IDSPS
Institute for Defense Security and Peace Studies

HRWG
Indonesia's NGO Coalition for International Human Rights Advocacy

Geneva Centre for the Democratic Control of Armed Forces (DCAF)

KOMNAS HAM

Human Rights and the Indonesian Security Sector:

2009 Almanac

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Writing Team:
Asfinawati
Bhatara Ibnu Reza
Dian Kartika
Galuh Wandita
Amdy Hamdani
Dimas Pratama Yuda
M. M. Billah
Meirani Budiman
Mufti Makaarim A.
Mugiyanto
Muhammad Islah
Nawawi Bahrudin
Nurkholis Hidayat
Oslan Purba
Papang Hidayat
Rusdi Marpaung
Septi Silawati
Usman Hamid
Saiful Haq
Syamsul Alam Agus
Zainul Maarif

Editors:
Mufti Makaarim A.
Fitri Bintang Timur
Wendy A. Prajuli

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Jl. Teluk Peleng B-32 Komp. TNI AL Rawa Bambu Pasar Minggu
Jakarta Selatan, Indonesia Tel./Fax: +62-21-7804191
Email: idsps_indo@yahoo.com, info@idsps.org
Website: www.idsps.org

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List of Abbreviations

ABRI	Indonesian Armed Forces (before 1998 Reformation)
ACHR	American Convention on Human Rights
AD	Indonesian Army *(Angkatan Darat)*
AFAD	Asian Federation Against Involuntary Disappearances
AI	Amnesty International
AKKBB	State Alliance for Freedom of Religion and Faith
AL	Indonesian Navy *(Angkatan Laut)*
ALDERA	People's Democracy Alliance *(Aliansi Demokrasi Rakyat)*
AMD	Indonesian Armed Forces social operation in villages *(ABRI Masuk Desa)*
AMM	Aceh Monitoring Mission
ANTI	Aliansa Nasional Timor-Leste ba Tribunal Internasional
APBD	Local State Earning and Spending Budget
APBN	National Earning and Spending Budget
APINDO	Indonesian Employers Association
Apodeti	Associacao Popular Democratica de Timor (a political party in Timor-Leste)
ASEAN	Association of Southeast Asian Nations
ASNLF	Aceh Sumatera National Liberation Front (or the Free Aceh Movement)
AU	Indonesian Air Force *(Angkatan Udara)*
Bais TNI	Indonesian Military Strategic Intelligence Body
Bakin	National Intelligence Coordination Body
Bakorstanas	National Stability Assistance Coordination Body
BIA	Indonesian Military Strategic Intelligence Body (before 1998 Reformation)
BKI	Intelligence Coordination Body
BKKBN	National Family Planning Coordination Body
BPI	Intelligence Central Body
BPS	Central Bureau of Statistics
BRA	Aceh Peace-Reintegration Body
BRANI	Indonesia Secret Service Body
Brimob	Mobile Brigade (one of the desks in the Indonesian Police Force)
BTI	Indonesian Farmer Front (was assumed to be affiliated with the communist party PKI)
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAVR	Comissio de Acolhimento, Verdade e Reconciliaçio (Commission of Acceptance, Truth and Reconciliation), Timor-Leste
CED	Convention of Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women

CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CGI	Consultative Group on Indonesia
CIDA	Canadian Intergovernmental Development Agency
CMI	Crisis Management Initiative
CoHA	Cessation of Hostility Agreement Aceh
DAK	Special Allocation Fund (in state budget)
DAU	General Allocation Fund (in state budget)
Danjen	Commandant General
Danramil	Commandant in Military Area
DBH	Shared Profit Fund
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DDR	Disarmament, Demobilisation and Reintegration
Dephukham	Law and Human Rights Ministry
DI/TII	Darul Islam/Tentara Islam Indonesia (organisation that aims to create an Indonesia Islamic State and Islamic Armed Forces)
DKP	Officers Honour Board
DLU	Defence Lawyers Unit for East Timor
DPR	People's Representative Council, Indonesian Parliament *(Dewan Perwakilan Rakyat)*
DPT	Electorate list (in Indonesian election)
DOM	Military Operation Zone
DPRD	Local People's Representative Council, Local Parliament *(Dewan Perwakilan Rakyat Daerah)*
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Culture
ESDM	Energy and Mineral Resources
ETAN	East Timor and Indonesia Action Network
FBR	Forum Betawi Rempug (civil organisation in Jakarta that sometimes uses violence)
FISIP UI	Social and Political Science Faculty, University of Indonesia
FPI	Front Pembela Islam (Islam Defender Front, civil organisation that sometimes uses violence)
Fretilin	Frente Revolucionaria do Timor Leste Independente (political party in Timor Timur)
GAM	Free Aceh Movement *(Gerakan Aceh Merdeka)*
GBV	Gender based violence
Gerwani	Indonesian Women's Movement (was assumed to be affiliated with the communist party PKI)
GMKI	Indonesia Christian Student Movement
Golkar	Golongan Karya (political party in Indonesia, was the biggest in New Order era)
HAM	Hak Asasi Manusia (human rights)
HGU	Business Utilization Right (allows a corporation to utilise certain natural resources or a public owned natural site, e.g., water)

HMN	State Ownership Right
HPH	Forest Management Right (allows a corporation to conduct logging in certain forests)
HRC	Human Rights Commission
HRW	Human Rights Watch
HRWG	Human Rights Working Group
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTJ	International Center for Transitional Justice
IDI	Indonesian Doctors Association
IDSPS	Institute for Defense, Security and Peace Studies
IGGI	Intergovernmental Group of Indonesia
IKOHI	Indonesian Association of the Families of Missing Persons
ILC	International Law Commission
INFID	International NGO Forum on Indonesia
INGI	International NGO Forum on IGGI Intergovernmental Group on Indonesia
JAKKER	People's Art Network
Jamkesmas	Society Health Insurance
JUHP	Joint Understanding of Humanitarian Pause for Aceh
KASUM	Solidarity Action Committee for Munir (Indonesian human rights activist who was killed)
KDRT	Kekerasan dalam Rumah Tangga (domestic violence)
KLI	Komando Lasykar Islam (civil organisation that sometimes uses violence)
KKN	Corruption, Collusion and Nepotism
KKO AL	Navy Command Corps
KKP Timor Timur	Commission of Truth and Friendship Timor-Leste
KKR	Commission of Truth and Reconciliation
KNPD	National Commission of Democratic Enforcement *(Komite Nasional Penegak Demokrasi)*
Kodam	Provincial Military Command
Kodim	City/District Military Command
Komnas HAM	Komisi Nasional Hak Asasi Manusia (Indonesia National Commission for Human Rights)
KontraS	Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (Commission for Missing Persons and Victims of Violence)
Kopassus	Special Troops Command
Kopkamtib	Security and Order Restoring Operation Command
Korem	Military Resort Command (under Kodam)
KOTA	Klibur Oan Timor Aswain (political party in Timor-Leste)
Kowad	Women's Corps in Army
KPA	Aceh Transformation Committee
KPI	Indonesia Broadcast Commission
KPKR	Commission of Acceptance, Truth and Reconciliation (Timor-Leste)

KPP	Ministry of Women's Empowerment
KPP HAM	Investigative Comission for Human Rights Violations
KPU	General Election Commission
KSAD	Army Head of Staff
KTP	Citizen Identity Card
KUHAP	Criminal Procedure Code
KUHP	Criminal Code
KUHPM	Military Criminal Law
LBHN	Nusantara Law Assistance Body *(Lembaga Bantuan Hukum Nusantara)*
Lekra	Lembaga Kebudayaan Rakyat (People's Cultural Body, was assumed to be affiliated with the communist party PKI)
LIN	National Intelligence Body (name under the Old Order regime)
Linmas	Society Protection *(Lindungan Masyarakat)*
LIPI	Indonesian Science Body
Mabes Polri	Republic of Indonesia Police Headquarters
MK	Constitutional Court
MoU	Memorandum of Understanding
MUI	Indonesian Islamic Clerk Association
NHM Halmahera	Nusa Halmahera Minerals (gold mining company)
NII	Indonesia Islamic State
NKRI	Unified Nation of the Indonesian Republic
NU	Nadhatul Ulama (one of the biggest and moderate Islamic organisations in Indonesia)
OECD-DAC	Development Assistance Committee of the Organisation for Economic Co-operation and Development
OMS	Civil Society Organisation *(Organisasi Masyarakat Sipil)*
OPM	Free Papua Movement *(Organisasi Papua Merdeka)*
Ormas	Civil Organisation *(Organisasi Masyarakat)*
P2TP2A	Integrated Service Center for the Empowerment of Women and Children
PBB	Indonesians for the UN *(Persatuan Bangsa-Bangsa)*
PDI	Partai Demokrasi Indonesia (Indonesian Democratic Party, political party in the New Order before splitting in 1997)
PDI-P	Partai Demokrasi Indonesia Perjuangan (Indonesian Democratic Party-Struggle, political party)
Pemilu	General Election
Peradi	Indonesia Advocate Association
PETA	Pejuang Tanah Air (Indonesian military formed in Japan occupation time)
PKI	Indonesia Communist Party
PNI	Indonesian National Party
Pokja Intel	Intelligence Reform Working Group
Polda	Provincial level police force *(Polisi Daerah)*
Polsek	District level police force *(Polisi Sektor)*
Polri	Indonesian Police Force *(Polisi Republik Indonesia)*
Polwan	Women Police
Polwil	Local police force (in city)

Polwiltabes	Big city police force
Pospol	Police office
PPNS	Civil Service Investigator
PPP	Partai Persatuan Pembangunan (United Development Party, political party since the New Order)
PRD	Partai Rakyat Demokratik (People's Democratic Party, political party dissolved in New Order)
PsiAD	Army Psychology Center
PTPN	State Plantation Company
PTSD	Post-Traumatic Stress Disorder
PUJ	Gender Mainstreaming *(Pengarusutamaan Jender)*
Pusintelstrat	Strategic Intelligence Center
PWD	Police Women Desk
RAN HAM	Human Rights National Action Plan
RDTL	Republica Democratica de Timor-Leste (Republic of Timor-Leste)
RPK	*Ruang Pelayanan Khusus* (special service room in police offices for handling cases such as domestic violence)
RPKAD	Army Command Regimen
RSA	Role of State Apparatus
RSK	Security Sector Reform *(Reformasi Sektor Keamanan)*
SANDI	Alliance Knot for Intelligence Democratisation *(Simpul Aliansi untuk Demokratisasi Intelijen)*
SARA	Suku Agama Ras Antar-golongan (ethnic, religion, race and between groups, New Order propaganda as based of no differentiation in civil interaction)
Satpol PP	Municipal Police *(Satuan Polisi Pamong Praja)*
SALW	Small Arms and Light Weapons
SCU	Serious Crime Unit
SIPRI	Stockholm International Peace Research Institute
SK	Decision Letter *(Surat Keputusan)*
SKB	Joint Decision Letter *(Surat Keputusan Bersama)*
SMID	Student Solidarity for Indonesian Democracy *(Solidaritas Mahasiswa untuk Demokrasi Indonesia)*
SOBSI	Indonesian Labor Central Organisation (was assumed to be affiliated with the communist party PKI)
SPSC	Special Panel for Serious Crimes in East Timor
SSK	Satuan setingkat kompi (military unit)
SSR	Security Sector Reform
Tap MPR	General People Assembly's Statement
TGPF	Fact Finding Joint Team *(Tim Gabungan Pencari Fakta)*
TNA	Aceh Armed Forces *(Teuntara Neugara Atjeh)*
TNI	Indonesian Armed Forces *(Tentara Nasional Indonesia)*
Trantib	Police Unit for Public Security and Order
Tupoksi	Main Task and Function
UDHR	Universal Declaration of Human Rights

UDT	Uniao Democratica Tomorense (political party in East Timor)
UIN	State Islamic University
UMI Makassar	Indonesia Moslem University, Makassar
UN	United Nations
UNAMED	United Nations Mission in East Timor
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNTAET	United Nations Transitional Administration in East Timor
UPPA	Women and Children Empowerment Unit
UPT	Integrated Service Unit
UU KKR	Truth and Reconcilliation Commission Law
UU KIP	Freedom of Public Information Law
UU Otsus	Special Autonomy Law
UU PA	Aceh Government Law
UUD 1945	State Constitution of 1945 Law
WCC	Women's Crisis Center
WTC	World Trade Center
YKNCA	Cahaya Alam Cancer Foundation and Narcotics *(Yayasan Kanker dan Narkoba Cahaya Alam)*
YLBHI	Indonesia Legal Assistance Body Foundation *(Yayasan Lembaga Bantuan Hukum Indonesia)*

Preface DCAF

This Almanac on Human Rights and Security Sector Oversight in Indonesia is primarily intended to map the current status of human rights observance by Indonesia's security sector in terms of policies and practices. Secondly, by benchmarking the status of human rights observance, the almanac is intended to be a tool that can help prioritise ongoing security sector reform needs to ensure the improved provision of public security by Indonesia's security sector actors.

Since the end of the Cold War, human rights observance by state agencies has coalesced as a critical issue, instantly reflecting not only the freedom from fear and freedom of expression within states but also the states' profile at the international level. In general, a lack of systematic human rights observance has served as a catalyst for protest within states, leading to political instability, a lack of trust in public institutions and the erosion of the legitimacy of government policies and practices.

With the emergence of security sector governance as a democratic norm at the international level, the effectiveness of security sector reform programmes, the access of the general population to public security and the consistency of government policy, practices and management in the security sector, have all impacted on the perception of human rights observance in states and across regions. Moreover, in the general context of democratisation, development and good governance, the idea of the state providing security as a public good is now well established. Rather than providing security in the political or economic interest of narrow sectoral groups or focusing on imagined conventional threats at the international level, states have refocused on providing security to and access to justice for citizens at the community level.

The fundamental importance of human rights observance by security sector agencies is that aggregated data provides an immediate index of the transparency and accountability of security sector actor's policies and practices, and also the government and executive's interest and effectiveness in controlling its security sector's activities. Where a deficit in human rights observance by security sector agencies is perceived, democratic institutions, civil society, the media and the security sector itself can work together to ensure that: an effective legal framework for security sector governance is put in place and enforced; policies and practices are amended to prevent repeated abuses; security sector personnel have adequate training to perform the role mandated by government and society; and that the general population is sufficiently well informed to know their rights and expectations when interacting with the security sector. Where abuses are detected, investigations can be mounted by any or all of these stakeholder groups to initiate a further round of relevant reforms.

This type of substantive action by key stakeholders pre-supposes that—as communities—they have moved beyond a culture of protest or "resistance" to engage systematically with democratic institutions, the government and its agencies, the executive and civil society to identify problems across policy and practices and have proceeded to identify possible solutions. Not least, the stakeholder groups need to ensure their capacity to perform their functions, not only in monitoring and analysing relevant issues, but in actively creating tools that may help provide constructive solutions in terms of ensuring levels of transparency and accountability consistent with those to be expected in a democracy.

From 1998 onwards, Indonesian civil society organisations (CSOs) have relentlessly mapped instances of human rights abuses by state agencies and lobbied their government and the international community for assistance in changing policies and practices and in prosecuting those accused of documented human rights abuses. In recent years, the Munir Case has, for many, been highly symbolic of the contentiousness of the interaction between state, society and the security sector. But, at the same time, many CSOs have systematically developed their capacity to monitor, research and analyse key issues, as well as to follow-up with recommendations to improve the provision of public security through lobbying, advocacy and awareness raising with multiple stakeholders.

Since 1998, Indonesia's continued democratic development and emergence as a key economic actor in Asia has provided the back-drop to the debate on security sector reform in the post-Suharto era. In the general context of security sector reform, much attention has been focused on Defence Reform, with much more attention now being paid to the Police Reform agenda and Intelligence Reform on issues such as the "State Secrecy Bill." The crux of these debates has been the need for increased transparency and accountability in terms of policy, practices and budgeting. The security sector has cooperated with various reform platforms, not least through democratic reform imperatives but also its corporate interests in the post-Suharto reform era.

Thus, to further inform the debate on transparency and accountability across Indonesia's security sector, and to identify ongoing reform needs across defence, police and intelligence, this almanac reflects a concise effort to map the intersection of public security provision and the practices of state agencies. By mapping key problem areas and sub-dividing the relevant security sector actors, agencies and thematic issues, the almanac provides a benchmark of various agencies' contributions to public security, while at the same time enabling the mapping out of solutions that can help resolve the critical issues identified. It is intended that this mapping process can be repeated in the future in order to map the extent to which human rights observance improves across the security sector.

The Institute for Defence, Security and Peace Studies (IDSPS) has managed the creation, implementation and publication of this almanac as a component of its ongoing work on human rights and democratic security sector governance in Indonesia. The project is one of three current projects between IDSPS and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the others focusing on building the capacity of CSOs across Indonesia's regions to cooperate on security sector governance issues and the creation of training tools for those capacity development programmes in the short and long term. This

almanac reflects the capacity within Indonesia's monitoring and advocacy community to analyse security sector oversight issues and to advocate longer-term reforms and is indicative of the degree to which local ownership has long been an intrinsic driver of Indonesia's security sector governance process.

Finally, DCAF is grateful to acknowledge the support of the Foreign Ministry of the Federal Republic of Germany who fully funded this project as part of a two-year programme to support Indonesia's democratic security sector governance capacity development across democratic institutions, civil society, the media and the security sector.

Eden Cole
Deputy Head Operations NIS & Head, Asia Task Force
Geneva
August 2009

Preface IDSPS

Discourse and the practice of SSR in Indonesia correlate with human rights issues. This view is based upon the respect security actors (military, police and intelligence) have for human rights as one of the prerequisites to the success of SSR. Respect for human rights is integral to the activities and identity of security actors. Accountability of security actors for violations of human rights is a crucial issue in the discourse and practice of SSR.

One of the underlying strengths in the relationship between human rights and the security sector is the thirty-two years of experience under the New Order authoritarian regime. The New Order and its military bureaucracy not only harmed the principles of democracy but also forced the practices of power in social, legal, political, economic and cultural arenas that conflicted with and violated human rights. The need to renew old paradigms and the respect of security actors for human rights is paramount to SSR.

Human rights are fundamental in SSR for establishing security actors.[1] Security actors are charged with maintaining security and they play an important role in creating safe conditions that allow all citizens to enjoy human rights. Therefore, a security actor should respect human rights and the supremacy of national and international law when carrying out their tasks. A considerable boost is needed in order to reform security actors from an authoritarian military regime towards a course of democracy, particularly in respecting human rights.

CSOs encourage the establishment of reformist security actors who respect human rights. CSOs advocate SSR and human rights issues with extra-parliamentary assessment and monitoring, as well as a technocratic approach. However, two major problems exist in advocacy, namely transitional justice and human rights violations by security actors with impunity.

The fact is that ten years after the fall of the Suharto regime, the enforcement of human rights is not optimal. The efforts of pro-human rights enforcement groups from the National Human Rights Commission (at the government level) or the CSOs' demand for respect, protection and fulfilment of human rights is still hampered by practices of impunity, the sustainability of human rights violations and "resistance" to the position of human rights as an indicator of SSR.

So long as human rights issues are important in encouraging SSR, then IDSPS (the Institute for Defense, Security and Peace Studies) and DCAF (the Geneva Centre for the Democratic Control of Armed Forces), in collaboration with the HRWG (Human Rights Working Group) and the National Commission on Human Rights (Komnas HAM), will attempt to record the intersection of human rights issues and SSR in this almanac.

1 Hans Born and Ian Leigh, Handbook on Human Rights and Fundamental Freedoms of Armed Forces personnel (Warsaw: OSCE/ODIHR, 2008), 11.

This book, published in Indonesian and English: 1). Elaborates on CSO and individual actor's experiences within human rights and SSR advocacy; 2). Assesses the achievements, failures, opportunities and threats of human rights enforcement in the security sector; and 3). Encourages strategic recommendations relating to the agenda of human rights protection and to improve the quality of respect, protection and fulfilment of human rights in the security sector.

The initial plan for writing and publishing this book was the result of collaboration between IDSPS and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), with the support of the government of the Federal Republic of Germany. The process involved IDSPS and DCAF, including Komnas HAM and the HRWG, as the parties directly involved in efforts to encourage the respect, protection and fulfilment of human rights in Indonesia.

Finally, IDSPS expresses their gratitude to all those who supported the writing of this book.

Jakarta, 16 October 2009
Institute for Defense Security and Peace Studies (IDSPS)

Mufti Makaarim A.
Executive Director

Preface Komnas HAM

Searching for Human Rights in Security Sector Reform

(After 11 Years of Reformation)

The agenda of human rights promotion and enforcement is actually an inseparable part of the democratisation process, notably at the beginning of the reformation era. The MPR Decree No. XVII/ MPR/1998 on Human Rights was constituted at the Extraordinary Session of the Legislative (People's Consultative Assembly or MPR) in 1998 that was a Human Rights Charter for Indonesia, complementing the human rights regulations of the 1945 Constitution (UUD 1945) that, at the time, had not been amended.

It was not until 1999 that Law No. 39 of 1999 on Human Rights was regulated, which laid the foundations for the insurance of respect, protection and promotion of human rights, and also served as a basis for the establishment of the National Commission on Human Rights (Komnas HAM), which was previously based, solely, on presidential decree. A year later, Law No. 26 of 2000 on the Human Rights Court was also successfully constituted, which regulates the legal mechanism for the settlement of severe human rights violation cases.

A more fundamental and monumental effort to guarantee human rights protection and enforcement is through the amendment process of the UUD 1945. Constitutional changes on human rights were discussed and ratified in 2000 as part of the second amendment of the UUD 1945. Those changes resulted in regulations concerning human rights and the constitutional rights of citizens—which previously only consisted of seven regulations that could not be fully regarded as a constitutional guarantee of human rights—that now contains thirty-seven regulations.

The new regulations adopted in the UUD 1945 were specifically regulated in Chapter XA on Human Rights, starting from Article 28A to Article 28J, plus several other regulations amongst other articles in the UUD 1945. Therefore, the formulation of human rights under the Indonesian constitution can presently be regarded as being complete, which makes the UUD 1945 one of the world's most complete constitutions in terms of human rights protection regulations.

Since the reformation, various legal products were constituted to improve the condition of human rights in Indonesia, particularly civil and political rights, such as: the Decree of the MPR on Human Rights; the Press Act; the Law on the Freedom of Expressing Opinion (Demonstration Act); the Human Rights Act (Law No. 39 of 1999); the General Election Act; the Political Party Act; the Law on the Structure and Position of the MPR, the DPR (People's Representative Council) and the DPRD (Regional DPR); the

Regional Autonomy Act; the law ratifying the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the law ratifying the Convention on Anti-Racial Discrimination.

Political Situation and Developments

Over the last ten years, politically speaking, we have seen the people of Indonesia enjoy extensive political freedoms. The four basic freedoms are freedom of expression and communication, association, organisation and the right to participate in government—vital for the working of a democratic political system and government.

Lately, through the media, almost every level of Indonesian society has been able to express their feelings or opinions without fear, unlike during the New Order. The Indonesian people are relatively free to communicate their ideas and information. People also enjoy the right to the freedom of association. The gathering of people at conferences, seminars, or rallies no longer requires permission from the "rulers" as under the New Order.

Individuals or societies/groups like labourers, farmers, artists and others who wished to conduct demonstrations or strikes in front of public offices or officials did not previously require permission, though they had to inform the police of their intentions beforehand.

For approximately ten years now, the Indonesian people have also enjoyed the freedom of organisation. Citizens are not only free to establish political parties as a means to fight for their political aspirations but are also free to set up various societal organisations. The realisation of the right to the freedom of organisation is vital to the people's efforts in fighting for their common interests. Moreover, the emergence of these organisations will strengthen civil society, which is crucial for the continuation of a democratic political system and government.

For the past ten years, the Indonesian people have also enjoyed their political right to participate in government, as directly elected members of the DPR and the DPRD in 1999 and again in 2004. In 2004, for the first time, the people directly elected the president and vice president. Furthermore, people in provincial, regional and municipal areas also directly elected governors, regents and mayors. Before this, there were no precedents for the realisation of the right to political freedom in the history of Indonesia.

Human Rights Problems in Indonesia

Nevertheless, political freedom that paves the way to the fulfilment of the four basic freedoms mentioned above has yet to be enjoyed by minority religious groups. The adherents of minority religions, such as the Bahai, are still being discriminated against by the state. Several regions also apply regulations with syariah (sharia) content that contradict the concept of the respect for human rights.

Furthermore, the minority group of Ahmadiyah (Muslims) continues to be discriminated against and monitored by the state. Moreover, political minority groups, such as the Indonesian Communist Party (PKI), ex-convicts or those who were charged with being members or sympathizers of the PKI and other left-wing parties, continue to be denied political rights.

Revolutionary left-wing or communist ideology, as well as promoters of an Islamic state, are still being watched and held suspect by other elements of society and government. Government policy carried out through the Attorney General's Office still prohibits the circulation of several books considered to disseminate leftist ideology and doctrine. The minister of national education, who withdrew from circulation several of the revised history textbooks concerning the G30S event, showed the caution and suspicion of the ruler against leftist ideas or opinions considered radical. This attitude and viewpoint will clash with the realisation of civil and political rights in Indonesia.

The efforts of Komnas HAM to uncover severe human rights violations as a result of the G30S event are always met with threats from military groups and/or several Islamic organisations. A number of acts of terror and threats, as well as demonstrations, have been directed against Komnas HAM and its commissioners in relation to the formation of the Crime of 1965 Ad Hoc Team. Several ex-generals and government officials are obstructing investigations by Komnas HAM, relating to severe past human rights violations.

Legal Protections Remain Weak

The political freedom enjoyed by Indonesian society, in reality, is not matched with the necessary legal protections for civil rights, i.e., the right to personal freedom and safety, the right to freedom from torture or treatment that is cruel, inhumane or degrading, the right to a fair investigation and legal process, the right to individual acknowledgment before the law, and the prohibition of propaganda of war and the incitement of hatred.

Reports from many regions, such as Poso, Lombok, Papua, Jakarta and other places in Indonesia, indicate that horizontal violence is still happening that involves the police and military elements. Maltreatment of labourers, farmers, traditional societies, religious minority groups and students continues.

Worse still, in almost every horizontal violence event, the security apparatus, such as the police, acts as though they are incapable of protecting the groups that become the targets of violence. Human rights reports released by non-governmental organisations (NGOs) and the UN state that maltreatments continue to happen in police detainment centres. For almost eleven years, the legal system and its apparatus, such as the police, prosecutors and judges, have not been able to provide an answer to the horizontal and vertical violence cases that involve police or the military apparatus.

Cases of past severe human rights violations, such as the murders, kidnappings and the arbitrary detainment of hundreds of thousands people suspected of having relations with the PKI (the Talangsari

case), until today have not yet had a fair hearing. Those heavily suspected of involvement in severe human rights violations are still free to roam without the fear of legal recrimination.

Even when several human rights violators are brought to justice, they are usually accused and charged with a lighter criminal misdemeanour. For example, the shooting of farmers by police officers in Manggarai, where the accused were charged with lighter criminal offences and finally sentenced to light punishment of between one or two years or several months, or even discharged, as with the East Timor post-1999 referendum and the Tanjung Priok 1984 cases.

This later became a culture of impunity that continued to infect the legal system and its apparatus such as the police, prosecutors and judges, especially when the law enforcement officers had to deal with human rights violation cases that involved the police and the military. This culture of impunity is what is paralysing every effort of law enforcement. If this is allowed to continue, this culture of impunity would destroy the sovereignty of law and in turn destroy democracy.

The crimes of terrorism conducted by the Jemaah Islamiyah have caused heavy casualties and the destruction of possessions. The crime of terrorism has caused a relatively widespread sense of fear and insecurity among civilian societies. On the other side, the crime of terrorism in Indonesia has called for the birth of the Anti-Crime of Terrorism Act that is set aside from the regular Criminal Procedure Code (Penal Code).

Under the Anti-Crime of Terrorism Act, the police, setting aside the protection of civil rights regulated under the regular penal code, can easily conduct arrests, detainments, searches and investigations against anyone suspected to be part of a terrorism activity network. The implementation of this new act has negatively impacted civil rights as those suspected of having relations with terrorist criminals could face arrest, detainment, violence, torture and investigation. This situation clearly worsens the condition of civil and political rights. Therefore, Komnas HAM, along with other national commissions of human rights in the Asia-Pacific region, urge countries in the region to continue being stern in fighting terrorism but that these efforts should be done with respect for human rights law.

How About Security Sector Reform?

While redefining the Indonesian National Armed Forces (TNI) in 1998, the then ABRI (Indonesia Armed Forces) Commander-in-Chief General (TNI) Wiranto tried to rethink the relations between the military and the police in relation with the state and its relationship with citizens (civil society). At that time, Wiranto stressed that the position of the TNI was no longer vanguard and no longer directly decisive. Moreover, Wiranto also stated that the TNI were willing to share power with non-military executives.

This was not without reasons. There were at least three main causes perceived by the then TNI/Polri (Republic of Indonesia Police) leaders that required them to reform. This included the delegitimising of the military, which took the form of protest actions by students, labourers, farmers, NGOs, and others. This

then was followed by the emergence of various SARA (inter-ethnic, inter-religious, inter-racial and inter-group) conflicts, mass riots, abuses of military powers and human rights violations (such as kidnapping, murder, rape etc.)—a phenomenon which later showed the symptoms of weakening military discipline and professionalism and that during the New Order era became one of the main pillars of power.

Departing from those realities, the chief of ABRI announced several reforms known as the "Political Stance and View of ABRI on the New Paradigm of the Role of ABRI in the 21st Century." The reform is also known as the fifteen new steps: the political stance and view of ABRI on the new paradigm of the social and political role of ABRI; the separation of Polri from ABRI/TNI starting from 1 April 1999 as the commencement of internal TNI reformation; the abolition of the Central Social and Political Council (Wansospolpus) and the Regional Social and Political Council (Wansospolda/Level 1); the change of social politics staff to become territorial staff; the liquidation of Syawan ABRI, Kamtibnas ABRI, and Babinkar ABRI (bodies that managed security); the abolition of Sospoldam, Babinkardam, Sospolrem and Sospoldim (bodies that manage social-political issues); the abolition of ABRI employment through decisions of retirement or shifts of duty; the reduction of the number of ABRI factions in the DPR and DPRD I/II; the disinvolvement of the TNI in day-to-day politics; the separation of organisational relations with the Golkar Party and to hold equal distance with all political parties; the commitment and consistency of the TNI's neutrality in general elections; the change of paradigm in relation to the TNI and the TNI wider family; software revision of various TNI doctrines according to the reformation era and the role of TNI in the 21st century; and the name change from ABRI to the TNI.

These "revolutionary" sounding reformation steps were coldly received by society. At that time, more accusations arose that the military violated the law, committed violence, supported the status quo, kidnapped students and activists and was the enemy of society, often removing people from their land and residences with the excuse of development but actually in the interests of businessmen.

Therefore, people accepted the separation of Polri from the TNI as more of a political "consequence" rather than an "obligation." A number of Polri observers warmly welcomed this separation idea, stating that the decision would make Polri more professional and able to self-develop as a true law enforcer.

The TNI and Polri in Security Sector Reform

There are three aspects included in security sector reform, namely military reform (TNI), security and order apparatus reform (Polri), and intelligence reform. The latter is as good as forgotten by the public. The role of intelligence insecurity in SSR should be the main priority, considering the experience of the past when intelligence operations often broke the boundaries of the constitution, human rights or the political order—which were supposed to be protected by both the TNI and Polri.

Compared to the TNI reform, which was mostly conducted internally by using a top-bottom approach, police reform can be said to take place more openly by involving elements of civil society. And, if studied further, what is left of the Reformation of 1998, only three aspects have taken hold—that is, the freedom

of the press, the freedom of expression and the independence of Polri. These are the artefacts of the democratisation movement in Indonesia since May 1998, which are still preserved today and which the Indonesian people are proud to show off to the outside world.

The organisation and performance progress shown by Polri is very obvious. Since its separation from the TNI and the change that enables the chief of Polri to come directly under the remit of the president as mandated by the Decree of MPR RI No. VII of 2000 and Law No. 2 of 2002, Polri has succeeded in using the available opportunities to continue developing its organisation and independence. This situation is supported by no more intervention or interference in decision making from the TNI as during the New Order, when the positions of regents, mayors and ministers of internal affairs were usually held by former members of the TNI.

It is possible that Polri is the only institution that has performed the fastest reformation process among all the other law enforcement institutions. Since being separated from ABRI in 1999, Polri has actually opened itself up to various groups that reform the efforts of the police. In fact, from 2000 to 2005, a working group on police reform under the cooperation of Kemitraan (Partnership) and Polri Headquarters was established.

Polri has also conducted a variety of reformation steps through curriculum changes, the education system, recruitment patterns, uniform changes, and implementation of the most up-to-date measures of policing, community policing. Model projects of community policing are now being implemented in the regions of Papua, NTT, Surabaya, Yogyakarta and Bekasi and have been complimented by many as successful in supporting the idea to accelerate the changing of the police paradigm as a civilian police force.

Perhaps what has been done by Polri in those regions can serve as an example in other places in Indonesia. Surely in depth study and comparison of implementation patterns between community policing in Bekasi that received assistance from the Japanese government and community policing in Yogyakarta that was assisted by the Asia Foundation and in NTT by Kemitraan (European Union) need to be reviewed further—as there is no need for uniformed efforts because, in principle, community policing depends heavily upon the locality of the situations and the cultures of each area being policed.

Brimob (Mobile Brigade) used to receive a lot criticism, especially when “dealing with” the Aceh problem before the enforcement of a military emergency on 19 May 2003, and has tried to perform self-reformation with the help of other external parties through curriculum and education system revision.

Even though Polri has undergone excellent progress at a high level, practices at lower levels remain inadequate. For example, the practice of illegal retribution on the streets and the use of violence against demonstrators remain a problem. However, this bad mark in the reports of certain personnel is not impossible to erode with the passing of time as the chiefs of Polri have expressed their intention to reform and to eliminate all forms of problems. The acts of violence used by the members of Polri at Universitas Muhammadiyah Indonesia (UMI) Makassar should become a lesson and a milestone for major self-reformation.

On 22 June 2009, the Chief of Polri General Bambang Hendarso Danuri issued the Decree of the Chief of Polri No. 8 Year 2009 on the Implementation of the Principle and Standard of Human Rights in the Execution of Polri Duties. This was deliberately brought forward on Polri's anniversary and seemed to answer any doubts many parties had on Polri's commitment in paying respect to, protecting and fulfilling human rights.

The greatest challenge for Polri is to make itself an apparatus that upholds the law and public order as best as possible. The Asian Crisis in August 1997 left Indonesia the only country still facing prolonged problems. Some of the multi-crisis effects that remain are the emergence of mass unemployment, criminality and mistrust by the public of the law, coupled with the occurrences of terrorist threats and new forms of globally networked crime.

Surely this cannot be done easily considering there are many laws and regulations that position Polri as a law enforcer, while at the same time with a power of authority. One example is the articles on hatred (haatzai artikelen), which in the past were used by the government to silence the opposition. There is also pressure from the government and intelligence agency (BIN), which can make Polri participate in silencing critical voices of the public toward the existing government.

The challenge of impartiality that must always be assumed by Polri is not easy, considering the president is the superior chief of Polri. This position was once noted by a police expert, T. A. Critchley, who said "that from the beginning, the police were introduced to flow along with society, understand society, the property of society, and place its power upon the people."

Questions around the TNI Reformation

Military reform has not gone smoothly. Military reform, except for the detachment from politics and sole focus on defence, can be said to be currently unsuccessful. TNI reform is conducted almost covertly and does not involve members of civil society who do not have sufficient knowledge in this area.

If perceived in detail, TNI Headquarters has actually made some basic structural changes, apart from its separation from Polri, in terms of organisation and command structure. These changes include the abolition of the positions of Kassospol (chief of socio-political staff) TNI and Kaster (chief of territorial staff) TNI; the abolition of Dwifungsi (dual function) of ABRI; liquidation of employment functions and socio-political roles of the TNI; abolition of the TNI/Polri factions in the legislative body in 2004; the implementation of public accountability toward military business activities; and the reformulation of Indonesia's strategy and defence doctrines.

However, TNI reform still leaves many questions unanswered—namely, those related to budget management, military business and the military court system. The measure of achievements of defence reform also seems to be under debate between the military and civil society actors, as well as the concept of the TNI doctrine in relation to the national security doctrine and the doctrine on national defence.

How About Intelligence Reform?

The intelligence institution is the black mark on reform. Though the authority of the State Intelligence Agency (BIN) is now limited to information gathering and processing, it can be said that the intelligence agencies have not been effected at all by the reformation process (see table 1).

We can see that since Suharto's descent in May 1998, several covert intelligence operations have taken place. These are, among others, the post referendum riot case in East Timor (1999), the murder case of the prominent Papuan figure, Theys Hiyo Eluai in 2002, and the murder case of the human rights activist Munir (2004).

In 2003, there was an effort to constitute an Intelligence Act involving discussion between actors of the intelligence community and civil society. However, this effort has not materialised, except for several drafts from either party. In fact, some groups interpreted this reform as part of foreign intervention to weaken the Unitary State of the Republic of Indonesia (NKRI). A strong legal umbrella is needed to make the intelligence community able to perform a more optimal role.

In a democratic state, the intelligence community function is to be the gatherer, processor and supplier of information. In Indonesia, this is an ideal being sought after as in a democratic society that respects human rights. The duty and function of an intelligence body must be ensured so as not to stray from its main mission and functions (tupoksi). This relates closely with the level of intelligence and access society has to the dynamics of information.

There is a tendency to return the role of intelligence to what it used to be in the New Order. This includes the authority of an extrajudicial role that was used by institutions like the Kopkamtib (Operations Command for the Restoration of Security and Order). This continues to strengthen as a discourse. Not to mention that there are accusations that Polri is incapable of handling terrorist group activities. Post-Bali Bombing II, the structure of Babinsa (village leadership non-commissioned officers) was relieved by the chief of TNI and Kominda (Regional Intelligence Community) by BIN.

The discourse of adding authority to the role of intelligenc has returned with a vengence, especially after suicide bombs at the Ritz Carlton Hotel and the Marriott Hotel in the Kuningan area of Jakarta on 17 July 2009.

Maybe we need to pay close attention to the situation that is developing post-Kuningan bombing of 17 July 2009. It is not impossible that security sector reform will face drawbacks. A number of plans for discussing the bills in parliament show a weakening of the commitment of the people's representatives to continue to safeguard security sector reform.

	Reasons	Obstacles	Opportunities
TNI	- Awareness that there were TNI actions in the past that were wrong (among others, the implementation of Dwifungsi concept) - Awareness that the TNI must no longer be involved in politics - Hatred from civil society toward the TNI at the time of the reformation movement in 1998	- The TNI needs only 30% of the APBN (national budget), old Alutsista (Main Equipment and Weapon Systems) - Suspicion from the TNI circle toward groups/institutions wanted to do TNI reform - Suspicion from the public toward NGOs that have close relations with the TNI - Resistance in the TNI circle	- The will to reintegrate the state security system with the regional security system - A number of experts in defence studies and military issues from the civilian circle (academics, researchers, etc.) - University that opens education in defence studies (UI)
POLRI	- Awareness that in the past Polri had been wrong in performing its functions (which were supposed to comprise the law and order apparatus but which became a political apparatus implementing security) - Separation of Polri from the TNI - The blue book of Polri reform - High demand from civil society on Polri to become an institution with its clean and professional personnel	- Polri needs have not been met by the APBN (and APBD/regional budget) - Efforts are made more on educational sectors (such as curriculum revisions, policewomen empowerment, etc.) and less on the cultural and monitoring aspects - Opinion that Polri (intelligence) is incapable in dealing with terrorism activities	- Financial support from multi-donor trust funds for the Polri reform efforts - University that opens studies in policing (UI) - Supports from international police studies experts
INTELLI-GENCE	- Failure of intelligence function as early warning system (EWS) - Overlapping of intelligence authority in field operations - High rate of "black" intelligence practices, which make the public avoid intelligence activities - Awareness that Indonesian intelligence has many weaknesses - Demands (from the international world) to make intelligence effective as an effort in combating global terrorism	- Lack of coordinator function amongst intelligence community - Major suspicion that intelligence reform is part of foreign efforts to undermine the NKRI - Overlapping in intelligence main mission and functions - Intelligence still want old style authority (discretion) (among others, to capture targets with self-tasking model)	- Willingness of the state to improve the intelligence structure - A number of intelligence experts from the civil society circle - Attention paid by international institutions toward the performance of national intelligence institutions

Yosep Adi Prasetyo
Member of Indonesia National Commission of Human Rights
Subcommission of Education and Information

Preface HRWG

Security sector reform without human rights implementation and efforts to make human rights the standard of Reformasi will only lead to artificial and ceremonial change or transitional democracy. Without substantive change and work to solve the fundamental problems of security sector reform, the security sector will only be a burden on democracy and ensuring the rule of law.

One important standard of human rights principles is the adherence of security actors—such as intelligence bodies, the police and the military—to legal regulations, especially after human rights violations. This adherence to the law, especially human rights law, becomes an important standard because it not only reflects recognition of the basic concept of the state and the state's legal basis, but it also shows openness toward democratic supervision (democratic oversight) from each stakeholder within society.

Adherence to human rights law becomes an enduring problem that has not finished in the journey of Reformasi, especially on settlement of past conflicts: this adherence is forgotten and buried along with its past victims. Thus, crimes of impunity always exist without any thorough settlement. In the case of the crimes against humanity in Timor Leste in 1999, no actors from the police and the military have been punished. Even retired General Wiranto, who was instructed to be arrested by the SCU (Serious Crime Unit) from Timor Leste's judiciary, is still free. Another example is Munir's murder in 2004, for which there is strong evidence implicating intelligence actors but until now no main actors have been arrested.

Even in the Munir case, there is systematic resistance from the State Intelligence Body (Badan Intelijen Negara/BIN), which rejects adherence to the law, especially the Fact Finding Team's (Tim Pencari Fakta/TPF) work. This lack of adherence came up again when Muchdi PR, the former deputy V of BIN, became a defendant and was tried in the State Court of South Jakarta.

International human rights law recognises the no safe haven principle that guarantees no gross human rights violator can escape the law. Even in many UN resolutions this principle is stated clearly, especially in the Timor Leste case in 1999, "the United Nations... condemns all violence and acts in support of violence in East Timor, calls for immediate end, and demands that all those responsible for such violence to be brought to justice" (United Nations Security Council Resolution 1272, 1999).

This rejection of the law and human rights principles also occurs in other matters; for example, until now it has been common for members of the military not to pay for tickets when they use public transportation and the police still conduct mean and inhumane acts of torture to get confessions from suspects.

The problem of adherence to the law is only one problem that has yet to be resolved in the journey of security sector reform. It still needs more hard work to be finished.

This Human Rights in Security Sector Reform Almanac you now hold provides a picture of how security sector reform relates to human rights, including its legal context, and how human rights observance should be a standard practice for security actors. The importance of making human rights observance a common standard for security sector reforms will also not only ensure security actors respect human rights but also for ongoing democratisation processes: especially in the Indonesian context, which has a long history of human rights violations perpetrated by security actors and of a democratic deficit due to the political dominance of security actors.

This Almanac contains various essays "commemorating" various past and present incidents and suggesting ways to resolve existing problems. Within the various writings, there are options for the agenda to be pursued and basic guidelines offered. This Almanac is important to read, especially for stakeholders in this field including decision makers, security actors, academics, civil society organisations and society in general.

In the end, HRWG would like to thank each contributor for its support of this almanac. Special thanks are given to DCAF and IDSPS, which engaged HRWG to participate in the programme, and also to Komnas HAM, which cooperated on this programme.

Rafendi Djamin
HRWG Coordinator

PART I

Human Rights Trends and the Contemporary Security Sector: A Framework

Human Rights Discourse and the Contemporary Security Sector

Amdy Hamdani

Human Rights Global Discourse

The idea of human rights surfaced in 1537, which shows that the terminology and idea of human rights was born in the modern era. The idea of human rights, however, was nascent and a unified understanding of human or individual rights had yet to be established.[1]

Human rights discourse became topical when various acts of violence, cruelty and harassment towards humanity began to be documented by historians. The behaviour of totalitarian regimes in recent history is not much different from that of the leadership in medieval or even primitive ages—humans have been exploiting each other for centuries. Subordination and superiority intertwined with leadership and the people is part of a nation's historical journey.

To moderate the relationship between humans, various agreements had to be made, especially those that regulated the limits of authority between leaders (rulers) and citizens (people). These agreements, however, did not have a significant impact, even though the moral underpinning for them had been recognized. Thus, to support further action, a global affirmation of the importance of human rights was required.

Furthermore, the growth of Western liberalism—based upon the assertions of freedom and equality—catalysed support for the application of human rights. For a democratic state, the guarantee of political rights and the continuity of life are absolute. This includes the guarantee of human rights, which must be reinforced. Essentially, human rights are attached to a human being from birth. These rights cannot be taken away, diverted or shared.

Since the Universal Declaration of Human Rights (1948) affirmed the importance and fundamental guarantee of freedom from want and need, modern discourse of human rights cannot escape the nature of mankind—especially that put forward by Thomas Hobbes.

1 Simon Goyard-Fabre, *Les principes philosophiques du droit politique moderne*, (Paris: PUF, 1997), 266.

In Hobbes's view,[2] humans are full of ambition, competing with other human beings in creating and maintaining a satisfactory life. Therefore, to guarantee the creation of order, an organization bigger than society's social system needs to exist in order to enforce regulation. The organization that is seen to be capable of implementing this enforcement, according to Hobbes, is the state.

Hobbes believed that a state needed to exist in order to decrease violence and to make sure that social relations progressed towards an agreed social goal(s). Hobbes also viewed the state as the administrator of a freely mandated social contract, ensuring its function. The view of a strong state becomes the root of authoritarianism, which Hobbes called "Leviathan."

According to Immanuel Kant, however, the goal of a state is to guarantee the legal position of an individual within society. Kant also opined on the characteristics of state law, which should affirm and protect human rights, and assist in the diversification of power.

Great philosophers such as Plato, Thomas Aquinas and Immanuel Kant have provided rational arguments that place human rights at the foundation of public life which cannot be challenged. Nevertheless, past efforts seemed to have lost their appeal in modernity.

Conversely, Richard Rorty puts forward a counterargument. In his speech on Human Rights, Rationality, and Sentimentality presented to Amnesty International in 1993, Rorty criticised Plato, Thomas Aquinas and Immanuel Kant by saying foundationalism and their efforts were "outmoded and irrelevant."

Wandi S. Brata agrees with Rorty in his writing titled Memikirkan Kembali Pendasaran Hak Asasi Manusia (Rethinking the Grounding of Human Rights, 2000). According to Wandi, discourse on human rights (the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic Social and Cultural Rights) covers a widespread problem that has not been handled until now. This problem is the grounding of human rights itself.

Foundationalism has tried to build rationalization upon a human rights foundation, starting with the characteristics of human rights as being basic, non-derogable, universal, independent and international.

This conclusion was challenged by highlighting the position of the inherency law in the real world, balanced against rights and respect in a world of values. Wandi believes that the "inherency" world and the world of values are separated by a large gap, therefore what is basic, non-derogable, universal, independent and international in the inherency world cannot be directly claimed to have the same characteristics as the world of values.

This reality spurred David Ross to introduce the term prime facie in his book The Right and the Good (1930).[3] Prime facie stated that every ethical responsibility is valid until other considerations cancelled out its validation.

2 Thomas Hobbes, *Leviathan*, (Harmondsworth: Penguin, 1968).
3 Ken Cooley, S*ir David Ross's Pluralistic Theory of Duty (The Beginnings)*, http://www.manitowoc.uwc.edu/staff/awhite/ken95.htm.

In the context of human rights, prime facie means that any given human right is valid until there is another consideration able to suspend it. Therefore, this means that the claims of basic, non-derogable, universal, independent and international rights can be invalidated.

In Indonesia, public discourse on human rights is not new. Historically, the state's constitution contains basic human rights values. After the fall of Suharto on May 20th 1998, civil and political rights in Indonesia automatically attained stronger guarantees and the second amendment to the constitution was the specific agendum for discussing human rights.

On closer inspection, the process of formulating human rights for the international community is reflected by the serious efforts and attempts to guard and protect human dignity. Besides the discourse on the universality of human rights, the support of global human rights enforcement must be continually addressed in order to protect the freedom of conscience and other freedoms.

When the criminally offending party is a system, we might expect that a solution to a human rights violation could be easily handled as the mechanism and line of command is easily traceable. However, the facts show a very different case; a system controlled by humans can demand the destruction of others.

Given this criminal structure, efforts to enforce human rights seem pointless. Human rights enforcement based on the principles of truth, equality and transparency can only be successful if conducted using Immanuel Kant's theory of reflective evaluation. This means that in order to understand and solve a problem prudently, considerations must be viewed from several angles and not just one.

The Hobbesian State versus the Kantian State

Hobbesian theory denies the existence of international law because in this theoretical framework, the state has complete sovereignty. Sovereignty means that a state has the right to decide something according to its own free will without interference from another state. Therefore, international law erodes state sovereignty. A state must be willing to sacrifice its sovereignty for civil government, which limits its ability to execute its national policies.

Hobbesian theory on full and absolute sovereignty only increases fears over the misuse of state power. Problems arise when a state's national policy is regarded as erroneous from an international perspective, particularly when human rights violations may be involved.

Unlike Kant, Hobbes's ideas are more attuned to future development. Kant is possibly the only philosopher that believes morality follows absolute moral regulation, or rules that must be followed, whatever the result. It is difficult to imagine how such a perspective can be held, except maybe if we believe these regulations are God given, without prerequisites. The problem is that Kant did not base his arguments on theological considerations but on rational arguments—i.e., by considering that reason demands us not to lie.

Kant believed in the law of qishash or retributive law (an eye for an eye), which is refuted by Utilitarians. In the field of morality, many European states have adopted a Utilitarian rather than Kantian approach. Utilitarians believe in socializing and correcting criminals, rather than avenging them.

Hobbes' Leviathan and Kant's Zum Ewigen Frieden: Ein philosophischer Entwurf (Toward Eternal Peace)[4] were also based on real conditions. The starting point of these two works is the same but Kant's achievements are far more optimistic as manifested in international relations theory. Kant attempted to rupture Hobbesian pessimism with liberal philosophy.

Kant tried to create a set of laws that would prevent conflict at all levels of society in pursuit of eternal peace. There are at least three important elements within the legal articles produced by Kant for the creation of perpetual peace: (1) democracy; (2) an international organization; and (3) economic interdependence. According to Kant, these three elements are the most successful antidotes to cure the disease of war. This Kantian concept has a particular bearing today, considering the current world condition, where wars still rage. Wars are not only physical but also ideological, part and parcel of the natural human condition.

Kant believed that a peace treaty could be realised and suggested a series of steps to establish peace. The first step required each state to be a democracy. The first definitive article in his essay stated that, "The Civil Constitution of Every State should be Republican." The law of states referred to by Kant can be in the form of Vol Kerbund (United Nations). By Vol Kerbund, Kant believed that an organization could create a set of norms in the form of a peace resolution, preventing conflict between states and placing law above the notion of the state.[5] In "The First Addition: On the Guarantee of Eternal Peace," Kant highlights economics as another important pillar of peace.

According to this theory, if all three elements or characteristics co-exist between countries (dyads), conflict will rarely occur as democracy, economic interdependence and an international organization are all interlinked. If one of the three elements is in place, this encourages the development of the other two. If all three elements function within the right framework (in Kant's ideal), eternal peace can be realised.

Steps Toward Peace

In international relations theory, both Hobbesian realists and Kantian liberals depict human nature as fundamentally defined by an unequal struggle for power. Hobbesian realism can be used to clearly decipher the roots of war, whereas Kantian liberalism can be applied as an antidote to war. The root of the problem is realism. Kant's theory of a republican constitution may be used as a primary antidote. This element is crucial to the internal workings of the state, where the public as the highest decision maker decides on whether a country should go to war. Rationally speaking, the public will prefer not to go to war, as they too will become victims. Therefore, democracy is essentially the key to improved relations between states.

4 Immanuel Kant, *Menuju Perdamaian Abadi, translated by Arpiani Harun and Hendarto Setiadi*. (Bandung: Mizan, 2005).
5 Published in *Perspektif: Fisip Journal of Interdisciplinary Studies*, Vol. 5, No. 2, April 2007, by Asrudian Center, Information Center for International Relations Studies.

If Kant's primary element is successfully implemented, the next step involves external application. The impact of this transformation will enhance relations between countries. The heaviest burden (involving a great human factor), is the application of Kant's third element of an international organization (a League of Nations and/or a United Nations) to unite all the countries of the world in eternal peace. The first two Kantian elements only create conducive conditions of an international system limited to democratic countries.

The concept of an international organization of Kantian proportions is the formation of a civilian constitution at the global level, i.e. international governance. Regardless of the formation of peace organizations such as the League of Nations in 1914 and the United Nations in 1945, global wars like World War I, World War II, the Korean War, the Vietnam War, the Falkland/Malvinas War and the Gulf War have occurred and many other international conflicts such as the wars in Iraq and Afghanistan are still in progress. The biggest challenge for humankind remains how to maintain a civilian constitution (democracy) not only as an internal factor in national governance but also as an external factor in global governance.

Human Security

Former Secretary-General Kofi Annan, as part of a new security perspective, defined the term "human security" stating that:

> *"It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a healthy natural environment—these are the interrelated building blocks of human – and therefore national – security."*[6]

In substance, the idea of "human security" is not new to international relations as non-external military threats have been appreciated by analysts and decision makers over several decades.

The substance of human security can also be found within the security concept expressed by the proponents of critical theory that debate whether state building is patriarchal. Current human security discourse forms part of a new and interesting security paradigm. With the end of the Cold War, an effort and momentum to create a new world order has surfaced, allowing for new interpretations of security values, where security is not solely an issue of military threat towards another state.

The strengthening of ideas and efforts in human security is a reaction towards the current global problems of humanity. Human security places the focus on the individual. The crux of human security is designed to preserve individual security.

6 Kofi Annan, "Secretary-General Salutes International Workshop on Human Security in Mongolia," *UN Press Release SG/SM/7382*, (14 December 2004).

However, the definition of human security remains unclear. Whether "human security" is part of "security" or whether it is a problem between the state and its people still troubles experts and academics. By definition, the focus of human security is to protect an individual, primarily, in response to a threat.

State Security

Traditional security is the ability of a state to protect itself from external threats. Traditional security (often referred to as national security or state security) focuses upon the concept of a nation state. State security is fragile to the threats of poverty, social inequalities, injustice, radicalism, separatism and natural disasters, which catalyse "humanitarian intervention" from other countries. State insecurity can be manifested in two situations: internally, which is the insecure state of citizens, and externally, when a state is insecure in relation to another stronger state.

State Security versus Human Security

The concept of human security has been a UN priority for increasing development, especially in the eradication of poverty and increasing human welfare in the Third World. During the Millennium Summit 2000, as many as 189 member states of the UN agreed to adopt the Millennium Declaration, known as Millennium Development Goals (MDGs).

Human security as a global demand is related to human rights, requiring the wide participation of non-state actors such as citizens, non-governmental organizations, the media and other state and international organizations, as well as a state's government.

Meanwhile the G8, a group of developed countries, declared their commitment to fight various threats toward human security. This declaration has reinforced the state's role in ensuring individual and group security. This group of countries views security from a realist perspective and therefore does not view human security as part of "security" per se.

In this context, the existence of human security is seen as a social dynamic separate from that of security. The threats toward human security itself—according to a human rights perspective—come from the denial of human rights and the non-existence of a democratic system. This point of view positions war as the main threat of human security, placing individual survival as the main goal in human security development. Furthermore, an important element of human security is the emphasis on the state's role and responsibility toward its citizens.

Human security is security focused on the "human element" for local, national and global stability. Furthermore, the concept of human security is also related to development practices. Poverty and inequality are the root causes of human insecurity.

Initially, the concept of human security was shown through peace research to be a national security concept, which was dominant since the end of Cold War.[7] In 1994, the United Nations Development Programme (UNDP) released a Human Development Report, which is seen as the first step in the adoption of a human security concept. The UNDP explained that the concept of human security includes economic security, food security, health security, environmental security, personal security, community security and political security.

Human security and traditional security (national security) are not contradicting concepts. Human security and national security are two interdependent issues. Social and political disorder, as well as economic needs, destroys security, which in the end will weaken a state facing internal and external threats.[8]

Frances Stewart stated that security and development are interconnected. Human security becomes the goal of development because it is one of the most important parts of human existence. The lack of human security has a bad impact on economic growth and development. Development inequality that involves horizontal disparity can be a source of conflict.[9]

Therefore, the birth of the human security concept is not to negate the security concept in the form of territorial sovereignty but to synthesize the basic meaning of the word "security." A state is a result of a social contract with its citizens, therefore all the state's policies in the field of security have to accommodate the fulfilment of human security.

According to Ichlasul Amal, during the Cold War the concept of security was solely defined as national security, meaning the centralized defence of a state. But, the post-Cold War era definition of security, both internationally and nationally, is wider. The current concept of security is not limited to the state and cannot be bound to military power per se.

Returning to the Cold War condition, intellectuals, bureaucrats, international organizations and humanity workers had learnt to accept the inseparable (inextricable) relations between security and development. In this condition, security must be seen as comprehensive security and the balance of state security interests on one side and human security on the other. A threat directed at one of these securities does not give the government the direct right to diminish respect for or to sacrifice the other. In the definition of national security as a public good, the government is always demanded to maintain the balance between liberty and security.

According to the Indonesian Military's Major General Sudrajat, the director general of defence from the Ministry of Defence, security threats that arise internally (domestic threats) are commonly named as *kamtibmas (keamanan dan ketertiban masyarakat*—social security and order) disturbances. Although these threats are seen to come from inside the country, this does not mean they are not interlinked with regional and international security dimensions. For example, the social conflict in Ambon or the separatist movement in Aceh, and the fall of the Indonesian rupiah exchange rate to the US dollar due to escalating money laundering, has shown that threats are also influenced by external factors.

7 Roberto Bissio, Jorge Suarez, Soledad Bervejillo, *Fear and Want: Obstacles to Human Security*, (Montevideo, Uruguay: Social Watch, 2004), 14.
8 OECD, "Security Issues and Development Cooperation: A Conceptual Framework for Enhancing Policy Coherence," *DAC Journal*, Vol. 2, No. 3 (2001), 42.
9 Syaiful Haq, Willy Aditya & Aditya Muharram, Baku Saku *'Keamanan Insani Adalah Hak'*, (Jakarta: VHRmedia, March 2008).

In its development, human security cannot always be fulfilled by the state as the state can become the source of insecurity.[10] Over the years, humanitarian workers have learnt to accept the tangled relations between security and development. Even the UN has admitted there are difficulties in implementing development programs in an insecure environment.[11]

The idea of human security has evoked discourse on security and how to achieve it. First, human security is an idea and effort of the West "wrapped up" in new packaging to spread Western values, especially on human rights. Second, human security as a concept widely includes non-military issues that have been developed into the concept of comprehensive security. Third, this is the sharpest discourse with an effort to realize human security by each state's government based on diverging points of view, experiences and priorities.

The differing perspectives on human security are rooted in philosophical and practical discrepancies. Primarily there is a sharp contrast between whether human security is seen more in the context of physical violence in armed conflict and human rights violations, or whether it also covers vulnerabilities from all forms of threats, including poverty and natural disasters. It seems that this debate will not end since each side has strong basic arguments.

The diverging views of human security have serious implications for the concept of humanitarian intervention. The understanding that security is more state-based and that human security is universal is not strong enough to unify the perceptions, ideas and policies to answer the questions surrounding when and how humanitarian intervention should be conducted.

The early detection mechanism that, in an ideal situation, is one of the functions of intelligence and counter intelligence, is the main key in creating national security that covers defence, homeland security and social/human security. Globally, this early detection mechanism is the source of decision and policy making conducted by the head of state.

The recent situation shows that the military might feel weakened by positioning the former head of the Indonesian Police Force, General Sutanto, as head of the National Intelligence Agency (BIN). Throughout national history, intelligence is the regulator and main information provider to the president. So far, the personnel seen to have the qualification and capacity to conduct conflict detection or to read security threat potency are in the military. Therefore, military officials interpret the appointment of Sutanto as the head of BIN as President SBY's mistrust in the Indonesian military institution.

The State Paradigm and the Civil Society Paradigm

The security paradigm is divided into two comprehensive perspectives: traditional and non-traditional. The traditional perspective is that security is always seen from the point of view of the armed forces and political

10 United Nations Office of the Special Adviser on Africa (OSAA), *Human Security in Africa*, (December 2005): http://www.un.org/africa/osaa/reports/Human%20Security%20in%20Africa%20FINAL.pdf.

11 *Ibid*.; Annan, "Secretary-General Salutes…" (2004).

calculation. Non-traditional security aligns itself to the armed and political forces too but is more dominated by additional factors such as population, transnational crimes, natural resources, natural disasters and so forth. In his book The Southeast Asian Security Complex, Barry Buzan stated that security problems are not only the issue of one country but a necessity for regional or international coordination.[12] Buzan is also known as the expert that uttered the term securitization, which in his understanding is defined as the effort to make non-military issues such as economy, environment, disaster, plague and global warming security issues, which then become not only civilian issues but also issues in need of a military power response.[13]

This assumption is based on the need for human security, where every symptom that endangers human survivability must be categorized as a threat. Terrorism, global warming and deforestation have forced several countries to agree to the management of their internal security by other countries.

The next step is the intervention of another country's policies in issues of defence; for example, Indonesia was forced to create the Anti-terror Law. This has made Indonesia change its threat perspective from the former traditional paradigm to consider non-traditional threats such as the environment, economy and natural disasters. These can easily be translated as threats toward human security, which at the same time threaten the world's security, in which it will be easier to address through international participation. This nonetheless guides the agenda of economic neo-liberalism.

Military budgetary support given to Third World countries is provided to support the war against terrorism or other threats used as a starting point for intervention by developed countries. This intervention can be done directly or by using elites and domestic military compradors, such as the support of the US and Australia in the creation of the Indonesian Police Anti Terror Detachment 88 and their cooperation with the Indonesian Military (TNI).

Barry Rosen (2008) stated that after the Cold War ended there seemed to be agreement among US political elites that the biggest threat for the country in the short term is self-preservation from terrorism that came from abroad. They were pointing fingers at Middle Eastern and Arab states, countries seen as "bad" (rogue states) and failed states.

According to Michael Hardt and Antonio Negri (2000, 2005), the US seems to portray itself as an empire, no different from the Roman Empire, only much bigger and more powerful. Chalmers Johnson (2005, 2006 and 2008) views the US, in its efforts at empire-making that have been ongoing since World War II, as currently receiving some blowback, which could mark the end of its glory that had been idealized by the US founding fathers. It is undeniable that the ambition of creating an empire was a big contributor to the development of the global geopolitical arena that tends to threaten the sovereignty of a state. Non-state actors such as Al Qaeda, Hamas, Hezbollah, as well as NGOs, have been seen as threatening state credibility, the state being conventionally seen as having a monopoly over the use of violence. The Iraq War encouraged an anti-US insurgency, supported by modern armaments and trained using their self-made weapons, prepared for long-

12 David A. Lake & Patrick M. Morgan, *Regional Orders: Building Security in a New World*, (University Park, PA: The Pennsylvania State University Press, 1997).
13 Barry Buzan, *People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era, Second Edition*, (Boulder, CO: L. Rienner Publishers, 1991).

term resistance. This was cause for concern for the US and its European allies as the spread could not be prevented or controlled. The situation forced the US to conduct an anti-terror war campaign and, at the same time, mark its influence in the world.

Indonesia must be careful of the emerging new model of security threats, which was produced by the empire-making process conducted by super powers such as the US, and also of the rising new actors in global geopolitics and strategy. Moreover, the impact of democratization and globalization on societal development will influence the process and growth of threats toward state security.

Sovereign states cannot continue to take for granted the idea that security threats only come from abroad. They cannot rely only on their internal power anymore, especially when facing more difficult threats from various sources. In this situation, Military General Sjafrie Sjamsoeddin stated that the security challenges in the Asia-Pacific cannot be handled alone anymore thus every country needs to cooperate in order to build regional stability.

Conclusion

Violence, oppression and degradation of humanity in the modern era spawned efforts supporting the global acknowledgement of human rights, understood as a serious effort to protect and guard human dignity. The application of human rights as the acknowledgment of freedom and equality is supposed to be guaranteed by democratic states.

Seen from a security threat development viewpoint, which has occurred in the world recently, it is important to inform the public of new "human security" perspectives that influence local, regional and international policies to create eternal peace for future generations. Apart from the experts' difficulties on deciding whether "human security" is a part of security or only a related problem between the state and its people, or because for example Indonesia is still holding onto traditional standpoints in responding to security threats, human security falls under state security.

Although the idea of human security is still new to Indonesia, the possibility to promote human security as an integrated security system that can create a more guaranteed security structure should be pursued. This must be done by considering the various implementations of policies that guarantee the enforcement of human rights, even if far from ideal.

References

Annan, Kofi. "Secretary-General Salutes International Workshop on Human Security in Mongolia." UN Press Release SG/SM/7382, 14 December 2004.

Bissio, Roberto; Suarez, Jorge & Soledad Bervejillo. *Fear and Want: Obstacles to Human Security. Montevideo, Uruguay: Social Watch, 2004.*

Buzan, Barry. "The South-east Asian Security Complex." *Contemporary Southeast Asia*, Vol. 10, Issue 1, 1998.

Buzan, Barry. *People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, Second Edition. Boulder, CO: L. Rienner Publishers, 1991.

Cooley, Ken. *Sir David Ross's Pluralistic Theory of Duty (The Beginnings)* : http://www.manitowoc.uwc.edu/staff/awhite/ken95.htm.

Goyard-Fabre, Simone. *Les principes philosophiques du droit politique moderne*. Paris: Presses Universitaires de France, 1997.

Goyard-Fabre, Simone. *Philosophie critique et raison juridique*. Paris: Presses Universitaires de France, 2004.

Haq, Syaiful, Willy Aditya & Aditya Muharram. *Buku Saku 'Keamanan Insani Adalah Hak'*. Jakarta: VHRmedia, March 2008.

Haq, Syaiful, Willy Aditya & Aditya Muharram. *Buku Saku 'Peran Media dan Komunitas dalam Fungsi Peringatan Dini'*. Jakarta: VHRmedia, March 2008.

Hobbes, Thomas. *Leviathan*. Harmondsworth: Penquin, 1968.

Human Rights Committee. "General Comment No. 29, States of Emergency (Article 4)." UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001.

Kant, Immanuel. *Menuju Perdamaian Abadi*, translated by Arpiani Harun and Hendarto Setiadi. Bandung: Mizan, 2005.

Lake, David A. & Patrick M. Morgan. *Regional Orders: Building Security in a New World. University Park*, PA: The Pennsylvania State University Press, 1997.

Martin, Rex. *"Human Rights: Constitutional and International"* in David A. Reidy (ed.), Universal Human Rights. Oxford: Rawman and Littlefield, 2005.

OECD. *"Security Issues and Development Cooperation: A Conceptual Framework for Enhancing Policy Coherence."* DAC Journal, Vol. 2, No. 3 (2001).

Reidy, David. A. (ed.). *Universal Human Rights: Moral Order in a Divided World. Lanha*m, Maryland: Rowman & Littlefield, 2005.

Rorty, Richard. *"Human Rights, Rationality and Sentimentality" in On Human Rights: The Oxford Amnesty Lectures* 1993. Stephen Shute and Susan Hurley, eds., 1993.

United Nations. Fact Sheet No. 2 (Rev.1) *The International Bill of Human Rights*. Geneva: United Nations, June 1996.

United Nations Office of the Special Adviser on Africa (OSAA). *Human Security in Africa*. December 2005: http://www.un.org/africa/osaa/reports/Human%20Security%20in%20Africa%20FINAL.pdf.

Accountability for Past Human Rights Violations: Impunity versus Transitional Justice

Galuh Wandita

> *Government should prosecute the perpetrator, not in the contrary to give award for the murderer. I mean that the criminal actor should be punished, if he/she was even get raised in ranking from Corporal further on, he/she will [be] General. This means that they were given award because they are honorary murderer. One day, the state apparatus will kill [again] because it is honored by raise in rank.*[1]

Relevance of Transitional Justice in Indonesia

Ten years have passed since the fall of President Suharto. In the beginning, a transitional justice framework reform process helped construct the discourse on the necessary transformation agenda to overcome the residual authoritarian regime and set it on a path to democracy and law enforcement.[2]

A transitional justice approach assumes that without understanding what has happened in the past, it will be difficult to build a better future. At any rate, it takes a variety of approaches to analyze the tangled knot of past oppression to achieve the main goal of strengthening the responsibility of society and the state. The transitional justice approach is composed by specific context, which in general contains four issues that need to be addressed:

- **Truth**: Revealing the truth about past violations through forming a truth commission, conducting special research and creating a collection of historical archives, making reports based on victims' testimonies and searching for mass graves.
- **Justice**: Carry out court proceedings for the most responsible actors of wide scale violence. This can be done by a domestic court, mix/intervention court (which uses domestic and international law and personnel, as used for trials in Cambodia and Timor-Leste), and using "universal jurisdiction" over violations of international law.

1 Ross Clarke, Galuh Wandita & Samsidar, *Memperhatikan Korban: Proses Perdamaian di Aceh dari Perspektif Keadilan Transisi (Jakarta: ICTJ*, January 2008). Quotations from the male victim, 32 years old, Pidie, 20 July 2007.

2 TAP MPR IV/1999 on GBHN 1999-2004, which stated the need for law settlement, including "fair investigation and trial for the human rights violator" for cases of Aceh, Papua and Maluku. Tap MPR V/2000 tasks the government to establish a truth commission that "has duty to uphold the truth with revealing the abuse of power and human rights violations in the past, in accordance with the applicable law and regulation, and to implement reconciliation in the common perspective as a nation." See also in *Prinsip Surabaya*, report by Komnas HAM.

Photo 1. 2007 Demonstration Demanding Post-conflict Recovery in Aceh through Equality, Education and Rights for Aceh's People

- **Institutional Reform**: Reform the institutions involved in crime and injustices in the past, with the goal of ensuring that these violations will not occur again and restoring citizen confidence in state institutions. This is usually done with special attention given to security sector reform, which is directly linked with criminal conduct. However, it should also focus on the civil and private institutions that use and justify security approaches. This includes an effort to return property that was stolen by those who had taken advantage of the authoritarian regime to be used for the welfare of the people.
- **Reparations**: Consists of a number of actions conducted by the state to make amends to victims. This includes appreciation of the victim, an apology and efforts to improve the life of the victim so that he/she is able to return to the situation before the violation occurred, returning land and other resources that have been arbitrarily seized, making compensation payments, and other forms of recognizing a victim's rights.[3]

3 Reparations must be offered by the state to victims of human rights violations. This can be in the form of rehabilitation (health care, social support), restitution (the return of seized property), compensation (remuneration payments), satisfaction, including recognition of wrongs and apology by the state, searching for missing people, building memorials and guaranteeing the non reoccurrence of the crimes. See: UN General Assembly, "Basic Principles and Guidelines for the Settlement Rights (Right to Remedy) and Reparations for Victims of Gross Violations of Human Rights and the Gross Violations on International Humanitarian Law," *UN General Assembly Resolution*, (March 2006).

The fact is, however, that the change toward state responsibility in Indonesia is not going to happen overnight. Various efforts to reveal the truth through formal mechanisms (national KKR, KKR Aceh and Papua) are not supported by the government.[4] Institutional reformation is slow and does not refer to past violations, or to the alleged perpetrators of violence. This situation makes the transitional justice approach increasingly difficult but also more relevant. Why is this so? **First**, this approach allows a variety of mechanisms to work contemporaneously. The authoritarian regime needed a variety of tools to be disassembled and to change its former impact. In particular when there was a problematic approach in Indonesia, where the transitional justice approach has been reduced to being the sole mechanism for KKR, effectively as a substitute of the court. Conversely, experience in other countries show the KKR can and must work in harmony with the courts. Also, the multifaceted transitional justice approach provides space to understand the problems at the root of the violations; for example, the meeting point for civil-political, social, economic and cultural violations. **Secondly**, this approach places the victim at the centre of the transformation process. Victims of gross human rights violations have three rights: the right to legal settlement, the right to information on the experienced violations and the right to reparations.[5]

The momentum of change that occurred ten years ago is ebbing and the strength of the old regime is (seemingly) getting stronger. There have also been achievements in addressing the gross violations of the past, although if considered from the perspective of fulfilling the rights of victims, there are still many shortfalls. These achievements should be considered a step along the long road ahead:

Truth • Governmentally-formed investigation teams for cases of May 1998, Aceh, Maluku, Poso and the murders of Theys Eluay and Munir. • Report of the National Commission Against Violence toward Women (*Komnas Perempuan*) on Aceh, Poso, 1965; victim situation 1998 (10 years later). • Report of the Commission of Truth and Friendship. • Commission on Truth and Reconciliation Draft Bill as revision from UU 27/2004 that had been cancelled by the Constitutional Court. • This list does not include revealing efforts by the victims themselves and civil society.	**Justice** • Pro-justice investigation by the National Commission of Human Rights: Trisakti, Semanggi I & II, Kidnapping, May 1998 and Wasior-Wamena cases. • Human Rights *Ad hoc* Court on Timor-Timur 1999, Tanjung Priok; Abepura Human Rights Court. • Connecting Court: Aceh (Bantaqiah). • Military Court: Aceh, activist kidnapping, Trisakti, Semanggi II, Theys. • Civil Court: Munir case. • Criminal Court: 65, Sampit. • Civil Court in the US: St. Cruz case (1991), Referendum case (1999) and Exxon Mobil Aceh case (2002).
Institutional Reform • Human rights amendment of the constitution (UUD). • Ratification of human rights instruments (torture, civil-political rights, ECOSOC rights and racial discrimination). • Direct election of head of provinces. • Separation of the TNI and POLRI, efforts to eliminate military business (but the alleged/convicted perpetrator's careers continue). • Human rights law, court of human rights law, national mechanism of human rights, Department of Law and Human Rights, etc. • Former military personnel involved in election.	**Reparations** • Tanjung Priok *Ad hoc* Trial decision cancelled when the alleged perpetrators were cleared of charges in a court appeal. • Remuneration payment and victims' rehabilitation in Aceh supported by Vice of Governor in the conflict era, and continued by Aceh Reformation Bureau as part of peace process.

4 Constitution Court Decree, Special Autonomy Law and Aceh Government Law.
5 UN General Assembly, "Basic Principles and Guidelines…", *UN General Assembly Resolution*, (March 2006).

Transitional Justice: Victims' Voices

Why is the voice of the victim important in the transformation toward democracy? Because these people are witnesses of what can happen when power is imbalanced, greed is untamed and violence goes unpunished. Testimony of victims encourages people to strive harder to restore the values of humanity in all of us. Thus we must ask: is there a relation between the victim and security sector reform (SSR)?

The marginalization of victims and other vulnerable people in a repressive regime where human rights violations are rife can result in the denial of their most fundamental and non-derogable rights.

The SSR approach is justice sensitive and aims to achieve state security services that are effective and responsible, as well as to strengthen the victims and vulnerable groups to identify and protect their rights within the security system.[6]

This means that SSR has to strengthen the relation between a state and its citizens in building legitimacy through participation and consultation with society in designing and running a security system, and with special concern for vulnerable groups and those who have been victimized by security forces.

Security Sector Reform and Transitional Justice[7]

Where is the meeting point between security sector reform and a transitional justice approach? One of the main goals of transitional justice is the transformation of public bodies from an engine that used to serve the interests of an authoritarian ruler to institutions that protect and defend public interest, including security actors. Focus on institutional reform admits that it is not only individuals who commit crimes but also institutions (through practices, legal frameworks, organizations and leadership cultures) that facilitate the occurrence of violations on a massive scale.

A transnational justice approach observes and understands what happened in the past so that it can transform the institution that behaved erroneously to avoid repeat violations. This includes paying attention to the behaviour of institutions such as the police, military, intelligence and supervision mechanisms on security agencies but also to non-state actors like armed opposition groups, militias and other actors that conduct systematic violations. In a democratic society, security actors should be the human rights defenders and protectors of norms stated in the constitution. Therefore, taking responsibility for past events becomes one of the most important contributions in the transitional justice approach for security sector reform.[8]

6 Laura Davis, *Transitional Justice and Security System Reform*, (Initiative for Peacebuilding, 2009).
7 *Ibid.*
8 See, for example, Eirin Mobekk, *Transitional Justice and Security Sector Reform: Enabling Sustainable Peace*, (Geneva: DCAF, November 2006); UNDP, *Security Sector Reform and Transitional Justice: A Crisis Post-conflict Programmatic Approach,* (March 2003).

Aceh and Timor-Leste: First Steps of Security Sector Reform in Indonesia

In Indonesia, the interface between transitional justice and security sector reform is twofold. First, the peace process in Aceh has been described in a framework of transitional justice under the Helsinki Agreement (2005) and, secondly, the process of hearings in which to hear truths related to crimes that occurred in East Timor during the 1999 referendum.

Transitional Justice and Security Sector Reform in Aceh:[9]

"The perpetrator is still around the victim. [Victim] is still in fear or trauma and hate when passing military or police office."[10]

"Now there is no threat anymore, but I still feel fear when meeting TNI-Police in the street or seeing them carrying weapon."[11]

"I'm still not able to trust the police, if I remember what happened in the past. They cannot build confidence and guarantee security."[12]

The Helsinki Agreement, facilitated by international mediators, was signed in August 2005 after several rounds of negotiations between the government and the Free Aceh Movement (GAM). Political momentum was increased by the tsunami that resulted in hundreds of thousands of deaths. The Helsinki Agreement, which was later legalized in the form of the Aceh Government Law (UU PA), contains elements of transitional justice, especially in the establishment of a Human Rights Court and Truth Commission for Aceh, the provision of compensation for "civil society who had experienced loss," as well as institutional reform, including a civil supervision mechanism over the security apparatus and the reaffirmation of the obligation for the Indonesian government to establish a human rights agreement that had been ratified. From the perspective of transnational justice, there are three main challenges for the security sector reform process in Aceh:

- **Disarmament and demobilization without the discontinuation of actors involved in past crimes:**

  At the beginning of the peace process, disarmament and demobilization was running quite smoothly. GAM submitted 840 weapons; the Indonesian government demobilized some 25,890 military personnel and 5,791 non-organic police, and freed GAM prisoners who were granted amnesty. However, the process of security sector reform seemed more focused on training.[13] Although training is an essential part of reform, it is difficult for it to succeed on its own. One of the important elements of security sector reform is the dismissal of criminals from office (vetting), which is usually based on the process of revealing truth, or a court and administrative process. In fact, this has not been seriously implemented in Indonesia, therefore the security actors that have been accused, for example from the investigation conducted by the United Nations for the case of Timor-Leste, are still employed.[14] Without a vetting

9 In Clarke, Wandita & Samsidar, *Memperhatikan Korban...* (2008).
10 *Ibid*., quote from the female victim, 34 years old, Bener Meriah, July 26, 2007.
11 *Ibid*., quote from the female victim, 34 years old, Bener Meriah, July 26, 2007.
12 *Ibid*., quote from the female victim, 39 years old, South Aceh, July 29, 2007.
13 See: IOM, *Final Report on Police Needs Assessment in Nanggroe Aceh Darussalam*, (January 2006).
14 For example, a first-officer punished by the Military Court for involvement in the kidnapping of Tim Mawar appeared again in Aceh; Danrem Iskandar Muda, whose name was mentioned in the report of the United Nations (OHCHR) as the person allegedly responsible for the criminal responsibility of individuals and commanded the crimes in East Timor. In the case of the other former Dandim Maliana (East Timor), whose name was mentioned in the report and the OHCHR in the indictment on the two crimes against humanity (Case No 2/2003 and 18/2003), one move up into Danrem Papua, and the other became the inspector general of Brawijaya (East Java).

process, the actors that are still active in security institutions will detract from the process of community confidence building efforts for state institutions, particularly security institutions.

- **Truth and justice continues to be delayed:**

  In Aceh, establishing a truth commission for Aceh has been delayed because the Constitutional Court cancelled Law 27/2004 on forming a national truth commission. Political support from the government of Indonesia for a truth commission in Aceh seemed to be very weak, especially when compared with the support given to the Commission of Truth and Friendship (KKP) for the case of Timor-East (1999).[15] The jurisdiction of the human rights court in Aceh also met with restrictions when it was formalized in UUPA, where it was said that a human rights court could only adjudicate cases that occurred after the UUPA was issued.

  At the same time, the Court of Human Rights (established based on Law 26/2000) should be able to adjudicate cases of serious crimes that occurred in Aceh post 2000. But in fact, that the court located in Medan, jurisdiction over Aceh is not active. The National Commission on Human Rights has not run a pro-justice investigation for Aceh cases and there is no investigation being conducted by a state prosecutor. While there are a series of cases listed at the Military Court and the "koneksitas" court, no trials have been held since the Aceh peace settlement was reached. Interestingly, the deadlock has opened the door for criminal allegations in the United States, which wants to prove the involvement of Exxon Mobil in supporting the security officers that conducted human rights violations around the area of the Arun gas and oil exploration field.[16]

- **Incomplete security institution transformation:**

  The common changes agreed on the official role of the TNI in Aceh, as per the Helsinki Agreement, established a role limited to "enforcing external defence" that was then expanded again in the UUPA to also handle internal security.[17] The security apparatus in Aceh still conducts various activities that ideally should be outside the capacity of security institutions, such as monitoring NGO activities,[18] and continue forming military posts at new locations.[19] Before the local elections in Aceh, violent incidents between local parties increased, which resulted in dozens of deaths. There were allegations about the involvement of security actors behind the rising violence between local parties and the former GAM (KPA) organization.[20] The TNI is reported to have increased the number of their personnel and is building more military barracks in Aceh.[21] There are still obstacles to the implementation of various provisions of the UUPA, which give the Aceh governor the authority to conduct and control significant

15 See: Megan Hirst, *Kebenaran yang Belum Berakhir,* (ICTJ, March 2009).

16 See: ICTJ, *Kasus Keterlibatan? Exxon Mobil di Pengadilan karena Perannya dalam Pelanggaran HAM di Aceh*, (October 2008).

17 Article 202 of the UUPA expands the role of the TNI to "preserve, protect and secure the unity and sovereignty in accordance with Indonesian laws and regulations." References to the applicable law are not directly referred to in the application of Law 34/2004 on the Indonesian Armed Forces to provide a broad role to the TNI as the implementation in other regions, including the mandate to deal with internal security problems.

18 Local human rights NGO, KontraS Aceh, experienced scrutiny and intimidation in a seminar to raise awareness about issues of truth and reconciliation in the region in May 2007.

19 See: KontraS Aceh, *Menyikapi Penambahan Pos TNI di Aceh*, (7 April 2009) on the addition of 5 posts in the military and 19 post elections in the year 2008.

20 World Bank, *Aceh Conflict Monitoring Update,* (1 December 2008–28 February 2009).

21 The number of battalion troops in Aceh increased gradually through the establishment of additional command troops and the establishment of additional battalions. Now there are 13 KODIM, which have been operating or are nearly ready to operate in Aceh. Before the regrouping, there were only 8 KODIM. This trend reflects the increasing number of districts under Aceh civil administration and also expanding military policy and size in the region. Based on monitoring by the media, it is roughly estimated that the troop strength of the current total of KODIM Iskandar Muda is 14,750, which is a significant increase from 7,900 in the year 2002–2003 (email interview with Matthew N. Davies, 18–25 July 2007; see also: KontraS Aceh, *Menyikapi Penambahan…* (7 April 2009).

surveillance of the Aceh police department.[22]

The biggest problem associated with economic motives has been embodied in the security institutions.[23] Various reports continue to cite cases of extortion, costs and tax collection that are not officially regulated,[24] and illegal logging is still being performed[25] by security officials or former GAM combatants. The Mobil Oil case mentioned above also covers the same problems—where the economic benefits determine the action of the security institutions.

Without a strong signal that the security agencies are truly "learning" from the past or are willing to change their behaviour and culture of authoritarianism and violence, the message being delivered by security agencies to their own institutions and to the rest of the community is that it is "business as usual."

KKP Findings and Recommendations: Provision for Security Sector Reform in Indonesia

To anticipate UN action in establishing a "commission of experts" to assess the performance of the court for violence cases in East Timor at the polls in 1999, the government of Indonesia and Timor-Leste established a Commission of Truth and Friendship, with a mandate to "examine retrospectively all the materials that have been documented in the report by the Commission of Human Rights Violations in East Timor 1999 (KPP-HAM); the Court of Human Rights Ad-Hoc to East Timor; the Special Panel for Serious Crimes, and the Commission of Acceptance, Truth and Reconciliation of Timor-Leste" in order to produce a final truth about the violations.[26] KKP members consist of five people from the commissioner and Commissioner of the five people of Timor-Leste. The KKP worked for three years, assessing the process and documents, as well as conducting hearings. The KKP received sharp criticism from civil society because of the problematic hearing process, its authority to provide recommendations on the perpetrators' amnesty and its focus on the institutions (it was not allowed to make recommendations to the court for the perpetrators).[27]

- **Accountability for human rights violations in East Timor:**
  The KKP submitted a final report in July 2008 finding that the Indonesian military, police and civilian officials were responsible for the crimes against humanity that occurred in East Timor at the time.[28] The finding is opposed to the appeal decision from the East Timor ad hoc court (which now has freed all the accused, including the Supreme Court decision in the matter Eurico Guterres).[29] According to the KKP, the crime was born from policy and practices rooted in the Indonesian security institutions. The KKP specifically states that these findings are relevant and relate to what happened in the

22 As the governor approves the appointment of the head of police in Aceh, both sides should coordinate policies about policemen. On issues of law and order, the chief of police must report to the governor. See: UUPA, Article 204 and Article 205.
23 See, for example: Lesley McCulloch, *Greed: The Silent Force of the Conflict in Aceh*, (Melbourne: University of Deakin, October 2003).
24 See: World Bank and the BRR, *Trucking and Illegal Payments in Aceh*, (2006).
25 See: International Crisis Group (ICG), "Aceh: Komplikasi Paska Konflik (Aceh: Post-Conflict Complications)", *Asia Report*, No. 139 (4 October 2007). According to sources in the south of Aceh, the KPA security institution/GAM and the Indonesian government were directly involved in the operation of illegal logging but the main players of both parties cannot be identified.
26 Preferences framework, the Commission of Truth and Friendship, Article 14 (a) (i).
27 Megan Hirst, *Meraih Persahabatan, Melepas Kebenaran*, (Jakarta: ICTJ, January 2008).
28 But the KKP does not break down a series of important questions related to the institutions questioned: Are high officials encouraging violence, or do they simply fail to prevent it? What is the role played by each unit of the security sector?
29 In that case, the Supreme Court took the view, *inter alia*, *that the murder in the house of Manuel Carrascalão on 17 April 1999 is not a crime against humanity but "collusion" between hostile groups.*

other conflict areas in Indonesia, such as Aceh, Papua, Ambon and Kalimantan.[30] The KKP made a series of recommendations to reform the security sector, including human rights training programs, legislative amendments, planning and special investigation and a prosecution mechanism for cases of violations conducted by the security apparatus. With the Indonesian government's official support of the KKP, ideally the opportunity and political will to implement the recommendations are also greater. Recommendations related to core security sector reform consider "military doctrine and practices, and institutional mentality," including: 1) stopping the use of militia/civilian armed groups and switching to a legally based military back up system; 2) clear explanations between civil authorities that create policy and security actor authorities that run the policy; and 3) separation of police and military roles.

However, the main weakness of the KKP recommendations is the absence of proposals on the termination of careers for military personnel involved in crimes against humanity. If Indonesia wants to show the world that it is serious in revealing the truth, it should immediately follow up the KKP report with independent investigations against practices that have resulted in gross human rights violations, and at least give administrative sanction to those involved.

Photo 2. Meeting of Truth and Friendship Commission with President Susilo Bambang Yudhoyono in Presidential Palace mid 2008

30 International Center for Transitional Justice, *Per Memoriam Ad Spem: Laporan Akhir Komisi Kebenaran dan Persahabatan (Final Report of the Commission of Truth and Friendship),* (Jakarta: ICTJ, 2008), 41, 46 and 57.

- **The findings and recommendations related to systematic violence against women:** The KKP made specific findings regarding the role and responsibility of the militia and Indonesian security forces on the occurrence of systematic rape and sexual violence around the 1999 polls. The KKP use archives of UN investigative personnel through the Serious Crime Unit (SCU) court in Dili and confirm the findings of the CAVR findings.[31] This practice is important to the accountability of Indonesian security agencies for sexual crimes that occurred in Aceh, Papua and in May 1998 in several major cities in Indonesia. The KKP made recommendations for "special training for military, police and civil officers" to protect women, children and other vulnerable groups from sexual violence, and formed a special mechanism within the police and prosecution agencies to investigate "the gender based violence carried out in conflict, civil unrest and political turmoil."[32]

- Initial step toward command accountability: The KKP's restraint in using its authority to recommend amnesty for perpetrators marks progress that should be praised. In its report, the KKP stated that "amnesty was not coherent with the objectives of the restoration of human beings' dignity, the foundation for reconciliation between the two countries, and the assurance of violence non-recurrence within a framework that is guaranteed by the rule of law." In an appendix to the report, the examination of documents conducted by the KKP concludes that the evidence "indicates that TNI had recognized there were crimes committed by militia members and their own personnel at levels of higher command. There is also evidence that significantly indicates that the highest military command had the ability to control actions of their own members and the militia, but chose not to use the control ability to prevent crime."[33] This evidence promoted accountability in the higher levels of command and increased Indonesia's obligation to encourage law settlement on crimes against humanity that had been perpetrated by Indonesian security forces in East Timor.

Conclusion

In situations where impunity is still rife, we are required to (again) be more creative in looking for an entry point, to use all opportunities and mechanisms to encourage security sector reform. Understanding what actually happened in the past can encourage individual and institutional responsibility for the gross violations that occurred. Although the main target is security agencies, organizations/companies that misused security agencies should also be examined. For example, the BKKBN has just signed a MoU with the TNI for cooperation in helping to reach targets of family planning (KeluargaBerencana-KB), a repetition of the violations committed by the New Order regime to achieve the target KB acceptors in the past. There are many companies that still have to pay special funds to support the operational costs of the security apparatus to protect the company interests, a practice that began in the early New Order regime and can be said to be one of the root problems of oppression experienced in Indonesia.

31 See: Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR), *Chega! Laporan Akhir Komisi Kebenaran dan Rekonsiliasi Timor-Leste (Final Report of the Commission of Truth and Reconciliation Timor Leste)*, (1 January 2007), Chapter 7.7: Sexual Violence.
32 International Center for Transitional Justice, *Per Memoriam Ad Spem…* (2008), 298.
33 David Cohen et al., *Seeking Truth and Responsibility: Report on the Expert Advisor KKP*, (April 2007), 226.

