitate trials for human rights abuses as post-transitional (delayed) justice. An independent judiciary actively taking initiatives for transitional trials was not found anywhere among the three countries here. The 1995 South Korean trial of former presidents cannot be attributed to the independent judicial system or rule of law culture. It was political elites, President Kim Young-sam and party representatives in the National Assembly, who reversed the decision of the Prosecutor’s Office that it had no authority for the 1979 coup. Re-trials and reparation trials in South Korea were held upon the recommendation of truth-seeking commissions.

The Indonesian judiciary, especially the Supreme Court, is one of the arenas where post-authoritarian reforms have generally failed (Davidson 2009a). The disappointment with *koneksitas* and ad-hoc court decisions discouraged victims and human rights groups to resort to the judiciary. In all cases, the independent judiciary or, more profoundly, a liberal tradition of legalism, did not play a central role in transitional justice.

In sum, factors usually discussed as major determinants – nature of democratic transition, the duration of the regime, and quality of the judiciary – do not explain the lack of delayed justice in Indonesia. If the starting points of the three countries were relatively similar, I argue, it is time to turn our attention to the political processes of transitional justice – the course taken after transition by relevant actors, especially political elites, who are supposed to lead decision-making processes in democracies.

### **6-3. Identities and Cleavages: A “Politicized” Route to Transitional Justice**

In this section, I explore a potential mechanism of sustaining pressure for transitional justice beyond the immediate transitional period: wider social forces that sympathize with direct victims (and their families) through shared identities. If the memory of violence is deeply ingrained in their particularistic identities, it provides a potential source for making past abuses a prioritized political issue, particularly when the social groups are related to major political cleavages of party politics.

I will first examine the role of Islamists in the course of advocacy for the Tanjung Priok massacre, which produced a rare occasion of the operation of an ad-hoc human rights court for New Order abuses. Then I will argue that the repeated re-emergence of

the Gwangju agenda in Korean politics was possible because of the presence of an opposition party based on regional constituencies. Lastly, I ask why the Gwangju path, or the earlier Tanjung Priok path, is not seen in “post-transitional” Indonesia, and then attempt to find answers in the configuration of post-New Order Indonesian politics.

### *6-3-1. The Tanjung Priok Killings and Pressure from Islamic Forces*

Why was an ad-hoc court established only for Tanjung Priok in the long list of human rights abuses under the New Order? The answer cannot be separated from the “politics of memory,” i.e. the symbolic importance of the Tanjung Priok massacre and the ensuing crackdown on opposition figures for the wider community of political Islam beyond the victims’ community. Many interpret the event not “merely” as human rights abuses or, along with human rights groups, a consequence of the Suharto regime policy of imposing the state ideology Pancasila as the only possible program (*azas tunggal*) for all social organizations, but also as a conspiracy that came out of the factional power struggle to alienate Islamic forces from the regime.

Observers of the late Suharto period (Honna 2003, Aspinall 2005) commented that demand for re-investigation of the Tanjung Priok killing emerged as independent inquiries and military disciplinary measures were being taken for East Timor, Irian Jaya, etc. In 1996, two months after the July 27 Affair, a thousand people attended the commemoration ceremony for the Tanjung Priok massacre, where the protest leader Amir Biki’s brother demanded Komnas-HAM inquiries into the tragedy.<sup>338</sup> Within less than a

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<sup>338</sup> M. Syafii Anwar, Zainal Abidin, Ahmad Baso, Ali Anwar, Idris Thaha, and Yadi Sastro, “Menyingkap  
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month after Suharto stepped down, PPP proposed a fact-finding team for Tanjung Priok, and a number of political figures supported victims' advocacy activities. Two thousand people gathered at the fourteenth anniversary of the tragedy, where Amien Rais, the vocal opposition figure from Muhammadiyah, demanded rehabilitation for victims (Sulistiyanto 2007; Wahyudi 2009).

Aside from the support of human rights groups, especially Munir's Kontras, the advocacy activities for Tanjung Priok were empowered by the persistence of Jakarta-based victims, who were ready to camp out at Komnas-HAM demanding thorough inquiries,<sup>339</sup> solidarity committees of Muslim student activists who joined demonstrations; and party politicians who sympathized with victims. In June 2000, the Komnas-HAM announced findings of its inquiry team (KP3T; Komisi Penyelidikan dan Pemeriksaan Pelanggaran Hak Asasi Manusia di Tanjung Priok). Although the team even summoned such high-ranking men as Try Sutrisno, the former regional commander and, subsequently, Suharto's vice president (1993–98), and Benny Moerdani, the former ABRI commander (1983–88), the findings and recommendations of the KP3T disappointed victims and their sympathizers.

The team concluded that the tragedy occurred "because of the uncompromising attitude of those mobilizing the masses," emphasized "gross human rights violations" by the crowds who torched a Chinese shophouse on their way to the military command,<sup>340</sup>

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Tragedi yang Penuh Misteri," *Ummat*, No. 7, Tahun II, September 30, 1996.

<sup>339</sup> A victim proudly recalls that the Tanjung Priok victims were called "crazy" (*gila*) because of their militancy. Author's interview, August 11, 2010.

<sup>340</sup> The KP3T report records that twenty-four victims perished as a consequence of military shootings, and nine victims – eight members of a Chinese family and a maid – were killed by the arson. Among the twenty-four victims of shootings, based on the hospital record, the identities of nine victims were revealed.

and stated that “there was no evidence of a deliberate or planned massacre.”<sup>341</sup> Most importantly, the non-*pro-justicia* team did not recommend trials of perpetrators. After the findings were announced, the Islamist organization FPI (Front Pembela Islam; Islamic Defenders’ Front) attacked Komnas-HAM with stones and sticks.<sup>342</sup> Islamic parties in the parliament also strongly rejected the report, demanding further inquiry (Sulistiyanto 2007). Komnas-HAM made an exceptional move of forming a follow-up team, and announced a list of twenty-three individuals who were deemed responsible for what came to be defined as gross human rights violations within four months (Komnas-HAM 2000).

Whether the status of the Komnas-HAM team was *pro-justicia* or not did not matter, when political Islam – including Minister of Justice Yusril Mahendra, from an Islamist party – was expressing a sense of unfairness or discrimination against “Christian” East Timor. President Abdurrahman Wahid formed an ad-hoc court for Tanjung Priok, upon the DPR’s recommendation, as a package with the ad-hoc court for East Timor. The *islah* – or the private settlement – between military officers and a majority of victims dampened advocacy for Tanjung Priok,<sup>343</sup> but the ad-hoc trials against four (groups of) defendants – Sergeant Sutrisno Mascung and his ground troops, retired Major General Pranowo (former head of the military police in the Jakarta Military Regional Command), retired Major General Rudolf A. Butar-butur (former head of the

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In the aftermath of shootings, LBH and Petisi 50 used conservative estimates of nine victims, as in the press release of the army. Higher estimates between 28 or 40 also existed, while Amnesty International estimated hundreds of victims had perished. “Dari Versi Benny sampai Amnesti,” *Ummat*, No. 7, Thn. II, September 30, 1996. The number of victims registered to victims’ groups is more or less similar with the KP3T version, though the nine victims of arson are not registered. Author’s interview, October 25, 2010.

<sup>341</sup> “Commission to Investigate Human Rights Abuses at Tanjung Priok (KP3T) Press Release,” June 16, 2000, translated by Vanessa Johanson on June 20, 2000.

<sup>342</sup> “FPI Members Attacks Rights Commission Headquarters,” *Jakarta Post*, June 24, 2000.

<sup>343</sup> Nurcholish Madjid, a reformist Muslim intellectual, served as a witness for the *islah* ceremony.



North Jakarta Military District Command), and Major General Sriyanto (former head of the Operations Section Branch of the District Command) – proceeded.<sup>344</sup> In spite of the problematic atmosphere of the trials, R. Butar-butur and Sutrisno Mascung were sentenced to ten and three years in jail. The convictions, as well as a related decision for compensation, were reversed upon appeal in July 2005 (Sulistiyanto 2007).

Many regard the Tanjung Priok ad-hoc tribunals as a failure because of the problematic judicial procedure and limited prosecution of top decision-makers, especially those on the regional command (Kodam) level or above. One may also ask whether it would have been possible to form an ad-hoc court for Tanjung Priok without the East Timor factor. Still, it is notable that an event of the 1980s, instead of recent human rights abuses of the transitional period, was chosen as a “counterpart” of the East Timor court. The efforts of human rights NGOs were not negligible, but what distinguishes the Tanjung Priok massacre from other past cases is the wider Islamic forces – Islamist social organizations, individuals, and Islam-oriented political parties – who had supported the cause.

### *6-3-2. Gwangju and Sustained Pressure for Justice in South Korea*

For a similar dynamics involving wider social groups and political parties, going beyond the immediate transitional period, I examine the tortuous course towards the trials of former President Chun Doo-hwan in South Korea. The case of Gwangju does not represent all “protracted” transitional justice measures in South Korea, not to speak of

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<sup>344</sup> Rudolf A. Butar-butur, Sriyanto, and Pranowo were among those who signed the *islah* document, but it did not prevent prosecution of the three.

new democracies in East Asia. Rehabilitation and truth-seeking measures for other groups of victims did not follow automatically; each measure involved frequent shelving of relevant bills, persistent advocacy from victims' groups and decisions to revive the bills. Still, Gwangju made a breakthrough for later measures in Korea by providing a model and reversing the earlier closure. It also most clearly shows the role social groups and political parties can play in advancing transitional justice.