The transitional justice approach is already contributing to the security sector reform process through the Aceh peace process and the truth crimes revelations that occurred in East Timor.[34] However, encouragement from the public and civil society is still needed to ensure that Indonesia really conducts security sector reform based on the recognition of past human rights violations.

References

Clarke, Ross; Wandita, Galuh & Samsidar. *Memperhatikan Korban: Proses Perdamaian di Aceh dari Perspektif Keadilan Transisi (Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective)*. Jakarta: ICTJ, January 2008: http://www.ictj.org/images/content/9/8/983.pdf.

Cohen, David et al. "*Seeking Truth and Responsibility.*" Report on the Expert Advisor KKP. April 2007.

Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR). *Chega! Laporan Akhir Komisi Kebenaran dan Rekonsiliasi Timor-Leste (Final Report of the Commission of Truth and Reconciliation Timor-Leste)*. 1 January 2007: http://www.cavr-timorleste.org/chegaFiles/Chega-BukuPanduan.pdf

Davis, Laura. "*Transitional Justice and Security System Reform.*" *Initiative for Peacebuilding*, 2009: http://www.initiativeforpeacebuilding.eu/pdf/Transitional_Justice_and_Security_System_Reform.pdf.

Hirst, Megan. *Kebenaran yang Belum Berakhir*. ICTJ, March 2009: http://www.ictj.org/static/Asia/Timor/BenarBelumAkhirHirst.pdf.

Hirst, Megan. *Meraih Persahabatan, Melepas Kebenaran: laporan pemantauan Komisi Kebenaran dan Persahabatan Indonesia dan Timor-Leste (Too much friendship, too little truth*: monitoring report on the Commission of Truth and Friendship in Indonesia and Timor-Leste). Jakarta: ICTJ, January 2008.

International Center for Transitional Justice. *Kasus Keterlibatan? Exxon Mobil di Pengadilan karena Perannya dalam Pelanggaran HAM di Aceh (A Matter of Complicity? Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh)*. October 2008: http://www.ictj.org/images/content/1/1/1120.pdf.

International Center for Transitional Justice. *Per Memoriam Ad Spem: Laporan Akhir Komisi Kebenaran dan Persahabatan (Final Report of the Commission of Truth and Friendship)*. Jakarta: ICTJ, 2008.

International Crisis Group (ICG). *Aceh: Komplikasi Paska Konflik (Aceh: Post-Conflict Complications)*. Asia Report No. 139. 4 October 2007: http://www.crisisgroup.org/library/documents/asia/indonesia/indonesian_translations/139_aceh_post__conflict_complications_indonesian_final.pdf.

International Organization for Migration (IOM). *Final Report on Police Needs Assessment in Nanggroe Aceh Darussalam*. January 2006: http://www.iom.or.id/reports.jsp?lang=eng.

KontraS Aceh. "*Menyikapi Penambahan Pos TNI di Aceh.*" 7 April 2009: http://www.kontras.org/aceh/index.php?hal=pers&id=861&tahun=2009.

McCulloch, Lesley. Greed: *The Silent Force of the Conflict in Aceh*. Melbourne: University of Deakin. October 2003: http://www.preventconflict.org/portal/main/greed.pdf.

Mobekk, Eirin. *Transitional Justice and Security Sector Reform: Enabling Sustainable Peace*. Geneva: DCAF, November 2006.

34 See also the report of the Commission of Truth and Reconciliation Timor-Leste, which has a record of human rights violations that occurred from 1974–1999 (the report can be accessed a http://www.cavr-timorleste.org).

Putusan MK, UU Otsus dan UUPA

TAP MPR IV/1999 on GBHN 1999-2004.

UN General Assembly Resolution. *Prinsip-Prinsip Dasar dan Panduan untuk Hak atas Penyelesaian (Right to Remedy) dan Reparasi untuk Korban Pelanggaran Berat atas Hukum Hak Asasi Manusia Internasional dan Pelanggaran Berat atas Hukum Humaniter Internasional*. Resolusi Majelis Umum PBB. March 2006.

World Bank. *Aceh Conflict Monitoring Update*. 1 December 2008–28 February 2009.

World Bank and the BRR. *Trucking and Illegal Payments in Aceh*. 2006: http://know.brr.go.id/dc/unsorted/20060402_Trucking_Illegal_Payments_Aceh.pdf.

UNDP. *Security Sector Reform and Transitional Justice: A Crisis Post-conflict Programmatic Approach*. March 2003: http://www.undp.org/cpr/documents/jssr/ssr/UNDP_2003_JSSR_Approach.doc.

PART II

The General Context of Human Rights and the Security Sector in Indonesia

Human Rights and Security Sector Reform in Indonesia

Dimas P. Yudha & Mufti Makaarim A.

Along with the demands of reformation in 1998, the discourse of security sector reform (SSR) also started to gain a place in the transition agenda proposed in the designs of the post-New Order government and the mass media. At that time, the emerging discourses were "abolishment of ABRI's (Armed Forces of the Republic of Indonesia) dual-function (*Dwifungsi ABRI*)," "the separation of Polri (Republic of Indonesia Police) from ABRI," and accountability for human rights violations in the New Order era, etc. Nevertheless, a far-ranging discourse known as the SSR concept was little understood and therefore attracted the people's attention. The focus of public attention tended to fall on conventional security institutions, e.g. the military, and a few years later the discourse on police reform emerged (though nothing in terms of intelligence reform nor reformation at the executive level, such as the Department of Defence, or at a legislative level, especially in Commission I and Commission III of the DPR, was discussed).

A few years later, the then Minister of Defence Mahfud M.D. formed a team known as the "SSR Working Group" to help him constitute a draft Defence Act.[1] Thereafter, the concept of SSR was popular, which tended to be connected with the study or research work on the military in Indonesia. This was the correct approach considering the context of the tasks achieved and the working teams developed to observe military activity.[2]

On the other hand, efforts to promote the agenda of human rights enforcement and accountability for crimes against human rights in the New Order and post-1998 era were also being developed. The biggest challenge for this process is that the efforts of law enforcement and SSR are unparallel, as security actors involved in various human rights violations have yet to be charged and tried according to their responsibilities and actions. Slow moving SSR—especially in relation to the effort of promoting fair and accountable legal responsibility—encourages the emergence of impunity and the continuation of violence committed by security actors post-1998.

1 S. Yunanto, M. Nurhasim and Ishak Fathoni, *Evaluasi Kolektif RSK di Indonesia: TNI dan POLRI* (Jakarta: The Ridep Institute and Friedrich-Ebert-Stiftung, 2005), 10–11.

2 Ibid.

This article seeks to elaborate on the SSR framework and to connect it to the context of human rights enforcement problems in Indonesia.

Security Sector Reform: An Extensive Concept

In the wake of European internal conflict and wars, the concept of SSR was born, developed and disseminated across the world. There are three early situations that nurtured the SSR concept.[3] *First,* with the end of Cold War, the governments of Western countries—in a framework they called "new defence diplomacy"—spread the idea of democratic civil-military relations to post-communist countries in Central and Eastern Europe through bilateral relations or multilateral organizations in security sectors such as NATO or the OSCE. With the increasing involvement of other multilateral actors like the European Union, it extended this to other elements of non-military security actors such as the courts, police and border protection personnel.

Second, as a consequence of increased interstate conflict in the 1990s, there was increased awareness of the importance of security in the development process, which was included as the basis of cooperation between states. This awareness resulted in the inclusion of SSR by donor countries or multilateral bodies—like the Organization for Economic Cooperation and Development (OECD) or the UNDP programs and policies for development assistance—in their programming.

Third, SSR implementation strategies and programmes have emerged and are considered suitable in assistance situations by foreign countries for countries facing internal conflict or in failed states. This problem has also become a developing discourse in the UN system in which SSR is viewed as a "key to success" in continuous peace building efforts.

Even though there is no single accepted definition of SSR, it is generally believed that an unreformed security sector is an obstacle to the process of development, democracy, peace and security. The extensive range of SSR itself often has had many titles, including JSSR or justice and security sector reform.[4] SSR, however, is not necessarily solely related to security actors but is in fact also associated with other related sectors, such as law enforcement.

Referring to the definition provided by the Development Assistance Committee (DAC) of the OECD, SSR means a transformation of a security system, including all its actors, roles, responsibilities and activities, to make it suitable and consistent with the norms of democracy and good governance management principles, while functioning well as a framework for security itself.[5] Therefore, there are usually three objectives faced by every country in its effort at conducting SSR, which are: (1) to develop clear institutional frameworks in determining security and development policies, including all relevant actors; (2) to strengthen the management of security institutions; and (3) to develop the capability and professionalism of security actors that refer their responsibilities to a civil authority.[6]

3 Alan Bryden and Heiner Hänggi, "Reforming and Reconstructing the Security Sector" in *Security Governance in Post-Conflict Peacebuilding*, Alan Bryden and Heiner Hänggi (eds.) (Zurich: LIT, 2005), 23–24.
4 Heiner Hänggi and Vincenza Scherrer (eds.), *Security Sector Reform and UN Integrated Missions* (Munster: LIT & DCAF, 2008), 4–5.
5 OECD DAC, "Security System Reform and Governance Guidelines," DAC Guidelines and Reference Series (OECD, 2005). The book can be downloaded at: http://www.oecd.org/document/33/0,3343,en_2649_34567_33800289_1_1_1_1,00.html
6 Ibid.

The security actors that are the focus of SSR include: (1) the main security actors, such as the military, police and intelligence; (2) the supervision and management bodies, such as parliament or the Department of Defence; (3) the courts, including bodies related to law enforcement (the rule of law); and (4) other actors known as the non-statutory security forces, which include militias or combatants.[7]

The emphasis of SSR is associated with the need to organize the "defunctionalisation" of the security sector that is unable to provide security to the state and citizens effectively and efficiently, which causes insecurity and violent conflict to occur. The word "defunctionalisation" in this context is understood not only as the inability to "secure" a situation but also by the deficiency of democratic government.[8] According to its original definition, "SSR is meant to turn a dysfunctional security sector into a functional one, thereby reducing security deficits (lack of security or provisions of security) as well as democratic deficits (lack of oversight in the security sector)."[9]

The extensiveness of the SSR concept not only creates a redundancy when linked to other concepts but, at the same time, also enhances re-conceptualization. Therefore, the concept can be used as a tool of analysis in explaining the contextual condition in a state and actual implementation processes.

A study conducted by DCAF in Burundi showed the importance of paying attention to the SSR aspect in the UN peace mission there. In the context of a post-conflict state, in the United Nations Operation in Burundi (ONUB), the concept of SSR assists the peace process by providing recommendations for aspects of democratic supervision and the responsibility of security actors.[10]

Before we elaborate further on the situation in Indonesia, there are three different contexts that must be understood in explaining SSR, as shown in the table below:

Table I: Contexts of Security Sector Reform[11]

	Context in development situation	Context in post-authoritarian situation	Context in post-conflict situation
Criteria	Socio-economic development	Political system	Security situation
Problem	Development deficit	Democracy deficit	Security deficit
Reformation goal	Development	Democratization	Peace-building
General reformation process	Transition of economy from "underdeveloped" to "developed"	Transition of regime from authoritarian to democratic system	Transition from armed conflict to sustainable peace
Nature of foreign involvement	Reformation pressure through development process assistance coupled with political assistance and shaping of the political environment	Hope for involvement in regional organizations, such as the European Union or NATO, as reformation incentives	Reformation pressure (usually by the UN) through "peace support operations"
Foreign Actor	Donor countries; development organizations (such as the World Bank, UNDP); transnational actors	Donor countries; international organizations; transnational actors	International peace troops; donor countries; transnational actors (such as NGOs)
Specific problem of security actor	Bad management, over-budgeting, including self-funding of security actors through business activities	Excessive posture, lack of democratic control, strong state but weak civil society	Failure of state structure, weak civil society, strong militias or combatants, including illegal weapons circulation
Possibility for SSR	Depends on political commitment, the power of state institutions, the role of security actors, the security environment, the approach assumed by donors in SSR	Better if foreign incentives are available, such as becoming a member of one of the regional organizations, professionalism of security actors, and expanding the democratization process	Depends on the commitment of foreign involvement and local readiness to conduct reformation

7 Ibid.
8 Bryden and Hänggi, "Reforming…" (2005), 29.
9 Ibid.
10 Hänggi and Scherrer (eds.), *Security Sector Reform*… (2008), 55.
11 Bryden and Hänggi, "Reforming…" (2005), 30.

The SSR context in Europe, as the table above shows, contains three situations in which SSR efforts take place. The situation in Indonesia can be likened to that of the "context in a post-authoritarian situation." In Europe there was also a set of regional actors involved in SSR, such as the European Union, the OSCE and NATO, who could incentivize SSR programming.

The post-authoritarian situation in Indonesia asserts that SSR includes political system change. The military was the dominant political force in the New Order regime, which held power from 1966 to 1998. Furthermore, this development underlined the weakness of political system theory that failed to emphasise the extent to which the military's role highly influences a political system.[12] Using the state to support its own interests is commonly conducted by governments whose power is dominated by the military.[13] The reign of the New Order was full of human rights violation practices.

Human rights are understood in Indonesia as "a set of rights that are attached to the essence and existence of humans as the creatures of the God Almighty and are His gift that must be respected, upheld, and protected by the state, the law, the Government, and everyone for the honour and protection of human value and dignity."[14] Meanwhile, human rights violations are defined as every violation or crime committed by a state actor through the abuse of power, either by an act or by an omission,[15] that relates to the Law of the Republic of Indonesia No. 39 of 1999 on Human Rights, defined as "every action or a group of people including a state actor, either unintentionally or intentionally, or negligently which by against the law reduces, hinders, limits, and/or abolishes the human rights of a person or group of people guaranteed by this Law, and does not obtain, or feared not to have fair and righteous legal settlement, according to the applied legal mechanism." This is the type of violation that often occurred in the New Order era.[16]

Up to this point, it appears that there are two aspects that relate to the importance of human rights in SSR for Indonesia.[17] First, the definition and terminology of SSR is broad and relates to other aspects outside the state security problem, which are usually represented by the armed forces (the military). Therefore, the deficit of security elements is not only about "insecurity" but also about the deficit of the principles of democracy. In this sense, the importance of human rights enforcement is paramount. Secondly, human rights issues often relate to bad experiences of abuses in the past, in which the security actor was often the party committing human rights violations.

Ten Years of the Reform Movement: SSR in Indonesia 1998–2008

Several SSR achievements can be confirmed in the post-Suharto governments. Reform started with reformation in the ABRI, which in the early period of the reformation movement was considered the main actor that needed to be "changed." This institution had the initiative to "change itself" from the category of "political soldiers" like

12 Sunardi, "Militer, Politik dan Demokrasi dalam Amatan Teoritis," *Progresif*, Vol. 2, No. 1 (October 2002): 1.
13 Ibid., 8.
14 The Law of the Republic of Indonesia No. 39 of 1999 on Human Rights.
15 The stress on "committed by state" is what differentiates it from violations and crimes committed by non-state actors, which in international law is known as human rights abuses.
16 For more complete information on this human rights violation, see attachment "Pelanggaran HAM di Indonesia" in Indria Fernida, "Hak Asasi Manusia, Akuntabilitas dan RSK," *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit* (Jakarta: IDSPS and DCAF, 2009).
17 Dimas P. Yudha, "Reflection of 10 Years Reformation Movement: Human Rights and SSR in Indonesia" (2009).

Koonings and Kruijt, which were associated with backward thinking as "human rights violators" and "corrupt and undignified in the international community."[18] This initiative is shown by the addition of the new paradigm of ABRI issued by the ABRI Headquarters in 1998.[19]

Furthermore, the separation of the TNI (Indonesian National Army) and the POLRI—based on the Decree of the MPR (People's Consultative Assembly) No. IV of 2000 on the Separation of TNI and POLRI, along with the Decree of the MPR No. VII of 2000 that regulates the roles of TNI and POLRI—was an achievement of reform. These two legal precedents show that an institution can be changed and is not as "sacred" or "untouchable" as during the New Order. The phrase "everything great shakes" (*alle Gröesse sthet im Sturm*) by the philosopher Plato is apt to describe this phenomenon.[20]

The abolishment of ABRI's dual function went along with the change of doctrine from *Catur Darma Eka Karma* (CADEK) to *Tri Darma Eka Karma* (TRIDEK). This attempted to change the "socio-political" role of the TNI. Apart from that, it also stated that learning from the past was important as ABRI's previous role had caused disjointed democracy in Indonesia.[21] The manifestation of this was the withdrawal of ABRI "representation" in parliament.

Reform efforts continued with the Constitution of Law of the Republic of Indonesia No. 3 of 2002 on State Defence and the Law of the Republic of Indonesia No. 34 of 2004 on TNI, which further define the role of the TNI in dealing with external threats as opposed to police who are to deal with internal threats; the placement of the TNI under the coordination of the Department of Defence; the title change from socio-political assistant to territorial assistant; and the publication of The White Book of Defence. Apart from the ever-present criticisms regarding some of those policies, it proved that the TNI—borrowing the term from the TNI Commander-in-Chief Djoko Santoso—"have and continues to reform itself."[22]

Furthermore, as the general election for 2009 approached, which was the third general election in the post-New Order period that is often regarded a priori as a "milestone" for Indonesia in the transition to democracy, the TNI issued a book entitled *Netralitas TNI dalam Pemilu dan Pilkada* (TNI Neutrality on the General Election and the Regional Election). The publication of this book was an effort by the military to affirm its neutral stance in the midst of civil politician contests.[23]

In relation to human rights, policy could give the impression that the military has reformed itself as per the publication of the *Pedoman Prajurit TNI AD dalam Penerapan HAM* (The Handbook of the Army Soldiers on the Implementation of Human Rights) book by the TNI AD in 2000. The book attempts to educate the TNI on the prevention of human rights violations while also giving the impression that the TNI acknowledged and respected human rights, as lessons from their past. Other more specific achievements can be traced to the

18 Ikrar Nusa Bhakti, "Kendala dan Peluang Reformasi Internal TNI: Suatu Kerangka Konseptual" in Sri Yanuarti (ed.), *Evaluasi Reformasi Internal TNI 1998–2003* (Jakarta: P2P LIPI, 2003).

19 Mabes ABRI, *ABRI Abad XXI-Redefinisi, Reposisi dan Reaktualisasi Peran ABRI dalam Kehidupan Bangsa* (Jakarta: Mabes ABRI, 1998).

20 The writers took this terminology from Dhakidae in explaining the collapse of understanding of the concepts of "major" and "minor" political parties in Indonesia. See: Daniel Dhakidae, "Partai Poltik di Persimpangan Jalan," *Prisma*, Vol. 28 (June 2009): 89.

21 Decree of MPR RI No. VI/MPR/2000 on the Separation of TNI and POLRI.

22 *Kompas*, "Reformasi TNI, Sudah Tuntas atau Masih Harus Berlanjut?" (10 October 2009).

23 Civil politicians here refer to the political parties participating in the legislative general election, which consisted of 44 national political parties and 6 local political parties in Aceh. Meanwhile, the candidates for president and vice president included three TNI retirees, namely presidential candidate President *incumbent* General (Ret.) Susilo Bambang Yudhoyono, vice-presidential candidate General (Ret.) Wiranto and Lieutenant General (Ret.) Prabowo Subianto.

notes on the transition of military reform.[24] Achievements on the TNI's reformation based on official documents can be simplified, as shown in the table below.

Table II: Military Reform Based on Official Documents[25]

Reform Agenda	Year	Status
Publication of the "new ABRI paradigm" can be viewed in the book ABRI Abad XXI—Redefinisi, Reposisi, dan Reaktualisasi Peran ABRI dalam Kehidupan Bangsa (ABRI in the 21st Century—Redefinition, Reposition, and Re-actualization of ABRI Roles in Nation Live)*	1998	Done
Publication of the "Army soldier's handbook on human rights enforcement" pocket book*	2000	Done
Law of the Republic of Indonesia No. 3 of 2002 on State Defence	2002	Done
The White Book of Defence	2003	Done
State defence general policy	2008	Done
Takeover of military business*	2009*	In process. Latest development in 2009 is the formation of the TNI Business Takeover Controller Team in reference to Presidential Decree No. 43 of 2009.
State defence strategy	2008	Done
State defence posture	2008	Done
State defence doctrine	2008	Done
The White Book of State Defence	2008	Done
Publication of Netralitas TNI dalam Pemilu dan Pilkada (TNI Neutrality in the General Election and Regional Election) pocket book*	2009	Done

POLRI was also carrying out efforts to reform. The inclusion of POLRI in the TNI, as in the past, often emerges as an accusation of the enduring "violent character" of POLRI, identical to that of the military. Aside from the separation of the two institutions, the role division of POLRI is asserted further by the presence of specific regulations, namely the Law of the Republic of Indonesia No. 2 of 2002 on POLRI. With this legal umbrella, POLRI is directed to become a civil police force that focuses on the enforcement of law and order.

POLRI reformation efforts also started with the return of POLRI doctrine to *Tata Tentrem Karta Raharja* and now no longer use the soldier's *Sapta Marga* as when previously joined in the ABRI. This POLRI doctrine relates to the management of order and public security and guarantees the implementation of community activities with the purpose of achieving prosperity. A soldier's oath was replaced with *Tri Brata Catur Prasetya. Tri Brata* means that the police are the main servants of the country and people, model citizens of the state and are obliged to preserve the order of society. Meanwhile, *Catur Prasetya* emphasises soldiers' loyalty to their country and leaders, readiness to eliminate enemies of the state and society, the need to glorify the state and, lastly, to consistently maintain all of these values.[26]

24 Alexandra R. Wulan (ed.), *Satu Dekade Reformasi Militer Indonesia* (Jakarta: Pacivis and Friedrich-Ebert-Stiftung, 2008).
25 Ibid., 74. (A * denotes additions from authors).
26 Santhy M. Sibarani (et al.), *Antara Kekuasaan dan Profesionalisme Menuju Kemandirian Polri* (Jakarta: Dharmapena Multimedia, 2001), 51 quoted by S. Yunanto, M. Nurhasim and Ishak Fathoni, *Evaluasi Kolektif*… (2005), 54.

The seriousness of POLRI in reforming itself is also shown with the *Pemolisian Masyarakat (Polmas)* program, which is known as Community Policing. This program contains the umbrella Decree of the Chief of POLRI *(Perkap)* No. 7 of 2008 on Community Policing. The program, considered a success in forming "civilian" police character as part of the community, has been widely practiced internationally. For example, in Japan this program succeeded in bringing the police closer to the community and suppressing criminal acts in several cities.[27]

In its transition, these efforts by POLRI continued with the policy to form a human rights instrument for POLRI. The Chief of POLRI Bambang Hendarso Danuri issued the Decree of the Chief of POLRI No. 8 of 2009 on the Guide to the Implementation of Human Rights for the POLRI ranks. Even though the decree still requires applicable technical rules such as a standing procedure, execution guidance and a technical manual,[28] the decree, whose issuance involved activists from civil society organizations, is expected to further strengthen the intention of POLRI to be a civil police force and a community partner.

Several studies have concluded that there are three aspects of reform required in the POLRI body:[29] *structural aspects*, which relate to the normative aspect of the POLRI organizational structure, including the formation of Special Detachment (*Densus*) 88 as a result of terrorism in Bali; *instrumental aspects,* which relate to changes in paradigm, doctrine, function, task, authority and competence;[30] and *cultural aspects*, which relate to the implementation of community policing as an effort to increase the POLRI service function and place the role of POLRI as part of the community in the prevention of human rights violations by its members while executing their duties (*Perkap*).

Intelligence reform faces more serious challenges, which compared to the efforts in the military and police, has undergone limited reform. As a strategic and tactical state mechanism, by nature, the intelligence institution is prone to misuse in favour of government self-interest and in authoritative circles as occurred during the New Order.

The awful experiences of the New Order era should highlight intelligence reform as a paramount part of the SSR agenda, especially to: 1) change the mindset of New Order intelligence that sustained the roles of strategic intelligence and military intelligence in support of regime political policy; 2) create a legal umbrella so that operational legality, the working mechanism of intelligence bodies and the supervision of them can be developed; and 3) to ensure the organization, coordination, and the absence of overlapping authority, roles and functions of intelligence bodies.[31]

Ali A. Wibisono concisely categorized the transformation of Indonesian intelligence into four phases, namely as the supporter of military operations (1945–1958), the adherent of the implementation of state political policies (1959–1965), the adherent of the preservation of the New Order (1966–1998) and a part of "security" recovery (1998–present).[32]

27 Monica Tanuhandaru and Ahsan Jamet Hamidi, "Program Pemolisian Masyarakat." *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit* (Jakarta: IDSPS and DCAF, 2009).
28 Andi K. Yuwono, "Perkap HAM dan Tantangan Polri," *VHR Media* (31 July 2009).
29 S. Yunanto, M. Nurhasim and Ishak Fathoni, *Evaluasi Kolektif* (2005), 53–56.
30 Tiarma Siboro (ed.), *Police Reform: Taking the Heart and Mind* (Jakarta: Propatria Institute, 2008) 217.
31 Tim IDSPS, "Pemisahan dan Peran TNI-POLRI" (June 2008).
32 Ali A. Wibisono, "Reformasi Intelijen dan Badan Intelijen Negara," *Panduan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit* (Jakarta:

The role as the supporter of military operations was implemented while battles involving the Republic's army during early independence between 1945–1949 raged, marked by the formation of a Special Agency tasked to collect as much information as possible in various places in Java to support the national army against the Dutch and, at the same time, to raise support for the Republic of Indonesia's independence several months after the proclamation. In the next development, the task of this institution was extended to include combat support functions by infiltrating Dutch controlled areas and assisting in the collection of funds, weapons and medical supplies for combat operations, including foreign campaigns.[33]

After the war for independence, the government mobilized the intelligence institution to face internal military "revolts." The politicization of the intelligence institution occurred to preserve the coordination of intelligence units under political control of President Sukarno in the form of the *Badan Koordinasi Intelijen* (Intelligence Coordination Agency), which later became the *Badan Pusat Intelijen* or BPI (Central Intelligence Agency) headed by the Minister of Foreign Affairs Subandrio from November 1959. While the intelligence agency served the political interests of the government, the effectiveness of intelligence operations in the context of national security weakened. Military operations were weakened as they were not supported by sufficient intelligence information, i.e. the *Komando Siaga* operation in the form of troop deployment in the Malayan Peninsula during August–September 1964, where it is controversially held that the presence of groups in Malaysia who supported the insurgents against their government ended with the loss of the troops' equipment during the deployment and capture by the Ghurkha troops that hunted them. On the other hand, the TNI AD (army) conducted special operations in the form of a peace proposal and disassociation of the TNI AD from military attacks towards Malaysia, with the knowledge of the Army Chief of Staff General Ahmad Yani, to prevent the outbreak of war between Malaysia and Indonesia.[34]

In 1966, the Indonesian intelligence community went through a metamorphosis with the formation of an "intelligence state"—a concept proposed by Richard Tanter in 1991 on the network of intelligence institutions and special divisions in the military, which altogether kept the preservation of the New Order regime, in which there was an integration of a militarized intelligence institution with governmental and non-governmental institutions, either civilian or military to become the supervising instrument of the society. The BPI was dissolved by Major General Suharto in August 1966 and the *Badan Koordinasi Intelijen Negara* or BAKIN (State Intelligence Coordinating Agency) was formed in May 1957, lead by him. The BAKIN was operated by military officers and coordinated all intelligence activities, either civilian or military, while sealing the ever-present military into the Indonesian intelligence community.[35]

Since 1998, SSR has not been able to improve the performance of the intelligence community, although the dissolving of *Bakorstanas* (the Coordination Board for the Consolidation of National Stability) in 2001, the withdrawal of Law No. 11/PNPS/1963 on Anti-subversion, and the trial against several members of the *Kopassus* (Special Forces Command) intelligence unit who were involved in the kidnapping and disappearance of activists in 1998 are viewed as positive efforts to reform the intelligence community. The restructuring of the Indonesian intelligence community began under President Abdurrahman Wahid in 2001 with the changing of

IDSPS and DCAF, 2009).

33 Ibid.

34 Ibid.

35 Ibid.

BAKIN to become the *Badan Intelijen Negara* or BIN (State Intelligence Agency), along with the responsibility for this institution coming under the remit of the president and the parliament—although the coordination mechanism between the different intelligence bodies has not materialized. BIN is now under the control of civilian government with its chief appointed directly by the president, though it is still dominated by military personnel and adopts a conservative militaristic disposition. On the other hand, without the effective control of civil political officers, especially by parliament, the president could obtain limitless control over the intelligence agency and could conveniently appoint individuals (ex-military) considered loyal to him.[36]

Prominent non-state actors that commit human rights violations are either militias or paramilitaries. These groups, either separately or during military operations in search of separatist movements, are often associated with human rights violations in the areas where they operate. In Aceh, for example, during periods of military and civil emergency the presence of militias was debated. Iskandar Muda Military Area Command Commander-in-Chief (*Pangdam*) Major General TNI Supiadin denies that during conflict management in Aceh the TNI never formed militias.[37] According to him, some resistance was exhibited by *Pasukan Berantas*, *Front Merah Putih* and other fronts in Aceh, though none of them used weapons—even though it is a state secret that the formation of movements against the *Gerakan Aceh Merdeka* or GAM (Free Aceh Movement) by the TNI occurred in many regions in Aceh.[38]

In Aceh Besar, for example, the *Front Perlawanan Separatis GAM* (FPSG) was formed and led by Suhaimi (alias Iomi), a PNS (civil servant). This front claimed to have approximately 15,000 members, declared on 24 December 2003, led by 22 people and actively raising a loyalty pledge to the NKRI (Unitary State of the Republic of Indonesia) in the Aceh Besar region. In Banda Aceh, *Gerakan Penyelamat Aceh Republik Indonesia* (GPA-RI), led by Agus, an entrepreneur, and founded on 4 January 2004, claimed to have approximately 10,000 members with 14 officers in charge. In Sabang, which is regarded as a region unaffected by conflict, a militia called *Ormas Pembela NKRI* (*Ormas-NKRI*) and led by Adnan Hasyim, a civil servant, was formed on 7 February 2004 and claimed to have 10,000 members and 37 officers. In Pidie, a group named *Gerakan Rakyat Anti Separatis Aceh* (GEURASA), led by a member of Pidie DPRD (Regional People's Representative Council) named Zulkifli Gede, was established on 18 December 2003 with 15,000 sympathizers from various sub-districts and villages. In Bireun Regency, a resistance front named *Front Perlawanan Separatis GAM* (FPSG) was also formed, led by a contractor, Sofyan Ali (alias Yan PT) on 1 October 2003, with a claim of 10,000 members. In North Aceh, similar fronts called *Benteng Rakyat Anti Separatis* (BERANTAS), led by M. Satria Insan Kamil, a member of the PKPI, with 10,000 sympathizers was founded on 12 November 2003 in Lhokseumawe. There are still similar institutions spread across other regions in Indonesia, especially in Aceh and Papua.[39]

36 As could A.M. Hendropriyono who was appointed by President Megawati because of his support in the leadership candidacy of *Partai Demokrasi Indonesia* or PDI (Indonesia Democratic Party), or as Major General Syamsir Siregar, who was appointed by President Yudhoyono, who was none other than his campaign team member (Ibid.).

37 *Serambi* (21 September 2005).

38 Taufik Al-Mubarak, "Apa Kabar, Milisi?" (30 October 2005).

39 Ibid.

Future SSR Possibilities in Indonesia

SSR efforts in Indonesia have to date "succeeded,"[40] particularly several normative achievements such as regulations for security actors, especially the TNI and police. Its failures tend to be reflected by the absence of new legislation in parliament, for example for the defence sector.[41] Other discourse appears to clash with SSR, especially in relation to the military sector that is regarded to have "more important necessities." Usually, this occurs by promoting the discourse of "militarizing the military," "soldiers' welfare," "increase of defence and security budgets," "needs of a reserve component" to "defence posture development."

The existence of such a discourse means that these SSR "achievements" alone are not enough. Human rights violations are still occurring and responsibilities have yet to be defined among security sector agencies, becoming a burden for SSR in Indonesia. On the contrary, it is precisely this lack of clarity that raised the question of what is happening with SSR in Indonesia. What is wrong? What course of action should be pursued? The security actors, now the object of SSR, still maintain their past character when performing their duties and committing human rights violations.

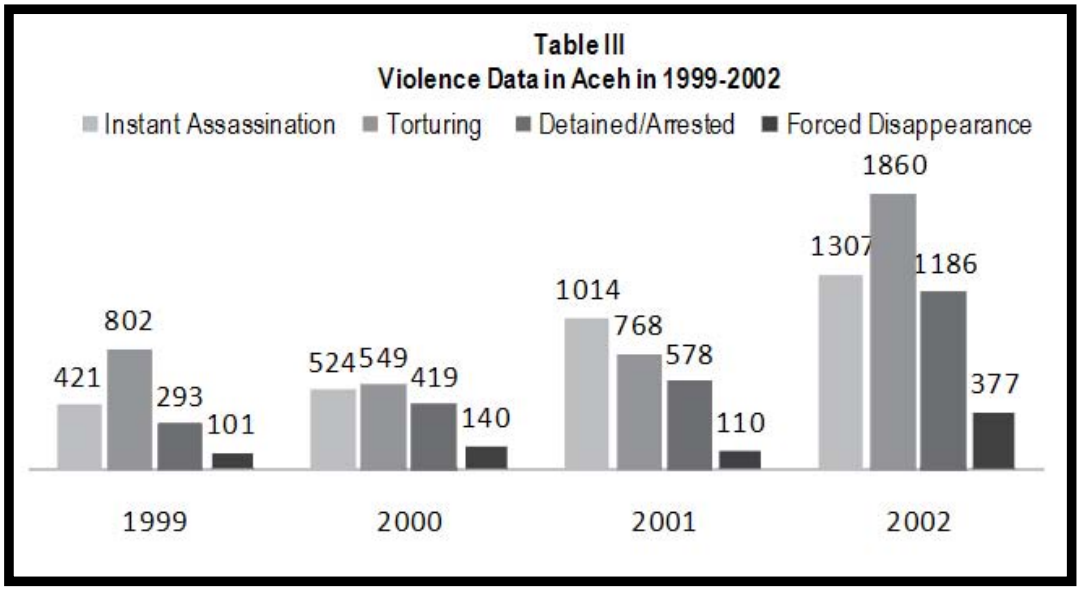
The general election of 2009 was an interesting phenomenon, not only due to the dynamics of new political parties but to the presence of candidates previously involved in human rights violations.[42] Their presence further inhibited the struggle of establishing a pro-democracy civil society as the current path of SSR is heading toward stagnation, if not failure.

In the early years of SSR efforts, a tragedy in Timor Leste before, during and after the referendum in 1999 occurred. Human rights violations, which ultimately ended in East Timor's independence, were frequently the responsibilities of the security actors involved there. The ad hoc human rights court that was formed managed to summon several high ranking military officers. However, instead of punishing them, the related actors were set free, promoted or even failed to attend court,[43] while others returned to politics and continued their lives with impunity.

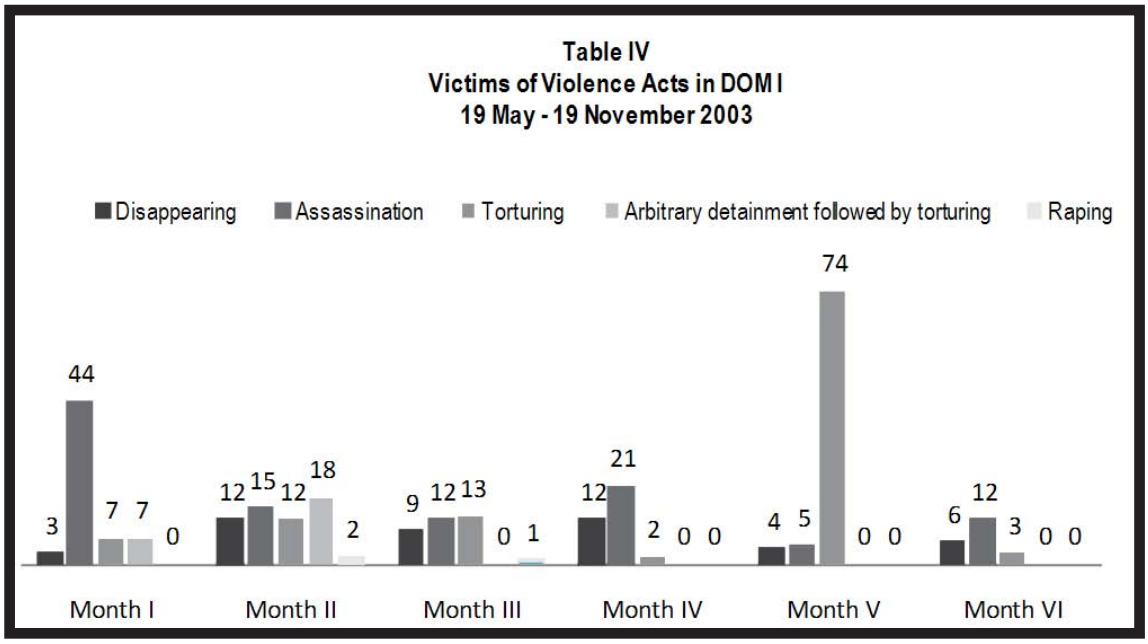
Another example of the involvement of security actors in human rights violations post the New Order is what happened in Aceh, especially under President Megawati's government. Through Presidential Decree No. 28 of 2003, she reinforced the status of a military emergency and military operations starting on 19 May 2003.[44] At that time, 400,000 TNI soldiers were deployed to Aceh to conduct military operations. This, apart from worsening the situation, also showed that SSR had yet to become the spirit of the post-New Order government. Human rights violations were often committed by security actors while claiming it as war against "separatism." The case of the shooting of a theologian, Tengku Bantaqiyah, and a number of his male students at his *pesantren* (Islamic boarding school) on 23 July 1999 in Beutong Ateuh, Aceh[45] highlights this.

40 *Kompas*, "Reformasi TNI…" (10 October 2009).
41 Andi Widjajanto, "Kegagalan Politik Legislasi Parlemen" *Kompas* (5 October 2009).
42 Didiet Adiputro, "Rachland Nashidik: Pelanggaran HAM mempersulit Tugas," *Perspectif Online* (14 June 2009).
43 Poengky Indarti (ed.), *Laporan Praktek Penyiksaan di Aceh dan Papua selama 1998–2007* (Jakarta: Imparsial, 2009), 210–211.
44 Ibid., 112.
45 Tim KontraS, *Politik Militer dalam Transisi Demokrasi Indonesia* (Jakarta: KontraS, 2003), 88.

Based on data acquired from Litbang (research and development) Kontras, prior to the decision on the upgraded "military emergency" status in 2003, there was an increase in human rights violations. Victims of human rights violations in the form of assassinations, torture, detainment and forced disappearances have increased since 1999. However, would the violence of the New Order also end? It appears that the following data speaks for itself. From 1999 to 2002, the total number of victims of instant assassination was 3,266, victims of torture 4,024, victims of detainment 2,476 and victims of forced disappearance 728, as shown in the graph[46] below.



Meanwhile, data issued by Imparsial[47] showed the occurrence of human rights violations during Military Emergency I in Aceh. This further stressed the vulnerability of the involvement of security actors when "given" legitimized authority.



46 Database KontraS 2002, as quoted by Poengky Indarti (ed.), *Laporan Praktek Penyiksaan di Aceh dan Papua Selama 1998–2007* (Jakarta: Imparsial, 2009), 104.
47 Database Imparsial, as quoted by Indarti (ed.), *Laporan Praktek…* (2009), 114.

The problems surrounding SSR, especially with regard to security actors and human rights, also occured in Papua. Cases clearly involving security actors—in particular the TNI and POLRI—are the Abepura case in 2000 and the murder of a prominent figure of the *Dewan Presidium Papua* (Papua Presidium Council), Theys Eluay, on 10 November 2001. In the Abepura case, POLRI (post separation from the TNI) was involved, highlighting failures in its internal reformation.

Triggered by an assault of a police post in Abepura by an unknown group, the police launched an operation to find the perpetrators.[48] The police also committed torture during their search for the "perpetrators" during this tragedy.[49] The ad hoc Human Rights Court was held in Makasar for five years in order to try the security actors involved in this tragedy. However, as in the Timor Leste trial, it failed to catch the "big fish"[50] who were all promoted.[51]

Human rights violations, especially in the form of torture by POLRI, are still happening. Amnesty International's Report *Unfinished Business: Police Accountability in Indonesia* confirms this. The report uncovered acts of police violence in dealing with detainees, particularly relating to crimes committed by the working classes.

Meanwhile, the murder case of the late Theys Eluay highlighted the involvement of *Kopassus*, an elite military group in Indonesia. This murder was considered despicable and damaged the trust building process of Papuan society and the government. A military court heard the case. It became an irony of SSR efforts, as reflected by the army chief of staff's statement on the perpetrators: "The law stated them guilty. It is okay for them to be convicted. But, for me they are heroes."[52] A 2009 Human Rights Watch report called *What Did I Do Wrong? Papuans in Merauke Face Abuses by Indonesian Special Forces* highlighted the violence still being inflicted upon Papua society by *Kopassus*.[53]

Other incidents outside of Papua and Aceh still go on, i.e. the murder case of human rights activist and former coordinator of *Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* or Kontras (Commission for Missing Persons and Victims of Violence Acts), Munir Said Thalib,[54] the involvement of the Marines (TNI-AL or Naval Forces) in Alas Tlogo,[55] the attack by the police apparatus on the Universitas Nasional campus as a reaction to students demonstrating against the increase of fuel prices[56] and many other cases that involve security actors. The recurrence and preservation of human rights violations as displayed by these cases further stresses that human rights is an aspect that has not received attention in SSR in Indonesia.

Aside from showing that there has not been a perception of "threat" agreed as a national interest and formulated by all the nation's components, the conduct of the security actors that undermine the human rights aspect of their work is also caused by the absence of uncovering the truth in favour of the victims and the responsibility for human rights violation in the past, which are supposed to teach violators from their mistakes. The inability

48 Indarti (ed.), *Laporan Praktek…* (2009), 160–161.
49 Ibid.
50 The term "big fish" refers to the perpetrators with high-level positions (high ranking officers).
51 Indarti (ed.), *Laporan Praktek…* (2009).
52 *Tempo Interaktif*, "Jenderal Ryamizard: Pembunuh Theys Hiyo Eluay adalah Pahlawan" (23 April 2003).
53 Human Rights Watch, *What Did I Do Wrong? Papuan in Merauke Face Abuse by Indonesia Special Forces* (New York: Human Rights Watch, 2009). downloaded from http://www.hrw.org/en/reports/2009/06/24/what-did-i-do-wrong.
54 See: Komite Aksi Solidaritas untuk Munir (Kasum), *Risalah Kasus Munir: Kumpulan Catatan dan Dokumen Hukum* (2007).
55 Bhatara Ibnu Reza and Rusdi Marpaung (eds.), *Politik Militer dalam Penguasaan Tanah* (Jakarta: Imparsial, 2009).
56 Tim Investigasi Insiden Pasuruan, "Penembakan Protes Damai Petani, Ongkos Kemanusiaan Bisnis TNI di Alas Tlogo, Pasuruan, Jawa Timur" (3 September 2007).

of the court to hand down verdicts "big fish," coupled with the abovementioned statement of the army chief of staff, concretises the status quo. Therefore, it can be said that SSR in Indonesia has not yet covered transitional justice.

Transitional justice, like SSR, is a broad concept. The assumption of this approach is that without clarification of the violations that have happened, it is difficult to create a better society in the future.[57] In general, its scope touches on: (1) uncovering the truth about violations in the past during the authoritarian regime; (2) the trial processes of the perpetrators involved in violations; (3) reparations in the form of recovery for the victims; and (4) reformation of the institutions involved in the violations, usually security sector institutions.[58]

In order to minimize the occurrence of human rights violations committed by an institution, the responsible institution needs to be reformed. This matter is regarded as vital in preventing the recurrence of violence committed by security actors. Furthermore, transitional justice mechanisms such as the *Komisi Kebenaran dan Rekonsiliasi* or KKR (Commission for Truth and Reconciliation), can provide recommendations on changes and reforms needed by the governmental institutions involved in those violations.[59]

Meanwhile, a vetting mechanism for individual background checks can guarantee that perpetrators are not given the opportunity to hold positions in government institutions such as the military, police, intelligence, parliament or other civil service positions.[60] This vetting process can also ensure the discharge of perpetrators with past violations who are still active in these institutions.[61]

Transitional justice has been conducted in various countries, i.e. the KKR in South Africa. The formation of the KKR after Nelson Mandela came into power was regarded as quite successful in uniting the people and uncovering the truth regarding the Apartheid regime. In the area of SSR, they changed the South African Defence Force (SADF) to the South African National Defence Force (SANDF) and carried out military rationalization, which consists of 56% blacks, 31% whites, 15% Asians and 12% others.[62]

Another example is the experience in the Republic of Malawi. A lifetime dictator, Hastings K. Banda once ruled this small landlocked country in Africa. With his mantra of "one party, one leader, one government, and no nonsense about it," Banda committed severe human rights violations against his people.

The democratic government of Malawi (1991) established an Investigation Commission to investigate the deaths of four cabinet ministers, previously believed to have died in a highway accident. In reality, the commission reported that the event was associated with the role of Banda who gave the assassination order. Then in court, several assassins from the military admitted the crime they committed. Based on the confessions, Banda had a commutation of his sentence. The process involved an examination by a jury who came from his own tribe.

57 See the writing of Galuh Wandita in this Almanac (Galuh Wandita, "Akuntabilitas Kejahatan HAM Masa Lalu: Impunitas *Versus* Keadilan Transisi").
58 Ibid.
59 Eirin Mobekk, "Transitional Justice and Security Sector Reform: Enabling Sustainable Peace," *Occasional Paper No. 13* (Geneva: DCAF, 2006), 2–3.
60 Ibid.
61 Ibid., 68.
62 Tim IDSPS, "Pemisahan dan Peran TNI-Polri," *Penjelasan Singkat (Backgrounder)*, No. 4 (Jakarta: IDSPS & Rights and Democracy 2008), 6.

The trial was conducted *in absentia* against Banda, and the refusal of Banda to be present in court did not result in the discontinuation of the trial. On the contrary, the court went on. In this case, although the court finally declared Banda free, it is a good thing that this court had pointed out his mistakes. It is in this regard that justice had been upheld.[63]

Returning to the process of vetting, the experiences of Jose Efrain Rios Montt, former dictator of Guatemala, are insightful. The Constitution of Guatemala succeeded in tackling Rios Montt in his presidential candidacy and his effort to come back to power. It is known that Rios Montt had conducted a military coup and launched a program to exterminate "rebels" from the Guatemalan security sector, namely *Plan Nacional de Seguridad y Desarrollo* (National Security and Development Plan) with the purpose to enforce "stability" in 1982. The dictator had committed severe human rights violations. It was recorded that horrifying massacres had occurred in the history of Latin America, where 75,000 human lives were lost in an 18-month period.[64]

Even though Rios Montt had filed a personal complaint, stating that the Guatemalan constitution had violated his political rights, the Inter-American Commission on Human Rights rejected it. It is an interesting argument, as the basis of the rejection was that the reasonable restriction was in the form of a prohibition of the Guatemalan constitution against Rios Montt.[65]

A reasonable restriction in this case was based on the consideration that the actor subjected to the restriction had committed certain crimes, in this case severe human rights violations. It referred to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which stated that the right and opportunity (on political rights) can be limited to a reasonable restriction, i.e. the age limit (either of a voter or chosen candidate), nationality status, technical aspect (being abroad so that they are outside the reach of the general election process), or for the conviction of certain crimes. Unreasonable restrictions on political rights are matters relating to gender dimensions (males and females possess equal rights), socio-cultural aspects (ethnic groups or race), economic or social class aspects (the differences of economic status still maintain political equality) or other aspects, such as for disabled persons.[66]

Experiences in other countries in uncovering the truth show the "resistance" conducted by security actors who were involved in the violations. In Chile in the early 1990s, the Minister of Defence Patricio Rojas was involved in a conflict with the army in the investigation effort of two military officers who were suspected to be responsible for the murder of an ex Chilean diplomat, Orlando Leteiler in 1976. General Pinochet, who had already stepped down as ruler but still maintained power as the military commander-in-chief of the Chilean Army (until March 1998), mobilised approximately ten thousand troops onto the streets of Santiago in order to intimidate the government.[67]

63 Geoffrey Robertson, *Kejahatan terhadap Kemanusiaan: Perjuangan untuk Mewujudkan Keadilan Global* (Jakarta: Komnas HAM, 2002), 336.
64 Dario Azzelini and Boris Kanzleiter (eds.) *La Emresa Guerra: Bisnis Perang dan Kapitalisme Global* (Yogyakarta: INSISTPress, 2005), 110.
65 Papang Hidayat, "Lustrasi, Vetting dan Keadilan Transisional: Bagaimana Memperlakukan Mereka yang Bertanggung-jawab atas Kejahatan Serius di Masa Lalu", unpublished paper (2009).
66 Ibid.
67 Beni Sukadis, "Departemen Pertahanan dan Penegakan Supremasi Sipil dalam Reformasi Sektor Keamanan," *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit* (Jakarta: IDSPS and DCAF, 2009), 2, particularly box I.

In Indonesia, similar trouble has occurred. The statement made sometime ago by the minister of defence, which pleaded for retired generals to disobey the summons of the Komnas HAM (National Commission on Human Rights) regarding human rights violations, in effect caused those guilty to once again evade punishment, truth and justice for the victims.

By not denying the effort to establish courts for the remaining cases,[68] the attempt to achieve justice through the courts remains an uphill battle. Moreover, ad hoc courts for those cases must have recommendations from the parliament. The difficulty arises with the reality that parliament is heading for—borrowing the term of the contemporary philosopher Alain Badieu—*capitalo-parliamentarisme* whose work and existence is dictated by capitals.[69]

In the meantime, the KKR that was established according to the Decree of the MPR RI No. V/MPR/2000 on the Consolidation of National Unity and Totality, which was then legalised in the Law of the Republic of Indonesia No. 27 of 2004 on the KKR, was finally aborted by the Constitutional Court. Although the Constitutional Court still gave leave to formulate new regulations, its abolishment has disappointed the victims´ hopes of obtaining truth and justice. Furthermore, this is an obstruction of SSR efforts in reforming the institutions guilty of past violations.

Conclusion

These problems clearly show there are still many challenges to be faced in SSR efforts. Even though a regulation instrument has been successfully created, including the publication of a human rights handbook for security actors, human rights violations continue to occur.

In the midst of difficulty, an optimistic attitude is clearly still needed. Discovering the SSR possibilities in Indonesia can be done by returning the perception of SSR to be more extensive in its scope. SSR should not only deal with military actors or take up the discourse on the intensification of weaponry used by them but focus attention on capacity building efforts and civil supremacy in controlling the functioning of SSR. Transitional justice is as useful as SSR and is an inseparable part of it. If this is carried out, then it is not meaningless to promote human rights as part of SSR in Indonesia.

68 About the remaining cases, see: Fernida, "Hak Asasi Manusi…" (2009).
69 The authors took this term from Alain Badieu, as quoted by Dhakidae, "Partai Poltik…" (2009), 97.

References

Adiputro, Didiet. "Rachland Nashidik: Pelanggaran HAM mempersulit Tugas." *Perspectif Online*, 14 June 2009: http://www.perspektif.net/article/article.php?article_id=1092.

Azzelini, Dario and Boris Kanzleiter (eds.). *La Emresa Guerra: Bisnis Perang dan Kapitalisme Global*. Yogyakarta: INSISTPress, 2005.

Bhakti, Ikrar Nusa. "Kendala dan Peluang Reformasi Internal TNI: Suatu Kerangka Konseptual" in *Evaluasi Reformasi Internal TNI 1998–2003*. Sri Yanuarti (ed.). Jakarta: P2P LIPI, 2003.

Bryden, Alan and Heiner Hänggi, "Reforming and Reconstructing the Security Sector" in *Security Governance in Post-Conflict Peacebuilding*. Alan Bryden and Heiner Hänggi (eds.). Zurich: LIT, 2005: http://www.dcaf.ch/publications/security_governance_post_conflict_05/bm_sgpc_ch02.pdf.

Dhakidae, Daniel. "Partai Poltik di Persimpangan Jalan." *Prisma*, Vol. 28 (2009).

Fernida, Indria. "Hak Asasi Manusia, Akuntabilitas dan RSK." *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit*. Jakarta: IDSPS and DCAF, 2009.

Hänggi, Heiner and Vincenza Scherrer (eds.). *Security Sector Reform and UN Integrated Missions.* Munster: LIT & Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008.

Hidayat, Papang. "Lustrasi, Vetting dan Keadilan Transisional: Bagaimana Memperlakukan Mereka yang Bertanggung-jawab atas Kejahatan Serius di Masa Lalu." Limited paper (unpublished), 2009.

Human Rights Watch. *What Did I Do Wrong? Papuan in Merauke Face Abuse by Indonesia Special Forces*. New York: Human Rights Watch, 2009: http://www.hrw.org/en/reports/2009/06/24/what-did-i-do-wrong.

Indarti, Poengky (ed.). *Laporan Praktek Penyiksaan di Aceh dan Papua Selama 1998–2007*. Jakarta: Imparsial, 2009.

Komite Aksi Solidaritas untuk Munir (Kasum), *Risalah Kasus Munir: Kumpulan Catatan dan Dokumen Hukum*, 2007.

Kompas. "Reformasi TNI, Sudah Tuntas atau Masih Harus Berlanjut?" 10 October 2009.

Kompas. "Menhan Bertemu dengan Keluarga Korban Pelanggaran HAM." 23 December 2008.

Mabes ABRI. *ABRI Abad XXI-Redefinisi, Reposisi dan Reaktualisasi Peran ABRI dalam Kehidupan Bangsa*. Jakarta: Mabes ABRI, 1998.

Mobekk, Eirin. "Transitional Justice and Security Sector Reform: Enabling Sustainable Peace." *Occasional Paper No.13*. Geneva: DCAF, 2006.

Al-Mubarak, Taufik. "Apa Kabar, Milisi?" 30 October 2005: http://almubarak.multiply.com/journal/item/41.

OECD DAC. "Security System Reform and Governance Guidelines." DAC Guidelines and Reference Series. OECD, 2005: http://www.oecd.org/document/33/0,3343,en_2649_34567_33800289_1_1_1_1,00.html.

Reza, Bhatara Ibnu and Rusdi Marpaung (eds.). *Politik Militer dalam Penguasaan Tanah*. Jakarta: Imparsial, 2009.

Robertson, Geoffrey. *Kejahatan terhadap Kemanusiaan: Perjuangan untuk Mewujudkan Keadilan Global*. Jakarta: Komnas HAM, 2002.

Siboro, Tiarma (ed.). *Police Reform: Taking the Heart and Mind*. Jakarta: Propatria Institute, 2008.

Sukadis, Beni. "Departemen Pertahanan dan Penegakan Supremasi Sipil dalam Reformasi Sektor Keamanan." *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit*. Jakarta: IDSPS and DCAF, 2009.

Sunardi. "Militer, Politik dan Demokrasi dalam Amatan Teoritis." *Progresif*, Vol. 2, No. 1 (2002).

Tanuhandaru, Monica and Ahsan Jamet Hamidi. "Program Pemolisian Masyarakat." *Panduan Pelatihan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit*. Jakarta: IDSPS and DCAF, 2009.

TAP MPR RI No. VI/MPR/2000 tentang Pemisahan TNI dan Polri.

Tempo Interaktif. "Jenderal Ryamizard: Pembunuh Theys Hiyo Eluay adalah Pahlawan." 23 April 2003.

Tim IDSPS. "Pemisahan dan Peran TNI-Polri." *Penjelasan Singkat (Backgrounder)*, No. 4. Jakarta: IDSPS & Rights and Democracy, 2008.

Tim Investigasi Insiden Pasuruan. "Penembakan Protes Damai Petani, Ongkos Kemanusiaan Bisnis TNI di Alas Tlogo, Pasuruan, Jawa Timur." 3 September 2007: http://www.kontras.org/data/ALAS_TLOGO.pdf.

Tim KontraS. *Politik Militer dalam Transisi Demokrasi Indonesia*. Jakarta: KontraS, 2003.

UU RI No. 39 Tahun 1999 tentang HAM.

Wibisono, Ali A. "Reformasi Intelijen dan Badan Intelijen Negara." *Panduan Tata Kelola Sektor Keamanan untuk Organisasi Masyarakat Sipil: Sebuah Toolkit*. Jakarta: IDSPS and DCAF, 2009.

Widjajanto, Andi. "Kegagalan Politik Legislasi Parlemen." *Kompas*, 5 October 2009.

Wulan, Alexandra R. (ed.). *Satu Dekade Reformasi Militer Indonesia*. Jakarta: Pacivis and Friedrich-Ebert-Stiftung (FES), 2008.

Yudha, Dimas P. "Reflection of 10 Years Reformation Movement: Human Rights and SSR in Indonesia." Paper presented at Gwangju Human Rights Folk School, Republic of Korea, 2009.

Yunanto, S., M. Nurhasim and Ishak Fathoni. *Evaluasi Kolektif RSK di Indonesia: TNI dan POLRI*. Jakarta: The Ridep Institute and Friedrich-Ebert-Stiftung, 2005.

Yuwono, Andi K. "Perkap HAM dan Tantangan Polri." *VHR Media*, 31 July 2009: http://www.vhrmedia.com/Perkap-HAM-dan-Tantangan-Polri--opini1937.html.

Human Rights National Commission (Komnas HAM) in Human Rights Enforcement[1]

M.M. Billah

"*ABRI dual-function is a state of mind and not something that is physical.*"
(L.B. Moerdani)

"*Even if the sky is falling down; the (Human Rights) Law has to be enforced."*
(Baharudin Lopa)

Introduction: Context and Background
Pre-New Order

The 1955 election was the first election in the history of Indonesia. Political observers considered it the most democratic elections of the early 21st century and a victory for the four main parties in the 1950s that collected 80% of the vote. The four parties were: the PNI, made up of middle to upper class society; the PKI, which was supported by the city working classes and *tuna-kisma* farmer classes; the Masyumi, Modernist Muslim groups; and the NU, the political vehicle of Muslim traditionalists (Schwarz & Paris, 1999: 8; Liddle, 2001: vii). This era is often referred to as an era of liberal politics, in which "identity politics"[2] and/or "political mainstream"[3] parties oriented to the *berkibar* ideology[4] were censured by both Soekarno and Suharto, two Indonesian political authorities, for almost half a century before the latter was eventually overcome by the reform movement in 1998, where students led the crusade. After Masyumi was dissolved by Soekarno and political parties simplified

1 This chapter on the experience of Komnas HAM is not an official opinion of Komnas HAM as an institution and organization but a personal opinion of the author. The author was a member of Komnas HAM from 2002–2007, chairman of the Monitoring Sub-Committee from 2002–2005 and political rights commissioner from 2005–2007. As of October 2007, he was no longer a member of Komnas HAM as he had completed his five year work contract.

2 The term "identity politics" is intended to identify political groupings based on characteristics such as: gender (sex), religion and ethnicity. Those characteristics can affect the natural behavior of the people in a formal organization and therefore affect the functioning of the organization; even if such identification is not always included in the official organization rules and is not seen as important for the organization according to the values of the primary culture. This concept is discussed by Alvin W. Gouldner, who also uses the terms "latent organizational identity" and "social role." Identity and roles that are considered relevant and predicted by the organizational rules and cultural values are called the social or organizational identity manifests. See: A.W. Gouldner, "Cosmopolitans and Locals: Toward an Analysis of Latent Social Roles–I," *Administrative Science Quaterly*, Vol. 2: (December 1957); George A. Theodorson & Achilles G. Theodorson, *A Modern Dictionary of* Sociology (New York: Thomas Y. Crowell Company, 1969), 225.

3 The meaning of "stream politics" is similar to the meaning of "identity politics" but the word "stream" here refers to the term used by Geertz when describing "religious" variants in Java, namely "santri" and "abangan" (Clifford Geertz, *The Religion of Java* (Glencoe: The Free Press, 1960)). The concept of "political mainstream," according to Evans, is commonly used as a tool to explain political behavior in Indonesia. For example, in the 1950s, the flow of "santri" is associated with the Masyumi and NU, while the flow of "abangan" is associated with the PNI and PKI. See: Kevin Evans, "Politik Aliran yang Mana?" *Tempo magazine*, 30 March–5 April 2009.

4 Three different ideologies that are considered dominant in this era are: nationalism, Islamism and communism, as reflected in the four winning parties during the 1955 elections.

by the Suharto regime, the NU stood still, even though since the mid-1980s the NU was no longer officially a political organization.[5]

Photo 3. Soekarno Inaugurated as Head of Military by General Soedirman in Yogyakarta, 15 February 1947

Both Soekarno—with his "Nasakom politic"[6] and "*Terpimpin* Democracy"[7]—and Suharto—with his "political development"[8] and "*Pancasila* Democracy"[9]—did not successfully create a democratic government in Indonesia. In fact, both of them delivered two authoritarian types of government that prevented societal participation through elections and other political activities commonly conducted by political parties and organizations in a democratic state. The difference between Soekarno and Suharto is that Suharto survived thirty-two years longer compared to Soekarno's six, as Suharto successfully dissolved the PKI, tamed the army and succeeded in creating an economic growth average of 6% per year for almost three decades;[10] all of these factors gained him support from the people (Liddle, 2001). If the main centre of power struggle in the era of "Orde Lama" is what is referred to as the "Soekarno-Military forces (Angkatan Darat)-PKI" triangle (in which Soekarno—who does not have any party and

5 In the first election of Suharto's "New Order," NU still participated in the election but in the next election, Suharto's regime forced the merging of some parties into two parties—the PDI (Indonesian Democracy Party) and the PPP (Partai Persatuan Pembangunan)—so in the 1977 election there were only three parties that competed: the PDI, PPP and Golkar.

6 Nasakom is a compound acronym of **Nas**ionalis (nationalist), **A**gama (religion) and **Kom**unis (communist), a term that indicates the existence of the PKI (Indonesian Communist Party) in the 1961 government. This principal initiative of Soekarno, who focused on unity as a national anti-thesis of what he called the 'gontok-gotokan' type of 'free fight liberalism' of politics practiced in Indonesia in 1950s which using a multi-party system. This further emphasizes the idea that free competition has to be limited in order to achieve the necessary commitment to the most correct, most loyal basis, and whole-heartedly to the state ideology (see: Rex Mortimer, *Indonesian Communism under Sukarno: Ideology and Politics 1959–1965* (London: Oxford University Press, 1974), 90). Soekarno's idea of Nasakom can be found in his writings "Suluh Indonesia Muda" (1926). He entitled his writing *Nasionalisme, Islamisme, dan Marxisme* (see: Sukarno, Di Bawah Bendera Revolusi (Canberra: Panitya Publisher Di Bawah Bendera Revolusi, 1965)).

7 The "Terpimpin Democracy" system was created by Soekarno in July 1959 and imposed until 1966. Mackie (1974) states that it is hard to decide how the system works and hard to mention what is the main anasir. However, he says that there are four characteristics of "Terpimpin Democracy" in the period from 1959–1966, namely: (i) a very important triangle relationship between President Soekarno, the leaders of the military and the PKI (and to a lesser degree other leaders also parta) as the central focus of the power struggle; (ii) the Nasakom concept as Soekarno's main basis to organize and manipulate the political representatives; (iii) the indoctrination and the official ideology; and (iv) the tendency towards an inflationary budget and a serious economic slowdown. See: J.A.C. Mackie, *Konfrontasi: The Indonesia-Malaysia Dispute 1693–1966* (London: Oxford University Press, 1974), 81.

8 Suharto's New Order regime's "Development Politics" emphasizes the growth of Rostowian economists as an anti-thesis of "nation building" ("nation and character building") of the era of Soekarno's "Old Order" dilapidation that transmitted economic and political instability (R. William Liddle, "Pengantar" in Salim Said, *Militer Indonesia dan Politik: Dulu, Kini dan Kelak* (Jakarta: Pustaka Sinar Harapan, 2001), vii).

9 "Pancasila Democracy" was practiced to ensure political stability as a competitor of "liberal politics" in the 1950s by the fall-colored government. Suharto stated that, "The Democracy we practice is The Pancasila (democracy). It's main characteristic is the rejection of the poverty, backwardness, chaos/conflict, exploitation, capitalism, dictatorship, colonialism and imperialism. This is a policy that I choose to believe" (quoted in Adam Schwarz, A Nation in Waiting: Indonesia in the 1990s (Boulder, CO: Westview Press, 1994), 24). However, the practice of "Pancasila Democracy" is basically the same as the "Terpimpin Democracy," which was successfully developed and practiced strictly by Suharto, while Soekarno was considered to have failed in implementing the "Democracy Terpimpin." If in Soekarno's "Democracy Terpimpin" triangle relationship "Soekarno-TNI-PKI" dynamited the political slant at that time, on the other hand Suharto's "Pancasila Democracy" has three national political strengths, namely: (i) presidential institutions; (ii) ABRI; and (iii) the bureaucracy that supported the Golkar hegemon (Gaffar, 1995). In both types of democracy there are the same characteristics, namely, the army was considered a legitimate political player under the term "Middle Way" or Jalan Tengah Nasution in the 1950s, which changed to "Dwifungsi" (or dual function) in the period of Suharto (Liddle, "Pengantar" (2001), vii). In short, this is like the expression "old wine in new bottles."

10 During the three decade reign of authoritarian rule, Suharto had successfully improved political stability and put policies in place to change the Indonesian economy. Average growth of around 7% lead to more than 10 times the per capita income and decreasing poverty for approximately 70% of the population in the late 1960s to around 11% in the middle of 1990s (Adam Schwarz & Jonathan Paris (eds.), *The Politics of Post-Suharto Indonesia* (New York: Council on Foreign Relations Press, 1999), 2).

organization—is maintaining a very dominant position in the political system by maintaining the balance of the two political forces [Military and PKI], which have national organizing principles that have a concrete political goal [Mackie, 1974]), Suharto closely held political power and controlled the military dynamic (at least until the end of 1980), including the Golkar (and bureaucracy), perfectly.[11]

New Order

The New Order regime was an alliance between the intellectual-technocrat-civilians and the military-modernizers. In this alliance, technocrats provided the conceptual basis for political change that supports economic development, while the military (especially AD Forces) provides a guarantee of security and political stability after gaining legitimacy for involvement in politics under the "dwifungsi" (dual-function) doctrine.[12] In short, both of the elites had a strong ideological confidence, namely "development-ism ideology" and "the doctrine of military dual function" (Mas'oed, 1994). Thus, Indonesian political observers have sought to identify Suharto's New Order characteristics with various terms,[13] such as the "bureaucratic-authoritarian state" (King, 1982). Such bureaucratic-authoritarian systems are marked by five basic characteristics: (i) a regime that suppresses rights and political freedoms and practices state corporatism,[14] political cooptation and repression; (ii) a regime that incorporates the military, technocrat, technologist, civil and military bureaucrats; (iii) the "development-ism" ideology, stability is held as a tool for economic growth; (iv) development policies enjoyed by those who have access to power and/or capital; (v) power is legitimated through materials, domination and hegemony, so that the government becomes very dominant (Surbakti, 1995; Pratikno & Lay, 2002). This system produces a very

11 Gaffar (1995) states that the politics of Suharto were coloured by the mutual interaction between the three main national politics, namely: (i) the dominant presidential institution; (ii) ABRI, who established the conducive atmosphere for the implementation of the president's policies; and (iii) institutional bureaucracy as the political machine of the hegemonic party (Golkar) [Gaffar, 1995].

12 The doctrine of bi-function was invented in the late 1950s by Nasution as the basis for the role of the military in politics. Military involvement in politics, according to Said (2001), first appeared in the revolution time when the military, under the command of General Soedirman, appeared as a political power amongst various well-known political forces. In spite of the early 1950s military leaders' efforts to end the TNI's political role, political circumstances at that time and later even turn to encourage the army to play a political role. See: Salim Said, *Militer Indonesia dan Politik: Dulu, Kindi dan Kelak* (Jakarta: Pustaka Sinar Harapan, 2001), 8. This doctrine was broadened significantly under the Suharto government, which firmly gave the rights of the main political role to the military by positioning them as a governor, in cabinet positions and in seats in parliament. In other words, the role of its (military) social political regime dramatically extends through the New Order. Military officials were allocated seats in the national parliament and the MPR, a body which held one electoral meeting every five years to select a president and vice president. Military officials also occupied seats in the provincial and district level institutions and, given the non-military position in government, worked as ambassadors, provincial governors, senators and also in many prestigious positions in the bureaucracy. In the early 1990s, it was estimated that there were 14,000 military personnel holding positions outside the formal structure of the military (Shiraisi, 1999; Schwarz & Paris, 1999: 11–2; Liddle, 2001). Military involvement in politics is a result of the interaction of two main factors: (i) the political involvement of the army since its creation (about the creation itself; political behavior of Panglima Besar Soedirman who had always tried to maintain the military's autonomy from the government; and the army experience in running the military government in war in the period 1948–1949); and (ii) civil institutions are too weak to function properly (Said, 2001: 2).

13 King (1982) uses the term bureaucratic authoritarianism to describe the government's efforts in creating the New Order "restrained participation" ("controlled participation") through the creation of state corporatism institutions. Jackson (1978), using the term bureaucratic polity, states that the participation and power in the decision-making process at the national level is fully occupied by state-level officials, including the technocrats. Crouch (1979) uses the term "Neo-patrimonialism" while describing political elites and New Order political authorities who had built political support through the economic resource distribution system. Anderson wrote that "the New Order is best understood as the Resurrection of the state and its triumph vis-à-vis society and [the] nation" (Anderson, 1983: 487). However, there are some observers who see the other side, such as Emmerson (1983) with the term "Bureaucratic Plurailsm," which shows that Indonesian politics is not entirely totalitarian because there is still fairly fierce competition among the groups of state officials in implementing their vision in the development of the nation. Liddle (1987) concluded that Indonesian politics is not entirely dominated by high state officials at the central level because the decision-making process also involves some other political actors, such as regional officials, the council members, journalists, consumers, and others—despite the fact that involvement of parties in the decision process is indirect (Liddle, 1987: 129). MacIntyre (1990) states that the groups at the end of the 1980s had been able to organize themselves to influence government policy through the participation of the group and not in klientilisme ways (1990: 245). See: Pratikno & Lay, *Komnas HAM 1993–1997: Pergulatan dalam Otoritarianisme* (Yogyakarta: Penerbit FISIPOL UGM, 2002, 7).

14 Schmitter gives the definition of a corporatist state as follows: "Corporatism can be defined as a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by states and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and support" (quote from: Bob Jessop, *State Theory: Putting Capitalist States in their Place* (Pennsylvania: The Pennsylvania State University Press, 1990), 111). In a corporatist state, Korporatis in the Country, different functional groups deliberately given monopoly rights by the state as a reward for the articulation of demands, supports and controls the selection of leaders of the group. The goal of this system is to muffle conflicts between classes and groups to create a balance, cooperation and harmony in the relationship between the state and society (Mas'oed, 1994). Corporatism institutions that become agents and aspirational leaders could be a medium of influencing government policy, but this function is less compared to its role as the regime representative to control society's demands and ensuring the government's domination in the policy making area. In this era, the country is often seen as proof of the most dominating state in the political history of Indonesia since the colonialism era (Pratikno & Lay, 2002).

dominative state.[15] Such repressive domination is performed by the state apparatus,[16] especially the military (AD), in their performance of political roles in civilian arenas, under the doctrine of dual-function rooted to the revolution.[17] This perspective is a foothold for "authoritarianism practices" and confidence in maintaining political stability (Pratikno & Lay, 2002) is expressed as the self-image of the New Order.[18] There is no space for the individual or individualism, including the rights of individuals, so that the protection of individual rights and the independence of state power are both ignored (Bouchier, 1991).[19]

New Military Order

The Indonesian military in the New Order[20] was organized into a structure to maintain internal security and provide a framework for guerrilla operations and conventional operations at a lower level,[21] which was transformed into two kinds of forces: (i) combat troops whose duty was to attack the enemy wherever they were located; and (ii) territorial troops who are placed in a particular region as the main resistance forces and also to prepare people to be involved in war[22] (Said, 2001: 5). The two most important operational commands both militarily and politically were Kostrad[23] and Kopassus,[24] the two commands of the army which were trained, given the best military equipment and were ready to act[25] (Shiraisi, 1999).

The territorial command was not only designed to mobilise people but to be a resource in support of guerrilla power and internal operations. All levels of territorial command had an intelligence function and all levels above the military district command had intelligence staff to support its operational command whose duty was to report to the BIA (Army Intelligence Forces)[26] (Shiraisi, 1999). The apparatus, community and network

15 The integrality perspective believes that the foundation of the state must be based on institutional norms and be able to reflect the political system and traditional culture of the Indonesian people, where people live together in the spirit of gotong-royong (togetherness), family, working together and there is no separation between society and the regulations. Political order and social harmony is the most important value in managing the social-political relations between the state and society, between individuals and between groups in the community. Supomo said that: "According to this perspective, there will be no dualism between 'Staat and individuals.'" The state is an integral community, its members and its parts are the organic unity, a unity which does not put one individual over others, a unity based on togetherness. For more detailed discussion about "state integralistik." See: Marsilam Simanjuntak, *Pandangan Negara Integralistik* (Jakarta: PT Pustaka Utama Grafiti, 1994).

16 Repressive state apparatus (RSA) is a term used by Althusser (1986) to mention one of the two state apparatuses (i.e., repressive state apparatus and the ideological state apparatus, which consists of the government, administration, army, police, court, prisons, etc.). An RSA functions by using violence (functions by violence); for example, the military uses weapons. See: Louis Althusser, "Ideology and Ideolgical State Apparatuses (Notes towards an Investigation)" in John G. Handhardt, *Video Culture: A Critical Investigation* (New York: Visual Studies Workshop Press, 1986), 56–95.

17 There are at least three sub-factors that become a basis for military involvement in politics: (i) a self-created army; (ii) the political behavior of Soedirman who always tried to maintain army autonomy from the government; and (iii) the army experience in running the military government in the guerrilla war 1948–1949 (Said, 2001: 2).

18 The New Order self-image is a developmentalist regime, which had a high demand for political stability. See: Michael R.J. Vatikiotis, *Indonesian Politics Under Suharto: Order, Development and Pressure for Change* (London: Routledge, 1993), 32–59. The New Order referred to themselves as "a developmental regime, dedicated to the achievement of a modern industrial economy, including a high standard of living for all Indonesians" See: R. William Liddle, "A Useful Fiction: Democratic Legitimation in New Order Indonesia," a draft to be published in Robert Taylor (ed.), The Politics of Elections in Southeast Asia (Cambridge: Cambridge University Press, 1996), 2.

19 Depiction of this kind of political history in Indonesia had been spread to the community through schools, books, cinemas and monuments. See: David Bouchier, "The 1950s in New Order Ideology and Politics" in D. Bouchier and J. Legge (eds.), *Democracy in Indonesia: 1950s and 1990s*, Monash Papers on Southeast Asia No. 31, Center for Southeast Asian Studies (Melbourne: Monash University, 1994), 51–17).

20 Military forces consist of three elements—the army, navy and air force—plus the National Police, and have the power of half-a-million personnel led by Panglima, assisted by two of the staff, i.e. the general staff and head of the social-political staff, together with the head of navy staff, the air force and police. The overall numbers of military personnel in the 1970s were as follows: 240,000 army, 47,000 navy, 23,000 air force, and 190,000 police (Armed Forces, 23 July 1977). Of all the forces, the army seems more dominant than the two others because: during the New Order regime, its Panglima was always from the forces (only in President Abdurrahman Wahid's time was the position of TNI's Panglima held by non-official forces); of the number of army personnel in the Mabes ABRI (at the end of 1997, 11 out of the 15 top leaders in Mabes ABRI were from the army while the two others were from the navy and the rest from the air force and one the National Police); the number of operational commands (out of 16 operational commands, 12 is the army commandant); and the opportunity to have the most important political positions of the military personnel (Shiraisi, 1999).

21 The Indonesian Military organization designed by Nasution, who formulated the design based on the guerrilla war strategy experience (war of attrition) (Said, 2001).

22 A.H. Nasution, *TNI*, Vol. 3 (Jakarta: Seruling Masa, 1971), 160–161 (in Said, 2001: 5).

23 Kostrad (Strategic Reserve Commando) was Suharto's basis for power when he began to hold power in 1965–1966.

24 Before, its name was RPKAD, then it was changed to Kopasandha before finally being changed to Kopassus.

25 A Kostrad commander was appointed from the two-star position to three-stars in 1996, while the two divisional commanders became major-generals. A Kopassus commander was appointed from one-star to two-stars, and the rank was changed from commander to commander-general. It should also be noted that Infantry Brigade 17 Kostrad and Kodam Commando V/Jaya, together with Kopasssus (especially Group IV and V) and the First Marine Infantry Brigade, are strategically important for the security of Jakarta (Shiraisi, 1999).

26 The BIA was created in January 1994 to replace the army intelligence that was very powerful, which was known as BAIS ABRI. First led by the assistant of the head of general staff intelligence of the army, BIA obtained its independence in November 1995, reversing the placement of dawah BAIS ABRI. For more information, see:

intelligence was also dominated by the BIA, which facilitated military control over the political process.[27] During the New Order, armed forces, especially Army Forces (AD), became the vein of the political system and backbone of *Golkar* (effectively "ruling party"). Army officers[28] possessed good values for military life (discipline, hierarchy, self-sacrifice), a paternalistic draft of civil-military relations (that included the doctrine of dual-function) and had a special responsibility to save the nation from foreign and domestic enemies. They believed that since the 1940s, there were many conspiracies, regional separatist rebellions and communists, Islamic militants,[29] and liberal democrats in history and politics that were destroyed by military leadership to uphold national unity and national self-confidence. The military was ready to act if needed and justified (Liddle, 1999). This is considered to be the nature of the core of the military self-image of the New Order.

The military, which was the political background of the Suharto government, had structural power as a result of its monopoly over coercive state power, legitimizing its role in the political process and as the dominant Indonesian intelligence community, and its domination over the regional level (Shiraisi, 1999). Under the doctrine of bi-function,[30] the military took a direct role in daily politics—military officers become cabinet members, governors and ambassadors, and were allocated seats in parliament[31] (Schwarz & Paris, 1999: 3; Shiraisi, 1999). Military officers became dominant political actors at this time, similar to the "rule-type praetorian" (Jenkins, 1984).[32]

The role of military involvement in politics is based on the civil-military relationship model, built on the experience of the revolution: the Indonesian military is a self-created army[33] that also serves as the executive government[34] during guerrilla war, which was then used by the military as a basic justification for its historical

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Editors, "Current Data on the Indonesian Military Elite: September 1, 1993–August 31, 1994," *Indonesia*, No. 58 (October, 1994), 84–85) (in Shiraisi, 1999). In the early 1970s, violence was the main instrument used to achieve political stability. Numerous intelligence agencies were formed to control the citizens, such as BAIS (Strategic Intelligence Body), which consists of the army, BAKIN (State Intelligence Coordination), and educational institutions such as Lembaga Sandi Negara or the Jaksa Agung Muda (Youth General Attorney) of intelligence (Tanter, 1990: 218). Bodies that monitor down to the rural level are BAIS, Ditjensospol and Kopkamtib (Kopkamtib is the most important security tool of the New Order regime during the two decade before it was replaced by Bakorstranas). BAIS was established in 1983 and deals directly with the Headquarters of ABRI. Its duty is to analyze the social-political situation and national bodies. BAIS also deals closely with ABRI, which has a duty to take social and political control. Ditjensospol is under the coordination of the Ministry of Internal Affairs and is an intelligence agency that helps this department. Its duty is to help local government maintain its stability. There is a body similar to Ditjensospol in the provincial and district/municipality but the function of this body is not too clear. However, its duty is usually to filter the potential members of the DPRD and prospective state employees, and to issue permits for research activities. With Presidential Decree 1969, the body is not only responsible for clearing the PKI remnants but also to handle issues that threaten national security, including overseeing the activities of the press and those who are critical to the government. Kopkamptib is the organization with unlimited power nationally and locally. Laksuda is Kopkamtib at the local level. "Kopkamtib opens the opportunity for the military and takes control of the nation de facto through emergency law irresponsibly" (Tanter, 1990: 220). Kopkamtib became the most repressive and intimidating body, which always monitored the issue of political succession in every social organization, and arrested whoever they wanted. Kopkamtib and Laksuda dissolved on 5 September 1988 and were replaced with Bakorstanas and Bakorstranasda (Pratikno & Lay, 2002: 25).

27 In addition, non-military intelligence—such as BAKIN, which reports directly to the president, to the directorate general of Social-political Affairs of the Ministry of Internal Affairs, and to the Youth General Attorney intelligence office—is led by military officers (Shiraisi, 1999).

28 The active army officers are members of a small, self-contained community and those who have graduated from the Military Academy in Magelang, Central Java (Liddle, 1999).

29 The EKI (extreme left) acronym was created in the 1990s to name the (former) followers of communist ideology (the PKI and other similar bodies), and also the EKA (extreme right) for those following radical Islamic ideologies.

30 According to the ABRI Panglima (1983–1988), General L.B. Moerdani. The ABRI bi-function is a state of mind and not something physical. The only visible thing is the embodiment of the state of mind itself (Said, 2001: 27–8).

31 Political roles are played by military officers through the TNI territorial system through kowilhan, kodam, kodim, Koramil, and Babinsa levels, which serve as the intelligence and TNI operations network that covers all areas in Indonesia and dominates regional areas. This kind of levels had, at the time of the revolution, the logistics defense function. The army, without modern equipment or weapons, was nearly forced to rely on the support of the people in the battlefield. But during the Terpimpin Democracy and the New Order, the territorial system was used by the repressive government more as a tool. Public political activities are being controlled and supervised if deemed threatening to the interests of the state or the officers. As the money and knowledge, the organization is also a major source of political power that is almost universal (Liddle, 2001).

32 Nordlinger distinguishes the three types of "praetorian" apparatuses, namely: moderators, guardians and rulers. Praetorian moderators use veto power over many government decisions but they do not control their own government themselves. A praetorian guardian holds the government in the hands of their own over civil government, usually for two or three years (the term "praetorian" comes from the elite troops in The Praetorian Roman empire, which was originally formed to oversee and protect the emperor but in the end was used to replace the emperor and control its successor). See: Eric A. Nordlinger, *Soldier in Politics: Military Coups and Governments* (New Jersey: Prentice Hall, 1977). This book has been translated into Indonesian by Drs.Sahat Simamora under the title *Militer dalam Politik* (Jakarta: Rineka Cipta Publisher, 1990). "Rule-type praetorian" is a kind of praetorian that not only controls the government but also dominates the regime and their political and economic goals are very ambitious. This type forces a fundamental change in power repositioning by eliminating almost all existing power centres. Some of this praetorian type try to mobilize people by creating a mass party (or movement) which they strictly control. They enter politics, economics and society at the highest level (Jenkins, 1984: 19).

33 One that might be the most important is the TNI experience as a self-created army; the army that created itself at the beginning of the Revolution before the command of the civilian government.

34 Said in The Genesis of Power, Salim follows the root of TNI political power to the Revolution and the actions of General Soedirman, President Soekarno and other founding fathers.

role. In other words, the root of TNI political power is embedded and therefore not easy to pull out (Liddle, 2001: xiii). Moreover, because of its experience as an executive at the time of the revolution, the military was also supported by an independent financial system.[35] The dominant relationship of the military over civilians was revived in the 1950s and, after 1966, become the most important model in the structure and practice of the Indonesian government (Said, 2001: 7). Military officers were therefore hard to convince that they should be subject to the control of civil government officials. This is, according to Liddle (2001), a source of their arrogance[36] over the Indonesian people, which increased during the 1950s and 1960s when they successfully destroyed the various resistance movements against the central government or the state.[37]

Military arrogance is still clearly visible, although its role in the non-military field is increasingly censured since the reform era.[38] However, this does not mean that it does not appear factionalist in its internal politics since the beginning of its formation in the revolution era[39] until the end of the Suharto regime.[40] In the 1980s, there were three known factions: the "45," which consisted of a "politically pragmatic"[41] military wing and "principled" wing (Jenkins, 1984)[42] and the post "45" (Britton, 1973).[43] The "45" core group that surrounded Suharto was very "pragmatic" and viewed Indonesian society as in transition and therefore it remained very important for the military to play a primary or dominant role in daily life. They believed that the intelligence services could and should manipulate the political process to achieve the desired result.[44] In short, the "pragmatic" group did everything to achieve its goals.

35 The pattern of financial independence starts with smuggling and bartering—exchange without the exchange of money—forced by the revolutionary situation. Most of the TNI budget, approximately three quarters of the budget, comes from non-governmental sources, the foundations of which are managed directly by military institutions. Moreover, the management of these foundations is concealed so that their own government, let alone the public, do not have adequate information about the army's finances. Money and knowledge are the two main sources of political power everywhere. As long as the TNI has its own financial resources and hides the figures of its income and expenditures, the Indonesian people, through their representative government, might not be able to uphold the supremacy of civilian oversight (Liddle, 2001).

36 The TNI members' arrogance—including soldiers and officers—to a fellow human being, especially to their sociey, is depicted by Liddle (2001) as those who claim to follow the behavior of the TNI as far as possible at the time of Terpimpin Democracy while living in North Sumatra, and at the time of the New Order, and while living in several areas, including Bandung, Kulon Progo and Banda Aceh, as well as visiting many other regions including East Timor and from Sabang to Wamena in the Baliem Valley. There is a strong impression that many members of the TNI are not ready to behave like professional soldiers who understand and obey the norms of humanitarian and military forces that have long become the standard of the world (Liddle, 2001: ix–xi).

37 However, they often forget or do not want to remember that some of the resistance movement, including the Thirty of September Movement (G 30 S PKI), comes from the army itself (Liddle, 2001: xiii).

38 The strength and power of TNI's arrogance in politics is reflected in the results of the MPR Annual Session until 2009, while at the same time the people outside the council demand removal of the role of TNI outside the defense field. However, this can involve 'horse-trading' between political parties and the army faction. Besides, the TNI is also strongly suspected to be an actor behind the riot, bombings and violations and that there is no complete solution to the horizontal conflict.

39 Military factionalism during the revolution. See: Said, *The Genesis of Power…* (1985).

40 When viewed from the proximity of military faction to the core-center of power, as presented by Jenkins (1984), this faction consists of: an inner circle, an outer circle and a focus group. This core group is marked by the following characteristics: (a) very loyal and has collaborated for a long time, and all of a rear-intelligence; (b) the most trusted is given a dual function; (c) holds a key position exceeding the normal time frame; (d) is considered very "Islamo phobia"; and (e) has the same view in terms of business and has a business relationship with the "capitalists" (Jenkins, 1984). Such divisions are often not visible and are submerged by many other issues, but can be found while there is tension at the same time. For instance, in 1974 "political vs. principled-pragmatic" dichotomies appeared in the form of what is called by Crouch "political-financial" with "military professionals" wing (Jenkins, 1984).

41 This "pragmatic military" wing regards the people of Indonesia as still in transition and thus the military should play a dominant role in daily life. This group believes the military should remain dominant in the community. This group also believes that intelligence can and should manipulate the political process to achieve the goals that have been determined. In short, this "pragmatic military" wing's principal is "to reach the goals by every possible way" (Jenkins, 1984: 31). This "pragmatic" group in general tends to be action oriented; only a few of them who have an interest in abstract thought. They are inclined by habits, trainings and experiences to build on what is viewed by opponents as a "Maciavellian" means to achieve the goal (Jenkins, 1984: 32).

42 Even though there was no military withdrawal from all positions, the "principled military" wing requires a lack of military involvement in the community. A member of this wing is less suspecting of Islamic political groups and requires a system of government based on law that does not corrupt and does not misuse power, especially by intelligence officers. More members of this wing have a better education and are more reflective than the "pragmatic" wing, puting more emphasis on moral considerations (what is good and bad) before they act. This wing not only believes there is a limit on the need for military involvement but also believes the moral boundaries that set the action. This wing views the need to reform the military to get "back to basics," reducing the level of corruption and not using a confrontational approach with Islamic groups (Jenkins, 1984).

43 In the last decade, the new officers started to occupy an important position in the TNI. In general, these new generations come from the privileged segment of society that have a comfortable city life, unlike the previous generation. They are more confident—even arrogant—and have a strong sense of unity (l 'esprit de corps) and are proud of their professionalism. These young people are not moved by the experience and do not have direct experience in the struggle for independence (Britton, 1973). Some of the "principled" wing's thought penetrates this new military generation.

44 When they identify Islamic politics as the main threat to the society, they feel that they can use all the tools, including using state intelligence to face, split and divide Muslim political groups. In doing so, they have full support from the president (Jenkins, 1984: 30–31).

At the end of the 1980s, Suharto, who held onto his power with a tighter grip,[45] used Islam as the internal political direction of ABRI, aligned with the religious group, and thus the military was partitioned[46] into what is known as the green faction (Islamic)[47] and the red and white faction.[48]

Indeed, it is not clearly visible how strict or how deep these dividing lines are but the division is wide enough that during the last months of the Suharto regime, the military was not politically effective, remaining split and with no option on how to respond to the street demonstrations, and divided when dealing with Suharto (Paris & Schwarz, 1999: 12).[49]

National Commission on Human Rights (KOMNAS HAM)[50]

New Order & Human Rights

Although *Pancasila*[51] is the formal state ideology, interpreted in the framework of the regime's interest as the legitimate ideology that animates the integral view,[52] the development-ism ideology is based on political stability as the basic justification of the authoritarian bureaucratic New Order.[53] The state's integral concept presupposes the existence of a spirit of "togetherness" and kinship (collectivism) among its elements. State policy in such a political system is not able to be responsive to the interests of the community. In this context, human rights then become irrelevant, or at least the issue of human rights has to be viewed in a particular framework.[54] The New Order regime did not consider human rights in accordance with the Indonesian people, who had appreciated human rights through the 1945 Constitution and *Pancasila*. The state rejected the ideas of human rights as understood by the West. Individualism of human rights ideas is always faced with the spirit of collectivism and kinship that are considered to be at the heart of the Indonesian nation. All concepts of human

45 In the last decade, President Suharto himself made all important political decisions and ensured that other officials in his government were only implementers. The political role of ABRI decreased when Suharto became stronger. After overcoming all the challenges against the government, at the end of the 1980s Suharto no longer needed a strong political role in the military and was able to let ABRI's political power decrease. In addition, Suharto's disagreement with Panglima ABRI General Benny Moerdani can be seen from the reorganization withdraw act on military intelligence operations, which was a primary power base of Moerdani. The result was decreasing the ability of ABRI to anticipate and react to political events (Paris & Schwarz ,1999: 11–2). In early 1998, none of its officers—including Pangab Wiranto and even Pangkostrad Prabowo—had formulated independently an action plan to deal with increasing protests of students and the community while the power of Suharto over the political system was running out (Liddle, 1999).

46 This partioning appears to increase to the significant level of civil society polarization, a trend that occurred between two groups of India: it is Muslims who decide their political interest in the religion and, on the other hand, Muslims who join the non-Muslim Indonesia (Christian, Hindu Bali and others) (Liddle, 1999).

47 The green faction consists of officials who are close to the Muslim modernists; its leader up to May 1998 was Suharto's son-in-law, Letjend Prabowo Subianto (Paris & Schwarz, 1999: 12).

48 The so-called red and white faction represents the nationalist army, the secular wing. General Benny Moerdani, ABRI commander from 1983 until 1988, and a Roman Catholic official are rumored to have discriminated against the righteous Islamic officials and the appointment of a campaign on the basis that they can help to change Indonesia to be an Islamic State. Moerdani himself has denied that he had produced such a policy. At the end of the 1990s, Wiranto, especially after he became KSAD in the year 1977, lead the red-and-white faction until the period of Suharto's resignation.

49 If the military took an independent position against Suharto—which did not occur during the end of his power—then its top leaders indeed could not let actions risk an open civil war as happened at that time. Suharto did not make it possible for the military to reach any independent agreement of its goals while ensuring that both Panglima ABRI Wiranto and Panglima Kostrad Prabowo had their own important associates in the command (Paris & Schwarz, 1999: 12).

50 The dynamics of Komnas HAM is well-written in two studies on Komnas HAM in two Pratikno & Lay books, which are the sources of this section's writings. See: Pratikno & Lay, *Komnas HAM 1993–1997: Pergulatan dalam Otoritarianisme* (Yogyakarta: UGM FISIPOL Publisher, 2002); Lay & Pratikno, *Komnas HAM 1998–2002: Pergulatan dalam Transisi Politik* (Yogyakarta: FISIPOL UGM Publishers, 2002).

51 As written by Pratikno & Lay (2001), Pancasila is seen as the best ideology to describe the relationship between people, between people and the state, between the ruler and the occupied, between God and man and between the world and the universe. The state is the forefront agency that will take its people to their ideals. Thus, whatever the state does is considered an act of the people and should not be preceded as it would disrupt stability. Pancasila is misused by the regime who uses it as a basis for "an effective instrument of political discourse and behavior" during the New Order . See: Douglas E. Ramage, "Pancasila discourse in Suharto's late New Order" in Bouchier, D. and John Legge (eds.), Democracy in Indonesia: 1950s and 1990s, Monash Papers on Southeast Asia No. 31, Center for Southeast Asian Studies (Melbourne: Monash University, 1994); (Pratikno & Lay, 2002: 24).

52 About the state integralistic view, see footnote 14 above.

53 Brigjen (Purn) Abdul Kadir Besar, a state integralistic follower, states: "Pancasila as an integralistic ideology is deeply paternalistic and the government has the duty to protect all parts of the national family equally. The emphasis is on government duty towards individuals and groups rather than on individual rights. Checks on government power are unnecessary because this would hinder government ability to fulfill its protective duties towards all" (Douglas E. Ramage, Politics in Indonesia: Democracy, Islam and the Ideology of Tolerance (London: Routlegde, 1995)).

54 One member of Komnas HAM who had a military background (General Major Purnawirawan), affirmed the partikularistik concept and human rights when interviewed by the UGM Research Team (Lay & Pratikno, 2002: 120).

rights were largely criticized by the New Order regime, which still stood for repressive values and a system that ignored the values of human rights. That is why, "until 1990 Indonesia had not been a member of the UN Human Rights Commission established in 1947."[55] The government believed that Indonesia was already perfect with *Pancasila* and the 1945 Constitution. Ideas of human rights were not considered to be correct. Human rights issues were viewed as an "outside" problem, which was against *Pancasila* and the 1945 Constitution, being the domestic values of Indonesia (Pratikno & Lay, 2002: 39-40). Such a country, as Pratikno and Lay state, is a country that has a very high probability of human rights violations (Prasetyo, 2001: 28) and also ignores the emergence of human rights and violations such as those that occurred during the New Order regime of Suharto (Pratikno & Lay, 2002: 21; 40–41, 42–43). In the name of state ideology and government programs, the military apparatus and civil bureaucracy can do everything considered as the state's perspective (legally), including the use of violence, which means that human rights violations by the state are potentially wide open (Pratikno & Lay, 2002: 30). For example, the implementation of the Anti subversion Law (Law No. 5/1969) is a justification of the government actions on behalf of the state and national interest to protect the emergence of another ideology and political system that endangers *Pancasila*.[56]

Komnas HAM Pre-1998

As already expressed, the political format and power constellation of the pre-1998 period has a single monolithic character, at the state and community levels, which opens a broad possibility for the state apparatus to use violence—which is supported by what is called a "security approach"—that is highly vulnerable to human rights violations and often appears as a historical and empirical reality.[57] Many of the alleged events that show strong evidence of serious human rights violations by state officials obtain strong responses from the country and even from the international community, i.e. international pressure from the Human Rights Commission forum on 27 January 1989, where Indonesia was strongly attacked for performing various human rights violations.[58] Indonesia was also subject to IGGI pressure led by the Netherlands to improve their quality of human rights as a reaction to the shooting in Santa Cruz, Dili, East Timor, in November 1991 and this pressure soared at the Conference VIII INGI in Odawara, Japan on 22 March 1992.[59] Dutch insistence was regarded by the New Order Government as an act of interference in the state's internal problems, which led to the dissolution of IGGI at the beginning of 1992 by Suharto, the cancellation of the planned purchase of F-16 jets from the US and the resignation of the IMET (International Military Education and Training) in response to the lack of enforcement of human rights in Indonesia[60] (Samego, 1998; Pratikno & Lay, 2002: 60). International pressure also came from

55 "This is caused by the existence of a wrong perception about Human Rights in both concept and in practice," said one of the sources interviewed by the researchers of Fisipol UGM (Pratikno & Lay, 2002).

56 Subversive actions covering a variety of activities will be considered not only dangerous to national security and the state ideology Pancasila but also to the social order, production activities, and even to personnel and Suharto's family. A person can be punished just for stating sympathy for a state enemy or if they were not familiar with the state. Thus, spying activities become more regular (Article 1–3). A critical attitude of the government's policies are criminal actions whose restrictions and limits are not clear. One can be punished even though the defendant did not intend to do what the state alleged (Hart, "Aspect of Criminal Justice" in Hans Thoolen (ed.), Indonesia and the Rue of Law: Twenty Years of New Order Government (London: Frances Pintre, 1987), 198–199)); (Pratikno & Lay, 2002: 27).

57 Many of the human rights violations that allegedly occurred—even serious human rights violations—in the pre-1998 events such as murder and arbitrary arrest, occurred as follow-up actions of: the G30S 1965; the "Petrus" cases in the early 1980s; the Tanjung Priok case in 1984; the DOM cases in Papua and Aceh; the Talngasari case in Lampung; currently in Dili, East Timor in 1993; and the PDIP office attacking case in 1996.

58 Strong international pressures against the New Order appeared when the (Indonesian) government was not paying attention to the G30S PKI political prisoners. There are so many cases of inhumane treatment of political prisoners who are not receiving a fair judicial process (Pratikno & Lay, 2002: 49).

59 The Netherlands, Canada and Denmark delayed some or all of the developmental aid until investigation and prosecution results became available. The Japanese government provided official contact to the INGI Conference for the first time (Pratikno & Lay, 2002: 55–6).

60 Indra Samego, et.al., *Bila ABRI Menghendaki* (Bandung, Mizan, 1998).

INGI[61] via its forum in Brussels, Belgium in 1989, which threatened to stop IGGI's assistance unless the state stopped its violence and serious human rights violations (cf. Lay & Pratikno, 2002).[62]

Besides the international pressure against the New Order government relating to the protection of human rights, it is also the awareness of the importance of human rights and democracy in the state—as marked by increased freedom in the early 1990s—even though it was accompanied by an opposite tendency shown by the military.[63] The Indonesian Government held a seminar on human rights on 21–22 January 1991 discussing proposals for the establishment of Komnas HAM, as well as an international seminar on human rights involving 34 countries in the Asia Pacific region in order to build international support for the establishment of Komnas HAM (Pratikno & Lay, 2002: 62).

On 7 June 1993, the government established Komnas HAM by Presidential Decree No. 50, 1993, which worked as the promoter, protector and upholder of human rights, a medium to dissolve authoritarianism and a mechanism to develop civil society.[64] In short, the presence and existence of Komnas HAM was a reaction to international and domestic political pressures on the New Order, and its establishment also aimed to raise domestic awareness of the furtherance, protection and enforcement of human rights. The transition of the institution—which was clearly established by a government that had dominant political hegemony—according to Pratikno & Lay (2001), to an organization that is able to enforce human rights has also made a large contribution to the enforcement of human rights and has provided the basis for growth and development of democracy in Indonesia.[65] However, the organization has faced many challenges from opponents[66] (Pratikno & Lay, 2002). During this period, Komnas HAM was considered to be undergoing two important transitions, which *Harkrisnowo* describes as the trust-building period (i.e. its establishment and its role) (Noor & Jebatu, 2004: 24).

61 INGI (International NGO Forum on IGGI Matter, which then became the International NGO Forum on Indonesia) is an international NGO forum (domestic, foreign and international) that specifically monitors IGGI assistance for the development of the Indonesian government. This forum began with the Commission of Dialogue (COD), a forum of NGOs and individuals concerned with democracy, human rights and development in Indonesia, which is organized by the YLBHI in collaboration with Novib—a non-governmental organization in the Netherlands that provides assistance to various programs of democracy and human rights in developing countries at the beginning of the second half of 1980. In 1985, it held seminars and meetings in the COD Royale Tropical Institute, Amsterdam, which later become the embryo of INGI. After IGGI dissolved and was replaced by the CGI (Consultative Group on Indonesia), INGI changed its name to INFID (International NGO Forum in Indonesia Development), until now.

62 Gus Dur, along with some NGO activists (who attended the International Non-Governmental Forum on Indonesia [INGI] in Nieuwport, Belgium, April 1989), issued an Aide Memoire at the end of the meeting, which was formulated by 52 participants and consisted of hard critiques of Human Rights violations of the Kedungombo case. Some participants of the conference were interrogated by the security apparatus and were called by the Minister of Home Affairs. This incident was then known as the "incidence of Brussels" (Pratikno & Lay, 2002: 56–7).

63 The Santa Cruz incident is the most serious turning point on the idea of the establishment of Komnas HAM. Inside, ABRI found the momentum to stop the establishment of Komnas HAM and argued that the Santra Cruz cases were caused by the idea of human rights enforcement. While outside, a reaction against the incident was made by the UN Human Rights Commission to support the funds were promised to organize the international seminars. The UN Human Rights Commission had been promised 143 million Swiss francs but they canceled it 10 days before the event. Hasan Wirayuda finally tried to get the budget support from a number of diplomats. One of the reasons is because Suharto agreed to open the event at the State Palace. Hasan Wirayuda could not imagine the future consequences. He eventually received support from Japan, which provided 70 thousand, followed by the UK, Australia and New Zealand, which cumulatively reached 150 thousand CHF. As a result, the assistance bid France offered was declined. The cost above was for the participants' accommodation and transportation. Meanwhile, the department of foreign affairs held the accommodation in Indonesia (Pratikno & Lay, 2002: 63).

64 These institutions are funded by the state through the executive bureaucracy budget. Its first members were appointed by the president and led by state officials—who are also Suharto's confidants.

65 Although the institution is not intended to be a vehicle for political participation, and especially not for democracy in general, in practice, it can be manipulated and can provide opportunities for political activism (Pratikno & Lay, 2002: 6).

66 For example, supporters of the integralistic state concept persist with efforts to raise the particularism issue, stating that the implementation of human rights still needs to consider the unique culture of the countries concerned. In this effort, Indonesia along with China, Malaysia, and Singapore, pioneered the concept of an Asian Human Rights, in the preparation of the Vienna conference. The concept recognizes that human rights is a universal idea but each country has the right to make interpretations of the international standards on human rights based on its culture, values and political system, and also based on its historical background and its economic development level (Human Rights Watch/Asia, 1994: 71); (Pratikno & Lay, 2002: 65).

Post-1998

At the end of the 20th century, a change at the global level influenced both the domestic and national levels of civil society. At the end of the 1990s, the wave of democratization at the global level was followed by the development of a new definition of human rights,[67] and attention "branching" into the fundamental issues of human rights.[68]

At the national level, following the fall of the authoritarian regime, a more democratic government was born and gave more credence to human rights and human rights violations committed by the state decreased.[69] The issues of human rights[70] and human rights violations are widespread.[71] There are also found the change in community level which marked by the rise of political identity,[72] which manipulating groups sentiments that sometimes lead to actions/deeds of human rights violations, so that civil society groups can be the perpetrators of human rights violations. The perpetrators are no longer state actors as in the past but also involve community groups (Pratikno & Lay, 2002).

Photo 4. Flags of Political Parties that Competed in Indonesia's 2009 National Elections

Authoritarianism's failure in 1998 has changed the political arena,[73] which proceeds with efforts to reform the state's institutions and enforcement of a more democratic government by civil groups followed by demilitarization and police reform.[74] Changes also occured in the system of governance at the local government level.[75]

67 This development was marked by the expansion of a variety of rights such as: women's rights, children's rights, and indigenous native rights associated with economic, social and cultural rights (Pratiko & Lay, 2002).

68 Human rights issues are formulated to be more flexible while becoming an integral part of larger issues such as good governance, decentralization, demilitarization, civil society and even the free market (Pratiko & Lay, 2002).

69 Human rights violations that occurred from 1998–2001 are not a part of the state policy design as in the past, but more understandable as excesses of the implementation of a policy (Lay & Pratikno, 2002: 18).

70 Human rights issues are rising more than the previous period both in terms of type and form. Issues of women's rights were starting to rise in mid-1998, right after the violence against women occurred during the May 1998 events. The environment issue also came up, after the public discovered the bad management of the environment by PT Freeport in Papua (Pratikno & Lay, 2002).

71 Dilation occurred on the issue of human rights violators, namely non-state actors in the communities themselves, not as happened in the previous period in which human rights violators were monopolized by the state (Lay & Pratikno, 2002: 23).

72 Various groups in society have rediscovered a new basis for group consolidation—namely, ethnicities, religious affiliation and other categories—which is also used as the basis for relationships and social interaction with liyan groups (Lay & Pratikno, 2002: 18–9).

73 The fall of the New Order regime in 1998 has changed the political constellation with the rise of various issues, such as: the idea of nationality, the state authority, the political system, various political behaviors and the relations between groups/classes. Political instability has led to many human rights incidents, whose scope and background were relatively "unknown" in the previous period. Therefore, through the UU (policy) No. 39/1999, Komnas HAM's authority was strengthened by the functions of investigation (Jebatu & Noor, 2004).

74 The role of the military was changed into a more professional force that also gradually began to leave its praetorian character. As the military and police are separated from daily politics, cases of human rights violations by the state decreased (Lay & Pratikno, 2002: 16).

75 Changes from a dominant centralization before 1998 into implementation of decentralization in Law No. 22/1999 on Regional Government and Law No. 25/1999 on the financial balance of the central and regional government, which then replaced Law No. 5/1975 (Lay & Pratikno, 2002: 39).

Post-1998 changes[76] are marked by political liberalization and the transition towards democracy, as well as thevarious political actors involved in the process of interaction between political powers.[77] Political liberalization—which marked a transition toward democracy—in general provides a possible process of democratization and, after the establishment of policies such as the freedom of information, the establishment of political parties and the recognition of differences of ideas, provided the basis for a fair and honest 1999 general election to produce selected representatives in a democratic process.[78] In the field of human rights, important events such as the ratification of the two covenants (Economic, Social and Cultural Rights Covenant and Civil and Political Rights Covenant), which became the state's policy (Law No. 11/2005 and Law No. 12/2005), are also important. Furthermore, the empowering of legislative institutions to create public interest is a way to gain back society's trust.[79]

On the other hand, the change of political format has created pluralism and competition at both state and society levels. Fragmentation and segregation can be seen through the various political actors,[80] as well as territorial conflict management.[81] Fragmentation of the political reformist versus the well-established (status quo) groups dominates the political arena in Indonesia. Contentions and compromises variously occurred between the two groups and between the two factions in the citadel (O'Donnel & Schmitter [eds.], 1996). Political actors are not only fighting for their personal interests or the interests of the people they represent but also to set the rules or procedures that can determine who might win and lose in the future (O'Donnel & Schmitter [eds.], 1996). Those contentions and compromises are also taking place in representative institutions, the military, the civil service, the judiciary, NGOs and other institutions (Lay & Pratikno, 2002: 41–42).

Polarization and fragmentation has taken place at both state[82] and community levels.[83] Fragmentation at state and community levels, according to Pratikno & Lay (2002), have implications for the organization or community groups in a political format, as visible from the way they defend democracy: effectively, institutions create a central and international network, and change the pattern of leadership or organization into a modern structure (Budiman & Tornquist, 2001: 28; Pratikno & Lay, 2002).[84] The result of fragmentation and polarization is that the political and ideological interests of those fragmented groups can utilize human rights and Komnas HAM discourse as an important part of their project. This part, according to *Harkrisnowo*, is marked by "a decrease in the people who come to the Komnas HAM" because of the massive growth of NGOs that are even more

76 The PDIP won the 1999 election followed by Golkar, the PKB and the PPP as the top four parties that got the most votes. Implications of political party domination occurred on an ideological basis. The ideology of stability and development shifted to the renaissance of hidden ideologies during the previous period, which was plural and of varied ideologies such as Islamic, nationalist, socialist, etc. Each ideology consists of its variety such as traditional-modern, conservative, radical, etc. (Feith and Castle, 1970; Ramage, 1995; Haris, 1993) and is often represented by colors: the red-and-white ideology for nationalist, light green for moderate Islam and deep green for radical Islam (Emmerson, 2001: 602–5). In short, a political condition that was singular and monolithic became very complex when combined with all its implications (Pratikno & Lay, 2002).

77 O'Donnell, Guillermo and Philippe C. Schmitter (eds.), *Transisi Menuju Demokrasi: Rangkaian Kemungkinan dan Ketidak-pastian* (Jakarta: LP3ES, 1993).

78 Ibid.

79 Changes in the party system have implications for the occurrence of shifting relationships among the institutions of power in government both at the national and regional levels, and further strengthen the representative institutions of the people. The domination of the MPR, DPR and DPRD in the government process became very prominent (Lay & Pratikno, 2002: 38).

80 The actors' fragmentation reflects on the resurrection of new actors (reformist; pro-status quo), the appearance of alternative ideologies such as nationalism, Islam and socialism as rivals of the development and stability ideology, and the appearance of representative institutions as a dominant political force rivalling executive institutions (Lay & Pratikno, 2002: 41).

81 In the territorial case, it appears the new power is local governmental power, which competes with the central government (Lay & Pratikno, 2002: 41)].

82 State fragmentation: (i) the fragmentation of political actors; (ii) political parties; (iii) the military; (iv) ideology; (v) formal state institutions (parliament, bureaucracy); (vi) representatives vs. executive institutions; and (vii) the management of territory (central vs. local) (Lay & Pratikno, 2002: 40–8).

83 Community fragmentation: (i) the actors (the appearance of actors from the country: teachers demonstration demanding increased salaries); (ii) community associations (ABN defend Wiranto case); (iii) ideology (light green vs. dark green; radical, liberal, conservative, modernist, neo-modernist, transformist); (iv) paramilitary; (v) religion (religious vs. secular); (vi) ethnicity (Malay vs. Dayak, Iramasuka etc); and (vii) territory (immigrants vs. native; central vs. local) .

84 Such an impediment is typical of the movement of people that is very solid when dealing with an authoritarian regime; a movement that polarized when the regime was transitioning to democracy (Lay & Pratikno, 2002: 57).

bold than Komnas HAM. Thus Komnas HAM is no longer "the sole" actor of human rights enforcement (Noor & Jebatu, 2004: 24). Human rights enforcement issues post-1998 are influenced by political fragmentation forces both at state and community levels or, in other words, those political formats which are polarized and fragmented create a foundation for Komnas HAM post-1998 (Pratikno & Lay, 2002).

RSA Interplay and the Human Rights Movement

Komnas HAM obtained a legal position as an independent institution[85] whose presence is unique in the context of human rights. First, as a state institution, Komnas HAM is positioned under state authority, so it can be called a state apparatus[86] with authority[87] and legal obligations[88] on one hand and rights on the other. Komnas HAM is a law enforcement institution with two main goals[89] and four roles[90] that have to deal with other law enforcement institutions. For example, while conducting its investigations, Komnas HAM often has to deal with another state apparatus, which has similar authority as a fellow law and human rights enforcement institution. Relationships with other law enforcement institutions should be cooperative but at certain times are empirically contradictory or competitive.[91]

Furthermore, Komnas HAM as a human rights enforcement institution has to be independent[92] and impartial.[93] In increasing the protection and enforcement of human rights (Article 75), monitoring (Article 89 (3) of Law No. 39/1999) and investigating serious human rights violations (Article 18 of Law No. 26/2000), Komnas HAM has to involve: (i) the actors; (ii) the victims, including witnesses; and (iii) the actions/deeds of human rights violations.[94] With regard to human rights violators, different from the conventional understanding,[95] there are two categories known as "state actor"' and "non-state actor."[96] In relation to the state actors, Komnas HAM

85 Article 1 point 7 of Law No. 39 of 1999 on Human Rights states that: the Human Rights Commission hereinafter referred to as Komnas HAM is an independent institution whose position is at the same level of other state institutions that conduct investigation, research, extension, monitoring, and mediation of Human Rights.

86 In the Althuserrian perspective, Komnas HAM can be classified as a "repressive state apparatus" while performing its role as the human rights enforcement actor but also can be classified as an "ideological state apparatus" while perpetrating elucidation, for example.

87 The authority of Komnas HAM is stated explicitly in Article 89 of Law No. 39/1999: (i) review and research; (ii) counselling; (iii) monitoring; and (iv) mediation; and in Article 18 of Law No. 26/2000, namely investigating serious human rights violations.

88 The obligations of Komnas HAM involve submitting the annual report on implementation of the functions, duties and authority, and the condition of human rights, and the cases investigated to the Indonesian House of Representatives and president with a copy to the Supreme Court (Law No. 39/1999 Article 97). Komnas HAM's broader obligations are: (i) develop conducive conditions for the implementation of human rights; and (ii) improve the protection and enforcement of human rights (Article 75 of Law No. 39/1999).

89 In the legal-normative way, Komnas HAM's goals are: (i) develop conditions conducive to the implementation of human rights; and (ii) improve the protection and enforcement of human rights (Article 75 of Law No. 39/1999).

90 Role or legal-normative functions of Komnas HAM, according to Law. 39/1999, are: (i) review and research; (ii) counselling; (iii) monitoring; and (iv) mediation; and Article 18 of Law No. 26/2000, namely investigation of serious human rights violations. According to Harkrisnowo, the tasks of the National Commission (in this case Komnas HAM), based on the instrument of the United Nations, are: (i) education; (ii) advisory/give opinions or advice to the government and other institutions; and (iii) conduct neutral investigations (Noor & Jebatu, 2004: 25).

91 Such a conflictual and competitive nature is the result of the mutual-overlapping of duties and authority of various agencies/departments who are working in the law enforcement field; and because the boundaries of their respective institutions are not clearly formulated and explicated, as recognized by Harkrisnowo (Noor & Jebatu, 2004).

92 Asmara Nababan defines "independence" as: (i) free of state intervention; (ii) free of interference from political parties; and (iii) free of private sector interference. To guarantee this independence, the Paris Principles cited 3 principles, namely: (a) pluralism should be reflected in the composition of members; (b) organizational autonomy—the institution has separated offices and employees of the government and is not subject to financial supervision that could affect its independence; and (c) members mandate that remains in a certain period (Noor & Jebatu, 2004: 2–3).

93 Impartial means fair (in judging); not one-sided and not profitable over another party (Horby, 1987: 424).

94 In investigations the question "who did what to whom" is often heard, the "who" being the human rights violator. "What was the action" (what s/he did) and "to whom the action/the act was intended" are also common questions. The investigation does not stop here but is usually followed up with other questions about when and where the act occurred.

95 Human rights violations have been referred to differently by various authors, which has been the subject of debate. Conventional human rights violations are seen as the responsibility of the state, in the context of its obligations to citizens. Various experts who support this opinion, among others, stated that: "...Human Rights violations carried out by the state through its agents (police, armed forces and any person acting as the authority of the country) against the individual" (English & Stapleton, 1997: 4) can be compared to the definition of crimes (i.e. actions or criminal actions committed by one or more to damage or harm the public, and has been prohibited by domestic law countries) (English & Stapleton, 1997: 4). Conde (1999) refers to violations as a "failure of one country or the other party legally obligated to the one abiding [by] international Human Rights norms/rules. The failure to perform obligations is a insubordination of its obligations" (Conde, 1999: 156).

96 The World Conference on Human Rights in Vienna in 1993 developed a broader perspective on human rights, encompassing a strong recognition that human rights

often faces external and structural difficulties that arise from the nature of institutionalisation. Furthermore, in relation to the victim (and witness), the difficulty Komnas HAM faces is largely derived from the narrative ability of expressing current incidents it has experienced or witnessed in accurate detail, and a willingness to provide valid and reliable information.

The complexity of the realisation of both roles will increase if Komnas HAM cannot entirely escape from the conflict of (political) interest in its environment, for example, the interests of elites and state officials internalised in Komnas HAM. In this sphere, interaction and interplay will occur between Komnas HAM and others who are involved in human rights violations.

Advocacy

Throughout Law No. 39/1999, we cannot find articles using the term "advocacy" but the elements[97] and the basic principle of advocacy[98] are found between the lines (in Articles 75 and 89 of Law No. 39/1999), which state that the normative "goals" and "functions" of Komnas HAM are educative, advisory and investigative (Harkrisnowo, 2004 in Jebatu & Noor, 2004)—although it is probable such commentary will be challenged by a group holding a strong legalistic-positivistic paradigm.[99] Some definitive elements of advocacy is whether it is oral or written, while various basic principles of advocacy found behind the "goals" and "functions" are activities that are systematically used to influence public policy (including human rights) and to alter the misuse of power. Concrete forms of Komnas HAM advocacy are: (i) writing recommendations from various activities (such as seminars) to change policy, particularly regarding the appreciation, protection and fulfilment of human rights both for legislative institutions or executive officers; (ii) counselling, education and training to change the cognitive knowledge, awareness, attitudes and behaviour that encourage the protection of human rights; and (iii) monitoring incidents strongly related to human rights violations so that victims receive their fundamental rights.

(consisting of civil, cultural, economic, political and social rights) cannot be separated, are mutually related and mutually dependent, and are also the responsibility of various other actors in addition to the state, which resulted in the definition of human rights violations (Dueck et al., 2001). Indonesia acknowledges such broader perspectives while also referring to human rights violations as the following: a violation of human rights is every action of a person or group of people, including officials, of both an intentional or unintentional nature, or through illegal omissions, that are meant to reduce, prevent, limit and/or deprive a person or group of people of their human rights as guaranteed by law, who subsequently does not get, or fears they will not get, a fair settlement based on the legal mechanisms implemented (Law No. 39/1999, Article 1.7).

97 Elements of the term advocacy appear in the definition of the term itself. Advocacy refers to "giving support to something" (Hornby, 1974: 14) or "action that defends, discusses, or writes to give support to the case" (Neufeldt & Guralnik, 1988: 20). See: A.S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, (Revised and Updated) (London: Oxford University Press, 1974).

98 Basic principles of advocacy are reflected in the different definitions of advocacy. Miller & Covey wrote that: "Colleagues in India describe advocacy as an organized, systematic, intentional process of influencing matters of public interest and changing power relations to improve the lives of the disenfranchised. Other colleagues in Latin America define it as a process of social transformation aimed at shaping the direction of public participation, policies, and programs to benefit the marginalized, uphold human rights, and safeguard the environment. African colleagues describe their advocacy as being pro-poor, reflecting core values such as equity, justice, and mutual respect, and focusing on empowering the poor and being accountable to them." See: Miller & Covey, *Advocacy Sourcebook: Frameworks for Planning, Action and Reflection* (Boston: Institute for Development Research, 1997).

99 A legalistic-positivistic paradigm is the paradigm most professed by law experts in Komnas HAM. Satjipto Rahardjo, a professor emeritus at the University of Diponegoro in Semarang and former member of Komnas HAM, sees the legalistic-positivistic paradigm as a way of thinking about law as in the XIX century, based on a rational approach, which is even, logical and based on formal regulations. The credo used is "rules and logic." Law is practiced as a rational experiment of regulations and procedures. This can 'deprioritize' the search for justice itself and, as a result, the law has not been running meaningfully. Human rights have not been protected in the broadest sense but are still tied to the creed "rules and logic." Such an understanding of human rights is flat, linear and does not attempt to understand the concept's depth of meaning (Compass, 2002). Other paradigms tend to be more interpretive in nature while emphasizing the need for justice and a moral perspective to find and give meaning to truth in law enforcement.

RSA Interplay and Komnas HAM

"Interaction" research has a special definition:[100] in the practice of social interaction it means communication and mutual relationships between two or more individuals and/or groups. Social behaviour in a social interaction is conducted through language, symbols and body movement while people mutually exchange meanings that have a reciprocal effect on behaviour, expectations and thought (Theodorson & Theodorson, 1969: 211). As already mentioned, in the practice of "advocacy" Komnas HAM has to interact with other organisations that also engage in law enforcement. The implementation of an advisory role facilitates interaction between Komnas HAM and the recommended institution, its role in education provides Komnas HAM an interaction space with participants who come from various executive agencies and non-governmental organizations, while its role of investigation/monitoring opens up complicated interactions with the state apparatus, which is sometimes responsible for human rights violations. If the events consist of criminal elements and human rights violations, the investigation might involve Komnas HAM[101] and police investigators, opening up interaction between Komnas HAM and the police where both institutions have the authority of investigation. If in such events Komnas HAM and the police investigators conduct their investigations separately, it could cause problems related to the principle of criminal law with what is referred to as "double jeopardy"[102] or the general international law principle of *ne bis in idem*,[103] which can be considered a disadvantage.

When an incident that contains elements of a human rights violation occurs, Komnas HAM has the authority of investigation, though it has to interact with other state officials such as the police and the attorney general.[104] If the incident involves repression by a state apparatus (e.g., police, army), the interaction between Komnas HAM and the police and/or military will be complicated, i.e. Komnas HAM as an investigator and the military and police as a witness or suspect. Therefore, two possible interactions between Komnas HAM, other law enforcement actors and human rights violators exist, namely: (i) a cooperative interaction; and (ii) a non–cooperative interaction or conflict.

Cooperative Interaction

Cooperative interaction occurs when both parties are willing to do what is required by the other. A platform for a cooperative and positive interaction is the Memorandum of Understanding (MoU) between Komnas HAM and Mabes POLRI, signed by both parties in 2005.[105] The MoU includes agreement on mutual cooperation in each role, such as conducting human rights training (education) and the exchange of information regarding the investigation of human rights violations. At a lower level of cooperation, a number of state institutions (police,

100 In general, interaction is a dynamic interplay that mutually determines the relationship between two or more variables. Interaction is the mutual influence between variables so that the value of each variable affects the others involved in the relationship (Theodorson & Theodorson, 1969: 210–211).

101 The function of legal investigation held by Komnas HAM is mentioned in Law 39 of 1999, Article 76 Article 89 (3).

102 Double jeopardy is the criminal law principle that states that someone cannot be prosecuted for the same crime twice. This principle is expressed in the Latin term *non bis in idem* (Conde, 1999: 38).

103 *Non* (or *ne*) *bis in idem* is a general principle of international law that states that a person cannot be prosecuted for the same crime twice. This is the Principle of Double Jeopardy in international law, which now most commonly refers to double claims on the domestic and international levels. *Non bis in idem* and *ne bis in idem* mean the same thing (Conde, 1999: 95).

104 For serious human rights violations, Komnas HAM is the only institution that has the authority to conduct investigations. See: Law 26 year 2000, Article 18 (1). The general attorney has the authority of examination (Law 26 year 2000, Article 21 (1)) and prosecution (Law 26 year 2000, Article 23 (1)).

105 The Memorandum of Understanding between Komnas HAM and POLRI was signed on 10 June 2005. The purpose and goals of the MoU are to improve the synergy between and professionalism of each party in implementing their functions, duties and authority. Cooperation is conducted for handling cases of human rights violations, especially those cases involving police officers, and to gain cooperation in education for the improvement of professionalism of each party (Komnas HAM, 2006: 14).

army, prosecutors and judges) send their active members as trainees on human rights training courses provided by Komnas HAM.[106]

A lower level of communication is often more unilateral, namely the form of recommendations provided by Komnas HAM[107] to institutions, agencies,[108] departments,[109] the executive (president[110] and/or the government[111]), the DPR[112] and MPR[113] in monitoring activities (investigation), the interaction between Komnas HAM (performed by the investigator) and the POLRI (represented by police agents at a police station and Polda). Positive interactions are noticeable in some of these cases:

- Bulukumba case: The Bulukumba case related to the clash between farmers in Kajang Bulukumba, South Sulawesi and a police officer at Bulukumba police station.[114] The (Komnas HAM) Investigation Team obtained the right to investigate a number of police agents suspected of knowing about and/or being involved in this incident at every level: soldiers, field officers and even senior officers. This investigation was conducted at Bulukumba police station, Bone police station and Polda Makasar in Central Sulawesi. The investigation team also obtained facilities to conduct inspections, enabling them to reconstruct and analyze the incident from data collected (View Reports Case Bulukumba).
- UMI case: Similar to the Bulukumba case investigation experience, a clash occurred between a student of UMI Makassar and the Makasar police forces.[115] The investigators of Komnas HAM obtained positive interaction with Central Sulawesi Polda in Makassar. Polda provided a checkpoint and brought a number of police agents to this event (View UMI Makassar case report).
- Manggarai case: This case involved a land dispute that led to demonstrations by farmers in front of the Manggarai police office, whichcaused a clash between Colol (Manggarai region, Nusa Tenggara Timur) farmers and the police and resulted in deaths and injuries.[116] The investigation team obtained checkpoint facilities at Manggarai police office and was assisted in processing police members who were witnesses. Further investigation done at the NTT regional police office was also facilitated by the NTT regional police.

106 This training is called Human Rights Training for the Strategic Groups, which was conducted during the period before the application of Law 39/1999. This human rights monitoring training was held as a result of cooperation between the Sub-Commission and the Monitoring Sub-Committee of Education and Extension in the various regions (Aceh, North Sumatra, West Sumatra, South & Southeast Sulawesi, North & Central Sulawesi; NTT; Bali & NTB, North, Central & Southeast Maluku; South Sumatra & Bengkulu, Riau & Kepri; East Java, Central Java, Jakarta, and Yogyakarta), which occurred between 2004 and 2007, and also involved a number of personnel prosecutors, judges and police as participants (see: Training Reports).

107 The recommendation is usually presented in writing (in the form of a letter of recommendation). Komnas HAM issued 402 recommendations in 2006, which consisted of 139 recommendations related to the protection of economic, social, and cultural rights, 187 recommendations related to the protection of civil and political rights, and 76 recommendations related to violations of a protected group (Komnas HAM, 2006: 57; see reports of Komnas HAM from 1999 to 2006).

108 For example, Komnas HAM has requested the Indonesian Judiciary to investigate and prosecute actors involved in human rights violations in Papua (Papua KPP HAM) (Komnas HAM, 2002: 163–164).

109 On March 13, Komnas HAM sent a letter of recommendation on the academic draft of the amendment of Law 39/1999, which suggested changing the content of the article regarding: (i) the secretary-general; (ii) the number of members; (iii) the right to sue; and (iv) representatives of Komnas HAM. This proposal obtained responses from the Ministry of Law and Human Rights on 29 May 2001.

110 Komnas HAM requests the president to settle the case and recommends the establishment of KPP, and invites members of the National Investigators Commission (Komnas HAM, 2003: 42).

111 For example: Komnas HAM urged the government to immediately issue a regulation on the protection of witnesses and victims as listed in Article 34 of Law No. 26/2000 of the Court of Human Rights (Komnas HAM, 2002: 163–164).

112 Komnas HAM delivered a letter to the House of Representatives on 9 November 2002 which stated that there were provisions in Perppu No 1/2002 that could lead to human rights violations and also suggested the House of Representatives reject the second Perppu. Komnas HAM recommended the government and the House of Representatives discuss immediately the draft of the Law on Terrorism Abolishment (Komnas HAM, 2003: 29–30). Preparation of the draft Citizenship Bill was submitted to the National Legislation in the House of Representatives at the beginning of 2002 (Komnas HAM, 2003: 47) The draft of the Citizenship Bill was submitted to the Legislative House as an initiative of the Government via. Ministry of Internal Affairs (Komnas HAM, 2003: 48).

113 Recommendations regarding the results of various studies of MPR provisions.

114 For details of the Bulukumba case, see: Billah, et al. *Bulukumba Current Monitoring Report* (Jakarta: Komnas HAM, 2004).

115 The UMI case refers to the clash between UMI students and the Makassar police, when a number of police agents are considered to have "attacked" the UMI Makassar Campus. See: Billah, et al. *UMI Makassar Case Monitoring Reports* (Jakarta: Komnas HAM, 2005).

116 This case was reported in the monitoring report: Billah, M.M., *Manggarai Case Monitoring Report* (Jakarta: Komnas HAM, 2005).

- Case of Aceh: The Aceh Monitoring Team during the CoHA[117] and the Military Emergency period[118] were accepted by the Kapolda of NAD. The Kapolda even offered guard assistance for the team but the team insisted on working alone.[119] The team always contacted the Kapolda while monitoring and the Kapolda were expected to notify the police in order to avoid possible misunderstandings.
- Ahmadiyah case, Parung Bogor: The investigation process of the Jema'at Al Ahmadiyah assault case at Al Mubarak campus, Parung Bogor in July 2005 involved an investigation team that obtained assistance in the form of a police member investigation room and the provision of police members as witnesses.

Non-cooperative and conflicting interaction

Various examples of the interactions mentioned are not necessarily beyond expectation and many difficulties were indeed faced. For instance, with regard to the "MoU Socialization," Komnas HAM complained that the police often rejected requests submitted by Komnas HAM—despite the rejections being made politely.[120] In short, besides cooperative and positive interactions in law enforcement, non-cooperative and sometimes conflicting interactions arise. This is why conflict interaction has various gradations (levels), ranging from the lowest to the highest level nuances: (i) disobedience; (ii) denial; (iii) insubordination; (iv) resistance to offences; (v) "threat & terror"; and (vi) "attack."

Disobedience

Komnas HAM 2006 reports state they have issued 402 recommendations, which consists of 139 recommendations relating to economic, social and cultural rights violations, 187 recommendations relating to civil and political rights violations, as well as 76 recommendations relating to violations of a special group protection (of Komnas HAM, 2006: 57). However, recommendations are often skimmed over or completely ignored by the related institutions and parties, which constitutes disobedience[121] in terms of Komnas HAM recommendations. Disobedience of recommendations is often complained of by Komnas HAM in its annual reports. Various examples that indicate disobedience of the recommendations addressed to institutions are as follows:

- Komnas HAM conducted the *Ketetapan* (provisions of) MPRS and MPR in terms of inappropriateness or disrespect of human rights. This study has found that: 16 provisions were appropriate or did not conflict with human rights values; and 4 provisions were on the whole or in part against the values of human rights (i.e.: Tap MPRS No. XXV/MPRS/1966 on PKI; Tap MPR No. III/MPR/1988 on elections; Tap MPR

117 The CoHA (Cessation of Hostilities Agreement) is an agreement signed by the Indonesian government and GAM on 9 December 2002 in Geneva, Switzerland in an effort to end the conflict in Aceh, which was mediated by the Henry Dunant Center (HDC). This effort failed so the Indonesian government held a structured operation to end conflict in Aceh. The structured operation included security operations and a settlement operation. To carry out the structured operation, the Indonesian president issued Keppres No. 28/2003, which stated that Nanggroe Aceh Darussalam was in a Military Emergency Period as of 19 May 2003 (Komnas HAM, 2003).

118 In a Military Emergency Period; the president of Indonesia issued Keppres No. 28/2003, which stated that Nanggroe Aceh Darussalam was in a Military Emergency Period as of 19 May 2003 (Komnas HAM, 2003).

119 The monitoring team of Komnas HAM stated that they would work by themselves so Kapolda NAD suggested the Komnas HAM team have a recognizable sign that could be seen from far. That is why the monitoring team was always waving the "Komnas HAM Flag" from their car, especially when entering rural areas that were the "battlefield" between the TNI and the TNA.

120 Another example is Komnas HAM's investigation of the "Banggai Case," which was a clash between Banggai police officers and protesters against the change of Banggai as Banggai area capital to Salakan. The clash lead to four deaths and other injured victims. Kapolres Banggai fulfilled the team's request to investigate police officers involved in the clash but later Kapolda said that the case was under investigation of propam Central Sulawesi Polda, and the monitoring team was suggested to request it to the program.

121 Disobedience is a process or action marked by ignorance; carelessness of duty, tasks or work; negligence; and indifference, etc. (Ali et al., 1996: 1).

No. XIV/MPR/1998 on elections; Tap MPR No. VII/MPR/2000 on the role of the TNI/police) (Komnas HAM, tt.: 54–58)]. Komnas HAM has reported these findings and sent recommendations to the related institutions but has had no response. A lack of response indicates disobedience of the recommendations and issues raised by Komnas HAM.

- Komnas HAM has asked the president to further investigate the murder of the chairman of the Presidium of Papua, Theys H. Eluay, and recommended the establishment of KPP for this case and invitation of members of the National Commission Investigators (Komnas HAM, 2003: 42). There is no information on whether the recommendation has been responded to. If there has been no response at all from the president regarding the recommendation, it is clear that the president is neglecting the recommendations and its contents. In other words, the president does not respect human rights.
- Komnas HAM sent the government recommendations consisting of a request to investigate the Clove Garden Ambon case[122] on 14 June 2001 so that the accused actors could be brought to trial by the military/general judiciary. At the end of 2001, Komnas HAM had yet to be informed of any follow-up by the government [Komnas HAM, 2002: 98]. This shows that the government ignored the issues of human rights in the concerned case.
- Komnas HAM sent a letter to the House of Representatives on 9 November 2002. The letter stated that there were articles in Perppu No. 1/2002 which could lead to human rights violations. Komnas HAM also suggested that the House of Representatives reject the illegitimate Perppu provisions. Komnas HAM further suggested that the government and the DPR discuss the draft Law on Terrorism Criminal Illiteracy as soon as possible (Komnas HAM, 2003: 29–30). There are no reports on whether the letter and recommendations have been adequately answered by the DPR, which could signal a neglectful attitude towards the issue at hand.
- The draft Citizenship Bill was submitted by Komnas HAM to the legislation body of the DPR in early 2002 (Komnas HAM, 2003: 47). The draft of the Citizenship Bill was submitted to the DPR as a government initiative right of the Ministry of Internal Affairs (Komnas HAM, 2003: 48). There is no explanation of whether the drafts were commented upon by the institutions concerned. A lack of response from the legislative body of DPR shows its disobedience of Komnas HAM recommendations.
- Komnas HAM has sent a letter of recommendation to the president, Kapolda North Sumatra, and the governor of North Sumatra regarding the case of PT Inti Indo Rayon. Komnas HAM is no longer monitoring the case, as it was taken over by another party (Komnas HAM, 2003: 70). There is no explanation of how the president, the Kapolda and the governor responded to the letter and it highlights the disobedience of the state apparatus in handling human rights violation cases.
- Komnas HAM sent a letter of recommendation to the regent of East Lombok, East Lombok Kapolres, and the Head Office of the Ministry of Religion of East Lombok in relation to an assault case of Ahmadiyah followers in Pancor, East Lombok. The case clearly shows violations of the right to freedom of religion, belief and worship, and the right to have a sense of security (2003: 73). There is no information on whether the recommendation obtained any feedback from the institutions concerned. A lack of response again shows how the state apparatus at a regional level is desensitized to human rights issues.

122 In 2001, Komnas HAM only established one TPF, namely the Fact Investigator Team of the 14 June 2001 incident in Ambon Clove Garden. The TPF assumed that there were serious human rights violations according to the definition of a serious human rights violation in Article 104 UU No. 13/1999 (Komnas HAM, 2002: 92). The TPF estimated the serious human rights violations included extra judicial killings, torture and the absence of freedom from fear in the community.

Komnas HAM treats this indifference with concern. In response, it sent an academic draft of Law 39/1999[123] on 13 March 2000, which incorporated an article requesting that a Komnas HAM Accusation Right be instilled so that institutions that neglect the recommendations of Komnas HAM can be summoned and sanctioned.[124] Aside from the lack of sanctions for those who ignore the recommendation, Law 39/1999 also opens up a very limited loophole regarding the recommendations. This loophole opens up an opportunity for a legalistic-positivistic interpretation as a legal basis for disobedience.[125]

The explanation above covers disobedience of the recommendations regarding the implementation of the investigatory function and the results of the review and research activities. Komnas HAM also issued recommendations related to human rights violations—including serious ones—as a result of monitoring activities (Law 39/1999 Article 89 [3]) and proyustisia investigation (Law 26/2000 Article 18 [1]). Various examples of recommendations (in an "advocacy" context of human rights enforcement) are as follows:

- An ethnic conflict investigation in Sampit:[126] KPP HAM Sampit has stated that this case consists of human rights violations but not of a serious nature. KPP HAM Sampit has completed its investigation and the results of the investigation have been submitted to the attorney general for further investigation (Komnas HAM, 2003: 74). There were no responses from the institutions regarding the issue and therefore KPP HAM Sampit's investigations were disregarded.
- In serious human rights violation cases, Komnas HAM has conducted various investigations such as in: (i) Talangsari, Lampung; (ii) 27 July 1996 in Jakarta; (iii) the riot in May 1998; (iv) Trisakti; (v) Semanggi I; (vi) Semanggi II; and (vii) Maluku. The results of these investigations are not being followed up and no further action was taken. The lack of further investigation is a clear sign that the institutions have disregarded human right issues, which could be handled by the attorney general.

Rejection

A rejection recommendation is slightly more serious than disobedience—which is a passive tendency[127]—based on Komnas HAM's proposed activities and research, or the result of human rights violation investigations. Examples of rejection of the recommendations of Komnas HAM are as follows:

123 The amendment draft of Law No. 39/1999 consisted of four things, which were developed based on the provision of a special plenary meeting of Komnas HAM on 6 and 12 December 2000.

124 Komnas HAM states that since the existence of the Komnas HAM in 1993, many recommendations of Komnas HAM have been ignored by concerned parties. The problem is that Komnas HAM does not have any tools to enforce the law and there are no sanctions for institutions ignoring the recommendations. Thus, this is the time for Komnas HAM to be given a legal basis for "efforts to force" so the recommendations of Komnas HAM can be implemented by responsible institutions. The right to accuse through a civil claim/TUN presumably could be a choice that can be given by law to Komnas HAM in facing the concerned/responsible institutions that ignore their responsibility to implement Komnas HAM recommendations. Therefore, Komnas HAM decided to propose the addition of a sentence in paragraph 4 of Article 89, which states: "In the case of Komnas HAM giving recommendations based on the results of the investigation in accordance with article 89 paragraph 4, and if the recommendations are not implemented without specific reasons by the concerned/responsible parties, Komnas HAM can submit a civil claim/Tun through the courts" (Komnas HAM, 2002: 3).

125 Recommendations in Law No. 39/1999 are only concerned with: (i) the functions of research, and only in connection with the various laws and regulations related to the establishment, change and abolition of laws and regulations related to human rights (Law No. 39/1999 Ps. 89 (1)); (ii) the monitoring function, which is only concerned with giving advice based on the approval of the chairman of the court on certain cases of human rights violations (Law 39/1999 Ps. 89 (3)); (iii) the mediation function, which is only to complete the mediation in human rights violations towards government (Article 89 (4) d) and towards the House of Representatives (Article 89 (4) e). The last recommendations can be referred to as recommendations that have a legal basis (Article 89 (4) d and e). In other words, all the recommendations that are not related to Article 89 (1) letter b, Article 89 (3) letter h and Article 89 (4) letters d and e do not contain obligations that require action on the recommendations.

126 The inter-ethnic clash in Sampit, which occurred in mid-February 200, has led to 419 deaths, 93 injured, 1304 houses and 259 vehicles being burned and destroyed, and the evacuation of 88,164 people. To investigate these events, Komnas HAM established KPP HAM Sampit (Komnas HAM, 2003: 74).

127 Rejection is the refusal to act (giving, yielding, granting) or refusing a request submitted by another party (Ali et al., 1996: 1065); or the refusal, resistance, reluctance or denial of action of another party (Endarmoko, 2006: 676–677). In this case, it is the rejection of the recommendations of Komnas HAM, and the investigation results or conclusions on human rights violations and recommendations.

- Komnas HAM has proposed an amendment to Law No. 39/1999 to the minister of law and human rights. The amendment consists of 4 articles, namely: (i) the secretary general of Komnas HAM has to be a member of Komnas HAM (Psl 81 [3]); (ii) the number of Komnas HAM members has to be at least 15 and not more than 25 (Psl 83 [1]); (iii) the Komnas HAM's Accusation Right (Psl 84 [4]);[128] and (iv) "the representative of Komnas HAM." The minister of law and human rights declined this proposal in writing on 29 May 2001, stating that it is less urgent to make changes to Law 39/1999 (Komnas HAM, 2002: 12–3).

Rejection can also be performed (aside from in writing, as above) in a more visible way:

- Komnas HAM's recommendation of solving problems through dialogue and negotiations on conflicts (such as the conflict in Aceh and Papua, which caused many victims), obtained answers in the form of policy; Inpres (Presidential Instruction) No. 4/2001 enables the implementation of military operations and the decision to establish a state of emergency later changed into Presidential Instruction No. 7/2001. The last Inpres stated that no negotiations and dialogue on human rights violations would be conducted. In fact, according to the Komnas HAM, the experience of DOM thus indicates that military operations are always free to be carried out in a repressive manner—which the people of Aceh have always denied. Even more people insist that the Inpres needs to be illegitimated (Komnas HAM, 2002: 33).
- The rejection of human rights enforcement by the state is a form of ignorance towards the importance of citizenship protection from human rights violations—which should be prevented or not occur at all.[129] This is reflected by the state apparatus attitude, which has failed to provide any protection, and has rejected conducting further investigation into human rights violations.[130] Moreover, there are reports of increasing repressive activity being performed by the state apparatus. Thus, the rejection of human rights enforcement by state officials is a clear and visible form of "disobedience" (by omission) and action (by commission) in various events.[131] This is real proof that the state disrespects human rights enforcement (Komnas HAM, 2002: 40). This is also exhibited by regulations that contain discriminatory elements, which remain unchanged.[132]

Law No. 26/2000 Article 18 (1)[133] states that Komnas HAM is the only state institution with the legal authority[134]

128 The suggestion of the Right to Accuse is based on the experience of Komnas HAM, whose recommendations are often ignored by the related parties, such as the absence of sanctions for parties that do not implement the recommendations (Komnas HAM, 2002: 11).

129 Komnas HAM noted that the Conflict in Aceh has caused more than 1070 deaths from 1977 to 2001. Also, conflicts occurred on the island of Java, as well as in Jakarta, Cilacap, Cikampek, Cirebon, Purwakarta, Karawang, Majalengka, Pekalongan, Pemalang, Pasuruan, Situbondo and Banyuwangi. The conflict in Kalimantan, Sambas and Sampit resulted in 1510 victims, while the conflict in Maluku 9750 victims (Komnas HAM, 2003: 28).

130 For example, in connection with the murder case of Udin the journalist. Komnas HAM established the monitoring team and delivered a letter consisting of questions for the head of POLRI but there was no answer (Komnas HAM, 2003: 72).

131 Komnas HAM states in its annual reports: "The action taken by the security apparatus and military, militia on behalf religious, ethnic, party and military wing actions led to the fall of thousands victims. Including Human Rights defenders. Therefore, it must be stated once again that the State failed to provide security protection of Human Rights towards the citizens" (Komnas HAM, 2002: 40). During 2002, violence by the police and military has not reduced, as shown by the violence they perpetrated on the demonstrators during an anti-Golkar protest in May 2002 and a farmer demonstration, which was handled by the police in a brutal way as they hit, dragged, tortured and shot the farmers and indigenous peoples (Komnas HAM, 2003: 27–28). Some of the cases that occurred during 2002 were the shooting of farmers in Ladongi, Southeast Sulawesi on 11 March 2002, which left 11 people injured, the penggaran shooting of farmers in PTPN II Nagori Bandar Marsilam, Pematang Bandar, Simalungun, North Sumatra on 31 May 2002 and the violence towards farmers who work the land of PTPN III in Afdeling 39 and 40 (Komnas HAM, 2003: 28).

132 Although Indonesia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 through Law No. 29/1999 (Komnas HAM, 2003: 30) there are still a number of regulations that are discriminatory, such as: President Decree No. 127/Kep/12/1966 on procedures of converting the original Chinese family name to Indonesian; Presidential Decree No. 240/1967 on Chinese descent of Indonesian citizens; MPRS provision No. 32 1966 on the Prohibition of the Use of the Chinese Language and Alphabet in Mass Media and in the name of stores or companies; Bakin Decree No. Kpts-031 to 032 year 1973 on The Establishment of Structure and China Problem Authority; Bakin Memo No. M. 039/XI/1973 that Konghuchu is not a religion; Minister of Religion Letter MA/608/80 states that Konghuchu is not a religion; Minister of Welfare Letter No. 764/X/1983 states that Konghuchu is not a religion; and Ministry of Internal Affairs Letter No. 477/2535/PUOD/90 states that Konghuchu is not a religion (Komnas HAM, 2003: 32).

133 Article 18 (1) of Law No. 26 Year 2000 states that investigation of serious human rights violations is a duty of the National Commission of Human Rights.

134 Legal authority can: (i) conduct investigations and inspections; (ii) receive reports or complaints; (iii) call the complainant, victim or the parties accused; (iv) call witnesses; (v) review and collect information on the scene; (vi) ask the concerned parties to give information or submit documents; and (vii) under the order of the inspector, the investigator is able to take action checking mail, searching for and seizuring evidence, conducting local investigations and contacting experts (Article 19 of Law No. 26/2000).

to conduct investigations into incidents of serious human rights violations, and has the right to submit results to the general attorney[135] for further investigation or conclusion if the case does not contain enough evidence.[136] There are many human rights investigations that have been completed by Komnas HAM and investigation files have also been sent to the offending institutions, but no further investigation has materialised. This is against the law (namely Law No. 26/2000, Article 21 & 22). The investigation files submitted by investigators that remain incomplete include the following:

- Three events in Aceh, namely: the Simpang KKA case in North Aceh, the Rumah Geudong case in Pidie and the case of Idi Rayeuk in East Aceh (Komnas HAM, 2003: 68).[137] Ten years on, no report exists regarding these cases. If there was no valid legal reason, follow-up investigations on the three events can be deemed as a refusal conduct investigations.
- An annual report of Komnas HAM states that the case of the DPP PDI office raid (27 July 1996) has still not been completed by the attorney general. The file stalled at the police and judiciary level (Komnas HAM, 2002: 35). Further reports fail to mention the repercussions of this case.
- TGPF, formed to investigate the riot in May 1998, stated that there were wide systematic actions that indicated the occurrence of serious human rights violations (Komnas HAM, 2002: 33). Komnas HAM established a TGPF Final Report Investigation team for the May 1998 riot case to investigate six reports.[138] The team concluded that there were serious indications of human rights violations against Law 7 article 9 of Law No. 26/2000.[139] The results of the investigation have been submitted to the attorney general for follow up and have been returned several times between September 2003 and the end of 2004 (Komnas HAM, 2004: 116–7). There was no further action from the House of Representatives up to 2005 (Komnas HAM, 2006: 69–71).[140]
- Current KPP HAM cases—Trisakti, Semanggi I and Semanggi II—report indications of serious human rights violations (Komnas HAM, 2004: 117–19).[141] Investigation on the events completed in 2002 as well as a *pro justisia* investigation was sent and re-sent to the general attorney, only to be returned. Komnas HAM, through a letter dated 6 January 2005 (No. 10/TUA/I/2005) sent the file back again to the general attorney.[142] This shows the government places no serious concern on human rights enforcement, especially on serious violations coupled with the weaknesses of Law 26/2000 (Komnas HAM, 2006: 30).

135 Article 20 of Law No. 26/2000.

136 The general attorney can restore the investigation files (Article 20 (3) of Law No. 26/2000), continue having a mandatory investigation completed within 90 days (Section 22 (1) of Law No. 26/2000) or terminate the case if it was lacking evidence (Article 22 (4) of Law No. 26/2000).

137 The report and investigation results submitted by the Independent Commission for the Investigation of Violence in Aceh, which was established in 1998, (including the three cases mentioned) have also been reported to the president (Komnas HAM, 2003: 68).

138 The six types of reports examined by this team are: executive reports, clash incidents data, images, and progress reports, testimonials and verification, and the executive summary.

139 During the May 1998 riot there were various murders, persecution and destruction involving burning, pillaging and stealing, which indicates serious human rights violations occured.

140 The Komnas HAM report explicitly states the refusal of a number of state officials to cooperate with investigators in the process of investigation on presumed serious human rights violations, in this case arbitrary arrests in the context of violations toward humanity (Komnas HAM, 2006: 21).

141 KPP HAM found the occurrence of serious human rights violations. Various murders, torture, persecution, arbitrary arrests, seizures of independence and physical freedom have been systematically expanded. Infringement action was undertaken effectively by the actors through territorial institutions and through Kodam and Polda. Besides, the mobilization of the main combat command (Kotama), which functions as Kostrad, can only be used by the command of a military superior. Violence carried out by the TNI and police officers, including the excessive use of force against this group of people, was clearly supported by the strategic policy of the TNI and police superiors (Panlima TNI and Kapolri) at the time (Komnas HAM, 2004: 117–119).

142 However, before accepting the findings of Komnas HAM, the House of Representatives Commission II first stated that there were no serious human rights violations in the cases so there was no juridical basis to propose to the president the establishment of an ad hoc human rights court. The statement also does not have a legal basis, either for the attorney general for prosecution or for the president to establish an ad hoc human rights court. The situation required dealing with the demands of the community to bring the perpetrators of human rights violations to justice (Komnas HAM, 2003: 46). On 19 March 2003 Komnas HAM sent a letter to the chairman of the House of Representatives, which requested the House of Representatives to review the previous decision. Komnas HAM also met directly with the chairman of the House of Representatives on 29 October 2003. Komnas HAM then sent a letter (No. 363/TUA/XII/2004) to the DPR RI superiors on 9 December 2004 (Komnas HAM, 2004: 117–119).

An investigation team in Papua was established on 2 July 2003[143] and an ad hoc *pro justisia* investigation of Wamena and Wasior human rights violations was established in a plenary session on 8–9 October 2003 (Komnas HAM, 2003: 62–65). The ad hoc team completed a *pro justisia* investigation in 2004 and found significant evidence of serious human rights violations (Komnas HAM, 2004: 113–114).[144] Komnas HAM has submitted an investigation file to the attorney general through a letter dated 3 September 2004 (No. 290/TUA/IX/2004). The attorney general sent back the files through a letter dated 30 November 2004 and stated that the investigation is considered incomplete. Komnas HAM sent the files back to the attorney general through a letter dated 29 December 2004 (Komnas HAM, 2004: 113–114). There are no further reports to indicate that the investigation has been completed. This complicated process is obviously a form of rejection.

Another form of rejection of human rights enforcement is in the form of military justice and *koneksitas* judicial presence. Komnas HAM believes that the presence of the military court potentially prevents human rights enforcement (Komnas HAM, 2002: 41), especially if the human rights violator(s) is a member of the military. The existence of *koneksitas* gives the cases carrier officer (pepera) a very dominant role. Komnas HAM uses examples of Kol. Sudjono (in the case of Teungku Bantaqiah and his *santri* slaughter case) is not clear; there is a tendency for the *l'esprit de corps* (Komnas HAM, 2002: 38).

Insubordination

Insubordination is disobedience, opposition and protest, or denied action (Ali et al., 1996: 88; Endarmoko, 2006: 53) of the law, or actions taken by an authority to implement rules. In this case, insubordination of the authority of Komnas HAM, which is expressed in Law 39/1999, concerns in particular the authority to call and examine witnesses and presumed actors of human rights violations. The ad hoc KPP HAM team in the Trisakti, Semanggi I and Semanggi II cases[145] did not successfully call a witness and therefore failed to examine a witness "from the TNI and POLRI." The team eventually used a subpoena, as guaranteed under article 95 of Law No. 39/1999,[146] strengthened with the decision of a court as per letter/HAM Jakarta Pusat No. W7.Dc.Hn.628.II.2002.02 on 21 February 2002. This step also failed to bring witnesses from the military and police. Finally, without examining witnesses from the military and POLRI, Komnas HAM submitted results to the attorney general, as well as made recommendations to the government[147] (Komnas HAM, 2003: 98–102). No further investigation has materialized to date.

143 The team conducted the review in three steps: 1) identification and general classification of allegations of crimes/violations; 2) collecting primary data; and 3) analysing selected cases. This team proposed the establishment of the ad hoc human rights violations investigation (Komnas HAM, 2003: 62–65).

144 The ad hoc team concluded that there was enough early evidence to presume serious human rights violations in the Wasior incident in the form of murder, illegal seizure, torture, rape and arbitrary arrests. There is also enough early evidence to presume serious human rights violations in the Wamenadalam incident in the form of murder, removal and other arbitrary acts of physical seizure and torture (Komnas HAM, 2004: 113–114).

145 The ad hoc team of the Trisakti, Semanggi I and Semanggi II cases was established on 27 August 2001 by Komnas HAM to investigate the Trisakti, Semanggi I and Semanggi II cases (Komnas HAM, 2003: 98–102).

146 Article 95 of Law No. 39/1999 states that if someone ignores calls or refuses to provide information, Komnas HAM can ask the court to force him/her to provide information, in accordance with the provisions of laws and regulations.

147 Komnas HAM delivers the following recommendations: (a) urges the government to immediately take legal and administrative action towards state officers, especially the TNI and POLRI apparatuses, which defend the legal process for enforcement of obstruction of justice during the investigation of the three events; (b) urges the government and the House of Representatives to consistently accelerate the process of reestablishing TNI's role as a tool of the state, which defends the state and eliminates foreign threats; (c) urges the government, through the general attorney, to immediately investigate the May 1998 case in accordance with the recommendations of Tim Gabungan Pencari Fakta—Fact Investigator team; and (d) urges the government and parliament to immediately ratify the instruments of international law that are important for the furtherance and protection of human rights, not limited to the International Covenant of Civil and Political Rights and its optional protocol of individual complaints (Komnas HAM, 2003: 98–102).

Resistance

Resistance is to prevent an act or business (Ali et al., 1996: 570–571; Endarmoko, 2006: 366), which in this case, is as a resistance of Komnas HAM authority, especially that of examination in the context of human rights violations that directly or indirectly results in the examination process being obstructed, delayed or failing. Various examples of attitudes and behaviours of resistance are noted as follows:

- The resistance of human rights violations investigations in the form of actions against investigation reported by KPP HAM Papua. The Jayapura police station called back witnesses/victims who have and will provide information to the KPP HAM Papua/Irian Jaya. Those people who are being called by police feel unsafe, so they requested security protection. The investigation process was hampered due to this incident (Komnas HAM, 2002: 158).
- The human rights departmental office in Irian Jaya has legally advised the Polda Irian Jaya that the KPP HAM Papua/Irian Jaya is an illegal entity[148] and therefore (Polda Irian Jaya) need not meet the calls of KPP HAM Papua/Irian Jaya. As a result, the investigation of Polda Irian Jaya officers has been seriously delayed (Komnas HAM, 2002: 158).
- POLRI's slow moving policy of providing lists of names of the Brimob Resiman III Yon B KORBRIMOB POLRI members being BKO to Jayapura police station is a form of resistance. As a result, KPP HAM Papua/Irian Jaya cannot check up on Brimob members due to time limits (Komnas HAM, 2002: 158).
- Indirect resistance against the investigation of serious human rights violations is clearly (despite completed investigations by Komnas HAM and submissions to the attorney general) reflected in a statement by Commission II at the House of Representatives, which states that there were no serious human rights violations in the cases of Trisakti (1998), Semanggi I and Semanggi II (1999). The DPR statement resulted in the absence of a juridical basis to propose the establishment of an ad hoc human rights court to the president, and the absence of an ad hoc human rights court is used as the basic argument of the attorney general not to conduct investigations on these three events (Komnas HAM, 2003: 46).

Threat & Terror

Threat is an act or action committed by a person or group of people with the warning that a catastrophe might happen, or something that could have harmful consequences, which distresses the threatened party (Ali et al., 1996: 38; Endarmoko, 1006: 24). Terror is the effort to create fear by intimidating a person or group of people (Ali et al., 1996: 1048; Endarmoko, 2006: 665). Terror and threats can be an effective tool to prevent and thwart acts which, when well planned, will be performed. In connection with the enforcement of human rights, Komnas HAM receives threats and is terrorized—directly or indirectly—verbally or through direct speech, through printed media and through body language or writing (mail, short messages). Various examples of threats and terror experienced by the Komnas HAM are presented below:

148 The legal advice has also been broadcasted in the local mass media, which lead to a decrease in public trust of KPP HAM Papua/Irian Jaya (Komnas HAM, 2002: 158).

- Threat and terror by mail: One example is a letter sent to the leader of the Aceh ad hoc team whose duty is monitoring the condition of human rights in Aceh during military and civil emergency. Aceh ad hoc team action is broadcasted by various media—stifling the military, officials and other state institutions[149]—was met with a letter stating that the ad hoc team had lost its sense of nationalism, which—according to the letter—could be harmful and threaten national unity and the NKRI. Any threats to the national unity and the NKRI could invite the military to fight these threats. Therefore, the author of the letter requested the leader of the Aceh ad hoc team to be careful when making statements about the situation in Aceh during a time of military emergency.

- Terror and threats through the media and public communication: During the military emergency period, the KSAD also travelled to Aceh. KSAD's journey was broadcasted by the national and local media, including vociferous statements made by the Komnas HAM ad hoc team regarding the existence of a "mass grave," encouraging TNI annoyance. The media broadcast the KSAD trip to Aceh and cited the words spoken directly by KSAD, which were inappropriate when spoken to the state agency (in this case Komnas HAM), who warned that he would hit the leader of the Komnas HAM *ad hoc* team on the head when he came to Aceh. The body language and verbal expressions used by KSAD, which were broadcasted by the media, conveyed the impression that the threat against Komnas HAM was very real.

- Physical threats and terror: The physical terror and threats carried out by the FBR (Forum Betawi Rempug)[150] to impede the authority of Komnas HAM investigations of serious human rights violations occurred during the Suharto regime.[151] A group of 75–100 people dressed in black shouted and yelled their way into a Komnas HAM office, accusing the ad hoc team of communism and professed to emulate Suharto (who had successfully destroyed communism in Indonesia), while demanding the dissolution of the ad hoc team. One member of the group, dressed in combat trousers and a black caftan with padded shoulders and three yellow stars, claimed he was a commander of the FBR.

Photo 5. TNI Soldiers Patrolling in the Jungle of Aceh in 2008

- Midnight checks at the Meulaboh Hotel: These checks terrorized the Aceh ad hoc team during their visit to Meulaboh. A person claiming to be a military officer at the local military

149 The anger of the military was disclosed by Menkopolkam in the meeting between Menkopolkam boards, the military and Komnas HAM in the Menkopolkam office at Merdeka Barat street. Menkopolkan explicitly stated that the ad hoc team statements often conflict with the interests of security.

150 FBR also reported perpetrating violence: they kicked and beat women and children who followed the peace demonstration in the office of Komnas HAM. Victims were bruised and injured.

151 Komnas HAM established the ad hoc Investigation and Examination Team of Suharto Human Rights Violations to collect facts from the various events that have occurred since 1965. The events are classified into five groups, namely: the case of 1965, the cases of "Petrus," the case of Tanjung Priok, the case of DOM and 27 cases in July 1996 and arbitrary arrests (Komnas HAM, tt: 59). Results of the study were reported in the plenary session from 6–7 August 2003, which concluded that in the five cases examined there were elements of serious human rights violations (Komnas HAM, tt: 59).

office broke into the rooms of team members in the middle of the night. One member of the team confirmed they were being investigated at that time. His ID card was taken and returned to him the next day, via hotel staff.

- Threats against monitoring training at the Seulawah Hotel, Banda Aceh: During the military emergency period in Aceh, the Sub-Commission for Education and Elucidation, in cooperation with the Monitoring Sub-Commission, provided human rights training and monitoring at the Seulawah Hotel. For the purposes of training, the provider committee sent a letter of notification addressed to Pangdam Iskandar Muda in Banda Aceh with a copy sent to Kapolda Aceh. This training consisted of 35 activists from various districts in Nanggroe Aceh Darussalam, personnel from the office of the Ministry of Law and Human Rights and two Polda police officers. The training session was interrupted by two men claiming they were from the intelligence agency (Kodam) and inquiring as to why they were not invited, stating their intention to participate uninvited. The two agents demanded training materials, entered the training room and proceeded to smoke in the air-conditioned room. The training committee requested the agents to stop smoking or continue to do so outside the room. A day later, "Kodam intelligence" summoned the committee and training provider to Pangdam and threatened to stop the training unless the committee obtained permission from Kodam. The chairman of the committee rejected the termination of the training and refused to go to Kodam as the request was not made in writing or by phone. A Kodam officer finally called the committee via telephone to request they come to Pangdam and stated that the training session would be cancelled. When Kodam Intelligence officers argued with the chairman of the committee, the hotel electricity was switched off. Even though the atmosphere was tense, the training still ran in the form of group discussions held in hotel rooms, but some of the training participants felt insecure and discontinued with the training, while other participants remained firm and pressed on.
- The attack and arrest of the Aceh ad hoc team in Nisam: While the Aceh ad hoc team (6 people including the driver) was visiting Nisam[152] in relation to the report of the existence of a mass grave, the team was threatened. The location of the mass grave on the southern main road of Medan - Banda Aceh, was approximately 7 - 10 km from the main road, the team had to pass staggered military posts. The nearest military post to the main road was under the guard of military personnel equipped with a tank and armoured vehicles led by a colonel of the Diponegoro Semarang Division. The next post was under the guard of a single group of soldiers and the distance between the posts is approximately 1–2 km, often led by a sergeant or a corporal with armed combat experience, not counting other troops who patrol around the region. While the ad hoc team was in the middle of the forest, a uniformed unit of the military forces ambushed the team. The team's car was stopped and all team members were lead out of the vehicle at gunpoint. All members of this brigade were visibly exhausted, hungry and sleepy and were made to lie face down on the grass. The brigade commander, a Madurese lieutenant (by his language), asked the team why they were in the region. There was a very tense debate between the leader of the ad hoc team and the army commander. The commander insisted on arresting the ad hoc team, while the chairman of the ad hoc team explained that his team of Komnas HAM was not illegal and firmly asked the commander to produce a letter of arrest. A soldier requested a tape recorder and

152 The Nisam area is classified as a "black spot" that is considered to have been occupied by the GAM during the conflict period in Aceh, or at least the people of the region are believed to support the GAM. The term was introduced to the Aceh ad hoc team by NAD Kapolda.

its contents but the chairman of the team refused to give it up[153] and asked the commander to contact his office. There was radio contact between the brigade commander and the office. The commander then allowed the ad hoc team to continue their journey and told them to be careful, after having detained them for 30–45 minutes, in a very tense atmosphere.

- Threats and gun terror by GAM: The Aceh ad hoc team sent about 12 people[154] in two rented cars to a village in Nisam, located about 3–4 km from southern Medan, on the Banda Aceh main road.[155] Previously, the field assistants had collected a number of witnesses consisting of men[156] and women[157] who were victims of TNI violence. Witnesses' investigation is conducted in a meunasah.[158] The team was divided into four small groups; one of the groups consisted of a women's team of investigators to check out female witnesses. Outside the meunasah, many people came together with strained faces and curiosity to watch the process. In the middle of the investigation a man carrying two pistols approached. He said he was the commander of the GAM in the area and proceeded to threaten the women's team's investigator, as he pointed his pistol, threatening to shoot. Petrified, the investigator decided to end the investigation and encouraged all team members to leave the location immediately, which they did fearing for their lives.
- Meeting with Pangkoops: The leader and two assistants of the ad hoc Aceh team in Lhok Seumawe, from the Komnas HAM Office in Aceh, attempted to broker a "non-formal agreement"[159] with the commander of the Commando Operation (known as Pangkoops) in order to pay official visits whenever the team was in the city. Contact was finally made. At the agreed time, a small group (consisting of three of the abovementioned) arrived at the command operations headquarters. An officer welcomed the group and ordered them to sit on the bench on the terrace while he reported their visit. The officer informed the team that Pangkoops would personally meet them. They waited for over an hour. Meanwhile, two of Pangkoops's assistants—a colonel and lieutenant colonel, accompanied by other staff—met the team without the presence of Pangkoops. As Pangkoops did not arrive for a further twenty minutes, only small talk was made in the meeting room. Finally, Pangkoops arrived, uniformed and with a pistol at his waist, and proceeded to thunder and curse at the Komnas HAM as a non-nationalist institution that cornered the TNI. Due to the dark and tense atmosphere in the meeting room, the ad hoc team assistant failed to operate his tape recorder during the meeting. Moreover, while the leader of the team refuted Pangkoops's statement and explained the statement issued by Komnas HAM, Pangkoops interrupted him and said, "I do not want to be lectured!" Not long after, a soldier carrying a tray and a drink came in and Pangkoops turned his anger to the officer and shouted loudly, "Out! Take it out! We

153 Before the chairman refused to give the soldier the tape, he listened to it. The recorded voice of the leader of the ad hoc team, described the condition of roads, trees in the street and residents' houses, which was recorded during the journey. The tape, which included the interview with the sources (people, victims, witnesses), was not listened to because it was forbade by the leader of the team.

154 The ad hoc team that conducted a visit consisted of twelve commissioners; some were not members of Komnas HAM (e.g. from Komnas Perempuan), some were staff of Komnas HAM, and a number of them were staff of the Komnas HAM Representative Office in Banda Aceh.

155 The village is visibly isolated and to get there the team needed to pass a wide water channel, the bridge over which had been destroyed. The team had to wait while some people helped them by bringing wood blocks to build a temporary bridge so the team could pass. When both cars of the team had passed, the blocks of wood were immediately taken back by the people of the region. They did something similar when the team left for Bireun.

156 One male witness who was investigated by the ad hoc team claimed to have survived the murder of fishing pond guards while 7 people were killed by bullets of the TNI. Other witnesses conveyed that they were tortured in a meunasah by a group of TNI when they were not able to provide information about the presence of GAM members the TNI was searching for. Other witnesses provided information about the torture they experienced in other places at different times. For details of the incident, see: Billah et al., *Aceh Ad hoc Team Report* (Jakarta: Komnas HAM, 2005).

157 Some of the female witnesses gathered by field assistants were willing to be interviewed by the ad hoc team. These women claimed they had been raped by seven TNI members who were searching for GAM members. A witness who lived with his mother was raped in the house while the TNI was searching for GAM members. For details of the interview, see: Billah et al., *Aceh Ad hoc Team Report* (Jakarta: Komnas HAM, 2005).

158 A meunasah is a small mosque or mushalla (surau) generally found in villages in Aceh and used by local residents for prayers, shalat jama'ah and pengajian.

159 "The non formal agreement" appeared in the meeting between Menkopolkam and the ad hoc team in Banda Aceh, which was organized by Menkopolkam to reunite the team with local security apparatuses during the military emergency time.

will not have a drink here!" and the visibly shaken officer left with his tray of drinks. Pangkoops tried to force the team to give the names of the witnesses investigated by the ad hoc team but Pangkoops's demand was rejected by the leader of the ad hoc team not only because it was regarding the safety of witnesses but also because Komnas HAM is responsible for the safety of the witnesses. Pangkoops shouted in response, "I will protect the witnesses!" The leader of the team convinced Pangkoops that the witness protection guarantee cannot be expressed verbally but must be written and released by the authoritative institution(s). Pangkoops then ordered his two colonels present at the meeting to provide a written witness protection guarantee. The two staff members seemed very surprised but finally prepared the written statement as requested. The team leader then offered to hold a press conference as a number of journalists had been waiting outside. Pangkoops shouted back saying, "No need!"

Assault

Assault is attack, opposition, protest, criticism and contradicting action (Ali et al., 1996: 922; Endarmoko, 2006: 587). Attack is usually physical with direct contact between the "actor" and his/her target whereas criticism is often made verbally or through the media. Several cases can be categorized as assault on Komnas HAM as an institution or its members. Various examples of assault on Komnas HAM are expressed below:

- Current attacks on Komnas HAM in a courtroom by the FBR: An FBR threat through its so-called commander during a demonstration at the offices of Komnas HAM turned into reality. While Komnas HAM conducted a plenary meeting, news spread that "hundreds of members" of the FBR would also conduct a demonstration at the Komnas HAM offices. These crews successfully entered the courtroom on the third floor of the Komnas HAM building. Two or three FBR members proceeded to occupy the chairs of the chairman and vice chairman of Komnas HAM while leading the council. After successfully taking over the microphone, a crew member stated that they were trying to find the chairman of the Suharto human rights violations investigation, which was established by a Komnas HAM plenary session, and asked the commissioners present, with the intention of humiliating the work of the investigation team. He shouted they would continue to threaten the occupied office of Komnas HAM until the chairman of the investigation team was deposed and the team abolished. The vice chairman of Komnas HAM said afterward that the establishment of the Suharto human rights violations investigation was the result of a Komnas HAM plenary session. After that, not one of the commissioner members was willing to speak, though the chairman of the Suharto human rights violations investigation was in the room. A commissioner of Komnas HAM received a short message that requested the commissioners to remain in the courtroom and not leave the office of Komnas HAM because it was surrounded by unruly FBR crews. Present was a police agent who did not (or was unable) to do anything. Disruption of the plenary session by the FBR finally ended after approximately one hour of not finding the head of the investigation team.
- Ambush of the Komnas HAM team in NHM Halmahera: The monitoring team for a conflict between a police officer and an indigenous person visited the field after receiving a report from local activists and guarded by security. Each person who considered entering had to obtain a permit from security. The

distance from the gate to the company offices was about 5 km. The leader of the "Halmahera Case" team immediately filled the guest list and requested that the team use the NHM road to meet the protesters. After waiting approximately half an hour, there was still no feedback from the company. The leader of the team requested the security to contact the office once more. As it was getting late, the leader of the team said that the team would go to the forest via the company road with or without permission from the office. After waiting more than 20 more minutes, the team decided to go through the gate to the location of the protesters. Approximately 2 km from the gate, the team's car was ambushed and blocked by three company cars driven by the security company, a military ex-military Australian, along with camat and Koramil commander, Ambonese and an armed unit of Brimob. There was a long debate and negotiation between the leader of the Komnas HAM team and the head of security. The negotiation took about half an hour and it was getting dark (around 17:00). After lobbying Danramil, camat, the squadron commander and the Brimob brigade, eventually the leader of the Komnas HAM monitoring team stated that they would continue on and said, "We insist to go. Please shoot us, if it is what you have to do!" Suddenly Danramil said, "I myself will oversee your team. Please keep going." The threatening atmosphere finally faded and the team successfully met the protesters in the forest community. While in the field, the team obtained a report that around 200 people camping in a forest declared as *adat* property protested to the NHM who was conducting open mining in protected forest areas. The community, protesting, contacted the team and requested the team to come. After lunch around 13:00, the Komnas HAM monitoring team—consisting of two commissioners and two other staff with a guide—went to the protesters' location. The only way to the location was to pass the closed gate of the NHM Compa.

- The Troop blockade case against Komnas HAM training activities in Hotel Seulawah: The human rights monitoring training Steering Committee rejected an 'intel Kodam' request to be a training participant and a dispute ensued. Hotel Seulawah was eventually encircled by more than one SSK (unit at the brigade level), which was then known as TNI troops from Kodam Iskandar Muda (approximately two brigades of armed combat troops), and one brigade from the local police station. About 20 army officers dressed in civilian outfits and uniforms surrounded the narrow hotel lobby. A man claiming to be a police officer requested the chairman, who was responsible for the training, to come to Mapolres to provide information about this possibly illegal training. The request was rejected by the chairman of the Aceh ad hoc team for there were no formal letters. An "intel Kodam" also asked the chairman of the ad hoc team to appear before Pangdam but the request was rejected for the same reason. In the hotel lobby, one of the undercover police agents threatened to dissolve the training, challenging the chairman of the Aceh ad hoc team, who had been in the hotel lobby accompanied by staff from the Office of Komnas HAM Aceh, ready to face the brigade. In the middle of the hotel lobby, a police officer tried to convince the chairman of the Aceh ad hoc team, using polite language, to come to Mapolres. The chairman refused the request saying that the training activities are part of running the country. Then the chairman said to the police officer, "If you are willing to die while serving the State, then I am willing to die while serving this training!" In short, the negotiation was tense and the chairman could not be convinced to come to Mapolres. The blockade continued until lunch time, while the training was conducted in the training room.
- 'Sit-in' at Komnas HAM Training in Banda Aceh: During the lunch break, all participants left the training

room and went to the refectory as the training was to be continued after lunch. Unfortunately, the courtroom had apparently been taken over without the SC's knowledge; the participants were also requested to hold discussion groups in another room. Two colonels of Kodam[160] were sitting in facilitator's chairs at the front of the training room. The chairman of the Aceh ad hoc team asked who they were, what their purpose was and if they needed help. This question was answered angrily, "No need to know, I was just ordered to sit down here!" "Intel Kodam" then went to the chairman of the Aceh ad hoc team and informed him that a Kodam intel officer had assured the committee of the training to appear before Pangdam. This request was firmly rejected by the chairman of the Aceh ad hoc team. Eventually, the officer who was speaking on the phone directly asked the chairman to appear before Pangdam. Negotiation took a very long time. In the afternoon, the chairman agreed to fulfill the demand only if the conditions requested by the chairman of the Aceh ad hoc team for a meeting with Pangdam were met. The team was willing to come only if the following requirements were fulfilled: (i) there was a formal letter from Kodam; (ii) the troops who occupied the training had to be dispersed before the chairman of the Aceh ad hoc team left to Kodam; and (iii) a guarantee to continue training. After the name and position of the officer was made known to the SC and the Kodam intelligence officer stated the approval, the meeting time with Pangdam in Kodam was set and the SC team fulfilled the agreement. The 'sit-in' was dissolved along with the departure of two senior officers occupying the training place.

- Current ambush in the forest of the Nisam area: Before journeying to the location of mass graves in Nisam remote areas, the Aceh ad hoc team had already notified the troops in the area, first in the foremost post that is only a few kilometers from the Medan - Banda Aceh main road. The officer at this post was a colonel[161] of the Diponegoro Division. This post is armed with tanks, armored vehicles and military communication equipment that can be used between the military troops in the combat field and the command headquarters. In a "civilized" conversation with this officer—who claimed to know the chairman of the Aceh ad hoc team from television—he confirmed the names and team members of the Aceh ad hoc team and wrote this down in the book provided by the other post's military officer. The chairman of the Aceh ad hoc team also requested the officer inform his brigade regarding the visit of the team through the existing communication equipment. The officer promised to do so. While the team was passing through the next smaller military posts, the team was always notified that the journey had been legally reported to the first post officer and therefore the team had no difficulty in passing various military posts. The "ambush" of the team done by the forest patrols happened on the return trip. The car of the team was stopped and the troops dressed in military uniform were pointing their weapons at them. All passengers were ordered to come out of the car while the car was ransacked. One soldier reported to the commander who was moving to the stopped car and approached the group of team members outside of the car. There was a conversation and negotiation between commanders and the chairman of the ad hoc team while some of the soldiers stood still with their weapons drawn. The group of Komnas HAM was held for about 45 minutes and after the commander communicated with his superior via radio, the group was allowed to continue their journey.

160 The information claiming these two people were colonels of Kodam Iskandar Muda was provided by one training participant from the Department of Law and Human Rights of the Aceh region. Unfortunately, he was killed by the tsunami in Aceh.

161 The name of the officer is known by the Aceh ad hoc team.

The Existence of KOMNAS HAM
Values/ideology/paradigm

Three important aspects that influence the strengths, weaknesses, opportunities and threats or challenges of Komnas HAM are the values/ideology/paradigm, the institutional structure and culture, and the agents/actors in which consists a paradox. Differences and competitions of values/ideology/paradigm, which set the view of the public law, enter the Komnas HAM through the legal profession who are also members of the Commission (Pratikno & Lay, 2002). Two opposing points of view are the legal-positivist and moral-interpretive models. The legal-positivistic view is based on a creed of "rules and logic" and reductionism, with an emphasis that law and human rights are reflected in the articles and the revelations of the policy. Law and human rights are separated from morality, essence and human dignity, which are protected by law and regulations. The law is practiced as a rational experience of regulation, procedure and completeness of the "law." The legal process tends to be an event to search for procedure over the search for justice. Laws have not been applied meaningfully (Rahardjo, 2002).[162] The implications of such a view is the emergence of attitudes of law enforcement and human rights enforcement as only procedural actions rather than truth seeking ones and, therefore, empathy and sympathy for the victim is minimal; even if there is legitimacy, law enforcement is paramount. A further implication of this view is the continuity of "impunity," such as in the Trisakti, Semanggi I and Semanggi III incidents.[163] The moral-interpretive model, on the other hand, holds that law is a tool (instrument) that is needed to achieve justice, and not a self-serving entity. Therefore, law is part of justice and morality. Moreover, law should not be separated from morality. Articles and clauses in the law and regulations need to be deciphered in the context of justice and truth. Legal procedures must be used and placed in the context of the truth, namely justice and morality. In short, the moral-interpretive model is the antithesis of the legal-positivist view.

For Komnas HAM, such values/ideology/paradigm sometimes come into play in the decision-making process regarding the investigation and results of human rights violations. One example is the discontinued process of preliminary investigation for various incidents, which should have been investigated further and even been subjected to *pro justisia* investigation, such as the human rights violations during the Suharto regime[164] and serious violations in Aceh during the military emergency period.[165] Another example is the debate going on in the plenary session on defending a journalist arrested by Ishak Daud GAM troops—with the forum eventually stating that Komnas HAM could not do that.[166]

162 Compare to the writing of Prof. Satjipto Rahadjo (*Kompas*, 2002). See footnote no. 99.

163 The TNI superiors who were called by Komnas HAM, supported by their legal advisers and Babinkum, are using the statements to exploit the weakness of human rights procedural justice and refused to provide information. The further absence of investigation on the Trisakti, Semanggi I and Semanggi II cases—the investigations into which have been completed by Komnas HAM and which have been under the responsibility of the general attorney—is also based on the weaknesses of human rights procedural justice.

164 The Komnas HAM plenary council established the Suharto Human Rights Violations Investigator team to examine various events that have occured. This team focused on five events, referred to as: (i) the island of Buru (detention without trial) case; (ii) the mysterious shooting incident (Petrus) case; (iii) the DOM (Military Operations Area) of Aceh and Papua case; (iv) the Tanjung Priok and Talangsari cases; and (v) the attack on the PDIP office on Diponegoro Street. See: The Komnas HAM Ad Hoc Team, *Report on Soeharto Human Rights Violations Investigation* (Jakarta: Komnas HAM, 2005).

165 Komnas HAM established the Aceh Ad Hoc Team to monitor the human rights situation in the period of CoHA, Emergency Military and Civil Emergency in Aceh. The report of the team, which states the early allegations of serious human rights violations, has been submitted to the plenary session of Komnas HAM and will be further investigated with what is referred to as legal analysis. Up to the present, there have been no follow up investigations.

166 The author based this on Article 75 of Law No. 39/1999, which allows for the opportunity to conduct hostage rescue action in the context of increasing "the protection and enforcement of Human Rights." Article 75 of Law No. 39/1999 (letter b) states that Komnas HAM aims to: "improve the protection and the enforcement of Human Rights... etc." On the other hand, a number of commissioners stated that Komnas HAM does not have the authority to rescue hostages because, first, this task belongs to the PMI (Indonesian Red Cross) and, second, according to Article 76, Komnas HAM can only conduct research, extension, monitoring and mediation of Human Rights.

Structure and institutional culture

Structure and institutional culture in the external environment of Komnas HAM is transitionally marked by the existence of structure and dualistic characteristics of bureaucracy,[167] i.e. patrimonial bureaucracies versus Weberian legal-rational bureaucracy. In patrimonial bureaucracy,[168] as practiced during the New Order, individuals and groups control the power and authority of position for the sake of political and economic interest. Therefore: (i) officials are selected by their criteria and personal political choice; (ii) the position is seen as a source of wealth or profit; (iii) officials control both political and administrative functions as there is no separation between the production facilities and administration; and (iv) any action is taken in terms of political and personal relationships (Muhaimin, 1991: 9–11). In short, patrimonial bureaucracy characteristics involve the "patriarch" holding a determined role, emphasizing tiered personal relationships, strong subordinate loyalty to the "patriarch," and personal 'like/dislike' preferences tend to stop some initiatives, resulting in a lack of quality and effectiveness.

In the legal-rational bureaucracy, the role of the "patriarch" is replaced by active participation and a legal-rational relationship—preferably based not on personal loyalty but on the superior plan, legal-rational rules and agreement. Responsibility is spread structurally and the elements of rational working networks are prominent and open to initiatives (which lead to optimal performance and good quality). Dualistic characteristics of both types of bureaucracy are to encourage the structural dualism in Komnas HAM as reflected in: (i) institutional independence (Ps 1 number 7 of Law No. 39/1999)) vs. the hegemony of "cultural patrimonial bureaucracy" (Ps 81 [4] & [5]); "personnel PNS-isation"; (ii) the structure of the political elite is dominated by the status quo pro-reactionary group vs. the strength of the weak pro-reform group in civil society during the period 2002–2007; (iii) a rigid organizational-departmental structure vs. a simple-organizational structure that is flexible and well-designed; and (iv) the commissioner's authority versus authority in connection with the secretary general of staff.