The special law for Gwangju eight years after the direct presidential election and five years after the 1990 compensation law shows the way interaction between the partisan struggle in the legislature, party cleavages, and collective identities of indirect victims sustains the priority of the issue. The massacre was closely linked to the collective identity of two groups – the citizens of Gwangju, who shared the victim identity with the direct victims, and the wider pro-democracy movement and student movement, which felt indebted to the martyrs of resistance. The hostility felt by citizens in Gwangju and its vicinities against the “murderers” and their successors is, in turn, closely related to the regional cleavage, which is the major cleavage in Korean party politics. Thus, the Gwangju issue could be resurrected at major political junctures as the prioritized issue in the National Assembly. Similarly, the February 28 massacre in Taiwan can be identified with the most salient cleavage of party politics, the cleavage between mainlanders and Taiwanese.<sup>345</sup>

The Gwangju massacre was first discussed in the legislature in 1985, before the transition. Representatives from the opposition Shinmin party demanded truth-seeking

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<sup>345</sup> For major political cleavages in Korean party politics, see Park (2003) and Kim, Choi, and Cho (2008); for Taiwan, see Fell (2005) and Yu (2005), among others.

measures, though the proposal was rejected at that time.<sup>346</sup> As seen above, the thirteenth National Assembly (1988–92) formed a special committee and passed a compensation law. The compensation law was one of the focal points of contention between the ruling Democratic Liberal Party and Kim Dae-Jung’s oppositional Party for Peace and Democracy. The 1990 proposals from the Party for Peace and Democracy – specific rehabilitation measures through re-trials and reinstatement of former government officials and students, reparations for political prisoners (in addition to the killed, disappeared, and the injured), and memorialization as a measure of collective reparations<sup>347</sup> – formed core elements of Korean transitional justice, which will be repeated for different groups later.

The 1990 compensation law seemed to be a closure for the Gwangju case. However, President Kim Young-sam’s inauguration in February 1993 revived the agenda again. The opposition Democratic Party immediately put forward a new proposal, largely based on the 1990 proposal for rehabilitation measures, reparations for political prisoners, and memorialization.<sup>348</sup> Kim Young-sam’s new measures for Gwangju, announced in May 1993, were very similar to the proposals from the opposition. Once Kim Young-sam agreed with the broadened rehabilitation and reparation measures, however, the Democratic Party demanded inquiry and prosecution. In October 1993, the Gwangju city council passed a resolution demanding a special prosecutor for truth-seeking.

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<sup>346</sup> “*Shin Min-dang, 85nyeon gukjeongjosa yogu*” (Shinmin party demands national inquiries in 1985), *Chosun-ilbo*, November 25, 1994.

<sup>347</sup> “*Gwangju-teugbyeolbeob: yeo-ya-‘5.18 danche’ samgak pigo*” (special law for Gwangju: triangle of the ruling-opposition parties and ‘May 18 organizations’), *Kukmin-ilbo*, March 19, 1990.

<sup>348</sup> “*Gwangju-teugbyeolbeob-an malyeon/Minju/pihaejaneun gugga-yugongja dae-u*” (Draft of Gwangju special law prepared by Democratic Party: victims will be treated as national heroes), *Kyunghyang Shinmun*, May 1, 1993. Party for Peace and Democracy merged with smaller Democratic Party in 1991.

In the following years, the debates over the 1979 coup and the Gwangju massacre became intensified as the end of the statute of limitation – fifteen years for treason and murder for the purpose of treason – was approaching. In 1994, the Prosecutor’s Office decided to suspend the 1979 coup case, leading to opposition outrage over the decision. In 1995, students from more than thirty-five universities went on strike. The National Congress for New Politics – Kim Dae-jung’s new opposition party – announced that it was preparing for three new bills for Gwangju trials. Later in the year, former President Roh Tae-woo was arrested for corruption. Ten days after the National Assembly began to review the bills from the opposition parties,<sup>349</sup> President Kim Young-sam announced that his party would bring in a special law to the National Assembly, opening the way to the historical trials of former presidents.

By offering an analysis centered on party politics, I do not deny the role of leadership, but provide a context within which leadership is exercised or “enabled.” Kim, Liddle and Said (2006) argue that the divergent pathways of military reform in South Korea and Indonesia can be attributed to the leadership, i.e. the “impact of the strategic and tactical choices” of the political leaders (Kim, Liddle, and Said 2006, 249). Kim Young-sam’s reformist leadership was indeed critical for the Gwangju trials. Moreover, he was also personally a victim of the crackdown on opposition figures in the fatal month of May 1980 and thereafter, as he stated in his 1990 speech on Gwangju. Although he became president with the help of the former ruling party of the authoritarian regime, his personal background seems to have played a role in his decision to expand reparation

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<sup>349</sup> Some politicians remained in the Democratic Party after Kim Dae-jung made his new vehicle, National Congress for New Politics. Both parties submitted bills separately.

measures and to send the Gwangju case to the court. However, the leadership factor alone cannot explain why Kim Young-sam's initiatives were almost identical with the preceding proposals from the opposition. His choices, though not predetermined, are better understood in the context of party politics of the time.

Based on the discussion above, I propose to rethink the “politicization” of transitional justice and its implications. Some believe that adoption of transitional justice mechanisms for political purposes – other than beliefs in human rights and rule of law – is no different than “hijacking” justice (Subotić 2009a; 2009b). If we understand politicization as undue political intervention in judicial or truth-seeking processes, the answer should be yes. In my view, however, demanding political will from the executive and the legislature and warning against politicization *before* the implementation stage is at best incoherent. Adopting transitional justice mechanisms without independent initiatives of judicial institutions is political because it needs intervention of political will. In practice, it is hard to separate sincere beliefs from strategic intentions in political choices. Moreover, to be implemented, sincere beliefs in ideas require strategies – and thus “politicization” – too.

Therefore, I believe that it is more promising to evaluate the sustainability of pressure rather than sincerity of intentions behind adopting transitional justice measures. Indonesian human rights activists often blame the use of past human rights abuses as a “political commodity” by politicians. The Indonesian parliament had formed two special committees (*pansus*; *panitia khusus*) on past human rights abuses: one on the Trisakti/Semanggi killings (by 1999–2004 parliamentarians) and another on the activist

kidnapping (by 2004–09 parliamentarians). When I asked the backgrounds of the latter *pansus*, which produced the recommendation for follow-up measures in 2009, an activist answered that “it was just a political commodity for the politicians.”<sup>350</sup> If past human rights abuses are a marketable issue, however, we should expect more special committees for abuses and more recommendations for trials, when the Indonesian reality does not exhibit either trend. If a “political commodity” is interpreted as an issue that can be neglected easily as the situation changes, however, this analogy might be helpful for understanding the Indonesian situation and its difference with the Gwangju issue in Korea.

The consecutive opposition parties in South Korea were not consistent in their demands for the Gwangju issue. Lee and Park (2004) criticize the opposition for agreeing to put closure to Gwangju with the 1990 compensation law. In 1993, the opposition proposed prosecution only to outbid Kim Young-sam’s new measures, and was not very persistent with the proposal, just as in 1990. However, they could not ignore the demands for prosecution from Gwangju, frequently expressed by local politicians, e.g. the Gwangju city council. With the strong regional cleavage, the stronghold of the consecutive opposition parties was Gwangju and Jeolla-provinces, which means that the opposition politicians could not change their positions over Gwangju as they saw convenient. The Gwangju massacre was so central to the regional identity of the constituency of Gwangju and Jeolla that, when Kim Young-sam’s ruling party was still

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<sup>350</sup> Author’s interview, October 6, 2010.

against prosecution, some politicians in the local branches of the ruling party announced their support for prosecution and resigned from the party.<sup>351</sup>

In sum, the sustained pressure for Gwangju can be attributed to the wider sympathy from Gwangju and Jeolla citizens, based on whom Kim Dae-jung's opposition parties could survive, as much as the tenacity of victims' groups and the supporting role of the student movement. The adoption of a transitional justice mechanism was a focal point of partisan conflict and contention, rather than a matter of consensus based on shared beliefs in human rights and rule of law.

### *6-3-3. Indonesian Parliament and Ad-hoc Courts: Veto Power against Justice?*

The Gwangju special law was passed eight years after Chun stepped down. What occurred in Indonesia eight years after Suharto resigned? Why was the course of advocacy for Gwangju not realized, and why was the Tanjung Priok advocacy not repeated? Before answering the latter questions, in this section, I will first discuss what transpired in the Indonesian parliament regarding past abuses between 2006 and 2009. I argue that the conventional explanations condemning the DPR as a whole as a veto power against transitional justice are misplaced. Some parliamentarians did have the political will to support transitional justice, as the efforts of the parliamentary committee (*komisi*) III for justice and human rights show – though it seems that the will was easily dampened when faced with resistance.

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<sup>351</sup> “5.18 teugbyeolbub jiji seomyeong: Minja Yi Hwan-ui ui-won Gwangju-jibujang satoe” (after signing the call for May 18 special law, Democratic Liberal representative Yi Hwan-ui resigns his position as Gwangju provincial office chair), *Chosun-ilbo*, September 23, 1995; “Suncheon Jo Chung-hun wiwonjang 2ho chunggyeogpa” (second shock: Suncheon branch chair Jo Chung-hun), *Chosun-ilbo*, September 26, 1995.