167 A bureaucracy is a large scale formal organization that is differentiated and organized by formal rules and the department or bureau of experienced experts is coordinated by a chain of hierarchic commands. Such an organization is also marked by the centralization of authority and emphasis on discipline, rationality, technical knowledge and impersonal procedures (Theodorson & Theodorson, A Modern Dictionary of Sociology [New York: Thomas Y. Crowell Company, 1969], 34). In Weberian sociology, bureaucracy is a form of the most efficient administration for the achievement of rational or efficient organizational goals. The ideal type of a bureaucracy consists of various elements: a high level of specialization where the division of labor is defined very clearly and job descriptions are clearly defined; a hierarchic structure of authority that clearly describes the chain of command and responsibilities; the establishment of a formal framework of rules to run the organization and direct activities; administration that is based on a written document; non-personal relationships between organizational members and clients; recruitment of personnel on the basis of ability and technical knowledge, long-term job opportunities, promotion on the basis of merit or seniority and a fixed salary; and separation between official and personal income. Modern research has shown that many bureaucratic organizations work efficiently, which was not anticipated by Weber's model. R.K. Merton (1952) shows that a bureaucracy is not as flexible because of unpredictable results, which stem from the structure. Members can be bound by the rules in ritualistic ways and in lifting up the goals they were designed to crystallize. Staff tend to follow a certain direction even if it is wrong. Specializations often pursue a shallow view that cannot solve the problem. Colleagues in one department develop a feeling of loyalty to one another and their departments and promote this group whenever they can (Abercrombie et al., *Dictionary of Sociology* [New York: Penguin Books, 1988], 22–23). In fact, according to Nelson, Robert Merton (in R. Merton, "Bureaucratic structure and personality" in R. Merton [ed.], *Reader in Bureaucracy* [Glencoe, III: Free Press, 1952]) noted the danger inherent in every organization "that is bound to rule, that the rule will be the destination itself, and will blind officials of the functions of the organization and make them refuse to change." In the same spirit, Michel Crozier (M. Crozier, *The Bureaucratic Phenomenon* [Chicago: Univeristy of Chicago Press, 1964]) described a bureaucracy as "one organization that cannot correct its behavior by learning from its error" (Michel Nelson, "Bureacracy" in Adam Kuper and Jessica Kuper [eds.], *The Social Science Encyclopedia* [London & New York: Routledge, 1985], 79–81).

168 In Weberian sociology, patrimonialism is a traditional form of political domination in which a kingdom implements power through a bureaucratic apparatus. In the patrimonial system, administrative and political power positions are under the direction and control of the person in power. Support for patrimonial authority is given not by the strength of noble land owners but by slaves, forced service in the military and hired people. Weber saw patrimonialism as: (i) politically unstable because it depends on the court intrigue and revolution in the kingdom; and (ii) a hindrance to the development of rational capitalism. Therefore, patrimonialism is one aspect of Weber's explanation of the absence of capitalism in the East where the private government is dominant (Abercrombie et al., 1988: 181).

Agent/actor/activist

The process of personnel recruitment, both for commissioners and staff of Komnas HAM, cannot be completely separated from the transitional changes in the political system and society as a whole. The process tends to produce two types of personnel that have the characteristics and patterns of patrimonial bureaucracy in general, i.e., "under-achieving" personnel who: (i) produce the smallest and lowest (*Sak-titahe*); (ii) tend to delay work; (iii) prefer to cut and paste rather than the innovate; (iv) tend to resist criticism and change, especially when the change means personal loss; (v) prefers to opt out; (vi) underachieves; and (vii) has a low achievement tendency (*n-Ach*). Therefore, the overall institution can only produce "the smallest results in long periods or 'low performance'". Such recruitment processes are not able to produce the personnel required by institutions such as Komnas HAM, namely personnel who are: (i) willing to work beyond the call of duty; (ii) fast, to produce the biggest and best results in a limited time; (iii) take the initiative and are creative; (iv) open to criticism and change; (v) obedient and honest; and (vi) high achievers (high *n-Ach*).

The implementation of human rights violation courts is slow, which leads to disappointment and harsh criticism. Some of the problems are: (i) the political interest in "impunity" puts pressure on the political principle of the "freedom of the court"; (ii) a minimal "sense of justice" (for example: a claim-free, omission and prosecutors to appeal); (iii) expertise and verification skills (investigators and officers) that are less skilled; (iv) rejection (resistance) from the military (for example in the May '98 riot case); and (v) less implementation of "chivalrous" principles.

References

Abercrombie, Nicholas et al. *The Penguin Dictionary of Sociology*. London: Penguin Books, 1988.

Ali et al. *Kamus Besar Bahasa Indonesia*. Jakarta: Penerbit Balai Pustaka, 1996.

Althusser, Louis. "Ideology and Ideolgical State Apparatuses (Notes towards an Investigation" in Handhardt, John G. (ed.), *Video Culture: A Critical Investigation*. New York: Visual Studies Workshop Press, 1986.

Anderson, Bennedict. "Old State, New Society: Indonesia's New Order in Comparative Historical Perspective." *Journal of Asian Studies*, Vol. XLII, No. 3 (1983).

Billah, M.M. et al. *Laporan Pemantauan Peristiwa Bulukumba*. Jakarta: Komnas HAM, 2004.

Billah et al. *Laporan Pemantauan Kasus UMI Makasar*. Jakarta: Komnas HAM, 2005.

Billah et al. *Laporan Pemantauan Peristiwa Manggarai*. Jakarta: Komnas HAM, 2005.

Billah et al. *Laporan Tim Ad hoc Aceh*. Jakarta: Komnas HAM, 2005.

Bouchier, D. and J. Legge (eds.). *Democracy in Indonesia: 1950s and 1990s*. Monash Papers on Southeast Asia No. 31, Centre for Southeast Asian Studies. Melbourne: Monash University, 1994.

Britton, Peter. *Profesionalisme dan Ideologi Militer Indonesia*. Jakarta: LP3ES, 1973.

Cahyono, Heru. *Pangkopkamtib Jenedral Soemitro dan Peristiwa 15 Januari '74*. Jakarta: Pustaka Sinar Harapan, 1998.

Conde, H. Victor. *A Handbook of International Human Rights Terminology*. Lincoln NE: University of Nebraska Press, 1999.

Crozier, M. *The Bureaucratic Phenomenon*. Chicago: University of Chicago Press, 1964.
Crouch, Harold. "Patrimonilasm and Military Rule in Indonesia." *World Politics*, Vol. XXXI (1979): 571–578.

Crouch, Harold. *Militer dan Politik di Indoensia*. Jakarta: Pustaka Sinar Harapan, 1999.

Dueck, Judith; Guzman, Manuel and Bert Verstappen. *HURIDOCS Events Standard Formats: A Tool for Documenting Human Rights Violations* (second revised edition). Switzerland: HURIDOCS, 2001.

Editors. "Current Data on the Indonesian Military Elite: September 1, 1993–August 31, 1994." *Indonesia*, No. 58 (October 1994).

Emmerson, Donald K. "Understanding the New Order: Bureacuratic Pluralism in Indonesia." *Asian Survey*, Vol. XXIII, No. 11 (November 1983).

Emmerson, Donald K. (ed.). *Indonesia Beyond Soeharto. Negara, Ekonomi, Masyarakat, Transisi*. Jakarta: Gramedia, The Asia Foundation, 2001.

Endarmoko. *Tesaurus Bahasa Indonesia*. Jakarta: Penerbit PT Gramedia Pustaka Utama, 2006.

English, Kathryn and Adam Stapleton. *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*. Ndabeni Western Cape: The Rustica Press Ltd., 1997.

Evans, Kevin. "Politik Aliran yang Mana?" *Tempo*, 30 March–5 April 2009.

Feith, Herbert and Lance Castles (eds.). *Indonesian Political Thinking 1945–1965*. Ithaca: Cornell University Press, 1970.

Geertz, Clifford. *The Religion of Java*. Glencoe: The Free Press, 1960.

Gouldner, A.W. "Cosmopolitans and Locals: Toward an Analysis of Latent Social Roles–I." *Administrative Science Quaterly*, Vol. 2 (December 1957): 281–306.

Haris, Syamsudin. *Demokrasi di Indonesia: Gagasan dan Pengalaman*. Jakarta: CESDA-LP3ES, 1993.

Heffner, Robert W., "Islam and Nation in the Post-Suharto Era" in Schwarch & Paris (eds.), *The Politics of Post-Suharto Indonesia*, New York: Council on Foreign Relations Press, 1999.

Hornby, A.S. *Oxford Advanced Learner's Dictionary of Current English*, (Revised and Updated). London: Oxford University Press, 1974.

Jackson, Karl D. "Bureaucratic Polity: A Theoritical Framework for the Analysis of Power and Communicaion in Indoensia" in Jackson, Karl D. and W. Pye Lucian (eds.), *Political Power and Communication in Indonesia*. Berkeley: University of California Press, 1978.

Jenkins, David. *Suharto and His Generals: Indonesian Military Politics 1975–1983*. Ithaca, New York: Cornell University, 1984.

Jessop, Bob. *State Theory: Putting Capitalist States in their Place*. Pennsylvania: The Pennsylvania State University Press, 1990.

King, Dwight Y. "Indonesia's New Order as a Bureaucratic Polity, a Neopatrimonial Regime or Bureaucratic Authoritarian Regime: What Difference Does it Make?" in Anderson, B. and A. Kahin (eds.), *Interpreting Indonesian Politics: Thirteen Contributions to the Debate*. Singapore: Equinox Publishing (Asia), 1982.

Kingsbury, Damien. *The Politics of Indonesia*. Oxford: Oxford University Press, 1998.

Komnas HAM. Laporan Tahunan 2002. Jakarta: Komnas HAM, 2003.

Komnas HAM. Laporan Tahunan 2003. Jakarta: Komnas HAM, 2004.

Komnas HAM. Laporan Tahunan 2004. Jakarta: Komnas HAM, 2005.

Komnas HAM. Laporan Tahunan 2005. Jakarta: Komnas HAM, 2006.

Komnas HAM. Laporan Tahunan 2006. Jakarta: Komnas HAM, 2007.

Lay and Pratikno. *Komnas HAM 1998–2002: Pergulatan dalam Transisi Politik*. Yogyakarta: Penerbit FISIPOL UGM, 2002.

Liddle, R. William. "A Useful Fiction: Democratic Legitimation in New Order Indonesia" in R.H. Taylor (ed.), *The Politiccs of Elections in Southeast Asia*. Cambridge: Cambridge University Press, 1996.

Liddle, R. William. "Pengantar" in Salim Said, *Militer Indonesia dan Politik: Dulu, Kini dan Kelak*. Jakarta: Pustaka Sinar Harapan, 2001.

Liddle, R. William. "The Politics of Shared Growth: Some Indonesian Cases." *Comparative Politics*, Vol. 19, No. 2 (January 1987): 127–146.

MacIntyre, Andrew. *Business and Politics in Indonesia*. Sydney: Allen & Unwin, 1990.

Mackie, J.A.C. *Konfrontasi: The Indonesia-Malaysia Dispute 1963–1966*. London: Oxford University Press, 1974.

Mas'oed, Mohtar. *Negara, Kapital, dan Demokrasi*. Yogyakarta: Pustaka Pelajar, 1994.

McGregor, Katharine E. *Ketika Sejarah Berseragam: membongkar ideologi militer dalam menyusun sejarah Indonesia*. Yogyakarta: Syarikat, 2007.

Merton, Robert. "Bureaucratic structure and personality" R. Merton (ed.), *Reader in Bureaucracy*. Glencoe, Illinois: Free Press, 1952.

Miller, V. and J. Covey. *Buku Pedoman Advokasi: Kerangka kerja untuk perencanaan, bertindak, dan refleksi*. Jakarta: Yayasan Obor Indonesia, 2005.

Miller, V. and J. Covey. *Advocacy Sourcebook: Frameworks for Planning, Action and Reflection*. Boston: Institute for Development Research, 1997.

Mortimer, Rex. *Indonesian Communism under Sukarno: Ideology and Politics 1959–1965*. London: Oxford University Press, 1974.

Neufeldt and Guralnik. *Webster's New World Dictionary of American English*. New York: Webster's New World, 1988.

Nasution, A.H. *TNI*. Vol. 3 Jakarta: Seruling Masa, 1971.

Nelson, Michel. "Bureacracy" in Kuper, Adam and Jessica Kuper (eds.), *The Social Science Encyclopedia*. London and New York: Routledge, 1985.

Noor and Jebatu. *Komnas HAM di Persimpangan Jalan*. Jakarta: Lab-Sosio FISIP UI, 2004.

Nordlinger, Eric A. *Soldier in Politics: Military Coups and Governments*. New Jersey: Printice Hall, 1977.
O'Donnel, Guillermo and Phillippe C. Schmitter (eds.). *Transisi Menuju Demokrasi, Rangkaian Kemungkinan dan Ketidak-pastian*. Jakarta: LP3ES, 1993.

Pratikno and Lay. *Komnas HAM 1993–1997: Pergulatan dalam Otoritarianisme*. Yogyakarta: Penerbit FISIPOL UGM, 2002.

Rahardjo, Satjipto. "Menjalankan Hukum dengan Kecerdasan Spiritual." *Kompas*, 30 December 2002.

Ramage, Douglas E. "Pancasila Discourse in Soeharto's late New Order" in Bouchier, D. and John Legge (eds.), *Democracy in Indonesia: 1950s and 1990s*. Monash Papers on Southeast Asia No. 31, Centre for Southeast Asian Studies. Melbourne: Monash University, 1994.

Ramage, Douglas E. *Politics in Indonesia: Democracy, Islam and the Ideology of Tolerance*. London and New York: Routlegde, 1995.

Said, Salim. *The Genesis of Power: Civil-Military Relations in Indonesia during the War for Independence, 1945–1949*. Ohio State University, 1985.

Said, Salim. *Militer Indonesia dan Politik: Dulu, Kini dan Kelak*. Jakarta: Pustaka Sinar Harapan, 2001.

Samego, Indra et al. *Bila ABRI Menghendaki*. Bandung: Mizan, 1998.

Schwarz, Adam. *A Nation in Waiting: Indonesia in the 1990s*. Boulder, CO: Westview Press, 1994.

Schwarz, Adam & Jonathan Paris (eds.). *The Politics of Post-Suharto Indonesia*. New York: Council on Foreign Relations Press, 1999.

Shiraisi, Takashi. "The Indonesian Military in Politics" in Schwarch & Paris (eds.), *The Politics of Post-Suharto Indonesia*. New York: Council on Foreign Relations Press, 1999.

Simanjuntak, Marsilam. *Pandangan Negara Integralistik*. Jakarta: PT Pustaka Utama Grafiti, 1994.

Simamora, Drs. Sahat. *Militer dalam Politik*. Jakarta: Penerbit Rineka Cipta, 1990.

Soekarno. *Nasionalisme, Islamisme, dan Marxisme* (see: Sukarno, *Di Bawah Bendera Revolusi*). Canberra: Panitya Penerbit Dibawah Bendera Revolusi, 1965.

Sukarno. *Di Bawah Bendera Revolusi*. Canberra: Panitya Penerbit Dibawah Bendera Revolusi, 1965.

Tanter, Richard. "The Totalitarian Ambition: Intellegence Organization in the Indonesian State" in Budiman, A. (ed.), *State and Civil Society in Indonesia*. Monash Paper on Southeast Asia No. 22. Melbourne: Monash University, 1990.

Taylor, Robert (ed.). *The Politics of Elections in Southeast Asia*. Cambridge: Cambridge University Press, 1996.

Theodorson, George A. and Achilles G. Theodorson. *A Modern Dictionary of Sociology*. New York: Thomas Y. Crowell Company, 1969.

Tim *Ad hoc* Komnas HAM. *Laporan Pengkajian Pelanggaran HAM Soeharto*. Jakarta: Komnas HAM, 2005.

Vatikiotis, Michael R.J. *Indonesian Politics Under Soeharto: Order, Development and Pressure for Change*. London: Routledge, 1993.

Intelligence Transformation in Indonesia's Democratic Transition and Human Rights

Usman Hamid

Introduction

This article examines the significance of intelligence work required by democratic countries while respecting human rights. In Indonesia, democratic control of state intelligence bodies has prerequisites. Political regulation is needed to determine the borders between secret and specific intelligence work for the enforcement of human rights, civil freedoms and democratic principles. This political regulation is necessary because of the rising tendencies toward non-traditional authority as a result of the US "war on terror" post-September 11th. One authority should interrogate and detain suspects involved in a terrorist network. This article tries to see how intelligence can serve as a supporting pillar of a national security system that protects human rights and how an intelligence institution can perform the transformation, paradigm, roles, functions, culture and structures of intelligence are fundamentally linked with human rights.

In the last decade, the "war on terror" foreign policy of the Bush administration abandoned secret intelligence compatibility and the maintenance of human rights, even though in the 1990s the intelligence process was on a path toward democratization.[1] Intelligence work conducted by US security actors (mainly by the intelligence bodies) has broken international legal norms on human rights,[2] although at present the policy is being fixed by the new government under President Barack Obama. The present shifting political power in the US with Obama as president got a positive reaction from human rights activists,[3] mainly after the policy decision to close the Guantanamo prison.[4]

1 Peter Gill, "Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?," *Intelligence and National Security*, Vol. 24, No. 1 (2009): 78–102.

2 See: Karen J. Greenberg and Joshua L. Dratel (eds.), *Torture Papers: The Road to Abu Ghraib* (Cambridge University Press: Cambridge, 2005). See also reports about human rights conditions made by Human Rights Watch (HRW) and Amnesty International (AI) on the Bush administration (2000–2008) at www.hrw.org and www.amnesty.org.

3 On the contrary, when George Bush was chosen, Indonesian military conservatives were still able to give positive reactions. For example, see: A/M. Hendropriyono, "Prajurit Kita Laga dengan Terpilihnya Bush," *Harian Kompas* (20 December 2000). He wrote, "bagi Bangsa Indonesia yang patriotik termasuk para prajurit kita yang mendambakan selalu persatuan dan kesatuan bangsa tentunya merasa lega, sebab George Walker Bush mempunyai latar belakang kepemimpinan yang lebih mendengarkan pertimbangan pertahanan dan keamanan nasional ketimbang faktor-faktor lainnya dalam menetukan kebijaksanaan politik di saat situasi membutuhkannya" (…patriotic Indonesian people, including our soldiers, who always yearn for national unity, of course feel relieved because George Walker Bush had a leadership background that focused more on national defense and security than on other factors in determining political decisions).

4 Indonesian human rights activists had demanded Guantanamo's closing since the Bush administration until Obama was elected. Last time, a demonstration occurred in the name of "Youngsters for Humanity's Value" through symbolic protest in the Hotel Indonesia traffic circle, where activists wore orange shirts like Guantanamo prisoners that spelled out the message "STOP Penyiksaan" (stop the torture). See the photo and their statement titled "Melawan Terorisme dengan Keadilan" at: http://kontras.org/index.php?hal=siaan_pers&id=832.

The global situation almost always affects domestic conditions. In the context of Indonesia, the "global war on terror" degraded the democratization process and transition agendas i.e., reformation of the security system and human rights maintenance. Many papers discuss this, mainly interrelated with the intelligence that was produced.[5] Civil society activists have also studied the intelligence progress for the movement of a democratic system and human rights protection.[6]

However, the democratic pulse and human rights maintenance in Indonesia allowed room for military parties to return to power as the status quo, which can be seen from efforts to defend military influence over civil authority, even reviving intelligence as a repressive tool towards civil society. This is a real threat, often used to assert democracy and human rights fail to create public/national security. This situation, including global influence, always occurs thus we should be unsatisfied with the achievement of the 1998 political reformation agenda, including the continuation of the security system reformation of the intelligence body.

Intelligence Practices and Human Rights Intersection

The intersection between intelligence practices and human rights can be elaborated upon, based on general functions of an intelligence body, which are building on target profile activities (targeting), collecting information using technological intelligence (Techint), human intelligence (Humint), dissemination, policy and covert operations.[7]

1. Building target profiles (targeting)

The goal of this activity is the prevention of attack on national security by arranging profiles gained from various public and private databases. Before this activity is conducted, there should be a clear government policy. This policy must be clear, logical, and able to explain and calculate the real threats to national, regional and day-to-day security.[8] There must also be a threat differentiation to ascertain what cases need domestic and/or foreign intelligence responses.[9] Differentiation is also needed in the identification of an intelligence body and a law enforcement body response, including dual functions under specific conditions.

An intersection with human rights occurs when profiles are composed from databases protected by the act, although we can find possible relations outside private databases as well. For example, the United States' "behavioral screening" policy put in place after the 9/11 attack is also applied in European states. This method is a human behavior tracking system that is applied when a person moves about an airport. Many

5 See Richard Tanter's work or another paper on intelligence like Ken Conboy, Pacivis, SANDI, and Pokja Reformasi Intelijen.

6 See: Yoseph Adi Prasetyo's papers about intelligence as a tool for publication control, Danang Widoyoko's paper about the role of intelligence documents, Patra M. Zen's paper about intelligence wants to have the authority to arrest, Zainal Abidin and Indri Saptaningrum's paper about accountability of intelligence bodies, Hari Prihantono and Yandri Kasim's paper about intelligence, security and defense, Sandra's paper about wartime intelligence logic during peacetime, Muradi's about intelligence security, and Edwin Patogi and Usman Hamid's about intelligence progress in mysterious shooting operations.

7 P. Gill and M. Pthythian, *Intelligence in an Insecure World* (Cambridge: Polity, 2006), 7.

8 Studies by civil society activists conclude that after reformation, the government had not defined a complete political policy for national security. In this context, the "policy" means policy including all security bodies, foreign or domestic.

9 The US legislature even made a problem out of the CIA's report, which over-estimated the weapons. See the Voice of America news at July 10th 2004.

"selected" passengers on commercial civil planes[10] must go through specific interrogation at the airport before boarding, without any clarification of why. The interrogation is held in a specific room for a lengthy period and the selected person must answer uncommon questions. The questioning is concluded by taking a photograph of the individual and their finger prints.

The question is, is the use of this specific method based on intelligence information appropriate? Or do these interrogation methods have no proper intelligence basis to reveal threats to a specific journey? If there is data, the formal legal question of how the data was collected should be raised. The answers to these questions lead us to two basic human rights problems. First, if the information collected from the interrogation is protected by law—like bank account numbers, phone conversations, individual travel documents and mail correspondence—then intelligence targeting operations have breached private rights. Secondly, if everyone must follow an interrogation process without clear initial information being collected, there is no problem. But if questioning is carried out based on subjective considerations such as race, ethnicity, religion or personal appearance, then we can say these actions were discriminatory and violated human rights principles.

In Indonesia there are many suspected terrorist breeding grounds that lead to, for example, intelligence targeting of a specific *pesantren* (Islamic boarding school). This targeting, especially when conducted through public announcements, is inappropriate. Whether targeting respects human rights principles, especially those against discrimination, must be evaluated.

2. Information gathering

This activity is different than building target profiles, though it has similar impacts on human rights. For example, working processes for the gathering of information through technological intelligence equipment (techint) able to breach privacy, potentially breaches Article 17 of the Covenant of Civil and Political Rights, which states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." In privacy cases, the European Human Rights Court decision said that England had breached Article 17 of the ICCPR, which is enshrined in Article 8 of the European Constitution on privacy rights. The decision stated that intelligence activities must have a clear working framework and must fulfill tight prerequisites such as legality, proportionality, subsidiarity (wherein an intrusive technical technique must be the last effort), accountability (authorized, recorded process and monitoring), and finality (the information collected must be used

Photo 6. Stop Terror Logo, International Action Campaign Launched in India in 2008

10 The author personally experienced a long interrogation in John F. Kennedy airport in New York. His colleague, the late Munir, had a similar experience in Bangkok.

for a specific purpose outlined before).[11] Due to these complicated prerequisites, perhaps the Indonesian intelligence body, specifically BIN, proposed a legal draft that legalizes revealing personal correspondence. This activity must respect the authority held by legal bodies so as not to create a clash with the law and/or create conflict between an intelligence and law agency.

The same goes for the use of human intelligence (humint), which requires great caution, diligence and accuracy when using intelligence informants and during interrogations. The use of informants is regarded as important because intelligence agencies face threats that cannot be identified using technology per se. We can minimize the tapping of telephones, emails and other correspondence. Potential criminals can avoid these measures by changing phone numbers, email addresses or by using safe email addresses, or other methods of general human intelligence. Intelligence technology is not always effective in detecting and prohibiting attack. The 9/11 attacks show us how, in spite of technology, the perpetrators were not stopped. The problem is, when we want to rely on human intelligence, the informant must have accurate and reliable information of when an attack is imminent. This is where human rights problems potentially arise, regarding informant protection. Perhaps during the recruitment process the informant should get clear authorization on their working status, or at least they must register officially. These mechanisms must be formulated in a human intelligence manual, so problems can be handled as they occur.

An example of a human rights problem is when the police use information from an informant that is not officially registered. Nuala O'Loan, an ombudsman from Northern Ireland, delivered her research on this case and found many problems:

- Failing to capture informants for crimes committed, which had been admitted to by him/her;
- Intelligence secrecy that indicated three intelligence agents had been involved in an assassination and another serious crime;
- The creation of fake interview notes, failure to record and protect the real interview notes and formulation of meeting notes with an informant;
- Retaining what is required by their police colleagues, including suspected names that could be used to prevent crimes from happening;
- Preparing at least four inaccurate and misleading documents for court evidence in four different incidents connected to an informant's safety;
- Giving and ordering junior officials not to finish recording the current event being handled or banning records of current events;
- Destroying or losing forensic materials; and
- Not using UK Home Office Guidelines on how to handle an informant.

Aside from the use of an informant, human rights problems can also arise in interrogation methods, i.e., the controversial use of torture to interrogate a detainee suspected to have information about an imminent attack. This is controversially known as the "ticking bomb" scenario.

11 Gill, "Security Intelligence…" (2009).

In this scenario, torture is used as a means of interrogation to obtain useful information needed for handling a looming bomb explosion threat.[12] As the government is experienced in the practice of torture, torture should be legalized and limited to extreme cases to avoid hypocrisy. This utilitarian argument believes that it is acceptable to use torture for the sake of saving more human lives. Of course, this argument is weak. Yuval Grimbal from Amnesty International, in his book *Why Not Torture Terrorists*?, or Danchev in his paper "Human Rights and Human Intelligence," strongly oppose this argument. The "ticking bomb scenario" is rebutted with the "slippery slope" argument, which states that once torture or other inhumane treatment is legitimized, it creates a new norm. Secondly, the claim that torture will save many lives has to be carefully examined and tested as the quality of information obtained from torture is contentious. This rebuttal is logical, bearing in mind that the information provided by a tortured person could be false, as their endurance of pain wanes and they consequently tell the interrogator what he wants to hear. Finally, the method could trigger revenge for the inhumane treatment administered to a person unlawfully arrested and suspected of being a terrorist.

3. Intelligence analysis and dissemination

Intelligence work is accountable to policymakers. Policymakers use data and information analyzed by intelligence agents. As an intelligence body cannot execute action on its own, intelligence officers must not be able to control the information sources to be used by policymakers.[13] The authority to utilize intelligence lies in civil hands. This is why the results of intelligence analysis are presented to policymakers. Furthermore, the exchange of intelligence information between intelligence bodies is also important. In this case, policymakers are given the best analysed results from each body, though this collaboration is not easy.

The debate regarding relations between policymakers and intelligence bodies, and the coordination between intelligence agencies and domestic law enforcement, is exemplified by the 9/11 attacks.[14] First, the Bush administration was regarded as unable to create a synergy between the intelligence bodies, rejecting the idea for a new organization or redirecting the responsibility to intelligence bodies.[15] Secondly, the Federal Bureau of Investigation (FBI) seemed unwilling to accept their responsibility in domestic intelligence analysis.[16] Thirdly, the head of the Central Intelligence Agency (CIA) also seemed unwilling to accept responsibility for protecting and controlling classified data.[17] Finally, the dynamic of the Bush administration reveals how policies, rules and approaches to a single problem often differ given the multiplicity of the actors and conditions involved.[18]

12 A similar argument was made by A. Dershowitz in: *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (London: Yale University Press, 2002), chapter 4. F. Alhoff also made the "lesser evil" argument for torture in: *Ethical Designs of Torture in Interrogation* in Jan Goldman (ed.), *Ethics of Spying* (MD: The Scarecrow Press, 2005), note 46, 126–40.
13 Roger Z. George and James B. Brush (eds.), *Analyzing Intelligence: Origins, Obstacles and Innovations* (Washington DC: Georgetown University Press, 2008), 6.
14 Bruce Berkowitz, "Homeland Security Intelligence: Rationale, Requirements and Current Status" in Roger Z. George and James B. Bruce (eds.), *Analyzing Intelligence: Origins, Obstacles and Innovations* (Washington DC: Georgetown University Press, 2008), 6 & 289.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid.

Another interesting example is the Maher Ara case, a Canadian deported by the US to Syria, arrested, tortured and jailed for ten months based on inaccurate information.[19] It is possible that trans-border dispatches like this are conducted to veil the actions of states who wish to avoid being seen torturing terrorist suspects within their own territories.

A similar case in Indonesia is that of the leader of BIN, AM Hendropriyono, who dispatched Umar Al-Farouk to US authorities. Umar's wife, Mira, kept questioning the dispatch.[20] Mira queried the information that her husband was found dead, shot in Iraq after escaping from Afghanistan. The possibility of torture, inhumane treatment and execution outside legal mechanisms seems to have been neglected in the Al-Farouk case, beginning with his illegal deportation under national law. Coordination between intelligence and law enforcement is also a problem in Indonesia, which can be seen by the repeat bombing campaigns in Bali and Sulawesi.[21] After the bombings, the usual debate focused on the poor coordination between the intelligence body in detecting and/or giving early warnings and law enforcement bodies i.e., the police.[22] It has been argued that it is perhaps this low detection that is allowing torture practices to exist as discussed above.[23]

4. Covert action and counter-intelligence

Colonial leaders often used covert action as an effective method for quelling rebellion. This activity can vary from the use of subversion and trickery to military sabotage, including counter intelligence i.e., information distortion in order to balance out a targeted party's intelligence. Generally, covert actions are carried out for an external power, which is defined as an enemy. In the case of Northern Ireland, "troubles" between 1967–1997—a term used to refer to "sectarian murder" between Nationalist and Loyalist groups—was always used by the government, though many suspicions arose over whether the trouble was created by collusion between the militia and the security apparatus, a belief strongly opposed by Britain.[24] In response to this suspicion, several formal investigations were conducted. The John Stevens investigation in 1989 found no systematic collusion. Another study in 1999, in connection with the Pat Finucane 1989 murder, resulted in a brief report in 2003 that concluded that there was systematic collusion in the murder—seen as a failure in intelligence information records, a lack of accountability, deficient evidence taking and knowledge of the agent involved in the murder.[25] In this context, covert action was high risk, and clearly clashed with human rights protection.

19 Peter Gill pointed this out in the report, *Commission of Inquiry: Report to Maher Arar* (Ottawa: Public Works and Government Services Canada, 2006). This report can be accessed at: http://www.ararcommission.ca

20 *Daily Kompas*, "Al Faourk, Mira Mempertanyakan" (29 September 2006). Mira married Al Farouk on July 26th 1999. In this news article, the Indonesian Police General Inspector Paulus Parwoko noted that in POLRI's investigation about many bomb explosions in Indonesia, Farouk's name never came up. The captured terrorist never said Farouk's name until now.

21 The cases that have not been investigated yet are: the bombing case of May 28th 2005; two bombings in Tentena, Poso that killed 20 persons and injured 53 (*Kompas*, May 29th 2005); and also a bomb explosion in Palu on December 31st 2005 that killed 7 persons and injured 54 (*Kompas*, January 1st 2006).

22 Sectoral Intelligence ego polemic.

23 After coming to the branch office of the Human Rights National Committee in Palu, Central Sulawesi, several human rights organizations have had sufficient time to demand the UN Special Rapporteur on Torture, Professor Manfred Nowak, visit Central Sulawesi in connection with the investigation of torturing methods in interrogation of suspects accused of bombings. The ones who were tortured are: Junaedi, Jumeri, Mastur Saputra and Sutikno on June 1st 2005. They were arrested then taken to Mulia Hotel, Pendolo (Poso), then tortured and forced to confess their involvement in the bombing at Tentena, May 28th 2005. The same happened to twenty civilians of Poso City when the DPO (the wanted persons list) mission was held on January 22nd 2007 in Kelurahan Gebang Rejo, and to Selena's civilian (Poso) and five civilians from Ampibabo (Parigi-Moutong). See: *Daily Kompas* (13 November 2007).

24 Gill, "Security Intelligence…" (2009), 78–102.

25 Ibid.

State Problems in Transforming Intelligence

The state's main problem in reforming intelligence is the absence of a long-term strategic policy. In this situation, the guidelines for reforming intelligence are only partially implemented according to who has authority. A decade of reformation shows that every government has its own interpretation on how to reform the intelligence service. Internal clashes occur when one authority uses intelligence as a power instrument over another, resulting in an unavoidable power struggle over the intelligence authority. In the end, the politicization of the intelligence body and the most senior appointee (chief of intelligence) always occur. Governmental change means changing the person in charge of intelligence, which also includes changing policy direction.

Strategic policy direction can differ between intelligence bodies. Indonesia's intelligence evolution indicates a changing type of interaction between intelligence agencies, state power and government. The first type is the militarization of intelligence with political intelligence from 1945 to 1966; the second phase relates to an interaction between state intelligence developed by the New Order era. During the reformation, the government was able to make basic changes that promoted intelligence interaction, expected to fulfill good governance standards. The intelligence profession is unique and specifically skilled therefore it needs to divide internal working units within the intelligence body as a whole.

Photo 7. Demonstration Demanding an Investigation into Munir's Killing by the NGO Coalition for the Munir Case (KASUM) in December 2008

As a comparative reference, the DCAF-FES SSR publication Vol. II (*Praktik-Praktik Intellijen dan Pengawasan Demokratis, 2007*) explained a general form of intelligence categorization that can be divided into two parts:

1. *Security Intelligence*: this function focuses on developing intelligence wings domestically, where security leads to protecting the state and society from espionage, subversion or potential harm, which threatens national political stability. Domestic intelligence will defend public security and guarantee domestic security.
2. *Foreign Intelligence*: this function collects information as part of early warning data on issues that have the potential to create risk, danger or threat, both by other foreign intelligence agencies as well as by foreign (non-state) actors. The information collected by foreign intelligence agents is used to defend national interests that cover political, social, cultural, economic, scientific and security interests.

According to the differentiation explained above, we can understand the work between domestic and foreign intelligence with other law enforcement bodies. This differentiation process becomes meaningless when we examine the State Intelligence Body (BIN). Intelligence has a different working method compared to other

law enforcement bodies, such as the police, which are supported by another law enforcement body. Aside from secrecy and covertness, an intelligence agency's main task is to collect trusted and accurate information needed for supporting other law enforcement bodies.[26]

This strategic policy can actually be stated in a strategic political regulation. "Strategic" means the policy must be free from partiality and the interests of other authorities. Real implementation can be established with the formulation of a political regulation such as an act of law that consists of a long-term policy relating to national security, early warning systems, and how intelligence functions sequence with the constitution, law and politics. In the future, policymakers must consider a proposal for an intelligence act, incorporating joint civilian Working Groups for Intelligence Reformation (*Kelompok Kerja Reformasi Intelijen*-POKJA INTEL) and the Node Alliance for Intelligence Democratization (*Simpul Aliansi untuk Demokratisasi Intelijen*-SANDI).

Although Indonesia has no regulation on intelligence at present, this does not preclude the need for intelligence reform. Policymakers, like the president, can provide clear executive direction on intelligence. This can push for changing the old paradigm towards a new era, in a democratic country. Without policy, no changes in the intelligence paradigm can occur. Studies conducted by many scholars, practitioners and activists initiated by Pacivis UI show that the intelligence body still positions itself as a military entity, often targeting civilians. Ideally, military bias in intelligence must be erased, although we cannot deny that history has noted the gross human rights violations in Indonesia in which the state and intelligence actors were actively involved. One of the incidences that still captures public attention is the assassination of the human rights activist Munir Said Thalib in 2004, masterminded by BIN. BIN's competence as a professional intelligence agency is thus questioned, both from a legal as well as empirical perspective.

Lessons learnt from these experiences highlight the necessity of the intelligence body's need to conduct activities within a legal framework. A starting point would be to give civil authority control of strategic policy within the security system. A drastic change must be conducted as soon as possible, although the civil government's mandate often runs into obstacles such as rejection from the conservative military elite, who regard reformation of the security system as a restraint on the Indonesian military.[27]

The history of Indonesian intelligence highlights the need for a full powered intelligence body, which can work according to its true function: that is, providing trusted and accurate information to the government. This information will be used as a tool to minimize new risks, danger and threats that could disturb state stability. This intelligence body must respect legal political authority and be fully compatible with the values of human rights.

26 This needs to be stressed so society can understand that a state intelligence body should not conduct involuntary arrests and detention without following specific procedures. This contradicts the current reality of recent terrorism issues, in which the state intelligence body has prerogative rights to be involved in the arrest and detention of terrorist suspects. This contradicts the control-and-check mechanism within a state, when intelligence bodies have the responsibility of providing accurate information, proportional action and functional recommendations that reflect that intelligence respects human rights and democracy.

27 Although in Megawati, the Soekarno Putri administration made drastic changes. She used a security approach in Indonesian political policy, especially to handle GAM separatism in Aceh and the OPM in Papua. This can be seen in the constellation mapping that Megawati's rise to the presidential chair was supported by the TNI institution. Besides that, Megawati also was not able to implement the essence of civil supremacy over the military, unlike Abdurrahman Wahid (the second Indonesian president in the reformation period).

Conclusion

The existence of strategic policy direction through democratic oversight and strong regulation will ensure security will not hamper human rights values that are inherent within the development of a modern democratic state. Of course, though intelligence norms may be kept covert and secret, they should continue to be part of specific authority controlled by a democratic system that supports legal political authority. Parliament, as an institution of political oversight that represents the people, must be strengthened. In the future, parliament is expected to provide objective control measures and layered checks-and-balances based on democratic law. To continue formulating political regulation for intelligence, the control and oversight function can be carried out by controlling the budget for intelligence, its working mission and limiting the end user of the intelligence services to only cover the state level, which in this context is the president. The ability to perform advanced control and oversight of internal and external intelligence agencies, especially in accessing technological and human resources, can ultimately help the intelligence sector function effectively and professionally.

Reform of the intelligence body is a burdensome job that must be done through a continuous working process by the concerned parties. Attention from civil society and the judiciary will complete the political oversight of parliament. The end result is to realize the hopes of democratic life that provides safety to all Indonesians and society.

Reference List

Almond, Gabriel and Sidney Verba. *Civic Cultures: Political Attitudes and Democracy in Five Nations.* Boston: Little Browns, 1963.

Bentham, Jeremy. *Panopticon: Or Inspection House*. Dublin: Thomas Byrne, 1791.

Born, Hans and Ian Leigh. *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. Oslo: Publishing House of the Parliament of Norway, 2005.

Buzan, Barry, et al. *Security: A New Framework for Analysis*. London: Lyne Rienner, 1998.

Dahl, Robert A. *On Democracy*. New Haven, London: Yale University Press, 2000.

Gill, P. and M. Pthythian. *Intelligence in an Insecure World*. Cambrigde: Polity, 2006.

Gill, P. "Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?" in *Intelligence and National Security*. Vol 24, No.1 (February 2009): 78–102.

Hadinoto, Suyanto, et al. *Dua Puluh Lima Tahun Trikora*. Jakarta: Yayasan Badan Kontak Keluar Keluarga Besar Perintis Irian Barat, 1988.

Hiariej, Eric. *Materialisme Sejarah Kejatuhan Soeharto: Pertumbuhan dan Kebangkrutan Kapitalisme Orde Baru*. Yogyakarta: IRE Press, 2005.

Liddle, William. "Indonesia's Threefold Crisis." *Journal of Democracy.* Vol. 3, No. 4 (1992).

Orwell, George. *1984.* London: Secker and Warburg, 1949.

Parekh, Bikhu. "The Cultural Particularity of Liberal Democracy" in David Held (ed.), *Prospects for Democracy: North, South, East, West*. Cambridge: Polity Press, 1993.

Rustow, Dankwart A. "The Surging Tide of Democracy." *Journal of Democracy*. No. 1: 1992.

Sen, Amartya. *Basic Education and Human Security.* Jointly organized by the Commission for Human Security, UNICEF, The Pratichi (India), Trust and Harvard University, 2002.

Uhlin, Anders. *Indonesia and the Third Wave of Democratization: The Indonesia Pro-Democracy Movement in a Changing World*. London: Curzon Press, 1997.

Wibisono, Abdullah Ali and Faisal Idris. *Menguak Intelijen "Hitam" Indonesia*. Jakarta: Pacivis Center for Global Civil Society Studies, 2006.

Widjajanto, Andi and Artanti Wardhani. *Hubungan Intelijen Negara 1945–2004.* Jakarta: Pacivis Center for Global Security Studies, 2008.

Constitutional and Fundamental Rights for the Security Sector

Rusdi Marpaung

Introduction

This paper reviews human rights for security actors. This chapter will explain what the fundamental rights of security actors are and their differences from civilian human rights. Furthermore, the chapter will explain the basis of fundamental rights for security actors within international law and constitutional rights. It will also explain the state's responsibilities, including the supervision mechanism for fundamental rights. Furthermore, the author will outline the forms of human rights advocacy for security actors and the increasing awareness of security actors given these advocacy efforts. A SWOT (strength, weakness, opportunity and threat) analysis of CSOs' (civil society organizations) advocacy on the fundamental rights of security actors will also be discussed. Finally, the author will also make some basic conclusions and recommendations.

> ...subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of the world order based on freedom, abiding peace and social justice, then...
> (1945 Constitution of the Republic of Indonesia, Preamble)

The preamble of the 1945 constitution lies at the heart of Indonesia, unwavering even after the fourth constitutional amendment in 2002. According to constitutional experts, the preamble of the 1945 constitution conveys the goal that law should establish basic norms that contain legal certainty, expediency and justice for all. Those three basic principles exist as the juridical and ideological preamble aims to steer and control instruments for the enforcement of human rights protection, status, functions, the authority of the state, the mechanism of state institutions relations and state-citizens relations.[1] While on the subject of fundamental rights, the provisions in Article 37 TAP MPR XVII/1998 state:[2]

1 Krisna Harahap, *Konstitusi Republik Indonesia, Menuju Perubahan Ke-5* (Bandung: Grafitri, 2009), 96.
2 Also compare with the understanding of fundamental rights in Article 4 Clause 2 of the Covenant on Civil and Political Rights and Article 4 of Act No. 39/1999.

> The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person in the name of the law, and the right not to be prosecuted on a retroactive law, are human rights that cannot be reduced in any circumstances (non-derogable).

Fundamental rights, as mentioned in the TAP MPR above, are also in the spirit of the constitution, which states that human rights, especially fundamental rights, are synonymous with the idea of the establishment of Indonesia.

What about the fundamental rights of security actors? In practice, the hierarchy in the armed forces makes the emergence of differing treatment according to the practices of chiefs in the armed forces possible. In some cases, the same treatment can only be enjoyed by a group of soldiers, whether they are senior, middle, or lower rank. Differing treatment is also apparent in the recruitment process, both in voluntarily recruitment and conscription.

The concept of citizenship actually denies the differences between the military and civilians or between regular voluntary soldiers and their conscripted counterparts. In Germany for example, the constitution specifies that soldiers are citizens in uniform (*staatsburger in uniform*).[3] A similar categorization is found in the Netherlands, which claims that civilians who enter military service do so voluntarily and give up their rights and obligations as ordinary citizens, while civilians who join the military by conscription are still considered ordinary citizens.[4]

Thus citizens who join the armed services still have all the fundamental rights of any other citizen.[5] The concept of "soldiers are the citizens in uniform" is certainly relevant to the historical background or experience of these countries in terms of armed forces positions. Germany, for example, adopted this concept because of its experience after World War II.[6] In addition, military development in Europe also adopted the general principles of human rights from international human rights instruments and the European Convention on Human Rights of 1950. The use of human rights principles as a means of control—in case of violations conducted by soldiers and or violations of the rights of soldiers—is upheld by the European Court of Human Rights.[7]

Nevertheless, care must be taken when interpreting the concept of "soldiers are the citizens in uniform." The interpretation of this concept as an equation between the military and civilians with human rights terms is inaccurate.[8] It is true that members of the military are citizens but this can be described more appropriately as reflecting a political philosophy of citizen soldiers rather than reflecting a precise legal classification.[9]

3 Georg Nolte and Heike Krieger, "Military Law in Germany" in Georg Nolte (ed.), *European Military Law Systems* (Berlin: De Gruyter Recht, 2003), 370.
4 Leonard F.M. Besselink, "Military Law in the Netherlands" in Georg Nolte (ed.), *European…* (2003), 580.
5 Nolte, "Military Law in Germany" in Georg Nolte (ed.), *European…* (2003), 370.
6 Ibid., 370. The rebuilding of the German Armed Forces (*Bundeswehr*) in 1956 placed the military under the control of parliament and responsible to the government. Soldiers are bound by the rule of law in general and by the fundamental rights in particular. This is described completely in the Legal Rights and Obligations of the Soldiers (*Soldatengesetz*).
7 Peter Rowe, *Control Over Armed Forces Exercised by the European Court of Human Rights*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper Series No. 56 (Geneva: DCAF, August 2002).
8 Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (Cambridge: Cambridge University Press, 2006), 14.
9 Ibid.

In political philosophy, there is common sharing between the civilian and military.[10] Philosophically, all citizens can participate in the armed forces but not all citizens can become members of the military body, considering there are certain qualifications that must be fulfilled as set forth in legislation.[11] The concept of law, as a consequence, requires clarity between the military and civilians. The difference in their characteristics, functions and position also requires classification within the concept of citizenship.[12] Military characteristics relating to hierarchy, command and order are not usually found in civilian life. On this basis, if there are violations conducted by the military in accordance with its command characteristics, under current conditions they are not covered by civil law.[13] Thus, currently there are is a differentiation between jurisdiction and justifiability of legal implementation for the military and for civilians and their classification.

Book II of the Military Penal Code Law or KUHPM (*Kitab Undang-undang Hukum Pidana Militer*) illustrates this concept. This book covers criminality of security actors and is divided into seven chapters which are:

1. Crimes against state security
2. Crimes against military obligations without the intention of any assistance to the enemy or damage to the country
3. Crimes which are tantamount to military personnel withdrawal from the implementation of service obligations
4. Crimes of devotion
5. Crimes against various service obligations
6. Theft and corruption
7. Damage, destruction or misplacement of military equipment.

Most of these crimes are also actually regulated in the Penal Code. Crimes against state security are regulated by both the Penal Code and the Military Penal Code. In the Military Penal Code, the crime is stipulated in Articles 64 to 72, which are regulated in Articles 104 to 129 of the Penal Code. The difference is that KUHPM more strictly regulates border security actors than the Penal Code does.

Where does national law place security actors? The different treatment of civilians and the military is relevant within international humanitarian law (IHL) in the application of the "distinction principle" that has become part of international common law.[14] This "distinction principle" has become the basis for dividing citizens into two groups during armed conflict. The first group is comprised of combatants, which actively participate in hostilities, while the other group is civilians.[15]

The combatant status is inherently attached to the armed forces, including the armed civilian groups, which are strictly legislated. For armed civilian groups, humanitarian law specifically requires a state to clearly announce which armed civilian groups are classified as combatants.[16]

10 Ibid.
11 Ibid.
12 Soldiers and police have main duties and functions, which are also specifically regulated in the Indonesia National Army Act 34/2004 TNI and the Indonesia Police Act 2/2002.
13 See: Bhatara Ibnu Reza, et al., *Reformasi Peradilan Militer di Indonesia* (Jakarta: Imparsial, The Indonesian Human Rights Monitor, 2007).
14 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (International Committee of the Red Cross, 2005), 3–24.
15 KGPH Haryomataram, *Pengantar Hukum Humaniter* (Jakarta: Raja Grafindo Persada, 2005), 73.
16 The Air Force Manual (1990) described what is meant by combatants and armed forces, which are regular troops who are members of the armed forces and consist of voluntary troops, compulsory military and foreigners, including citizens from neutral countries that belong to belligerent armed forces. Militias, such as volunteer groups and individuals who are part of the armed forces, should be considered regular troops with the status of combatants. See: Jean-Marie Henckaerts and Louise Doswald-Beck,

International humanitarian law, which is adopted by the armed forces, considers all soldiers into a single principle of equality, although in reality there are more approaches on their duties rather than on their rights. The Geneva Conventions of 1949 and the Additional Protocols to the Geneva Conventions 1949 (1975) should be considered equally without any adverse distinction based upon race, nationality, belief, religion or political views.[17] International humanitarian law does not distinguish between voluntary and conscripted military personnel.[18]

Parallel with the human rights perspective, IHL considers the different responsibilities, rights and obligations of civilians and members of the armed forces. Civilians are citizens who enjoy all human rights that are fully guaranteed by the state. Members of the armed forces do not fully enjoy their human rights, in particular those rights that have been exchanged with the authorities for being the part of the military. With that authority, citizens who become members of the military have an obligation to protect and defend the fulfillment of human rights that have been secured and have become part of the state constitution.

Even though there are some limitations on the implementation of human rights for the members of the armed forces in daily life, they still have non-derogable rights that cannot be diminished under any condition. The right to life, the right to be treated equally before the law, the right not to be tortured, degraded, or to accept inhumane treatment and the right to religion, including freedom of thought, are human rights that can be enjoyed by military members and civilians together, as stipulated in the International Covenant on Civil and Political Rights of 1966.[19]

Are There Any Human Rights for the Members of the Indonesian Military (TNI) and Police (POLRI)?

Debates in the media often question society's discrimination against the TNI and POLRI. The military states in repsonse, "We also have human rights, therefore please respect us." This problem arises in some cases where the TNI and POLRI are the victims. The death of TNI and POLRI members in Abepura in March 2006, for example, shows that security actors can also be the victims in the context of rights to life.[20]

In this context, we can see how human rights violations occur. As an ordinary citizen, a security actor also has non-derogable rights. As mentioned above, security actors are civilians who become officials.

Violations of a Security Actor's Human Rights = Violation of Non-Derogable Rights

Violation of a Security Actor's Non-Derogable Rights = Violation of a Civilian's Non-Derogable Rights

Customary International Humanitarian Law, Volume II: Practice (International Committee of the Red Cross, 2005), 80–81 and 91.

17 Rowe, *The Impact of Human Rights…* (2006), 8.

18 Ibid., 21.

19 Ibid., 8.

20 See Imparsial's press statement of March 22, 2006 about the Abepura case.

The Basis of the Military's Non-Derogable Rights

(Binding) International Legal Basis	National Legal Basis	Basis in International Humanitarian Law
Universal Declaration on Human Rights	Legislative Decree TAP MPR XVII/ MPR/1998	Den Haag Convention 1907
International Covenant on Civil and Political Rights	Act 39/1999 on Human Rights	Geneva Conventions of 1949
International Covenant on Economic, Social and Cultural Rights	Act No. 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights	Additional Protocols to the Geneva Conventions of 1949 (1977)
Genocide Convention	Act 12/2005 on Ratification of the International Covenant on Civil and Political Rights	
Convention Against Torture	Act 26/2000 on the Human Rights Court	
Convention on the Elimination of All Forms of Racial Discrimination	Presidential Decree Kepres No. 129/1998 dan Kepres No. 40/2004 on the National Action Plan on Human Rights	
Convention on the Elimination of All Forms of Discrimination against Women	Act 5/1998 on Ratification of the Convention Against Torture and Act 29/1999 on the Convention on the Elimination of All Forms of Racial Discrimination	
Convention on the Rights of the Child		
Convention on the Status of Refugees		

From the table above, various provisions in Indonesia can manage the relationship between the foundation of international humanitarian law and human rights. The purpose of IHL and human rights are as follows:[21]

- In principle, both aim to guarantee human protection. The difference is in the application of the law. A fundamental right is applicable in all circumstances and conditions (in war and in peacetime).
- International humanitarian law guarantees the protection of victims of war and the methods of warfare. The Geneva Conventions of 1949 impose obligations on states to protect individual rights. Rejection of these conventions cannot be justified and is considered a violation of international law. Regulation concerning the protection of individuals is also found in Common Article 3, which requires humanitarian protection in non-international armed conflicts.
- International humanitarian law and human rights complement each other. Aspects not regulated under the Geneva Conventions are completed by human rights, thus there is a unity and harmony in the substance of both laws.

State Responsibility for Security Actor's Respect for Human Rights

By the definition of international law, human rights are included in the international legal system. The international community of states, including the Republic of Indonesia, are signatories of the UN Charter. Furthermore, the state plays an important role in creating a legal system through conventions, international treaties and other

21 Sentra Ham UI, *Modul HAM bagi Brimob Polri* (Jakarta: Sentra HAM UI, Korps Brimob Polri, Kemitraan, dan Uni Eropa), 60–63.

declarations and technical guidance. That is the reason why states then affirm the agreement and are bound by international law.

Within human rights, individuals, certain groups and property are protected. Who is then responsible for the fulfillment of human rights? The state or government, as evidenced by agreement at the international level, has the obligation to protect citizens and their property. A citizen or individual security actor may not make policies or regulations. The state is the party that makes policy tools. Does policy then fulfill the standards or expected results? In fact, this is very difficult to achieve as written policies are often very out of touch with reality.[22]

We can assess whether the state is responsible for fulfilling fundamental rights. As an illustration, in order to maintain these rights the state should prepare various structures like the security actor education curriculum for the Indonesian military (TNI) and police (POLRI) forces. In addition, we have to assess whether the state facilitates equipment, regulations and standard operating procedures (SoP) for the security forces. With this form of software and hardware facility, it is expected security actors as individuals will obtain protection for their fundamental rights.

In the context of war, clearly set fundamental rights can be protected, especially the right to life and the right not to be tortured or inhumanely treated. In addition, through policy context we can assess how other provisions protect the fundamental rights of a security actor. These provisions include a Decree of Consultative Assembly, the constitution's Article 28 and the Law on Human Rights and the Human Rights Court of Law, as noted in the previous table. One form of government commitment in implementing this is the establishment of a National Action Plan (RAN HAM).

Several Definitions of Fundamental Rights in National Law

(Part II. Preamble Bill of Rights) The Indonesian nation essentially recognizes, admits, ensures and respects the human rights of others. Therefore, human rights and human obligations are integrated and embedded in human beings as individuals, family members, community members, nation members and its citizens, and members of the community of nations.	**CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA DECREE NUMBER XVII/MPR/1998 ON HUMAN RIGHTS**
Article 37 The right to life, right not to be tortured, the rights of freedom of thought and conscience, freedom of religion, the rights not to be enslaved, to be recognized as an individual before the law, and the right not to be prosecuted under a law with retrospective effect are all human rights that cannot be reduced under any circumstances (non-derogable).	**CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA DECREE NUMBER XVII/MPR/1998 ON HUMAN RIGHTS**
(Article 1 paragraph 1) A set of rights that are embedded in nature and human existence as creatures of God that must be respected, upheld and protected by the state, the law, government and every person for the honor and protection of human dignity and status.	**Law No. 39 of 1999 on Human Rights**

22 From Imparsial's observations, it is known that the trend of human rights violations have changed from violations of civil and political rights during Suharto's regime to violations of economic, social and cultural rights.

Who are the violators of these fundamental rights?

Referring to the principle that fundamental rights of security actors = fundamental rights of citizens, the legislation in Indonesia established the Human Rights Act in 1999. Here are some examples of violations of the law by particular perpetrators:[23]

1. **State apparatus**
   a. Torture by the apparatus in seeking information or confessions from the suspects of a security actor.
2. **Certain communities**
   a. Murder, persecution of a security actor.
   b. Treat soldiers as an individual or group discriminatively based upon religion or race.
3. **Public**
   a. A man committing violence in his household and he is military or police personnel.

From the identification of these three types of perpetrators, it can be concluded that generally violations of military members' fundamental rights exist within the state apparatus and community. In public cases of violence in the household, human rights violations are treated in terms of security actors as ordinary citizens, especially cases that happened outside the remit of the armed forces.

How is the fulfillment of fundamental rights of a security actor measured? For clarity, we can divide the fulfillment of human rights into internal and external levels. At an external level, the focus is in terms of security actor rights during security operations. While at an internal level, the focus is the security actor in everyday life.

Ascertaining data on a security actor's fundamental rights violations at an internal level is very difficult. Human rights monitoring can generally only get an indication from official sources (military or police) that appeared in the media or on an official security institution's website—i.e., the number of deaths in the Aceh Military Region in 2003 and the case of Abepura II in March 2006. Aside from "official" information, there is little in order on the victims at an internal level.
This differs from the external level, i.e., with regard to those who are injured or killed in riots. From the fulfillment perspective of fundamental rights, this condition can ideally be changed in the future. The expectation of openness in the protection of security actors' fundamental rights is much considered due to their guaranteed constitutional rights.[24]

Apart from the lack of data on the fundamental rights of security actors in Indonesia, let us examine these fundamental rights in full.

23 See: Sentra HAM UI, 55–56.
24 Indonesia has had the Freedom of Public Information Act, which guarantees the disclosure of information concerning the public interest. Because the right to life is a public right, thus society and human rights monitoring agencies can also access the information at the internal level of security institutions.

Right to Life

In fulfilling the right to life, as mentioned previously, it seems that not many cases appear in the media or are known to the public. Nevertheless, in carrying out their duties, security actors know there is risk of death in their work, especially for those who serve in relatively dangerous situations, facing pirates, criminals, high intensity riots (particularly the Mobile Brigade in the Indonesian Police), etc.[25]

The right to life is protected when, for example, standard operating procedures, equipment and technology are prepared and provided. For instance, bulletproof jackets, shields, helmets, etc. can save lives. All of these tools should be provided to prevent any risk of injury that results in death or disability.

According to the Geneva Conventions, in conditions of war, this right to life can be protected whenever the military surrenders. This also applies to all combatants who surrender.

Freedom from Torture

In any circumstances, including war, the Geneva Conventions provide regulation. Even in the case of prisoners of war, no combatant can be tortured, including during interrogations for information from prisoners of war.

The Geneva Conventions even describe prohibited actions against combatants who have surrendered. The prohibition includes murder, torture, physical punishment, mutilation, humiliation, hostage-taking, collective punishment, execution without trial, and other actions that violate human dignity.

Freedom of Beliefs and Religion

In terms of freedom of beliefs and religion, cases denying these freedoms are rarer. Nevertheless, if we reflect on the relationship of the security institutions and the use of religious symbols during the New Order and post-reform periods, violations are apparent—as exhibited by the government funded civil security force (*Pamswakarsa*) cases in 1998, the case of Ambon, Poso and/or the involvement of religious symbolism in the handling of the members of the PKI post-1965.[26] Religious symbols clearly have the potential to influence the position of security actors in the field. This is a sign that religion can be used for security purposes. Ideally, the right to believe and worship should be protected by the security forces. If security actors cannot guarantee this freedom, it is reasonable to suspect that the same thing also happens in the security institutions.

On one hand, the fundamental rights of security actors are guaranteed but on the other, there are so many imbalances of the state's obligations in protecting this right. Therefore, this right is vulnerable within security institutions. For example, the Ahmadiyah case has been broadly discussed over the last few years. Are the rights of Ahmadiyah security actors guaranteed in security institutions?

Equal Rights Before the Law

Regarding this right, we can see how security actors are faced with the discrimination of law enforcement. The Alastlogo case, which involved the kidnapping of activists, the UMI Makassar case and the 1965 case give us an

25 We can understand this risk by looking at the security actors' basic tasks, which are embodied in the Indonesia National Army Act 34/2004 and the Indonesia Police Act 1/2002.

26 See: John Rossa, *Pretext for Mass Murder: the September 30th Movement and Suharto's Coup d'Etat in Indonesia* (Madison: University of Wisconsin Press, 2006).

idea of how security actors are treated differently by the justice process. They are charged by a military court or by an internal mechanism and they do not have the same rights as civilians, though the Act ensures that these rights are protected by the human rights provisions in the constitution and any other laws.

In the case of 1965, several security actors became political prisoners for being involved in the G30S. In reality, not all of them had the right to a fair trial therefore discrimination was used in deciding who was to be arrested and executed. The concept of a fair trial was abandoned for political reasons.

Another example is when the Special Forces Commando (*Kopassus*) Tim Mawar got into the military court, while General Prabowo (one of the leaders of the team) was processed in the Honorary Council Officers (DKP). Ideally, all parties involved are submitted to a military court while their leader is processed another way. Considerations at that time leaned to the internal selection of the military institution. There are many other examples of discrimination in matters of law enforcement, including cases in the post-reform era such as the UMI Makassar case, where police officers involved in acts of violence against students were sanctioned administratively and not tried in the courts.

Apart from the argument that justice can be obtained outside the courts, in the long-term this will cause a problem for justice, especially between the executors and commanders of security institutions. In the experience of the human rights courts and cases involving security actors, commanders often go unpunished in a court's decision. According to the author, as bad as any litigation process and outcome can be, it is best for the security actor. This takes into consideration the principle of equality before the law; that no rank or position, or certain privileges of each security actor can be used to obtain justice. Security actors also have the right to prove themselves innocent in court.

Moreover, constitutionally, Indonesia is known as a legal state, not as an "administration" or "discipline" state.[27] This causes the reform of Indonesia's military court to be relevant, not to weaken the security actors but to strengthen and respect the security actors' fundamental human rights.

Human Rights Advocacy for Security Actors

The relation between human rights advocacy and the fundamental rights of security actors is still relatively limited. Ideally, a policy change is necessary. In the long term, advocacy for the human rights of security actors can change on three levels: from the point of view of knowledge, attitude and the conduct of the state apparatus. Advocacy, in the end, will result in change.

Indonesia began its reform after the fall of Suharto in 1998. Civil society advocacy boomed. What has been produced in advocating the enforcement of fundamental rights for security actors?

27 The review of the law state can be seen in: Sowandi, *Hak-hak Dasar dalam Konstitusi-konstitusi Demokrasi Modern* (Jakarta: PT Pembangunan, 1957, 15) in Krisna Harahap, *Konstitusi Republik Indonesia, Menuju Perubahan Ke-5* (Bandung: Grafitri, 2009), 21. Also, see: Miriam Budiarjo who characterizes the law state by the recognition and protection of human rights and justice that is independent and impartial, which is based on the rule of law. See: Miriam Budiarjo, *Dasar-dasar Ilmu Politik* (Jakarta: Gramedia, 2003), 57.

The effort of advocacy of human rights for security sector actors still raises the issue of the accountability of the security sector for past human rights violations. The limitations of human rights advocacy is caused by several factors. Firstly, there is an insufficient change in the knowledge, attitudes and behaviour of security actors on human rights issues. This of course is not entirely the responsibility of security actors themselves. It is the state itself that has neither implemented any human rights instruments since 1998 nor instrumentalised such items with the security sector itself. This is most unfortunate since the change of knowledge and attitudes could be fulfilled by educating security actors from the beginning of their training and conducting supplementary trainings.

Secondly, there has been a copious amount of public pressure for the disclosure of past human rights violations. As a result, security actors' human rights observance is relatively limited if we explore cases of "omission" and "commission." For instance, in the case of Monas 2008, a security actor hesitated to act against those who committed violence, whereas in the case of Abepura II in 2006, the security sector agencies did act in an aggressive fashion but at least four security actors died. From these observations, very little of the advocacy on human rights issues for security actors had a lasting effect, not least by evaluating the protection of fundamental rights of the security actors outlined in the cases mentioned above.

Although advocacy for cases that involve security actors is relatively low-level and low key at the moment, we can see some impact of HR advocacy with security sector actors. Firstly, there is the pressure or demands that exist for the state to cooperate with CSOs in revealing perpetrators. Secondly, there is cooperation in the form of ascertaining the motives of violence against security actors. Thirdly, CSOs, with their relative strengths, can also contribute their thoughts on the legal, economic and political situation when violence occurs. Finally, CSOs can pressure the state to protect, prepare and provide preventative tools to protect the lives of security actors.

The existence of direct support—both in terms of knowledge and technical ability—for security sector reform indirectly helps to enforce security actors' fundamental rights. For example, in the legislative process, the military court draft act strategically helps the assessment of security actors' fundamental rights, whether the jurisdiction is clear or not, and helps prevent the abuse of power by the state against security actors.

The active involvement of CSOs in regulation and legislation will provide new perspectives, although will attract relatively little attention from the security apparatus. During the discussion of the TNI draft act and the welfare of soldiers, human rights activist Munir contributed his thoughts on soldiers' welfare in an article. Some of the security sector reform activists who were involved in the discussion even called this welfare article in TNI Act No. 43/2004 "Munir's Article" as a reminder of Munir who initiated the idea.

Furthermore, the involvement of actors from the academic community—for example, Ikrar Nusa Bakti (Indonesia Science Institute), Makmur Keliat (Social and Political Science Faculty of the University of Indonesia), Rachland Nashidik (CSO in law and security issues, Imparsial), Munir (Imparsial),[28] Usman Hamid (Commission for Force

28 At the time of Munir's murder on 7 September 2004, he was with the civil society network across Indonesia advocating the draft of the Military Act, which finally passed at the end of the same year. The killer, Pollycarpus, has been sentenced to 20 years in prison while the mastermind behind the murder was not punished.

Disappearance and Victim of Violence KontraS) and Kamala Chandrakirana (National Commission on Violence against Women)—enriches the perspective in the formulation of defence and security policy.[29] It was a long process of collaboration between civil society and security actors to produce several policies, namely, the inclusion of human rights principles in guides for security institutions like the Indonesia National Military pocket book, the Additional Regulation on Human Rights for Police in 2009 and the Additional Regulation on Community Policing in 2008, all of which attempt to strengthen the understanding of human rights and are supported by various state institutions and the UN.

For the sake of defence, particularly for the fundamental rights of a security actor, the role of parliament is also important. After the dismissal of the Indonesian military and police factions from parliament in 2004, parliamentary oversight (civilian oversight) continues, although it still contains many weaknesses.[30]

Besides advocacy, litigation also occurs, although this is very limited. In the kidnapping case of an activist by Tim Mawar in 1998, for example, lawyer Adnan Buyung Nasution became their lawyer in the Military Court. In the case of 1965, called G30S, no legal defence from CSOs was seemingly available. Nevertheless, advocacy and humanitarian support for the security actors who were judged as being involved in the G30S was also performed by international and national institutions. This limitation occurred because of the authoritarian political situation and a weak understanding of the responsibilities to fulfil the fundamental rights. Therefore, support was limited to humanitarian aid and was not extended to legal and political advocacy. Another reason is the role of the TNI Law Education Body (*Babinkum*) who made the plea for the security actor, not the CSOs.

Supervision of the Fulfillment of the Fundamental Rights of Security Actors

Supervision of fundamental rights is essentially the same for security actors and ordinary citizens. The relevant supervision in Indonesia includes supervision at the national and international levels. At national level, supervision is conducted by:[31]

- Government institutions, including the police
- National Commission on Human Rights
- NGOs
- Courts
- House of Representatives
- Mass media
- Professional organizations, such as the Indonesia Doctor Association IDI, Indonesia Lawyer Society (Peradi)
- Religious organizations
- Center of Studies at the University.

29 Some of the study group was born after the 1998 reforms, including Imparsial, IDSPS, Lesperssi, and Ridep. The activists of these institutions generally depart from student activists and human rights activists. One of the important things in the discourse of SSR in the last three years has been gender studies and SSR.

30 See: Imparsial's 2008 study about civilian oversight of security sector reform. The result of this research is the weakness of civilian oversight from the House of Representatives, especially the 1st Commission, to the continuity of SSR.

31 Sentra HAM UI, 50.

Meanwhile, supervision at the international level is available and ready to be used for the protection of fundamental rights. In general, the UN provides agreement monitoring bodies, which oversee the fulfillment fundamental rights, including the rights of security actors. Thus, it is inappropriate if the international mechanism is viewed negatively, as was the case in the general human rights discourse that circulated among the people. For more details of the oversight process, please see the following table:

Supervision at the international level or by the UN[32]

Human Rights Agreement (instrument)	Monitoring Bodies
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
International Covenant on Civil and Political Rights	Human Rights Committee (HRC)
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Elimination of All Forms of Discrimination Against Women	Committee on the Elimination of All Forms of Discrimination Against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee Against Torture (CAT)
Convention on the Rights of the Child	Committee on the Rights of the Child

The table above highlights the direct relevance of the position of security actors. We have already mentioned that the fundamental rights of security actors are non-derogable, as set out in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Oversight bodies can thus be the advocacy target for the fundamental rights of security actors.

SUPERVISION OF SECURITY ACTOR'S FUNDAMENTAL RIGHTS = SUPERVISION OF CIVILIAN'S FUNDAMENTAL RIGHTS

There are three human rights mechanisms that are internationally valid. They are the treaty mechanism (international treaties), the national mechanism and Special Rapporteurs. Apart from the existence of human rights violations, a decade after reform Indonesia has implemented these three mechanisms as follows:

- **Treaty mechanism**: Indonesia ratified two important components, namely the Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two agreements are very important results for the struggle of the human rights community in Indonesia and at the international level. With this ratification, Indonesia is tying itself to human rights enforcement efforts in two domains: civil and political rights, as well as economic, social and cultural rights. In addition, Indonesia's involvement is increasing in various committees based upon the treaty. Indonesia is now providing an annual report on its human rights situation to the committees. In reporting (at the

32 Ibid.

committee level), CSOs can also intervene in the form of an alternative report (shadow report) relating to the condition of rights in Indonesia.

- **National mechanism**: The establishment of a human rights institution (the National Commission on Human Rights–*Komnas HAM*) is also an improvement. This impartial institution works in accordance with the Paris Principles. Even though issues have arisen in the matter of recruiting a commissioner, includinga lack of political support from the state and its institutions, the national commission is involved in testing out violations of fundamental rights in cases where security actors are victims like in the Abepura II case in which Komnas HAM was involved in the investigation. The National Commission on Human Rights at present and in the future remains important as it is the main recipient of complaints of fundamental rights violations—despite the lack of any substantially big victory in Indonesia.
- **Special Rapporteurs**: Indonesia has become more open to inviting the UN Special Rapporteur to conduct investigations on matters relating to torture, human rights defenders, migrant workers, etc. Unfortunately, there is not yet a special rapporteur for the field of security actor's fundamental rights. However, this mechanism will receive reports of violations for all individuals, regardless of whether they are civilian or military personnel.

Seizing the opportunity to supervise the fulfillment of the fundamental rights of security actors, we can conclude that there is no reason not to complain if violations have occurred. The role of national and international mechanisms strengthens the principles of human rights fulfilment, which has become a constitutional ideal for Indonesia.

Weaknesses, Strengths, Opportunities and Challenges for CSOs in Advocating for the Human Rights of Security Actors

Weaknesses: Limited capacity for advocacy within the security sector, weak access to information at security institutions and a weak understanding of security sector reform (the establishment of security sector reform training for CSOs only started in 2005) are significant issues. Previously, there were several civilians who were involved in the legislation process related to SSR but generally their involvement was limited to academic experts and CSO activists.

Strengths: The ability to conduct advocacy work, networking at both the national and international levels, relations with the mass media and the growth of human rights CSO experts have improved. NGOs have participated since the 1980s in discussions on human rights on an international forum. Especially after the case of Santa Cruz, East Timor in 1991, the role of civil society became stronger in the monitoring of human rights violations.

Challenges: CSOs, which are often critical of security actors, are often considered unsupportive of these actors—resulting in intimidation from various parties who accuse CSOs of undermining the unity of Indonesia, or being Communists or Zionist affiliates, etc. One concrete example is the case of Imparsial's lawsuit against the head of the TNI Intelligence Body (BAIS TNI) in 2007 at the South Jakarta District Court. The matter

disputed was a paper issued by the head of BAIS stating that Imparsial, KontraS and Elsham Papua are extreme movements, categorized as "others."[33] This case proved the existence of an old mindset that views critical groups as enemies of the state.

Opportunities: The need for parties who can criticize the SSR process to encourage open and broad opportunities for civil society involvement. Some activities that should be undertaken are legislative study, public consultation on the fundamental right of security actors, cooperation with the media and engagement with the general public (public meetings, art, music, etc.).

The 1998 reform became a moral foundation, which is marked by public support for fundamental change of the Suharto regime.[34] Although it did not specifically mention the fundamental rights of security actors, the real spirit of that reform is the strengthening of responsibility in fulfilling human rights, including the fundamental rights of security actors.[35] In addition, the role and image of Indonesia has been intensified by its involvement in positions at the UN Human Rights Council and human rights monitoring committees at the international level.

Conclusion

It can be concluded that the fundamental rights of security actors have the same importance as the fundamental rights of ordinary citizens, given that the terms of human rights and right to life are individual rights and cannot be taken away. Fundamental rights of security actors, as well as those of ordinary citizens, are protected by international and national regulations.

Remembering that it has not been long since security actors have become accustomed to talking about fundamental rights, misinterpretations of human rights often occur, including of fundamental rights, especially on the state's responsibility to protect the fundamental rights of security actors. That there are some exceptions and delays to recognizing these rights for security actors does not diminish them in times of peace or war.

On the other hand, CSOs who are supposed to be impartial also face difficulties in advocating for the fundamental rights of security actors. From the author's discussions and personal experiences, several weaknesses of CSOs can be identified, one of them being the ability to remain objective when viewing the internal dynamics of the fundamental rights in security institutions. On the other hand, the strength of CSOs lies in their experience in human rights advocacy at both the national and international levels.

Besides examining the opportunities and challenges facing CSOs, it can be concluded that there is a need for a strategy to respond to the recognition and fulfillment of the security actors' fundamental rights to human rights all over Indonesia. Therefore, every effort is needed to achieve this goal, which may include conducting national

33 On 29 August 2006, General Major Armen Syafnil, head of BAIS, stated that Imparsial, KontraS and Elsham (Papua) are part of "other radical groups" that threaten the existence of Pancasila and the non-governmental organizations that are dissatisfied and disappointed with the government. This statement is contained in a paper titled "Persepsi Ancaman Internal dan Transnasional" (pages 14–15), which was presented at a defense seminar held by the Defense Department on 29 August 2006.

34 Three demands for reform in 1998 were: the fall of Suharto and justice for his cronies, lowering prices and the clearance of the dual function of Indonesia's National Army.

35 Some human rights characteristics are interdependent and indivisible. This understanding affects everyone, including security actors, and their ability to enjoy human rights. The review on principles and understanding of human rights can be seen in Todung Mulya Lubis, *Jalan Panjang Hak Asasi Manusia* (Jakarta: Gramedia Pustaka Utama, 2006).

and international advocacy on human rights mechanisms, education of the fundamental rights of security actors and a human rights campaign in conjunction with security and other state institutions.

Recommendations

Based on the explanations and conclusions above, the following recommendations can be proposed:

- For general society, including security actors, the mainstreaming of fundamental rights of security actors is very important. Equally important is highlighting the weakness of the security actors' fundamental rights, and regular monitoring is needed for the fulfillment of these rights.
- Indonesia needs to strengthen the role of the state to protect the fundamental rights of security actors. One of the ways to do this is to improve policies and regulations, for example through the Military Court regulation, which is still incomplete, as well as through measures to ensure soldier's welfare, which remain inadequate.
- Strategically, it is also necessary to strengthen education efforts. Hopefully, education will provide a strong foundation and have a direct effect on the performance of security actors, encouraging the respect of the fundamental human rights of soldiers.
- In the case of the human rights National Action Plan, state specific agendas to help with both human rights education at the academy level and other military/police academy levels, for middle and lower rank personnel, are needed.
- One of the ways to enhance fundamental rights education in the military academy is to strengthen the basic knowledge required for attitude changes, especially on the state's responsibility in fulfilling human rights. In certain situations, such as during military operations, as well as working in accordance with the main duties and functions of the security actor, debriefing of fundamental rights should be repeated.
- Furthermore, intense communication between civil society actors and the security institutions, particularly in ensuring the protection of non-derogable fundamental rights, is required. Finally, the need for open access to information on the processes and results of the security apparatus´ fulfillment of fundamental rights is paramount.

The fulfillment of the fundamental rights of security actors is a necessity. If the effort to fulfill these rights can be achieved, the next five to ten years will be marked by a positive change in the professionalism of security actors. Thus it is not only the development but the procurement of the main defence equipment system which can reinforce SSR.

All efforts relating to the fulfillment of these rights for security actors may be one of the determining factors for success in security sector reform, and in the long term will also affect the fulfilment of human rights for all citizens of Indonesia.

References

Armen, Syafnil. "Persepsi ancaman Internal dan Transnasional." Presented in a seminar held by the Ministry of Defense on August 29th, 2006.

Budiarjo, Miriam. *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia, 2003.

Harahap, Krisna. *Konstitusi Republik Indonesia, Menuju Perubahan Ke-5*. Bandung: Grafitri, 2009.

Haryomataram, KGPH. *Pengantar Hukum Humaniter*. Jakarta: RajaGrafindo Persada, 2005.

Henckaerts, Jean-Marie and Louise Doswald-Beck. *Customary International Humanitarian Law*. Volume I: Rules. International Committee of the Red Cross, 2005.

Henckaerts, Jean-Marie and Louise Doswald-Beck. *Customary International Humanitarian Law*. Volume II: Practice. International Committee of the Red Cross, 2005.

Lubis, Todung Mulya. *Jalan Panjang Hak Asasi Manusia*. Jakarta: Gramedia Pustaka Utama, 2006.

Nolte, Georg (ed.). *European Military Law Systems*. Berlin: De Gruyter Recht, 2003.

Imparsial Press Statement on Abepura Case. March 22nd, 2006.

Reza, Bhatara Ibnu, et al. *Reformasi Peradilan Militer di Indonesia*. Jakarta: Imparsial, The Indonesian Human Rights Monitor, 2007.

Rossa, John. *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*. Madison: University of Wisconsin Press, 2006.

Rowe, Peter. *The Impact of Human Rights Law on Armed Forces*. Cambridge: Cambridge University Press, 2006.

Rowe, Peter. *Control Over Armed Forces Exercised by the European Court of Human Rights*. DCAF Working Paper Series No. 56. Geneva: DCAF, August 2002.

Sentra Ham UI. *Modul HAM bagi Brimob Polri*. Jakarta: Sentra HAM UI, Korps UU Brimob Polri, Kemitraan, dan Uni Eropa, tanpa tahun.

Gender Mainstreaming in the Security Sector

Septi Silawati

Introduction
a. Understanding the Gender Concept

The term gender generally refers to a social construction and pattern of interaction between women and men in a society at a certain place and time. Jill Steans[1] makes it clearer with her emphasis on ideological and material interaction between women and men. That pattern of interaction affects the policy being made. In the meantime, those patterns of interactions between women and men are not constant but tend to change according to environmental dynamics.

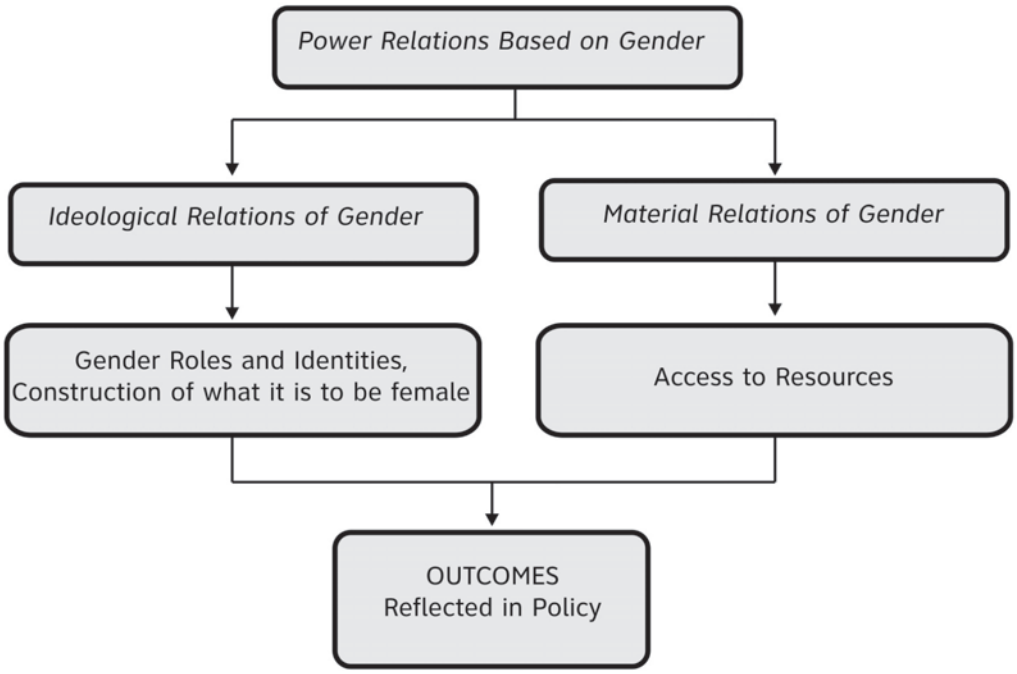
From gender terminology, other terms which follow are "feminine" and "masculine." The former is a characteristic supposed to be attached to women while the later to men. That classification closely relates with patriarchal culture, justifying biological differences between women and men that automatically creates differences in roles and responsibilities between the two. This creates an artificial image of women and men according to characteristics—both emotional and psychological—that position each to develop actions fitted with the roles and responsibilities expected by the people around them. Problems arise when male-identified roles are considered far more important and deserve social rewards compared to female-identified roles.[2] In short, gender-based ideology justifies unequal practices that produce forms of social inequality. The following chart shows gender systems,[3] and how gender-based power relations manifest in ideology and material that then produce discriminative policy.

Starting from the fact that inequality creates unfairness toward women, which is rooted in and even institutionalized by patriarchal culture within society, therefore, gender analysis is needed. Gender analysis is an effort to investigate the differences between women and men that cause unfairness toward women, applied to understanding development policy and the public service. Gender analysis emphasizes the root problems that cause unfairness and its purpose is to create positive changes for women.[4]
Using gender analysis, one can understand interactions between women and men, including their access to resources and various activities and the obstacles faced by both. Gender analysis can present information

1 Jill Steans, *Gender and International Relations: An Introduction* (Oxford: Polity Press, 1998), 10.
2 Ibid., 12.
3 "Gender and International Relations," http://www.soc.uwimona.edujm:1104/government/GT37Mlec1.htm.
4 New Zealand Ministry of Women's Affairs, "What is Gender Analysis?" http://www.gdrc.org/gender/framework/what-is.html.

on the different situations and results felt by both women and men from each program or policy. From that information, one will find that women and men indeed have different needs. Not only that, these findings are expected to raise the knowledge and understanding of people—especially policymakers—about women and men's different needs. The next step is to apply knowledge and understanding that can be formulated on a gender-sensitive program or policy. By conducting gender-sensitive programs or policy, the end product will surely be able to answer the needs of both without eroding either's rights. Thus, there should be continuous development efforts to obtain non-discriminatory development goals.

b. Understanding the Concept of Gender Mainstreaming (GM)



Discrimination in any form, both direct and indirect, erodes the fulfilment of a certain group's rights. The same can be said about gender-based discrimination that puts women aside and positions them as second class citizens. Acknowledging gender-based discrimination that perpetuates gender inequality has led to the creation of various movements that gained international recognition in emphasizing the need to include gender perspectives in development. Some of these come in the form of poverty eradication, human rights, good governance, sustainable environment, development and peace, etc. Hopefully the strategy to obtain gender equality that is conducted on a global level is adopted at a national level too.

There are several strategies to promote gender equality. Mieke Verloo classified them into three parts, which are the equal treatment strategy, specific equality policies strategy and the gender mainstreaming strategy. These three strategies detect the root of the problem, the actor who shares the responsibility and what needs to be done to solve the problem. These three strategies are shown in the chart below.

Different Strategies in Gender Equality Policy

Strategy	Diagnosis What is wrong?	Attribution of Causality Who/what is responsible for the problems?	Prognosis What should be done?	Call for Action Who should do something?
Equal treatment	Inequality in law, different laws/ rights for men and women	Individual responsibilities	Change the laws toward formal equal rights for men and women in law	Legislators
Specific equality policies	Unequal starting positions of men and women. Group disadvantage of women. Specific problems of women that are not addressed. Lack of access, skills, or resources of women	Diverse, both at the individual level and at the structural level	Design and fund specific projects to address the problems of (specific groups of) women	Gender equality agencies, sometimes together with established institutions
Gender mainstreaming	Gender bias in regular policies and social institutions, resulting in gender inequality	Policymakers (unintentionally)	(Re)organize the policy process to incorporate gender equality perspectives in all policies	Government/ all actors routinely involved in policymaking

Using these three strategies, this paper concentrates on gender mainstreaming (GM) or, in the context of Indonesia, *Pengarusutamaan Jender*. The table above shows how GM is needed as a result of gender-biased policy and institutions resulting in gender inequality. The government, as the part that shares the most responsibility, together with all the actors involved in the policymaking process should reorganize policy processes in order to incorporate gender equality perspectives in all policies.

GM is a global strategy to pursue gender equality and to eradicate potential conditions directed toward gender inequality. Introduced for the first time in 1985 at the 3rd World Conference on Women in Nairobi, the basic idea was using the gender concept as an analytical tool to find out why there were so many inequalities that existed between women and men in every aspect of life. Nevertheless, the long road of GM has finally been realized as a global strategy in the Platform of Action of the 4th World Conference on Women in Beijing, which stated:

> *...The advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue....*

At the conference, delegations from at least 189 nations agreed that inequality between women and men has had serious effects on human welfare. They declared goals for the advancement of women in every aspect of human life such as politics, healthcare and education. In the 1995 Platform of Action, nations participated and the United Nations then committed to implement GM by considering realities (needs and experiences) between women and men as an integral part of planning, implementation, supervision and the evaluation process so

both women and men can equally gain advantage from the produced program and policies.

In July 1997, the United Nations Economic and Social Council (ECOSOC) defined gender mainstreaming as a public policy concept used to measure the implications arising from every policy—including legislation, policies and programs in every area and level—for women and men.[5] GM is a strategy to pursue gender equality and fairness by implementing policies and programming that emphasises experience, aspirations, needs, and women and men's problems in planning, implementing, supervising and evaluating processes. Its goal is to make sure women gain equal footing with men for access, control, participation and benefits so equality and gender fairness can be realized.

The Urgency of Gender Mainstreaming in the Security Sector

The importance of GM in every aspect of life cannot be separated from the security sector. If until the end of the Cold War the security issue was mostly seen in the context of states' security, after the Cold War there was a shift in understanding the security concept. James J. Wirtz[6] in his book *Strategy in the Contemporary World: an Introduction to Strategic Studies* classifies the national security agenda into high politics[7] and low politics.[8] In the Cold War era, the issues of high politics dominated interstate relationships, while after the end of the Cold War other issues came to prominence. Interstate political actors also became more varied and were not only represented by states.

The realist paradigm, with its state-centric assumptions, positions states' security as its main goal. As a dominant perspective in international relations, the realist believes that: (1) the state is the most important actor; (2) the state is a unitary actor; (3) the state is a rational actor; and (4) the main issue is national security.[9] With those assumptions, the realist sees processes and structures of international relations without considering gender issues. As a result of patriarchal cultural dominance in the realist perspective, the security field tends to be an absolute male world. The implication is that women—both in the form of representation and their needs—become second-class citizens without any representative or needs fulfilment. In order to make a fairer world, women and men should have equal access, opportunity and control.

The lag of women's condition compared to men caused by an unequal world system made GM in the security sector inevitable for several reasons. Firstly, the preamble of the Universal Declaration of Human Rights of 1948 explicitly states that the recognition of inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, which is then elaborated in more detail in its articles. Thus, to be born as a woman is not necessarily to reduce her rights as an ordinary human who has rights from birth. Despite having rights as a human being, women also have rights as citizens with equal status along with men and deserve to have equal opportunity and recognition guaranteed by the government. Secondly, there are differences in the needs of women and men. As part of the biggest population

5 International Labour Organization, "Definition of Gender Mainstreaming," http://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm.
6 James J. Wirtz, "A New Agenda for Security and Strategy?" in *Strategy in the Contemporary World: An Introduction to Strategic Studies* (New York: Oxford University Press, 2002), 310.
7 James J. Wirtz gave some examples like war and peace, nuclear deterrence, crisis management, summit diplomacy, arms control and political alliance.
8 For example, environmental issues, scarce resource management, demography, etc.
9 Paul R. Viotti and Mark V. Kauppi, *International Relations Theory: Realism, Pluralism, Globalism and Beyond* (London: Allyn and Bacon, 1999), 6–7.

in world, the fulfilment of women's needs is a compulsory task. Thus it is becoming increasingly important to include women's perspectives in the security sector to ensure the accommodation of women's needs. Thirdly, we need to pursue sustainable development. Development that includes perspectives from both women and men will turn out to be beneficial for both groups. Not only that, if it involves all elements and groups of society then there will be more effective and efficient policies.

The importance of including GM in the security sector becomes a starting point to formulate consecutive strategies in integration. There are at least 3 GM[10] targets: (1) organization and institution; (2) structure and the system of organization and institution; and (3) policies and programs of organization and institution. As the security sector is so far dominated by men—with a very masculine culture, through structures that position males in a dominant role and are not yet gender sensitive—integrating GM into the security sector can only be implemented if the male-centric security sector is reformed. This transformation is usually known as security sector reform (SSR).

This raises the question of how SSR is specifically defined. SSR is the answer to many problems that exist in the security sector such as corruption, low capacity of security actors, violations of human rights and armed violence, etc. Initiated in the early 1990s, although there is not yet a common understanding, the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD DAC) defines SSR as transforming the security sector/system, "which includes all the actors, their roles, responsibilities and actions—working together to manage and operate the system in a manner that is more consistent with democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework."[11] There are two goals to be pursued through SSR: first, to ensure civic control and democracy of the security sector and second to develop an effective, strong and efficient security sector.[12] The first goal can

Photo 8. Female Indonesian Soldiers of the Garuda Contingent Sent to the UN Mission in Lebanon, 2008

10 R. Husna Mulya and Antarini Arna (eds.), *Draft ManualPelatihan Gender dalam Kepolisian* (Jakarta: January 2009), 54.
11 Kristin Valasek, *SSR and Gender*, Toolkit 1 in the Gender and SSR Toolkit (Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008), 1.
12 Ibid.

be achieved by empowering the government's supervisory bodies, parliament and society, while the second can be achieved by developing the security sector's material and immaterial capacity.

There are two strategies[13] to integrate gender issues into SSR and security institutions. The first is through gender mainstreaming and the second through promoting equal participation of men and women in security activities. Both strategies could be applied to the SSR process or to the institutions conducting SSR. GM in the security sector means giving attention to all groups due to SSR policies and programs at every step, including assessment, planning, monitoring and evaluation. By adopting GM in SSR more attention should be paid to men and women's experiences, needs and problems in formulating security sector assessment, implementation, monitoring and evaluation. The result would be a gender initiative which focuses on empowering awareness and responses of the security sector to various experiences, needs and roles of every group related to security issues. The second strategy—promoting equal participation between men and women—sees ensuring participation of both men and women in the SSR decision-making process and security in general, as compulsory. This strategy mainly focuses on increasing recruitment, training and empowering women, and ensuring civil society organizations' participation, including women's organizations.

The police are a top priority of SSR, besides the military and intelligence. Police reform is an effort to reform the police organization into a professional and accountable police service that responds to societies' needs.[14] Its goal is answering the challenges of the police sector in an effective, accountable, fair and respectful way.[15] Including gender as a part of police reform is not only coherent with SSR in general but also as an instrument and norm of international law that focuses on security and gender issues. The Convention on the Elimination of All Forms of Discrimination against Women (1979), The Beijing Declaration and Platform for Action (1995) and the United Nations Security Council Resolution 1325 on Women, Peace, and Security (2000) are relevant. Integrating gender into the police sector is a process to improve the efficiency and effectiveness of the police organization.

In general, there are three reasons[16] why it is important to include gender as a part of police reform. Firstly, to provide more effective security supervision for every woman, man, adult and child. Because the police are stakeholders that share the most responsibility in maintaining public order and protecting society, the police should comprehensively understand and solve every threat society faces—including the fact that violence experienced by women and men affects both genders differently. Secondly, a gender perspective is needed to create a more effective and representative police service. Security and criminal threats will always endanger society. But so far the police organization has been dominated by males, related to the perception that policing is a male area, which has implications for unequal representation for certain groups, i.e. women. Police tasks thus far are associated with masculinity, sometimes denying female candidates who do not represent masculine work. Ideally, a representative police service can enhance the credibility, trust and legitimacy of the police service. This occurs by raising public trust toward the police. Thirdly, a gender sensitive perspective ensures a non-discriminatory police culture and organization, which also promotes human rights. Eliminating discrimination and human rights violations, including gender-based violations (GBV) committed by the police themselves, will

13 Summarized from: Ibid., 2–5.
14 Tara Denham, *Police Reform and Gender*, Toolkit 2 in the Gender and SSR Toolkit (Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008), 1.
15 Ibid., 3.
16 Summarized from: Ibid., 3–6.

help create an effective and productive working environment, as well as enhance security both for police personnel and society.

Discourse and Practice of GM in Indonesia's Security Sector

As a state claiming to be democratic, Indonesia has ratified some international human rights instruments. They are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) into *Undang-Undang* (Law) No. 7/1984; the Convention on the Rights of the Child into *Keputusan Presiden/Keppres* (Presidential Decree) No. 36/1990 and UU No. 23/2002; the Covenant of Economic, Social and Cultural Rights into UU No. 11/2005; and the Covenant of Civil and Political Rights into UU No. 12/2005. Although *de jure* Indonesia has adopted many international regulations into national law, the existing legal system, policies and programs are not yet gender neutral. A systemic change through conducting gender mainstreaming in every aspect of life is necessary.

Indonesia's Road Map Outlines GBHN 1999 and UU No. 25/2000 on the National Development Program *PROPENAS* (*Program Pembangunan Nasional*) stated that the PUJ is a national policy to be implemented by every institution in order to pursue gender equality and fairness. In the same year, presidentially issued instruction Instruksi Presiden (Inpres) No. 9/2000 implemented PUJ as a part of national policy. Inpres No. 9/2000 on GM on National Development obligates all government institutions at every level (provincial, district and city) to implement GM. In the regulation, GM is defined as a strategy to integrate the principle of gender equality and fairness into planning, formulating, implementing, supervising and evaluating national development programs.

Although Inpres No. 9/2000 on GM imposed obligations on all government institutions at every level (provincial, district and city), to enact GM by integrating the principle of gender equality and fairness into planning, formulating, implementing, supervising and evaluating a national development program, there are many problematic local policies. In the speech of the head of the National Commission against Violence toward Women (*Komnas Perempuan*) launching the report "On Behalf of Local Autonomy-Discrimination Institutionalization on Indonesia Nation-states Order" (*Atas Nama Otonomi Daerah-Pelembagaan Diskriminasi dalam Tatanan Negara-bangsa Indonesia*) dated 24 March 2009, there were 154 discriminative local policies, as well as forty conducive local policies for fulfillment of citizen's rights.[17] Those problematic policies in the form of *Peraturan Daerah* (*Perda*/ local regulation), *Peraturan* (regulation), *Surat Keputusan* (ministerial decree), and *Surat Edaran Kepala Daerah* (the district head circular letter) were gathered through surveillance conducted by *Komnas Perempuan* in sixteen cities/districts of seven provinces in Indonesia.

Besides the obstacles stated above, in the security sector or specifically in the police, Inpres No. 9/2000 instructs the chief of the Republic of Indonesia Police (*Kapolri-Kepala Kepolisian Republik Indonesia*) to implement GM in every development process. It is because PUJ is an inseparable part of functional activity in every government institution, both at the national and local levels, including the police. For Indonesia, there are several reasons why it is indispensable to include GM in police activity. First, POLRI, in its internal reform, has stated the

17 http://www.komnasperempuan.or.id/2009/03/24/pidato-ketua-komnas-perempuan-dalam-launching-laporan-atas-nama-otonomi-daerah-pelembagaan-diskriminasi-dalam-tatanan-negara-bangsa-indonesia/

prerequisites for structural, instrumental and cultural reform. Second, on behalf of the public service, half of Indonesia's population consists of women served by the police. Third is the commitment to respect human rights. Bearing this in mind, that Indonesia has ratified the CEDAW and adopted it into the National Law of UU No. 7/1984, ideally, women should now have equal opportunity with men without any discrimination. The paragraphs that follow provide an explanation.

Internal police reform has been going on since 1 April 1999 following *Inpres* No. 2/1999 on Policy Steps to Separate Indonesia's Police and Armed Forces (*Polri* and *ABRI*). A year later, parliamentary decrees TAP MPR No. VI/2000 and TAP MPR No. VII/2000 explicitly ordered the separation of POLRI and ABRI, while at the same time regulated the roles of each agency and established the need for police internal reform as a security actor. Another significant regulation is UU No. 2/2002 for the Indonesian Police (POLRI) that justifies its status as a security actor with the responsibility of handling internal/homeland security issues. TAP MPR No. VI/2000, TAP MPR No. VII/2000 and UU No. 2/2002 are essentially becoming POLRI's base for conducting structural, instrumental and cultural reform.

Cultural reform is POLRI's biggest challenge, as from its inception with ABRI it had a militaristic approach. Therefore, it is no easy task to conduct reform that includes changing POLRI's attitudes and behaviors, both individually and organizationally. One approach to conduct reform is by implementing Community Policing–CP (*Perpolisian Masyarakat-Polmas*). The initiation of *Polmas* is supported by several reasons: 1) to boost police image in society; 2) to increase public trust towards police institutions; and 3) conducting *Polmas* means creating a partnership with society due to POLRI's limited resources. Ideally, *Polmas* is a transformation of the traditional police model, which positions society as a partner with equal position. Its main consideration is that crime exists and comes from society thus society itself should be actively involved to detect crimes and enable its own security.

Furthermore, it is important to include a GM agenda in police activity as the beneficiaries of the police service are women. Because women and men have different experiences, it is becoming important to incorporate women's experiences into a planned, formulated and legalized policy. An obligatory change in internal police reform is making POLRI a state tool designed to maintain public order, uphold the law and provide care and service to society.[18] This clearly means the police are the ones who should uphold the law and give shelter and service without any difference, to every single group in society. The fact that fifty percent of Indonesia is female makes gender sensitive policies and programs compulsory.

The third reason is the commitment to respecting human rights. Considering that Indonesia has ratified CEDAW and adopted it into national law, UU No. 7/1984, ideally means there should be equal opportunity without any discrimination for men and women. In the convention, discrimination is defined as:

> ....any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[19]

18 TAP MPR No. VII/2000, Article 6 (1).
19 Jane Connors, "Konvensi Wanita di Dunia Islam" in *Feminisme dan Islam*, Mai Yamani ed. (Bandung: Yayasan Nuansa Cendekia, 2000), 527.

By signing the convention, countries should take specific measures to end discrimination toward women in every single aspect of human life.

Considering the dominance of patriarchal culture in various institutions and organizations within the system, structures, policies and programs, a specific policy is needed for women, which is commonly known as affirmative action. One specific temporary measure for women in the security sector relating to human rights is the Special Service Room (*Ruang Pelayanan Khusus*–RPK). It is assumed that everyone has the right to fairness, including women and children, so the existence of an RPK is a necessity.

The idea of an RPK was originally developed in 1997 by Dr. Saparinah Sadli when she was a member of Komnas HAM (*Komisi Nasional Hak Asasi Manusia*/National Commission of Human Rights). Her idea was based on concerns about violence against women, especially rape victims, who were generally treated unfairly. She then pushed to implement the concept of the *Police Women Desk* (PWD) as practiced abroad. But the idea did not run smoothly. In the end, the idea finally garnered serious attention after the May 1998 tragedy when many women became victims of violence. The emotional state of society after the May 1998 tragedy demanded the police to immediately boost its image and performance. This situation was seen to be conducive to urgently implementing an RPK to improve POLRI's service toward victimized women and children.

The existence of a new service unit in the police demanded reform within the internal organization. Considering victims are predominantly women and children who tend to be more comfortable with policewomen, the number of active policewomen is still meager. Women, as a majority group with specific needs, also deserve service and shelter provided by the police. A significant inequality in the ratio of policewomen to the number of victimized women demands an increase in the number of female police officers.

The Indonesian standard is, unfortunately, still well below the UN recommended standard of police numbers. The ratio of police is 1:1250 in Indonesia, whereas the UN standard is 1:400.[20] One problem is that the increased number of police recommended by the UN is believed to not fit with the real needs on the ground. Although the amount of policewomen is reportedly increasing each year, those numbers have not yet reached a significant level. Ideally, the composition of policewomen should be approximately twenty percent of the total number of police but until 2007, the percentage of women had only reached around three percent. Data cited below shows how insignificant the numbers between 2003 until 2007 were.

Table 5: Policewomen in the Police Force [21]

	2003	2004	2005	2006	2007
Number of policewomen	8,189	8,989	9,789	10,589	11,389
The total number of police officers	264,666	289,666	314,666	339,666	364,666
Percentage of policewomen	3.094%	3.103%	3.110%	3.117%	3.123%

20 LSI and PTIK, *Final Report on Police Need Assessment in NAD* (Jakarta: IOM, 2006).
21 Makalah Irawati Harsono, "Gender Dalam Kepolisian," *Hukum Online*, http://www.hukumonline.com.

The low number of policewoman in the police force is inherently due to the discriminative recruitment system within the organization. Discrimination of women can be seen from the quotas for recruitment and the process to continue service or specialized education.[22] Limited numbers of policewomen continue service education compared to the number of policemen. *Bintara* (low rank soldier) recruitment quotas for women have only reached 500 while numbers for men reach approximately 16,000 annually. The greater numbers of policemen compared to policewomen is related to the support and capacity of the police institution. Until 2006, POLRI had twenty-four State Police Schools[23] (SPN–*Sekolah Polisi Negara*) to educate thousands of male candidates (*Bintara)*, whereas there is only one policewomen school (Sepolwan- *Sekolah Polisi Wanita*) in Jakarta.[24]

The significant difference in the capacity provided for policewomen and policemen has had serious implications for both recruitment systems. Due to limited capacity, a different selection process applies to candidates. Male candidates only follow a singe step selection process in every Polda (*kepolisian daerah* or police area), whereas the selection process for female candidates is a two-stage process. First, selection is held in an area where a female candidate submits her application and a secondary selection process is held in Jakarta. Another discriminatory policy presents a problem when women have already gained the status of policewomen. Education at the officer *(Perwira*) level is also discriminatory toward female candidates. For example, at the Sespimpol (*Sekolah Staf dan Pimpinan Kepolisian*/Police Staff and Leadership School), advanced development students are required to hold the position of Kapolres (*kepala kepolisian resor*/police district chief) and other leadership positions, which accepts 140 candidates each year yet there are only two women (one-and-a-half percent of the student body).[25] The recruitment system has limited the number of policewomen and their respective career development in every unit and function in the Polsek (*polisi sektor* or police sector).

The working environment and function filled by female graduates are generally operational but also developmental; yet, policewomen are generally given administrative work.[26] According to Irawati Harsono, in training conducted by the IOM, seventy percent of women work in the development division because there are no programs to prepare women to work in the operational division.[27] The situation becomes more complicated since there are opinions that most of POLRI's personnel are male and the stereotypes that women are neater, more accurate and more diligent enforce the opinion that women are more suitable to do administrative work.

While the number of policewomen does not show a significant increase, the number of victimized women due to violence increases each year. Data taken from the Women Crisis Centre (WCC)[28] show that cases of domestic violence are on the rise. In 2004, of 329 cases handled by the WCC, approximately eighty-eight percent of them were related to domestic violence. A year later, this number reached eighty-six percent of 455 cases. In 2006, domestic violence cases were eighty-five percent of 336 cases. The increasing number of domestic violence cases has also been covered by Komnas Perempuan in its 2007 Annual Report on Violence against Women. From 2001 until 2007, the number of domestic violence cases rose five times. Before the Law on Domestic Violence UU PKDRT was established, reported cases reached 9,662 from 2001–2004. At the same time UU PKDRT came

22 Fitriana Sidikah Rachman, dkk, *Wanita Berseragam: Sebuah Kajian dalam Rangka Meningkatkan Jumlah dan Peranan Polisi Wanita* (Jakarta: Kemitraan, 2006), 13.
23 IOM, *Pelatihan untuk Pelatuh Gender dalam Kepolisian* (Jakarta: IOM, November 2008).
24 Rachman, *Wanita Berseragam…* (2006), 14.
25 Ibid.
26 Ibid., 19.
27 IOM, *Pelatihan…* (2008).
28 *Hukum Online*, "Hasrat Polri Memahami Gender," http://hukumonline.com/detail.asp?id=20540&cl=berita.

into force, 53,704 cases were reported from 2005–2007. Complete data is shown in the table below.

Table 6: The Number of KDRT Cases (Before and After UU PKDRT)[29]

Before UU PKDRT		After UU PKDRT	
Year	**Cases**	**Year**	**Cases**
2001	1,253	2005	16,615
2002	1,396	2006	16,709
2003	2,703	2007	20,380
2004	4,310		

Aside from domestic violence, human trafficking is another common threat to women, which is something that calls out for more policing by policewomen. This condition is closely related to the phenomenon of the Indonesian labor force migrating abroad since the 1970s. According to BNP2TKI data, between January and June of 2007, the amount of migrant workers reached 354,548 and the number of female migrant workers reached 280,183 (almost eighty percent).[30] Limited access to economic resources has become the motive for the poor of Indonesia to move abroad. In order to earn a living, it is very common for women to be the victims of scams as in the face of economic pressure, victims are easily seduced by promises.

The initiative taken by the Indonesian government through UU No. 21/2007 on the eradication of the criminal act of human trafficking is noteworthy. Human trafficking defined by this law includes actions of recruitment, transport, shelter, exporting, transfer or acceptance of someone using the threat of violence, acts of violence, kidnapping, imprisonment, falsification, deception, abuse of authority, debt-trap and payments or benefits in kind so as to receive an agreement from a person being held under the control of another, either carried out nationally or internationally with the aim of exploitation or resulting in exploitation of a person.

Aside from the KDRT and human trafficking, there are other serious problems relating to women like sexual abuse in the community, child abuse (of girls), violence towards women in conflict areas, etc. Because there are so many female victims of violence, services provided by policewomen for women and children in the security sector deserve serious attention.

CSOs and Advocacy for the PUJ in the Security Sector

The initiation of gender focused institutions and regulations in the discussion above relate closely to the amendment of the constitution. As one of the most important results in SSR, the amendment of the constitution can ensure better protection of human rights than under the New Order. The constitution can also become a starting point for human rights based regulations, activities and programs for all citizens.

It is interesting to see the transition of SSR in Indonesia that began in 1998 and continues today, something that cannot be detached from the multi-stakeholder role, including civil society organizations (CSOs). Although CSOs

29 Komnas Perempuan, "Diolah dari data Komnas Perempuan," http://www.komnasperempuan.or.id.
30 Komnas Perempuan, *Catatan Tahunan Kekerasan Terhadap Perempuan 2007*, 15, http://www.komnasperempuan.or.id.

have played a very important role in Indonesian SSR, SSR itself cannot be separated from the functions attached to government. SSR demands cooperation from every party, both intra-institutions and inter-institutions.

Within intra-institutional reform, as stated above, POLRI has made substantial changes since its separation from the TNI. On the PUJ issue, POLRI has delivered in the 2002 Head of Management Divison of Law Working Notes to the Head of Program of POLRI Development and Planning No. Pol.: B/ND-526//XII/2002 on Socialization of GMS Proposal and Law of Child Protection *UU Perlindungan Anak*. For its implementation, POLRI has delivered the Head of POLRI Telegraphic Letter *ST Kapolri* No. Pol.: ST/839/VIII/2003. Although still being processed, the progress made by POLRI deserves praise. Not only has POLRI begun cooperation with CSOs, it has taken measures to develop a GM program to boost POLRI's service toward victimized women and children of domestic violence.[31] Positive reaction by the Republic of Indonesia Police Headquarters can be seen from the fact that up until 2007, the RPK had already started to function in almost every police district (*Polres*) across Indonesia. This is significant progress, though it has yet to provide gender-sensitive public service toward victimized women and children of violence.

POLRI is involved in several collaborations relating to gender empowerment programs. One of them is the cooperation between the Education and Training Institution (*Lembaga Pendidikan dan Pelatihan-Lemdiklat*) Mabes Polri and *Derap Warapsari*, founded by several policewomen retirees. This institution has consistently supervised law enforcement processes, especially crimes against women and children.[32] Along with the IOM, POLRI has continuously cooperated for general reform and, specifically, gender empowerment. For instance, POLRI has begun conducting training for trainers like the Gender in Police Institution symposium held in November 1998 for twelve days, which covered joint activities by various education centres (*pusdik*), functional units and the consideration of gender distribution goals consisting of: (1) communicating gender knowledge; (2) the composition of a Gender Module draft; and (3) complementing the Gender Manual draft in police institutions.

In its eleventh year, *Reformasi* boasted twenty-nine specific regulations concerning the handling and eradicating of violence against women. Eleven of these regulations are at the national level, fifteen at the local level and three are ASEAN-based regional regulations. There are also 235 new institutions established by the government and society relating to violence against women. Society's aspiration, or specifically the victims', to be handled by policewomen has at least been answered by the establishment of a Special Service Room (*Ruang Pelayanan Khusus*-RPK), which continue to increase in number. In 2008, according to Komnas Perempuan,[33] an RPK on RS Bhayangkara (*Rumah Sakit* or Hospital of Bhayangkara) has been institutionalized across Indonesia consisting of 129 units in the *Unit Pemberdayaan Perempuan dan Anak* (UPPA, or Unit for Women and Children Empowerment) and thirty-six units in the *Unit Pelayanan Terpadu* (UPT, or Integrated Service Unit). The government has also established similar service-based institutions. Since 2002, the Ministry of Women Empowerment formed an Integrated Service Unit for Women and Children Empowerment (*Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak*-P2TP2A) at the local government level, directly below the coordination of the Women Empowerment Bureau (*Biro Pemberdayaan Perempuan*-BPP) or People's Welfare Service (*Dinas Kesejahteraan*

31 IDSPS and Rights and Democracy, *Masyarakat Sipil dan Reformasi Sektor Keamanan di Indonesia: 1998–2006* (Canada: Rights and Democracy, 2008), 13–14.
32 Mufti Makarim, *Efektifitas Strategi Organisasi Masyarakat Sipil: Dalam Advokasi Reformasi Sektor Keamanan di Indonesia 1998–2006* (Jakarta: IDSPS, 2008), 46.
33 Summarized from: Ibid., 4.

Rakyat-Kesra). According to data from the Ministry of Women Empowerment, in 2008 there were twenty-three units of P2TP2A in nineteen provinces. There are now also forty-one Women's Crisis Centres (WCC) in various provinces.

The existence of gender-based regulations, institutions and programs do not necessarily mean the end of CSO tasks. There are other heavy tasks that demand extra attention and effort—with surveillance of the newly established system being a task in itself—to see whether the new regime moves on track with measurable progress. From the *Monitoring and Investigating the Security Sector* book published by UNDP and DCAF, there are two approaches provided concerning the surveillance mechanism and investigations in the security sector. Firstly, there is the *integrated military oversight mechanism* and, secondly, the *civilian oversight mechanism.*[34] From the approaches provided, the same pattern could also be applied to conduct monitoring and investigation in police institutions. In this case, the roles played by CSOs are covered by the second part. For example, the LBH APIK focuses mainly on the judicature of cases of violence against women and children, and legal processes for cases reported to the police.[35] In conclusion, heavy tasks remain for CSOs in order to continuously guard the reform process in Indonesia.

It is an advantage that efforts to build networks in advocating SSR issues have attracted serious attention from international donor institutions. For the implementation of the GMS in the police, there have been several institutions that gave support, for instance the Partnership for Governance Reforms in Indonesia, the Government of Denmark, CIDA and the Asia Foundation (TAF). Actual synergized cooperation between SSR stakeholders has moved toward meaningful change and the continuance of adaptive advocacy strategy within the context of human rights should be supported.

The Weaknesses, Strengths, Challenges and Opportunities for CSOs in Advocating GM in the Security Sector

There are challenges that remain for the implementation of a gender mainstreaming program in POLRI's institutions. Firstly, the prolonged patriarchal culture that has been integrated into Indonesian everyday life also exists in the police sector. There are still beliefs that women are more suited to administrative work carried out during the day, that women are physically unsuitable for operational work such as intelligence and research, that women require guidance for hard work and that it is a woman's destiny to be pregnant and to become a mother. Therefore, the tasks surrounding culture and organizational change in the police force is challenging. POLRI still adheres to a militaristic culture inherited from ABRI. Secondly, the government's GM policy has not been integrated into all of POLRI's programs and still focuses on the socialization of POLRI members in the scope of POLRI headquarters and at provincial police offices.

When analyzing these problems, it can be concluded that these challenges have internal and external dimensions. Internal challenges come from the decision makers and police actors, while external challenges come from civil

34 Katrin Kinzelbach and Eden Cole (eds.), *Monitoring and Investigating the Security Sector: Recommendations for Ombudsman Institutions to Promote and Protect Human Rights for Public Security* (Slovak Republic: RENESANS, 2007), 40.
35 Ibid., 46–47.

society, especially those related to the understanding of GM. The GM issue has not been seen as a crucial part of SSR. Generally, GM has only been positioned as a part of SSR relating to human rights protection. Although certain CSOs focus on women issues, generally SSR-concerned CSO advocacy has not yet pressed for the urgent and different needs of women in particular.

Generally speaking, there are weaknesses in the CSOs.[36] Firstly, there is the problem of civil society's internal consolidation. Some CSOs tend to be tentative and have not been solid in formulating and guarding SSR strategic issues. The result is that follow-up processes depend heavily upon the resources available. Secondly, matters of professionalism make CSOs' understanding of macro aspects limited, which tends to weaken argumentation when advocating issues. Thirdly, there are no solid networks between CSOs. In conclusion, all these weaknesses and challenges have created the image that CSOs still represent foreign interests without public interest representation. This stereotype is frequently associated with human rights and security-based CSOs.

Although there are weaknesses in advocating security issues, CSOs have the potential to develop into a power base if they are more consistent in advocating human rights and security issues. They have gained support from foreign organisations that are concerned with human rights and security development in Indonesia. The image of CSOs as unnecessary supporters can be gradually erased. The awareness of the moral movement without academic insight in CSO advocacy does not provide a strong basis or opportunity for cooperation with universities.

Notwithstanding these weaknesses and strengths, there are also opportunities for CSOs in advocating the GM issue. The democratic climate has provided momentum for CSOs to continue reforms. On a global level, more attention is being given to human rights and SSR since the Cold War. This shows that in democracy, human rights and good governance are still opportunities available for Indonesia.

We should not forget the fact that CSOs have strengths and opportunities that would become irrelevant if CSOs themselves could not manage all the challenges they face. Therefore, CSOs need to formulate strategies and actions designed to help them optimally play their role. There are patterns that can be used by CSOs in advocating gender mainstreaming in the security sector, at a strategic and operational level.

On a strategic level, we can conduct gender impact assessment on policy implementation. The goal is to measure whether implemented security policy has had a positive impact on all groups, both men and women. There is also the gender-responsive SSR programme cycle,[37] which is a tool with specific steps to develop advocacy strategy. Generally, the steps consist of assessment, design and planning, implementation, monitoring and evaluation. All these processes can be done continually and be named a program cycle. Assessment is conducted to gain a comprehensive understanding of the situation today, while the design and planning step helps every SSR program to be developed with a gender-responsive framework of thinking. Next, monitoring and evaluation is important as it influences reform toward beneficiaries and to identify lessons learned.

36 Summarized from: Mufti Makarim, "Masyarakat Sipil dan Reformasi Sektor Keamanan" in *Almanak Reformasi Sektor Keamanan Indonesia*, Beni Sukadis ed. (Jakarta: Lesspersi and DCAF, November 2008), 161.

37 Summarized from: Valasek, *SSR and Gender* (2008), 14–16.

On an operational level, there are several things that should be emphasized by CSOs when advocating SSR issues. Firstly, there is the independence problem. This criterion is important as some CSOs are funded by or even influenced by security actors, which makes CSO independence doubtful. Secondly, building trust—not only with other CSOs but also between CSOs and security actors—is important. Building trust becomes more important when we acknowledge the fact that CSOs are not homogenous organizations. They are created with different characteristics, capacities and structures. Thirdly, there is civil society consolidation. It is inevitable in the nature of CSO advocacy that it is sometimes fragmented according to the issues at hand. Meanwhile, it is important to see SSR as an inclusive and interrelated issue that cannot be detached from other issues. Finally, CSOs should develop their capacity and skills so they can provide technical assistance in training or even advise decision makers within the security sector. In doing so, CSOs will not be viewed narrowly.

References

Connors, Jane. "Konvensi Wanita di Dunia Islam" in *Feminisme dan Islam,* Mai Yamani ed. Bandung: Yayasan Nuansa Cendekia, 2000.

Denham, Tara. *Police Reform and Gender.* Toolkit 2 in the Gender and SSR Toolkit. Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008.

Gender and International Relations http://www.soc.uwimona.edujm:1104/government/GT37Mlec1.htm.

Harsono, Irawati. "Gender Dalam Kepolisian." *Hukum Online. h*ttp://www.hukumonline.com.

Hukum Online. "Hasrat Polri Memahami Gender." http://hukumonline.com/detail. asp?id=20540&cl=Berita.

IDSPS and Rights and Democracy. *Masyarakat Sipil dan Reformasi Sektor Keamanan di Indonesia: 1998–2006.* Canada: Rights and Democracy, 2008.

International Labour Organization. "Definition of Gender Mainstreaming." http://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm.

IOM. *Pelatihan untuk Pelatuh Gender dalam Kepolisian.* Jakarta: IOM, November 2008.

Kinzelbach, Katrin and Eden Cole (eds.). *Monitoring and Investigating the Security Sector: Recommendations for Ombudsman Institutions to Promote and Protect Human Rights for Public Security.* Slovak Republic: RENESANS, 2007.

Komnas Perempuan. *Catatan Tahunan Kekerasan Terhadap Perempuan 2007*. http://www.komnasperempuan.or.id.

Komnas Perempuan. "Diolah dari data Komnas Perempuan." http://www.komnasperempuan.or.id.

LSI and PTIK. *Final Report on Police Need Assesment in NAD.* Jakarta: IOM, 2006.

Makarim, Mufti. *Efektifitas Strategi Organisasi Masyarakat Sipil: Dalam Advokasi Reformasi Sektor Keamanan di Indonesia 1998–2006.* Jakarta: IDSPS, 2008.

Mulya, R. Husna and Antarini Arna (ed.). *Draft Manual Pelatihan Gender dalam Kepolisian.* Jakarta: January 2009.

New Zealand Ministry of Women's Affairs. "What is Gender Analysis?" http://www.gdrc.org/gender/framework/what-is.html.

Rachman, Fitriana Sidikah, dkk. *Wanita Berseragam: Sebuah Kajian dalam Rangka Meningkatkan Jumlah dan Peranan Polisi Wanita*. Jakarta: Kemitraan, 2006.

Steans, Jill. *Gender and International Relations: An Introduction*. Oxford: Polity Press, 1998.

Sukadis, Beni (ed.). *Almanak Reformasi Sektor Keamanan Indonesia*. Jakarta: Lesspersi and DCAF, November 2008.

TAP MPR No.VII/2000

Valasek, Kristin. *SSR and Gender.* Toolkit 1 in the Gender and SSR Toolkit. Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008.

Viotti, Paul R. and Mark V. Kauppi. *International Relations Theory: Realism, Pluralism, Globalism and Beyond*. London: Allyn and Bacon, 1999.

Wirtz, James J. *Strategy in the Contemporary World: An Introduction to Strategic Studies*. New York: Oxford University Press, 2002.

Yamani, Mai (ed.). *Feminisme dan Islam*. Bandung: Yayasan Nuansa Cendekia, 2000.

PART III

The Interaction between Human Rights and the Security Sector in Indonesia

Challenges in Solving Extrajudicial Killing Cases in Conflict Areas

Oslan Purba

Introduction

For more than a decade after the New Order regime ended, continuously changing governments underwent a process of reform. However, the transformation as envisaged by the reformists in 1998 remains unrealised. The structures and culture "planted" by Suharto and his supporters have taken root and are difficult to extricate from the political, economic, legal and social systems in Indonesia. Thus far, the process of democracy and programmes of reform have not been easy to carry out as former actors are still dominating the power structure. The culture of the New Order—containing elements such as monumental violence, corruption, collusion and nepotism—has been a hurdle to the democratic transition.

The process of transition from authoritarian regime to democracy can be determined by the extent to which the new pro-democracy power is able to exert political pressure and negotiate with the former group. The latter has a considerable interest in maintaining political resources for its economic and political benefit that include efforts to escape lawsuits for previous policy and practices that violated human rights. The political struggle in a transitional phase does not necessarily result in a democratic political system. One of the principal aspects for success is reforming military institutions and building civil supremacy, in particular achieving civilian control over a democratically compliant military.[1] Thus, reform of the military is not only critical but invariably poses some dilemmas in the transition efforts from an authoritarian to a democratic regime.

One of the reformist aspirations in 1998 was to return the army to its base, lift the dual function of the military and settle the cases surrounding human rights violations that had occurred during the New Order. The Indonesian National Armed Forces (ABRI, now known as the TNI) had ruled for thirty-two years and had established its hegemony. The New Order regime failed to create both welfare and justice for the people or security. On the contrary, there were several serious cases of human rights violations at that time. Numerous "slaughtering" events had occurred in the name of maintaining security and stability to ensure economic growth.

1 Donni Edwin, "Reformasi Militer: Kepemimpinan Sipil vs Tentara" in *Warisan Orde Baru: Studi Fenomena dan Sistem Bablasan Rezim Soeharto di Era Reformasi* (Jakarta: Institute of Current Information Studies, University of Melbourne and USAID, May 2005).

Security reform has experienced some progress, notably the establishment of various regulations within the sector. However, violent practices by army and police officers are still apparent. Over the last five years (2004–2009), security reform has stagnated as the "previous group" (status quo) still has a strong influence on change, dominating the political system with their interests. The regulations are still far from people's expectations and have the potential for multiple interpretations and actions, which violate human rights.[2] Although civil society has become involved in political dynamics, their existence is not yet able to "guide" the transformation in the direction expected by the people.

Apart from security reforms, various human rights cases also failed to be settled. Investigation efforts for cases such as the 1965 Mysterious Sniper case (known as Petrus), Tanjung Priok (1984), the Talangsari (1989) incidents, the May 1998 incident, Trisakti, Semanggi I and II and the Abduction Cases in 1998 experienced obstruction. The offenders are still free and even hold places within the authority structure. The victims have failed to obtain justice and the perpetrators have never been punished for their actions so the violence continues. There is concern mainly at the grassroots levels where the potential of horizontal conflict continually exists.

It would appear that the transition to democracy has been complete with the establishment of free, open and fair general elections in 1999, 2004 and recently in 2009. However, these elections still contained several flaws as[3] various New Regime policies have created some acute problems. There have been millions of extrajudicial killings and no recourse to justice and truth for the families of the victims.

This article will attempt to describe the actual conditions and prospects of an end to severe human rights violations, namely extrajudicial killings or execution without any legal processes, which have been and continue to be perpetrated by the state through its army and police officers.

Law Enforcement Perception in Conflict Areas

The state's reaction to the many political and social conflicts that have emerged in the country has been to violate human rights under the guise of recovering or maintaining national integration. The government and the TNI's plan for aggressive and coercive efforts to sustain the integration is a serious problem in itself and, coupled with widespread human rights violations, has generated serious problems that are the catalyst for other additional problems that are more complex and threaten national integration itself.[4]

When the New Order prevailed, the military was accomplished at justifying its human rights violations. Military political power and authority placed heroic truth over constitutional principles. Through this framework, we can see the interconnectedness of human rights violations and the myth of the military's political role. This is obvious from the description of human rights violations in the history of the military's political role in the New Order era. Incidents such as Tanjung Priok (1984) and Lampung (1989) and their rationale to preserve Pancasila;

2 Since Suharto's retreat on 21 May 1998, his power has come to an end. Political actors from his regime still hold power so there has been no significant systemic change. Military domination has transformed successfully and maintains its influence. The feudal bureaucratic system is rife with corruption, collusion and nepotism while the development paradigm remains unchanged. The reformation process has been "hijacked" by Suharto sympathizers. See: Mochtar Pabotinggi, "Kembalikan Kedaulatan Rakyat," *Kompas* (24 January 2004).

3 The general election in 2009 is still associated with a chaotic permanent voter list (DPT), money politics, etc.

4 See: Kumpulan Pemikiran Munir, "Membangun Bangsa Menolak Militerisme: Jejak Pemikiran Munir (1965–2004)" (Jakarta: KASUM, September 2006).

Trisakti, Semanggi I and II incidents in the name of national stability; the abduction of the political activist in 1998 for the sake of national prestige; and the Marsinah and Udin cases, for national stability and development are good examples.[5]

After the downfall of the New Order on 21 May 1998, military domination decreased within the democratic state framework. The lessening of military domination was caused by strong public pressure on the state to carry out political reform as soon as possible given its history during the New Order era. Slowly, the military institution was administered in the decrees of the People's Consultative Assembly TAP MPR No. VI/2000 and TAP MPR No. VII/2000, which regulate the separation of roles for the military and police. In the same year, the Indonesia Constitution (UUD) of 1945 was amended, including Chapter 30 on State Defence and Security, which defined the differences in function between defence and security. Another political regulation is Law No. 3/2002 on State Defence, which regulates the strategic policy of the State Defence System, including relations and authority patterns of the president, minister of defence and commander of the armed forces. Political reform also specifically controls the police through Law No. 2/2002 and Law No. 34/2004 on the Indonesian National Armed Forces (TNI). Unfortunately, not all these crucial changes have been enforced. The application of the State Defence Strategy concept is still based on the New Order Paradigm, especially in valuing the army.[6]

In the meantime, conflicts in different regions continue on a larger scale. The democratisation process is not legitimate enough, in spite of: (1) the widening of the political spectrum; (2) the emerging of temporary interests that can be negotiated with the elite group; (3) the competition to gain mass support; and (4) the weakening of central political authority. The impact of democratisation has tended to bring society closer to horizontal

Photo 9. Indonesian Army in Papua Mission Deployed to Fight Separatism in 2009 from Indonesia News Agency Antara Report

5 Ibid., 32.

6 The next effort, which vowed to change the old military paradigm, was when the Department of Defence issued the White Book of Defence in 2003. This book was believed to be the new paradigm of the professional military force in facing the challenges of the 21st century. It was not. The book speaks about internal threat and state sovereignty was seen only as homeland security. The old security paradigm, which was based on territorial security, has been ineffective and inefficient as a result of domination by the military. The book also encouraged the army to decide to add nineteen Military Regiment Commando Bases (*Makorem*) and three Military District Commando Bases (*Makodim*) in 2005. The White Book of Defence in 2008 is similar.

conflict, especially because the existing political institution is unable to anticipate the great political boom.[7] Not only is there vertical conflict in Aceh or Papua, social cohesion between groups in society, which had been massively and tightly controlled by the military, has weakened and is further marked by the spread of conflict that involves religious identity such as that of the weaponry conflict between Muslims and Christians in Sampit, Sambas, Poso and Maluku. Conflict with religious overtones has become a huge issue, especially as the parties involved were militants bent on religious radicalism.[8] The emerging separatism in society has been caused by friction between the forces of democracy and centralised authoritarian power.

Internal conflicts in Indonesia are deeply rooted and involve numerous actors. Conflict resolution has to be based on the understanding that there is no single cause of conflict but rather that religion, ethnicity, economic and political struggles, and historical wounds all play a part. These factors interact with each and create a complex situation. Thus, designing a military strategy is fraught with complexity and actors should realise that there are no military solutions to an internal conflict.[9]

Nevertheless, the fact remains that military operations are still conducted to "muzzle" and "eliminate" people who are considered anarchists. Military and police forces take part in security operations from a militaristic perspective and are less prone to the use of dialogue in handling conflict.

Military intervention tends to employ violence and the use of strategies to break up chains of violence via systematic acts of terror aimed at affecting people's psychological condition, all of which are a violation of human rights. The violence and violations of human rights have a similar function, in the sense that state policies have a political goal that are technically conducted through security operations and the use of a state's official natural resources. Security officers build military posts around the country and,[10] as a result, there are many violent acts surrounding them including beating, seizing, arresting and attacking groups that are considered to be potential threats to the state.

Meanwhile, in controlling domestic security, the use of force by police in handling current conflicts does not accord with its main function as law enforcer and controller of order, protector and guide to society, as regulated in Law No. 2/2002 on the Indonesian National Police (POLRI). The repressive acts carried out by the police have been to force order and control violence. The presence of the police force in areas of conflict has been to control rather than to work in partnership with the people. The hierarchal structure and organisation of the police, like that of the military, is overseen by the president.[11] It usually confines the discretion of the lower ranks while local police structures are characterised by less freedom of speech with resource use decided by superiors. As a consequence, POLRI is vulnerable to intervention by civilian political interests, the military's influence has penetrated domestic security and the elite can be found inside the police department.[12] The police force is used as the guard of government stability. This reflects the inability of the government to manage security.

7 See: Propatria Team, *Reformasi Sektor Keamanan Indonesia* (Jakarta: Propatria, 2004).
8 See: Amdy Hamdani, "Milisi Sipil" in Beni Sukadis and Eric Hendra (eds.), *Perjalanan Reformasi Sektor Keamanan Indonesia* (Jakarta: Lesperssi and DCAF, November 2008).
9 Propatria, *Reformasi Sektor...* (2004), 32.
10 Approaching the general election in 2009, the TNI built more military posts around Aceh and Papua with the excuse of securing the election.
11 See: Law No. 2/2002 on the Indonesian National Police.
12 A centralised police system usually coincides with an authoritarian system. See: Anneke Osse, *Memahami Pemolisian: Buku Pegangan bagi Penggiat HAM* (Holland: Amnesty International, 2007).

From the perspective of Law No. 2/2002 on Indonesian National Police, the authority of the police relates to its main function and makes the preservation of security and public order more important than law enforcement and public service.

The problem that emerges is if the police force becomes an agent of political stability as it did in the New Order era. Together with the armed forces, the police force was employed as a tool for political authority and only of benefit to the political elite, rather than as a law enforcer.[13] This matter sullies the image of the police in the eyes of society. Nevertheless, the police force has to be able to conduct various measures according to its role and function so that the conflicts in Aceh, Papua, Maluku and Poso can be settled and domestic security can be realised.

Stigmatisation by Society and Separatism as an Excuse for Violence

During the New Order era, all political channels were limited in the name of stability. The military was also allowed to enter the arena of non-defence such as social affairs, politics, law and religion. In fact, stability has failed to create security; instead, it has produced an atmosphere of fear and has eliminated people's rights. The security reforms that have occurred over the last ten years have been unable to eradicate the culture or change the "security" model. The crucial role of preserving security so that the people can enjoy their human rights is still being played out. Hence, the TNI and POLRI are supposed to value human rights and the supremacy of national/international law in the engagement of their roles. But the TNI still views the domestic political dynamic that has arisen in the reformation era with uncertainty.[14] Uncertainty is viewed as the unprepared, unaware and immature civil society that seeks to apply democratic principles. This statement is summarised in the White Book of Defence 2008 published by Indonesia's Ministry of Defence. Besides, they also believe that political impartiality can give way to unlimited freedom.[15] This perspective is reflective of the old model governing the issue of stability.

The military also considers local autonomy and local identity as counterproductive to the national principle *Bhinneka Tunggal Ika* (unity in diversity).[16] Local people, the land rights of indigenous peoples and customary rights discourse as consequences of decentralisation have yet to be considered as a means of distributing power and justice. The enhancing of local identity cannot be regarded as a threat that requires a coercive instrument such as the military. It is supposed to be viewed as a correctional effort of authoritarianism, which in the New Order confined local identity and entities, and as an effort to fight for equivalent access to political resources, or at least as an expression of local dissatisfaction with the centralised system of government.[17]

They still consider the Free Aceh Movement (GAM), which became the Aceh Party, and the Aceh Transition Committee (KPA) as a threat to the country.

13 For more information, see: Bambang Widodo Umar, *Polisi vs Politik dalam Konteks Keamanan Pemilu* (Makassar, 27 August 2008).
14 See: Indonesian Ministry of Defence, *Buku Putih Pertahanan 2008* (Jakarta: February 2008).
15 Ibid., 23.
16 Ibid., 24–25.
17 See: KontraS, *Satu Dekade Reformasi TNI* (October 2008).

The political decision made by the country, which committed itself in a peace agreement with GAM in Helsinki in 2005, justified with Law No. 11/2006 on the Government of Aceh, seems to be little utilised as a guide for conducting military operations. GAM is not supposed to be regarded as an enemy but as a partner in building sustainable peace in Aceh in the future.[18]

The military view the local dynamics and local party declaration with its GAM banner as an affront to law and a threat to the country, justifying its conduct in several acts of violence in Aceh. On the whole they act professionally, even though the distrust between the military and GAM runs deep. However, there is some developing apprehension about intelligence operations conducted by the Indonesian government, including the support for ex "front anti-separatists" and others who consider supporting the nationalist agenda. Some intelligence officers who believe that GAM has not abandoned its separatist agenda sought to prevent it from gaining control in the local parliament in 2009.[19]

This viewpoint also applied to Papua society with their Evening Star (*Bintang Kejora*) flag. For the Indonesian military and police forces, the displaying of the flag signifies opposition to the law and is regarded as a subversive act and an affront to national unity. The military regard both GAM and Bintang Kejora as representing separatism and do not allow them to be part of the culture or party symbol.[20] The Papuans feel their cultural expression has always been suspected of being separatist.[21] Security officers have considered this expression as a symbolic struggle opposing state symbols. The symbolic conflict consumed much energy and money, and had the potential for allowing human rights violations. In addition, almost all the criticisms of government policy—specifically the actions of the military and police forces in conflict areas such as Aceh, Maluku, and Papua—are often levelled at groups as separatist acts.[22]

Moreover, criticising the state when national policy has failed to accommodate public interest is always considered a form of rebellion. The state often labels or stigmatises human rights and pro democracy activists, whom it claims are symbols of the communist struggle, to gain the support of society for the violent acts carried out by the military.[23] As in the New Order era, the fear of emerging communism, Islam and other movements are categorised as threats to state sovereignty.[24] The inclusion of ideology as a source of threat is clearly a mistake. Thinking and believing something related to religion, faith or political preference is a basic freedom protected by international law and constitutions in democratic countries. Over the last ten years, anti-communist discourse has always been defended. As a result, it is used for political bargaining during strategic periods, such as around general elections and other times of political significance.

In the early period of the reformation era, the movement demanding democratisation was accused of being infiltrated by communists. Some student activists deemed to subscribe to communist ideology were abducted in 1998.[25] The military stated that the re-emergence of communist danger could be recognised by the actions

18 The military force, including the commander of the Iskandar Muda Military District, reacts critically to government policy in Aceh.
19 International Crisis Group, "Aceh: Komplikasi Pasca Konflik," Asia Report No. 139 (4 October 2007).
20 It is never clear whether the Republic of Indonesia might disintegrate by displaying the flag. With the same act, it is also unclear whether Aceh and Papua can separate themselves from the Indonesian Republic.
21 It is supported by Government Regulation (PP) No. 77/2007 on local symbols, which prohibits the usage of the same symbol used by the separatists.
22 See: Muridan S. Widjojo, et al., *Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future* (Jakarta: LIPI, TIFA and Yayasan Obor Indonesia, March 2009).
23 See: KontraS, *Satu Dekade…* (2008).
24 Indonesian Ministry of Defence, *Buku Putih…* (2008), 32.
25 See: KontraS, *Satu Dekade…* (2008).

and behaviour of the provocateurs in every riot and conflict. This statement was also followed by a tendency to view the activities of victims, labourers and poor city society as a sign of the resurrection of the Indonesian Communist Party. The call to be alert to any communist uprisings resulted in unilateral acts of violence in dismissing civilian meetings, such as in Bandung, Surabaya and Solo. From the patterns that have emerged, these acts had strong links to military personnel.[26]

Extrajudicial Killing as a Systematic Effort to Contain the Rebellion in the Conflict Area

In general, the government has not yet been able to handle the serious human rights cases of the past. Insufficient resources, weak leadership and limited responsibility are factors supporting the ongoing oppression and murder by security personnel, though the frequency has declined in comparison with that of the previous government. For the last five years, there has been a decline in assassinations by officers. However, the government seldom investigated killings in the past and as a rule never brought charges for violations against the military or police.[27]

Human rights violations by security officials are linked to the structure of Indonesian nationalism, which has a militaristic character. By implication, the demand to respect human rights when carrying out their duties is combined with the effort to maintain national harmony.

In the past, political violence was justified as the duty of the military forces in defending the republic. After the downfall of the New Order regime, which left behind various problems in the area of conflict, the military used armed violence to eradicate separatist movements. Therefore, political violence is still occurring. People are forced to accept killings without recourse to the legal process as a legitimate method to redress wrongs. The acts tend to be considered part of a sacred mission, even in support of the people. The security forces use torture and other forms of mistreatment.

Table 7: Human Rights Violation Cases Considered Extrajudicial Killings

No.	Case Name	Year	No. of Victims	Annotation
1	Massacre of 1965	1965–1970	1,500,000	Most of the victims were members of the Communist Party (PKI) or its affiliates, such as SOBSI, the BTI, Gerwani, Lekra, etc. Mostly done without due legal process.
2	Mysterious Sniper "Petrus"	1982–1985	1,678	Most of the victims were criminal figures, recidivist or former criminals. This military operation is illegal and was conducted without any clear institutional identity.

26 In early 2008, the National Commission of Human Rights (Komnas HAM) established a *pro justicia* investigation team for the human rights violence in 1965–1966. This has been strongly opposed by anti-communist groups. On a few occasions, the Indonesian Anti Communist Front and another group held demonstrations at the Komnas HAM office to stop the investigation. The army was worried that communism, Marxism and Leninism would recur and used this discourse to defend their historical influence. The implication was that the anti-communist group was affiliated with the army, even though they may have different purposes, including political interests. See: KontraS, *Satu Dekade…* (2008).

27 Democracy, Human Rights and Workers Bureau, "Report on human rights settlement of the states: 2006" (8 March 2006).

3	Cases on Pre-Referendum in East Timor	1974–1999	Hundreds of thousands	Started with military aggression of the National Armed Forces (Seroja Operation) over the legitimate Fretilin government in East Timor. Since then, East Timor became a district for routine military operations, vulnerable to violent acts conducted by security officers.
4	Cases in Aceh, pre- and post-military operation district (DOM)	1976–2005	Thousands	Since GAM was declared by Hasan Di Tiro, Aceh has always become a military operation district with a high incidence of violent acts.
5	Cases in Papua	1966–2009	Thousands	Intensive military operations carried out by the army to counter the Free Papua Movement (OPM). Also related to natural resources, generating conflict between international mining companies together with security officials versus locals.
6	"Dukun Santet" Case in Banyuwangi	1998	Dozens	Murdering of a public figure accused of being a voodoo practitioner (*dukun santet*).
7	Marsinah Case	1995	1	The main actor was untouched, while another person became the scapegoat. Was proof of military involvement in the labour sector.
8	Bulukumba Case	2003	2 persons died, dozens injured and arrested	This incident occurred because the desire of PT London Sumatera to expand their plantation area had been rejected by the locals.

Source: KontraS R&D

Violence was a major political problem in the New Order era. A culture of violence was developed by the army in order to support Suharto's government. The motives for this vary from being a tool of political repression, to secure military business practices, to monopolise the ideology of single power, as a public discipline tool in the name of development, among others. According to the KontraS record, this culture of violence is still embedded in the army post-New Order and is involved in almost every conflict and violent act (individual or institutional). The use of violence is chosen and applied in an effort to counter resistance in the conflict area. It is spread and used systematically. Technology and the methods applied changed over time and have been identified as follows: (1) open and brutal assassination; (2) covert murder; (3) forced disappearance(s); and (4) torture and other various inhuman acts.

These actions are universally categorised as a severe violation:

(1) Extrajudicial killing(s)

(2) Summary killing(s)

(3) Forced disappearance of person

(4) Torture

(5) Arbitrary arrest and detention.

These crimes attracted international attention and had to stop.[28] They should have been made part of the remit of the police—that is, firm measures against military personnel who used violence should have been taken. Unfortunately, the military believes that communal conflict on a large scale can be a threat to national security and as such the legal framework alone is not enough.[29] The old military perspective from the New Order is in their psyche, imprisoning them so that they are unable to adapt to the development of a strategic defence environment. There is a contradiction within a civil authority that politicises the police and military. This is clearly threatening democracy based on civil supremacy, where the military should ideally be under the authority of those democratically elected and in political control.

Extrajudicial Killings in the New Order Era and Post-1998

The 1945 Constitution stated that every person has the right of freedom from torture and inhuman and degrading treatment. Moreover, Indonesia has ratified the International Covenant on Civil and Political Rights through Law No. 11/2006, which regulates non-derogable rights and the right to life. Arbitrary acts against human life are prohibited in international law.[30] Even when there is an emergency situation threatening a nation, the obligation to respect the right to life cannot be limited under any circumstances.[31] The same law applies to armed conflicts that are regulated by international humanitarian law.[32] The prohibitions include: (1) intentional killing of civilians; and (2) killing an enemy who surrenders, or is wounded, sick or captured.

Killing without legal justification is a serious violation of human rights. A severe violation of human rights is not adequately defined with criminal penalties. It is established to describe the massive consequences of the crime on the body, soul, dignity, civilisation and human life. The crime has a clear intention—to offend and destroy certain people or groups of people with far reaching consequences. It is usually systematic or widespread.[33]

In Indonesia, when the military dominated the political power structure, there were a number of cases of murder that were considered to be extrajudicial killings or summary killings. In September 2005, the first permanent Indonesian human rights court in Makassar, South Sulawesi, stated that the police attack in 2000 with almost 100 victims in Abepura, Papua, was not a "crime of humanity." Ironically, the court dismissed the entire case against Police Brigadier General Johny Wainal Usman and Police Senior Commissioner Daud Sihombing. The court also rejected the victims' request for rehabilitation and compensation. The attorney appealed to the Supreme Court, which until now has not issued a verdict. The Abepura Incident happened while the police made an erratic pursuit after an attack on the Abepura Police Office on 6 December 2000 by an anonymous group who had also burned a shop at the centre of Abepura city and killed two Brimob (mobile brigade) personnel and a security guard.

28 See: Munir, *Membangun Bangsa…* (2006), 241.
29 This point of view is potentially creating a grey area, blurring the working domain of the police force, army and civil government authority. Communal conflict is a social and security problem and the use of the armed forces is needed only if the situation really threatens national security. It also needs approval from the civil government through a power sharing mechanism by the president with parliamentary approval. See: Law No. 34/2004 on the National Armed Forces, chapter 7:3.
30 Universal Declaration of Human Rights, Chapter 3; International Covenant on Civil and Political Rights, Chapter 6; and customary law. See the Human Rights Committee, General Comment 24, paragraph 8.
31 International Covenant on Civil and Political Rights, Chapter 4 (2); Human Rights Committee, General Comment 6, paragraph 8.
32 *Advisory Opinion on the Threat or Use of Nuclear Weapons*, ICJ Reports 226 and 240 (1996).
33 See also: Law No. 26/2000.

Table 8: Extrajudicial Killing Cases in the New Order Era and Post-1998

No	Name of Incident	Victim	Conviction	Military Officer	Annotation
1.	Mysterious Sniper (Petrus) in 1983	Approximately 10,000 criminals were killed during the operation	N.A.	Suharto admitted in his biography that it was under his instruction.	Not clear
2.	Tanjung Priok incident on 12 September 1984	18 died, 53 injured (government version); 50 died, 16 missing, 61 injured (information from locals)	N.A.	Commander in Chief of Indonesia Armed Force General Benny Moerdani; Army Chief of Staff General Rudini; Commander of Military District Command (Kodam) Jaya General Tri Sutrisno	Government established KP3T (Commission for the Investigation of Human Rights Violations in the Tanjung Priok case). The investigation process is still ongoing, and there is a dispute settlement programme between the military officer and the victims. In the ad hoc trial, the defendant was released.
3.	Talang Sari Incident– Lampung, 1989	Two versions: 27 people were members of the Warsidi group; the other version stated 246 people were civilians	N.A.	Commander in Chief of the National Armed Forces General Try Sutrisno; Army Chief of Staff Edi Sudrajat; Commander of Korem Garuda Hitam Colonel Hendropriyono	Korem Garuda Hitam Operation
4.	Haur Koneng Incident, 28 July 1993	5 died, dozens injured	N.A.	Commander in Chief of the Indonesian National Armed Forces Jenderal Faisal Tanjung; Army Chief of Staff General Wismoyo Arismunandar; Commander of Kodam Siliwangi Mayjen Muzani Syukur	-
5.	Marsinah Murder, 8 May 1993	1 died	Danramil Porong Captain Kusaeri (convicted to nine months confinement), Pasi Intel Kodim 0816/Sidoarjo Captain Sugeng, Dandim 0816/Sidoarjo Lieutenant Colonel Max Salaki convicted with commuted sentence.	Commander in Chief of the Indonesian Armed Forces General Faisal Tanjung; Army Chief of Staff General Wismoyo Arismunandar; Commander of Kodam Brawijaya Major General Haris Sudarmo	The real killer was never found
6.	Nipah Incident– Sampang Madura, October 1993	4 civilians died	N.A.	Commander in Chief of the Indonesian Armed Forces General Faisal Tanjung; Army Chief of Staff General Wismoyo Arismunandar; Commander of Kodam Brawijaya Major General Haris Sudarmo; Regent of Sampang Colonel Bagus Hinayana	The killer was never found
7.	Middle Aceh Incident, November 1980	12 died	N.A.	Commander in Chief of the Indonesian Armed Forces General Try Sutrisno; Army Chief of Staff Jenderal Edi Sudrajat; Commander of Kodam Bukit Barisan Major General HR Pramono	Military Operation District policy

8.	Mass Grave in Bukit Tengkorak, Pidie, May 1991	Not clear	N.A.	Commander in Chief of the Indonesian Armed Forces General Try Sutrisno; Army Chief of Staff General Edi Sudrajat; Commander of Kodam Bukit Barisan Major General HR Pramono	-
9.	Santa Cruz Incident, Dili, East Timor, 12 November 1991	19 died, 91 injured (government version)	Commander of Kodam Udayana Major General Sintong Panjaitan, Pangkolakops Brigadier General Rudolf Warrouw was convicted by Military Honoured Board (High Level Officer) to relieve him of his position. Commander of C/Dili Sector Colonel Binsar Aruan and Danton II Yon 303 Second Lieutenant John Harland Aritonang were convicted by Military Court III in Denpasar with 12 months confinement. Danton III Yon 303 Second Lieutenant Eddy Sunarya, Danton Intel Korem 164 Second Lieutenant Alexander, Pasi Sospol Korem 164 Second Lieutenant Mursinab S. were convicted by Military Court III to 8 months confinement. Six sergeants and two privates were convicted by Military Court III in Denpasar with twelve months confinement.	Commander in Chief of the Indonesian Armed Forces General Try Sutrisno, Army Chief of Staff General Edi Sudrajat	Government officially established Commission of National Investigation (DPN)
10.	Liquica, Dili, 12 January 1995	4 detainees and 2 locals died	Private Rusdin Maubere was convicted to 4 years in jail.	Commander in Chief of the Indonesian Armed Forces General Faisal Tanjung; Army Chief of Staff General Hartono; Commander of Kodam Udayana Major General Soewardi	-
11.	Liquica, 5–6 April 1999	54 died and 10 badly injured	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Udayana Major General Adam Damiri; Danrem Wiradharma Colonel Tono Suratman	US cancelled military cooperation
12.	Execution at Manuel Soares Gamma's house, Boboaro, 13 April 1999	5 died	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Udayana Major General Adam Damiri; Danrem Wiradharma Colonel Tono Suratman; Dandom Bobonaro Lieutenant Colonel Burhanuddin Siagian	-

13.	Ermera Incident	6 shot	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; East Timor military state of emergency commander, Lieut. Gen. (retired) Kiki Syahnakri Danrem 154 Wiradharma Kol Muis	This is one of the cases after the referendum
14.	Suai Incident, 6 September 1999	20 died	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; East Timor military state of emergency commander, Lieut. Gen. (retired) Kiki Syahnakri Danrem 154 Wiradharma Kol Muis	This is one of the cases after the referendum
15.	Lhoksumawe, 18 January 1999	11 died	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Bukit Barisan Major General Abdurrahman Gaffar; Danrem Lilawangsa Colonel Jhony Wahab	Akhmad Kandang Arresting Operation
16.	Idi Cut East Aceh, 2 February 1999	7 died, dozens injured	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Bukit Barisan Major General Abdurrahman Gaffar; Danrem Lilawangsa Colonel Jhony Wahab	Reaction from Lhok Nibong Incident, 29 December, eight army officers were held hostage and murdered
17.	KKA Junction Aceh Utara, 3 May 1999	39 died, 125 injured	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Bukit Barisan Major General Abdurrahman Gaffar; Danrem Lilawangsa Colonel Jhony Wahab	Stemmed from the killing of Serka Adityawarman
18.	Beutong Ateuh, West Aceh, 6 August 1999	31 died, including Bantaqiah	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Army Chief of Staff General Subagyo HS; Commander of Kodam Bukit Barisan Major General Abdurrahman Gaffar; Danrem 012/Teuku Umar Colonel Syarifudin Tippe	The culprits, who are privates, have been convicted in Koneksitas Court
19.	Abduction of 11 activists, 1997	11 activists (returned), 12 people are still missing	Ex-Commander of Army Special Force Commad Lieutenant General Prabowo Subianto was convicted by the Officer's Honorary Council to be relieved from his position. Commander of the Army Special Force Commad Major General Muchdi R.R, and Group 4 Kopassus Colonel Chairawan were convicted of being off-duty. 11 Pama and Pamen of Mawar Team Kopassus were convicted to 12–22 months of confinement and discharge.	Commander in Chief of the Indonesian Armed Forces General Faisal Tanjung; Army Chief of Staff General Wiranto	14 people are still missing and it is still not clear which institution is responsible for the matter

20.	Trisakti Incident,12 May 1998	5 died	6 Pama POLRI were convicted by Military Court to 2–10 months in jail.	Commander in Chief of the Indonesian Armed Forces General Wiranto; Commander of Kodam Jaya Major General Sjafrie Sjamsoeddin; Chief of Police Metro Jaya Major General (Pol.) Hamami Nata	Major General Hamami Nata resigned
21.	Semanggi Incident I	5 students died	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Chief of Police Metro Jaya Major General (Pol.) Drs. Nugroho Djayusman; Commander of Kodam Jaya Major General Djaja Suparman	During the MPR (People's Consultative Assembly) meeting
22.	Semanggi Incident II	10 died, including Yun Hap (Faculty of Technique, University of Indonesia); an Independent Investigation Team had been established, but the People's Representative Council voted to reject the ad hoc court of human rights.	-	Commander in Chief of the Indonesian Armed Forces General Wiranto; Chief of Police Metro Jaya Major General (Pol.) Drs. Nugroho Djayusman; Commander of Kodam Jaya Major General Djaja Suparman	No follow-up
23.	Attack on Indonesian Democratic Party's (PDI) Office (27 July 1996)	The National Commission of Human Rights stated: 5 died, 23 missing, 143 injured. Government version: 4 died, 26 injured, 200 arrested.	-	Commander in Chief of the Indonesian Armed Forces General Faisal Tanjung; Social and Political Chief of Indonesian Armed Forces Lieutenant General Syarwan Hamid; Intelligence Department of Indonesian Armed Forces Zocky Anwar Makarim; Staff of Kodam Jaya Soesilo Bambang Yudhoyono; Chief of the Indonesian National Police General (Pol) Dibyo Widodo; Chief of the Provincial Police Metro Jaya Major General (Pol) Hamami Nata	Investigation by the National Police was diverted to Konektivitas Court. The head of the DPR met the commander in chief of the Indonesian Armed Forces talking about Konektivitas Court.
24.	Batu Merah Berdarah Incident (11 August 2000) and Kebun Cengkeh Berdarah Incident (14 June 2001)	5 died and 14 injured in the Batu Merah Berdarah Incident. Twenty-three dead in the Kebun Cengkeh Incident. The actors were Joined Battalions (Yon Gab) and Yonif 407.	-	Head of the Civil Emergency Status (PDS) Maluku, Soleh Latuconsina; Commander of Kodam Pattimura Brigadier General Madde Yassa; Chief of Provincial Police in Maluku Brigadier General (Pol) Edi Darnadi and Head of High Attorney in Ambon IDK Kresna.	National Commission on Human Rights established an Investigation Committee on Human Rights.
25.	Abepura Incident in 2000	100 victims	-	Brigadier General (Pol.) Johny Wainal Usman and Grand Commissioner (Pol.) Daud Sihombing	The court rejected the victim's request to get rehabilitation and compensation. The attorney appealed to the Supreme Court, which has yet to release its verdict.

Source: KontraS Monitoring

"Mysterious sniper" (Petrus) was a popular term in the 1980s, especially used to explain extrajudicial killings. It is considered part of an effort to manage the high rate of criminality. The idea is temporary and reactive and also begs the question: why did the state introduce such an unlawful practice? The resistance to social order and law is viewed as civil insubordination and the state rejects the use of normal legal mechanisms to handle the crimes. The state uses arbitrary killings as a shortcut. The killing of the criminals is locally known as *gali* or *bromocorah.*

There are no clear criteria to define someone in those terms, even from the several notes that have been found. People who were suspected as *bromocorah* were never jailed for a crime. Among the targets, only two people had been jailed, two or four years before the project, and most of the cases were pending lawsuits. Some witness said that a head of village/sub-district or *lurah* was asked by the military to list the name of troublemakers and or disliked inhabitants.[34] In the book of *Pikiran, Ucapan, dan Tindakan Saya*, Suharto said that the incidents are mysterious yet not mysterious. The real matter is that the incidents are preceded by the fear of imminent crime on the part of the citizens. Things had gone too far and he felt the need to take firm action. It was shock therapy (Soeharto, 1989: 389–390).

The Beutong Ateuh Incident, West Aceh on 6 August 1999, which was an attack directed at Teuku Bantaqiah, killed thirty-one people. According to intelligence reports before the general elections in 1999, Bantaqiah was accused of killing nine soldiers (two police and seven military personnel) and six days later, fourteen military personnel. He had also been suspected of involvement in a deviant sect as well as planting and trading marijuana. The incident became brutal when, in mid-July 1999, more than 200 soldiers from KOREM (Military Resort Command) 011/Lilawangsa, KOSTRAD (Army Strategic Reserve Command) and KODAM (Military Area Command) Bukit Barisan came to Pesantren (Islamic Dormitory School) Babul Muqaromah owned by Bantaqiah. He himself was forced to come out and was shot. Fifty-eight of his students were also brutally murdered; twenty-three of them were taken from the Pesantren just after being shot and their bodies hurled down the ravine. Of the 215 soldiers involved, only twenty-five men were taken to court, these being the private executors. Meanwhile, the commander Lieutenant Colonel Heronimus Guru was left untouched and the supervisor Lieutenant Colonel Sudjono disappeared. The attorney did not investigate Colonel Sjafnil Armen, the commander of KOREM in the area. In fact, Colonel Sjafnil was the one who was aware of the telegram on 15 July 1999 ordering the attack. Tempo magazine was trying to get confirmation of this situation from the director of investigation of the Central Military Police, Colonel Hendardji, but he chose not to divulge any information about the telegram, which Tempo claims came from the high officer in Jakarta.[35]

The Semanggi I and II Incidents occurred in 1998 during the student demonstration that demanded Suharto stand down as president. During the incidents, the police and military attacked the students while they peacefully demonstrated. The Panji Masyarakat magazine (25/11/1998) described this incident: "The army kept moving forward, taking combat positions, lying flat between the trees facing Atmajaya (university) and shooting. From the rooftop of BRI building II, or BRI building I small fireballs were seen being rolled along—people believed these to be sniper shots. The noise was heard for almost two hours."

34 See: Artijo Alkostar, *Negara Tanpa Hukum* (Yogyakarta: Pustaka Pelajar and Pusham UII, 2000).
35 See: *Tempo*, "Mengadili Prajurit, Lupa Perwira" (30 April 2000).

The attack on the central management office of the Indonesia Democratic Party (PDI) on 27 July 1996 saw five people killed, twenty-three missing and 143 injured. According to witnesses, there was a meeting on 24 July 1996 in Kodam Jaya Headquarters, attended by Zacky Anwar Makarim and Colonel Haryanto (Assistant Intelligence of Kodam Jaya). During the meeting, the decision for Kodam Jaya to handle the take-over the PDI office was made.[36] The military involvement in the attack became clear, particularly when each began accusing the other. The Chief of General Staff (KASUM) ABRI Lt. Gen. (ret.) Soeyono at the time even spoke about the possibility of Suharto as the main player behind the incident. According to him, before the attack, some of the ABRI officers had held a meeting at Jalan Cendana (where Suharto's house was located) on 19 July 1996. The meeting discussed the national political situation, especially the dispute within the PDI itself. Besides Suharto and Soeyono, there was also the ABRI Commander in Chief Gen. Faisal Tanjung, the ABRI Chief of Social and Political Affairs Lt. Gen. Syarwan Hamid, R. Hartono, Sutiyoso, the National Police Chief Gen. Dibyo Widodo and the Jakarta Police Chief Maj.Gen. Hamami Nata. All of the above was verified by Sutiyoso.[37]

The offenders were eventually taken to the Connectivity Court, which made the decision in a closed meeting between Commission I-II and the TNI Commander in Chief Adm. Widodo A.S., the National Police Chief Gen. Rusdiharjo, the Minister of Defence Juwono Sudarsono, the Minister of Laws and Legislations Yusril Ihza Mahendra, and the Deputy Attorney General for General Crime M.A.Rachman on 26 June 2000. The Connectivity Court comprised a mixed panel of civilian and military judges for ordinary crimes. As a result, this court was unable to establish responsibility.[38]

The *Batu Merah Berdarah* (Red Stone Bleed) Incident on 11 August 2000 and the *Kebun Cengkeh Berdarah* (Clove Plantation Bleed) Incident on 14 June 2001 resulted in the deaths of twenty-two people. One of those was a member of KODAM, Pattimura who was shot by the Combined Battalion (Yon Gab)[39] whilst he was in civilian clothes at the polyclinic. The brutal attack overstepped the limit as the polyclinic is a public facility. The Commander of Pattimura Military Regional Command defended his subordinates by saying, "Everything that I have done has been permitted by the Civil Emergency Administrator (Penguasa Darurat Sipil/PDS) and protected under the law."[40]

Advocating Cases of Extrajudicial Killings in the Conflict Area

In Indonesia today, impunity continues even though Law No. 26/2000 has been established and the human rights court reviews cases. Unfortunately, there are numerous obstacles to eradicating impunity. These include resistance from high-level officers and civilians and/or the unpreparedness of the superstructure and infrastructure. Insubordination by the military class is evident from the rejection by TNI high-level officers to testify or provide information when called upon to do so by the investigator—the National Commission of Human Rights. This happened during the investigation of the Trisakti, Semanggi I and Semanggi II Incidents in May 1998 and the Abduction Incidents of 1998. As grounds for its rejection to cooperate, the TNI argued that

36 See: Koran Tempo Daily, July 28th, 2001.
37 Ibid.
38 See: Koran Tempo July 27th, 2001.
39 Yon Gab is a joint battalion with troops from Kopassus, Marinir and Paskhas.
40 See: Republika, June 16th, 2001.

the investigation being carried out by KPP-HAM (established by Komnas HAM) was illegitimate and that they had no authority to investigate high-level officials regarding those cases.[41]

A statement by the Indonesian parliament's DPR upheld the rejection on the grounds that there was no severe violation in the matter. In the development of Indonesian politics, the realisation of Law No. 26/2000 became more difficult, when the military high officer who was suspected of a case of severe violation was promoted to a strategic position, including a TNI operational command and a place on another executive board.[42]

Furthermore, obstacles surfaced in the legislature as the old guard in the parliament was still intact. Incompetent parliamentarians further exacerbated this with little regard for their responsibility to society for criminal acts in the past.[43] Ultimately, Law No. 26/2000, which was voted as a "contentment act," could not be enforced effectively. As a result, human rights violations continue.[44]

Problems recur because of the use of the Military Court, which has a wide jurisdiction regulated by Law No. 31/1997. This law uses the object identification method. If the perpetrator is a TNI soldier, the case will proceed through the Military Court without attention being paid to the crime itself. Eventually, the human rights violation case, which is supposed to be investigated by a special investigator, is handled internally by the TNI. Under these conditions, the responsibility mechanism provided for in Law No. 26/2000 on the Human Rights Court becomes "jammed."

According to the Law on the Human Rights Court, violations of human rights that happened before the creation of the law can be settled through the Ad Hoc Court on Human Rights, established by a presidential decision with parliament's (DPR) recommendation or through the Truth and Reconciliation Commission (KKR). In terms of past violations, it can be concluded that the transitional government regime in Indonesia followed a moderate policy in handling severe human rights violations. It provided two avenues: via the Ad Hoc Court on Human Rights or the Truth and Reconciliation Commission (KKR). A contradiction that exists is that the Constitutional Court repealed Law No. 27/2007 so that the mechanism through the KKR is not possible at the moment.

Today, there are more difficult challenges faced by civil society in the effort to enforce human rights, especially when it relates to ending severe violations, including extrajudicial killings, and reviving security sector reform. Not only does the Yudhoyono government seem to favour a reconciliation approach but the calibre of the legislature is considerably inferior as many candidates supported by civil society have failed to become representatives.

41 Brussels Group for International Justice, "Brussels Principles against Impunity and for International Justice," following on from the colloquium "The Fight against Impunity: Stakes and Perspectives" (Brussels, March 11–13, 2002).

42 For example, Sjafrie Sjamsoedin, who was the Jakarta Military Commander when the Trisakti Incident and the May 1998 incident occurred, was promoted to head of the TNI Information Centre at TNI's headquarters. A.M Hendropriyono was promoted to head of the State Intelligence Agency (BIN), even though in 1989 he led a military operation on the Talangsari-Lampung community that led to many civilian deaths.

43 The Triksakti, Semanggi I and Semanggi II cases were concluded in a Special Committee (Pansus) Meeting. Firstly, it was recommended that the president issue a presidential decision on the establishment of an ad hoc court on human rights (PDI-P and PDKB fraction); secondly, the holding of a military/general criminal court was recommended (Golkar Party, PPP, Refomation, TNI/Police, PBBKKI, PDU fraction); and thirdly, there was a recommendation made on reconciliation (Kebangkitan Bangsa fraction). After the vote, the result was that of twenty-six members, fourteen opted for a "regular" violation and five opted for a "severe" human rights violation. As a result, many people were disappointed and the DPR—which was valued as a legislative authority to settle human rights cases politically—had demoted itself to the protector of impunity and no longer was seen as a guardian of human rights. Responding to the matter, the parliament published some statements: first, the settlement process in the military court had some procedural/material law weaknesses which did not touch on or accommodate rehabilitation, compensation and restitution; secondly, there was no defined command responsibility but only individuals in the field. See Kompas 10 July 2001.

44 The facts revealed that in the ad hoc human rights court on East Timor and Tanjung Priok, as well as in the Abepura case, principles of justice and accountability had not been satisfied. Impunity permeated the trial in the case of the human rights defender Munir Said Thalib, who was killed with arsenic in September 2004—not a single intellectual or protagonist was brought to court. During 2005–2006, threats to civil freedom also came to the surface in the handling of terrorism. New problems relating to freedom of religion and faith, after some minority groups had been brought to court and threatened, also arose.

Furthermore, the victim-conscious civil society is still mobilised to create effective pressure on the government and so a stronger victim movement in the future must be realised.

Conclusion

During the New Order era, the TNI had evolved into a far reaching organisation, which identified itself as a guardian of the state and controlled economic, political and socio-cultural trends in the society. This gave the military full control of civil life. As a result, the military was dragged into a New Order-like power struggle, became unprofessional and was unable to carry out its function in the state defense area as outlined by the constitution. The military even perpetrated many human rights violations.

Weak civil political authority and the incomplete political reform agenda make military cooptation still feasible in the Indonesian political system. This has occurred because of political decisions, which place the commander in chief of the TNI and the head of the Indonesian National Police on equal footing with cabinet ministers. Hence they are still involved in political decision making. Security reforms over the last ten years have not made any fundamental changes to the civil-political control of the military. The unfinished political reform has led to flawed legal reform. Thus the TNI continues to commit acts of violence and human rights crimes. Trials for TNI officers are still held in military courts and the promotion of TNI officers to strategic positions still occurs as officers who are "released" by unfair and unaccountable legal processes or unresolved trials have places reserved for them within the system. The government's inability to take responsibility for assuring security has served the TNI elite's political interests well. The aspirations of this group have been realised by their return to recent political "adventure" through the reactivation of the smallest unit called Koter, in the context of counter-terrorism. The landscape of human rights violations in Indonesia is supposed to become an important condition for evaluating the basis of the whole component.

We are facing a situation where civil society, the middle class and promoting ideas of democratisation in security reform has collided with impunity that will be exceedingly difficult to manoeuvre past for the foreseeable five-to-ten years. Nevertheless, there is hope that passion and solidarity are regaining their strength, and that civil society's struggle to assure the settlement of human rights violations, including extrajudicial killings, may bear fruit. If the political compromise between the status quo and the anti-reform groups becomes ascendant, civil society has to be able to dismantle certain elements that have led them in the same direction but not in a unified way to carry out the second version of reformation.

References

Alkostar, Artijo. *Negara Tanpa Hukum*. Yogyakarta: Pustaka Pelajar and Pusham UII, 2000.

Brussels Group for International Justice. "Brussels Principles against Impunity and for International Justice." Following on from the colloquium "The Fight against Impunity: Stakes and Perspectives," Brussels, March 11–13, 2002.

Democratic, Human Rights and Worker Bureau. "Report on human rights settlement of the states: 2006." 8 March 2006.

Edwin, Donni. "Reformasi Militer: Kepemimpinan Sipil vs Tentara" in *Warisan Orde Baru: Studi Fenomena dan Sistem Bablasan Rezim Soeharto di Era Reformasi.* Jakarta: Institute Studi Arus Informasi, the University of Melbourne and USAID, May 2005.

Hamdani, Amdy. "Milisi Sipil" in Beni Sukadis and Eric Hendra (eds.), *Perjalanan Reformasi Sektor Keamanan Indonesia*. Jakarta: Lesperssi and DCAF, November 2008.

Indonesian Ministry of Defence. *Buku Putih Pertahanan 2008*. Jakarta: February 2008.

International Crisis Group. "Aceh: Komplikasi Pasca Konflik." Asia Report No. 139, 4 October 2007.

KontraS. *Satu Dekade Reformasi TNI*. 5 October 2008.

Koran Kompas, 27 July 2001

Koran Tempo 28 July 2001

Munir, Kumpulan Pemikiran. *Membangun Bangsa dan Menolak Militerisme: Jejak Pemikiran Munir (1965–2004)*. Jakarta: Kasum, September 2006.

Osse, Anneke. *Memahami Pemolisian: Buku Pegangan Bagi Penggiat HAM*. Holland: Amnesty International, 2007.

Pabotinggi, Mochtar. "Kembalikan Kedaulatan Rakyat." *Kompas*, 24 January 2004.

Panji Masyarakat Magazine, (25/11/1998)

Propatria Team. *Reformasi Sektor Keamanan Indonesia*. Jakarta: Propatria, 2004.

*Republik*a, 16 June 2001

Tempo. "*Mengadili Prajurit, Lupa Perwira*." 30 April 2000.

Umar, Bambang Widodo. *Polisi vs Politik dalam Konteks Keamanan Pemilu*. Makasar, 27 August 2008.

Widjojo, Muridan S. et al. *Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future*. Jakarta: LIPI, TIFA and Yayasan Obor Indonesia, March 2009.

The Challenges of Ending Torture within the Sphere of Law Enforcement

Asfinawati

The Universal Declaration of Human Rights (UDHR), namely Article 5, declares that torture is unacceptable. Since the time of its adoption, a number of other UN conventions have been adopted to prevent the use of torture, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Convention on Civil and Political Rights (ICCPR), specifically Article 7. The most crucial aspects of the ICCPR and the UDHR are the freedom from torture and disgraceful, inhumane and humiliating sanctions.[1] In terms of human rights, freedom from torture is considered an absolute right, which cannot be limited under any condition (i.e., non-derogable rights).[2]

The definition of torture in the UNCAT can be found in Article 1, which outlines the following components:

- Every action that is taken deliberately and causes great pain or suffering, whether physical or mental;
- Actions inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind;
- Pain or suffering inflicted by, at the instigation of or with the consent/acquiescence of a public official or other person acting in an official capacity; and
- It does not include pain or suffering arising only from lawful sanctions.

Regulation for other contemptible, inhumane and humiliating actions or sanctions can also be found in Article 16 of the UNCAT, which includes these components:

- Does not include the actions in Article 1 of the Convention against Torture;
- Mistreatment is perpetrated by, or as the result of force of, or in secret agreement with government officials or any other person who has a legitimate capacity;

1 See Article 5 of the UDHR, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and Article 7 of the ICCPR, "No one shall be subjected to torture or to cruel, inhuman or degrading punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

2 See Article 4 (2) of the ICCPR.

- Articles 10, 11, 12 and 13, are also valid as references;[3] and
- This regulation does not affect national and international regulation, which prohibits any other contemptible, inhumane and humiliating punishment or action that is related to extradition or eviction.

Indonesia ratified CAT with Act No. 5/1998. There are several factors to note when considering the ratification time of 28 September 1998, the first of which being that ratification occurred only four months before President Suharto's resignation.[4] Secondly, ratification occurred simultaneously with the 1997/1998 activists kidnapping breakthrough, when nine people were found alive, one dead and another thirteen remained unaccounted for.[5] From these facts, the influence of the international community on the domestic one is quite obvious. This influence can also be seen in the explanation in Act No. 5/1998 about the CAT ratification in Part III Point 5, "The Reason for Indonesia's Role as a State Party in the Convention":

> *The validation and implementation of its Convention responsibly shows us Indonesia's earnestness in its effort towards the development and protection of human rights, especially the right to be free from torture. This will also increase Indonesia's positive image in the international sphere and make the international society's trust in Indonesia more solid than before.*

Nevertheless, the ratification was not a full-ratification. Indonesia declared a reservation on Article 20:

> *Based on valid international law, Indonesia as [a] sovereign state decided to deliver a declaration on Article 20 of the Convention. This pronouncement asserts that in terms of its implementation obligations as stated in the Convention, national sovereignty and region wholeness of the State Party must be honored. This declaration does not have any compulsory jurisdiction, thus the declaration is not diminishing the State Party's obligation and responsibility to implement the Convention."*[6]

The effect of the declaration was that Indonesia "was not going to recognize the authority of the Convention against Torture in terms of Article 20 or Article 28 (1)."[7] Besides that declaration, Indonesia also declared a reservation in relation to Article 30 (1):

> *...which regulates disputes and seeks redress through the International Court of Justice. This action was based on the consideration that Indonesia did not recognize the International Court of Justice's compulsory jurisdiction. This requirement is procedurally appropriate with the valid international law and regulation.*[8]

3 See Article 10 on the education of law enforcement officials on the prohibition against torture. Look at Article 11 about the interrogation rules, instructions, methods and practices of individuals arrested or jailed. See Article 12 about rapid and objective investigations any time there is a suspicion of maltreatment. See Article 13 about the rights of victims and witnesses of mistreatment to contest and be protected from intimidation while the case is being examined.
4 Suharto resigned on 21 May 1998.
5 *Media Bersama*, "Penyelenggara Negara Kembali Dituntut Menuntaskan Kasus Penculikan 1997/1998" (10 November 2008).
6 Explanation of Act No. 5/1998.
7 Ibid.
8 Ibid.

This reservation rendered Indonesia as "no longer being tied to the offer of dispute solution between State Party and [the] International Court of Justice."[9]

Torture and the Revelation of Crimes

The paradox herein is the use of torture by those meant to uphold the law as the method or means to reveal crimes that were actually committed by law enforcement officials themselves. As noted in the news and on the basis of Jakarta's Legal Assistance Body (LBH) contestations, those who usually become dominant actors in maltreatment are the police.

An example of the above is a misarrest case. One of the misarrest cases occurred in 2008 involving Imam Hambali or Kemat, Devid Eko Priyanto and Maman Sugianto. It began with the incorrect identification of a corpse and ended with mistaken suspects. The evidence stated Asrori was the murdered victim, which ultimately proved to be untrue. Based on DNA tests conducted at the laboratory at Police Headquaters (Lab Pusdokkes POLRI), the corpse was actually that of Fauzin Suyanto. On that basis the alleged murderer, Kemat, had to undergo trial.[10] During his testimony he told the judge that to obtain a confession from him, he had been tortured. The effect of that torture made Kemat sick and he had to be admitted to hospital, though he was rumoured to have committed suicide. The event report (Berita Acara Polisi-BAP) was then falsified by the police. Thus, when Kemat had to reconstruct the events, he felt compelled to tell the police what they wanted to hear.[11]

Photo 10. Performance Art in a Demonstration against Torture in 2009

Another exceptional case is that of the misguided courts in relation to Risman Lakoro and Rostin Mahaji at Gorontalo. The couple was suspected of killing their daughter, Alta Lakoro, but she later showed up in June 2007 after they had served their sentence. Risman Lakoro's thumb had been wedged in a door during questioning and was irreparably damaged. In addition, his toes had been crushed by a desk on which some police officers had stood. His wife, Rostin Mahaji, was subjected to the torture of her husband. She was beaten on her back with a ruler and rattan. Both Risman and Rostin endured this torture for almost three months, until the investigation was over.[12]

9 Ibid.
10 *Hukum Online*, "Salah Tangkat Kemat CS Berbuah Sanksi Etik dan Profesi" (24 January 2009).
11 *Okezone*, "Kemat 'Bernyanyi' di Pengadilan" (23 October 2008).
12 *Gatra*, "Risman Cacat Seumur Hidup Dianiaya Polisi" (14 July 2007).

These cases of maltreatment appeared in the annual report on law and human rights by LBH Jakarta and show that police officers use torture as a valid method of securing confessions and information. It is obvious that the police are focussed on the suspect's confession, to the exclusion of all other possible evidence. Their priorities are the suspect's admission and punishment. This modus operandi is both curious and unlawful if we refer to the regulations in Indonesian Procedural Criminal Law (Hukum Acara Pidana), which state that the defendant's admission should not be taken as main evidence. Article 189 (4) states:

> *...[the] Defendant's admission is not sufficient proof that a person committed the action with which he/she was accused and this should be accompanied by other evidence.*

Misarrest and misguided cases show the inferior and grossly unfair means of basing the results of an investigation on the defendant's admission.

A Typology of Torture in Indonesia[13]

The research conducted by Jakarta LBH in 2005 (based on data from 2003–2005) and 2008 (based on information from 2007 until early 2008) revealed similar results.[14] Information on cases of torture between 2007 and early 2008 generally showed that just over eighty-three percent of 367 respondents had been tortured during the investigation and arrest process. The data also supports similar research from 2005 that showed that approximately eighty-one percent (535 respondents) had also been tortured, seventeen percent (112 respondents) were saved from torture whilst a further thirteen respondents had no information about it.

The data from 2007 to early 2008 revealed that about seventy-two percent (278 respondents) had been tortured in the investigation process. Data on torture during the arrest process highlighted that almost seventy-five percent of 358 respondents had been tortured when unaccompanied by a legal advocate. Just over seventy-seven percent of nine respondents had been tortured while accompanied by a legal advocate. Based on the information from 2003 to 2005, 425 respondents (approximately sixty-five percent) were tortured while being investigated, 240 respondents (about forty-three percent) were tortured while being arrested, 170 respondents (about twenty-five percent) were tortured while they were in prison and another six respondents (just under one percent) were tortured in other places. In the period from 2003 to 2005, the agents of torture were:

Actors	2003–2005	
	Person(s)	Percentage
Police agent	491 persons	74.4 %
Jailer	30 persons	4.5 %
Soldier	6 persons	0.9 %
Civilian Official	4 persons	0.6 %
Others	38 persons	5.9 %

13 This typology is based on the data of LBH Jakarta, which has basic results based on research of maltreatment by police agents, not by any other criminal government officer and not in the conflict area.

14 For complete research results, see: LBH, "Mengungkap Kejahatan dengan Kejahatan" (Jakarta: LBH, 2009).

The information from 2007 to early 2008 shows that just over eighty-three percent of 367 respondents had been tortured by police personnel. Based on sex, about eighty-four percent of 333 men stated that they had been tortured, while approximately seventy-six percent of thirty-four women admitted to being victms of torture.

Based on age, the data collected showed the following were tortured:

- Age 11–17: 100% of twenty-two respondents
- Age 18–25: 98.24% of 170 respondents
- Age 26–35: 94.02% of 117 respondents
- Age 36–45: 95.45% of forty-four respondents
- Age 46–58: 85.71% of fourteen respondents

In so far as the place of torture was concerned, 354 respondents (about seventy-six percent) had experienced it at the police station while twelve respondents (about three percent) had experienced it at another place, e.g. Pulomas field, in an unoccupied house and in the National Narcotics Body (*Badan Narkotik Nasional*–BNN) office.[15]

The most common type of torture is non-physical, experienced by 262 respondents or seventy-one percent. This was followed by physical violence experienced by 212 respondents or about fifty-seven percent. The least common type of torture was sexual violence, which 110 respondents or just under thirty percent experienced.

The forms of the non-physical violence used were:

- Being forced to confess: 186 persons
- Being threatened: sixty-four persons
- Being neglected for hours: thirty-eight persons
- Denial of food, drink and/or medicines: thirty-two persons
- Being ordered to confess: twenty-eight persons
- Being misinformed: twenty-four persons
- Being disgraced/humiliated: twenty persons
- Being prohibited to see visitors: twelve persons
- Other: thirteen persons

The forms of physical torture vary. The data shows that physical violence was employed most. The forms of torture used were:

- Being hit hard and continuously: 139 persons
- Simultaneous ear hitting: fifty-three persons
- Hair-pulling: thirty-six persons

15 Ibid., 43.

- Being forced to exercise: thirty-three persons
- Being burnt by cigarettes: twenty-five persons
- Being crushed by a desk: twenty-two persons
- Being hit on the sole of the foot: twenty-one persons
- Being made disabled in some way: thirteen persons
- Sleep deprivation: twelve persons
- Electrocution: eleven persons
- Having teeth mistreated: six persons
- Having nails pulled out: two persons
- Holding the face under water: two persons
- Other: twenty-one persons

This "other" category is described by the respondents as being hit with various objects like clubs, car keys, chairs, glass, thick books, bamboo, wood, baseball bats, irons, a cell phone charger, a helmet, shoes and sandals, screwdrivers, rattan, revolvers and belts. People were also pushed by a crowbar, had their head tied and wrapped in plastic, were handcuffed for a long period of time time, had their head shaved, were threatened with a gun and were forced to squat for a long time. Certain body parts like the face, back, knees and head often bore the brunt of the torture.[16]

The following list outlines the forms of sexual harassment that occurred:

- Verbal harassment: sixty-three persons
- Being forced to strip in a public area: thirty-five persons
- Being photographed in a humiliating position: eleven persons
- Being forced to kiss: five persons
- Groping: three persons
- Being forced to masturbate: three persons
- Electrocution of vital organs: two persons
- Rape: two persons
- Other: six persons

If the data on maltreatment, both physical and non-physical, is compared with the information on the respondents' sex, then the result looks like this:

Non-physical Torture

Violence Conducted	Total Respondents	
	men	women
Being forced to confess	169	17
Being threatened	60	4
Being neglected for hours	37	1
Denial of food, drink and/or medicines	31	1
Being ordered to confess	28	0
Being misinformed	23	1
Being disgraced/humiliated	17	3
Being prohibited to see visitors	12	0
Other	13	0

16 Ibid., 44.

Physical Torture

Violence Conducted	Total Respondents	
	men	women
Being hit hard and continuously	134	5
Simultaneous ear hitting	52	1
Hair-pulling	36	0
Being forced to exercise	33	0
Being burnt by cigarettes	25	0
Being crushed by a desk	22	0
Being hit on the sole of the foot	20	1
Being made disabled in some way	13	0
Sleep deprivation	11	1
Electrocution	11	0
Having teeth mistreated	6	0
Having nails pulled out	2	0
Holding the face under water	2	0
Other	21	0

Sexual Torture

Violence Conducted	Total Respondents	
	men	women
Verbal harassment	57	6
Being forced to strip in a public area	34	1
Being photographed in a humiliating position	11	0
Being forced to kiss	5	0
Groping	3	0
Being forced to masturbate	3	0
Electrocution of vital organs	2	0
Rape	2	0
Other	6	0

Looking at the data, we can see that men were most often the victims of torture. However, the number of female respondents (thirty-four) is far less than that of males (333). Thus, considering this information, we can conclude the following:

1. Men usually experience more torture than women.
2. The type of torture carried out on men is usually more serious than that experienced by women.
3. The type of torture women experience is usually non-physical.

The variation in type violence, as described above, reveals that most victims were subjected to numerous types of torture. The data is tabulated below:

Violence Conducted	one	more than one												
		2	3	4	5	6	7	8	9	10	11	12	13	14	15
Total Respondents	89	79	59	40	23	11	13	4	2	3	0	2	1	1	1

The duration of the torture experienced by most generally did not occur over a long period of time:

Duration (hour)	Respondents	
	Total	Percentage
< 1	128	24.88%
1–5	73	19.89%
5–10	12	3.27%
10–15	5	1.36%
15–20	2	0.54%
20–24	3	0.82%
> 24	10	2.72%

From the typology outlined above, there are some common physical and psychological effects on the victims:

Effects	Respondents	
	Total	Precentage
Trauma	92	25.07 %
Contempt for the police	69	18.8 %
Scarring	66	17.98 %
Injury to internal organ(s)	45	12.26 %
Deafness/difficulty hearing	28	7.63 %
Fear of the police	18	4.9 %
Physical defects	17	4.63 %
Broken bones	11	3 %
Bleeding	10	2.72 %
Difficulty speaking	9	2.45 %
Disability	1	0.27 %
Other	6	1.63 %

Other data reveals cases where the personal belongings of detainees and/or victims of torture have been confiscated by the police. Data from 2003 to 2005 and from 2007 to 2008 show that as well as experiencing torture, the victims were also asked for money, forced to withdraw money from ATMs, and pushed to hand over their money, jewellery and mobile phones. It would appear that one of the aims of torture was to exploit the defendant's wealth.[17]

The research that directly recommends improving the system is the findings relating to the investigating officers and the torture conducted. From this, it can be concluded that as the number of investigating officers increased, so too did the incidence of torture. From 128 respondents who were investigated by one police officer, about sixty-two percent confessed to having been tortured. From ninety-two respondents who were investigated by two police officers, a little over eighty percent confessed to having been tortured. Of the sixty-four respondents investigated by three police officers, almost eighty-eight percent of them confessed to having been tortured. Of the forty-three respondents who were investigated by four police officers, over eighty-three percent confessed to having been tortured. Finally, of the thirty-one respondents that were investigated by more than five police officers, almost ninety-four percent confessed to having been tortured.