The DPR records regarding ad-hoc courts, and transitional justice more generally, are mixed. The DPR passed the human rights court law and the TRC law unanimously, and, as Table 3 shows, recommended ad-hoc courts for three cases: East Timor 1999 (March 2001), the Tanjung Priok massacre (March 2001), and the 1997–98 disappearances or activist kidnapping (September 2009). The normative argument that the DPR should take hands off judgment on the category of abuses, as human rights NGOs argue, should not be confused with an empirical assessment that the DPR is a major culprit in obstructing the ad-hoc court procedure.

Human rights NGOs made consistent objections to the intervention of political institutions in the establishment of ad-hoc courts (Chapter 4). Their attitude towards the parliament soured further after the special committee on the Trisakti/Semanggi shootings, formed even before the Komnas-HAM recommendation, concluded that the shootings were ordinary human rights violations, rather than gross human rights violations, and thus ad-hoc human rights court would not be necessary. A human rights activist who was involved in the advocacy for Trisakti blamed the decision on the PDI-P parliamentarians; while the PDI-P could prevail in the final vote, some parliamentarians did not bother to show up, and the parliamentary “verdict” on the shootings as gross violations failed to materialize.<sup>352</sup>

For ad-hoc courts, human rights NGOs and Komnas-HAM generally took a position that the role of the DPR should be limited to endorsing Komnas-HAM reports

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<sup>352</sup> Author’s interview, January 6, 2011. In the 2001 special committee voting on Trisakti/Semanggi, PDI-P, Wahid’s PKB, and PDKB (Partai Demokrasi Kasih Bangsa) – a small party based on Christian and ethnic Chinese constituencies – supported the ad-hoc court. “DPR Tak Bakal Rekomendasikan Pengadilan HAM ‘Ad Hoc,’” *Kompas*, June 28, 2001.



without further questioning. The 2004–09 members of *komisi* III made efforts to send relevant cases to ad-hoc courts following the suggested way. In particular, when the Komnas-HAM delivered the new *pro-justicia* report on the 1997–98 enforced disappearances (activist kidnapping) in November 2006,<sup>353</sup> the *komisi* intensively debated cases of gross human rights violations for the following months. For the Talangsari (1989) case, some committee members even demanded Komnas-HAM to wrap up its *pro-justicia* inquiry in a timely manner.<sup>354</sup>

For the activist kidnapping case, the *komisi* learned from Komnas-HAM that the Prosecutor General’s Office refused to launch an investigation for the reason that the ad-hoc court should be formed first.<sup>355</sup> (In fact, the Prosecutor General’s Office did not wait for the DPR recommendation, or even the adoption of the human rights court law, for the East Timor case.) The next day, the DPR speaker Agung Laksono (Golkar) asked President Yudhoyono to order the Prosecutor General Abdul Rahman Saleh to conduct an investigation into the activist kidnapping.<sup>356</sup> Then the *komisi* met the Prosecutor General’s Office and confirmed their position that Komnas-HAM had compiled sufficient preliminary evidence for all three cases – Trisakti/Semanggi, May riots, and enforced

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<sup>353</sup> Komnas-HAM sent official letters to the Prosecutor General’s Office on November 13 (conclusion) and November 15 (findings), respectively, and the summary report (*ringkasan eksekutif*) was sent to the DPR on November 27, 2006. “Laporan Singkat: Rapat Dengar Pendapat dengan Komnas-HAM,” February 6, 2007 (retrieved from <<http://www.dpr.go.id>>).

<sup>354</sup> “Laporan Singkat: Rapat Dengar Pendapat Komisi III DPR RI dengan Komnas-HAM,” November 22, 2006 (retrieved from <<http://www.dpr.go.id>>).

<sup>355</sup> “Laporan Singkat: Rapat Dengar Pendapat dengan Komnas-HAM,” February 6, 2007 (retrieved from <<http://www.dpr.go.id>>). The letter from the Prosecutor General’s Office was dated January 5, 2007. On January 19, Komnas-HAM sent a reply, stating that the argument that an ad-hoc court should precede investigation is not legally grounded and that the follow-up investigation must be conducted for all four *pro-justicia* reports, namely Trisakti/Semanggi, the May riots, and Wamena/Wasior (Papua). The last case occurred after November 2000; therefore, it does not need a recommendation from the DPR and president to proceed.

<sup>356</sup> “Penculikan: DPR Meminta Presiden Perintahkan Jaksa Agung,” *Kompas*, February 8, 2007.

disappearances in 1997–98. In their view, the previous DPR decision about Trisakti/Semanggi did not carry over to the 2004–09 DPR, and thus it should not be an obstacle for the follow-up investigation. The Prosecutor General’s Office seems to have disagreed on almost all points, however, and the *komisi* stepped back, proposing that the prosecutor’s office conduct a follow-up investigation *after* recommendations from the president.<sup>357</sup>

The *komisi* made further attempts to send the cases to ad-hoc courts. The *komisi* chair submitted their recommendation for three ad-hoc courts to President Susilo Bambang Yudhoyono.<sup>358</sup> At the same time, a special committee for the enforced disappearances in 1997–98 was formed,<sup>359</sup> and the Trisakti/Semanggi case was separately sent to the *badan musyawarah*, a body where party representatives discuss the agenda of the DPR plenary sessions (*paripurna*). There representatives of the ten parties voted on the issue; the majority of them refused to make the Trisakti/Semanggi case a plenary session agenda. Among the major parties, Golkar and Islamist parties – PPP and PKS (Partai Keadilan Sejahtera; Prosperous Justice Party) – opposed the agenda, while “pro-*reformasi*” parties – PDI-P, PKB, and PAN – gave support. The DPR speaker announced his respect for the *badan musyawarah* decision.<sup>360</sup>

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<sup>357</sup> “Laporan Singkat: Rapat Kerja dengan Kejaksaan Agung,” February 8, 2007 (retrieved from <<http://www.dpr.go.id>>).

<sup>358</sup> The recommendations were sent on February 14, 2007. Kontras (press release), “DPR RI Harus Bertanggungjawab atas Penundaan Penuntasan Kasus Pelanggaran HAM Berat Masa Lalu,” February 19, 2008 <[http://www.kontras.org/index.php?hal=siaran\\_pers&id=691](http://www.kontras.org/index.php?hal=siaran_pers&id=691)>.

<sup>359</sup> The *pansus* was formed on February 26, 2007. Kontras (press release), “DPR RI Harus Bertanggungjawab atas Penundaan Penuntasan Kasus Pelanggaran HAM Berat Masa Lalu,” February 19, 2008 <[http://www.kontras.org/index.php?hal=siaran\\_pers&id=691](http://www.kontras.org/index.php?hal=siaran_pers&id=691)>.

<sup>360</sup> “Bamus DPR Tolak Pengadilan HAM Ad Hoc,” *Suara Karya*, March 14, 2007.

After this defeat, ad-hoc courts emerged in the *komisi* reports only occasionally and cursorily, and the meeting agenda are generally dominated by sensational corruption scandals. The special committee for the enforced disappearance in 1997–98 remained dormant until October 2008, when it was revived under the new head Effendi Simbolon (PDI-P) in spite of the opposition from Golkar.<sup>361</sup> Because the committee members named presidential candidates such as Wiranto, Prabowo, and Susilo Bambang Yudhoyono as targets to summon,<sup>362</sup> it was widely suspected that the committee had a hidden political agenda. At first, NGOs and victims refused to attend the committee sessions because they believed the committee was politicizing the issue.<sup>363</sup> Meanwhile, a former victim of the kidnapping operation and then member of Prabowo’s Gerindra Party, Pius Lustrilanang, suggested it would be better to send the case to the (non-existent) TRC.<sup>364</sup>

In the middle of suspicion and opposition, however, the special committee finished its activities by issuing four recommendations in September 2009, two months after Yudhoyono defeated Megawati-Prabowo and Jusuf Kalla-Wiranto soundly in the first round of the presidential election. The four recommendations, passed in the plenary

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<sup>361</sup> “Hidup Lagi, Pansus DPR Penculikan Aktivistis,” *Kompas*, October 18, 2008. Its former head was Panda Nababan (PDI-P).

<sup>362</sup> “Hidup Lagi, Pansus DPR Penculikan Aktivistis,” *Kompas*, October 18, 2008. At the time of the activist kidnappings, President Yudhoyono was Assistant to Chief-of-Staff, Social-Political Affairs (Assospol Kassospol) of the armed forces. He was also a member of the military honor council for the case.

<sup>363</sup> Author’s interview, October 6, 2010. Kontras, LBH, and IKOHI met to discuss the invitation and decided to invite the committee members to Kontras, instead of going to the DPR. Several parliamentarians made an unofficial visit to Kontras, and the NGOs and victims began to cooperate with the committee.

<sup>364</sup> “Quo Vadis Pansus Orang Hilang?” *Kompas*, October 30, 2008. Pius and Desmond Mahesa joined Gerindra, and Desmond Mahesa is now a Gerindra parliamentarian (*komisi III*). For Pius’s statement on his career and decision, see his “The Most Frequent Question: Mengapa Gerindra?” <[http://www.facebook.com/note.php?note\\_id=37172986890](http://www.facebook.com/note.php?note_id=37172986890)> Meanwhile, Andi Arief (formerly SMID/PRD) joined Yudhoyono’s Democratic Party (PD) and became a special aide to the president.

session in the same month, are an ad-hoc court for the case, an official body for searching for the missing thirteen, rehabilitation and compensation for the victims, and ratification of the anti-disappearance convention. None of the four, or the “quick solution” based on them (Chapter 5), has been fulfilled so far. Still, the DPR recommendations provided a useful basis on which human rights activists can act.

The political will of the DPR, or at least some party politicians in the DPR, existed, though it was a weak one, faltering easily in front of the obstinate refusal from the prosecutor’s office to deal with the gross violation cases. The lack of follow-up measures to the 2009 recommendations and the absence of Wasior/Wamena trials in the human rights court, for which a DPR recommendation is not necessary, show that President Yudhoyono and the Prosecutor General’s Office are neglecting the human rights court system willfully.<sup>365</sup> Mietzner (2009, 309) argues that “the legislature could not only claim credit for some significant reforms in the security sector, but it achieved those reforms against fierce opposition by the government.” The recommendation for the enforced disappearance belongs to such reform initiatives. The initiatives largely ended up ineffective, possibly because of the “entrenched network of political relationships

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<sup>365</sup> In a 2010 meeting with the *komisi* III (2009–14), the Prosecutor General’s Office clarified that it would not conduct investigation into the Trisakti/Semanggi and activist kidnapping cases because military trials for those cases had already been held. For Talangsari and the May riots, the reason why an investigation would not be conducted was because the ad-hoc courts should be established first. “Laporan Singkat: Rapat Kerja dengan Kejaksaan Agung,” May 5, 2010 (retrieved from <<http://www.dpr.go.id>>). In a 2007 decision against Eurico Guterres’s request to review the human rights court law on the ground that the DPR had politicized the judicial system, the Constitutional Court ruled that the DPR should retain the authority of recommendation for ad-hoc courts, adding that the representatives should pay attention to the results of inquiries (*penyelidikan*, by Komnas-HAM) and judicial investigation (*penyidikan*, by prosecutors) when issuing recommendations (Putusan Nomor 18/PUU-V/2007, Mahkamah Konstitusi Republic Indonesia). Human rights NGOs welcomed this ruling as, according to their interpretation, it indicated that prosecutorial investigation must precede the DPR recommendation. Apparently, however, the Prosecutor General’s Office is not accepting this interpretation.

cultivated by the armed forces” (Mietzner 2009, 321) – or, alternatively, the lack of persistence on the part of parliamentarians. The partisan divide between pro-*reformasi* parties and Golkar is seen, but only vaguely.

#### *6-3-4. Fragile Will and the Context of Post-New Order Indonesian Politics*

Why was the political will for ad-hoc courts so fragile? First of all, the consensual nature of coalitional politics in Indonesia may have played a role in discouraging party politicians from supporting a potentially divisive issue. Slater (2004, 63–64) argues that, between 1999 and 2004, Golkar and PDI-P used “the spoils of the office... to co-opt all significant political parties into what is effectively an expansive party cartel.” In the 1999 legislative election, Megawati’s PDI-P – the oppositional symbol of the late Suharto period – gained the largest share of the total votes, 33.7%; Wahid’s PKB and Amien Rais’s PAN received 12.6% and 7% of the votes respectively.<sup>366</sup> Instead of a limited coalition – e.g. a reformist coalition of PDI-P, PKB and PAN or a nationalist coalition of non-Islamic parties – an anti-Megawati coalition of Islamic parties, Golkar, and the TNI emerged, electing Wahid in the indirect presidential election (Slater 2004). The logic of Wahid’s “national unity” cabinet did not change under Megawati’s “rainbow” cabinet, formed after Wahid’s impeachment in 2001. Megawati made concessions to the interests of conservative military officers significantly; by doing so, she might have contributed to stability, but achievement in terms of military reform, including transitional trials for past human rights abuses, was little (Kim, Liddle, and Said 2006; Mietzner 2006).

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<sup>366</sup> The Indonesian electoral system translates votes to seats rather accurately, although Java-based parties are in a slightly disadvantaged position.

Further, it is not even clear whether these “reformist” parties, especially PDI-P, had any coherent position on the New Order abuses, or enough reasons to make a clear stance. The 2001 Trisakti-Semanggi special committee vote, as shown above, indicates that PDI-P parliamentarians did not take the issue very seriously. In 2002, Megawati endorsed the incumbent Jakarta governor Sutiyoso – a former general who was allegedly involved in the July 27 affair – in his re-election bid in the Jakarta election, in spite of vocal opposition from many disappointed PDI-P councilors.<sup>367</sup> None of the *reformasi*-born parties paid attention to organized victims’ opposition to the 2004 TRC law.

If Megawati and the PDI-P did not even pay attention to the July 27 Affair, a founding moment of the PDI-P, there is no reason to expect that the party, or other *reformasi*-born parties, would give consistent support to victims who are not aligned with their parties in a partisan manner. Nor do victims’ groups form a significant voting bloc, which the parties might want to attract potentially with a transitional justice policy.<sup>368</sup> The student martyrs of Trisakti and Semanggi perhaps affected a generation of student activists, but the *reformasi* generation does not constitute a social or political bloc in any meaningful sense. The survivors of activist kidnappings entered different political parties and NGOs, and it is unlikely that there is any specific social group which deeply sympathize with the survivors or the disappeared.<sup>369</sup> The special committees for Trisakti/Semanggi and the 1997–98 disappearances may indicate the appeal of these

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<sup>367</sup> “PDI-P councilors confused over Sutiyoso’s nomination,” *The Jakarta Post*, June 29, 2002.

<sup>368</sup> Criminal gangs might have their own politics of memory for the “Petrus” killings, but it is not likely that they would advocate for victims’ rights publicly. The 1965 victims have diverse backgrounds and interests; the most vocal among them, communist political detainees, have no place in Indonesian politics as it is now. Papua might be the most promising group for this, but the potential has not been realized yet.

<sup>369</sup> The PRD won less than 0.1% of the total vote in 1999 General Election. See Aspinall (2012) for post-*reformasi* leftist politics in Indonesia.

martyrs of *reformasi* to the general public, but this appeal is not anchored to a bloc of voters who identify with direct victims – a potential source of pressure on political parties.<sup>370</sup>

The frustration of the *komisi* initiative to make recommendations for three past cases also shows the pattern of internal communication of political parties. As Kontras notes, the agreement made among parties in the *komisi* did not lead to the agreement of party representatives in the *badan musyawarah*.<sup>371</sup> In a study of the controversial anti-pornography bill, Sherlock (2008) explains that decision-making in the DPR is characterized by a dearth of party policies and weak party discipline. The loose discipline may provide chances for surprise decisions, such as the 2009 recommendation for the 1997–98 disappearance case, even when party headquarters are not particularly motivated to support such decisions. However, the political will of individual politicians, if any, remains fragile in the face of concerted efforts to block such initiatives, as the 2007 *badan musyawarah* decision shows. With a long list of unfinished bills carried over to the legislative program (*prolegnas*) each year, decisions for transitional justice with no immediate gains are not likely to be prioritized.

One may argue that the lack of protracted transitional justice in Indonesia is attributable primarily to the leadership of President Susilo Bambang Yudhoyono (2004–), contrasted with Korean President Kim Young-sam. Apparently, Yudhoyono shows a

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<sup>370</sup> As a survivor puts it, “the wider public’s understanding is that those who are involved in victims’ movement (*gerakan korban*) are those who suffered directly, and the same dynamics (*dinamika*) are found in the victims’ movement itself. This is how I see it, and this makes it hard to pressure post-Suharto governments to regard the demands of victims’ movement as important political agenda.” Author’s interview, July 1, 2010.

<sup>371</sup> Kontras (press release), “DPR RI Harus Bertanggungjawab atas Penundaan Penuntasan Kasus Pelanggaran HAM Berat Masa Lalu,” February 19, 2008.

“general disinclination to prosecute past abuses” (Mietzner 2009, 316) or any related measures – he delayed the appointment of TRC commissioners before the Constitutional Court decision, did not act on the 2009 DPR recommendation for the disappearance case, and kept silent when the Prosecutor General’s Office ignored the Komnas-HAM inquiry reports. His personal background as a former military officer and his careful leadership style might have contributed to the inaction, contrary to Kim Young-sam’s career as a civilian opposition politician and his ambition to leave reformist legacies.

The difference, however, is also found in the political contexts of the two countries. Many human rights activists I talked to said the momentum of transitional justice was lost around 2004 and 2005. First, Munir’s assassination moved the focus of human rights advocacy to that case. NGOs made a united call for the punishment of murderers, and organized victims joined protests for the dead activist. More importantly, Munir’s death meant that Yudhoyono could gain credentials for human rights by letting the trials for Muchdi and others go ahead.<sup>372</sup> Second, the records of the human rights courts for Tanjung Priok and Abepura disappointed the advocates of prosecution deeply, to the extent that they now felt another ad-hoc court would only put hasty closure to the case. With the Constitutional Court decision on the TRC, they lost almost all focal points that had defined transitional justice advocacy.