17 Ibid., 70–73 and 125–126.

A similar pattern can be found in relation to the presence of a lawyer. Data from 2003 to 2005 and from 2007 until early 2008 reveal that defendants who were unaccompanied were more susceptible to torture. In additon, the likelihood of torture grew if the legal advocate was the choice of the defendant rather than that of the police.

Efforts to Stop Torture: Instruments with Minimum Implementation

The facts above highlight how poorly implemented the CAT actually is. This does not come as a surprise. The crux of the problem is that of the unfinished transitional justice agenda, which is required to effectively move away from a human rights abused society. The most crucial aspect of the transitional justice agenda is ensuring justice and recovering victims.[18] Justice for the victims can only be achieved by due legal process and meting out proportionate sanctions to the respective violators of human rights. In order to achieve this end, violators should be removed from their strategic positions within state institutions. Unfortunately, this is rare. Human rights violators continue to retain high-level and strategic positions, even possessing the ability to freely register themselves as candidates in state elections.

These facts show the recurring pattern of human rights implementation in Indonesia. The Committee against Torture in 2008 made queries on this implementation. The Indonesian government presented its report claiming it had reformed its laws. The committee focused on impunity and the use of torture in regulations in Act 39/1999 and Act 26/2000. In addition, various forms of torture and other cruel, inhuman and degrading treatment or punishment still occur.[19]

The CAT requires signatory governments, in this case the Indonesian government, to submit three reports to the Committee against Torture. One is an initial report, which should be followed up with an annual, post-ratification one and thereafter by an additional report every four years. The Committee against Torture is always highlighting the fact that the government's report only contains the minimum number of cases. Below is one of the recommendations by the committee on Indonesia's initial report:

> *Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of detention.*[20]

This ineptness by the government is reflective of its cavalier attitude to its commitments under the CAT and its persistence in ensuring the police, military, state prosecutors, courts, and jailers, etc. remain the agents of implementing the substantive aspects of the convention.

It is hopeless to think that the police give priority to mainstreaming anti-torture in their daily work. They do not even use torture terminology in the investigation process. See, for example, the report by the head of the Indonesian Police on the hearing with the 3rd Commission of the Legislature in the Legislative Building held in

18 Human Rights Council, *Resolution 9/10: Human Rights and Transitional Justice.*
19 Committee Against Torture, *Concluding Observations of the Committee against Torture: Indonesia*, Fortieth Session (Geneva, 28 April–16 May 2008).
20 Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture*, Twenty-Seventh Session (12–23 November 2001).

Jakarta on 9 February 2009:

> *Based on the data of the Indonesian Police Headquarters, in Operasi Bersih (police operation "Bersih"), which was held on November 1st until December 31st, there are 1,462 police personnel who were caught carrying out violations. 232 cases are about misconduct related to an abuse of authority, 753 cases are about illegal taxation, 37 cases are about criminal conduct, and 440 cases are discipline related misconduct.*[21]

This contrasts starkly with illegal levies, which were specifically described. The detailed information about torture is being separated from the statistics, which need extra attention. This is why it is difficult to get exact information about the enforcement of discipline on police personnel, specifically on those who use torture in the course of their work.

Government Regulation PP 2/2002 on Discipline Regulation of Indonesian Police Personnel also fails to specifically regulate or prohibit torture during the investigation process, or during the daily work of the police.

Nevertheless, this does not mean that there is no prohibition or limitation on the use of torture within the internal regulations of the police. The appendix of the Indonesian Police Chief Decision Letter SK KaPOLRI No. Pol.: Skep/1205/IX/2000 of 11 September 2000 on the Revision of Implementation and Technical Guideline on Criminal Action Investigation Compilation (the process of criminal investigation in Chapter III Article 8c 3e Number 6) stated that, "During the course of the investigation, it is prohibited to use torture or force in any form."

Another internal regulation is the appendix of the Indonesian Police Chief Decision Letter SK KaPOLRI No. Pol.: Skep/1205/IX/2000 of 11 September 2000 on the Revision of Implementation and Technical Guideline on Criminal Action Investigation Compilation (the criminal investigation in Chapter III Article 8a Number 5d and Article 8c Number 3) stated, "Requirements for the investigation officer are patience and self control" and "The place of investigation should be a room which is calm and non-threatening."

These regulations fall short in that:

- They put the onus on the investigator's character instead of the system. This could mean that a patient investigator might also use torture if he believed that so doing was the best method of eliciting information or an admission from the accused.
- The regulation of the investigation place is too general. It is open to abuse and not sufficiently rigid to limit the investigator's option to use torture.
- There is no explicit sanction if these regulations are breached.

The enforcement of discipline on the other hand increases the likelihood of impunity because there is an impression that the disciplinary sanctions, without any continued criminal punishment, are already just. Look at the misarrest case of Kemat. Based on information given by the Chairman of the Public Relations Division of the Indonesian Police Headquarters Abu Bakar, there were limited ethical sanctions applied to the investigator.[22]

21 For two months, 1,462 police personnel were tried.
22 *Hukum Online*, "Salah Tangkap…" (2009).

Even if the police who use torture in the course of their work were prosecuted, the criminal law that would be used is Article 351 of the State Criminal Code (*Kitab Undang-Undang Hukum Pidana*–KUHP) on abuse, even though there is a more appropriate article describing torture in accordance with the CAT in the code.[23] The sanctions are still far from adequate. See for example Articles 422, 421, 427 and 304 of the State Criminal Code. A comparison between Article 351 of the State Criminal Code and another articles is given below.

351 KUHP	422 KUHP	421 KUHP	427 KUHP	304 KUHP
(1) An officer who is abusive will be detained/ imprisoned for a maximum of two years and eight months or will be fined up to IDR 4,500 (2) If the mistreatment results in serious injury, they will be detained for a maximum of five years (3) If the mistreatment results in death, the perpetrator will be imprisoned for a maximum of seven years (4) Abusive conduct is considered the same as deliberately damaging health (5) Conducting the abuse is not considered a crime	An officer who uses coercion in the handling of criminal cases, either to extort admission or get information, will be detained for a maximum of four years	An officer who misuses his power to force someone to do/not to do something, or lets bad things happen to someone, will be detained for a maximum of two years and eight months	(1) A person will be imprisoned for a maximum of four years if: 1. The officer investigating the criminal act deliberately fails to declare that someone's independence was taken unlawfully or deliberately fails to inform the higher authority 2. The officer on duty knows that someone's independence was unlawfully deprived but does not immediately inform the criminal investigator (2) The officer who is negligent and allows the behaviour cited in the articles above will be imprisoned for a maximum of three months or will be fined up to IDR 4,500	Anyone who deliberately places somebody in or lets somebody experience misery, while legally bound to provide daily care or maintenance, will be imprisoned for a maximum of two years and eight months or will be fined up to IDR 4,500

Compared with the provisions in CAT (excluding the sanction in Article 4 paragraph 2), Article 422 of the State Criminal Code KUHP coincides with the provisions of Article 1 of CAT about the purpose of torture to gain information or admission(s). Thus, Article 421 of the criminal code can be implemented as the elements of "the conduct which are caused by the act of solicitation, or with the approval, of public officials" in Article 1 about torture and Article 16 about any other contemptible, inhuman and humiliating punishment. Articles 427 and 304 of the code can be a means of accommodating other cruel, inhuman and degrading punishment. Article 351 (5) does not compliment Article 4 (1) of CAT, which considers the attempt to use torture a crime and therefore a prosecutable offence.

23 *Hukum Online*, "Masih Sulit Memetakan Penyiksaan yang Dilakukan Penyidik" (10 February 2009).

The continued use of torture cannot be separated from the actions of the state general prosecutor. Article 15 of CAT states that:

> *Every State Party should guarantee that every statement made as the result of torture must not be used in evidence. The evidence that the statement was made however should be used against the person accused of torture.*

However, the state general prosecutor usually ignores the suspect's claims of torture. Furthermore, the statement or admission gleaned by torture is admissible. This is not only contrary to the CAT provisions but also to Article 108 (3) of State Proceeding Criminal Code KUHAP, which states:

> *Every civil servant in conducting his/her duty who knows of any criminal [acts committed] is obliged to report that matter to the investigator immediately.*

Negligence by the general prosecutor is also found in the research of LBH Jakarta. Seventeen of 307 persons who had experienced torture made complaints to the general prosecutor whose response was negative. Four respondents claimed that the general prosecutor disproved that violence had occurred, seven respondents said that the general prosecutor deliberately kept silent, four respondents got attention because the police personnel involved were called and a further two respondents got an unspecified response.

The general prosecutor's reason for allowing the cases to continue is unacceptable. For even after having made their accusations, the cases should have been stopped. In accordance with Article 144 (1) of the Criminal Proceeding Code KUHAP, "The state prosecutor can change the indictment statement before the trial court sets the day, both to refine and **to not continue the claim**."

The ramifications of the general prosecutor's actions mean that the judges who adjudicate the cases usually are next in the chain of impunity in relation to the maltreatment. The LBH Jakarta cases, which are associated with torture and misarrests, show that the judges do not respond to the confessions of the witnesses and/or the accused on the existence of torture during the investigation process. The judges also respond negatively to the accused's statement of their intention to cancel the Inspection Proceeding Report (*Berita Acara Pemeriksaan*–BAP), although Article 185 Clause (1) of the Criminal Proceeding Code states, "Witness explanation that is used as evidence is what the witness declares during the trial."

Judges tend to blame accused persons who want to revoke the Inspection Proceeding Report. Actually, Indonesia's Criminal Proceeding Code KUHAP also gives authority to judges to consider those differences, as stated in Article 163:

> *If [a] witness' admission in the court differs from the one in the Inspection Proceeding Report, the head of judges should remind the witness of this matter, request explanation of those differences, and note it in the trial inspection proceeding report.*

The Criminal Proceeding Code KUHAP also opens up the possibility to subpoena the police investigator as witness of the investigation, as stated in Article 160c, and confront the witness, as regulated in Article 165 (4) of KUHAP.

> *In cases that both benefit and burden the defendant, which are noted in the case giving letter and/or requested by the accused or the legal advisor or general prosecutor during the trial or before the decision, the…judge shall pay attention to the witness' explanation.*
>
> *The judge and general prosecutor, or the accused or the legal advisor with the mediation of the head judge, may [meet] the witness, face-to-face, to examine the accuracy of each explanation.*

This is important to reveal the torture that occurred during the investigation process. Based on the experience of LBH Jakarta, this request is usually denied by the judge.

Reviewing the Weaknesses: Creating Space for Ending Torture

The information above reveals how efforts in stopping torture have encountered various obstacles. We can categorise those barriers accordingly: (i) the obstacles of substantive legislation; (ii) the legal structure; (iii) the legal culture; and (iv) the community.

The main obstacle to substantive legislation is the regulation of torture practices sanctioned in the Criminal Code KUHAP, which does not comply with the CAT. This is exacerbated by the fact that the criminal law is also at odds with the CAT as evidence gained through mistreatment is still being used. There is no special mechanism to process the complaints of victims. The pre-court in KUHAP was intended to balance the rights of suspects, the accused or victims with those of law enforcement officers (although the scope for this is limited).[24] This has not proved effective because the regulations make the pre-court unacceptable should the main case get to court. Police agents even take advantage of loopholes within the law to avoid appearing in the pre-court.

> *To abort the indictment of the pre-court, the investigators should finish and submit the matter to the state prosecutor as soon as possible. Besides, they have to make a request for that matter to be immediately delivered to the court and make some approach with the court officials, thus the main case will be examined at the latest before the pre-court sanction is decided.*[25]

Indonesia has yet to ratify the Optional Protocol of the CAT. The main purpose of this protocol is to prevent torture through the provision of open centres of detention. Based on the research of LBH Jakarta in 2005 "For

24 The pre-court definitions are whether an arrest on the request of the suspect, his family or other parties is valid or not and whether the termination of investigation or prosecution is by request in lawful terms and whether the enforcement of justice is valid or not. It also describes the request of the loss or rehabilitation, which is held by the suspect or his family or any other party by the authority of the suspect, is not submitted to the court.

25 Attachment of Decision Letter of the Republic of Indonesia Chief of Police No. Pol.: Skep/1205/IX/2000 on 11 September 2000 about Pre-Court Chapter III Article 10 c Number 3 of Field Guide Book.

Those Who are Arrested and Mistreated," detention is the very first step in the practice of torture. That is why it is crucial to create open centres of detention to prevent torture.

Legal provisions give some relief. Act 13/2006 on the Protection of the Witness and Victims, regulates the rights of the victim. Article 7 clause (1) of this act states that, "The victims through [the] Witness and Victim Protection Body (*Lembaga Perlindungan Saksi dan Korban*–LSPK) have the right to claim via the court: (a) rights of compensation in instances of grosss human rights violations; and (b) rights of restitution or [replacement]..., which becomes the responsibility of the crime subject."

Unfortunately, this regulation's significance is reduced by Article 5 (2) and by its explanation, which does not describe a victim of human rights violations as a specific party entitled to protection:

> *The rights, refer to Clause (1), is given to the witnesses and/or the victims of the crime, decided by LSPK.*
>
> *Some definitions of "specific cases" are those relating to corruption, drugs or psychotropic misuse, terrorism, and other crimes that bring witness and victims into a situation that is detrimental to their soul.*

The Constitutional Court's decision on the Judicial Review Act relating to the death penalty is a further obstacle. Non-derogable rights cannot be reduced or limited, however, the court does not seem to think this and hence does not see that working to end torture is also an absoulute right.

From a legal perspective, the major problem is the absence of any specific provisions on the prohibition of torture, along with severe penalties. The limited methods of investigating crimes also facilitate the use of torture. Additionally, anti-corruption efforts have failed to penetrate law enforcement institutions, which influences the continued use of torture.

On a cultural level, law enforcement officers' use of a suspect's confession acquired through torture has become commonplace and is viewed as a valid means of revealing crime. General prosecutors and judges who receive files from investigators reinforce this perception by prosecuting and convicting the accused, even in the face of proof that admissions were forthcoming as a result of torture.

The police has been a civilian institution for seventeen years and still possesses military characteristics. LBH Jakarta experiences in advocacy indicate that the police obey their leader more than legislation. Unfortunately, instructions from chiefs often contradict the law or the demands of justice, like the chief of the Indonesian Police's instructions on pre-court.

Society then becomes the vital factor in advocating the prevention of torture. Unfortunately, society has become accustomed to the culture of violence and is drawn into tolerating police violence as a result of TV shows depicting crimes and the disclosure of crime. Those impressions lead the audience to "punish" the perpetrators of the crime and lead to a trial by media and the people, which is contrary to the spirit of the court, rehabilitation

and integration as outlined in Act 12/1995 on Socialization (*Pemasyarakatan*).

The strengths, weaknesses and challenges in advocacy can be seen in the following outline:

STRENGTHS	CHALLENGES
• Indonesia has ratified the CAT	• The Constitutional Court's perception on non-derogable rights as rights that can be limited in the case of the death penalty
• There is a Protection of Witnesses and Victims Institution	• A lack of specific restrictions and sanctions for the police who carry out maltreatment
• There is a network on monitoring of torture and advocacy	• The police are still militaristic and obey the instructions of their leaders rather than the law
	• Corruption in the police body has not been targeted by the Commission Against Corruption
	• Some police personnel, prosecutors and judges still consider a suspect's admission as primary evidence
	• The limitation of the methods and tools for police investigations
KELEMAHAN	• The substance of criminalising practices of torture do not accord with the CAT
• Society tolerates the violence conducted by the police as a result of the mass media	
• Society fears and mistrusts the judiciary, thus there are few victims who dare to expose and/or have their experiences of torture investigated	• The procedures governing torture are still the same as the general criminal procedure
	• Indonesia has not ratified the Optional Protocol of the CAT

Recommendations

There are several steps that need to be taken to eliminate torture:

1. Ratify the optional protocol of CAT.
2. Revise the State's Criminal Code KUHP regarding the definition of, trial and sanctions of maltreatment to comply with the provisions of CAT.
3. Revise the State's Criminal Proceeding Code KUHAP to comply with the provisions of CAT, such as annulling evidence obtained through torture, improving the mechanism for complaints of torture and the time and method of arrest.
4. Revise the disciplinary regulations for police personnel, the state general attorney (*Kejaksaan Agung*), and the Supreme Court (MA) by adding penalties associated with torture.
5. Provide legal assistance to those detained for a maximum of five years or more or threatened with the death penalty, but also for all of the suspects and defendants in criminal cases.
6. Revise the Act on Protection and the Witness and Victim Protection Body (LPSK) to create mechanisms that ensure witnesses of torture obtain protection.

7. Create internal regulations within the police body on the detention procedure along with sanctions for when they are violated.
8. Create internal regulations within the police body on investigations; for example, the specific number of investigators permitted to question a suspect in a certain period of time. This regulation should also contain clear sanctions for violations.
9. While waiting for the KUHAP revisions, appropriate regulations should be implemented, such as creating decent conditions for the suspect/accused and providing legal assistance.

References

Appendix of SK KaPOLRI No. Pol.: Skep/1205/IX/2000, Pre-Court Field Guideline Book, 11 September 2000.

Berita Nasional. "Selama Dua Bulan 1.462 Polisi Nakal Ditindak." 9 February 2009.

Committee Against Torture. *Concluding observations of the Committee against Torture: Indonesia.* Fortieth Session. Geneva: 28 April–16 May 2008.

Committee Against Torture. *Conclusions and Recommendations of the Committee against Torture.* Twenty-Seventh Session. Geneva: 12–23 November 2001.

Gatra. "Risman Cacat Seumur Hidup Dianiaya Polisi." 14 July 2007, http://www.gatra.com/artikel.php?id=106077.

Hukum Online. "Masih Sulit Memetakan Penyiksaan yang Dilakukan Penyidik." 10 February 2009, http://www.hukumonline.com/berita/baca/hol21151/masih-sulit-memetakan-penyiksaan-yang-dilakukan-penyidik-.

Hukum Online. "Salah Tangkap Kemat Cs Berbuah Sanksi Etik dan Profesi." 24 January 2009, http://www.hukumonline.com/berita/baca/hol21010/salah-tangkap-kemat-cs-berbuah-sanksi-etik-dan-profesi.

Human Rights Council. Resolution 9/10. Human Rights and Transitional Justice, http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_10.pdf.

International Center for Transitional Justice. "What is Transitional Justice?" http://www.ictj.org/en/tj/.

LBH. *Mengungkap Kejahatan dengan Kejahatan.* Jakarta: LBH, 2009.

Media Bersama. "Penyelenggara Negara Kembali Dituntut Menuntaskan Kasus Penculikan 1997/1998." 10 November 2008, www.mediabersama.com.

Okezone. "Kemat 'Bernyanyi' di Pengadilan." 23 October 2008, http://news.okezone.com/index.php/ReadStory/2008/10/23/1/156928/kemat-bernyanyi-di-pengadilan..

UU No. 5 Tahun 1998.

Accountability in Solving Cases of Enforced Disappearance

Mugiyanto

The discourse on enforced or involuntary disappearance of persons in Indonesia emerged at the end of 1997 and in early 1998. In that period there were abductions of several pro-democracy activists. The Commission for Missing Persons and Victims of Violence (KontraS) was then established. After conducting intensive investigations, KontraS concluded that the abduction of these activists involved The Military Special Forces Command (Koppasus TNI). The final outcome of the investigation by KontraS revealed the involvement of Kopassus. This was reinforced by the National Commission of Human Rights's (Komnas HAM) official investigation, which published its report in October 2006.

The findings by KontraS about the involvement of Kopassus become the catalyst for a rising movement of pro-democracy and human rights condemning the conduct of the military (the Armed Forces of Indonesia [ABRI]) during the reign of Suharto's New Order. With its dual function, (military doctrine) the military had responsibility for state defence and security affairs, as well as social and political affairs. In this period, many human rights violations occurred, including the abduction and disappearance of pro-democracy activists, which occurred mainly at the end of the New Order's power.

Suharto's fall from power on 21 May 1998 signalled the way for democracy, human rights advancement and the welfare of the people. The fall of the New Order made ABRI's position, as the main supporter of Golkar, unpopular. In order to change its image, the prosecution of Kopassus, as a result of its involvement in the abduction of the pro-democracy activists, was responded to with the establishment of an Officers Honour Board (DKP) in August 1998 by the Indonesian Armed Forces Commander-in-Chief General Wiranto.

On the recommendation of the DKP—led by General Subagyo H.S. with Lieutenant General Agum Gumelar and Lieutenant General Susilo Bambang Yudhoyono—General Wiranto finally sanctioned the discharge of Lieutenant General Prabowo Subianto as Kopassus Commander-General, Major General Muchdi PR as Koppasus Commander-General and Commander Group-4, Colonel Chairawan.[1]

1 Department of Defense (Departemen Pertahanan), "Peristiwa Penculikan," http://www.dephan.go.id/fakta/p_penculikan.htm.

The dismissal of three Kopassus heads and the punishment of eleven members of Kopassus's *Tim Mawar* (or Rose Team, the team that abducted the activists)[2] by the military court was a sign that the TNI was not above the law. The TNI, which had enjoyed a position of dominance and impunity for its crimes for thirty-two years of dictatorship, finally had to succumb to the demands of civil society.

Revelations about the abduction cases led to civil society's confidence in revealing other crimes and human rights violations that had occurred previously. The forced disappearance of pro-democracy activists in 1997–1998 suddenly became just the tip of the iceberg as other human rights violations had happened since the inception of the New Order.

The Origin and Definition of Enforced Disappearance

Enforced disappearances as a systematic policy were employed for the first time in the modern era by Adolf Hitler when he published the "Night and Fog" decree (*Nacht und Nebel Erlass*) on 7 December 1941.[3] This decree was aimed at abducting persons who threatened the *Reich*—suspected agents or underground activists etc. who would be taken to Germany secretly and made to disappear into the "fog and night" without a trace.[4]

Enforced disappearances later became a systematic practice in Latin America, especially in Guatemala from 1963–1966 in the context of internal armed conflict. Then, during the 1970s–1980s, this practice spread widely to other countries in Latin America such as El Salvador, Chile, Uruguay, Argentina, Brazil, Colombia, Peru, Honduras, Bolivia, Haiti and Mexico. In these countries, enforced disappearances occurred in the context of internal armed conflict, political tension, guerrilla movements and general chaos.[5]

Similar conditions were described by Marguerite Feitlowitz in her book *Lexicon of Torture: Argentina and the Legacy of Torture,* which stated:

> *The Dirty War was the first major revival of Nazi-derived tactics and rhetoric since World War II. What happened in Argentina–Jew against Jew, instead of Jews against a common enemy–is both astounding and complicated.*[6]

Partly because of the phenomenon, enforced disappearances obtained a universal definition for the first time when the United Nations signed The Declaration on the Protection of all Persons from Enforced Disappearance on 18 December 1992. The preamble, which was authorised in Resolution No. 47/133, stated that enforced disappearance(s) occur when:

> *Persons are arrested, detained or abducted against their will or otherwise deprived of their*

2 The Kopassus Rose Team is a small team from the Kopassus TNI AD Unit of Group IV, which was assigned to abduct pro-democracy advocates in 1997–1998.
3 United Nations Economic and Social Council, "Civil and Political Rights, Including the Question of Enforced or Involuntary Disappearances," Report submitted by Mr. Manfred Nowak, E/CN.4/2002/71 (8 January 2002), http://daccessdds.un.org/doc/UNDOC/GEN/G2/100/26/PDF/G0210026.pdf?OpenElement.
4 Ibid.
5 Tullio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention* (The Netherlands: Martinus Nijhoff Publishers, 2007), 2.
6 Marguerita Feitlowitz, *A Lexicon of Terror: Argentina and the Legacies of Torture* (New York: Oxford University Press, 1998).

> *liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.*[7]

A more direct and definitive definition was also stated in a legally binding international instrument in the form of the International Convention for the Protection of All Persons from Enforced Disappearance. Section 2 of the convention adopted by the UN on 20 December 2006 stated:

> *For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*[8]

There is various terminology and concepts that resemble and are often confused with "enforced/involuntary disappearance." Examples are the missing/unaccounted for, unacknowledged detention, abduction and detention incommunicado. Although these examples can be considered similar, there are significant differences between them.

Some similarities are: (i) deprivation of liberty; (ii) refusal to acknowledge the deprivation of liberty; and (iii) efforts to eliminate information about the protection afforded by law, among others. Differences can be seen in: (i) identified/unidentified presence of the victims; (ii) the situation (peace/conflict) that triggered actions; and (iii) organised/unorganised disappearance of persons.[9]

In conclusion, enforced disappearances have at least three analytical aspects:[10] (i) any form of deprivation of liberty; (ii) refusal to acknowledge deprivation of liberty; and (iii) deprivation of protection under the law and all universally recognised rights.

The enforced disappearance of persons is a serious human rights violation. It violates several human rights such as the right to security, the right to protection under the law, rights to freedom and freedom from restraint, and the right not to be tortured or subjected to other cruel, inhuman or degrading treatment or punishment.

In particular situations, the enforced disappearance of people also violates the right to life, right to family life, freedom of expression, freedom of religion, and the right not to be discriminated against on any grounds. [11] That

7 United Nations General Assembly, "Declaration on the Protection of all Persons from Enforced Disappearance," A/RES/47/133 (18 December 1992).
8 Office of the United Nations High Commissioner for Human Rights, "International Convention for the Protection of All Persons from Enforced Disappearance" (2006), http://www2.ohchr.org/english/law/disappearance-convention.htm.
9 Komnas HAM, *Laporan Tim Pengkajian Kasus Penghilangan Orang Secara Paksa* (Jakarta, 2004).
10 United Nations Economic and Social Council, "Civil and Political Rights, Including the Question of Enforced or Involuntary Disappearances," Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of all Persons from Enforced Disappearance, E/CN.4/2003/71 (12 February 2003), para. 33.
11 Scovazzi and Citroni, *The Struggle…* (2007), 1.

is why Section 1 of the convention states that no one shall be subjected to enforced disappearance and that there are no exceptional circumstances whatsoever to justify such action—whether it be a state of war, threat of war, internal political instability or any other public emergency.[12]

Enforced Disappearances in Instruments of National Law

In national law, enforced disappearance is mentioned in Law No. 26 Year 2000 of the Judiciary of Human Rights as one form of serious human rights violation in the category of crimes against humanity. In section 7 of Law No. 26 year 2000, serious human rights violations include crimes of genocide and crimes against humanity.

Furthermore, section 9 states that crimes against humanity were part of a systemtic attack, which acknowledges that harm was directly or indirectly meant for civilians, in the form of:

(a) Murder;
(b) Annihilation;
(c) Slavery;
(d) Eviction or enforced migration;
(e) Deprivation of freedom or arbitrary deprivation of other physical freedoms that violate international law principles;
(f) Torture;
(g) Rape, sexual slavery, forced prostitution, forced pregnancy, defertilisation, forced sterilisation or any other form of sexual harassment;
(h) Torture against particular groups or certain associations, which are based on political ideology, race, nationality, ethnicity, culture, religion, sex or any circumstances that are universally accepted as prohibited under international law;
(i) Enforced disappearances; and
(j) Crimes of apartheid.

Sections 7 and 9 contain weaknesses compared with the the International Convention for the Protection of All Persons from Enforced Disappearance. Law No. 26/2000 only acknowledges enforced disappearance as a crime against humanity when systematic and widespread. In contrast, the convention states that enforced disappearance is a crime even when it does not happen systematically or is widespread. In Indonesia, "systematic" and "widespread" are the only conditions that need satisfying in determining a crime to be against humanity.

The flaws in Law No. 26 have come about from the government having selected its definition from the Rome Statue of the International Criminal Court (ICC). Several Asian countries have endeavoured to construct laws that specifically penalise the enforced disappearance of person(s), like that which have been pushed forward by several human rights NGOs in the Philippines and the civil society and government of Nepal.[13]
This is different in American and European countries that have regional instruments to deal with crimes against enforced disappearances in the form of commissions, conventions or even courts. For example, the Inter-

12 Office of the United Nations High Commissioner for Human Rights, "International Convention…" (2006), Part 1, Articles 1 and 2.
13 AFAD, *Healing Wounds, Mending Scars* (Philippines: AFAD), 2005.

American Convention on the Forced Disappearance of Persons (1994), the Inter-American Court of Human Rights, the European Convention on Human Rights, the European Commission on Human Rights and the European Court of Human Rights.[14]

The Context and Motives behind Enforced Disappearance(s) in Indonesia

In Indonesia, the practice of systematic enforced disappearances started in 1965 at the beginning of Suharto's New Order government. Research by the National Commission on Violence against Women (Komnas Perempuan) on the violence against women in the 1965 Tragedy,[15] by the Human Rights Investigation Commission KPP HAM on the TGPF case of May 1998, by the National Commission of Human Rights Investigation and by the Ad Hoc Court of Human Rights on the cases of Tanjung Priok in 1984 and East Timor in 1999 also found the practice of enforced disappearances.

Several organisations such as KontraS, the Association of Disappeared Persons' Family (IKOHI) and KontraS Aceh, which were concerned about the issue of enforced disappearances of persons, also found the practice of enforced disappearances to be the most prevalent violation of human rights.

Victims of Enforced Disappearance in Indonesia: 1965–2002

No.	Disappearance Date	Number	Location	Explanation
1	1965–1966	109	Pemalang Regency, Central Java	Suspected to be members of the Indonesia Communist Party (PKI)
2	1965	10	Sukorejo Village, Sidoarjo, East Java	Agrarian Problems
3	1966	11	Penataran Village, Blitar, East Java	Agrarian Problems
4	19 June 1983	1	Sepawon Village, Kediri, East Java	Agrarian Problems
5	14 July 1984	6	Harjokuncaran Village, Malang, East Java	Agrarian Problems
6	12 September 1984	10	Tanjung Priok, Jakarta	Religious Activities
7	7 February 1989	218	Talang Sari, Lampung	Religious Activities
8	1989–1998	350	Aceh (DOM)	Military Area of Operations (DOM)
9	27 July 1996	16	Jakarta	Political Activities
10	1997–1998	14	Jakarta	Political Activities
11	May 1998	5	Jakarta	May 1999 Riots
12	1999	191	Aceh (Post-DOM)	Post-DOM
13	2000	4	Papua	Military Operations

14 Scovazzi and Citroni, *The Struggle…* (2007).
15 Komnas Perempuan, *Gender-Based Crimes Against Humanity: Listening to the Voices of the Survivors of 1965*" (Jakarta: Komnas Perempuan, 2007).

14	2000	88	Aceh (Post-DOM)	Post-DOM
15	2001	2	Ambon	State of Civil Emergency
16	2001	106	Aceh (Post-DOM)	Post-DOM
17	January 2002	7	Aceh (Post-DOM)	Post-DOM
	TOTAL	**1148**		

Source: KontraS data from 2002. Data year 2005 reached 1,508 and current data that has been compiled with IKOHI indicates that already 3000 individual cases have been collected. This data is estimated and will continue to grow, especially considering the events that occurred in 1965.

Similar to those in Latin American countries, enforced disappearances in Indonesia occurred because of the "doctrine of national security" and involved the eradication of groups suspected of subversive, fundamentalist, separatist and terrorist behaviour, or for being the cause of internal armed conflict, political chaos, communal conflict and so on. Sometimes, however, enforced disappearances of journalists, peasants, cultural and labor union activists also occurred in relatively peaceful times.

The context shifted after the 11 September 2001 on the World Trade Center in New York. The "war on terror" also happened in Indonesia and the victims became those suspected of committing "terrorist" activities.

Enforced Disappearances: 1965–1966

Photo 11. Lubang Buaya Monument, which Became a Symbol of Those Killed for Being Communists, 1965

The widespread violence that took place from 1965–1966 caused millions of deaths[16] and had an impact on the number of victims of enforced disappearance.[17] The victims were mostly those suspected of being members and supporters of the Indonesia Communist Party (PKI). These individuals were abducted by the Indonesian Armed Forces through operations in many locations, after which their whereabouts and existence were unknown. The enforced disappearances in these years also created female victims.[18] Civil groups supported by the state also carried out enforced disappearances during this period. The enforced disappearances in these years occurred within the context of regime transition from pre-New Order to New Order. The aim was to destroy the foundations of the PKI. In other words, political ideology and anti-communism became the root cause for the practice of enforced disappearances.[19]

16 Victims have been estimated at between 250,000 until 3,000,000 persons: Teresa Birks, *Neglected Duty: Providing Comprehensive Reparations to the Indonesian "1965 Victims" of State Persecution* (ICTJ, 2006).
17 Ibid.
18 Komnas Perempuan, *Gender-Based Crimes…* (2007).
19 Komnas HAM, *Laporan Tim…* (2004).

Mysterious Shootings (*Penembakan Misterius*–Petrus): 1983–1984

In 1983–1984 there were "murders of criminal suspects," which later became known as *petrus* (mysterious shooting), that caused the deaths of more than 300 victims (usually suspected to be bandits or *gali*). Moreover, there were also disappearances of victims of unknown identity. The suspects had been caught by the TNI/POLRI apparatus dressed as civilians. Without warrants for arrest, they were taken to the Military District Commanders office and then disappeared. During this time, the government implemented its development ideology (that embodied the "Development Trilogies" slogan—emphasising security stability, economic development and the distribution of welfare). They claimed that development required foreign investment, which in turn required "security stability." Consequently, the eradication of criminal groups was needed. The methods included murder and enforced disappearances of criminal suspects as "shock therapy." Therefore, the rationale of an ideology of development (in this context embodied as security stability) emerged to legitimate murder and enforced disappearances.[20]

Cases of Tanjung Priok 1984 and Talangsari, Lampung 1989

In 1984, there was a shooting incident directed at civilians in Tanjung Priok (Jakarta) that injured many and resulted in ten people listed as missing. In 1989, civilians in Talangsari (Lampung) were shot at and 218 persons were declared missing. The TNI apparatus was involved in both incidents. The political context at the time was for the stabilisation and implementation of the development trilogies (as mentioned above, security stability, economic development and political stability) as embodied in the "single principle of Pancasila" ideology to ensure political stability. The victims of both incidents were Muslim groups that were accused of being "right wing extremists" and anti-Pancasila. The motive behind the murders and enforced disappearances in both incidents was "anti-right extreme" or "anti-right Islam" ideology.[21]

Cases of Military Operations Area (DOM) in Aceh

During the "DOM period" (Military Operations Area) in Aceh, there were 874 enforced disappearance cases recorded. The victims were taken by TNI/POLRI personnel from their houses or other places and subsequently disappeared. The victims were persecuted for being members of separatist movements. Thus behind the murder and enforced disappearances in both 'Military Operations Area' (in Aceh and Papua) and the United Republic of Indonesia, ideology became yet another tool to legitimate and combat "any form of separatism."[22]

20 Ibid.
21 Ibid.
22 Ibid.

The Case of 27 July 1996

This attack took place in the office of the Central Representation Body of the Indonesia Democracy Party (DPP PDI) on Diponegoro Street in Jakarta on 27 July 1996. Five people were killed, 149 injured and twenty-three enforced disappearances. The whereabouts of the victims remain unknown to this day. The attack occurred in the context of the corporatism strategy implemented by the state to control, dominate and exert hegemony on all political elements and components of civil society under the "national union" slogan.[23]

In considering the enforced disappearances that occurred in the period between 1997–1998, certain characteristics emerge: (a) they were a specific action that took the form of abduction of persons; (b) these disappearances got wide public exposure; (c) there is relatively complete data and information from NGOs and state institutions on the events; (d) the abductions directly involved military commanders; and (e) there are ongoing legal processes being conducted the by state judiciary institution. Therefore, this chapter focuses on the enforced disappearances of pro-democracy activists from 1997–1998.

The Abduction of Pro-Democracy Activists: 1997–1998

The enforced disappearance cases began when the 1997 election was about to begin on the 29 May. The election became unusual compared with the previous one because it was coloured by an internal conflict within one of the contesting parties, namely the PDI. It split into two factions, the PDI Soerjadi (recognised by the state) and the PDI Mega (recognised by the majority of PDI members). The 1997 election could not be separated from certain incidents, such as that of 27 July 1996 in Jakarta. That incident marked the beginning of the conflict between the political elites and became the root of many future incidents, including enforced disappearances.

Some sources discuss the enforced disappearances of persons between 1997–1998 as from the perspective of three political contexts and timeframes:

1. The abductions surrounded the safeguarding of the 1997 elections. The victims were Deddy Hamdun, Noval Alkatiri, and Ismail and M. Yusuf, suspected of being supporters of the Development Union Party (PPP), and Yani Afri (Ryan) and Sonny, as supporters of Megawati's version of the Indonesia Democracy Party (PDI).
2. The abductions occured during the safeguarding of the1998 General Session of the Indonesian Parliament (MPR). The victims were Pius Lustrilanang, Desmond Junaedi Mahesa, Haryanto Taslam, Petrus Bimo Anugerah, Suyat, Raharja Waluya Jati, Faisol Riza, Andi Arief, Herman Hendrawan, Nezar Patria, Aan Rusdianto and Mugiyanto.
3. The abductions occured at the beginning of the fall of Suharto's regime, around 13–15 May 1998. The victims were Yadin Muhidin, Hendra Hambali, Gilang and some students, workers and other civilians.

23 Ibid.

From the three political contexts, timeframes and the background of the victims, it can be concluded that the perpetrators of the abductions were in power and had a strong political desire to defend and retain their power via any means.

Those Who Became Victims[24]

During the 1997 Election		
Name	**Activities**	**Last Seen**
Deddy Hamdun	Active in the Development Union Party (PPP)	He was reported missing on 29 May 1997, along with his friends Noval Alkatiri and Ismail (Dedi Hamdun's driver), and has never been seen again.
Noval Alkatiri	Supporter of Mega-Bintang in 1997 election	Missing since 29 May 1997 and has never been seen again.
Ismail	Driver of Deddy Hamdun	Missing since 29 May 1997 and has never been seen again.
Yani Afri (Ryan)	Member of Pro-Megawati PDI. He showed his support for Megawati during the election campaign of 1997. The driver of public bus *metromini*.	On 23 April 1997, uniformed personnel from North Jakarta (Military) District Command came to his house in Tanah Abang Flat, Block 36, 3rd floor. They then took Yani Afri (Ryan) and his friend Sonny to their office. Ryan was arrested there and has never been seen again.
Sonny	Friend of Yani Afri as a fellow driver and supporter of PDI Megawati. In PDI he was considered a functionary of the North Jakarta Branch Representative Body (DPC) of the Indonesian Democratic Party (PDI).	Sonny was arrested along with Yani Afri on 23 April 1997. He has never been seen again.
Muhammad Yusuf	Worked as a teacher and was not engaged in any political activity.	Missing since 7 May 1997 during the PPP's campaign. He was reported missing by his family to KontraS on 8 June 1998. It was suspected he disappeared because of the campaign. On 7 May 1997 people with tattoos came into his house and took him away. He has never been seen again.
During the 1998 General Session of the MPR		
Those Who are Still Missing		
Wiji Thukul	Known as a revolutionary poet and also a militant mass organiser, almost all of his poems consist of protests about the authoritarian New Order regime. Besides writing poems, he also made wood carved paintings. Thukul was active in the People's Art Network (*Jaringan Kerja Kesenian Rakyat*–JAKKER).	According to Japp Erkelens, Thukul's best friend from *Koninklijk Instituut Voor Taal, Land en Volkenkunde* (KITLV), the last time he saw Thukul was in December 1997. Thukul was then seen in Jakarta in April 1998 but in May 1998 he completely disappeared and has never been seen again.
Suyat	Student at Airlangga University. Activist of People's Democratic Party (PRD) and also a member of Student Solidarity for Indonesian Democracy (*Solidaritas Mahasiswa Indonesia untuk Demokrasi*–SMID) in Solo.	Abducted on 12 February 1998 in Solo and his whereabouts remain unknown.
Herman Hendrawan	Student at Airlangga University. Activist of People's Democratic Party (PRD).	On 12 March 1998, Herman was abducted after the National Commission of Democratic Enforcement (*Komite Nasional Penegak Demokrasi-KNPD*) held a press conference to reject the accountability of President Suharto's speech. According to Pius' evidence, Herman was abducted in Megaria and is still missing.

24 Data from KontraS, IKOHI and the Indonesian National Commission of Human Rights.

Bimo Petrus	Student of Philosophy Higher Education (STF) Driyarkara at Airlangga University. Active in some political activities such as Student Solidarity for Indonesian Democracy (SMID) as central office manager and the People's Democratic Party (PRD).	On 13 March 1998, when Aan Rusdianto, Nezar Patria and Mugiyanto were arrested in Klender flat, Bimo was a witness to the event. He was last seen by friends on 31 March 1998.
Those Who Returned		
Desmond J. Mahesa	Director of Nusantara Legal Assistance Body (*Lembaga Bantuan Hukum Nusantara*–LBHN), Jakarta.	Abducted on 3 February 1998 by a group of people in front of the GMKI (Indonesian Christian Student Movement) office in Salemba, Central Jakarta. On 3 April 1998 he was released by the kidnappers and escorted to Soekarno-Hatta Airport.
Pius Lustrilanang	Activist of People's Democracy Alliance (*Aliansi Demokrasi Rakyat–ALDERA*) and Solidarity for Amin and Mega (SIAGA).	He was kidnapped on 4 February 1998 at 13:00 in front of the Cipto Mangunkusumo Hospital. He was released on 4 April 1998 and escorted to Soekarno-Hatta Airport with a ticket to Palembang.
Haryanto Taslam	The leader of Pro-Megawati PDI, active in assembling pro-democracy masses.	He was kidnapped on 8 March 1998, held for forty days then escorted to Bandung.
Raharja Waluya Jati	Active in the People's Democratic Party (PRD) and People's Working Network (Jaker).	Jati was kidnapped together with Faisol Riza on 12 March at the Cipto Mangunkusumo Hospital. On 26 April 1998, the kidnapper released Jati. He was escorted to Cipinang flyover with a business class train ticket to Semarang and pocket money.
Faisol Riza	When kidnapped, he was one of the leaders of the People's Democratic Party (PRD).	On 12 March 1998, he was abducted along with Raharja Waluya Jati in the Cipto Mangunkusumo Hospital. Riza was released on 17 May 1998, five days before the fall of Suharto. Riza went directly to his parent's house in Purbolinggo.
Aan Rusdianto	Activist of the People's Democratic Party (PRD) and Student Solidarity for Indonesian Democracy (SMID).	Abducted on 13 March 1998 from his home, he was confined, interrogated and mistreated in a secret location for two days. On 15 March he was moved to the Jakarta Metropolitan Area Police Office and on 6 June 1998 his arrest was suspended.
Nezar Patria	Activist of the People's Democratic Party (PRD) and Student Solidarity for Indonesian Democracy (SMID).	Abducted on 13 March 1998 from his home, he was confined, interrogated and mistreated in a secret location for two days. On 15 March he was moved to the Jakarta Metropolitan Area Police Office and on 6 June 1998 his arrest was suspended.
Mugiyanto	Activist of the People's Democratic Party (PRD) and Student Solidarity for Indonesian Democracy (SMID).	Abducted on 13 March 1998 from his home, he was taken to Duren Sawit Military Sub-District Command, East Jakarta Military District Command, where he was confined, interrogated and mistreated in a secret location for two days. On 15 March he was moved to the Jakarta Metropolitan Area Police Office and on 6 June 1998 his arrest was suspended.
Andi Arif	When kidnapped in Lampung, he was one of the front men of the People's Democratic Party (PRD).	Arif was abducted from his brother's house on 28 March 1998 at Ki Maja Street, Way Halim Indah Bandar Lampung. On 14 July 1998, he was released from the jail of the Greater Jakarta Metropolitan Area Police with suspended arrest status.
Around the Fall of President Suharto in 1998		
Triyono		Reported missing from 13 May 1998 and has never been seen since. On 2 June 1998, his family received an anonymous telegram stating that their son had been abducted during the 13 May riots in Jakarta.
Abdun Naser		Reported missing since 14 May 1998 and has never been seen since.
Ucok Munandar Siahaan	Student of Higher Economic Education STIE Perbanas. His family did not know about his activities in politics except that he was a college student.	On 13 May 1998, Ucok said goodbye to his parents. He was reported missing from 14 May 1998 and has never returned.
Yadin Muhidin	Was not active in politics	Reported missing from 14 May 1998 and has never returned.
Hendra Hambali	Was a high school student known to be in Glodok, Jakarta when the rioting began.	Reported missing from 15 May 1998 and has never returned.

Those who were reported missing and found dead		
Leonardus "Gilang" Nugroho	A busker in Solo, active in student organisation and a member of the PRD. On 21 May 1998 he spoke about the action to overthrow Suharto. In the evening, he told his parents that he wanted to go to Madiun because he had got a job there.	Two days later there was no news from Gilang. His family reported it to student activists. On 23 May 1998 his body was found. It was autopsied on 29 May and on 31 May 1998, his family and several lawyers took his body away.

Suspected Perpetrators

The Officers Honour Board (DKP), established by the Indonesia Armed Forces Commander-in-Chief General Wiranto, proved the involvement of Lieutenant General Prabowo Subianto, Major General Muchdi P.R. and Colonel Chairawan in the above incidents. Besides Jakarta's High Military Court II, eleven members of *Tim Mawar* (the Rose Team) of Indonesia's Special Forces Command (Koppasus) were also proven to be the involved. They were:

1. Major (Inf) Bambang Kristiono
2. Captain (Inf) F.S Muthazar
3. Captain (Inf) Nugroho Sulistyo Budi
4. Captain (Inf) Yulius Selvanus
5. Captain (Inf) Untung Budiarto
6. Captain (Inf) Djaka Budi Utama
7. Captain (Inf) Fauka Noor Farid
8. Head Sergeant (Serka) Sunaryo
9. Head Sergeant (Serka) Sigit Sugianto
10. 1st Sergeant (Sertu) Sukadi
11. Captain (Inf) Dadang Hendra Yudaha

Moreover, the investigations of KontraS, IKOHI and the Indonesian National Commission on Human Rights (Komnas HAM), which were handling the cases, revealed links to the abduction cases with other parties inside the TNI and POLRI. The levels of involvement were:

1. **Suharto,** as the commander-in-chief of the Indonesian Armed Forces and the president of Indonesia, gave the list of names of activists who should be "investigated" to the commander general of the Special Forces Command (Kopassus), Lieutenant (Ret.) General Prabowo Subianto.[25] According to Prabowo, he was not the only commander to have received the list. *Tim Mawar* (the Rose Team) then interpreted the list and carried out abductions, arrests, persecutions and enforced disappearances.
2. **Feisal Tanjung,** the former commander-in-chief of the Armed Forces of the Republic of Indonesia, had the armed forces under his command. In Prabowo's confession in the Officers Honour Council (DKP) interrogation, he admitted to having erroneously analysed the assignment of Operational Control Command (BKO). Meanwhile, Subagyo HS, as the head of the DKP, refused to say who gave the assignment. The only ones who could utilise Group VI Sandi Yudha Kopassus with the "Rose Team's" core unit was Kopassus's

25 *Panji Masyarakat*, No. 28, year III (27 October 1999).

commander general, Prabowo Subianto, or the former commander-in-chief of the Armed Forces of the Republic of Indonesia, Feisal Tanjung, and the commander-in-chief of the Indonesian Armed Forces, President Suharto.[26]

3. **Wiranto,** the commander-in-chief of the Armed Forces of the Republic of Indonesia from 1998–1999 and the former army chief of staff from 1997–1998, also played an important part in utilising ABRI forces. In his confession, Major Bambang Kristiono claimed that General Wiranto already knew about the "Rose Team."[27]
4. **R. Hartono,** the former army chief of staff, also had the capability to utilise the army. Part of the chain of command, Hartono was also suspected as the person who was responsible for giving the assignment (BKO) to Kopassus's commander general.
5. **Prabowo Subianto** was the commander general of Kopassus from 1996–1998. The Kopassus abduction operations occured when Prabowo became commander general. Prabowo's military career was brought to an end during the DKP interrogations when his role in the activist abductions was proved. Prabowo admitted to having given instructions to his staff to expose several radical movements.
6. **Major General Muchdi PR** was the Commander General of Kopassus from 28 March 1998–22 May 1998. Andi Arif was abducted from his brother's house in Lampung the same day that Major General Muchdi PR replaced Prabowo Subianto as Kopassus's commander general. This could only mean that there were several abducted persons who were still confined in Cijatung and that it was possible that Muchdi PR, as the number one person in the special forces headquaters at Cijantung, knew that.
7. **Colonel Chairawan** is the commander of Group VI Sandi Yudha. According to the confession of Major Bambang Kristiono, the leader of the Rose Team's abduction operation had been reported to Colonel Chairawan. The results of the operations were always routinely reported to Bambang in his capacity as Commander of Batallion 42 and to the Group VI commander, Colonel Chairawan.[28]
8. **Sjafrie Sjamsoeddin** is the Miliary Area Command commander-in-chief. He admitted to having abducted Nezar Patria in Klender flat, which means that he is responsible for the abduction of Nezar Patria, Aan Rusdianto and Mugiyanto as they were all kidnapped at the same time and in the same place.
9. **East Jakarta Commander of a Military District Command.** According to the evidence of Mugiyanto, one of the abducted victims, he was taken from his Klender flat to the East Jakarta Military District Command before being taken to the headquarters of the Special Forces Command in Cijantung. Prior to being taken to the East Jakarta Military District Command, he was interrogated in the Duren Sawit Military Sub-District Command.
10. **The Commander of Duren Sawit Military Sub-District Command.** Mugiyanto had been "visiting" and was interrogated for thirty minutes in the Duren Sawit Military Sub-District Command after his abduction from Klender flat.
11. **Dibyo Widodo** is the chief of the Republic of Indonesia Police Force (KaPOLRI). He was assumed responsible for the actions of his staff, particularly as the police had interrogated an abduction victim.

26 *Forum Keadilan*, Magazine Special Edition (17 August 1998).
27 Xpos, No. 07/II/25 (February–March) 1999.
28 KOMPAS, (24 February 1999).

12. **Dai Bachtiar,** chief of the Police Information Center, said that he had arrested and detained Andi Arief since 29 March 1998.
13. **Nurfaizi,** chief of the Research Corps of POLRI Headquarters, accepted Andi Arief from the kidnapper.
14. **Nugroho Djayusman** is the chief of the Jakarta Metro Jaya Police Office. Responsible for the actions of his staff, he knew that the abducted victims had been incarcerated in the Jakarta Police Office. He had visited Mugiyanto's cell once and had told him to "be careful."
15. **Mayor Arismunandar** is the head of the Abduction Victims Investigator Team in the Jakarta Metro Jaya Police Office. He accepted Nezar Patria, Aan Rusdiayanto, Mugiyanto and Andi Arief from Kopassus and then detained them in the Metro Jaya Police Office. During the interrogation in the Metro Jaya Police Office, he gave information that Faisol Reza, Waluya Jati and Herman Hendrawan would also be sent to the Metro Jaya Area Police.

The Effort to Urge Responsibility for Cases of Enforced Disappearance

As was said earlier, the enforced disappearance of pro-democracy activists from 1997–1998 was handled internally by the DKP and the Military Court. While the general criminal process according to Law No. 26 Year 2000 on Human Rights Court is still ongoing, these are the cases that are currently being handled:

1. Trial of *Tim Mawar* (Rose Team)

On 22 December 1998, the Jakarta High Military Court II was held to judge eleven Kopassus members who had joined the Rose Team. The Rose Team was believed culpable in enforced disappearances. They were declared guilty under section 333 of the Penal Code. The judges, led by Colonel (Military Legal Corps) Susanto, gave them a lower sentence than that of the military prosecutor, Colonel (Military Legal Corps) Harom Widjaja (see below).

NO.	NAME	SENTENCE	PROSECUTION
1	Major (Inf) Bambang Kristiono	22 months, fired	26 months, fired
2	Captain (Inf) F. Musthazar	20 months, fired	26 months, fired
3	Captain (Inf) Nugroho Sulistyo	20 months, fired	22 months, fired
4	Captain (Inf) Yulius Selvanus	20 months, fired	26 months, fired
5	Captain (Inf) Untung Budi	20 months, fired	26 months, fired
6	Captain (Inf) Dadang Hendra	16 months	22 months
7	Captain (Inf) Djaka Budi Utama	16 months	22 months
8	Captain (Inf) Fauka Noor Farid	16 months	22 months
9	Head Sergeant (Serka) Sunaryo	12 months	15 months
10	Head Sergeant (Serka) Sigit Sugiyanto	12 months	15 months
11	1st Sergeant (Sertu) Sukadi	12 months	15 months

2. Investigation by the Officers Honour Board (DKP)

The Officers Honour Board (DKP) was established by ABRI's Commander-in-Chief General Wiranto in a bid to save its crumbling reputation as a result of the cases of enforced disappearances. Lieutenant (Ret.)

General Prabowo Subianto was respectfully fired by ABRI's commander-in-chief, General Wiranto, on the recommendation of the Officers Honour Board (DKP). Other military personnel involved in the enforced disappearances of the activists, namely Major General Muchdi P.R. and Colonel Chairawan, were also interrogated by the DKP. They were discharged from all assignments, positions and status in the Indonesian Armed Forces (ABRI).

According to General Wiranto as ABRI's commander-in-chief, it was possible for Prabowo to be taken to the Military Court if the latter's trial for the eleven Kopassus members proved that they had been under the command of those three soldiers. Strangely, Major Bambang Kristiono, a soldier in a high position within the Rose Team's "kidnapping group," admitted that they had carried out the abductions on behalf of themselves. They were accused of breaching section 328 of the Penal Code with a maximum punishment of twelve years imprisonment. They were suspected of the abduction of nine political activists.

3. Legal Efforts to Resolve Enforced Disappearances, 1997–1998

Although the enforced disappearance case of pro-democracy activists from 1997–1998 had already been handled by the military court and the Officers Honour Board (DKP) in 1999, people, especially the families of the victims, still urged government to conclude it. There were several fundamental reasons for the demands:

1. The Military Court and the DKP were the only internal mechanisms in the body of ABRI (currently the TNI) that executed members of the TNI for misconduct. This mechanism was inapplicable as a lawful option for crimes that involved people outside the TNI. Furthermore, the enforced disappearances carried out by TNI members were crimes already categorised as serious crimes by the UN.[29] Military courts are not sufficiently competent to handle serious cases of human rights violations.
2. The TNI internal process could not answer the questions posed about the fate of the victims that are still missing. The material from the military court was the only action that had been conducted by the *Tim Mawar* Kopassus taskforce in relation to the nine people they had kidnapped and released. It did not include unreleased victims. According to the witness statements of Desmond J. Mahesa, Pius Lustrilanang, Faisol Riza, Raharja Waluya Jati, Andi Arief and Haryanto Taslam, victims, namely Yani Afri (alias Ryan), Herman Hendrawan and Dedy Hamdun, who are still missing were once confined in the same place as them. Hence, the *Tim Mawar* Kopassus is still responsible for those victims still missing.
3. Internal treatment through military courts and the DKP did not satisfy the rights of the victims for truth, reparations and a guarantee that abductions would not be repeated. The right to the truth could not be satisfied because the information on enforced disappearances from 1997–1998 was not published openly. Some victims are still missing.[30] The right to justice, in the context of fair and impartial courts, was not fulfilled either because the court was a military one. The right to reparations—including rehabilitation, compensation and restitution—went unaddressed. The guarantee of non-repetition did not exist because there was no institutional reform. Furthermore, after the incidents, the soldiers who were involved in those crimes were promoted to even higher positions.

29 United Nations General Assembly, "Declaration on the Protection…" (1992).

30 A comparative example of investigating enforced disappearances is Argentina, which, in 1984–1985 established the Commission of the Investigators on Enforced Disappearance (CONADEP), which successfully revealed motives, patterns, victims, suspects, methods of abduction, torture locations and recommendations to prevent the reoccurance of enforced disappearances. Complete information can be found in the Final Report of CONADEP entitled Nunca Mas at http://www.nuncamas.org/english/library/nevagain/nevagain_000.htm.

It is for these reasons that the families of victims and human rights organisations have supported victims in advocating for the state to accept responsibility for the incidents.

The Bumpy Road to the Human Rights Court

Because of the struggle of the victims and their families, the Indonesian Commission on Human Rights (Komnas HAM) established a Study Team for Enforced Disappearances of Persons on 23 September 2003. M.M. Billah led the team, whose mandate was based on Law No. 39 Year 1999 on Human Rights. At the end of their working period, the team recommended the creation of a Pro-Justice Investigation Team based on the mandate of Law No. 26 Year 2000 on the Human Rights Court.

The investigation team was finally established on 1 October 2005 and led by a commissioner of Komnas HAM, Ruswiyati Suryasaputra. The team, under the name of Ad Hoc Team for the Investigation of Severe Human Rights Violations of Enforced Disappearances of Persons Period 1997–1998, was based on the Konmas HAM Ministerial Decree No. 23/Komnas/X/2005 with a work period from 1 October to 21 December 2005. It was extended until 31 March 2006[31] with additional personnel.[32]

The team worked until 30 October 2006. During their investigations the team asked for information from seventy-seven witnesses; fifty-eight witnesses testified for the victims, the family of the victims and the public. Eighteen witnesses were retired POLRI personnel and one was a retired witness from the TNI. Moreover, in the investigation, the team conducted sixteen field visits.[33] In their final report, the team concluded:

> *There is enough evidence to suggest…Severe Human Rights Violations [occurred] in the form of murder, arbitrary deprivation of liberty, torture, persecution, and enforced disappearances of civilians. Moreover, those actions were part of a chain of attacks directly aimed at civilians. These attacks were instigated by the ruling power [that advocated this policy]…. Because those actions were widespread and systematic, they could be categorized as crimes against humanity.*[34]

The Ad Hoc Team of Komnas HAM also concluded that the following were responsible:

a. Commanders or superiors who did not prevent, stop or turn in suspects to the officers who were authorised to proceed in accordance with the law.
b. The individuals who perpetrated the crimes, and the *joint criminal enterprise*.

Furthermore, the team found the names of the suspects that are believed to be involved in and responsible for the enforced disappearances in the period from 1997–1998. These are not limited to the twenty-seven persons who are: (a) individuals suspected of crimes against humanity (eleven people); (b) individuals who demanded

31 SK KOMNAS HAM No. 23/Komnas/X/2005.
32 Ibid.
33 Komnas HAM, *Ringkasan Eksekutif Hasil Penyelidikan Tim Ad hoc Penyelidikan Pelanggaran HAM yang Berat Peristiwa Penghilangan Orang Secara Paksa Periode 1997–1998* (Jakarta: Komnas HAM, 2006).
34 Ibid.

the actions be carried out in accordance with their command responsibilities (ten people); and (c) individuals who were responsible as a result of the principles of the *joint criminal enterprise* (six people).[35]

In the concluding part of their report, the Ad Hoc Team of Komnas HAM recommended three things:

1. Demand the attorney general follow-up the investigation results focusing on the incidents that occured before the Law No. 26 Year 2000 on the Human Rights Court was enacted (where the victims have returned) but also for incidents that are still ongoing (where the victims have yet to return).
2. Give the report to the Indonesian Parliament (DPR-RI) and the president to speed up the process for the establishment of an Ad Hoc Human Rights Court on enforced disappearances for the period 1997–1998 before the enactment of Law No. 26 Year 2000 on the Human Rights Court (after which some of the victims were returned).
3. Make compensation, restitution and rehabilitation efforts to the victims and their families.

In November 2006, Komnas HAM gave the final report to the attorney general for facilitating any investigations. The attorney general has yet to undertake the investigation mandated by the law as of May 2009. The attorney general stated that the investigation could only be put in motion if the president formed an Ad Hoc Human Rights Court.

The arguments delivered and the pressure exerted by human rights organisations, Komnas HAM and the Indonesian Parliament to make the attorney general undertake the investigation amounted to nothing. The attitude of the attorney general, who is more concerned about procedure rather than substantive issues, has paid to settle the cases emanating from the May Riots of 1998, the Trisakti, Semanggi I and Semanggi II cases, and the enforced disappearances of pro-democracy activists from 1997–1998.

The decision of the Constitutional Court on 21 February 2008, which approved part of Eurico Guterres's request about the word "suspected" in the explanation of section 43 part (2) of Law No. 26 Year 2000 on the Human Rights Court, also placed demands on the attorney general to conduct investigations. In its decision, the court mandated that the establishment of an ad hoc court was contingent on the *locus* and *tempus delicti* of a particular case.[36] It also requires the involvement of political institutions that are representative of the people, like the parliament. However, the DPR recommended that an ad hoc court would have to pay attention to the investigation and examine the results of authorised institutions, such as Komnas HAM as investigator and the Attorney General's Office as inspector. This means that checks first need to be carried out by the attorney general before the DPR can recommend the president establish an Ad Hoc Human Rights Court.

There is something else that is missing from the attention of the attorney general, the DPR (parliament) and the people in general. Namely, thirteen cases of people who are still unaccounted for and that fall under the remit of the actual Human Rights Court, not the ad hoc one. Consequently, the political recommendations of the DPR and the president are not necessary. The ad hoc team of Komnas HAM, reiterated by its head, made this quite explicit in its recommendations:

35 Ibid.
36 Place and time the criminal event took place.

> *The Attorney General's investigation can be directly conducted. But for the Ad Hoc Court, it has to be suggested by the Parliament. We have to separate it. Of the enforced disappearances cases, there are twenty-three persons who were investigated. Ten have returned. Because the incidents happened before the establishment of the Human Rights Court, those cases have to go through the Ad Hoc Court. But for the thirteen people for whom no sign of death has been found and who are still suspected of being tortured, the implications are that the incidents still occur. These cases can be taken up through a general court. The task of the government of President Susilo Bambang Yudhoyono is to find them, to stop the violations and return them to their families no matter what the conditions.*[37]

The Indonesian Parliament responded to the reluctance of the attorney general to conduct an investigation by forming a Special Committee (*Pansus*) on the enforced disappearances of persons in February 2007. But the presence of the Special Committee was criticised by the families of the victims because of its potential to politicise human rights cases and its failure to produce any results before its period of work was almost over.

What can actually be seen from the tangled settlement of the cases of enforced disappearances of pro-democracy activists is that there is no substantive human rights politics in President Yudhoyono's government. The politics of human rights are pure rhetoric, which is obvious all the way to the top, from the reluctance of the attorney general to conduct the investigations piled high on his desk to the failure to reveal and punish the murder suspects of human rights activist Munir and the annulment of the KKR (Commission of Truth and Reconciliation) Law.

Enforced Disappearances and International Campaigns

To complete and strengthen national efforts, the victims of and organisations concerned with enforced disappearances have had to conduct international campaigns. These efforts are made not only for the cases of enforced disappearance that occured in 1997–1998 but in general. At least three initiatives have been taken: 1. making complaints to and campaigning to the UN mechanism, such as the UN Human Rights Council and the UN Working Group on Enforced Disappearances;[38] 2. developing legally binding international instruments; and 3. mobilize international solidarity.

In using the UN mechanisms such as those of the UN Human Rights Council (called the UN Commission on Human Rights prior to 2006) and UN Working Groups, some victims and their families, as well as their organisational representatives from IKOHI and KontraS, have attended meetings and sent special individual case reports by personal visit or via email.

Until the end of 2008, the UN Working Group had queried the Indonesian Government about the existence of 165 cases. Of those 165 cases, the government has clarified three cases. The remaining 162 are still

37 Widya Siska, "Interview with Abdul Hakim Garuda Nusantara," Voice of Human Rights News Centre (13 December 2006).
38 The full name of the working group is the *United Nations Working Group on Enforced or Involuntary Disappearances* (UNWGEID), which was established in 1980 by the UN Commission on Human Rights.

outstanding.[39] Some cases include incidents from 1965, the East Timor case, the Aceh case, the Papua case, the Poso case and the 1997–1998 cases. The report of the working group was minimal compared with the reality of the enforced disappearances in Indonesia because the families of victims and the human rights organisations were having difficulties with the standard format of the working group report. Last year, some organisations managed to train victims to work with the standard report. It is expected that they will report to the UN Working Group in the near future.

Besides asking the government to clarifiy the unresolved cases, on 12 December 2006 the UN Working Group also delivered a request to execute their mission in Indonesia. The government of Indonesia said it could not grant the request and asked for a postponement. The working group made a further request on 3 April 2008 but has yet to hear from the government.

Other efforts that have been made at the international level are the promotion and establishment of legally binding international instruments. Together with the federation of regional enforced disappearance organisations like AFAD (Asia), FEDEFAM (Latin America), FEMED (Euro-Mediterranean) and international human rights organisations such as Amnesty International, the *Federation International de Droite de l'Homme* (FIDH), Human Rights Watch, the International Commission of Jurists (ICJ) Aims for Human Rights and others, IKOHI and KontraS have been actively involved in lobbying and negotiating with the UN Human Rights Council since 2002. In December 2006, those instruments were legalised in a convention titled the International Convention for the Protection of All Persons from Enforced Disappearances.

This convention has yet to enter into force because the required number of countries has yet to ratify it. Twenty signatory countries enable a convention to enter into force and at the time of writing in May 2009, only ten countries had ratified the convention. These countries are Albania, Argentina, Bolivia, Honduras, Kazakhstan, Cuba, Mexico, France, Senegal and Uruguay. In March 2007, Indonesia promised the meeting of the UN Human Rights Council that it would immediately ratify the convention.[40]

This convention will be effective in protecting and preventing persons from the crime of enforced disappearance and will punish suspects. This convention is very relevant for Indonesia because the practice of enforced disappearances is not an imprisonable offence and Asia has yet to develop any regional mechanisms to handle the issues that Latin America has in its convention and regional court.

In an effort to generate international solidarity, KontraS and IKOHI became members of the Asian Federation Against Involuntary Disappearances (AFAD) whose headquarters are located in Manila in the Philippines.[41] The development of cooperation and solidarity was achieved with AFAD in a similar way to what was done in Latin America (FEDEFAM), the Euro-Mediterranean region (FEMED), Europe ("We Remember" in Belarus) and Africa.

39 UNWGEID has a humanitarian mandate, which communicates case reports that are sent by the families of the victims or their representatives to the government in order to make the government clarify the fate of the reported victims.

40 See the speech of the Ministry of Law and Human Rights delivered by Hamid Awaludin in the High-Level Segment of the UN Human Rights Council Meeting, March 2007, in Geneva, Switzerland.

41 AFAD is an organisation that directly works on the enforced disappearances issue in Asia. This organisation was led by Munir when he was killed. Since December 2006 it has been led by Mugiyanto, who is also the president of IKOHI.

Challenges

Revelations about the practice of enforced disappearances in Indonesia are quite different from the experiences of other countries such as Sri Lanka, Nepal and Colombia. For unlike the latter, where enforced disappearances were conducted mainly by non-state actors such as guerilla groups or armed separatists, in Indonesia almost all enforced disappearances had the approval of the state. The state used its instruments of repression, namely the military and police or any other party who supported them.

These enforced disappearances were carried out in the name of the doctrine of "national security," "national stability," combat "separatism" and "terrorism," etc. In the current transition to democracy, these doctrines are no longer relevant therefore institutional reform, especially that related to the security sector such as the military and police, is crucial. The following comment by Eirin Mobekk sums it up:

> *To what extent any transitional justice mechanism on its own is able to achieve the second objective, ensuring that the human rights violations and abuse do not reoccur, can be questioned, but it is here the connection to security sector reform becomes particularly important. To minimize the chances of institutional human rights violations, the government institutions responsible for the violation must be reformed. This is a vital step in ensuring non-reoccurrence.*[42]

However, the resolution of enforced disappearances in Indonesia and other human rights violation cases of the past is needed. There needs to be a more comprehensive approach, both judicially and outside a legal framework, such as efforts to reveal the truth, adjudication and recovery for victims, as well as security sector reform. In this reform framework, transitional justice is relevant because:

1. *Transitional justice* is aimed at ensuring the responsibility for crimes that happened in the past, while security sector reform is aimed at ensuring responsibility for present and future action.
2. *Transitional justice* and security sector reform are aimed at strengthening the rule of law.
3. *Transitional justice's* final aim is to prevent the reoccurrence of crimes and to implement this aim by supervising the security sector and ensuring transparency.[43]

Contradictory to expectations for preventing the reoccurrence of enforced disappearances, many of the suspects behind the disappearances of pro-democracy activists from 1997–1998 obtained job promotions. This made the effort to prevent reoccurrence very difficult.[44]

42 Eirin Mobekk, "Transitional Justice and Security Sector Reform: Enabling Sustainable Peace," *Occasional Paper No. 13* (Geneva: DCAF, 2006), 2–3.
43 Ibid., 6.
44 Some soldiers involved in the enforced disappearance of pro-democracy activists from 1997–1998 and subsequently given promotions were: Fausani Syahrial Multhazar, who became the commander of the Military District Command in Jepara as a lieutenant colonel in 2007; Untung Budi Harto, who became the commander of the Military District Command in Ambon as a lieutenant colonel in 2007; Dadang Hendra Yuda, who became the commander of the Military District Command in Pacitan as a lieutenant colonel in September 2006; Jaka Budi Utama, who became the commander of Battalion 115/Macan Lauser in 2007; Colonel Infantry Chairawan, who was promoted to commander of the Military Region Command Lilawangsa, Aceh in 2005 and is now a brigade general; Major General Muchdi PR, who become the Deputy V of BIN, who in the adjudication of the murder of Munir, was suspected as the brains behind the murder.

Recommendations

To reveal the truth, justice, accountability and prevention of further enforced disappearances, there are several important recommendations:

1. The government should immediately continue the settlement process of cases of enforced disappearances from 1997–1998 according to the recommendations of Komnas HAM:
    a. Request the attorney general to follow-up on the investigations verifying the incidents that occured before Law No. 26 year 2000 on the Human Rights Court (the victims already returned) was enacted and the ongoing incidents (the victims that have not yet returned).
    b. Convey the verification results to the Indonesian Parliament and the president to speed up the establishment of an Ad Hoc Human Rights Court on the enforced disappearances from 1997–1998 that happened before Law No. 26 year 2000 on the Human Rights Court was enacted.
    c. Make compensation, restitution and rehabilitation efforts to the victims and their families in incidents of enforced disappearance of persons from 1997–1998.
2. The government should amend Law No. 39 Year 1999 on Human Rights and Law No. 26 Year 2000 on the Human Rights Court immediately.
3. The government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance (2006) immediately and accept the competency of the Committee on Enforced Disappearances to handle and prevent the occurrence of the practice.
4. The government should ratify the Rome Statute of the International Criminal Court (ICC) immediately. The ratification of the Rome Statute must be followed by implementation, one aspect of which is the adjusting of related laws, such as Law No. 39 Year 1999 on Human Rights and Law No. 26 Year 2000 on the Human Rights Court.
5. The government should formulate the Law on the Truth Commission immediately.
6. The government should formulate a policy of reparation for the victims and their families immediately.
7. The government should formulate a civil status policy of enforced disappearance victims because it is unknown whether they are dead or alive. Therefore, the families of the victims have difficulties in organising their affairs within the community from an administrative and social perspective.

Conclusion

Solving cases of human rights violations from the past is not always easy, as the experience from post-authoritarian countries shows. In this transitional situation, political factors will be the key. Therefore, what is crucial is the role of the victims of human rights violations, human rights activists and human rights organisations in the formulation of state policy in the human rights sector.

References

Asian Federation Against Involuntary Disappearances (AFAD). *Healing Wounds, Mending Scars.* Philippines: AFAD, 2005.

Birks, Teresa. *Neglected Duty: Providing Comprehensive Reparations to the Indonesian "1965 Victims" of State Persecution.* International Center for Transitional Justice, 2006.

Departemen Pertahanan. "PERISTIWA PENCULIKAN." http://www.dephan.go.id/fakta/p_penculikan.htm.

Feitlowitz, Marguerita. *A Lexicon of Terror: Argentina and the Legacies of Torture.* New York: Oxford University Press, 1998.

Forum Keadilan. Magazine Special Edition. 17 August 1998.

Human Rights Council. "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development." Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/10/9, 6 February 2009, http://www2.ohchr.org/english/issues/disappear/docs/A.HRC.10.9.pdf.

Komnas HAM. *Laporan Tim Pengkajian Kasus Penghilangan Orang Secara Paksa.* Jakarta, 2004.

Komnas HAM. *Ringkasan Eksekutif Hasil Penyelidikan Tim Ad hoc Penyelidikan Pelanggaran HAM yang Berat Peristiwa Penghilangan Orang Secara Paksa Periode 1997–1998.* Jakarta: Komnas HAM, 2006.

Komnas Perempuan. *Gender-Based Crimes Against Humanity: Listening to the Voices of the Survivors of 1965.* Jakarta: Komnas Perempuan, 2007.

Kompas. 24 February 1999.

Mobekk, Eirin. "Transitional Justice and Security Sector Reform: Enabling Sustainable Peace." *Occasional Paper No. 13.* Geneva: DCAF, 2006.

Office of the United Nations High Commissioner for Human Rights. "International Convention for the Protection of All Persons from Enforced Disappearance." 2006, http://www2.ohchr.org/english/law/disappearance-convention.htm.

Panji Masyarakat. No. 28, year 3. 27 October 1999.

Scovazzi, Tullio and Gabriella Citroni. *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*. The Netherlands: Martinus Nijhoff Publishers, 2007.

Siska, Widya. "Interview with Abdul Hakim Garuda Nusantara." Voice of Human Rights News Centre, 13 December 2006, http://www.vhrmedia.net/home/index.php?id=view&aid=3439&lang.

SK Komnas HAM No.23/Komnas HAM/XII/2005.

SK Komnas HAM No. 30/KOMNAS HAM/XII/2005.

United Nations Economic and Social Council. "Civil and Political Rights, Including Questions of: Disappearances and Summary Executions." Report submitted by Mr. Manfred Nowak, E/CN.4/2002/71, 8 January 2002, http://daccessdds.un.org/doc/UNDOC/GEN/G02/100/26/PDF/G0210026.pdf?OpenElement.

United Nations Economic and Social Council. "Civil and Political Rights, Including the Question of Enforced or Involuntary Disappearances." Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of all Persons from Enforced Disappearance, E/CN.4/2003/71, 12 February 2003, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/109/43/PDF/G0310943.pdf?OpenElement.

United Nations General Assembly. "Declaration on the Protection of all Persons from Enforced Disappearance." A/RES/47/133, 18 December 1992.

Xpos. No. 07/II/25. February–March 1999.

Arbitrary Arrest and Detention: Excuses for Emergency Conditions and Terrorism

Bhatara Ibnu Reza

Introduction

Arbitrary arrest and detention are at conflict with provisions of criminal law, especially in relation to an individual's right to *habeas corpus.* The reasons for arbitrary arrest or detention might be to inflict terror or paralyse a movement and can result in other crimes such as torture and kidnapping. These methods are often practiced in countries with security issues such as internal conflicts, emergency conditions, terrorism and subversive acts.

There are two important points to be made about arbitrary arrest and/or detention. First, the lack of suspect's rights within criminal law permits security actors to act as if they can legitimately arrest or confine suspects. This usually occurs in authoritarian regimes where suspect's rights are not seen as an important part of the criminal code but provide disproportionate authority to the security apparatus like allowing minimal evidence, which results in an unbalanced investigation and ends in failure of the trial to proceed.

Second is the use of excuses such as ongoing conflict, emergency conditions, terrorism and subversive acts to justify unlawful conduct. Arrest is usually not based on the criminal code, which guarantees a suspect's rights, but via a special regulation that legalises arbitrary arrest and detention and is contradictory to the criminal code. This is the case in Law No. 15/2003 on the Replacement Decision of Regulation Law Number 1 Year 2002 on Fighting Terrorism.

It is possible to identify the actors who conduct arbitrary arrest and detention in this case. In periods of conflict or emergency, especially in military emergencies, the military apparatus is more dominant than that of the police in conducting arbitrary arrest and detention. Under similar conditions, the intelligence apparatus can sometimes carry out the practice with justification. In normal times, the police apparatus becomes the main perpetrator of these crimes.

One of the more famous cases relating to arbitrary arrest and detention was that of the *Guildford Four*. The English police apprehended four people after the bombing of a pub in Guildford by the Irish Republican Army (IRA). Along with their arbitrary arrest and detention, the "suspects" were tortured and were eventually

sentenced to life imprisonment in 1975. They obtained their freedom from the Court of Appeal after their attorney from Amnesty International successfully proved that they were victims of the police who had mistaken their identities and fabricated the evidence in the previous trial.

Another interesting fact is that the police eventually arrested the person who had carried out the bombing but then failed to secure the freedom of the innocent four. In 1989, fifteen years after they had been jailed, the Guildford Four were freed and the police involved in the case were scrutinised and investigated. This incident is a stain on the English legal landscape, particularly with its tradition and history of legal certainty.

The background of the Guildford Four Case was post-legalisation of an anti-terrorist law created to manage the terrorist actions of the IRA. In this case, the stigma associated with the Irish people is clear. This situation not only neglected suspects' rights but limited the time for the attorneys to prepare their cases on behalf of their clients.

This chapter aims to define the paradigm that is being used as an excuse for arbitrary arrest and detention. Further, this chapter will explain the nature of legal protection through international insruments and mechanisms of national law. It will also describe arbitrary arrest and cases of detention that have occured in Indonesia, especially during the military emergencies in Aceh and in the implementation of the Counter Terrorism Act.

National Security Paradigm: The Political Nature of Arbitrary Arrest and/or Detention

The principle behind arbitrary arrest and/or detention is the implementation of the doctrine of national security.[1] This doctrine was developed by the United States of America and France in the 1950s and 1960s and was used as a counterinsurgency doctrine by the military regimes in South America.[2] National security was much influenced by the impact of the Cold War.

In the Cold War era, almost all the military regimes in South America had carried out involuntary disappearances. Argentina used the doctrine when the state appeared to be in a precarious situation because of the international conspiracy about the threat of communism. The military regime then campaigned against what it called "subversive threat." This subversive threat was rooted in Marxism, Zionism and the freemasonry movement.[3] It was from these threats that the roots of human rights activism, socialism and liberal democratic parties grew.

Different from Argentina but with the same doctrine was the Philippines under Marcos. He used the threat of a communist rebellion to announce a state of emergency on 21 September 1972. He also changed the national constitution, which entrenched his position as president.[4]

Moments after the announcement of emergency conditions, governmental agencies together with militias (proxy army) not only conducted involuntary disappearances but also torture, arbitrary arrests and assassinations of

1 Jack Donnelly, *International Human Rights: Second Edition* (Colorado: Westview Press, 2003), 40.
2 Ibid.
3 Ibid., 41.
4 Karla Calinawan and Jennifer Jhun, "History of the Philippines," December 2001, http://www.wellesley.edu/Activities/homepage/filipina/philiphines/history/history.html.

anyone who was suspected of being a member of the New People's Army communist insurgency or had any, even tenuous, connection with it.[5]

The end of the Cold War has not changed the façade of the doctrine of national security. National security began as a huge bureaucratic political system that is the state, envisioned by government authority and the existence of a national leader. The usage of old jargon, such as communist fighting, in every pro-democratic movement is still echoed by national leaders.

Photo 12. 2009 Demonstration to Commemorate 20 Years of Unresolved Cases as a result of Islamic Groups Clashing with the Military

In Indonesia, after successfully making himself the national leader in 1966, General Suharto annihilated hundreds of thousands of members of the Indonesian Communist Party. At the time, it was regarded as the largest genocide of the 20th century.[6] The practice of involuntary disappearance in Indonesia was carried out in several conflict vulnerable regions, such as Papua and Aceh, though not exclusively in these areas. The "bloody incidents," such as Tanjung Priok in 1985 and Lampung (*Lampung Berdarah*) in 1989, were not immune from the practice either. Yet after the Cold War ended, the target of involuntary disappearances changed to political, student and human rights activists who had positioned themselves against Suharto.

The doctrine of national security gained a stronger position following the 11 September 2001 tragedy. This changed the policy of the global community with countries following the United State's campaign in fighting terrorism. That campaign, however, has simultaneously drowned out the promotion of justice and respect for human rights. These changes have impacted international relations by placing the state as a rational actor in international relations and security as the main agenda. The terrorism issue has ultimately heralded the return of a state's authoritarianism.

The practice of involuntary disappearance with arbitrary arrest and abduction of terrorist suspects ignores the non-degradable right to be treated equally before the law. However, these unlawful actions have become lawfully justifiable because they have been accommodated by draconian acts. Post 9/11, various countries in

5 Daisy Valerio, "Involuntary Disappearances in the Philippines and People's Response to This Cruel Pheonomenon" in Asian Federation Againts Involuntary Disappearances (AFAD), *Between Memory and Impunity: A Conference of Asian and Latin American Lawyers* (Jakarta, November 27–December 2, 2000), 43.

6 Robert Crib, *Pembantain PKI di Jawa dan Bali 1965–1966 (Indonesian Killings of 1965–1966)*, translated by Erika S. Alkhattab and Narulita Rusli (Yogyakarta: Mata Bangsa, 2003), 1.

the world, especially authoritarian states, used the threat of terrorism to strengthen their positions by erasing pro-democracy movements.

Amnesty International, a well-known NGO involved in human rights issues at the international level, has arranged a list of states that have tended to revive the role of the state by producing anti-terrorism acts since the US declared its War on Terror agenda.[7]

Australia has also arranged an Anti Terrorism Act formulated by its Federal Parliament. The draft arrangements state that the attorney general can ban certain groups and reduce their rights as suspects within the detention period. After the 9/11 tragedy, the Australian government immediately applied an even stricter test for those seeking asylum.

In Belarus, a fomer Soviet country, arrangements allow involuntary searches in houses and offices without a warrant. Moreover, the act also allows the head of anti-terror operations to control press and media activities. Canada has published Bill C-36 or the *Anti Terrorism Act*, which has been much criticised by civil society. Besides Bill C-36, on 29 April 2002, Canada also published Bill C-17 or the Public Safety Act. This act gives authority to the military to declare supervision of a certain region and to place military equipment there. All civil authorities must submit to the military's authority.

In Denmark's amended draft on criminal law, attorneys and legal advisors to terrorist suspects can also be viewed as suspected terrorists. *The Alien Act* permits the authorities to refuse a person the right to live in Denmark on the grounds of being a threat to national security, public order, health and security.

India has the *March Prevention of Terrorism Act* which allows police to arrest a suspect, imprison them for a period of three months without any claim or charges applied, and add a further three months to the period of detention by order of a specific court if need be. This act contradicts the *Indian Evidence Act,* which requires a suspect's confession in front of police or in court. The Anti Terrorism Act will also punish journalists or other professionals who conduct meetings with members of "terrorist organisations."

In Zimbabwe, in last year's election campaign, President Robert Mugabe stigmatised his election rival as a "terrorist." There were many clashes between his supporters and those of the rival party. Zimbabwe also published the January Public Order Act, which allows police to disperse demonstrations and to consider criticisms of the police, the armed forces and the president as criminal actions. The Access to Information and Protection of Privacy Act permits the government to close down newspapers and threaten journalists with imprisonment for articles that criticise the government.

In October 2001, the United States composed an instrument called Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism, or the USA PATRIOT Act of 2001, which allows detention without clear reason, especially for non-US civilians, if the attorney general has already "obtained strong evidence."

7 This research, compiled after 9/11, outlines the anti-terrorism acts passed in many countries, which threaten civil liberties and ignore civil rights in the judicial process. See: Amnesty International, "Charting the War on Terror," www.amnestyusa.org/amnestynow/war_terrorism.html.

Arbitrary Arrest and/or Detention According to International Law

International Human Rights Law

International human rights law defines "arbitrary" in terms that include injustice, unpredictability, unreasonableness, capriciousness and disproportionate response.[8] Within the framework of international human rights law, an arbitrary arrest and detention is not only a breach of the law but also a violation of human rights that should not be diminished in any situation (non-derogable rights).

This starts with the loss of the right to liberty and security of person, and the right to equal treatment before law. As the Universal Declaration of Human Rights declares, "Everyone has the right to life, liberty and security."[9]

This is also strengthened by Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which states:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Arbitrary arrest is also forbidden in other regional instruments, such as Article 6 of the African Charter on Human Rights and People's Rights (ACHPR)—often called the Banjul Charter—which declares:

> *Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.*

Article 7 of the American Convention on Human Rights (ACHR) states:

1. *Every person has the right to personal liberty and security.*

8 C. de Rover, *To Serve and to Protect: Acuan Universal Penegakan HAM* (Jakarta: RajaGrafindo Persada, 2000), 396.
9 Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

2. *No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.*
3. *No one shall be subject to arbitrary arrest or imprisonment.*
4. *Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.*
5. *Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial."*

Article 5 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, or the European Convention on Human Rights (ECHR), regulates the balance between liberty and security. It states:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. *The lawful detention of a person after conviction by a competent court;*
b. *The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
c. *The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
d. *The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
e. *The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
f. *The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

All international and regional instruments pay huge attention to individual liberty and protection from the state's misuse and abuse of power. The most important factor is the balance between security and freedom that must be guaranteed by the authority in state-civilian relations. Even arresting a person who cannot pay their debts is forbidden. This means that individual liberty and freedom cannot be taken away.

International Human Rights Mechanisms through the UN's Working Group on Arbitrary Detention[10]

The creation of this working group, initiated by the United Nations Commission on Human Rights (currently known as the Human Rights Council), came about because of the mushrooming of arbitrary arrests from 1985 onwards.[11] In 1990, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities conducted a study on the issue. It also provided reports and recommendations for managing this practice. Prior to that time, the United Nations General Assembly had adopted a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in 1988.[12] The working groups consisted of five experts and opened up opportunities to participate to all countries and/or non-governmental organisations.[13]

These working groups have the following mandate: First, to find and collect information from government, intergovernmental organisations and non-governmental organisations, including individuals, families and their legal advocates.[14] Second, to create a channel of communication, make urgent appeals and impose time limits on governments in handling cases related to arrested individuals.[15] Third, to perform their duties with discretion, objectivity, impartiality and independence, and fourthly, to give an official statement on gender specificity in their reports, including attention to the conditions endured by women who were subject to arbitrary deprivation of liberty.[16]

The cases handled by the working groups can be categorised as follows:[17]

1. Cases where freedom is taken with no lawful basis (i.e., detention before a court decision);
2. Cases where liberty is deprived on the basis of suspicion, especially in relation to the basic rights that are protected by the Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights. In particular:
    a. Freedom of thought, conscience and religion (Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant of Civil and Political Rights);
    b. Freedom of expression (Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant of Civil and Political Rights); and the
    c. Right to peaceful assembly and association (Article 20 of the Universal Declaration of Human Rights and Articles 21 and 22 of the International Covenant of Civil and Political Rights); and
3. A non-observance case, including all or parts of international regulations related to rights to a fair trial, individual freedom or other aspects that have an arbitrary character.

10 Knut D. Asplund, et al., *Hukum dan Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2008), 176.
11 United Nations High Commissioner for Human Rights (UNHCHR), "Working Group on Arbritary Detention," http://www2.ohchr.org/english/issues/detention/.
12 Ibid.
13 Asplund, *Hukum dan…* (2008), 180.
14 UNHCH, "Working Group on Arbritary Detention."
15 Ibid.
16 Ibid.
17 Ibid.

As part of their working procedure, the working groups also give out forms and questionnaires to individuals who are victims of arbitrary arrest and detention (see the appendix to this chapter).[18] It is important to remember that the working groups have a four step procedure. The first step is initiating communication with the government, intergovernmental organisations, and also the NGOs or related individuals, their families and their legal advisors.[19] This is where the questionnaire mentioned above is used. The second step is offering the government the opportunity to refute the allegations. This enables the government to give a clear explanation on its arbitrary arrests and/or detentions. We should note that this opportunity is time limited to ninety days. When governments do not use the opportunity and exceed the time limit, the working groups will assume the position based on the existing official statement.[20]

In the third step the working groups invite comments on the government responses. Every government statement given to the group will be transmitted to another source in order to derive comment and observation. The fourth and final step is the one in which the working groups present their own opinions on every official government statement.[21] This opinion is then sent back to the government in the form of recommendations, which are also published as an annex to the annual report created by the working groups to the Human Rights Council.[22]

International Humanitarian Law

According to international humanitarian law, human rights protection still needs to be guaranteed in emergency situations or during armed conflict. The international humanitarian laws that govern internal armed conflicts are the Geneva Conventions of 1949,[23] Additional Protocol I of the Geneva Conventions on International Armed Conflicts (1977) and Additional Protocol II on Non-International Armed Conflicts (1977).[24] Indonesia had signed and ratified the Geneva Conventions of 1949 by publishing Law No. 59/1958 on 30 September 1958. It has not ratified Additional Protocols I and II of the Geneva Conventions.

Nevertheless, many countries have ratified and implemented the two protocols in situations of armed conflict, both international and non-international. Indonesia cannot wait and retain the status quo because the two protocols are customary international law. The rules set down in international law should be able to diminish the number of deaths in armed conflict.

According to Common Article 3 of the Geneva Conventions, civilians must be treated humanely by combatants, which means they will not be subject to:

1. Physical and psychological violence, principally the practices of killing, detention, harassment and

18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
22 Ibid.
23 The Geneva Conventions of 1949 contain four conventions: the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949 and entered into force 21 October 1950) 75UNTS 31; the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949 and entered into force 21 October 1950) 75 UNTS 85; the Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949 and entered into force 21 October 1950) 75 UNTS 135; and the Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949 and entered into force 21 October 1950) 75 UNTS 287.
24 Protocol II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977 and entered into force 7 December 1978), UN Doc. A/32/144 Annex II, 1125 UNTS no. 17513.

maltreatment;

2. Being taken hostage;
3. Rape, including insulting treatment and degradation of human dignity; and
4. Capital punishment/execution without organised courts and a fair trial, which is a hallmark of civilised nations.

International humanitarian law also consists of several principles based on international customary law that are acknowledged universally when armed conflicts occur:[25]

1. Distinction: warring parties are required to distinguish between civilians and combatants, with the aim of protecting civilians and civilian property;
2. Proportionality: an armed attack must be appropriate and measured when compared to the military advantage expected to result from the engagement; and
3. Warfare must not cause unnecessary suffering or injury to civilians.