Third, with the smooth and successful direct presidential election, many Indonesians and foreign observers felt that democratic transition in Indonesia was on the

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<sup>372</sup> On the Muchdi trial, Klinken (2008, 371) notes that “Perhaps the reason [of no military protests on behalf of Muchdi] is that the (ex-military) president had personally given the nod for the prosecution to go ahead—something journalists assumed but no official confirmed.”



right track – though without transitional justice. An activist recalls that she and her colleagues sincerely believed that transitional justice was necessary because it would improve the quality of democracy, as the earlier literature indicated.<sup>373</sup> This consequentialist argument is doomed to lose force as time passes and democracy, or peace, becomes more or less stable without transitional justice. It is also unavoidable to see donors' attention and support leave for new transitional polities.

With his legitimacy as the first directly elected president of Indonesia and the success with the Aceh peace process, Yudhoyono had no reason to acutely feel that he should win reformist credentials through transitional justice measures. His reformist position has been primarily sustained by his anti-corruption moves, and the neglect of past human rights abuses did not threaten him in any regard. In contrast, a newspaper analysis for the Gwangju special law saw that “if the public opinion on the Gwangju issue becomes more serious, President Kim will be tormented with it for the rest of his term, to an extent that he will not be able to do anything.”<sup>374</sup> – a very unlikely situation for President Yudhoyono.

What are human rights NGOs doing for past abuses in a situation like this? In a 2010 interview, a survivor lamented that “the demands of human rights organizations are exactly the same with the ones twelve years ago.”<sup>375</sup> Because the comprehensive transitional justice mechanisms such as ad-hoc courts and the TRC, for which they have campaigned enthusiastically in the early years, remain under-utilized or abandoned, it is

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<sup>373</sup> Author's interview, August 16, 2010.

<sup>374</sup> “5.18 teugbyeolbeob jejeong: Kim daetonglyeong jeongyeogjisi baegyeong” (enacting the Gwangju law: the backgrounds to President Kim's sudden instruction), *Hankuk-ilbo*, November 25, 1995.

<sup>375</sup> Author's interview, July 1, 2010.

no wonder that the same slogans are still used. So far, the NGOs and organized victims – usually a small number of active individuals representing each case, except the “65” – failed to mobilize a coalition of social and political allies who are willing to join their campaign.<sup>376</sup>

It does not mean that NGOs avoid political lobbying and elections completely. Before the 2004 legislative election, human rights groups conducted a parallel campaign with anti-corruption groups, opposing politicians suspected to be involved in human rights abuses, under the slogan “don’t vote for bloody politicians.”<sup>377</sup> Before the 2009 legislative election, Kontras and victims’ groups visited headquarters of all political parties except Prabowo’s vehicle Gerindra and Wiranto’s Hanura, delivering them a list of demands from victims’ groups.<sup>378</sup> In the 2009 presidential election, however, they did not have a wide range of choices among the three pairs of presidential-vice-presidential candidates. Megawati (PDI-P) paired with Prabowo, and Jusuf Kalla (Golkar) with Wiranto, while the incumbent Yudhoyono chose an economist as his vice presidential candidate. When I asked about a Kontras position on the presidential election, the answer was that Prabowo and Wiranto should be ruled out, adding that it should not be regarded as a pro-SBY (Yudhoyono) position.<sup>379</sup> Human rights activists think that PDI-P’s response to their demands is relatively positive compared to other major parties,

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<sup>376</sup> Efforts to link victims of past human rights abuses with other groups, such as victims of eviction, workers, and peasants, exist, though they remain low-profile.

<sup>377</sup> “Don’t Vote for Bloody Politician,” *Berita Kontras*, No. 1/I-II/2004. But bloody politicians are very widely, perhaps too widely, defined as: “those who are directly responsible for violation against human rights, those who abuse their power to obstruct efforts to resolve human rights issues, those who abuse their power to create new violations against human rights, and those who do not show strong commitment to resolve past violations against human rights” (p.5).

<sup>378</sup> Author’s interview, July 2, 2009 (in English).

<sup>379</sup> Author’s interview, July 2, 2009 (in English).

especially Golkar,<sup>380</sup> but the PDI-P leaders do not seem to believe that the alliance with Prabowo would hurt their constituency base. The scarce political will available for transitional justice is as much a failure of the PDI-P, a party perhaps most well-positioned to make past human rights abuses a prioritized political issue in post-New Order Indonesia, as a success of veto power from “old political forces” like Golkar or former generals.

The last question: why were the social and political alliances for Tanjung Priok not extended to other groups, boosting transitional justice mechanisms in general? For one thing, the attention of Islamic groups to the Tanjung Priok massacre subsided significantly after the *islah*. Moreover, their fervent support for Tanjung Priok victims was not translated into support for human rights in general. Fealy (2008) argues that, in spite of detailed documentation of state violence towards the Islamic community – the Tanjung Priok and Talangsari massacres – the Indonesian Islamists are ambivalent toward universal human rights. Such indifference to other groups is, for example, indicated by the Islamist PPP, which campaigned for investigation of the Tanjung Priok killing in 1998 but rejected the ad-hoc court recommendation for the Trisakti/Semanggi killing in 2001 and in 2007.

The multiple dimensions of social cleavages in Indonesia mean that state violence is not simply interpreted as persecution of a certain social group by the authoritarian regime; it also contains potential divisions between social groups along cleavage lines. Some – though not all – Islamists actively tend to downplay the significance of other

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<sup>380</sup> Author’s interview, July 2, 2009 (in English); July 7, 2009 (in English). Of course, human rights activists in Aceh would perceive the Indonesian nationalist PDI-P very differently.

cases of human rights abuses, mobilizing them only to assert discrimination against Islam. After the July 27 affair, Adi Sasono of ICMI (the Indonesian Association of Muslim Intellectuals) said: “The funny thing is that those who are abusing the government now are the people who just kept quiet when the Tanjung Priok incident occurred. In fact, among those who are abusing the government now, there are even some who helped those who committed those killings at Tanjung Priok” (Aspinall 2005a, 194).

Adi Sasono’s accusation might have been groundless, but the division between ex-communists – though they are far from a meaningful political force now – and Islamists is real to a certain extent, as the 2000 excavation of a mass grave in Wonosobo (Central Java) dramatically showed. The excavation itself proceeded rather smoothly, with local members of Ansor – the NU youth wing that had been involved in local 1965 killings in many regions – and the “security apparatus” of PDI-P assisting the forensic team and the YPKP (Foundation for the Research into Victims of the 1965–66 Killings), a group largely comprising *ex-tapol*.<sup>381</sup> However, the reburial of the unidentified skeletons was blocked by a Muslim gang, who crushed the coffins and destroyed a local YPKP member’s house (McGregor 2010).<sup>382</sup> In 2011, the hard-line Islamist organization FPI, whose members previously stoned Komnas-HAM for an unsatisfactory report on the

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<sup>381</sup> See McGregor (2009) for reconciliation initiatives by young NU members.

<sup>382</sup> This incident discouraged unofficial truth-seeking initiatives through excavation of mass graves significantly. McGregor (2010) reports two different theories on the attack. One was that the local military had tried to provoke two political parties, PKB and PPP, to isolate NU youths. Another theory was that the initiative came from the Islamist militia Laskar Jihad. In either case, the attack shows that Islamist identities are easily mobilized for the cause of anti-communism.

Tanjung Priok killings, threatened to close a Goethe-Institute-sponsored international conference on the events of 1965.<sup>383</sup>

In the face of this multiplicity, suppression of particularistic memories and identities through forming a single identity of “victims of human rights abuses” across different cases is not a misplaced strategy. The neutralizing identity is also beneficial for victims with deep stigma, e.g. ex-communists. Moreover, as Mujani and Liddle (2010) argue about the decreasing salience of ethnic and religious cleavages in voting behavior of Indonesia, weak particularistic identities are perhaps a blessing in terms of conflict prevention. At the same time, however, it means that a potential route to sustaining pressure for transitional justice – through partisan memories – will not be activated in Indonesia.

#### **6-4. Conclusion**

In this chapter, I suggested an explanation to the divergent patterns of post-transitional justice in Indonesia, South Korea, and Taiwan. The latter two adopted and implemented new transitional justice initiatives over the decades since democratic transition, while Indonesian initiatives languished after the immediate transitional period.

I argue that this difference in timing is attributable to the different political contexts of the three countries. In South Korea and Taiwan, the major political cleavage of post-transitional politics overlapped with the division between social groups, one of which identifies itself with direct victims of state violence. In South Korean politics, where

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<sup>383</sup> “Conference on 1965 Tragedy Overshadowed by FPI Threat,” *The Jakarta Post*, January 19, 2011. FPI denied that the actual protesters who visited Goethehaus were linked to them.

regional cleavage is important, the major base of the opposition party – against the former ruling party of the authoritarian regime – was voters of Gwangju and Jeolla province. In Taiwan, the opposition to Kuomintang was associated with the ethnic cleavage between those who identify themselves as “Taiwanese” and those feeling closer to mainland China. That the target of major state violence was Gwangju citizens and residents of Taiwan before Kuomintang’s arrival provided a source of sustained pressure for transitional justice, which was taken seriously by major opposition parties in the two countries.

In contrast, the cleavages of post-New Order Indonesian politics were not beneficial for sustained pressure. The Islamist parties advocated for investigation of the Tanjung Priok massacre in the earlier period, but the advocacy was not extended to other groups of victims. For its part, the “pro-*reformasi*” PDI-P was not interested in supporting transitional justice for martyrs of *reformasi*. Although human rights abuses of the New Order remained a problem for NGO activists and direct victims, they lost their prioritized status on the political agenda. Considering the possibility that different memories of social and political groups may clash with each other in multi-cleavage Indonesia, the muted politics of partisan memory might be a blessing for the country; but it closed a potential route to delayed justice.

I used the case of the Gwangju special law to show that the Gwangju massacre was revived by the opposition party at major political junctures, and measures taken to deal with the massacre remained in the boundary of the proposals from the opposition, but did not outbid them. What occurred eight years after the 1987 June uprising in Korea was

then contrasted to the Indonesian situation eight years after *reformasi*. I show that some Indonesian parliamentarians attempted to exert their political will for more ad-hoc courts, contrary to the conventional understanding that the DPR as a whole is no more than a blockade to more justice, but their will was rather fragile when faced with resistance.

While “political will” is so frequently discussed as a requirement for transitional justice, theoretical explanations of the conditions that facilitate political will are few. This chapter is an attempt to propose a mechanism that creates one of such conditions. My intention is far from praising the “politicized” or partisan route to delayed transitional justice against the neutralized human rights approach. The excess of politicization without the basis of human rights principles may bring about detrimental consequences such as reversal of transitional justice measures following a change in the ruling party. Fortunately, both South Korea and Taiwan did not experience such reversals even after the former ruling party of the authoritarian regime returned to power, showing the power of officially implemented truth-seeking measures, whether adoption of such measures was political or not.

## **CHAPTER 7**

### **CONCLUSION**

#### **7-1. Summary of Arguments**

This study is an attempt to explain the successes and failures of transitional justice adoption and implementation in post-New Order Indonesia (1998–). The late timing of the post-authoritarian transition of Indonesia provided ready-made norms and models. Influenced by those models, and in the context of the international pressure in response to the East Timor referendum violence in 1999, Indonesia adopted two comprehensive mechanisms of transitional justice – the ad-hoc human rights court system and the Truth and Reconciliation Commission (TRC) – in 2000 and 2004.

Subsequently, however, the ad-hoc court mechanism was under-utilized, and the TRC was not even established until today. Initiatives for ad-hoc courts and the TRC languished after the immediate transitional period. How can we explain Indonesia's failure to better utilize the ad-hoc court mechanism and even to establish a TRC?

My approach to explaining adoption and implementation outcomes was to focus on sets of actors who played a major role, or were supposed to play a major role, in each phase. In Chapter 3, I observed that the international human rights advocacy campaign against the New Order government generated half-hearted accountability and inquiry



measures, which left lasting legacies for the transitional period. Indonesia has a long history of dealing with international pressure over human rights issues, going back to the *tapol* campaign for political detainees, some of them put in forced labor camps, in the 1970s. Moreover, the 1991 Santa Cruz massacre in Dili, East Timor produced an independent inquiry commission, military tribunals for field soldiers, and a military honor council for high-ranking officers, as measures to assuage international pressure. These measures formed standard demands of domestic political opposition and human rights groups in the late New-Order period, even for less internationalized abuses. When they were repeatedly used in the transitional period, however, it disappointed human rights groups and victims, and provided a ground to adopting noble measures for abuses.

Chapter 4 emphasizes the role of domestic norm entrepreneurs or human rights NGOs in promoting norms and models of transitional justice. The phenomenon of “enforced disappearance” dealt a critical blow to the image of the military with campaign strategies creatively introducing the Argentine model as the activists understood it. The Law on the Human Rights Court (No. 26/2000) has an ad-hoc human rights court provision, making it possible to send cases of genocide and crimes against humanity of the past to an ad-hoc tribunal; the design of this court was influenced by international criminal justice and UN courts. Although the human rights court provision was initially made by the Ministry of Justice, NGO workers influenced the law-making process in various ways, by criticizing from outside, participating in the drafting process, etc. Adoption of the Law on Truth and Reconciliation Commission (No. 27/2004) was

facilitated by a series of advocacy activities by NGO activists, who believed that the South African model was best suited to the Indonesian situation.

The “transnational relations” of NGOs illuminate the agency of the NGO workers on the receiving end of norms, models and aid. In the case of the Argentine model, Indonesian NGO activists took the initiative and reached out to international allies like the UN Working Group to promote their campaign. The TRC advocates did not hesitate to reject advices from international experts when they saw them as poorly fitting Indonesia.

Ultimately, the mechanisms could be adopted because the government and political elites saw them as preemptive measures preferable to worse alternatives: a domestic ad-hoc court against an international court for East Timor, and truth-seeking combined with amnesty against domestic ad-hoc courts. Nor did they accept all NGO proposals. Still, NGO advocacy influenced adoption of the bills, as well as their final forms.

To explain the absence of major transitional justice in Post-Helsinki Aceh (2005–), I examine the role of both local and national actors in Chapter 5. The double – post-authoritarian and post-conflict – transition in Aceh involved double neglect of the relevant measures on paper. In addition to the national ad-hoc court provisions, the Helsinki MoU and the autonomy law stipulated an Aceh TRC as a part of the national TRC. I argue that the neglect of transitional justice mechanisms is better explained in the context of Indonesian transitional justice as a whole. By the time the Helsinki agreement was signed, the ad-hoc court in Jakarta was so discredited that the failure of Komnas-

HAM to reveal gross human rights violations during the decades-long conflict did not invite strong reactions from victims and NGOs.

As for the TRC, it is well-known that the 2006 Constitutional Court decision annulling the TRC law resulted in technical complications for the Aceh TRC. Furthermore, the extremely slow progress of re-making the bill made the viability of the “national TRC first” strategy of local elites doubtful. Aside from additional aid schemes for victims, the post-Helsinki period saw few new measures for prosecution or truth-seeking in spite of the existing legal provisions, reflecting the lethargy of Indonesian transitional justice in general.

Why this lethargy? In Chapter 6, I compared post-New Order Indonesia to two post-authoritarian polities, South Korea and Taiwan, where new initiatives emerged even after political transition became an event of the past. Delayed or protracted justice is possible if there are sources of sustainable pressure that motivate political elites to prioritize the transitional justice issue. I suggested partisan memory as a potential source of such pressure. In South Korea and Taiwan, the most prominent cases of past human rights abuses were closely related to the existing social and political cleavages: the regional cleavage and the Gwangju massacre (1980, Korea) and the cleavage of ethnic identity and the February 28 massacre (1947, Taiwan). Wider sympathy of members of social groups, identifying themselves with direct victims, worked as pressure for political elites, who could not easily ignore demands of party supporters. Measures intended to close the case were reversed or revised later, creating a general momentum for expansion of measures.

In Indonesia, aside from the international pressure, the major source of advocacy was human rights NGOs and victims' groups working with NGOs. The memories of human rights abuses were just that, and not reinterpreted as partisan memories belonging to certain political groups. An exception to the trend existed, namely the Tanjung Priok massacre (1984) and Islamic groups who regarded it as an attack on them. The Islamist parties were, however, not consistent either in supporting official measures for the event, or in applying similar standards for other cases of human rights abuses. Support from reformist politicians was at best intermittent and vulnerable to counter-pressure. In multi-cleavage Indonesia, surviving partisan memories may become a source of inter-communal conflict; nevertheless, it is equally true that this lack eliminates a potential source of sustainable – and effective – pressure for transitional justice.

## **7-2. Possible Caveats**

### *7-2-1. Undue Expectations? Characterization of Transitional Justice Outcomes*

Characterization of transitional justice as a dependent variable is tricky. If Indonesian human rights activists regard experiences of Argentina and South Africa as successes, victims and human rights activists in Argentina and South Africa may think otherwise. Faced with victims who lost their own children, or suffered themselves, discussion of the “success” of transitional justice itself might sound insensitive – “we gave you reparations and chances to tell your truth, and these measures were very successful, so let’s move on”? Nevertheless, it is necessary to decide what to explain –

the adoption of discrete measures, the implementation of measures, the implementation of recommendations (of non-judicial bodies), patterns of timing, sequence, etc.

In particular, discussion of transitional justice successes in Indonesia begets a question about the possibility that the goal of the campaign was perhaps too high in the first place or the campaign developed too hastily. Fletcher, Weinstein, and Rowen (2009) warn against the introduction of standardized measures of combined trials and truth commissions in the immediate transitional period, arguing they might hamper the internal capabilities of transitional polities to develop their own measures accommodating victims' needs. Commenting on Indonesia, Linton (2006, 229) goes as far as to condemn the whole enterprise of international advocacy itself, beyond unrealistic expectations that the laws on human rights court and TRC generated:

The record of the ad hoc court and the design of the two truth commissions vividly demonstrate that there is a need for caution in selling concepts such as “justice” or “truth and reconciliation” to nations in transition. Not only do they involve the raising of unrealistically high expectations about redressing of balance or righting of wrongs that is in fact rarely achieved after mass and terrible violence or repression, but worse, there is also tremendous potential for them to be hijacked and manipulated into mechanisms that in fact serve unworthy goals that will in the long term cause even more harm.

Were these comprehensive mechanisms the very source of the problem? It is hard to make a plausible counterfactual to social phenomena, but I believe that this study has already tackled this question from a number of perspectives. First, the international environment in which the late transition in Indonesia – after Minerva's owl began to fly (Geddes 1999) – was situated, as well as the long history of engagement with international advocacy, made it hard to avoid international models available at the time.