These principles require warring parties to divide the population into two groups in the context of an armed conflict. The first group is combatants who are actively involved in the hostilities and the second group is civilians.[26]

In humanitarian law, civilians specifically obtain protection as stated in the Fourth Geneva Convention of 1949 on Protection for Civilians. It gives general protection for civilians without discrimination.[27] No matter what the conditions, civilians must have their basic rights for individual respect, family rights, ownership rights and rights to religious practice respected.[28] Articles 27–34 of the Fourth Geneva Convention forbids the following actions against civilians:

1. Physical and psychological coercion to get information
2. Behaviour that leads to physical suffering
3. Collective punishments
4. Intimidation, terrorism and pillaging
5. Retaliatory actions (revenge)
6. Taking civilians hostage
7. Acts that lead to physical suffering or hostility to protected persons

The position of the Geneva Conventions of 1949 in relation to the respect and protection of human rights is that they must be defended in spite of armed conflicts. The conflicting parties must not use arbitrary arrest and detention as methods of war or tools of war.

25 Ambarwati, et al., *Hukum Humaniter International dalam Studi Hubungan Internasional* (Jakarta: Rajawali Press, 2009), 41.
26 KGPH Haryomataram, *Pengantar Hukum Humaniter* (Jakarta: RajaGrafindo Persada, 2005), 73.
27 Arifin Permanasari, et al., *Pengantar Hukum Humaniter* (Jakarta: International Committee of the Red Cross, 1999), 170–171.
28 Ibid., 170.

The Geneva Conventions also set down guidelines as to actual conduct of battle and mandates the choice of methods of war and equipment. It forbids the use of indiscriminate, excessive and unnecessary methods of war or equipment. Article 35 of Additional Protocol I of the Geneva Conventions states:

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
2. Are prohibited to employ weapons, projectiles and material and methods of warfare of a nature that cause superfluous injury or unnecessary suffering.
3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

The Indonesian Criminal Court System and the Rights of Suspects and the Accused in the Criminal Procedure Code (KUHAP)

Arrest, according to Article 1 (20) of Law No. 8/1981 on the Criminal Procedure Code (KUHAP), involves restraining an individual for the sake of investigation or prosecution and/or judicature. Detention, according to Article 1 (21), is placement of a suspected or accused person in a specific place by an investigator, public prosecutor or judge.

From these definitions, we find that investigators consist of the Indonesian National Police (POLRI) or specific civil services that have investigative functions. This includes people such as immigration officers, customs officers, etc. This is one of the first things to understand about Indonesian criminal courts. The investigating body in a criminal case is the police (POLRI). This body has the authority to conduct arrests and detain people. The prosecutor's office also has the authority to make arrests on the basis of specific law, for example in cases of corruption, and is also able to detain people under other specific laws and KUHAP. The Ministry of Justice also has a detention function, based on KUHAP, for court investigations.

KUHAP's implementation in relation to arbitrary arrests and/or detention in Indonesia has a "unique" history because of its muddled interpretation. KUHAP was created by Suharto's regime and is often acknowledged as an impressive creation. However, its implementation has not been quite as impressive. The rights of suspects and the accused are minimally regulated because KUHAP did not at the time adopt the universally accepted rights for suspects and/or the accused as democratic countries had.

The rights of suspects and the accused are regulated in Chapter VI of KUHAP:[29]

1. The rights of immediate examination consist of:
    a. The right to immediate examination by an investigating officer
    b. The right to immediate arraignment
    c. The right to a prompt trial and verdict
2. The rights to conduct a plea include:
    a. Right to obtain a clear announcement in a language understood by the suspect about the

29 M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Jilid I* (Jakarta: Garuda Metropolitan Press, 1988), 351–352.

accusation(s) made pertaining to him/her
b. Right to (a) when interrogation begins
c. Right to obtain a clear announcement in a language understood by the suspect about the charge(s) that apply to him/her
d. Right to freedom in making a plea, in every step of the interrogation, from the beginning of the inquiry to the trial in court
e. Right to a translator
f. Right to a legal advisor

In a specific way, KUHAP also regulates the rights of the suspect when they are in detention. These rights are:[30]

1. Right to call a legal advisor
2. Right to call and receive visits from his/her private doctor, for the sake of health, whether it has a connection with the case or not
3. Right to inform the following about their detention:
    a. Family
    b. People that live in the same house with the suspect
    c. Other people whose help may be needed
    d. People who provide legal assistance
4. During detention, the rights of the suspect are:
    a. To call the family
    b. Receive visits from the family
5. Have the right to mediation, such as through the use of a legal advisor both for legal needs and those pertaining to family and work
6. Right to correspondence
7. Correspondence should be free and private—it is not to be examined by an investigator, public prosecutor, judge or officer in the prison except if there is evidence that the right has been misued

The rights of a suspect on trial include:[31]

1. Right to an open public trial
2. Right to propose witnesses or experts
3. No obligation to give evidence

The rights of a suspect to legal representation include:[32]

1. Rights to use common legal effort in the form of requesting appeal to a higher court or to the Supreme

30 Ibid., 356–357.
31 Ibid., 358.
32 Ibid.

Court

2. Rights to use an uncommon legal effort in the form of demanding the reinvestigation of a decision made by a court that has permanent legal status

Rights to compensation and rehabilitation apply in situations where:[33]

1. Arrest, detention, search or confiscation is carried out without a legal reason
2. The final court decision states that the suspect is free because the alleged criminal act was not proven or the criminal act imposed on the suspect is declared not a criminal act or violation

When KUHAP was first implemented, POLRI was part of the same body as the armed forces (ABRI), which meant its members had a double function both as enforcers of the law and as soldiers.[34] In practice, the authority to arrest and/or detain suspects was not just confined to the Indonesian Police but included the army, navy and air force. Thus it is not surprising when the military apparatus also arrests and/or detains a person. It is quite common for a criminal suspect to be sent to a military office rather than to the police.

There is said to be a widening interpretation of "military" because the Indonesian Police is effectively part of the armed forces and is therefore thought of as being "owned" by the military. This situation creates another problem for a person wanting to use the complaints mechanism through the Pre-Court. The Pre-Court is a mechanism under KUHAP, which regulates the rights of a victim to compensation and rehabilitation on the basis that arrest, detention, search or confiscation were carried out with no lawful basis.

The problem then becomes more complicated as KUHAP does not regulate the lawfulness of arrests and detention as part of its law enforcement function, if those activities were carried out by the military. The result is that any cases in the Pre-Court stage relating to arrest, detention, search or confiscation by the military apparatus is often not received by the courts and leads to a breach of the rights of the suspect.

Action performed by the military apparatus is illegitimate under the law and the apparatus will be categorised as having surpassed its authority. Therefore it can be claimed that an arrest and detention conducted by the military apparatus is action of an arbitrary nature.

Along with political changes after the fall of Suharto, changes to the spirit of the constitution also took place in Indonesia. The Amendment of the 1945 Constitution included human rights commitments. Unfortunately, this spirit has not quite reached the stage of enabling laws so some of the acts and regulations of Suharto's administration are still being used today. That includes KUHAP.

The other national mechanism is the Human Rights Commission. The Human Rights Commission, based on Law No. 39 Year 1999 on Human Rights, has the authority to perform and investigate cases of human rights violations. As regulated in Article 89 (3) (f), the investigation and examination applies to events occurring

33 Ibid.

34 ABRI then changed its name to *Tentara Nasioanal Indonesia* (TNI) or the Indonesian National Army, after the division of the TNI and POLRI. The division of the TNI and POLRI started with publication of Presidential Instruction Number 2 Year 1999 about policy steps to divide POLRI from ABRI. See: Muhammad Fajrul Falaakh, et al., *Implikasi Reposisi TNI-POLRI dIbidang Hukum* (Yogyakarta: Fakultas Hukum UGM, 2001).

within society based on their characteristic and scope that might be suspected of a human rights violation.

The authority of the Human Rights Commission to investigate and gather evidence provides a strong basis for use of the attorney general as the investigator in charge of human rights violations. Then again, the challenge is the actual mechanism because Law No. 26 Year 2000 determines the use of KUHAP in human rights trials.

Indonesia Laws and Arbitrary Arrest and/or Detention in Indonesia

Law No. 15/2003: Threat by a Non-Judicial Apparatus[35]

Law No. 15/2003 on the Promulgation of Government Regulation in Lieu of Law No. 1 Year 2002 on the Eradication of Terrorism Crime is to become law. This regulation was not established alone but accompanied by Government Regulation in Lieu of Law No. 2 Year 2002 on the Eradication of Terrorism Crime. After the Bali Bombing on 12 October 2002, it became Law No. 16/2003.[36]

From its inception, the Government Regulation to Replace Law was criticised for being a threat to democracy and human rights because:[37] 1) it changed the law enforcement façade by non-judiciary intelligence admitted in Integrated Criminal Justice System such as explained in KUHAP mechanism; 2) changes to the criminal procedural law in which KUHAP is no longer acknowledged as a lawful procedure in the investigation of terrorism crimes; and 3) retroactive application for crimes of terrorism.

Along with Government Regulation in Lieu of Law (*Perpu*), President Megawati made two Presidential Instructions at the time. *First,* Presidential Instruction No. 4/2002 gave the Ministry Coordinator of Social, Politics and Security the authority to formulate policy on terrorism.[38] Second, Presidential Instruction No. 5/2002 defined the role of BIN as coordinator of all intelligence activity, overseeing several institutions with an intelligence arm (the Indonesian Police Force, the Strategic Intelligence Body, the attorney general, the Supreme Court, the Immigration and Customs Offices, etc.).[39]

Ultimately, those instructions seemingly gave non-judicial apparatuses the authority to arbitrarily act in so far as the arrest and detention of suspects were concerned. The regulations, however, state that it is only the Indonesian Police who have the authority to conduct arrests and or detention.

35 Mosly taken from the author's paper in *Alamanak Revolusi Sekor Keamanan 2007*. See: Bathara Ibnu Reza, "Reformasi Legislasi Sektor Kemanan" in Beni Sukardis (ed.), *Alamanak Reformasi Sektor Keamanan 2007* (Jakarta: Lesperssi and DCAF, 2007), 172–202.

36 Law No. 16/2003 about Fighting Terrorism Criminals in the Bali Bombing (12 October 2002) was then canceled by the Constitutional Court because it contradicted Article 28 (i) of the State Constitution of 1945. See the decision of the Constitutional Court 013/PUU-I/2003 for Maskur's application (alias Abdul Kadir), the suspect in the Bali Bombing in the Denpasar High Court. See also: *Media Indonesia*, "Yusril: Putusan Mahkamaha Konstitusi hanya Untuk Bom Bali" (25 July 2004). About the study in the Constitutional Court, see: Petra Stockman, *The New Indonesian Constitutional Court: Case Study into its Beginning and First Years of Work* (Jakarta: Hans Seidel Foundation, 2007).

37 In response to those laws, several NGOs and human rights protectors agreed to form a coalition named "*Koalisi Untuk Keselamatan Masyarakat Sipil*" (Coalition for Civil Liberties) after meeting on 7 and 12 November 2002. At that time, the coalition agreed to choose IMPARSIAL (the Indonesian Human Rights Monitor) as coordinator. See: Imparsial and Koalisi Kebebasan Masyarakat Sipil, *UU anti Terrorisme: Anatara Kebebasan dan Keamanan Rakyat* (Jakarta: Imparsial, 2003). This book gives a complete explanation of laws about fighting terrorism, including several communiqués from the coalition.

38 Ibid., 9.

39 Ibid.

Law No. 15/2003 threatens the freedom of the media and the freedom of expression.[40]Article 20 of this act reads, "...the *intimidation* toward the investigator..." without providing a clear and precise definition of *intimidation*. This article can be used to limit the mass media or anyone who wishes to comment on the prosecution of a crime of terrorism.[41] The police apparatus can then conduct arrests and/or detain people on the basis of this article.

Law No. 15/2003 also threatens the rights of privacy by telephone tapping, bank account monitoring etc. by intelligence agents.[42] The use of intelligence reports as evidence is new to criminal procedure and is regulated by Law No. 8/1981 in the Code of Criminal Procedure Act (KUHAP).[43]

As explained previously, Law No. 15/2003 has threatened judicial independence by allowing the involvement of non-judiciary apparatuses such as the Indonesian Intelligence Body (BIN) and the Indonesian National Army (TNI).[44] This involvement by non-judicial intelligence in the legal process can paralyse public oversight.[45]

Law No. 15/2003 adopts a pre-trial mechanism that originates from the Anglo-Saxon system. However, it did not adopt the trial system and for this reason it can abolish a suspect's right to objection to *habeas corpus*.[46] Moreover, this mechanism closes down the possibility of an individual using his right to the pre-trial procedures such as that regulated in KUHAP, the one *habeas corpus* mechanism to control the medium.[47] The creation of pre-trial mechanisms in the admissability process where the judge determines early evidence, order of detention; search and confiscation, is a framework for developing the legal impunity of intelligence which was explained in Article 26 (2).[48]

Instead of limiting and preventing the misuse of state power, Law No. 15/2003 is giving the state the opportunity to misuse its power, especially in giving weight to intelligence, whether it be the TNI's or BIN's, and for other aims connected with the prevention of terrorism.[49] Law No. 15/2003 also protects banks or other financial institutions from revealing bank secrets, illegal cover-ups and corruption, which are only acknowledged as administrative shortcomings.[50]

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40 Imparsial, "Terrorisme dalam Pergulatan Politik Hukum" in Rusdi Marpaung and Al Araf (eds.), *Terrorisme: Definisi, Aksi dan Regulasi* (Jakarta: Imparsial, 2003), 52.

41 Ibid. Article 20 Law No. 15/2003: Every person who used violence, made violent threats or intimidated the interrogator, investigator, public prosecutor, legal adviser and/or judge handling terrorism criminals and disturbs the trial process are punishable with a minimum of three years in jail (fifteen years maximum).

42 Ibid. Article 26 (1) Law No. 15/2003: To gather enough evidence at the beginning, the interogator can use every intelligence report. See also: Article 30, Law No. 15/2003.

43 See Article 184 (1) Law No. 8 Year 1981 about KUHAP. Valid evidence is:
   a. Witness information
   b. Expert information
   c. Mail
   d. Clues
   e. Accused information

44 Rusdi Marpaung and Al Araf, *Terorisme*… (2003), 52.

45 Ibid.

46 Ibid.

47 About pre-trial, regulated under Law No. 8 Year 1981 on KUHAP in Section X.

48 Rusdi Marpaung and Al Araf, *Terorisme*… (2003), 52.

49 Ibid., 53.

50 Ibid. See Article 29 (2) Law No. 15/2003: The orders of the interrogator, public prosecutor, or judge, as stated in subsection (1), must be made in writing and clearly explain:
   a. Name and position of interrogator, public prosecutor or judge;
   b. Identification of every person who was reported by bank and financial service institutions for interrogation, or as suspects/accused;
   c. Reason for blockade;
   d. Criminal action suspected;
   e. The place where the wealth lies.

In the next development of the debate, the government finally grasped the fact that it had many critics of Law No. 15/2003 so policymakers began to formulate draft amendments. The spirit to actually amend this act only emerged after the bombings in Indonesia.The response to the JW Marriott bombing of 5 August 2003 is clearly reflected in the draft amendments of 20-28 August. Another amendment appeared in September 2004 as a response to the Kuningan bombing of 8 September.[51] The basis for the amendment was the same as that which created a stronger state, and not one that guaranteed and respected human rights and democracy.

In the first draft amendment, the government accommodated non-judicial institutions such as the TNI and BIN within the law enforcement process.[52] The demands from the Department of Justice and Human Rights,[53] seen as a reactionary response, were based on short term interests without due consideration of fundamental aspects such as the position of the TNI and BIN in a democratic state.[54] While in the second amendment draft for Law No. 15/2003, proposals by the government through the Department of Justice and Human Rights, post-Kuningan bombing, did not create clear boundaries on the definition of a terrorist.[55]

Law No. 15/2003 clearly adopts a security paradigm, placing the security actor as part of the draconian state. In the name of security, human rights values and freedoms can be neglected for political stability threatened by terrorism. As a result, arbitrary action by the police apparatus is evident in the arrests of Muslim activists and specifically in the arbitrary arrest, detention and torture of Abu Fida in Surabaya in August 2004.

Ideally, the amendment process should give civilians a feeling of security and not be used as an opportunity to threaten civilian freedoms. The urgent agenda now is one of amendment but not one which shuts down the prospect for government to include terrorism in its modification of the Criminal Code. In the review of KUHAP, specific room needs to be made for terrorist criminal procedures in order to avoid legal dualism. These two areas of revision subject to legal codes are not a way for the state to involve itself in the private matters of its citizens.

Draft of the State Intelligence Bill

There are no drafts that legalise arbitrary arrest and detention except for the draft of the State Intelligence Bill. This draft was formulated to allow BIN to have more law enforcement authority. The Draft of the State Intelligence Bill came to public attention when IMPARSIAL (one of Indonesia's human rights CSOs) disclosed it for public consumption through the Legislative Special Member in formulating the draft of the Eradication of Terrorism Crime Bill. IMPARSIAL said that the 25 January 2002[56] version of the intelligence bill contained language that might allow potential human rights violations. This draft was circulated in secret because BIN had no intention of publishing it.[57]

51 Imparsial, *Catatan HAM 2004: Keamanan Mengalahkan Kebebasan* (Jakarta: Imparsial, 2006), 48.
52 Ibid., 48.
53 This department is changing its name to the Deparment of Law and Human Rights.
54 Imparsial, *Catatan…* (2006), 48.
55 Ibid., 48.
56 Imparsial and Koalisi untuk Kebebasan Masyarakat Sipil, *UU Anti Terorisme…* (2003), 13. At that time, the executive director of Imparsial, the late Munir, was able to open up the Draft Law on State Intelligence in the Legislative Special Group for the first time and got negative feedback from parliament and society.
57 We found "secret" stamped on every page of the Draft Law on State Intelligence (version 25 January 2002).

One area of authority that the Draft State Intelligence Bill had proposed for BIN is the detention of a suspect for up to ninety days without the rights guaranteed by KUHAP, which became known as the "Abduction Article."[58] This article legalised arbitrary action regarding a suspect and reduced the certainty of accessing the criminal court system regulated by KUHAP. Moreover, this article also removed some basic and absolute rights.

In the 25 January 2002 version of the draft of the State Intelligence Bill, authority was granted to the chief of BIN to procure weapons and control for intelligence action.[59] Furthermore, the position of BIN within the government's administration system falls directly under the president and is regulated in Article 5 (2).

After being criticised by civil society, BIN then prepared the same criteria for the draft of the Intelligence Principals Bill dated 5 September 2003. This draft was also secret but the "Abduction Article" had been removed.[60] However, based on the latest draft, BIN also has the authority to conduct detentions for up to thirty days without any explanation or respect of the rights of the suspect.[61] Weapon provision is also regulated in the draft but at this time no regulations about weapon controls as regulated in the previous Draft.[62] The position of BIN in the draft of the Intelligence Principals Law version 5 September 2003 clarifies in Article 6 (2) that it is directly under and responsible to the president.

Over the next period, the government then formulated a legal Draft State Intelligence Bill dated March 2006. This draft still has many flaws and again attracts much criticism. The first criticism revolves around the existence of intelligence regulations that contradict democratic principles and the second is the lack of applied democratic intelligence principles.[63] This draft still authorises BIN to conduct itself like a law enforcement agency, with the ability to carry out arrests, for example.[64]

If we analyse the drafts more thoroughly, we can say that all the drafts of laws to regulate intelligence accommodate human rights violations. As we know, the BIN apparatus is not one of law enforcement. Therefore, when the authority of BIN is exercised, it is tantamount to creating a flawed criminal justice system. Besides

58 Article 27 (1) of the Draft Law on State Intelligence (version 25 January 2002) states: Detention in the framework of intelligence interrogation, as stated in Article 21, can last no more than ninety days. See: *Koran Tempo*, "BIN Akui 'Pasal Penculikan'," www.korantempo.com. On the refusal of the rights of suspects, see: Article 28 of the Draft Law on State Intelligence. In an intelligence interrogation, as stated in Article 21 (a):
   a. The inquisitor system prevails;
   b. The suspect has no right to legal assistance;
   c. The suspect has no right to remain silent/to not answer the interrogator's questions;
   d. The suspect has no right to have detention postponed by person or money guarantee;
   e. The suspect has no right to home arrest or city arrest; and
   f. The suspect has no right to contact with the outside world, including family.

59 Article 25 of the Draft Law on State Intelligence (version 25 January 2002) states the chief of the state intelligenence body is authorized:
   a. To make firearm provisions that are used directly and/or through agents domestically or that live in a foreign country;
   b. To ensure firearms are documented for intelligence.

60 A "secret" stamp was found on the front page of the Draft Law on Intelligence Principles (version 5 September 2003).

61 Article 21 of the Draft State Intelligence Principles (5 September 2003 draft) states:
   1. The arrest stated in Article 20 cast in 30 thirty days;
   2. If from the interrogation result stated in Article 20 subsection (1) a strong clue about threats to national interests is found, the suspect will be sent to the Indonesian Police as the next appropriate step under the law; and
   3. If from the interrogation result stated in Article 20 subsection (1) a strong clue about threats is not found, then the suspect must be released.

62 Article 23 of the Draft Law on Intelligence Principals states:
   1. The chief of BIN has the authorisation to make firearm provisions in the agency's interest directly to producers or through agents that reside in-country or in a foreign country;
   2. The use of firearms like those stated in subsection (1) is regulated by the chief of BIN.

63 Andi Widjajanto, ed., *Panduan Perencanaan Undang-Undang Intellijen Negara* (Jakarta: Pacivis, August 2006). This book comprehensively describes and criticises the Draft Law on State Intelligence (March 2006 version).

64 Article 12 of the Draft Law on State Intelligence (March 2006 version) states:
   1. BIN has special authority to capture for interrogation, wiretap, check bank accounts and open mail of anyone believed to endanger civilian safety;
   2. Interrogations must last no more than 7 x 24 hours;
   3. If a suspect fulfills the prerequisite of holding possibly important information, the suspect will be sent to the responsible interrogator; if not, they must be freed.

that, there are no lawful mechanisms to challenge BIN if errors occur or if its personnel commit wrongdoing in the course of their work—just as there are no mechanisms in KUHAP for the pre-trial process.

Aceh During the Military Emergency (2003–2005): Marking Civilian Houses

Two years of military emergencies in Aceh taught us a great deal as a nation in so far as respecting human rights and implementing humanitarian laws in times of war is concerned. After the legalisation of Presidential Decree Number 28/2003 on the Pronouncement of Nangroe Aceh Darussalam in Emergency Conditions and with the military emergency extended to two years, both GAM and the security apparatus had committed significant violations.

In emergency conditions, states can lawfully limit some of their human rights obligations. Nevertheless, in emergency conditions states cannot decrease specific civil rights as the basis for legalising arrest and or detention. The Law of Emergency Condition gives guarantees for legal certainty with the recognition of legal processes in arrests or detention.[65] In addition to that and within the framework of civil and political rights guarantees in Article 4 (3) of the ICCPR, two factors must be fulfilled. They are:[66]

1. The emergency condition must formally be declared by the government who implemented it.
2. The details about emergency conditions and the informing of the United Nations General Secretary of limitations of rights.

Photo 13. Daily TNI Activity in Aceh in the Military Operation Zone: Reading the Paper While Guarding a Post, 2003

65 See Article 32 (4) of Law No. 23 Year 1959 on the Emergency Condition.
66 See: Jimly Asshiddiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Press, 2007), 158.

Several cases connected with arbitrary arrest and/or detention emerged in Aceh after the emergency conditions were established. The emergency period in Aceh saw the use of different approaches. It is worthy of note that military operations must prioritise the law and only focus on the restoration of security. The TNI—as the main player in the military emergency conditions—had a different policy from POLRI as an apparatus of law enforcement. The differences between the two are illustrated by the manner in which each handled GAM suspects.

The TNI used more violent and destructive means in its endeavours to restore security. International humanitarian law governing non-international armed conflict does not recognise either side as combatants. The background for this is the basic concept that non-international armed conflict is for defending sovereignty and territorial integrity, and that the ones who are in conflict are the state and armed civilians. Therefore, the priority is not to destroy the enemy but to enforce the law because the rebels are the ones who are breaking the law.

Arrest and/or detention carried out by the TNI apparatus often ends in the destruction of things both mobile and immobile. The destroyed items can be used as evidence, which is enough to bring the TNI face-to-face with the law. On the other hand, POLRI, which must enforce the law, finds its position in the Aceh military process fraught with difficulties as they are less powerful after being positioned under the Region Emergency Military Authority (*Penguasa Darurat Militer Daerah*, or PDMD).

Despite the fact that no arbitrary arrests were carried out, the approach was more systematic, marking civilian houses suspected as GAM with the symbol of a cross. This action illustrated the use of a method of stigmatisation and was in no way a law enforcing action. The crosses have been used in Aceh since the declaration of the military emergency by the government as a method to terrorise Aceh civilians. The marking of houses stretched from Sabang to South Aceh. The military used the crosses in a manner that was not legitmated by law.

The military apparatus often operates in villages, making cross signs and writing the name of the house owner in other civilian houses with affiliations to GAM. The military apparatus also pushed other civilians to destroy houses lived in by people whose relatives had joined GAM.

History notes that the practice by the TNI/ POLRI apparatus of "marking by crosses" in Aceh is not new. Similar practices have occurred in other authoritarian regimes such as in Germany during the Nazi period. Nazi supporters moved by *sturmabteilung* members, or SA, marked the "Star of David" on every house or store owned by Jews. This movement, which became known as *kristalnacht*, marked the beginning of the Nazi war on the Jews. The markings also became a sign for other Germans not to contact Jews. The government then criminalised such contact through its Nuremburg Laws, anti-semitic laws introduced in Nuremberg in 1935.[67] In its implementation, the laws became more sadistic and brutal and ended in the genocide of Jews and other minorities after Hitler declared his "final solution on the Jewish question."

67 Hugh Purcell, *Fasisme (Fascism)*, translated by Faisol Reza, et al. (Yogyakarta: Insist Press, July 2000), 74.

When the more destructive methods of the TNI were highlighted, the Information Unit Task Force Commandant (*Dansatgaspen–Komandan Satuan Tugas Penerangan*) Colonel Ditya Suwarya objected, claiming these methods had been a formal order from the TNI. But was that really true? In the *Waspada* daily, Major General Endang Suwarya acknowledged that when he still held the rank of Emergency Military Region Chief (PDMD), he had been ordered to make crosses on all GAM member houses but not to destroy them.[68] As head of security restoring command after the termination of the civil emergency, Endang Suwarya insisted he would punish TNI personnel who had destroyed the houses of GAM member's families.[69]

An international law practice in the *de jure* trial of command holders was seen in the case of Jean Paul Akayesu by the ICTR (International Criminal Tribunal for Rwanda). Akayesu was mayor when the genocide of the Tutsi tribe occurred. The ICTR declared that based on national law of Rwanda, Akayesu's position as mayor had made him: (1) the head of (communal) society administration; (2) a state officer; and (3) the one who had the responsibility to protect and restore peace.

Article 87 of Additional Protocol I (1977) of the Geneva Conventions widened the legal responsibility for the commanders of troops to include other persons under their control. This responsibility is applicable to every level of command. Ignorance about an incident cannot be the basis for defence. The obligation to know that a situation occurred has been regulated in international instruments, namely Article 86 (2) of Additional Protocol I of the Geneva Conventions of 1949 and Article 28 (1) of the ICC Statute.

Anyone in command who fails to prohibit or mete out punishment for illegal actions on the part of a subordinate is liable to be held responsible. In international law mechanisms, the command responsibility can be found in Article 86 of Additional Protocol I of the Geneva Conventions; Article 6 from the Draft Code of Crime Against Peace and Security of Mankind, formulated by International Law Commission; Article 7 (3) of the ICY Statute; Article 6 (3) of the ICTR Statute; and Article 28 (2) of the ICC Statute. The national law instrument also regulates human rights trials, which is a mechanism copied from the Rome Statute of the International Criminal Court.

All these instruments require the commander to be responsible on his watch and to ensure his/her subordinates are not breaking the laws of war. The commander is also responsible for punishing subordinates if they violate the law. From these responsibilities, we can see that the command responsibility encompasses both acts of omission (negligence) and acts of commission (actively breaking the law).

The statement from the then Head of Security Restoring Command Mayjen Endang Suwarya, where he as the PDMD had given the command to make crosses on GAM houses ending in arbitrary arrests, can be the basis for an act of commission. This is because the violation stems from his orders and is clearly in contradiction with humanitarian and national law. Absolute obedience by the command cannot be a basis for protection in a trial. The command responsibility is also valid in police contexts. POLRI also has a chain of command structure, although there are differences in role and function.

68 See: *Waspada*, "Jika Terbukti, Pengkooptasioan Akan Pecat Oknum TNI Ancam Warga Rusak Rumah Keluarga HAM" (23 July 2004).
69 Ibid.

Conclusion

The practice of arbitrary arrests and detention in Indonesia can be categorised into two types. The first is when these actions are carried out with the use of legal instruments so that they can be interpreted as legal. And moreover that the instruments of law have *lex specialis* that are more robust than procedural law even when the constitution does guarantee the rights of the suspect.

The second is arbitrary arrest and/or detention under the policies of the emergency period. This clearly violates national and international law, which mandates protection for the rights to freedom and security as part of civil and political rights that cannot be limited in any condition. The part of the law that legalised arbitrary arrest and/or detention is the giving of extraordinary power to the state by a coercive apparatus. The ideal is that extraordinary power should be given to protect democratic values and justice, such as the presumption of innocence, protection and guarantee of the rights of suspects and the accused.

Therefore, we need immediate action to amend KUHAP as an instrument, which provides human rights protection to civilians, while remembering that for all of this time KUHAP has only bestowed minimum rights protection to suspects, victims and their families, and that the legal effort is only via a pre-trial mechanism for arbitrary arrest and/or detention. The new KUHAP revision must also guarantee that the use of violence must come under the framework of law enforcement and human rights protection so that there is no abuse by the state of its power.

The practice of arbitrary arrest and/or detention is a reflection of the power relations between the state and civilians. This practice is a signal that the human rights of civilians guaranteed under the constitution do not have real importance when compared to the security policy that protects and entrenches the state's position. This practice also reflects a state driven policy, which changes the balance between liberty and justice.

References

Ambarwati, et al. *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*. Jakarta: Rajawali Press, 2009.

Amnesty International. "Charting the War on Terror." http://www.amnestyusa.org/amnestynow/war_terrorism.html.

Asplund, Knut D., et al. *Hukum dan Hak Asasi Manusia*. Yogyakarta: PUSHAM UII, 2008.

Asshiddiqie, Jimly. *Hukum Tata Negara Darurat*. Jakarta: Rajawali Press, 2007.

Bill on State Intelligence (draft 25 January 2002, September 2003 & March 2006).

Calinawan, Karla and Jennifer Jhun. "History of the Philippines." December 2001, www.wellesley.edu/Activities/homepage/filipina/philippines/history/history.html.

Constitutional Court Decision No. 013/PUU-I/2003 (after the plea of Maskur, alias Abdul Kadir).

Crib, Robert. *Pembantaian PKI di Jawa dan Bali 1965–1966 (Indonesian Killings of 1965–1966)*. Translated by Erika S. Alkhattab and Narulita Rusli. Yogyakarta: Mata Bangsa, 2003.

De Rover, C. *To Serve and To Protect: Acuan Universal Penegakan HAM*. Jakarta: RajaGrafindo Persada, 2000.
Donnelly, Jack. *International Human Rights: Second Edition*. Colorado: Westview Press, 2003.

Falaakh, Muhammad Fajrul, et al. *Implikasi Reposisi TNI-POLRI dIbidang Hukum*. Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2001.

Harahap, M. Yahya. *Pembahasan Permasalahan dan Penerapan KUHAP, Jilid 1*. Jakarta: Garuda Metropolitan Press, 1988.

Haryomataram, KGPH. *Pengantar Hukum Humaniter*. Jakarta: RajaGrafindo Persada, 2005.

ICRC. "The Geneva Conventions of 1949." 3 September 2009, http://www.icrc.org/web/eng/siteeng0.nsf/html/genevaconventions.

Imparsial. *Catatan HAM 2004: Keamanan Mengalahkan Kebebasan*. Jakarta: Imparsial, 2006.

Imparsial. "Terorisme dalam Pergulatan Politik Hukum" in Rusdi Marpaung and Al Araf (eds.), *Terorisme: Definisi, Aksi dan Regulasi*. Jakarta: Imparsial, 2003.

Imparsial and Koalisi Kebebasan Masyarakat Sipil. *UU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat*. Jakarta, Imparsial, 2003.

Koran Tempo. "BIN Akui 'Pasal Penculikan'." www.korantempo.com.

Law No. 8 Year 1981.

Law No. 23 Year 1959 on the State of Emergency.

Media Indonesia. "Yusril: Putusan Mahkamah Konstitusi hanya untuk Bom Bali." 25 July 2004.

Permanasari, Arlina, et al. *Pengantar Hukum Humaniter*. Jakarta: International Committee of the Red Cross, 1999.

Purcell, Hugh. *Fasisme (Fascism)*. Translated by Faisol Reza, et al. Yogyakarta: Insist Press, July 2000.

Reza, Bhatara Ibnu. "Reformasi Legislasi Sektor Keamanan" in Beni Sukadis (ed.), *Almanak Reformasi Sektor Keamanan 2007*. Jakarta: Lesperssi and DCAF, 2007.

Stockmann, Petra. *The New Indonesian Constitutional Court: A Study into its Beginnings and First Years of Work*. Jakarta: Hans Seidel Foundation, 2007.

United Nations General Assembly. *The Universal Declaration of Human Rights*. Resolution 217 A (III), 10 December 1948.

United Nations High Commissioner for Human Rights. "Working Group on Arbitrary Detention." http://www2.ohchr.org/english/issues/detention/.

Valerio, Daisy. "Involuntary Disappearances in the Philippines and People's Response to This Cruel Phenomenon" in Asian Federation Against Involuntary Disappearances (AFAD), *Between Memory and Impunity: A Conference of Asian and Latin American Lawyers.* Jakarta: November 27–December 2, 2000.

Waspada. "Jika Terbukti, Pangkoopslihkam Akan Pecat Oknum TNI Ancam Warga Rusak Rumah Keluarga GAM." 23 July 2004.

Widjajanto, Andi (ed.). *Panduan Perencangan Undang-Undang Intelijen Negara*. Jakarta: Pacivis, August 2006.

Appendix

Model questionnaire to be completed by persons alleging arbitrary arrest or detention [a]

I. Identity of the person arrested or detained

1. Family name : .....

2. First name : .....

3. Sex : (Male) (Female)

4. Birth date or age (at the time of detention) : .....

5. Nationality/Nationalities : .....

6. (a) Identity document (if any) : .....

(b) Issued by : .....

(c) On (date) : .....

(d) No. : .....

7. Profession and/or activity (if believed to be relevant to the arrest/detention):

.....

.....

8. Address of usual residence : .....

.....

II. Arrest[b]

1. Date of arrest : .....

2. Place of arrest (as detailed as possible) :

.....

.....

.....

.....

.....

3. Forces who carried out the arrest or are believed to have carried it out :

.....

.....

4. Did they show a warrant or other decision by a public authority?
(Yes) (No)

5. Authority who issued the warrant or decision:

.....

.....

6. Relevant legislation applied (if known): .....

.....

.....

III. Detention[c]

1. Date of detention : .....

2. Duration of detention (if not known, probable duration): .....

3. Forces holding the detainee in custody : .....

.....

4. Places of detention (indicate any transfer and present place of detention):

.....

.....

5. Authorities that ordered the detention: .....

.....

.....

6. Reasons for the detention imputed by the authorities: .....

.....

.....

7. Relevant legislation applied (if known): .....

.....

IV. Describe the circumstances of the arrest and/or the detention and indicate the precise reasons why you consider the arrest or detention to be arbitrary[c]

.....

.....

.....

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.....

.....

V. Indicate internal steps taken, including domestic remedies, especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken

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VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible)[d]

.....

.....

.....

.....

Date: ..... Signature: .....

This questionnaire should be addressed to the Working Group on Arbitrary Detention, OHCHR-UNOG, 1211 Geneva 10, Switzerland, Fax No. +41 (22) 917.90.06.

a/ A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not necessarily result in the inadmissibility of the communication.

b/ For the purpose of this questionnaire, "arrest" refers to the initial act of apprehending a person. "Detention" means and includes detention before, during and after trial. In some cases, only section II or section III may be applicable. Nonetheless, whenever possible, both sections should be filled in.

c/ Copies of documents that prove the arbitrary nature of the arrest or detention, or help to better understand the specific circumstances of the case, as well as any other relevant information, may also be attached to this questionnaire.

d/ If a case is submitted to the Working Group by anyone other than the victim or his/her family, such person or organisation should indicate authorisation by the victim or his/her family to act on their behalf. If, however, authorisation is not readily available, the Working Group reserves the right to proceed without the authorisation. All details concerning the persons(s) submitting the information to the Working Group and any authorisation provided by the victim or his/her family, will be kept confidential.

Freedom of Information and Public Participation: Security Actors and the Stigmatisation of the Civil Society Movement

Nawawi Bahrudin

Introduction

After eleven years, reform of Indonesia's security sector still faces many critical and as yet unresolved problems. One of the problems is the stigma associated with civil society movements. This stigma often makes it difficult for civil society to gain access to public information because it is believed that these groups might leak secrets to foreign parties. History has proved that stigma is the most powerful weapon in repressing the civil society movement. There is also a stigma that civil society organisations have yet to realise some of the inherent problems relating to their participation in security reform, creating civil supremacy and identifying protagonists who are professional and respectful of the law and human rights.

The stigma itself is defined as a negative characteristic in certain persons or groups.[1] Thus the stigma, if attached to certain persons or groups, causes some kind of negative labelling without proof and tends to generalise the character.

Civil society is defined as all actors, institutions, or non-governmental organisations that are independent and promote the ideas of democratisation in security sector reform in the form of advocacy with decisionmakers from security institutions, policymakers (the People's Representative Council/DPR) and other governmental institutions, such as the Department of Defence.[2]

Meanwhile, the security sector is defined as all institutions that have the authority to use or deploy physical force or threaten the use of physical force in order to protect the state and its citizens. This definition includes the TNI and POLRI, and other civilian institutions that are responsible for its management and monitoring, such as the president, the Department of Defence and the parliament (DPR).[3]

1 W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia, Edisi Ketiga* (Jakarta: Balai Pustaka, 2003).
2 Mufti Makaarim, "Efektivitas Peran Masyarakat Sipil dalam RSK 1998–2008," paper given at the symposium on 10 Years of SSR in Indonesia, Jakarta, 28–29 May 2008.
3 IDSPS, *Backgrounder 4: Reformasi TNI* (Jakarta: IDSPS, May 2008).

The Facts about Stigmatisation

The following are several examples of stigmatisation of the civil society movement by security actors:

1. Minister of Defence Juwono Sudarsono once released a statement saying that non-governmental organisations, especially foreign NGOs such as Amnesty International or Human Rights Watch, were like moral bullies. NGOs, he added, were no more than a conscience industry whose ability to survive depended on certain cases only. Apart from double standards, the NGOs were also not considered independent because eighty percent of their funds came from foreign sources.[4]

   According to the minister, foreign NGOs were moral bullies who regarded themselves as righteous. They always rallied on behalf of human rights and democracy, whereas what really happened in some of the developed countries from which the foreign NGOs came was sometimes quite the opposite.

   In justification of his statement, the minister stated that when he had been Ambassador to the United Kingdom, he had once protested about Human Rights Watch, which he regarded as hypocritical because it considered the use of Scorpion tanks by the TNI in Aceh when dealing with the armed resistance was wrong. Meanwhile, the decision by the British government to send intelligence operations with the police to Northern Ireland was deemed righteous. His protest was also due to the fact that Human Rights Watch had urged the British government to complain to the Indonesian government over the use of Scorpion tanks by the TNI in Aceh.

2. The analysis that labeled civil society as one of the internal threats to the national integrity and coherence of the Unitary State of the Republic of Indonesia (NKRI) is still a view held by the government, especially the military. This view came about because the TNI circle still perceives the issues of human rights and law enforcement of TNI/POLRI members promoted by human rights NGOs are part of a Western agenda bent on breaking the TNI's unity and weakening it. As a reaction to this perception, several human rights NGOs have assumed a resistant attitude to every state action they suspect is aimed at threatening their work.[5] This analysis also shows that the Indonesain government has stigmatised civil society as part of its foreign strategy and intervention.

3. The role of civil society organisations (CSOs) in influencing the legislation and policies in the security sector is not as influential as imagined because CSOs are still perceived by parliament as a "cheering crowd" in the commotion of legislation and policymaking procedure with no formal involvement.

4. This stigmatisation of CSOs by security actors in 2007 nearly led to a lawsuit in the South Jakarta State Court between Imparsial and Major General TNI Syafril Armen as head of the Strategic Intelligence Agency (BAIS). This lawsuit was filed after the seminar held by the Department of Defence on 29 August 2006. At the seminar, the BAIS described the results of its studies and analysis entitled "Perceptions of Internal and Transnational Threats."[6]

4 *Kompas*, "Menhan: Jangan Jadi Preman Moral," 23 December 2008.
5 Mufti Makaarim A. and S. Yunanto (eds.), *Efektivitas Strategi Organisasi Masyarakat Sipil dalam Advokasi Reformasi Sektor Keamanan di Indonesia 1998–2006* (Jakarta: IDSPS, 2008).
6 *Hukum Online*, "Dituduh Kelompok Radikal, Imparsial Gugat BAIS," 22 March 2007, http://www.hukumonline.com/detail.asp?id=16398&cl=_Berita.

As a result of its research, the BAIS claimed that there were radical groups in Indonesia, which threatened the existence of Pancasila (the Five Principles). The BAIS divided them into three major groups, namely leftist radical groups, rightwing radical groups and other radical groups. "Imparsial, along with KontraS and Elsham Papua, were categorised as part of the other radical group."

Imparsial perceived the action by the BAIS as a violation of the law and human rights. Therefore, Imparsial demanded material and immaterial compensation for the sum of Rp 1,061,945. According to Poengky Indarti, the external relations director of Imparsial, this figure was derived from putting together the inception details of Pancasila, which is 1 June 1945.

5. Propatria, as one of the civil society organisations that conducts advocacy work in security sector reform, faces suspicion and defensive behaviour from the TNI circle. Several of Propatria's founders were once suspected by the TNI to be problematic because they were considered to be neither "clean self" or "clean environment." In fact, when Propatria was promoting the Defence Act, it received many threats via SMS or through direct phone calls issued by the heads of the TNI telling it to shirk from its planned actions.[7]

6. Bibit Waluyo, the governor of Central Java who was the former commander in chief of the District Military Command IV Diponegoro, accused the NGOs part of the *Jaringan Advokasi Peduli Pegunungan Kendang Utara* (Advocacy Network for North Kendang Mountains), Walhi, KontraS, Desantara, the LBH, the ANBTI, KRUHA, Jatam, ICEL, SHEEP, the LBH YAPHI, HUMA, SARI and Madya, among others, as *sontoloyo* (slang for stupid, which is an exclamation of dislike) and crazy because they had provoked the community in that region to reject the development of the Semen Gresik factory.[8]

   That statement resulted in a legal notice from the NGOs urging Bibit to apologise publicly for what he had said. If within the determined time he would not, the NGO network would file a civil action.

Principles, Boundaries and Protection (Including National and International Legal Protection)

One of the important pillars in the realisation of democratic government is open government. Open government is the transparent organisation of government from decision making, execution to evaluation. The right to information is a prerequisite to open government.[9]

From a human rights perspective, the right to information is fundamental and is acknowledged as such within international human rights instruments, like Article 19 of the Universal Declaration of Human Rights, which states that:

7 Yosef Adi Prasetyo, "Masyarakat Sipil dan Reformasi Sektor Keamanan," paper given in the training "Civil Society Advocacy for Indonesian Security Sector Reform" organized in cooperation with Imparsial, INFID and KontraS at Hotel Cemara in Jakarta, 10–16 December 2007.
8 *Tempo Interaktif*, "Gubernur Bibit Soal LSM 'Sontoloyo': Biarkan Saya Ambekan," 28 July 2009.
9 Emerson Yuntho, *Kejahatan Informasi Rahasia dalam RUU KUHP* (Jakarta: Aliansi Nasional Reformasi, 2006).

> *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.*

Indonesia guarantees the right to information by including it in Article 28F of the Second Amendment of the Constitution of 1945 (UUD 1945) as follows:

> *Each person has the right to communication and to acquire information for his own and his social environment's development, as well as the right to seek, obtain, possess, store, process and spread information via all kinds of channels available.*

Therefore, this right is a constitutional right.

The amendment served to strengthen the regulations that were previously formulated in 1999 through Article 14 of Law No. 39 of 1999. The rationale for the regulation, which distinctly regulates the freedom of information, is:

a. To promote democracy by ensuring public access to information and records of data and information;
b. To improve public access to data and information;
c. To ensure that institutions comply with the expiration period; and
d. To maximise the use of data and information from institutions.

Photo 14. Training for Civil Society Activists on Security Sector Reform Conducted in 2005

Several philosophers claim there is no such thing as absolute freedom therefore freedom of information is qualifiable. The problem is a question of defining boundaries so that freedom of information can be enjoyed with respect to everyone's rights.

Article 19 part 3 of the International Covenant on Civil and Political Rights states that in relation to the right to freedom of (responsible) expression—including to seek, receive and impart information—it is possible to regulate certain limitations or exceptions as long as it is regulated by law and considered that there are major interests in respecting another person's rights and reputation, as well as to safeguard state security, public order, public health or moral interests.
However, Article 28J part 2 of the UUD 1945 also regulates the limitations on the right to receive information, which state that in the practice of their rights and freedoms, everyone is bound by the limitations set by the law. The intention of this is merely guaranteeing and acknowledging a respect for other's rights and freedoms and to fulfil demands in reference to moral considerations, religious values, safety and public order within a democratic society.

The Penal Code (KUHAP) also regulates several limitations on the freedom of information with sanctions for people who release information on certain matters. For example:

1. Article 112 on letters, news or explanations that must be kept secret due to the interets of the state (maximum penalty twenty years in prison);
2. Article 124 on military secrecy (maximum penalty of fifteen years in prison);
3. Article 322 on official secrecy (maximum penalty nine months in prison or a maximum fine of Rp 900000);
4. Article 323 on company secrecy;
5. Article 369 on personal secrecy/being blackmailed (maximum penalty of four years in prison); and
6. Articles 430–434 on postal secrecy, via the postal system or relationship secrecy via public telephone (maximum penalty of two years and eight months in prison).

Apart from KUHAP, there are several other regulations on secrecy. These include:

1. Law No. 14 of 1970 on Public Court
2. Law No. 7 of 1971 on Archiving
3. Law No. 10 of 1998 on Banking
4. Law No. 36 of 1999 on Telecommunication
5. Law No. 30 of 2000 on Trade Secrecy
6. Government Regulation in Place of Law (Perpu) No. 1 of 2002 on the Fight against Criminal Acts of Terrorism
7. Perpu No. 2 of 2002 on the Enforcement of Perpu No. 1 of 2002.

Meanwhile, the regulations that acknowledge society's right to information are as follows:

1. Decree of the legislative People's Deliberative Assembly (MPR) No. XVII/MPR/1998 on Human Rights
2. Law No. 39 of 1999 on Human Rights
3. Law No. 41 of 1999 on Forestry
4. Law No. 25 of 1999 on Financial Balance between Central and Regional Governments
5. Law No. 28 of 1999 on State Organisations That are Clean and Free from Corruption, Collusion, and Nepotism (KKN)
6. Law No. 31 of 1999 on the Fight against Criminal Acts of Terrorism
7. Government Regulation (PP) No. 68 of 1999 on the Procedure of Implementation of Public Participation in State Organisations (descendant of the Law No. 28 of 1999 on State Organisations That are Clean and Free from KKN)
8. Law No. 23 of 1997 on the Management of the Natural Environment
9. Law No. 24 of 1992 on Spatial Planning
10. Law No. 40 of 1999 on the Press
11. Law No. 8 of 1999 on Consumer Protection
12. PP No. 27 of 1999 on the Analysis of Impacts on Environment
13. PP No. 69 of 1996 on the Implementation of Rights and Obligations, and Form and Procedure of Public Participation in Spatial Planning.

In relation to freedom of information and observing the regulations that exist in several countries, the following has been noted:

- In the USA, information exempted from public access is categorised into nine exemptions. They relate to:
  1. National security and foreign policy: a) military plans; b) weaponry; c) scientific and technological data related to national security; and CIA data;
  2. Internal regulations of institutions;
  3. Information that is distinctly exempted by law from public access;
  4. Classified business information;
  5. Internal government memo;
  6. Personal information (personal privacy);
  7. Data related to investigation;
  8. Financial institution information; and
  9. Geological and geophysical information and data on its sources.

  It must be remembered that the exemptions above have a discretionary character they are not obligatory and are entrusted to their respective institutions.[10]

- Asian countries with similar regulations include Thailand, which enacted its Official Information Act in

10 Harkristuti Harkrisnowo, *Kebebasan Informasi dan Pembatasan Rahasia Negara* (Jakarta: Komisi Hukum Nasional, December 2003).

1997. The exemptions on information that can be accessed by the public are similar to those regulated in the US Freedom of Information Act. This includes the following:

a. Information that can endanger the palace;
b. Information that can endanger national security, international relations or national finance;
c. Information that might obstruct law enforcement;
d. Information or advice from state institutions that is internal in nature;
e. Information that can endanger someone's safety or life;
f. Personal information or medical records, the publication of which will threaten the right to privacy; and
g. Official information protected by law or given by individuals and must be kept secret (Articles 14 to 15 part 6 of the Official Information Act).

- The text of Article 19 (published in London in June 1999) formulated the Public's Right to Know: Principles on Freedom of Information Legislation. There are eight principles put forward in the text, namely:
  Principle 1: Maximum openness
  Principle 2: The obligation to publicise
  Principle 3: Improving open government
  Principle 4: Limiting exemptions
  Principle 5: Making easy the process of obtaining access
  Principle 6: Minimising cost to obtain access
  Principle 7: Open meetings
  Principle 8: Prioritising freedom

Indonesia now has Law No. 14 of 2008 on the Openness of Public Information (KIP). The presence of the KIP Act makes Indonesia the fifth country in Asia, and the seventy-sixth in the world to officially adopt the principles of information openness.

Unfortunately, the KIP Act will have a delayed start as it was not instantly enforced when adopted so the era of information openness will begin in 2010. Section 11 part 1 of the KIP Act obliges every public institution to at any time provide public information related to: (a) the list of all public information under its authority, excluding exempted information; (b) decision results of public institutions and their considerations; (c) all existing policies, including supporting documents; (d) project working plans, including estimations of the annual expenses of public institutions; (e) agreements between public institutions and third parties; (f) information and policies delivered by public officials in public meetings; (g) working procedures of public employees related to public service; and/or (h) reports on public information access as regulated in this law.

In the midst of public optimism in welcoming the era of information openness, the public is concerned about the discussions of the State Secrecy Bill whose substance is contrary to the spirit of information openness. The exempted information mentioned above, in the regime of information openness, will not be kept secret forever but is "saved" for a certain period of time and disclosed to the public after the time period has lapsed. This is what is called "state secrecy."

Therefore, state secrecy is public information that is kept secret from the public for a while. State secrecy is the limitation or exemption from the right to information as a human right. This exemption must be decided by law. Nevertheless, the principle is that all public information, including information owned by the state, is public property.

Freedom of Information and the Security Sector (Cases, Motives, Actors, Forms and Victims)

The International NGO Forum on Indonesia (INFID) experienced a number of hurdles in its efforts to gather data and information pertaining to *alutsista* (main equipment and weapon systems) and the export credit facility. INFID encountered difficulties because institutions like the Bank of Indonesia and the Department of Finance were unwilling to provide information prior to authorisation from the Department of Defence. The excuse given was state secrecy. Meanwhile, the information sought by INFID had actually been published on the websites of international research centres, such as the Stockholm International Peace Research Institute (SIPRI). This shows how the government is deliberately keeping the lid on certain information and resisting any moves by civil society movements to acquire information relating to the procurement of *alutsista* (weapons systems) via the export credit facility.

The same also happened when INFID was producing a documentary on the acquisition of warships from the former East Germany. The purchase was suspected of hemorrhaging the state's coffers to the tune of US $560 million. INFID had great difficulties in carrying out its investigation and filming the warships in spite of having satisfied bureaucratic procedures. INFID's request to the head of the Hydro Oceanography Office of TNI-AL (Naval Forces) Jakarta, which according to information operated several ships from East Germany, had to be screened first to obtain approval from the TNI commander in chief and the TNI-AL chief of staff. At the time of writing, INFID had not received either a rejection or an approval of its request.

All this time, the problem surrounding *alutsista* is categorised within the limits of state secrecy. This makes it difficult for the public or those who wish to monitor the budget to access data. Apparently, such information is not forthcoming irrespective of whether items or projects are deemed sensitive or not. Meanwhile, the withholding of information from the public regarding government spending should only be limited to the procurement of highly sensitive items and information which if leaked could place the state in a precarious situation. An example of this is the procurement of the special forces.[11]

This "all barred information" is apparently out of date. Moreover, in this era of information openness, the people (effectively the taxpayers) have a right and a need to know how their money is spent. Openness is also a form of responsibility and accords with the Decree of the Minister of Defence No. 06/M/VII/2006.

The condition knowledge creates is one of a dividing line between consumers (the Department of Defence and the TNI), producers (the partners), monitors (the DPR) and society. It will automatically create a form of checks

11 *Seputar Indonesia*, "Membendung Calo Alutsista, Tangkal Prasangka," 5 November 2007.

and balances. Even *calo* (a go-between) will find it more difficult to negotiate its way because the public will receive information and be able to criticise the upcoming *alutsista* procurement projects, without having to pay too much for the information.

At the moment, the TNI's weaponry is approximately 25–40 years old. In fact there are many *alutsista* that are older, 41–64 years old. In early 2005, the state of readiness of Indonesia's ground weaponry systems had an average readiness of less than 35%, the naval weaponry system had an average readiness of less than 30% and the aerial weaponry system around 30%.[12]

The implementation of military policies on the "cleansing operations" of Indonesia's Communist Party (the PKI) remnants post-G30S/1965 remains a mystery today. The New Order government never released information on casualties or the instructions issued by the military to cleanse ex-PKIs or the steps taken by the military in relation to President Soekarno, etc. Documents on G30S/1965 and the political and physical struggles that occurred in the early 1970s when Suharto emerged as the new leader were never made public. The public did not receive clarification on human rights violations that occurred or the truth about *Supersemar*, etc. Apparently those documents were deliberately kept secret because the New Order wished to avoid charges of human rights violations and usurped Soekarno's authority by a coup d'etat.[13]

The public has never been told the truth about what really happened in Aceh during the implementation of DOM (military area of operation) in the 1980s—including how the policy of the New Order related to the DOM implementation, how many security forces were sent to Aceh, what the budget was, how much was spent, where the money had come from and how many casualties there were. All these questions remain unanswered and continue to be a government secret. The public has the right to know but the government, especially the military, does not feel the need to be accountable. In fact, it suits them not to be.

Otto Syamsuddin Ishak, a human rights observer from Imparsial, revealed that the total cost of the war in Aceh during military emergencies (*Darurat Militer*) I and II was Rp 4.23 trillion. The sum of Rp 1.868 trillion[14] was poured in by the state to fund police operations there in the same period. A huge deficit of information also remains over the government's conduct in East Timor and the human rights violations that occurred there. What actually transpired before the referendum that eventually saw East Timor secede from Indonesia remains a mystery to the general public in Indonesia.

Weaknesses, Strengths, Challenges and Opportunities in Advocating Freedom of Information and Public Participation

According to Kusnanto Anggoro, those who join civil society organisations are generally lacking in sufficient knowledge of security-related sciences. Perhaps the main strength of CSOs thus lies in its tendency to give democracy a voice.[15]

12 Bappenas, *Evaluasi Tiga Tahun Pelaksanaan RPJM 2004–2009* (Jakarta: Bappenas, April 2008), 79.
13 LSPP, *Position Paper 2003 on the Freedom of Public Information* (Jakarta: 2003).
14 http://komunitaspapua.com/modules.php?op=modload&name=News&file=article&sid=58
15 Kusnanto Anggoro and Anak Agung Banyu Perwita (eds.), *Rekam Jejak Proses SSR Indonesia 2000–2005* (Jakarta: Propatria Institute, 2006).

In its research, the Institute for Defence, Security and Peace Studies (IDSPS) concluded that the dynamic of the security sector reform being advocated in the past eight years is quite focused. It involves coalitions of many actors, approaches and problems that in and of themselves are not political matters but more a formulation of technocratic solutions for the security sector. Solutions need to address concepts of defence and security, the posture of defence and security institutions, budgeting policies and even curriculum development for the education of the military and police.

This dynamic is being influenced by several factors: (1) compromise and political accommodation of the former elite who previously held active roles in the New Order era in the judiciary, legislature and executive over the urgent demands of the public on security sector reform; (2) the emergence of civilian politicians from old and new political parties who are accommodating of the various democracy transition agendas; (3) the opening of public access to the planning process and the making of security sector policies in the parliament and the government (although this has not yet been accompanied by much involvement in the process of formulating the substance and with the latter failing to meet public expectations); and (4) the prompting and support from the international community towards the agenda of security sector reform in Indonesia.

There are various strategic roles held by CSOs, which have stimulated debate and contributed to the discourse of security sector reform. They have also aided in the formulation and advocacy of legislation and policies in the security sector, encouraging accountability and transparency in the process and the implementation of security policies. CSOs have acted as a watchdog for the misuse and abuse of authority and highlighted legal violations by the security actors in the parliament and the executive arms of government.

The limited knowledge of the civil society movement on the sciences related to security perhaps can be viewed as a weakness of the quality of public participation. This matter is actually very much understood by the civil society movement itself. To improve the knowledge of civil society in security sector advocacy, INFID, Imparsial, KontraS and IDSPS have delivered training programmes that started in 2005 and are conducted regularly on an annual basis.

The purpose of the training is threefold: (1) to improve the capability of civil society, including the women's movement, in understanding the interplay between the security sector and human rights, non-traditional security issues and the rights of women and children in conflict affected areas; (2) to provide a conduit for ideas and a means to communicate and formulate its strategies for the security sector (based on the respect and fulfilment of human rights) in Indonesia; and (3) to strengthen and widen the civil society network in promoting the security sector reform process. The following sections attempt to describe several civil society contributions in the regulation-making process related to security sector reform.

Participation of CSOs in the Drafting of the State Secrecy Bill

The Civil Society Network for Security Sector Reform desired the DPR to delay the discussion of the State Secrecy Bill draft because its "excuse of secrecy" had the potential to threaten human and civil rights, namely freedom of the press, freedom of public access to information and advocacy work. This obvious anxiety on the

part of the public is not unjustified. The scope of state secrecy is broad and flexible and it is this factor that may derail the entire process. The problem becomes more complicated because of the decision to label secret information without a "public test" process and thereby gives public officials the liberty to claim state secrecy over information and activities as they see fit. Further, the existence of the Secrecy Council (*Dewan Rahasia*) that is dominated by government officials, as well as the un-representative nature of state secrecy formulation, ignores the need for the public to receive information.

The State Secrecy Bill contradicts the advocacy efforts of civil society. For the security institutions, the TNI, POLRI and BIN could engage in coercive action against society on behalf of the secrecy regime. The lack of clarity in defining the scope and limits of their operations could facilitate the security apparatus in committing human rights violations. Moreover, information related to security sector reform discussions is witheld from advocacy groups and restrains the role of civil society in the reform of the security sector.

The Minister of Defence insists that the State Secrecy Draft Bill is to be legalised. In the discussion period of 2009, the minister is only keen to pursue nominal progress claiming that security sector reform is going well on the basis that a state secrecy act that regulates information relating to defence and security has been born. Therefore, the military reform agenda in the presidency of Susilo Bambang Yudhoyono's government is at an impasse.

Meanwhile, the DPR is inclined to obey the will of the executive. The DPR neglects to scrutinise the articles whose very provisions threaten democracy. If it is not careful, the DPR could diminish its own influence by failing to enter into thorough and rigorous debate about the bill amidst the general elections.

Participation of CSOs in the Formulation of the Decree of the Chief of POLRI No. 8 Year 2009

On 22 June 2009, the chief of the Republic of Indonesia Police legalised the Decree of the Chief of POLRI (*Perkap*) No. 8 of 2009 on the Implementation Guide of Human Rights for the POLRI Circle. This act is worthy of appreciation because POLRI was brave enough to open itself up to input from civil society.

The substantive aspects of *Perkap* are sourced from a number of international human rights instruments. They include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention against Torture, including principles on the use of weapons and codes of conduct. The human rights sensitive *Perkap* has become a sign that POLRI acknowledges the universality of human rights. Dogmatic impediments, often blurred by nationalism, were broken through by POLRI to realise its changes. In terms of scope, POLRI is far more advanced than other institutions.[16]

16 Andi K. Yuwono, "Perkap HAM dan Tantangan POLRI," *VHR Media*, 31 July 2009, http://www.vhrmedia.com/Perkap-HAM-dan-Tantangan-POLRI--opini1937.html.

The next stage of work demands the opening up of civil society participation in the dissemination and instilling of *Perkap* in all members of POLRI, almost 400,000 personnel, and especially to those in the lower ranks. This is vital to the interests of monitoring and control by civil society over the behaviour of the apparatus in the field. Independent monitoring by civil society is crucial to improving POLRI's performance. This resonates with the ideals of POLRI, which is to become a civil and democratic police.

Closing

Post-reformation, the space for public participation is greater to influence and monitor decision making at the executive, legislative and judicial levels. However, at this level of implementation, the government still seems desultory. The takeover of military business, the placing of the TNI Headquarters under the Department of Defence and the making of a national budget (the APBN) that will be the only source of defence funding have yet to be realised.

In future, the quality of public participation must be improved by considering the many perceptions that the security actors have towards CSOs. Some view them as a "cheering crowd" with insignificant contributions. There are parties quite apart from the security actors who maintain that civil society basically does not have adequate knowledge of the security sector.

Security sector reform is related to the formation of various structures that are suitable for civilian control over security actors. Meanwhile, key elements of security sector reform remain, like the socialisation process of various security sector bureaucracies and the depolitisation of the security sector. This shows that the role of civil society as part of the "wider security family" is in fact quite important in the development of democratic security forces and the security sector reform process.

It must be kept in mind that the main purpose of security sector reform is to create transparency and systemic accountability based on substantive democratic control. Therefore, public participation is a crucial aspect in determining the success of security sector reform. South Africa is an example of less successful security sector reform because of the absence of critical debate and the swelling of apathy toward the military.

The efforts at strengthening civil capability in the defence sector are not just limited to the civil society movement but also to those within the Department of Defence and the parliament. Their efforts are important in shaping outcomes because of their competence in areas related to defence and security. This is a vital prerequisite to the implementation of security sector reform in Indonesia.

Satisfying the right to receive information and acknowledging the participation of civil society movements in security sector reform will not only facilitate the creation of clean and efficient government and simultaneously aid in the prevention of corruption but will also improve the quality of public participation in the formulation of public policies and the monitoring of their implementation.

References

http://komunitaspapua.com/modules.php?op=modload&name=News&file=article&sid=58

Anggoro, Kusnanto and Anak Agung Banyu Perwita (eds.). *Rekam Jejak Proses SSR Indonesia 2000–2005.* Jakarta: Propatria Institute, 2006.

Bappenas. *Evaluasi Tiga Tahun Pelaksananaan RPJM 2004–2009.* Jakarta: Bappenas, April 2008.

Harkrisnowo, Harkristuti. *Kebebasan Informasi dan Pembatasan Rahasia Negara.* Jakarta: Komisi Hukum Nasional, December 2003.

Hukum Online. "Dituduh Kelompok Radikal, Imparsial Gugat BAIS." 22 March 2007.

IDSPS. *Backgrounder 4: Reformasi TNI.* Jakarta: IDSPS, May 2008.

Kompas. "Menhan: Jangan Jadi Preman Moral." 23 December 2008.

LSPP. *Position Paper 2003: Tentang Kebebasan Informasi Publik.* Jakarta: 2003.

Makaarim, Mufti. "Efektifitas Peran Masyarakat Sipil dalam RSK 1998–2008." Paper given at the symposium on 10 Years of SSR in Indonesia, Jakarta, 28–29 May 2008.

Makaarim, Mufti A. and S.Yunanto (eds.). *Efektifitas Strategi Organisasi Masyarakat Sipil Dalam Advokasi Reformasi Sektor Keamanan di Indonesia 1998–200*6. Jakarta: IDSPS, 2008.

Poerwadarminta, W.J.S. *Kamus Umum Bahasa Indonesia, Edisi Ketiga.* Jakarta: Balai Pustaka, 2003.

Prasetyo, Yosef Adi. "Masyarakat Sipil dan Reformasi Sektor Keamanan." Paper given in the training "Civil Society Advocacy for Indonesian Security Sector Reform" organized in cooperation with Imparsial, INFID and KontraS at Hotel Cemara in Jakarta, 10–16 December 2007.

Seputar Indonesia. " Membendung Calo Alutsista,Tangkal Prasangka." 5 November 2007.

Tempo Interaktif. "Gubernur Bibit Soal LSM 'Sontoloyo': Biarkan Saya Ambekan." 28 July 2009.

Yuntho, Emerson. *Kejahatan Informasi Rahasia Dalam RUU KUHP*. Jakarta: Aliansi Nasional Reformasi KUHP, 2006.

Yuwono, Andi K. "Perkap HAM dan Tantangan POLRI." *VHR Media*, 31 July 2009, http://www.vhrmedia.com/Perkap-HAM-dan-Tantangan-POLRI--opini1937.html.

The Right to a Fair, Open, Free and Impartial Trial: The Difficulty in Bringing Human Rights Violators to Justice

Agung Yudhawiranata

Introduction

The judiciary plays an important role in the settlement or rehabilitation efforts of cases of human rights violations. In its position and workings, the judiciary must guarantee the principles agreed by the international community, such as impartiality, openness, honesty and fairness.[1] The result of a trial conducted without respecting these principles is clear in that the rehabilitation of people deprived of their rights would not be achieved. That is why the courts must be free, open and fair.

The right to a fair and impartial trial is a basic human right and is one of the principles acknowledged in the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the UN General Assembly and which became the foundation of the international system of human rights. This right is further asserted and elaborated in various international agreements, for example the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the government of Indonesia in 2005. It states "everyone shall be entitled to a fair and public hearing by a competent, independent tribunal established by law."[2] Moreover, the covenant also included the rights to not be arrested or apprehended arbitrarily, the right to remain silent, the right to have a lawyer or legal adviser present, the right to be present in court, right not to be tortured and the right to appeal. Therefore, acknowledging and implementing the right to a fair and impartial trial is considered a symbol of a democratic society. How a person is treated when accused of committing a crime shows how far the state respects the human rights of its citizens.

This study is meant to achieve some understanding of what the concept and aspects of a fair trial should be and what actually supports and undermines the process. Aspects of a fair legal process must consist of the rule of law, the principle of equality before the law and the presumption of innocence. These three aspects are integral to a fair trial. The right to a fair trial is a norm in international human rights law designed to protect individuals from unlawful and arbitrary limitations of their rights and freedoms.[3]

1 See Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).
2 Article 14 of the International Covenant on Civil and Political Rights (ICCPR).
3 Yayasan Lembaga Bantuan Hukum Indonesia, *Fair Trial: Prinsip-Prinsip Peradilan yang Jujur dan Tidak Memihak* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia,

This writing seeks to uncover whether the judicial system, administration and practices in Indonesia are capable of executing this important role, especially in respect to cases that involve human rights violations. This, especially, is because the cases of human rights violations often involve state officials or law enforcement officials, including the military officials, as the perpetrators.

Violations of Fair Trial Principles in Legal Practice in Indonesia

A fair and impartial judicial process can be influenced by a number of things, in particular corruption or incompetence (specifically on the part of the judge and other judicial components), contempt of court or judicial intervention (usually by the media and families of the parties involved in the lawsuit), intimidation of witnesses, and the absence of legal assistance or difficulty of the accused in accessing a lawyer or legal adviser.

Based on the principles of a fair and impartial trial, it is apparent that many violations have occurred and continue to occur in Indonesia. One violation is the absence of or minimal access to legal advocates due to the non-existence of necessary funds. This is a violation of Article 14 Clause 3(d) of the ICCPR, which states that everyone has the right to acquire legal aid for the sake of justice and without paying for it in the event the person does not have sufficient funds to pay for it (the right to free legal aid). Another violation is when, in criminal cases where the accused is faced with a long sentence or a death sentence, a person is guaranteed the right to effective legal assistance (the right to effective legal assistance in death penalty cases). A third violation occurs when cases are bustling with judicial mafia, which is a violation of the right to be tried by a competent, independent and impartial tribunal established by law.[4]

The high cost of lawsuits, complex bureaucracy and corrupt judicial officials have contributed most to injustice or poor justice by those seeking redress and resolution. The principle of equality before the law, which has been the mandate of the Constitution of 1945 (*Undang-Undang Dasar*/UUD 1945), is not implemented in certain cases, especially in cases of those in poverty versus those with economic, social and political power. High levels of judicial corruption make access to justice by the poor impossible as they cannot afford to pay for it. The practice of trading cases still goes on. Overall, the judicial process does not guarantee true justice.[5]

Indonesia's legal system has been much interfered with by political and economic interests for years so that justice is no more than a traded commodity. The judicial body as the main instrument of law enforcement has been turned into a "market" to trade justice and become a source of corruption, collusion and nepotism (*korupsi, kolusi, nepotisme*/KKN). That is also the case with values pertaining to justice, which have been mixed with all forms of authority or commercial interventions.

A case is considered profitable only from a political and economic perspective. This is often regarded as legitimate because the determining mechanism has met the legal formal standard. The thing that has exacerbated our legal system is that the factors above are endemic and carried out systematically by the law enforcement

1997).

4 Sumbawa News, "YLBHI Minta Ketua MA Terpilih Pro Keadilan untuk Orang Miskin" (21 January 2009), http://www.sumbawanews.com/berita/nasional/ylbhi-minta-ketua-ma-terpilih-pro-keadilan-untuk-orang-miskin.html.

5 *Kompas Online*, 7 August 2004 edition. http://www2.kompas.com/kompas-cetak/0408/07/opini/1193493.htm.

officials themselves who are have come to be known as "judicial mafia."[6]

The result of this is that Indonesia is known for the abuse of power by its law enforcement officials such as the police and military. Arbitrary arrest and torture have been common practice in this country. The legal culture and practice and judicial system in Indonesia have directly or indirectly encouraged these illegal acts by law enforcement officials by guaranteeing them legal immunity. The situation in military courts is worse. It is very hard for civilians to access the court and the trial is held privately. The judges in the military court give verdicts that are in the interests of the perpetrators (military officials).

Privilege of Security Actors and Equality before the Law: Practices in Military Court

The military institution is unique due to its special role and position in the state structure. As the backbone of the state's defence, the military institution is expected to assure the discipline and readiness of its soldiers in facing all forms of threats to the security and survival of the state. Therefore, almost all military institutions in the world have their own special judicial mechanism known as the military court. In Indonesia, the military court is regulated under Law No. 31 of 1997 on the Military Court. It regulates matters related to military court jurisdiction, organisational structure and functions, the Penal Code and interconnection of jurisdiction code and military administration code.

Prior to the regime change in 1998, Law No. 31/1997 on the Military Court established the military court as one of the judicial bodies that was organisationally and administratively positioned under Indonesia's Military Forces Headquarters (*Markas Besar/Mabes* TNI). This judicial body was established to try criminal cases (crimes or infringements) against members of Indonesia's Armed Forces (TNI), individuals considered equivalent to them or individuals who—according to the law—were within the jurisdiction of the military court.[7] Thus, both the jurisdiction and the justiciable are very specific. If the jurisdiction is limited to criminal cases (so that the civil or state administration cases are outside its jurisdiction), then the justiciable is limited to members of TNI and/or individuals considered equal according to the law.

There is one main problem in relation to the organisation and operation of the military court, namely the position of the military court in the hierarchy of judicial authority. This has implications for the influence of command. The military court is located within the TNI Headquarters. Furthermore, the procedural mechanisms of the military court are influenced by its organisational problems. Therefore, one of the important pieces of action to take is to remove the Armed Forces Legal Office (*Badan Pembinaan Hukum/Babinkum*) and military court organisation from under the control of the Department of Defence and assert the position of the military court at the appeal level (in the Supreme Court/*Mahkamah Agung*, MA) as a civil institution. In such cases, all judges in the Supreme Court must have civilian status.

6 According to Daniel S. Lev, judicial mafia is "… a working system that benefits all its participants. In some ways, in fact, for advocates, who otherwise are excluded from the collegial relationships of judges and prosecutors, it works rather better and more efficiently than the formal system." See: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), *Advokat Indonesia Mencari Legitimasi: Studi tentang Tanggung Jawab Hukum di Indonesia* (Jakarta: PSHK, 2001), 11.

7 See Section One (General) of Law No. 31/1997.

Photo 15. Alas Tlogo Trial in March 2008, which Charged 13 Navy Personnel for Shooting Civilians During a Forced Eviction

Amendments to the 1945 the Constitution brought basic changes to the execution of judicial authority and further regulated Law No. 4 of 2004 on Judicial Authority. The consequence of these changes is the transformation of the organisation, administration and finance of judicial bodies under the Supreme Court. Prior to this, the military court was conducted under the TNI Headquarters. As of 1 September 2004, the organisation, administration and finance of the military court moved from the TNI to the Supreme Court. The result of this is that all TNI soldiers and civilian state officials (*Pegawai Negeri Sipil*/PNS) working within the military court became organic personnel of the Supreme Court, although the management for the military personnel is still conducted by the TNI Headquarters.

Even though the military court has been put under civilian administration, it does not mean that there are no problems, especially in the implementation of the principles of a fair trial. It is essential that the military court conduct itself competently, independently and impartially. The judges in military court often give special treatment to military officials. That is the reason why the main considerations in measuring the independence and impartiality levels of a judicial process are usually whether the judges received the required education and/or training and qualification in law (particularly in criminal law) and whether, in doing their duty, they can act truly independently or whether they are they under pressure from higher ranking military officials.

When a member of the military commits a crime, there are several legal channels that may be pursued. According to Law No. 31/1997 on the Military Court, each member of the TNI and POLRI who commits a legal infringement will be sent for a military trial. However, if the act was a general crime and/or was committed with

the involvement of civilians, it is possible, in accordance with Law No. 35 of 1999 on the Changes over Law No. 14 of 1970 on the Principles of Judicial Authority, to conduct an interconnectivity of jurisdiction case trial. Under the interconnection of jurisdiction procedure code, an interconnectivity team will be formed by a decree from the minister of defence and approval from the minister of justice. The Supreme Court will decide whether the interconnectivity trial is conducted in a civil or a military court.

In the handling of cases of human rights violations, the use of the interconnectivity trial has diminished the severity of the violations and erased the universal principles of international law, such as command responsibility and superior order. This is due to the chain of command and superiors with the right to impose punishment (*atasan yang berhak menghukum-Ankum*), absolving the person who has been given the right to make the order resulting in the violation in the first instance. The functions of *Ankum* and also *Papera* (*Perwira Penyerah Perkara*/officer with prosecutor function in a military court and in military legal cases) in the military judicial system have become problems within the framework of law enforcement in Indonesia. Ankum and Papera have the authority to decide legal mechanisms to be implemented over an infringement act committed by members of the military, as well as to decide whether an act of infringement is defined as a disciplinary violation, a military criminal act or a general criminal act. Even if an infringement is considered only a disciplinary violation, Ankum can directly decide and impose punishment. Papera, based on Law No. 31/1997 has the discretion to decide whether or not the result of an investigation will proceed to the prosecution level. The extensive authority of these two institutions, combined with the tendency toward an exclusive military circle, provides many opportunities for the closing of cases that in fact fall within the jurisdiction of general criminal law.

In the military circle, there are institutions called DKM/DKP (the Military Honour Board or Officers Honour Board). These institutions were established to maintain the honour of the officers corps and to take care of character and disciplinary violations committed by the officers. However, in practice, these institutions usurp criminal cases committed by military officers and deny the opportunity for the existing judicial system to function.

Another problematic aspect of the system is that an individual who is not even a member of the TNI/POLRI can be tried in military court. Article 9 paragraph 1 states that an individual who is not a member of the military—with the decree of the commander in chief (*Panglima*) and the approval of the justice minister—can be tried in military court. The Military Court Act also enables members of the TNI/POLRI who committed legal violations to not necessarily be tried. Article 123 of Law No. 31/1997 states, "Papera have the authority to (h) close a case for the sake of law or the military" and Article 126 paragraph 2 states that, "in certain cases, if public or military interests are willing, the Commander in Chief can consider the closure of a case." These arrangements are clearly a huge impediment to accessing a fair trial.

The injustice of the military court is not merely in the process and/or the decisions it makes. More than that is the issue surrounding the rights of the suspect and the accused, which are less guaranteed or even neglected. However, the TNI soldiers are also citizens who have the right to be treated like other civilians. Even though a citizen is suspected and/or is convicted of committing a crime, it does not mean that he/she loses their basic human rights. In the military court system there is no clarity on the guarantee of civil rights for military members. Acknowledgement of the rights of the suspect/accused is still poor, with several articles in Law No. 31/1997 on the Military Court distinctly limiting those rights. The right to have a lawyer present, the right to

know the reason behind the arrest and/or accusation, the right not to be intimidated and tortured, the right to call and meet with family, etc. are not by any means regulated in our military court system. The soldiers or members of the military, however, are citizens (citizens in uniform). Therefore, they must also have equal rights before the law as other citizens.

Several cases in which the military court breached the principles of a fair trial, for example, emerged in the case of the maltreatment of Nasarudin in 2001. The Jakarta Military Court sentenced the defendant Aj Insp. Makmur Sinuaji to only three-and-a-half months in prison, even though the victim died as a result of torture. In the case of Yudianto in Jakarta, the military court sentenced the defendant Brig. (Pol.) Pambudi to three years in prison for causing death by shooting.[8] Three soldiers from the 700th Raider Infantry Battalion who were suspected of involvement in the attack on three small villages, namely Karama, Bonto Gaddong, and Ujung Moncong in South Celebes on 29 November 2005, were sentenced to only two-and-a-half months by the 316 Military Court Makassar in the region on 16 January 2006. Moreover, there was no verdict issued by the court regarding compensation for the victims. It has been reported that the soldiers indicted for the South Celebes incidents are still on duty in their units.[9]

On 14 August 2008, the Military Court III/12 Surabaya sentenced thirteen members of the TNI AL (Indonesia's Armed Forces–Naval Forces) found guilty of attacking and shooting the inhabitants of Alas Tlogo Village on 31 May 2007. That attack killed four civilians and injured eight others. Ten defendants were each sentenced to a measly one-and-a-half years in prison, minus the period in remand. They were not even discharged from their unit. The team commander, First Lieutenant Budi Santoso, was sentenced to three years in prison and discharged from his unit; First Corporal Suratno was sentenced to two years in prison and also discharged from his unit; and Private First Class Suyatno was sentenced to two-and-a-half years in prison and discharged from his unit.[10] The verdicts of Military Court III/12 Surabaya for the cases of shooting of civilians by the TNI AL personnel negate the ultimate responsibility of command. The verdict by the judges in which only the field executors of the shooting were indicted demonstrates the impotence of the military court to reach the suspects who are the first in the chain of command.

The mechanism for redressing and settling violations committed by members of the military shows the clear takeover by the internal military establishment of legal matters that should not be within their juridsdiction, as it is this system that perpetuates impunity and injustice.

The Problem of a Fair Trial in the Penal Procedure Code: the Existence of a Crown Witness (*Saksi Mahkota*)

The birth of Law No. 8 of 1981 on the Penal Procedure Code (referred to as *Kitab Undang-Undang Hukum Acara Pidana*/KUHAP) gives new hope to the protection of human rights in the criminal court process—especially

8 Asian Human Rights Commission, "INDONESIA: Tiga serdadu mendapat hukuman yang ringan sementara yang pelaku yang lain masih dalam jumlah yang besar terkait dengan peristiwa penyerangan terhadap tiga dusun kecil di Sulawesi Selatan," AHRC Document No. UP-018-2006 (2 February 2006), http://indonesia.ahrchk.net/news/mainfile.php/ua2006/48/.

9 Ibid.

10 *Tempo Interaktif*, "Warga Alastlogo Protes Vonis Pengadilan Militer" (18 August 2008), http:www.tempointeraktif.com/hg/nusa/2008/08/18/brk,20080818-131290,id.html.

those related to the protection of the basic rights of a suspect/accused. This can be viewed in articles or principles concerning the rights of the suspect/accused, such as the principle of equality before the law, found in the general explanation of Article 3; the right to be immediately examined, presented to the court and tried (Article 50 paragraphs 1, 2 and 3); the right to acquire legal aid for every suspect/accused (Article 54); the right to be informed by the legal officers of the accusation directed toward the individual (Article 51); the right to freely give information (Article 52); and the principle of presumption of innocence, which is stated in the general explanation of Article 3c of KUHAP.

The rights of a suspect or the accused as mentioned above are in fact in accordance with the core of fair legal process, which principally desires protection over the suspect and the accused.

Nevertheless, it seems that fair legal process as stated in KUHAP is more oriented towards the protection of the rights of the suspect/accused. This can be seen in the articles regulating the rights of the suspect/accused and in the principles regulating the protection of human dignity in the explanatory section of KUHAP. The result of this is that fair legal process in this context tends to create an imbalance of interests between the interests of the suspect/accused and of the victim. The rights of the suspect are often put too much forward, while the rights of the victim are neglected. This is particularly seen in the facts of the still implemented mechanism of "crown witness" (*saksi mahkota*) within the criminal court in Indonesia.

The KUHAP has its own system of establishing proof that is referred to as legitimate evidence and described in Article 184 of the KUHAP. What is meant by legitimate evidence is: a) witness testimony; b) expert testimony; c) letter; d) clues; and e) the testimony of the accused. The term "crown witness" is unknown to the KUHAP but in practice exists. "Crown witness" is a reference to the "main witness" who is selected from a pool of other suspects accused of committing the same crime but who is bestowed with the ultimate accolade — the Crown.

The rule of this "crown witness" was initially regulated in Article 168 of the KUHAP, which principally proscribed the testimony of the other accused parties in court with the provision for the accused to resign as a witness. Later, the consideration on the understanding of "crown witness" as evidence in criminal cases was regulated in the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 1986K/Pid/1989 of 21 March 1990. In that jurisprudence, it was explained that the Supreme Court does not forbid the public prosecutor to present a crown witness provided that the witness-accused is not included in the same file as the accused against whom testimony is given.

Normatively speaking, the use of a "crown witness" is against the principles of a fair and impartial trial and a violation of the universal human rights principles as regulated in KUHAP itself; in particular, a denial of the right of the accused not to be burdened with the responsibility of verifyication (see Article 66 of KUHAP). Besides, the use of "crown witness" by the general prosecutor clearly violates the basic rights of the accused as regulated in the International Covenant on Civil and Political Rights (ICCPR).[11]

11 The "lawsuit" on the use of crown witnesses later became one of the main problems that surfaced in the trial process of the Ad Hoc Human Right Court for the East Timor and Tanjung Priok cases. The rules in the articles of KUHAP stated that the witnesses to be examined are forbidden to make contact with each other before the trial. However, many of those witnesses were still inside the court before the examination or, even though they were outside it, they were still able to hear the testimony through the speakers. There were no serious efforts from the judicial components to try to hinder or prevent the witnesses from making contact with each other or to listen to previous

Human Rights Court: the Challenges of Accountability, Fairness and Impunity

In the early years after the collapse of the New Order regime, the condition of human rights enforcement and protection was exacerbated with the incidence of more severe human rights violations. The settling of the cases of Tanjung Priok, the DOM (*Daerah Operasi Militer*/Military Area of Operations) Aceh, Irian and severe human rights violations in East Timor pre- and post-referendum have not yet been completed because there are no adequate instruments and legal mechanisms to try the perpetrators of the human rights violations.

The workings of the criminal court system in Indonesia have been incapable of real and tangible justice. Formal/legalistic policy is often the excuse. The courts often tolerate crimes with judicial consequences that results in the acquittal of offenders.[12]

In relation to severe human rights violations, the Indonesian KUHAP (*Kitab Undang-Undang Hukum Pidana*/Penal Code) also regulates crimes of homicide, expropriation of freedom, maltreatment/oppression and rape. But the crimes regulated in the KUHAP are ordinary crimes, compared to the severe human rights violations which, in order to be classified as such, have to satisfy several elements in accordance with the Rome Statute (1998). Severe human rights violations are extraordinary crimes with quite a different formulation from general crimes or criminal acts. With the difference in formulation, it is impossible to generalise solutions, which means that KUHAP cannot catch the severe human rights violators effectively.[13] What is needed is a specific court with specific rules and it is this thinking that lies behind the establishment of a special court, namely a human rights court.

Based on the need for a legal instrument to establish a human rights court promptly, the government issued Governmental Regulation to Replace Law No. 1 of 1999 on the Human Rights Court. This regulation laid the legal foundation for the National Commission on Human Rights (Komnas HAM) to conduct investigations into the severe human rights violations in East Timor. This regulation was replaced by Law No. 26 of 2000 on the Human Rights Court, which was ratified in November 2000.

The types of crimes under the jurisdiction of the human rights court are genocide and crimes against humanity, which were adopted from the Rome Statute of the International Criminal Court of 1998. A conclusion can be drawn from this in that the elements of crime in Law No. 26/2000 were also adopted from the Rome Statute. What makes Law No. 26/2000 different is that there is the option to establish an ad hoc human rights court, specially formed to investigate and to prosecute cases of severe human rights violations committed before the law was enacted. This is what makes it different from the permanent human rights court, which can prosecute cases of severe human rights violations that occurred after the creation of Law No. 26/2000.

The legitimate basis for the establishment of the ad hoc human rights court is based on Article 43 of Law No. 26/2000. Paragraph 1 states that the severe human rights violations that occurred before the creation of this law are to be investigated and convicted by an ad hoc human rights court. Paragraph 2 states that the

testimonies. For the complete story, see: ELSAM, *Pengadlan HAM Tanjung Priok Gagal Menemukan Kebenaran: Final Assessment Monitoring Pengadilan HAM Tanjung Priok* (Jakarta: September 2004) and ELSAM, *Kegagalan Leipzig Terulang di Jakarta: Catatan Akhir Pengadilan HAM Ad Hoc Timor Timur* (Jakarta: September 2003).

12 Krist L. Kleden, *Peradilan Pidana Sebagai Pendidikan Hukum* (Jakarta: Komnas HAM, 11 September 2000).

13 Muladi, "Pengadilan Pidana Bagi Pelanggar HAM Berat di Era Demokrasi," *Jurnal Demokrasi dan HAM* (Jakarta: 2000), 54.

ad hoc human rights court, as referred to in paragraph 1, is established on the basis of a proposal from the DPR (*Dewan Perwakilan Rakyat*/People's Representative Assembly) according to certain events by presidential decree. Paragraph 3 states that the court, as referred to in paragraph 1, is within the jurisdiction of the general court. In its explanation, the DPR, which is also the proposing party of the ad hoc human rights court, bases its proposal on the supposition of the occurrence of human rights violations that are limited to a certain *locus delicti* and *tempus delicti* that occurred before the creation of this law.

Unfortunately, the rule in Article 43 of Law No. 26/2000 does not clearly regulate the mechanisms for how the process of establishing the ad hoc human rights court works in the wake of Komnas HAM having concluded its investigations into the severe human rights violations. The experience of the ad hoc human rights court for the human rights violations in East Timor showed that the mechanism began with the investigation conducted by the Komnas HAM, the results of which were then presented to the Attorney General's Office. The Attorney General's Office then conducted an inquiry and the results were presented to the president. After that, the president issued a letter to the DPR, which, in turn, issued a recommendation. The president then issued a presidential decree to establish the ad hoc human rights court.

The spotlight is on parliament/DPR for the process towards the proposal and the establishment of an ad hoc human rights court ultimately rests with it. Many consider this authority as a further means of control. Some legal practitioners and academics regard the DPR's authority to view the matter of severe human rights violations within a political context as yet another effective procedural obstacle to facilitating impunity.[14]

The experience of the ad hoc human rights court for severe human rights violations in the East Timor and Tanjung Priok cases shows that the rules in Law No. 26/2000 could not be applied because they were not robust. Further, any legal breakthroughs in the Tanjung Priok case were jeopardised by the mandated presence of judges who had dealt with the human rights violations in the East Timor case in 1999.

Law No. 26/2000 on the Human Rights Court is fraught with basic weaknesses. These are due to the incomplete adoption of provisions from international human rights instruments. The adoption of the concepts of crimes against humanity and command responsibility delict were inadequate and ambiguous, lending themselves to many interpretations. The procedural weaknesses and poor mechanisms for establishing proof render them ineffective so many still utilise the regulations based on KUHAP.

The Distorted Adoption Process of the International Instrument

During the adoption process of crimes against humanity from the Rome Statute to Law No. 26/2000, some distortions occurred that theoretically weakened the concept of the crimes, especially those against humanity, because there were no distinct parameters to define the elements of "spreading," "systematic" and "intention"—which form the main elements of this type of crime. The vagueness of the definition made the element of proof

14 The authority of the DPR to propose the establishment of an ad hoc human rights court is considered an obstruction to the process of establishing the court because the DPR can declare that there are no severe human rights violations that occurred from the investigation results of the Komnas HAM. Examples of this situation are the Trisakti and Semanggi cases, which until now have not yet been able to proceed to the ad hoc human rights court.

(criminalisation) more difficult to establish. The definition of crimes against humanity is included in Article 9 of Law No. 26/2000 as follows:

> *Crimes against humanity, as referred to in Article 7(b), are one of the forms of conduct committed as part of spreading or systematic assaults where it is known that the assaults are directed against civilian inhabitants…*

The problem produced by the incorrect translation of this article by the law is in the wording: "directed against any civilian population" (this definition is from Article 7 of the Rome Statute), which should be defined as: *ditujukan kepada populasi sipil* but the law was defined as: *ditujukan secara langsung terhadap penduduk sipil*. The word *langsung* (direct) implied that it was just the direct field executors to whom this article applied, while the higher-ranking officers who made the policy would not be subject to this article. The use of the word *penduduk* (inhabitants) instead of *populasi* (population) itself limits the legal subjects by using territorial limitations and this significantly limits the potential victims of crimes against humanity to citizens of the country in which the crime is committed.

Further distortion in translation occurs in terms of the classification of conduct under the definition of "persecution." *Penganiayaan* (maltreatment) in Law No. 26/2000 is also difficult for prosecutors to prove. Since there was no detailed and definitive explanation, the Indonesian Penal Code (KUHAP) became the point of reference for "maltreatment." "Persecution" has a wider meaning that refers to discriminatory treatment that results in mental, physical or economic loss. Hence the requirement for persecution is not solely physical.[15] With the use of the word "maltreatment," the acts of terror and intimidation against individual or certain civil groups based on their political beliefs, which are non-physical in nature, are excluded from the category. Additionally, the prosecutor must prove that the physically-directed behaviour caused the final outcome.