Olsen, Payne, and Reiter (2010) show that adoption of measures is generally quicker in later transitions (made in 1990–2004) than in earlier ones (1970–89).<sup>384</sup> Moreover, it is now clear that Indonesian human rights activists did not passively wait until international activists showed up to sell concepts to them. The process of diffusion through inspiration is something hard to control, and it can occur even without tangible and direct channels.

Second, it is true that the ad-hoc human rights court system, largely born out of the international pressure on East Timor, set too many decision-making levels, incorporating unnecessary parts of the international criminal justice paradigm. Many transitional polities use ordinary criminal law to deal with human rights abuses. Would it have been better to deal with abuses in public court, rather than human rights tribunals? It is questionable whether the outcomes would have surpassed the records of the *koneksitas* trials or corruption trials of Suharto and his family. In any case, the human rights provision was already put in the 1999 law on human rights before the peak of militia violence in East Timor, and it was no wonder that Indonesian activists put some hope on the provision against prevalent impunity.

On the national TRC law and the Aceh TRC provision, I do not find unduly high expectations in them at all. If the ad-hoc court system was an innovative experiment, the TRC was not. Furthermore, the 2004 Indonesian TRC law was a result of serious compromises, rather than a product of uncompromised ideals. In both cases, I avoided an assumption that the laws themselves were designed with too many caveats in the first

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<sup>384</sup> Average time between transition and reparations in their dataset is 3.1 years for the later transitions, compared to ten years for transitions made in 1970–89; for truth commissions, it is 3.9 years (1990–2004) and 7.5 years (1970–89).

place, and tried to show that decision-makers on many levels were responsible for non-implementation or under-utilization of them.

### *7-2-2. Judicial System*

With a focus on the political processes of transitional justice, especially the hitherto neglected role of the legislature, this study does not engage fully with the characteristics of the Indonesian judicial system and its impact on the course of transitional justice, or the effectiveness of the human rights court system in general. I believe that there are others, especially legal scholars, who are more knowledgeable concerning details of judicial procedures than I am (e.g. Cohen 2003; Cammack 2010). Apparently, the records of earlier ad-hoc courts influenced the later course through an adverse demonstration effect. Once activists saw the Tanjung Priok trials, they began to doubt the viability of the ad-hoc court strategy. Civil lawsuits by NGOs and victims – e.g. Kontras’s 1999 request for information concerning the fate of the disappeared,<sup>385</sup> a 2005 class action of former political prisoners against five presidents (Streifeneder 2007), or recently, a suit against President Yudhoyono by a 71-year-old former palace dancer and detainee in the aftermath of the 65 coup<sup>386</sup> – failed without exception.

These episodes show that the unwillingness of the existing judicial system to deal with cases of past human rights abuses is a discouraging factor, although the unwillingness itself is not exceptional; in South Korea, the Gwangju victims’ civil lawsuits also failed without exception before the relevant legislations discussed in this

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<sup>385</sup> “The Long Road in Dealing with Missing People,” *Berita Kontras* No.2/1999.

<sup>386</sup> Anita Rachman, “Court Drops Lawsuit by Sukarno Palace Dancer,” *Jakarta Globe*, April 12, 2012.

study. It will be interesting to examine the Indonesian judicial system and transitional justice in the broader process of judicial reform in the future research. Nevertheless, I do not believe that the lack of closer examination of the performance of courts and prosecutors hurts the major arguments of this study.

### *7-2-3. Post-Transitional International Context: Pressure and Aid*

I did not focus on the international context and the role of Western powers in the post-transitional period compared to the New Order period. This shifted focus from international to domestic actors reflects my idea that international pressure for transitional justice tends to diminish significantly after a certain period. During my research, I did not find serious reasons to change this idea. It seems donors were still providing resources to workshops and publications, but there was no visible external pressure on the national TRC, the Aceh TRC, or the ad-hoc court for activist kidnapping, etc.

The War on Terror and the increased need for military cooperation between the US and Indonesia is often pointed to as an explanation for the declining international pressure and, thus, the lethargy of transitional justice. The relationship between the US and the Indonesian defense sector is being normalized, as, for example, the 2010 lift of the US ban on the aid to Kopassus, to which human rights activists and victims protested with a press conference, shows.<sup>387</sup> Still, the lack of international pressure does not explain

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<sup>387</sup> Wahyu Sabda Kuncahyo, “Kerjasama AS-Kopassus Jangan Lupakan 1997–98,” *Rakyat Merdeka*, March 18, 2010; David S. Cloud, “U.S. to Resume Aid to Kopassus, Indonesia’s Controversial Military Forces,” *Los Angeles Times*, July 23, 2010. In the press conference, the Indonesian activists focused on the 1997–98 disappearances, but the US newspaper mentions East Timor instead.



transitional justice outcomes adequately, because it is not an exclusive route to justice. In addition, I doubt whether the US and other Western powers were willing to exert serious pressure over past abuses in the first place, except with regard to the East Timor referendum violence in 1999.

Is the shift of international aid to other parts of world, or other NGO sectors, a major problem? Ford (2011, 49–50) explains that “the focus of international NGOs – and subsequently their Indonesian counterparts – is being increasingly constrained by the priorities of national aid agencies... It is evident that with the exception of serious trouble spots, most notably Papua, the international emphasis on political and civil rights in Indonesia has significantly decreased as the attention of the international human rights movement shifts to less democratic nations.” If NGO activities are totally dependent on the availability of donor aid, the languishing trend of transitional justice can be explained by the lack of aid for advocacy rather than the nature of advocacy as I argued.

During my stay in Jakarta, however, I observed a steady flow of NGO activities on the issue. In Aceh, according to an activist, aid for NGO initiatives on transitional justice increased after late 2008 – three years after the Helsinki peace process – rather than decreased.<sup>388</sup> The amount and direction of international aid is certainly one factor among many, but I believe that they do not wholly decide the strength and agenda of advocacy campaigns, not to speak of transitional justice outcomes.

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<sup>388</sup> Author’s interview, November 26, 2000 (Banda Aceh).

#### 7-2-4. *An Indonesian Culture of Impunity?*

Is there an inherently Indonesian culture of impunity? When I explained about the topic of my research, an Indonesian friend lamented; “Indonesians are so forgetful!” Separately, several anthropologists advised me to make inquiries into the conception of history in Indonesia or the idea of justice in the Islamic tradition. That I did not delve into these conceptions reflects the worldview of human rights activists, my major source of information, to some extent. This omission might be regrettable, but the idea of prosecution against human rights abuses and related conceptions are very new to almost all world cultures (Sikkink 2011), and following Merry (2006), I believe these ideas are powerful because they are new.

Another reason I did not deal with popular conceptions in this study is because I do not think they were major determinants of transitional justice outcomes in Indonesia. Indonesia is not characterized by high international pressure and low domestic pressure like Balkan countries (Subotić 2009b; Grodsky 2009). On the 1997–98 activist kidnapping case, a survey of September 1998 shows that 87% of respondents believe Prabowo, Muchdi PR, and Chairawan – those who went through the military honor council – should be judged by the military court.<sup>389</sup> In a 2001 survey, 53% of respondents did not agree with the suspension of prosecution against Suharto.<sup>390</sup> None of these trials occurred in spite of majority public opinion. In a 2005 survey, only about 15% of respondents indicated satisfaction with law enforcement over the Munir assassination and

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<sup>389</sup> “Jajak Pendapat LP3ES: Terjadi Krisis Kepercayaan Masyarakat terhadap ABRI,” *Kompas*, September 29, 1998. The survey was conducted in the three major cities: Jakarta, Surabaya, Medan.

<sup>390</sup> “Jajak Pendapat Kompas: Menuntut Kejelasan Nasib Soeharto,” *Kompas*, May 21, 2001.

activist kidnappings, and these figures were even lower than satisfaction with corruption cases, the current staples of Indonesian politics (20–27%).<sup>391</sup>

This popular sentiment is not limited to the activist kidnapping case; in another survey, those who indicated dissatisfaction with the way cases of human rights abuses and conflicts of the past were being resolved, respectively, amounted to 48.7% (East Timor referendum violence), 54.5% (massacres of communist sympathizers), and 63.4% (DOM Aceh) of the total respondents.<sup>392</sup> These figures are lower than the rate of disapproval for the progress of the Trisakti case (73.3%), and they do not reflect the intensity of this general dissatisfaction. Nevertheless, the survey outcomes indicate that the lack of progress on past human rights abuses, or the “culture of impunity,” is not attributable to popular sentiment. This applies to almost all prominent cases, whether victims were middle-class students, communist sympathizers, or Acehnese peasants.

### **7-3. Implications of the Study**

The major question I address in this section is the added value of this study, in particular to published human rights reports. The state of Indonesian transitional justice of twelve years is compiled in ICTJ and Kontras (2011) and an earlier compilation of Mufti, Wendy, and Fitri (2009). Case studies of enforced disappearances in Asian

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<sup>391</sup> “Jajak Pendapat ‘Kompas’: Penegakan Hukum dalam Titik Kritis,” *Kompas*, June 27, 2005. 68.4% and 57.8% of respondents said they were not satisfied with law enforcement over these two cases, while the rest of respondents chose “don’t know.” This survey was conducted in ten major cities over the archipelago.

<sup>392</sup> “Jajak Pendapat ‘Kompas’: Rekonsiliasi antara Dambaan dan Kesangsian,” *Kompas*, August 8, 2005. Interestingly, 39.1% of respondents were not aware of the referendum violence in East Timor (compare with 25.2% for communist massacres, 21.2% for DOM Aceh and 19.7% for Trisakti – the only “case” that more people were unaware of its occurrence was Talangsari 1989 or “Warsidi Lampung,” on which 74.5% of respondents answered ‘don’t know.’). Only 12.2% – or one fourth of those who indicated dissatisfaction – of respondents answered that they were satisfied with the progress of the East Timor case.

countries appear in Lauritsch and Kernjak (2011), with a chapter on Indonesia. As we have seen, Indonesian human rights activists follow the recent literature of legal studies and political science. Most of these “norm translators” are fluent enough in English to address English readers with their own writings, and many have relevant degrees from Western or Indonesian institutions. They upload publications and tables to the official website of their organizations or to their own blogs. I am not in a position to access materials that these intellectuals cannot access; in contrast, I benefited from their libraries and presentations enormously, though not all of my materials came from them.

Many of the NGO informants expressed their curiosity on my lengthy stay in Jakarta: “I gave/recommended to you those writings, all the relevant information on Indonesian transitional justice is in them – more than enough for your dissertation! Why are you still here?” What was I doing there, and what do I add to the pile of existing reports with this study? I believe my contribution is my approach, distinguished from the one usually taken by human rights activists at least in two aspects.

One is my focus on human rights NGOs themselves and the process-tracing method. I explained the way they introduce norms and models through different modes: “piracy” from the available pool of ideas and tangible linkages with foreign, or international, experts and practitioners. Then I pointed out the inherent plurality of international norms and models, and traced how it was translated into the truth v. justice, or amnesty v. justice, debate in Indonesia. Rather than merely analyzing the products of legislation and implementation, I started out from the products and then traced back to the processes of adoption and implementation, examining the role of various actors involved in the

processes, primarily Indonesian NGO activists. This approach of mine is different from the way human rights activists usually see legal provisions, as ahistorical “instruments” or “tools.”

The major implication of the active role of domestic norm entrepreneurs is that implications and recommendations focused on the “sending end” – i.e. donors, intergovernmental bodies, and international NGOs – would not work as intended. As I argued above, speedy adoption of transitional justice measures in later transitions is not only a matter of international involvement. Diffusion can occur without active promotion from the sending end, with initiatives from the norm entrepreneurs of the receiving end. Recommendations for the international community will be ultimately read by norm entrepreneurs or translators of the receiving end, who are themselves an integral part of the international community in some sense. In the short term, however, recommendations without considering the agency of domestic norm entrepreneurs will be less successful.

Another implication comes from the plurality of norms, models, norm entrepreneurs and their impact on the “holistic” approach. Although the plurality of models promoted by different groups may not be problematic in theory, in reality it may be exploited by those who want to disable nominal transitional justice institutions, because multiple institutions can be played against each other as an excuse for avoiding decisions relevant to implementation of policies. In Indonesia, the presence of the TRC bill as a permanent alternative was exploited as a good excuse by those who wanted to abandon the ad-hoc human rights court option, when there was no clear demarcation of jurisdictions between the two. The plurality of competing strategies is an inherent feature

of (democratic) politics, not a problem in itself. But it may be dangerous to rely on the international legitimacy of the “holistic” approach, disregarding the specifics of measures being adopted.

The second approach that distinguishes this study from human rights reports is its discussion of political elites. The usual blame on the “lack of political will” implies a voluntaristic assumption that political elites are able to adopt and implement transitional justice measures regardless of the structural conditions with which they are faced. Another reading of this agency-centered optimism is a mere description of the state of non-adoption or non-implementation without specifying relevant actors and their motivations. Whose will is lacking – the president, parliamentarians, the national human rights commission, or the prosecutor’s office? To whom are these actors accountable, and what can possibly motivate them to take actions in a desirable direction? Without answers to these questions, the “lack of political will” will remain an impotent cliché.

In this study, I showed a possibility that partisan support can work as a sustainable pressure for implementation and expansion of transitional justice policies. Excessive caution against “politicization” of transitional justice might in fact hurt a potential source of encouraging the necessary political will. Politicization of judicial processes will be a problem, but if the transitional justice issue is not politicized at all, where should the “political” will come from? Thus, in addition to academic implications with exploring a causal mechanism of generating political support for transitional justice, I believe my theory has practical implications for strategies of human rights campaigners.

Both human rights reports and the academic literature on transitional justice are full of policy implications and recommendations, but I still add two brief remarks on the international pressure and human rights advocacy. The first one is on the demand of judicial accountability for human rights abuses against dictators. It is unreasonable to expect that Franco would punish Franco, just as Milošević would not punish Milošević. Nor would they punish their right-hand men, if they are those who are responsible for the abuses. But Habibie's prosecutor general could summon Suharto, and it makes a crucial difference. Although the performance of Indonesian courts – the military court, the *koneksitas* court, and the human rights court – after Suharto's fall cannot be wholly attributable to the legacy of Santa Cruz trials, there are patterns of continuity. If dictators' strategic response against such demand may leave distorted legacies on transitional justice, it makes a reason to reconsider its effectiveness.

The second remark concerns campaign strategies relying on the availability of international pressure. Human rights is a global problem, and there is nothing wrong with human rights activists generating or invoking international pressure for their domestic campaigns. International pressure does not stay forever, however, particularly after political transition, reform, or adoption of some transitional justice measures. As for the pressure from international NGOs or intergovernmental bodies without donor pressure, reluctant governments will eventually learn that such pressure is toothless. To make advocacy strategies sustainable, it is necessary to prepare for the era after international pressure is largely gone.

#### **7-4. Further Research Agenda**

This study did not follow the logic of controlled comparison in employing case studies. Two so-called “cases” of state violence – Aceh and the 1997–98 activist kidnapping – were examined rather thoroughly, but others, such as the Tanjung Priok massacre and the Buru detention camp, were discussed only to explain particular phases of relevant advocacy or official policies. More case studies of different sets of human rights abuses in Indonesia, especially massive atrocities in Papua and in 1965–66, will be beneficial to our understanding of transitional justice, not merely because of their *sui generis* importance. They will also shed light on at least two theoretical questions on the relationship between advocacy actors in different locations (local-national [Jakarta]-international) and on impacts of the nature and scale of violence over the later course of transitional justice. The lack of official truth-seeking measures makes inquiries on the latter rather difficult – the estimated figures on the 1965–66 killings do not seem to have improved much since Cribb (1990). If official measures are not likely to come in the near future, however, delaying academic inquiries is not exactly the best strategy.

The case of Indonesian transitional justice, in turn, can be used as a source for cross-national comparative studies. It is no wonder that Indonesian norm entrepreneurs enthusiastically embraced the models from Argentina and South Africa, because these two post-transitional polities are perhaps overrepresented in the pool of case studies. Comparative studies of a moderate scale would be helpful in illuminating underlying causal mechanisms. For example, one of the implications of comparison with South Korea and Taiwan in this study is that anti-communism as a state ideology does not



necessarily hinder official rehabilitation and truth-seeking measures, though measures for (alleged or real) communists emerged in the later stage in these two countries. The claims made for Aceh in this study can be further examined through comparison with Nepal and Sri Lanka, among others. The way the ad-hoc court and TRC were adopted and implemented can help understand the situation of African countries faced with the ICC prosecution. Comparative case studies are also necessary for “filling the gap” of large-N studies; e.g. is the lack of transitional justice measures in Asia attributable to cultural characteristics, the nature of preceding regimes, or to political processes during and after transition?

The multi-dimensionality of post-authoritarian politics, especially the nexus between human rights abuses and “economic crimes” including corruption, was not sufficiently explored in this study. To some extent, this “compartmentalized” (Carranza 2008) view on authoritarian legacies was influenced by the way Indonesians, in particular human rights activists, whose area of activities is clearly demarcated from the one of anti-corruption NGO activists, approach the problem.

In reality, many infamous dictators of the world – e.g. Augusto Pinochet, Chun Doo Hwan, and Hosni Mubarak, to name a few – were accused of corruption and human rights abuses at the same time. While corruption does not create a group of identifiable victims, it may engender middle-class citizen anger against the regime, even in a situation where society-wide sympathy with victims of human rights abuses is relatively rare. If so, the simultaneous advocacy against two different kinds of authoritarian legacies may help boost the human rights campaign. However, corruption is more prone to “politicization.”

State violence on a massive scale is not gravel in everybody's shoe; however, in a certain political culture, corruption might be everybody's burden, dictators and democratic leaders alike, though to different extents, opening ways to a tradition of "political revenge" (a synonym for "eradication of corruption through democratic competition"?). In sum, these entangled dimensions of authoritarian legacies should be closely examined, but one should also give heed to different qualities of these dimensions.

Some links of my proposed causal mechanisms are missing. For example, I suggested that different actors – human rights NGOs and partisans – are likely to generate distinctive sorts of collective memories and that, in turn, they work as sources of sustainable pressure of differing degrees by addressing different constituencies. A large part of this explanation are not grounded on rigorous data analysis, however. Are certain kinds of memories – e.g. memories of resistance or nationalist memories – stronger than others, creating a source of pressure that lives longer? Exclusive reliance on macro-social analysis will leave many interesting questions unanswered. What actors understand about themselves and their situation may not outlive structural conditions, but larger questions on transitional justice, diffusion, and collective memory require closer examination of ideas as crucial intervening variables.

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