The Vague Concept of Command Responsibility

The concept of command responsibility has also been distorted in Law No. 26/2000. The definition of command responsibility in Article 42 paragraph 1 states:

> *The military command (or an individual effectively acting as military command) can be held responsible for criminal acts within the jurisdiction of the human rights court, which were committed by the forces under military command and control…*

The above definition, which uses the word *dapat* (can) instead of *akan* (will) or *harus* (must), implicitly asserts that command responsibility in the case of severe human rights violations regulated by this law is not a foregone conclusion in establishing guilt. This article distinctly strengthens the definition of crimes against humanity in Article 9, which tends to be directed against executors in the field. Therefore, the public prosecutor

15 Compare the definition of "persecution" in the ICC or the International Criminal Tribunal for the former Yugoslavia (ICTY) Statute with the definition of "maltreatment" in Article 9 (h) of Law No. 26/2000. Maltreatment—according to the definition stated in the KUHP—is equal (not the same definitively) to the definition of "assault," which points to direct attack against someone's physical person. See: Bassiouni, *Crimes against Humanity in the International Law* (Kluwer Law International, 1999), 247.

must be able to identify and prove the "urgency" to try those responsible higher up the chain of command and not just those acting in the field.

Moreover, Article 42 paragraph 1 (a) requires that the bearers of command responsibility "should have known that the forces were committing or just committed severe human rights violations." Whereas the source of that specific article, which is Article 28 paragraph 1 (a) of the Rome Statute, distinctly states that the military commander "should have known that the forces were committing or about to commit such crimes."[16]
This distortion means there is no obligation or motivation for the bearers of command responsibility to prevent the occurrence of crimes. Even though in Article 42 paragraph 1 (b) this negligence was corrected with the sentence "the military command did not act properly and necessarily within the scope of its power to prevent and to stop those acts...," there is no distinct definition and limitation about what is "proper" and "necessary" on the part of those holding command responsibility.[17]

The Problems of Procedure Code and Due Process of Law

Article 10 of Law No. 26/2000 states that the procedure code being used is the one based on the penal procedure code (KUHAP) unless decided otherwise by law. This kind of arrangement can cause legal uncertainty, which has been proved in practice. However, there are several fundamental differences between the procedure code based on the Human Rights Court Act and KUHAP. They are:

Executor of Arrest: According to KUHAP, the executor of arrests is the Republic of Indonesia Police Forces. In contrast, Law No. 26/2000 states that the executor of arrests is the attorney general.[18]

Duration of Arrest: Law No. 26/2000 does not specify the rights of a suspect if the period of detention is completed prior to investigation and prosecution. KUHAP regulates the right of the suspect to be released from jail if the period of detention is completed ahead of investigation and prosecution.[19]

Definition of and Executor of Investigation Task: Number five of the general rules of Law No. 26/2000 states that investigation is defined as a series of actions by the investigators to explore and determine whether or not the event is a severe human rights violation. This is to be followed up with an examination in accordance with the rules of this law.[20] Law No. 26/2000 also regulates differently who is entitled to conduct the investigation. It authorises only Komnas HAM to investigate and the examiners are not authorised to receive reports or accusations. Under KUHAP, those authorised by law to investigate the violations are the Republic of Indonesia's Police Forces.

16 Compare with Article 28 paragraph 1 (a) of the Rome Statute: "That military commander or person either know or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes" (author's emphasis).
17 This blurred definition of command responsibility was repeated in Article 42 paragraph 2, which regulated the responsibilities of superiors (the police and civilian officers).
18 See Article 18 of the KUHAP.
19 See Articles 24 and 25 of the KUHAP. Article 24 states that the duration of arrest for the investigation process is twenty days at most and can be prolonged up to forty days. If during this sixty day period the processes are completed, then the investigator must release the suspect from jail. Article 25 states that the duration of arrest is twenty days and can be prolonged up to thirty days. If the fifty day period has passed, the suspect must be released from jail. Both articles above also state that a suspect can be released from jail if the investigation is complete, even though the arrest period is not over.
20 Compare with the definition of investigation in the KUHAP. "Investigation" is a series of actions by investigators to examine an event suspected to be a criminal act and to determine whether or not the examination can be conducted according to measures regulated in this law.

Definition of Examination and Prosecution: The definition of examination is not regulated by Law No. 26/2000.[21] The party with the authority to conduct the examination of severe human rights violations is the attorney general. This examination excludes the receiving of accusations and reports because those are within the authority of Komnas HAM. In this examination effort, the attorney general can[22] appoint an ad hoc examiner from civil society[23] and from the government. Meanwhile, the rules on prosecution are contained in Articles 23 and 24 of Law No. 26/2000. Article 23 states that the prosecution of severe human rights violations is conducted by the attorney general and in doing so the attorney general can appoint an ad hoc public prosecutor.[24] Certain conditions must be satisfied to be eligible for appointment.[25] Thus the problem in a fair trial context is that one of the "certain conditions" to be an ad hoc public prosecutor is being "experienced as a public prosecutor." This qualifiction immediately closes the door to academics and other members of society. Needless to say, the only people who fit the bill are former prosecutors and military auditors, as well as active duty military auditors.

Composition of Judges: Article 27 of Law No. 26/2000 states that severe human rights violation cases are examined by a panel of five judges, consisting of two judges from the related human rights court and three ad hoc human rights court judges.[26] The arrangement on ad hoc judges is up to the appeal level only. There is no clarity on judges who can try in the revision level, considering that in the Indonesian Penal Procedure Code (KUHAP) the review process of a case is possible and it is the right of the accused and their heirs. In Law No. 26/2000, however, there are no regulations about the ad hoc judges for the examination of extraordinary legal efforts by means of review. Whether or not to use a composition of *ad hoc* judges is also unregulated in this law.[27]

Procedure Establishing Proof: The procedure to establish proof in the human rights court is not specifically regulated, which means that trials in the human rights court rely on KUHAP rules. The exception to the mechanisms of KUHAP for the procedure to establish proof lies in the process of testimony. To protect the witnesses and the victims of severe human rights violations, the examination process of the witness can be conducted without the accused present.[28] This rule is contained in Government Regulation No. 2/2002 on the protection of the witnesses and the victims of severe human rights violations. Regarding evidence, one must refer to Article 184 of KUHAP.[29] What can be regarded as evidence in the KUHAP are considered insufficient when compared to international courts. The international experience of trials relating to serious crimes (which in the Indonesian legal context is equal to the term severe human rights violations) draws on significantly more evidence than that regulated by KUHAP. Some examples are records, whether in the form of films or cassettes of recorded speeches, press broadcasts, interviews with victims, interviews with offenders, the conditions of the

21 The definition of examination can be viewed in letter 2 of the general rules of the KUHAP, which explains that examination is a series of actions by the examiners in matters and measures regulated in this law to search and collect evidence, which makes clear the criminal act that occurred and enables investigators to find the suspect.

22 The word "can" is meant so that the appointment of an ad hoc examiner by the attorney general is conducted by necessity.

23 The societal element includes people from political organisations, civil society organisations, non-governmental organisations, or other organisations such as universities.

24 The ad hoc public prosecutor is preferably an ex public prosecutor in a civil court or an auditor (military prosecutor in a military court).

25 Article 23 paragraph 4 regulates the requirements to be an ad hoc public prosecutor, which include being: a citizen of the Republic of Indonesia, a minimum of forty years of age/maximum sixty-five years of age, educated in law and experienced as a public prosecutor, physically and mentally healthy, authoritative, honest, fair and faultless, loyal to the *Pancasila* (the Five Principles) and the Constitution of 1945, and having knowledge of the field of human rights.

26 Ad hoc judges are judges appointed outside of career judges who fulfil professional qualifications, have high levels of dedication and integrity, and comprehend fully the ideals of a lawful and prosperous state, which is based on justice, understanding and respect for human rights and basic responsibility.

27 Considering the judges who try severe human rights violations are ad hoc judges, the inexistence of regulation on ad hoc judges in revision level, in legal logic, the mechanism of which should not use the regulations from the KUHAP.

28 This testimony process without the presence of the accused had actually been regulated in Article 173 of the KUHAP, which stated that at the trial the chief judge can hear witness testimony on certain matters without the presence of the accused. Therefore, the judge can request for the accused to be taken out of the courtroom but afterward, the examination of the case cannot be continued before it is made known to the accused what occurred in his/her absence. This is different from Government Regulation No. 2 of 2002, which did not regulate the procedure of the absence of the accused for testimonial examination.

29 The evidence, according to Article 184, is witness testimonies, expert testimonies, letters, clues and testimonies of the accused.

crime scenes, etc. The evidence used can also be copied documents, newspaper clippings, single articles and opinions related to the case.[30]

Rules on Penalisation: The rules on penalisation are regulated in Chapter VII, from Article 36 to Article 42 of Law No. 26/2000. The regulations use the minimal penalty rule, which is uncommon within the legal systems of many countries. This minimal penalty rule is considered very progressive and needed to guarantee that perpetrators of severe human rights violations do not get light sentences. But this rule also means directly reducing the rights of the accused of fair legal considerations by a panel of judges. It has since been proved that this minimal penalty rule is not implemented consistently.[31]

The public prosecutors who represented the interests of the public (including victims) in prosecuting the offenders (the accused) were clearly not implementing the principle that "prosecutions are to be undertaken in good faith and with due diligence," which has become a universal standard. This is evident by the brief rules governing the prosecution process, the presentation of evidence and witnesses (not the maximum number) and the lack of determined exploration by the public prosecutor,[32] rousing suspicions that the intention was not to fairly charge the accused. With this poor standard of prosecution, the panel of judges had limited evidence and information to determine the guilt of the accused. The result was, as predicted earlier, that most of the accused were declared not guilty while some were convicted to a minimum penalty (three years) or even less.[33]

For the case of crimes against humanity in East Timor, the ad hoc human rights court finally acquitted the accused Endar Priyanto, Asep Kuswani, Adios Salopa, Leonito Martin, Timbul Silaen, Herman Sedyono, Sugito and others, who were all state officials. All of the accused were in formal positions as persons in charge of security during and after the referendum and possessed the legal authority to conduct preventive or rehabilitative action at the time. Meanwhile, Abilio Jose Soares and Eurico Guterres, who in fact were not directly responsible for security, were pronounced guilty by acts of omission. Why was it that the command responsibility of those from the military was overlooked?[34]

These verdicts seem to confirm the widely growing suspicion that the Ad Hoc Human Rights Court was merely used as justification for what happened in East Timor. They also reinforced the view that the events and actions stemmed from collisions between different groups in society (pro-independence versus pro-integration) and were not committed by state officials as the investigation of the International Investigation Team (the United Nations) and KPP HAM East Timor claimed. This aroused further suspicion that the court had become not only a shield for protecting those responsible for the crimes condemned by the international community but as a "wash basin" to clean the bloodied hands of the state security officials involved in the events in East Timor.[35]

In the case of severe human rights violations in Tanjung Priok, the Ad Hoc Human Rights Court convicted Sutrisno Mascung and others to three years in prison and two years for his subordinates, while R. Butar-Butar—

30 See: ELSAM, "Progress Report Pemantauan Pengadilan HAM ad hoc Elsam ke-X" (28 January 2003).
31 This minimal penalty in practice could not be applied to the ad hoc human rights court for severe human rights violations in East Timor. This was proved by verdicts for the accused which were under ten years (the accused, Soejarwo received five years; M. Noer Muis five years; Hulman Gultom three years; and Abilio Soares three years), with the exception of Eurico Guterres who was convicted to ten years in prison.
32 See the ELSAM reports on the execution of the Ad Hoc Human Rights Court for the East Timor and Tanjung Priok cases.
33 See the table of comparisons between the prosecutions from the public prosecutors and the verdicts of the Ad Hoc Human Rights Court, especially in the East Timor case.
34 See: ELSAM, "Pengadilan HAM *Ad Hoc*…" (29 November 2002).
35 ELSAM, Press Release No. 009/PR/ELSAM/XI/2002 (27 November 2002).

as the commander of Military District Command 0502 Jakarta—was sentenced to ten years in prison.[36] Apart from the guilty verdict in two cases, the human rights court also "freed" two other accused individuals, namely Pranowo on 10 August 2004 and Sriyanto on 12 August 2004. The panel of judges that tried both individuals declared that neither of them were legally and convincingly guilty of committing the crimes against humanity as alleged by the public prosecutor. Therefore, both of them were cleared of all charges.

The verdicts from the Central Jakarta Ad Hoc Human Rights Court both astonished society and precipitated many questions for the court, as well as from the victims and other parties concerned with human rights issues in Indonesia nationally and internationally. The questions did not stem purely from the verdicts of the court. They included questions about why the court was not prosecuting the Indonesian high ranking military officers, who were suspected of being responsible for the severe human rights violations in the Tanjung Priok event in September 1984; the incapacity and failure of the public prosecutor to prosecute the accused; and, perhaps most importantly, the failure of the court to find material truth and to deliver justice to the victims of the event.[37]

Comparisons between the Charges of the Public Prosecutor and the Verdicts of the Ad Hoc Human Rights Court on the East Timor Case

No.	Case File	Public Prosecutor Charge	Verdict	Panel of Judges
1.	**Abilio Jose Osorio Soares** (Governor of East Timor)	10 years, 6 months	3 years	1. Emmi Marni Mustafa 2. Rocky Panjaitan 3. Rudi M. Rizki 4. Komariah Emong S. 5. Winarno Yudho
2.	**Timbul Silaen** (Regional Chief of Police, East Timor)	10 years	Freed	1. Andi Samsan Nganro 2. Ridwan Mansyur 3. Kabul Supriyadi 4. Amiruddin Abudaera 5. Heru Sutanto
3.	**Herman Sedyono** (Regent of Kovalima) **Liliek Koeshadiayanto** (Commander of Military District Command, Kovalima) **Gatot Subyaktoro** (Chief of Police, District of Kovalima) **Achmad Syamsudin** (Head of Staff of Military District Command, Kovalima) **Sugito** (Commander of Military Sub-district Command, Suai)	Ranging from 10 years to 10 years and 6 months	Freed	1. Cicut Sutiarso 2. Andriani Nurdin 3. M. Guntur Alfie 4. Rachmat Syafei 5. Abdurrachman

36 All of the accused were finally pronounced free at the appeal level.

37 For a complete analysis on the process of the Ad Hoc Human Rights Court in the Tanjung Priok case, see: ELSAM, *Pengadilan HAM Tanjung Priok…* (Jakarta: September 2004).

4.	**Endar Prianto** (Commander of Military District Command, Dili)	10 years	Freed	1. Amril 2. Eddy Wibisono 3. Amiruddin Abudaera 4. Kabul Supriyadi 5. Sulaiman Hamid
5.	**Soejarwo** (Commander of Military District Command, Dili)	10 years	5 years	1. Andi Samsan Nganro 2. Binsar Gultom 3. Kabul Supriyadi 4. Heru Sutanto 5. Amiruddin Abudaera
6.	**Hulman Gultom** (Chief Police, District of Dili)	10 years	3 years	1. Andriani Nurdin 2. Sunarjo 3. Rudi M. Rizki 4. Kalelong Bukit 5. Sulaiman Hamid
7.	**Asep Kuswani** (Commander of Military District Command, Liquica) **Adios Salova** (Chief of Police, District of Liquica) **Leonito Martens** (Regent of Liquica)	10 years	Freed	1. Cicut Sutiarso 2. Jalaluddin 3. Rachmat Syafei 4. Abdurrachman 5. Miruddin Abudaera
8.	**Yayat Sudrajat** (Commander of Task Force, Tribuana)	10 years	Freed	1. Cicut Sutiarso 2. Jalaluddin 3. Abdurrachman 4. Guntur Alfie 5. Amiruddin Abudaera
9.	**Adam Damiri** (Commander in Chief of Military Area Command IX Udayana)	3 years	Freed	1. Emmi Marni Mustafa 2. Rocky Panjaitan 3. Rudi M. Rizki 4. Komariah Emong S. 5. Sulaiman Hamid
10.	**Tono Suratman** (Commander of Military Region Command 164)	10 years	Freed	1. Andi Samsan Nganro 2. Binsar Gultom 3. Kabul Supriyadi 4. Heru Sutanto 5. Amiruddin Abudaera
11.	**Nur Moeis** (Commander of Military Region Command 164)	10 years	5 years	1. Andriani Nurdin 2. Sunarjo 3. Rudi M. Rizki 4. Kalelong Bukit 5. Sulaiman Hamid
12.	**Eurico Guterres** (Deputy Commander in Chief of PPI/ Commander of Aitarak)	10 years	10 years	1. Herman H. Hutapea 2. Rocky Panjaitan 3. Rudi M. Rizki 4. Komariah Emong S. 5. Winarno Yudho/Kalelong Bukit

Comparisons between the Charges of the Public Prosecutor and the Verdicts of the Ad Hoc Human Rights Court on the Tanjung Priok Case

No.	Case File	Public Prosecutor Charge	Verdict	Panel of Judges
1.	**R. Butar-Butar** (Commander of Kodim 0502 North Jakarta)	10 years	10 years	1. Cicut Sutiarso 2. Ridwan Masur 3. Komariah Emong S. 4. Winarno Yudho 5. Kabul Supriyadi
2.	**Pranowo**	5 years	Freed	1. Andriani Nurdin 2. Kalelong Bukit 3. Abdurrachman 4. Rudi Rizki 5. Soenaryo
3.	**Sriyanto** (Section Chief II Ops of Kodim 0502 North Jakarta)	10 years	Freed	1. Herman H. Hutapea 2. Amril 3. Rachmat Syafei 4. Amiruddin Abudaera 5. Rudi Rizki
4.	**Sutrisno Mascung, and others** (Group III Yon Arhanudse 6)	10 years	3 and 2 years	1. Andi Samsan Nganro 2. Binsar Gultom 3. Sulaeman Hamid 4. Amiruddin Abudaera 5. Heru Sutanto

The verdicts of the two cases tried by the Ad Hoc Human Rights Court finally shattered the efforts of this country to develop a "culture of accountability" and break the chain of impunity. Indonesian courts, especially the ad hoc human rights court, once again failed to play their part as the last bastion in the effort to defend and protect the interests of human rights. Moreover, those free of charge verdicts set serious precedents for the trials to follow and prevent efforts to lay the foundation for justice and law enforcement in the future. The failure of this ad hoc court to fairly and without discrimination convict those that commit crimes against humanity will bring serious repercussions. These verdicts are paving the way for a "new" legal system that is bound for failure in its efforts to protect and guarantee human rights in Indonesia.

Weaknesses, Strengths, Challenges and Opportunities in Advocating for a Fair, Open, Free and Impartial Trial

A person who is a victim of arbitrary arrest and detention has at least a right to reparations, including compensation. Those who are accused or charged of committing a criminal act, threatened with punishment and later proved not guilty and have experienced criminalisation or gone through unfair trials also have the right to compensation.

In humanitarian law, during conflict or war, violation of the right to be tried in a fair, independent, competent and impartial trial can be categorised as war crimes. This means that those who are responsible for causing the

crimes must be brought to justice by the state in which they live and or extradited back to their home country to be tried under international law. Therefore, it is important for everyone to understand their rights so that when faced with similar situations in which they become victims of a trial that does not meet the required standards, they can at least file charges or make efforts to obtain compensation, and endeavour for the real offenders or those responsible for a mistrial to be brought to justice according to law.

Civil society groups can play an important role in advocating the rights of a fair trial: They can:

Put Pressure on the Government
The government must be pressed to: (1) ratify and observe various international instruments that contain regulations on the standards of a fair trial; (2) put diplomatic pressure on other state governments that violate the principles and the standards of fair trial; and (3) not permit the extradition of a person to a country where that person is threatened by an unfair and biased process.

Monitoring of Judicial Process
The public undoubtedly has an interest in a fair judicial process and the right to know about the way things work in the administration of the courts and what particular verdicts they deliver. The monitoring of courts, whether conducted by foreign government representatives or non-governmental organisations, local or international, can help in ensuring the implementation of a fair trial. The right to observe a trial is an inseparable part of the right to a fair and public trial and plays an important function in the international community's bid to ensure and enforce human rights. Observers can report whether the practice in the handling of certain cases is consistent with the law applied in the country in which the related trial is conducted, and whether those practices or the law meet the international standards as contained in international instruments or other international standards to which the state is party.

Trials that are open to the public can help to ensure the integrity of the process, while at the same time protect the accused from intimidation by judges. Monitoring by the public is expected to exert influence over judges or prosecutors to conduct themselves impartially, to be fair and to enable the witnesses to give complete and factual testimonies in a bid to truth finding in the court. The observations, based on a series of examinations of the trial process, can be eventually published as periodic reports. These can be used for educational purposes in order to rectify any weaknesses prior to the next series of cases in that same court. Moreover, such reports can provide a means of input to those involved in reshaping and reforming the courts.

Training and Preparing Law Enforcement Officials
Judges, lawyers and other law enforcement officials such as the police and prosecutors are rudimentary to judicial administration. The main strategy to ensure the respect of international standards in trials is an integrated approach to strive for the further education of judges, lawyers and other law enforcement officials. This effort can include national or international lawyers associations, universities, inter-governmental and non-governmental organisations as well as law enforcement agencies in providing training or education.

Campaigning for the Ratification of the Statute of the International Criminal Court
The Statute of the International Criminal Court (the Rome Statute of the International Criminal Court) contains

perfected rules on the guarantees of a fair trial. These regulations have been integrated into various other international documents of standards and legal instruments to ensure that individuals accused of committing criminal acts of genocide, crimes against humanity or war crimes have the right to undergo a fair, impartial and public trial. The regulations in this statute contain more robust and effective protection compared to other international legal instruments for the accused, witnesses and victims.

For a country to be able to join the International Criminal Court it needs to ratify or accede to the Rome Statute, which should lead to a domestic process that enables legislation and regulations to be made in accordance with the standards and principles in the statute. In this context, the International Criminal Court plays a role as a catalyst and model for reformation of law and the domestic legal procedures of its member countries.

Conclusions and Recommendations

Together with the reformation in Indonesia, which occurred in 1998, there emerged a discourse on the need for security sector reform. At its core, reform seeks to create good governance within the security sector and to create a secure and orderly environment that is able to support the state's objective of bringing prosperity to the people. Strengthened by the previous discourse on democracy and human rights, the need for fundamental changes to the military court system is being encouraged.

The authoritarianism of the New Order, propped up by military power, not only permitted human rights violations but created a legal system that fortified criminal acts and the abuse of power by members of the military. Despite the decline of the New Order, efforts to bring to justice those members of the military who committed criminal acts, especially human rights violations, always end in an impasse.

The problem of the military courts has become more complex with uncertainty and the overlapping of the military criminal act, general criminal act and military disciplinary infringement. All of this requires a harmonisation of regulations. With the plan to revise KUHAP (the penal code), which was considered to no longer be relevant with social development, it seems just as reasonable to make changes to the KUHPM (the military penal code) to suit the spirit of the time. The regulations of the military criminal acts were based on Law No. 39/1947 and were adopted from the Dutch Military Penal Code when the Dutch occupied Indonesia. The Military Penal Procedure Code (KUHAPM), which has been part of Law No. 31/1997 on the Military Court, ought to have separate regulations apart from the Military Court Act so that the law fully regulates the organisation, structure and functions of military courts. Moreover, the KUHAPM also needs to be changed because it is no longer relevant to the times.[38]

On the macro level, the reform of military courts has also been a national mandate and was included in the Decree of the People's Consultative Assembly, Tap MPR No. VII/2007 on the Roles and Tasks of TNI/POLRI and Law No. 34/2004 on TNI. The agenda of security reform, which was manifested in the above regulations,

38 For information, the KUHPM that Indonesia has at present is the *Wetboek van Militair Strafrecht voor Nederlands Indie (Stb. 1934 Nr. 167)*, which was later changed into Law No. 39 of 1947. The law had been implemented in Indonesia by the government of the Dutch Indies as of 1 October 1934 by the Decree of the Governor General of the Dutch Indies No. 35 Bbl. 1934 Nr. 337.

distinctly states that members of the TNI are subject to the authority of the military court in cases of military legal violations and are subject to the civil court in cases of general criminal legal violations. The comparison with military courts in other countries shows new trends that need to be considered. These are related to the eradication of military courts in times of peace, "civilisation" of the military court and the prohibition of military courts for civilian citizens (excluding human rights violations and war crimes from the jurisdiction of military courts), to cite a few. We can learn from the experience and practice of good governance from other countries, especially in the building of democracy and human rights.

The analysis of every aspect of human rights court trials above has clearly shown how the trial processes of all the crimes against humanity cases worked in the Ad Hoc Human Rights Court. There are many lessons to take from this to improve the future. Nevertheless, those trials also showed just how appalling Indonesia's legal system really is.

Since its establishment, the human rights court has generated much controversy. The ad hoc court required two presidential decrees to be formed. The second presidential decree (Presidential Decree No. 96/2001) limited the jurisdiction it was given in the first decree (Presidential Decree No. 53 of 2001). The selection process of judges and prosecutors lacked transparency, as did the process of investigation and materials used to justify controversial charges. Even up until the moments before the court sat for the first tine there were numerous incomplete supporting instruments, such as the legal instruments on the protection of witnesses, which at the last moment were issued in the form of Government Regulation No. 3/2002 on Compensation for the Victims.

Moreover, the ability of the judges and prosecutors to understand and to use the definitions of crimes against humanity and genocide is a crucial point of public interest. The understanding of the nature of these crimes must become a basic capability, considering this ad hoc human rights court is the first court to handle "extraordinary crimes," and its process and results will be the point of reference for the settlement of various other cases of human rights violations in Indonesia.

Based on the several conclusions above, there are modifications that are needed. These are the recommended steps:

- It is necessary to amend Law No. 26/2000 on the Human Rights Court, in particular the formulation of the section "crimes against humanity" (by explaining more clearly the "elements of crime");
- It is necessary to modify the procedure code. The human rights court must be supported by a more specific procedure code, therefore it is not an exaggeration to advise the adoption of the "Rule of Procedure and Evidence" of the International Criminal Court; and
- The trials in the Ad Hoc Human Rights Court have sought to ensure individual criminal responsibility of the suspects, therefore it is advisable for these trials not to approve of the supporting of institutional attributes to which the suspects belong (such as uniforms, etc.). This is because the ones being examined here are not institutions but individuals who are suspected of abuses of power.

To bring criminals, whether civilians or members of the military, to justice and to punish them are forms of state responsibility in the protection of human rights granted by the state to its citizens. However, to execute

that responsibility, Indonesia is often obstructed by various weaknesses and the insufficiency of the existing legal system. Therefore, a comprehensive reformation of the instruments, administrations and legal system in Indonesia is a necessity. One of the ways out is to adapt the national legal system to the internationally applied standards, which can be started with the ratification of international legal instruments, the most important of which is the Rome Statute of the International Criminal Court.

Ratifying the Rome Statute will be a stimulus for Indonesia to immediately rectify those weaknesses. Moreover, by ratifying the Rome Statute, which includes rules on extraordinary crimes that are dynamic in character but not regulated in the KUHAP, the state can become motivated to reform its judicial system, including its procedure code. After ratifying the statute, the party state must have rules of engagement that are in line with the contents of the statute and national law must be able to provide guarantees for full cooperation with the International Criminal Court.

The logical consequence of ratification of an international regulation is that the ratifying state becomes bound by the rules of the convention. By ratifying the Rome Statute, Indonesia will be motivated to tidy up its messy and inadequate legal instruments to be in line with the regulations of the statute. This is due to the principle of non-reservation in the ratification process of of the Rome Statute. This effectively means that the ratifying state must submit to all regulations in the statute. To make effective the implementation of the Rome Statute, a country that has ratified the statute is obliged to issue implementation rules through the harmonisation process of national legal instruments, along with the socialisation of those rules to various elements that are related to the protection of human rights. In the Rome Statute, it was stressed that the settlement of a case is still emphasising the national legal efforts, formally or materially, with principles in accordance with international law. It means that the International Criminal Court is creating a great opportunity to make effective the national legal system and the domestic courts in prosecuting criminals.

The ratification process of the Rome Statute also acts as a preventive measure for crimes with greater casualties from recurring in the future and also to provide protection and reparations for victims. Aside from punishing offenders, the offering of compensation to victims is a state responsibility when dealing with severe human rights violations within its territory. Next, the Rome Statute also regulates the presence of the Witness and Victim Unit whose purpose is to provide steps of protection and security arrangements, an advisory service and assistance to the witnesses and the victims in court and others who might be at risk due to the witness testimonies.

By ratifying the Rome Statute, Indonesia can effectively adopt the system and mechanism of witness and victim protection as included in the statute to the national system and its mechanisms. Moreover, the Witness and Victim Protection Centre established under Law No. 12/2006 on Witness and Victim Protection will obtain more distinct legal legitimacy when referring to the practices of the International Criminal Court.

With these above steps, the effort to establish a judicial system and administration that is independent, competent, fair and impartial can be realised.

References

http://www2.kompas.com/kompas-cetak/0408/07/opini/1193493.html

Asian Human Rights Commission. "INDONESIA: Tiga serdadu mendapat hukuman yang ringan sementara yang pelaku yang lain masih dalam jumlah yang besar terkait dengan peristiwa penyerangan terhadap tiga dusun kecil di Sulawesi Selatan." AHRC Document No. UP-018-2006. 2 February 2006, http://indonesia.ahrchk.net/news/mainfile.php/ua2006/48/.

Bassiouni, M. Cherif. *Crimes Against Humanity in the International Law*. Kluwer Law International , 1999.

ELSAM. Press Release No. 009/PR/ELSAM/XI/2002. 27 November 2002.

ELSAM. "Pengadilan HAM *Ad Hoc* Kembali Gagal Membela dan Melindungi Hak Asasi Manusia." Press Release No. 010/PR/ELSAM/XI/2002. 29 November 2002.

ELSAM. "Progress Report Pemantauan Pengadilan HAM ad hoc Elsam ke-X." 28 January 2003.

ELSAM. *Kegagalan Leipzig Terulang di Jakarta: Catatan Akhir Pengadilan HAM Ad hoc Timor Timur*. Jakarta, September 2003.

ELSAM. *Pengadilan HAM Tanjung Priok Gagal Menemukan Kebenaran: Final Assessment Monitoring Pengadilan HAM Tanjung Priok*. Jakarta, September 2004.

Government Regulation PP No. 2 Year 2002.

Kitab Undang-Undang Hukum Aturan Pidana (Indonesia's Penal Procedure Code).

Kleden, Krist L. *Peradilan Pidana Sebagai Pendidikan Hukum*. Jakarta: Komnas HAM, 11 September 2000.

Kovenan Internasional Hak-hak Sipi1 dan Po1itik.

Law No. 26 Year 2000.

Law No. 31 Year 1997.

Muladi. "Pengadilan Pidana bagi Pelanggar HAM Berat di Era Demokrasi." *Jurnal Demokrasi dan HAM*. Jakarta, 2000.

Pusat Studi Hukum dan Kebijakan Indonesia (PSHK). *Advokat Indonesia Mencari Legitmasi: Studi tentang Tanggung Jawab Hukum di Indonesia*. Jakarta: PSHK, 2001.

Sumbawa News. "YLBHI Minta Ketua MA Terpilih Pro Keadilan untuk Orang Miskin." 21 January 2009, http://www.sumbawanews.com/berita/nasional/ylbhi-minta-ketua-ma-terpilih-pro-keadilan-untuk-orang-miskin.html.

Tempo Interaktif. "Warga Alastlogo Protes Vonis Pengadilan Militer." 18 August 2008, http://www.tempointeraktif.com/hg/nusa/2008/08/18/brk,20080818-131290,id.html.

United Nations. "The Universal Declaration of Human Rights." 10 December 1948, http://www.un.org/en/documents/udhr/.

Yayasan Lembaga Bantuan Hukum Indonesia. *Fair Trial: Prinsip-prinsip Peradilan yang Jujur dan Tidak Memihak*. Jakarta: YLBHI, 1997.

Freedom of Religion, Faith and Opinion: Impartiality and Partiality of the State and Security Actors

Ahmad Suaedy

Freedom of religion, faith and thought is very important to Indonesia's democratization because these are the freedoms that had not been given by the New Order Regime and became the main demands of the reformation. Although the rights were listed in the Constitution of Indonesia in 1945, the New Order government prohibited any activity related to what was called SARA (the Indonesian acronym for ethnicity, religion, race and grouping), The government also imposed strict limitations on the press and political parties. The current government's progress and seriousness in guaranteeing and protecting the freedoms therefore can be seen as an indication of achievement for post-democratization reforms.

The three freedoms (religion, faith and thought) are indeed difficult to distinguish from one another because they are interrelated. Freedom of religion and faith is very difficult to be realized without the freedom of expression. Even in the ICCPR's Article 18 (1) those three rights are included in one verse. This paper, however, will focus more on the first two, namely the freedom of religion and faith. There are two reasons for this. First, for the freedom of thought or expression, although unlikely to be entirely fulfilled, there are rules and institutional instruments to supervise and monitor it. The law on political parties, the existence of the General Election Commission (the KPU), the implementation of the elections, the Law of Press Principality, the Press Council, the Indonesian Broadcasting Commission (the KPI) and others are some instruments where the right of expression has received significant attention.

Meanwhile, the freedom of religion and faith seem to have not received enough attention in the implementation of both regulations and instruments to ensure their implementation. The existence of Joint Regulations (PerBer) No. 8 and No. 9 of 2006 by the Minister of Religious Affairs and the Minister of Internal Affairs on religious harmony and the building of worship places, for example, have not appeared effective. There have been various violations of these regulations in the last few years. Second, from a human rights perspective, there are differences between the right to expression and the rights to religion and faith. Namely, if the right to freedom of expression is categorized as a *derogable right*, a right that can be limited in urgent circumstances, the right

to freedom of religion and faith are *non-derogable rights*, or rights that are absolute or cannot be limited.[1]

Legal Position of the Freedom of Religion and Faith

It is not easy to measure and to find data, especially in quantitative form, on the enforcement and violations of the freedom of religion and faith in a certain time period since the reformation, except perhaps very limited data, which was gathered by the Wahid Institute[2] and Setara Institute[3] in the last two years. Nevertheless, the condition can be felt through the various media coverage on the trend of escalation of limitation and even violation on these rights for these last few years.[4] The central government issued the SKB (Joint Agreement Letter) on 9 June 2008 on the activities of Ahmadiyah (a religion that claimed to follow Islam but had a different prophet than Mohammad), along with the possibility of threats if they did not comply with the prohibited restrictions stated in the SKB.[5] Some local governments also issued a Letter of Decree (SK) to prohibit certain faiths.[6]

The rights to religion and faith have been constitutionally guaranteed in Indonesia since before the reform, which can be seen in the Constitution of 1945 Article 29 (2). Moreover, in the post-reform era, these rights are strengthened with the entry of a human rights guarantee through the amendment of the 1945 Constitution in Article 28, and not only stated in the Religion Chapter of Article29. Therefore, the guarantee of rights is more significant. This is even more the case with the ratification of an international human rights instrument—the International Covenant on Civil and Political Rights (ICCPR)—by Law No. 12 dated 28 October 2005 in which the rights are included.

Article 28 E of the 1945 Constitution stated that:

> *(1) Everyone has the right to practice their religion and worship freely according to his/her religion;*
> *(2) Everyone has the right to freedom of beliefs, thoughts and attitudes, according to his/her conscience.*

Article 18 (1) of the ICCPR states:

> *Everyone has the right to freedom of thought, beliefs and religion. This right includes freedom to hold religious beliefs of their own choice, and the freedom, either alone or together with others, both in public or private, to perform religious activities and worship, practice and teach.*

1 Ifdhal Kasim, "Kovenan Hak-Hak Sipil dan Politik, Sebuah Pengantar" in *Hak Sipil dan Politik, Esai-Esai Pilihan*, Ifdhal Kasim (ed.) (Jakarta: ELSAM, 2001), xiii.
2 The Wahid Institute, *Laporan Tahunan tentang "Pluralisme Beragama/Berkeyakinan di Indonesia, Menapaki Bangsa yang Kian Retak"* (December 2008).
3 Setara Institute, *Laporan Tahunan Kebebasan Beragama dan Berkeyakinan 2007: "Tunduk Pada Penghakiman Massa"* (18 December 2007), 8. See also: Setara Institute, *Laporan Tahunan Kebebasan Beragama dan Berkeyakinan 2008: "Berpihak dan Bertindak Intoleran"* (3 January 2009). Both were not published.
4 Monitoring reports by the Wahid Institute are published every month showing the high frequency of violations of freedom of religion and faith in Indonesia through government policy, extra judicial punishment, as well as restraint or criminalization. See: *Monthly Report on Religious Issues (MRORI)*, numbers 1–17, www.wahidinstitute.org.
5 On 9 June 2008, the government issued a joint agreement letter (SKB) from three ministers—the minister of religion, minister of internal affairs and the head of the state prosecutor for Ahmadiyah—warning not to express their beliefs and threatening to shut them down. See: SKB No. 3, Year 2008 (No. Kep-033/A/JA/6/2008) and No. 199, Year 2008. Also, see: The Wahid Institute, *Monthly Report on Religious Issues (MRORI)*, No. 11 (June 2008).
6 Some of the regents and the mayor issued a Letter of Decree (SK) on the prohibition of Ahmadiyah and other religion that are considered astray. See, for example: M.M. Billah, *Ringkasan Eksekutif Pemantuan Kasus Ahmadiyah* (Jakarta: Team of Ahmadiyah Case Monitoring in the National Commission of Human Rights, September 2006). Not published.

In the perspective of human rights, these rights are categorized as non-derogable rights or rights that cannot be suspended or restricted under any circumstance, including by law. This is enforced by Article 18 (2) of the ICCPR, which states:

> *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

Why Indonesia should ratify the ICCPR can be seen in the explanation of Law No. 12 Year 2005. There it is stated that Indonesia is a country which abides by the law and, since its birth in 1945, upholds human rights. Thus it can be said that human rights have been part of the national attitude since the beginning. With these constitutional and legal guarantees, it cannot be denied that it is the task of the Indonesian government to ensure their implementation to protect human rights.

Still, from a human rights perspective, the ratification of human rights instruments is not enough to guarantee and strengthen legal protections. With ratification, Indonesia must ensure that the principles contained in the covenant are enforced. As a state party, Indonesia is obligated to enforce human rights and to provide regular reports to the UN committee on human rights. Therefore, of its own accord, the government of Indonesia has decided to place itself under the international monitoring body, particularly concerning civil and political rights.[7]

Another obligation of the Indonesian government is to harmonize all its rules and regulations with the covenant, which is confirmed in Article 2 (2) of the covenant. The harmonization not only includes changes and improvements to laws that are not complementary/contradictory but also includes action on active legislation to ensure the protection of rights.

Furthermore, with the ratification, it is the government's responsibility to ensure the obligations included in this covenant are implemented immediately. As described in Article 2 (1) of the ICCPR:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

There are three responsibilities assigned to the state in this regard, which focus on the implementation of the covenant to protect, respect and fulfil human rights standards.[8] Thus, security and protection cannot be passive but must be active. If a state party has not set up the necessary legislation or other policies, the state is obliged to take the necessary steps, in accordance with the constitutional process and with the provisions stated in the covenant, to create the required legislation or other policies. By now, it seems there is no controversy

7 Agung Putri, *Implementasi Konvensi Hak Sipil Politik dalam Hukum Nasional*, paper presented in seminar on "Perlindungan HAM melalui Hukum Pidana," held by the National Alliance for Penal Code Reform, Jakarta (5 December 2007).

8 Ifdhal Kasim, *Kewajiban Negara Pihak terhadap Pelaksanaan Instrumen-instrumen HAM Internasional*, paper presented in the seminar "Perlindungan HAM melalui Hukum Pidana," held by the National Alliance for Penal Code Reform, Jakarta (5 December 2007).

or difference of opinion in Indonesia. Nevertheless, differences of opinion appear regarding the possibility of limitations of rights.

The Limitation of Rights in Indonesia

Are the freedoms of religion and faith really absolute? In Indonesia, there are two ideas that contradict each other. Some of them, supported especially by those who represent the government or semi-government such as the Ministry of Religion and the MUI (Indonesian Islamic Clerk Association), tend to say that the rights and freedoms are restricted because the government can intervene. Those from civil society generally believe otherwise. This controversy then reinforces the weak guarantee and protection of the two freedoms.

This controversy started with Article 18 (3) of the ICCPR and Article 28J (2) of the 1945 Constitution. Article 18 (3) of the ICCPR stated:

> *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

Article 28J (2) of the 1945 Constitution stated:

> *In exercising rights and freedoms, each person must follow the compulsory limitation stated in the law in order to ensure recognition and honor of the rights and freedoms of people and to meet the demands of justice in accordance with moral, religious values, security and public order within a democratic society.*

Related to this article, Professor M. Atho Mudzhar, head of Research and Development at the Ministry of Religion, reflects the views his ministry had argued that the freedom of religion regulated in Article 28E and Article 29 of the 1945 Constitution is not freedom without boundaries. This freedom, according to him, can be restricted by law.[9] The same opinion was also disclosed by the Minister of Home Affairs Mardiyanto,[10] the MUI member KH Ma'ruf Amin[11] and Junior Intelligence State Prosecutor Wisnu Subroto as Bakor Pakem.[12] As the freedoms of religion and faith can be restricted, they therefore are categorized as derogable rights.

The opposite opinion, which states that freedom of religion and faith are non-derogable rights, is provided by the independent heads of community. According to them, restriction of human rights for various fundamental reasons cannot be imposed upon the interpretation of faith or thought but can only be given to the ways of the

9 M. Atho Mudzhar, *Kebebasan Beragama dan Beribadah di Indonesia*, paper presented in the seminar on "Jaminan Perlindungan Hukum dan HAM untuk Kebebasan Beragama dan Beribadah menurut Agama dan Kepercayaannya," Jakarta (13 February 2008).

10 Mardiyanto. Speech at the seminar on "Jaminan Perlindungan Hukum dan HAM untuk Kebebasan Beragama dan Beribadah menurut Agama dan Kepercayaannya," Jakarta (13 February 2008).

11 Expressed on several occasions, especially in the seminar transcripts of the President Considerations Board (Wantimpres) in the Field of Law, Sultan Hotel (13–15 February 2008) and at the Limited Seminar of Wantimpres (3 April 2008) in the Wantimpres Office in Jakarta. Both were not published.

12 Wisnu Subroto, *Jaminan Perlindungan Hukum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya*, paper presented in a seminar on "Jaminan Perlindungan Humum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya," Jakarta (13–15 April 2008). Not published.

expression of faith in accordance with the criteria stated in Article 28J (2) of the 1945 Constitution. The leader of *pesantren* (Islamic Boarding School) in Jombang, East Java, KH Wahid Solahudin, also supports that faith is a non-derogable right thus the government cannot make restrictions on faith, except in the form of its expression. The government can regulate the expression of faith when it violates the rights of others and in accordance with reasons that make sense under the law.[13]

Professor Azyumardi Azra, former rector of the National Islamic University (UIN) Jakarta who is now the director of the University's Postgraduate Program, strengthened this opinion. According to him, ratification of the ICCPR requires the government to protect all faiths and prevent violence against minority groups. Azra even asked the government to be cautious of transnational movement infiltration, which often provokes people to attack minority groups and give alternate interpretations of religious scripts.[14] Abdurrahman Wahid (who is often called Gus Dur), the former Indonesian president, former head of Nahdlatul Ulama (one of the largest Islamic organisations in the world), and a respected theologian, is against government intervention in people's faith. This position is reflected in his severe resistance when the Indonesian government issued three ministries a joint agreement letter (SKB) toward Ahmadiyah.

Approximately one hour before the government issued the SKB on 9 June 2008, Gus Dur declared to the media that he will protect and defend the Ahmadiyah to death. He said that the existence of Ahmadiyah is protected by the constitution and did not violate the law like the FPI and the KLI (civilian organizations that often act violently in their operation). If the government bans and intervenes in faith, according to him, it is a violation of the Indonesian Constitution of 1945.[15] The similar response that the SKB is a potential violation of human rights was also issued by the National Commission of Human Rights (Komnas HAM).[16]

Practices of Protection

The perception of government officials that the freedom of religion and faith can be limited and that the government can intervene has influenced the impartiality of the government apparatus to protect and guarantee the two freedoms. Law enforcement—whether state prosecutors, police, judges, the Ministry of Religion and even the president and vice president—are more supporting of demands that are considered the majority view in the community rather than constitutional. This is exhibited by accusations of religious deviation and blasphemy. In these cases, the MUI (Indonesian Islamic Clerk Association), although it is not as important as other Islamic organizations, is more deliberated by law enforcement officers, including judges, rather than keeping to the mission of law enforcement itself and maintaining loyalty to the constitution.[17]

13 Solahudin Wahid, *Jaminan Perlindungan HAM untuk Kebebasan Beragama*, paper for the seminar on "Jaminan Perlindungan Hukum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya," Jakarta (13–15 April 2008). Not published.

14 Azyumardi Azra, *Perlindungan Kebebasan Beragama: Perspektif Hukum, keagamaan dan Politik,* presented in the seminar "Jaminan Perlindungan Hukum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya," Jakarta (13–15 April 2008). Not published.

15 *Liputan TV*, "Gus Dur: Saya Akan Pertahankan Ahmadiyah" (10 March 2009).

16 Komnas HAM (National Commission on Human Rights), *Pernyataan Komisi Nasional Hak-Hak Asasi Manusia (Komnas HAM) tentang Peringatan dan Perintah kepada Penganut, Anggota, Dan/Atau anggota Jemaat Ahmadiyah Indonesia dan Warga Masyarakat* (Jakarta: 10 June 2008). Not published.

17 The Wahid Institute, *Islam, Konstitusi dan Hak-hak Asasi Manusia: Problematika Kebebasan Beragama dan Berkeyakinan di Indonesia* (Jakarta: The Wahid Institute, 2009), Chapter VI.

1. The "National Museum Bloody Incident" (*Tragedi Monas Berdarah*), 1 June 2008

The "National Monument Bloody Incident" was an attack of the Islam Troop Command (*Komando Laskar Islam*–KLI) and the Islam Defender Front (*Front Pembela Islam*–FPI) on a rally of NGOs and civil society organizations called the National Alliance for Freedom of Religion and Faith (AKKBB–*Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan*) to commemorate freedom on the birthday of Pancasila (Indonesia's ideological base). The attack injured ninety people, fourteen of them severely.[18] Some victims of the attack were women and children because the rally was meant to be relaxed so that participants could take their families to the event.

No government representatives spoke out against the attack as a tragedy associated with the birthday of the state ideology. President Susilo Bambang Yudoyono (SBY) reacted strongly against the attacks by the FPI and the KLI but did not give enough attention to the context of the rally day to commemorate the birth of Pancasila, which led to a high number of victims that included women and children. He seemed to concentrate more on government officials, in this case the police, by saying the state should not lose power to the criminal action.[19] The police did not take any evidence from the scene of the incident (TKP) on the grounds that they did not want to further encourage FPI anger. In fact, from TV footage and eyewitnesses, it was very clear that the weapons they had carried were bamboo and wooden sticks used to beat the victims. The arrest of the perpetrators was carried out in FPI headquarters in Petamburan three days after the incident.[20]

On 2 June 2008, the Minister of Law, Politic and Security Widodo A.S., had given the signal to publish the on SKB Ahmadiyah, which was reinforced by the Minister of Religion Maftuh Basyuni who was considering stopping the activities of Ahmadiyah through the SKB.[21] Afters the tragedy, the head of the Indonesian Police Force, General Sutanto, blamed and accused the AKKBB as the provocateur,[22] the same as S.H. Munarman, the incident's attack commander. Munarman accused the AKKBB of provoking war by advertising for the rally. Munarman claimed the rally was intended to defend Ahmadiyah, which before had been declared by an MUI statement to be a stray religion thus their blood was allowed to be spilled.[23] With this statement, it seems that the head of the Indonesian Police agreed on the attack as they saw it had been provoked by the AKKBB.

The government, through its State Secretary Hatta Rajasa, even promised to issue the SKB on Ahmadiyah as soon as possible as demanded by the attacker in the incident.[24] The promise was seen as a public prohibition on Ahmadiyah, although in the end the SKB was issued not to prohibit Ahmadiyah but to warn that the government can ban Ahmadiyah if they did not follow the warnings.[25] The same thing was stated by the attorney general—he would resign only if the government prohibited the existence of Ahmadiyah.[26] Vice President M. Jusuf Kalla promised the same SKB after the attack occurred, while ensuring that the SKB

18 *TEMPO Magazine*, Edition 16/XXXVI (9–15 June 2008), 20–37.
19 See: *Kompas*, "Negara Tidak Boleh Kalah, Polisi Incar Lima Anggota FPI" (3 June 2008).
20 Ahmad Suaedy, "Dramatisasi Penangkapan FPI dan Barter Itu," *Esquire Magazine* (20 July 2008), 58–59.
21 *Kompas*, "Pemerintah Tetap akan Terbitkan SKB Soal Ahmadiyah" (2 June 2008).
22 *Kompas*, "Kepala Polri: AKKBB yang Cari Masalah" (12 June 2008).
23 *Kompas*, "Negara Tidak..." (2008).
24 *Koran Tempo*, "Status Ahmadiyah Ditentukan Bulan Ini" (5 June 2008).
25 *Kompas*, "Aktivitas Ahmadiyah Dilarang, SKB Tiga Menteri tak menyebut pembubaran Ahmadiyah" (10 June 2008).
26 hmad Suaedy, "Ahmadiyah dan Pemerintahan yang Panik," *Koran Tempo* (11 June 2008).

Foto 16. National Monument on 1 June 2008 Tragedy Where National Alliance for Freedom of Religion and Faith AKKBB was Attacked by Hard-Line Violent Groups of Islam Troop Command KLI and Islam Defenders Front FPI

did not violate the 1945 Constitution as a concession for the protesters who were against the government attitude, which fulfilled the demand of restriction of certain beliefs, namely Ahmadiyah.[27]

Finally, the FPI leader Rizieq Shihab, the KLI Commander Munarman and a number of perpetrators of the attacks were each sentenced one-and-a-half years in prison. But during the long trial, various violent acts had occurred in and out of court. None of these violent acts, however, conducted by the FPI on AKKBB members were legally processed by the police, even though violence had been reported to the police office, and there were no adequate reactions from the members of the board of judges on the violence that occurred during the court.[28]

Before the 1 June 2008 tragedy, the Ahmadiyah had already experienced violence in various places by those who demanded Ahmadiyah be dimissed. This claim began when the MUI issued 11 *fatwa* (religious announcements) in 2005, one of which forbade "pluralism, liberalism and secularism," and another which established religious teaching for Ahmadiyah as deviant.[29] Ahmadiyah was accused of being astray because they acknowledge Mirza Ghulam Ahmad as a prophet, while according to the doctrine of Islam the last prophet is Muhammad (SAW). Nevertheless, this religious strain had come to Indonesia in the 1920s and

27 *Kompas*, "Wapres: SKB Ahmadiyah Sejalan UUD 1945" (6 June 2008).
28 On the chronology of litigation, see matrix in: The Wahid Institute, *Laporan Tahunan tentang…* (2008), 95–96.
29 For the text of the *fatwa* and the responses, see: Ahmad Suaedy, et al., *Kala Fatwa Jadi Penjara* (Jakarta: The Wahid Institute, 2006), 263–264.

had obtained an official letter of recognition as a legal organization from the Indonesian Ministry of Internal Affairs in 1953.[30] The MUI *fatwa* on Ahmadiyah deviancy was used by certain groups as legitimacy for intimidation, assault and extrajudicial violent acts toward the religion.[31] Before the tragedy of 1 June, there had been a variety of events and violent attacks on Ahmadiyah headquarters in Parung,[32] and in Manis Lor village, Kuningan, West Java,[33] and in Lombok Barat.[34]

Thus the government's response, which corresponded to the demands of the attackers and supporters of the tragedy of 1 June 2008 by giving promises to immediately issued SKB on Ahmadiyah, can be said to fulfil the demands of the attackers, which used the MUI fatwa, rather than law enforcement, to ensure the freedom of religion and faith. The government's attitude made the freedom of religion and faith derogable rights and can also be taken as agreement on the part of officials that Ahmadiyah is a religious deviant that blasphemed one legitimised religion. If these are personal attitudes then that is acceptable but if these views influenced the impartiality and alignment of officials and caused irregularities in legislation, that is problematic.

2. Cases of Alleged Deviant Religious Teaching and its Consequences

There are many cases that can prove the weakness of the state apparatus to protect victims, especially victims of alleged deviant religious teaching or blasphemy. Without lessening the respect and appreciation for the police, prosecutors and court efforts to prevent violence, attitudes of these actors tend to allow the violence to continue and are subject to the requirements/views demanded by the masses. Often, when assaults occur, police officers evacuate victims while the attackers continue to damage the property and residences of the victims, or the police accept the attackers' demand to bring the Ahmadiyah to court and charge them. Some examples of this behaviour are as follows:

2. a. The Case of Ishak Suhendra Bin Shamad, Head of PPS Panca Daya

On 28 August 2008, the sixth trial of Suhendra Bin Shamad, head of *Pencak Silat* Martial Arts School Panca Daya, continued in Tasikmalaya District Court. Isaac was suspected of blasphemy in his book titled *Agama dalam Realita* (Religion in Reality), which had been said to disgrace Islam. Certain groups of the Islamic movement, including the Tasikmalaya's MUI, forced police and prosecutors to bring Ishak to court over allegations of disgracing religion, which was regulated in Article 156a of the Criminal Code (KUHP) and could result in a maximum of five years in prison. Because in the prior five trials the court had conducted there was always pressure from the masses along with threats, in the fifth trial Ishak said he would not attend the next trial. According to Ishak, this was supported by the police because the day of the trial was scheduled to be on the birthday (*Milad*) of the FPI, which was said to be planning a mass rally to press the panel of judges on the case of Ishak, and therefore was

30 Iskandar Zulkarnaen, *Gerakan Ahmadiyah di Indonesia* (Yogyakarta: LKiS, 2005).

31 For the MUI *fatwa* against the influence of mass violence in Indonesia, see: Luthfi Assyaukanie, "Fatwa and Violence in Indonesia," *Journal of Religion and Society* 11 (2009): 1–21.

32 Mujtaba Hamdi, 2007, "Sang Liyan dan Kekerasan: Kasus Penyeangan Kampus Mubarok Jemaat Ahmadiyah Indonesia Kemang – Bogor – Jawa Barat" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia*, Ahmad Suaedy, ed. (Jakarta: The Wahid Institute, 2007), 213–245, especially 215–216).

33 Mursyid Rosyidin and Ali, "Diskriminasi Hak Sipil Minoritas: Pelarangan Pencatatan Pernikahan Jemaat Islamiyah Ahmadiyah Kuningan" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia*, Ahmad Suaedy et al. (Jakarta: The Wahid Institute, 2007), 47–77.

34 View the investigation report: KONTRAS-LBH Jakarta, *Laporan Investigasi tentang kekerasan terhadap Jama'ah Ahmadiyah di Manislor, Kuningan dan Lombok-NTB, Qiyadah Islamiyah, dan Gereja di Bandung*, (Jakarta: LBH Jakarta-Kontras, 2008).

considered vulnerable to conflict and violence.[35]

It was true that the trial was attended by many visitors who were mostly FPI members that had just celebrated its birthday. Because the defendant did not come, the visitors were angry and forced the panel of judges to bring Ishak to court by force. The panel granted the visitors' demand by instructing the prosecutors to bring the accused at that moment. The state prosecutor and police officials carried out the instruction of the judges by going to Ishak's house; they were followed en masse in three big trucks.[36] After arriving at Ishak's house, the officials introduced themselves, showed their assignment paper and then forced Isaac to go to the court. Ishak was immediately arrested because, according to the police, thousands of people were moving toward Ishak's house to attack.[37] Around 11:55am that same day, WIB during the call for prayer (*Adzan*), about 100 people dressed in white encircled the home of Ishak Suhendra. They shouted, "*Jang Ishakiyah! Kill Ishakiyah! Burn down their house!*" They also tore down two name signs of Panca Daya; broke them and threw them into a pond in Panca Daya.[38]

In the end, Ishak was sentenced to four years in prison but legal advisors launched an appeal that is still ongoing. Most importantly, what should be pointed out here is that in Ishak's sixth trial, the panel of judges, police and prosecutors were under pressure from the masses that roughly and even violently demanded Ishak be punished. Enforcement and detention, and even a guilty charge for Ishak as a result of threats and attacks from the other party are inappropriate. The legal apparatus thus has shown very high tolerance to attackers at the expense of victims.

2. b. The Case of YKNCA Probolinggo, East Java

On 27 May 2005, along with a celebration of the birth of the Prophet Muhammad (SAW), four Islamic boarding schools near the village of Krampilan were simultaneously conducting Holy Quran reading. At 16:00 (GMT+7), instructions through the loudspeaker commanded an attack on the rehabilitation unit of the YKNCA (Foundation for Cancer and Drugs "Cahaya Alam"). The YKNCA residents at that time amounted to thirty people and they were running out to save themselves, seeking shelter in nearby houses. The patients who were in the unit included pregnant women who needed to be taken to a secure place. Meanwhile, the men and young people were trying to avoid the mass rampage that could not be controlled.[39] The attack was conducted by an angry group. This situation was witnessed directly by a number of officers from the Village Head Decision Makers (*Muspika),* the District Head Decision Makers (*Musyawarah Pimpinan Daerah –Muspida*) and local police officers that only watched the event and did not taking precautionary measures. Only after the attack ended did the police install a police line in the area.[40]

35 Isa Nurujaman, "Menggugat Buku Sesat, Massa Bertindak Anarkis."
36 Ibid. and Isa Nur Zaman, "Penjemputan Paksa Sang Tertuduh Penoda Agama."
37 Ibid.
38 The Wahid Institute, *Monthly Report on Religious Issues XIII* (Jakarta: The Wahid Institute, August 2008). See also: "H. Ishak Didakwa Bahayakan Aqidah Ummat Islam," http://www.prianganonline.com/index.php?act=berita&aksi=lihat&id=962.
39 A. Andri & Salman Al-Farizi, "Konflik Kepentingan Agama dan Kegagalan Negara: Kasus Pembubaran Padepokan YKNCA Besuk-Probolinggo-Jatim" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia,* Ahmad Suaedy, ed. (Jakarta: The Wahid Institute, 2007), 93.
40 Ibid., 95.

As a result of the attack, the police gave a half-hour to the YKNCA managers to pack their belongings and vacate the rehabilitation unit. Later, it was revealed that those involved in the attack, according to the LBH (Legal Assistant Body) Surabaya report, were each given IDR 20,000 (a little more than USD 2) from the regent of Probolinggo. The regent had also instructed the police not to catch the perpetrators of the violence.[41]

The assault on the YKNCA unit was a consequence of the rage of the surrounding Village Krampilan, Probolinggo people over the book *Menembus Gelap Menuju Terang* jilid 2 (MGMT2), which was written by Ardi Mohammad Husein, the chairman and founder of YKNCA rehabilitaion. The place was basically a medical centre for patients recovering from cancer and illegal drugs in spiritual ways, which seems to adopt the Islamic *tasawuf* approach. Because of the spiritual approach, every time the centre handled patients religious advice was given. From this, the patients' caretakers were writing the advice given by Ardi Husein, which was then published as a book. This book created controversy and ended with a violent attack and court proceeding after the rehabilitation centre was accused of deviant teaching by the MUI in Probolinggo district. Ardi Husein and his five followers were sentenced to five years in prison, the maximum sentence for an offender of Article 156a of KUHP.[42] As in the cases stated above, this case also showed government officials intervening in religion via illegitimate trial of a certain group and by not providing adequate protection for victims.

2. c. The Case of Al-Mubarok Campus in Parung, Bogor

On 15 July 2005, Abdurahman Assegaf and thousands of followers armed with wooden and bamboo sticks marched to Al-Mubarok Campus, the property of Ahmadiyah in Parung, Bogor, West Java. After they arrived in front of the campus gate, the mass made speeches and yelled threats. They stated that if by 16:00 the Ahmadiyah group in the campus did not come out, they would burn it down.[43] Before the mass of a thousand people arrived in front of the campus, the police in fact had already posted guards around the campus. Hundreds of police under the command of Police Commissioner Agus K. Sutisna, head of the Resort Police Station of Bogor, were sent. The station sent two units of command level Brimob (mobile brigades) and two units of mass controllers, plus a combination unit of police women. Each unit consisted of 100 personnel.[44]

But the police did not act firmly enough. This was seen from the act of some speakers that managed to get on top of the police car and shout threats and provocations for the mass to attack the campus. They also threatened the police by saying, "There will be no arrest of leaders today. No police can arrest our leaders. If the apparatus detained our leaders today, the follower (*umat*) must march ahead. Because they were defending the mislead."[45] Indeed, despite the attack, devastation and violence that had occurred, there were no arrests of the perpetrators. In fact, there were even a number of Bogor district officials who were in the middle of the aggressive mass, such as the head of the Kemang

41 Ibid.
42 For more about this, see: The Wahid Institute, *Islam, Konstitusi…* (Jakarta: The Wahid Institute, 2009), Chapter IV.
43 *Detik Surabaya*, "Bawa Kayu dan Batu, 10 Ribu Orang Datangi Gedung Jama'ah Ahmadiyah."
44 *Detik Surabaya*, "Kampus Mubarak Jemaat Ahmadiyah Dijaga Ketat Polisi."
45 Hamdi, "Sang Liyan…" (2007), 231.

administrative district, the regent of Bogor, the head of the District Prosecutor's Office (*Kajari*), the head of the police area (*Kapolwil*) and the head of the police resort (*Kapolres*) of Bogor. These officials were negotiating with the management of the Ahmadiyah followers. They were asked to stop their activity and put down the name sign of the Ahmadiyah follower to avoid the uncontrollable mass furor that had began. Because the Ahmadiyah followers were not willing to put it down, the officials ordered the Municipal Police (*Satpol PP*) to remove it.[46]

Because the pressure from the mass could not be prevented, the regent of Bogor and the heads of the police area and resort (*Kapolwil* and *Kapolres*) decided to evacuate Ahmadiyah followers to avoid mass violence against the Ahmadiyah people on the campus.[47] Finally, the mass attacked the campus and the Ahmadiyah followers had to be evacuated. Officials seemed to allow extensive damage to the campus while the Ahmadiyah people were evacuated.[48] For the evacuation, the police brought four police buses out of the complex of the Al-Mubarak Campus. However, when the mass understood the Ahmadiyah people were using the buses for evacuation, under the command of Abdurrahman Assegaf, the mass threw stones and wood at the buses. Meanwhile, the police officers did not appear to try and prevent this. Seeing the situation, the Ahmadiyah followers prayed they would be protected.[49] The Bogor local government finally issued a letter of decree prohibiting Ahmadiyah in the area and closing the campus of Al-Mubarok, which until now has remained vacant.[50] The violence prevention conducted by state officials in the field must be respected as an effort to prevent violence. But allowing the destruction to take place followed by a legal prohibition against a certain religious teaching, in this case Ahmadiyah, due to the pressure of certain groups through the regent's letter of decree, should be scrutinized.

Conclusion

Problems of impartiality and partiality of state officials and security actors in guaranteeing the security and protection of religious freedom and faith are intense in Indonesia, considering this is rooted in the perception or even the paradigm of the state. Another study[51] has found a paradigm regarding the accusation of deviant religious teaching and blasphemy in almost all levels of the state apparatus and security actors. The examples given above are a small number of cases out of many others.[52] Protection of religious freedom has never been a primary concern in the highest ranks of state officials, including both the president and vice president. There were often statements against violence but not on the protection of rights and guarantees of this protection under the law for those labeled as deviant religious groups by others. It seems that the condemnation of these groups is normal.

46 "Tindakan Aniaya Terhadap Ahmadiyah."
47 Ibid.
48 Ibid.
49 Fitraya Ramadhanny, "100 Jemaat Ahmadiyah akan Dievakuasi, Massa Bershalawat," *Detik News* (15 July 2005).
50 Arifin Asydhad, "Ahmadiyah Dilarang di Kab Bogor, Sekretariatnya Masih Dijaga Polisi," *Detik News* (21 July 2005).
51 Ahmad Suaedy, "Religious Freedom and Collective Violence in Indonesian Democratization" in the collected writings by the Center for South East Asian Studies, Kyoto University, Kyoto, Japan (forthcoming). Also, see the research report by the Wahid Institute on the implementation of the ICCPR's Article 18 in Indonesia, *Islam, Konstitusi dan Hak Asasi Manusia: Problematika Kebebasan Beragama dan Berkeyakinan di Indonesia* (Jakarta: Wahid Institute, 2009).
52 For example, see: The Wahid Institute, M*onthly Report on Religious Issues*, Number 1–17.

Therefore, this paradigm stems from the attitude of neglecting legislation and regulation, which is out of synch with and contradictory to the rules, and even neglects the constitution. A number of laws and other regulations issued both in the past before the amendments of the 1945 Constitution and after, contain problems of incoherence. There even exist regulations that were against the 1945 Constitution, especially on the freedom of religion and faith. For example, Law No. 1/PNPS/1965 and the existence of Society Religious Beliefs Control Body (*Badan Pengawasan Aliran Kepercayaan Masyarakat*–Pakem) and its Coordinating Body (*Bakor Pakem*), which were the heritage of colonialist power that supervised the religious beliefs of the people, are still listed in the Law on the Attorney General No. 16/2004. It seems that the government does not yet have any plan to harmonize the incoherent laws and regulations.

This contradictive paradigm is also reflected in practice, in the emergence of the local government leaders' letter of decree and the central government's SKB, and also in the attitudes of police in the field and judges in court. Countering the partiality of the state apparatus and the security actors, therefore, seems needed since the paradigm requires the state to be neutral and focused on its commitment to the constitution and law enforcement—not only following the political current and personal confidence. At the same time, there should also be harmonization of legislation, practices in the field and in the courts.

References

Andri, A. and Salman Al-Farizi. "Konflik Kepentingan Agama dan Kegagalan Negara: Kasus Pembubaran Padepokan YKNCA Besuk-Probolinggo-Jatim" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia.* Ahmad Suaedy, ed. Jakarta: The Wahid Institute, 2007.

Assyaukanie, Luthfi. "Fatwa and Violence in Indonesia." *Journal of Religion and Society* 11 (2009).

Asydhad, Arifin. "Ahmadiyah Dilarang di Kab Bogor, Sekretariatnya Masih Dijaga Polisi." *Detik News*, 21 July 2005, http://www.detiknews.com/read/2005/07/21/110602/407077/10/ahmadiyah-dilarang-di-kab-bogor-sekretariatnya-masih-dijaga-polisi.

Azra, Azyumardi. *Perlindungan Kebebasan Beragama: Perspektif Hukum, keagamaan dan Politik*. Presented in the seminar "Jaminan Perlindungan Hukum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya." Jakarta, 13–15 April 2008.

Billah, M.M. *Ringkasan Eksekutif Pemantuan Kasus Ahmadiyah.* Jakarta: Tim Pemantauan Kasus Ahmadiyah Komnas HAM, September 2006.

Detik Surabaya. "Bawa Kayu dan Batu, 10 Ribu Orang Datangi Gedung Jama'ah Ahmadiyah." ttp://surabaya.detik.com/read/2005/07/15/154113/403688/10/bawa-kayu-dan-batu-10-ribu-orang-datangi-gedung-jemaat-ahmadiyah.

Detik Surabaya. "Kampus Mubarak Jemaat Ahmadiyah Dijaga Ketat Polisi". ttp://surabaya.detik.com/read/2005/07/15/141515/403573/10/kampus-mubarak-jemaat-ahmadiyah-dijaga-ketat-polisi.

"H. Ishak Didakwa Bahayakan Aqidah Ummat Islam". http://www.prianganonline.com/index.php?act=berita&aksi=lihat&id=962.

Hamdi, Mujtaba. "Sang Liyan dan Kekerasan: Kasus Penyeangan Kampus Mubarok Jemaat Ahmadiyah Indonesia Kemang – Bogor – Jawa Barat" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting*

di Indonesia. Ahmad Suaedy, ed. Jakarta: The Wahid Institute, 2007.

Kasim, Ifdhal. *Kewajiban Negara Pihak terhadap Pelaksanaan Instrumen-instrumen HAM Internasional*. Paper presented in the seminar on "Perlindungan HAM melalui Hukum Pidana," held by the National Alliance for Penal Code Reform (*Aliansi Nasional Reformasi KUHP*). Jakarta, 5 December 2007.

Kasim, Ifdhal (ed.). *Hak Sipil dan Politik, Esai-Esai Pilihan*. Jakarta: Elsam, 2001.

Komnas HAM. *Pernyataan Komisi Nasional Hak-Hak Asasi Manusia (Komnas HAM) tentang Peringatan dan Perintah kepada Penganut, Anggota, Dan/Atau anggota Jemaat Ahmadiyah Indonesia dan Warga Masyarakat*. Jakarta, June 2008.

Kompas. "Kepala Polri: AKKBB yang Cari Masalah." 12 June 2008.

Kompas. "Aktivitas Ahmadiyah Dilarang, SKB Tiga Menteri tak menyebut pembubaran Ahmadiyah." 10 June 2008.

Kompas. "Wapres: SKB Ahmadiyah Sejalan UUD 1945." 6 June 2008.

Kompas. "Negara Tidak Boleh Kalah, Polisi Incar Lima Anggota FPI." 3 June 2008.

Kompas. "Pemerintah Tetap akan Terbitkan SKB Soal Ahmadiyah." 2 June 2008.

KontraS-LBH Jakarta. *Laporan Investigasi tentang kekerasan terhadap Jama'ah Ahmadiyah di Manislor, Kuningan dan Lombok-NTB, Qiyadah Islamiyah, dan Gereja di Bandung*. Jakarta: LBH Jakarta-Kontras, 2008.

Koran Tempo. "Status Ahmadiyah Ditentukan Bulan Ini." 5 June 2008.

Liputan TV. "Gus Dur: Saya Akan Pertahankan Ahmadiyah." 10 March 2009, http://www.liputan6.tv/main/read/0/l724722/0.

TEMPO Magazine. Edition 16/XXXVI 9–15 June 2008.

Mardiyanto. Speech at the seminar on "Jaminan Perlindungan Hukum dan HAM untuk Kebebasan Beragama dan Beribadah menurut agama dan Kepercayaannya." Jakarta, 13 February 2008.

Mudzhar, M. Atho. *Kebebasan Beragama dan Beribadah di Indonesia*. Paper presented in the seminar on "Jaminan Perlindungan Hukum dan HAM untuk Kebebasan Beragama dan Beribadah menurut agama dan Kepercayaannya." Jakarta, 13 February 2008.

Nurujaman, Isa. "Menggugat Buku Sesat, Massa Bertindak Anarkis." http://www.freedomreligion.org/id/index.php?option=com_content&task=view&id=95&Itemid=6.

Putri, Agung. *Implementasi Konvensi Hak Sipil Politik dalam Hukum Nasional*. Paper presented in seminar on "Perlindungan HAM melalui Hukum Pidana," held by the National Alliance for Penal Code Reform (*Aliansi Nasional Reformasi KUHP*). Jakarta, 5 December 2007.

Ramadhanny, Fitraya. "100 Jemaat Ahmadiyah akan Dievakuasi, Massa Bershalawat." *Detik News*, 15 July 2005, http://www.detiknews.com/read/2005/07/15/165316/403773/10/100-jemaat-ahmadiyah-akan-dievakuasi-massa-bersalawat.

Rosyidin, Mursyid and Ali. "Diskriminasi Hak Sipil Minoritas: Pelarangan Pencatatan Pernikahan Jemaat Islamiyah Ahmadiyah Kuningan" in *Politisasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia*. Ahmad Suaedy, ed. Jakarta: The Wahid Institute, 2007.

Setara Institute. *Laporan Tahunan Kebebasan Beragama dan Berkeyakinan 2008: "Berpihak dan Bertindak Intoleran."* 3 January 2009.

Setara Institute. *Laporan Tahunan Kebebasan Beragama dan Berkeyakinan 2007: "Tunduk Pada Penghakiman Massa."* 18 December 2007.

SKB (Ministerial Agreement Letter) No: 3, Year 2008 (No: Kep-033/A/JA/6/2008) and No: 199, Year 2008.

Suaedy, Ahmad. "Religious Freedom and Collective Violence in Indonesian Democratization" in the collected writings by the Center for South East Asian Studies, Kyoto University, Kyoto, Japan (forthcoming).

Suaedy, Ahmad. "Dramatisasi Penangkapan FPI dan Barter Itu." *Esquire Magazine*. 10 July 2008.

Suaedy, Ahmad. "Ahmadiyah dan Pemerintahan yang Panik." *Koran Tempo*. 11 June 2008.

Suaedy, Ahmad, et al. *Kala Fatwa Jadi Penjara*. Jakarta: The Wahid Institute, 2006.

Subroto, Wisnu. *Jaminan Perlindungan Hukum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya*. Paper presented in seminar on "Jaminan Perlindungan Humum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya." Jakarta, 13–15 April 2008.

"Tindakan Aniaya Terhadap Ahmadiyah." http://www.politikindonesia.com/readhead.php?id=602.

Wahid, Solahudin. *Jaminan Perlindungan HAM untuk Kebebasan Beragama*. Paper for the seminar on "Jaminan Perlindungan Humum dan Hak Asasi Manusia untuk Kebebasan Beragama dan Beribadah Menurut Kepercayannya." Jakarta, 13–15 April 2008.

The Wahid Institute. *Monthly Report on Religious Issues (MRORI).* No. 1–17, www.wahidinstitute.org.

The Wahid Institute. *Islam, Konstitusi dan Hak-hak Asasi Manusia: Problematika Kebebasan Beragama dan Berkeyakinan di Indonesia*. Jakarta: The Wahid Institute, 2009.

The Wahid Institute. *Laporan Tahunan tentang "Pluralisme Beragama/Berkeyakinan di Indonesia, Menapaki Bangsa yang Kian Retak."* December 2008, www.wahidinstitute.org.

The Wahid Institute. *Monthly Report on Religious Issues: XIII*. Jakarta: The Wahid Institute, August 2008.

Zulkarnaen, Iskandar. *Gerakan Ahmadiyah di Indonesia*. Yogyakarta: LkiS, 2005.

Zaman, Isa Nur. "Penjemputan Paksa Sang Tertuduh : Penoda Agama." *Desantara Foundation*, http://desantara.org/v3/index.php?option=com_content&task=view&id=523&Itemid=53.

Right to Reparation: Toward Victim Oriented Justice

Papang Hidayat

Background

After World War II ended and strengthened by the end of the Cold War, there was progressive development by the international community to pursue responsibility for serious crimes.[1] It began with the Nuremberg Trials, which were intended to bring Nazi criminals before the courts, and continued with the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the establishment of the International Criminal Court (ICC).[2] Alongside these developments at the international level, some initiatives have been taken at the national level as well.[3] These developments have begun to assert intolerance for serious crimes.

Unfortunately, the policy towards serious crime under international law has focused on the conviction of the perpetrator (judicial justice mechanisms/legal justice). It is only of late that issues of justice in the context of international law have developed and expanded to focus more on victims.[4] This is also in-line with the evolution of the concept of justice, which has shifted from the doctrine of retributive justice, which gives priority to the conviction (of perpetrators) as a form of justice, to reparative/restorative justice, which gives priority to reparations in an attempt to improve the damage that occurred as a result of serious human rights violations.[5] This doctrine provides a moral foundation that any damage resulting from a serious crime must be restored to its pre-event condition (*restutio in integrum*) to return the position (dignity) of the victim.

1 In international law, these include crimes of genocide, crimes against humanity and war crimes as outlined in the Geneva Conventions of 1949 and Protocol I of 1977. Thus, international serious crimes include breaches of human rights law and international humanitarian law.

2 The ICC was established based on the Rome Statute of the International Criminal Court, which was adopted on 17 July 1998 and entered into force on 1 July 2002 after the sixtieth ratification. Up to now, the ICC has been ratified by 108 countries. Nevertheless, the ICC gets some resistance from several countries like the United States, Israel, China, India and Russia. Indonesia at this time has also not ratified the ICC, though in the RAN of Human Rights 2004–2009 it has been stated that Indonesia will ratify it in 2008. The ICC held its first trial in 2009 against Thomas Lubanga, a former militia leader in Congo (*Union of Congolese Patriots*). The ICC also issued a letter on the arrest of Omar al-Bashir, the president of Sudan, in March 2009 over his involvement in the genocide in Darfur. Efforts to arrest and prosecute him have served as a precedent for prosecuting heads of state.

3 In various countries—post-authoritarian regimes or post-internal armed conflict—various initiatives at the domestic level are used as a mechanism for accountability and to prevent the recurrence of similar events. These initiatives, for example, take the form of accountability mechanisms, truth (and reconciliation) commissions, lustration policy, reparation agendas for victims and legislative/institutional reform. These initiatives can be undertaken simultaneously and in a complementary fashion, while in other places initiatives have been undertaken in a piecemeal fashion. This is also known as transitional justice.

4 Lisa Magarrell, *Reparations in Theory and Practice*, ICTJ (International Center for Transitional Justice) Reparative Justice Series (New York: ICTJ, 2007), 1.

5 More on this kind of justice model can be accessed at: http://www.restorativejustice.org.

The exploration (research) of a justice project, which concentrates on the victims in the context of international law, is growing rapidly after a new wave of democratisation in various parts of the world in the 20th century.[6] The end of authoritarian regimes and the end of various internal armed conflicts left much damage as human rights violations had occurred systemically over relatively long periods. The wave of democratisation commonly supported by the movement of human rights violation victims then successfully urged the change of interpretation of international human rights law to integrate reparation of victims' rights.

It is ironic that some rights have been "forgotten" because the mechanism for the reparation of victim's rights had been employed at the end of World War I. The decision of the Permanent Court of International Justice—a type of international court established by the League of Nations—in responding to Poland's claim against Germany after World War I declared:

> *It is a principle of international law that the breach of engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.*[7]

This decision was then made the prototype for the confirmation of the rights of victims to reparations under international law.[8] Post-World War II, the government of (West) Germany also operated a policy of providing relief to the victims of the brutality of the Nazi regime. It especially focused on its Jewish victims by building bilateral cooperation with Israel and with non-state organisations, both to the victims collectively and individually.[9] Some other countries even have domestic precedents in providing reparations to victims (and their families) from the previous authoritarian regime.[10] The principle of the state's obligation to provide reparations for victims of human rights violations was developed from the provisions of various international conventions,[11] including the Draft Articles on Responsibility of States for Internationally Wrongful Acts, organised by the International Law Commission (ILC) in 2001.[12]

6 Richard Falk, "Reparations, International Law, and Global Justice: A New Frontier" in *The Handbook of Reparations*, Pablo de Greiff (ed.) (Oxford: Oxford University Press, 2006), 480.

7 World Courts, "Chorzów Factory Case (Germany vs. Poland), 1927, http://www.worldcourts.com/pcij/eng/decisions/1927.07.26_chorzow. Reparation practices are categorised in the inter-state mechanism but, in their development, reparations could also be valid for an individual's claim to the state. Dinah Shelton, "The Right to Reparations for Acts of Torture: What Right, What Remedies?" *Torture* 17 (2) (2007): 97.

8 The PCIJ's decision complements the arrangement in Articles 231–247 of the *Treaty of Versailles* (1919), which forced Germany and its allies to pay for other parties' losses.

9 Ariel Colonomos and Andrea Armstrong, "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations" in *The Handbook of Reparations*, Pablo de Greiff (ed.) (Oxford: Oxford University Press, 2006), note 6, paragraphs 390–419.

10 Some of these countries are Uganda, Argentina and Chile. See: Theo van Boven, *Study concerning the right to restitution, compensation and rehabilitation for victims of severe violations of human rights and fundamental freedoms*, UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth session, Item 4 of the provisional agenda, UN Doc. E/CN.4/Sub.2/1993/8 (2 July 1993), 106–125.

11 Including efforts to develop the principles of the right to reparation in soft law instruments, which are not legally binding.

12 The International Law Commission (ILC), established in 1948, is a subsidiary body of the General Assembly of the UN with a mandate to conduct a campaign on the progressive development of international law and its codification. In the various evolutions of international law, the ILC contributed to the script arrangement of The Vienna Convention on the Law of Treaties (1969) and The Rome Statute of the International Criminal Court (1998).

Conceptual Framework of the Right to Reparations in International Law
Definition of Reparation from a Human Rights Perspective

In the etymology of the Indonesian language, the meaning of reparation is "broken" or in need of "improvement." The word in English is derived from the Latin word *reparare* that means "an action to pay the loss" or "compensation." In English, the similar word has a number of meanings, such as "to repair." In general, reparation is then understood as being the effort of repairing or returning something to a previous condition, before the damage occurred. In the context of human rights, violations are often made analagous to a disease for which the solution is medical treatment or a remedy to return a person to "normal." In actual fact, serious violations of human rights often cannot be remedied to render an individual as they were before. Murder, torture, forced displacement and rape are the types of crimes from which it is impossible for victims to return or fully recover either physically or mentally. However, the effect of reparation in the context of human rights does not merely have the function of settling the past. Reparation for victims also has a preventive effect for the recurrence of events in the future and is one of the state's obligations.

In various international human rights treaties, the term reparation is often used alternately with the term effective reparation. "Remedies" from the perspective of international law has two separate meanings: a procedural one and a substantiveone.[13] First, a "remedy" is the process whereby a claim of human rights violation can be received and decided upon, either through a court mechanism (both civil and criminal court), an administrative body or a state institution with the relevant competency. Access to this justice also includes the access of a victim to utilise the international (or regional) human rights mechanisms available to him/her.[14] Second, "remedy" can be understood as the result (outcome) that can be enjoyed by those who make claims through a series of processes. Thus, the definition of "remedies" is related to access to justice, which is conditional upon the existence of legal and institutional response mechanisms, and as such enable victims (and their families) to glean something concrete as a result of their suffering.

Rights to these "remedies" are valid for every violation of human rights, however, special attention is given to serious crimes under international law—both human rights and humanitarian law—which includes genocide, crimes against humanity and war crimes as stipulated in the Geneva Conventions of 1949 and Protocol I of 1977.[15] Neglect of both concepts of remedies is often referred to as "impunity." Impunity itself is defined as the impossibility, both *de jure* and *de facto*, to bring perpetrators of human rights violations to account for their conduct—both in the process of criminal justice and through more informal disciplinary action—because they cannot be the object of investigation. There are some debates about whether the focus of remedies should concentrate just on the recovery of the victim or whether remedies have to include the prosecution and detention of perpetrators within the legal justice sytem.[16]

13 Dinah Shelton, *Remedies in International Human Rights Law* (Oxford: Oxford University Press, 1999), 7.

14 United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution 60/147 (16 December 2005), paragraphs 12 and 14, http://www2.ohchr.org/english/law/remedy.htm. This provision is similar to Act 39/1999 on Human Rights, Article 7 (1): "Everyone has the right to use all the instruments of national law and the international community for all violations of human rights that are guaranteed by Indonesian law and international laws on human rights that have been adopted by the Republic of Indonesia."

15 United Nations, *Basic Principles and Guidelines on the Right to a Remedy…* (2005), paragraphs 4–5; United Nations, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Articles 2–3. This list is not yet final and closed (exhausted) considering the various conventions, which also affirm the state's duty to "remedy" various types of crimes (serious violations of human rights). See: Van Boven, *Study Concerning the Right to Restitution…* (1993), paragraphs 8–13 and 41.

16 "Amnesty," a perspective that emphasises political results, sometimes functions in maintaining the stability of a democratic transition and in maintaining peace and national reconciliation in a society that has been torn by internal armed conflict. See: Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments:

The right to reparations can be categorised in the context of remedies. In the evolution of international human rights law, reparation is narrowed down as a series of results that can be obtained by a person when he/she becomes a victim of human rights violations. The right to reparation is an autonomous human right. They are inherent to the victim (and his/her family) and they are inalienable (rights that cannot be taken away). The term "victims" here has a wide definition. In the Basic Principles and Guidelines on the Right to a Remedy and Reparation, "victims" is defined as those who, directly or indirectly, individually or collectively, suffered physically, mentally or in any other way and that his/her human rights were violated—both by acts of commission and/or omission—which is a serious breach of human rights law and international humanitarian law. Victims also include those who are the close family or people that are directly dependent on the victim, as well as those who have experienced a similar loss because they assisted the victims or prevented victimisation.[17] The Human Rights Committee also recognises the broad scope of the definition, particularly for families of victims of forced displacement or those who have died as the result of human rights violations.[18]

Models for Reparation

Reparation of a victim's rights—formulated in the Draft Articles on States Responsibility for Internationally Wrongful Acts, which was organised by the International Law Commission (ILC)[19] and based on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation[20]—cover restitution, compensation, rehabilitation, satisfaction (for the victims) and a guarantee that similar events will not reccur.

- *Restitution* is a process concerned with restoring the victim to their prior situation, before the violation of their rights (*restitutio in integrum*). Restitution includes whichever is appropriate: the returning of freedom, identity, family life and citizenship; returning a person to his place of origin; recovery of political rights that have been seized; the return to a job; and the restoration of his/her own property and goods.[21] A restitution programme often requires "judicial restitution" as it requires a revision, modification or the making of legal instruments that can guarantee this recovery.[22]

- *Compensation* is the recovery for all forms of loss that can be converted financially. It is proportionate to the level of seriousness of violation and the specific conditions of each case, such as physical or mental harm, opportunities lost (employment, education and social security), material damage and loss of earnings (including potential ones), moral damage (immaterial), the cost required for legal or expert assistance, medical services and medicines, and psychological and social services.[23] This kind of reparation is most often referred to in the decisions of treaty bodies and the human rights regional court. Generally, economic

Principles Applicable and Political Constraints" in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Vol. 1: General Consideration*, Neil J. Kritz (ed.) (Washington DC: Institute of Peace Studies, 1995), 3. Meanwhile, from the legal perspective, amnesty is the infringement of international law, whether it is explicitly listed in the various conventions or in the decisions of regional and international human rights institutions. See: Raquel Aldana-Pindell, "An Emerging Universality of Justiciable Victim's Rights in the Criminal Process to Curtail Impunity for Stated-Sponsored Crimes," *Human Rights Quarterly* 26 (2004): 607.

17 United Nations,*Basic Principles and Guidelines on the Right to a Remedy*… (2005), paragraph 8; United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly Resolution No. 40/34 (29 November 1985), paragraphs 1–2, http://www2.ohchr.org/english/law/victims.htm

18 Shelton, *Remedies in International*... (1999), 239–240.

19 United Nations, *Draft Articles on Responsibility*… (2001), Articles 34–37.

20 United Nations, *Basic Principles and Guidelines on the Right to a Remedy*… (2005), paragraphs 19–23.

21 Ibid., paragraph 19. Redress Trust, *Reparation: A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law* (London: The Redress Trust, 2003), 15, http://www.redress.org/downloads/publications/SourceBook.pdf.

22 Ibid., 15–16.

23 Ibid., 18.

damages (financial) are high compared with the state's ability to pay. The compensation thus depends on the economic condition of the state concerned. Having to part with relatively large sums of money might motivate and shape future behaviour on the part of the state.

- *Rehabilitation* is reparation that includes medical and psychological treatment, as well as access to social and legal services. A serious violation of human rights often results in trauma on the part of victims (and their families), damage to physical organs or stigmatisation by the community. The victim may be alienated by their community as a result of physical damage.

- *Satisfaction* is a concept that covers a protection programme for witnesses and victims, the cessation of human rights violations, full investigation, an official apology and recovery of the victim's reputation. This non-monetary reparation model has an enormous agenda looking into the long-term effects of restorative justice both of the victims and the wider community. In this model there are several recommendations: stopping the violence; making an apology; confessing the state's responsibility;[24] legal sanctions and administrative repercussions for the perpetrators concerned; warnings, memorialising and respecting the victims;[25] as well as legal reform and the establishment of relevant state institutions for the promotion and protection of human rights.[26]

- *Guarantees of non-repetition* are forms of "moral reparation" to prevent similar violations. These include the revision of state policy or institutional reform. It is called moral reparation because the model is not one that includes financial payment for the loss but is a moral statement by the country and its commitment in the future. The reparation model also has a broad dimension related to policy reform and state institutions. The agenda includes not only human rights mainstreaming, rule of law and human rights education for the state apparatus but also reform of the security sector,[27] the guarantee of civil control of the military and security institutions, and the use of a military tribunal solely for military crimes committed by members of the military.[28]

24 One common thing is when a new democratic government delivers an apology to the public for violations of human rights that were conducted by previous regimes. Magarrell, *Reparations in Theory* (2007), 4.

25 In Argentina, the government and parliament set the date of 24 March as the *Dia de la Memoria por la Verdad y la Justicia* (The Day of Remembrance for Truth and Justice). This national holiday was established to commemorate the coup d'etat by the military junta in 1976 that was followed by the forced removal of tens of thousands of people in Argentina. The military junta government in Argentina ended in 1983. This national holiday was ratified by the parliament and government in 2002 and effectively applied from 2006. Memorialising can also be done, as happened in South Africa. Post-apartheid, the government changed the function of Robben Island—formerly a prison for political prisoners that mirrored the brutality of the apartheid regime—to museums and a tourist attraction.

26 United Nations, *Basic Principles and Guidelines on the Right to a Remedy…* (2005),paragraph 22.

27 Security sector reform is often defined in terms of creating democratic oversight institutions that have authority over security agencies' policies and practices based on the principles of democracy, rule of law, and human rights observance. These security actors include the core security actors, such as the military, police, intelligence, border guards and many others. There are also additional security actors and agencies like management and oversight bodies such as parliament, ministries of defense, the national defense council, financial agencies and civil society organisations; institutions of law and justice (such as courts, ministries of law, prisons, law enforcement institutions, national human rights commissions or an ombudsman) and the traditional court system; and non-formal security actors (non-statutory security forces) such as armed militias, guerrilla armies and members of private security. See: OECD DAC, *Security System Reform and Governance* (2005), 20–21, http://www.oecd.org/dataoecd/8/39/31785288.pdf.; OECD DAC, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* (2007), 5.

28 United Nations, *Basic Principles and Guidelines on the Right to a Remedy…* (2005), paragraph 23; Redress Trust, *Implementing Victims' Rights*: *A Handbook on the Basic Principles and Guidelines on the Rights to a Remedy and Reparation* (London: Redress Trust, 2006), 39.

It is clear that reparations are not limited to paying for financial loss but may include symbolic actions as well. Reparations can also be made for victims individually or collectively. The context for collective reparations is a national reconciliation programme or one related to the issue of human rights violations based on discrimination (racial, religious or of a specific ethnic group). It is vital that the reparation policy does not take on a mantle of discrimination in such undertakings and that it must always be proportionate to the state's other reform policies.

In the debates concerning the quest for an ideal settlement model, what cannot be denied is the fact that any reparation policy will be far more effective and meaningful when it complements other transitional justice programmes such as the disclosure of truth, institutional reform and accountability mechanisms. Seeking a reparation policy in isolation may prove counterproductive and degrade the status of the victims.[29] There are some states that have undertaken reparations programmes exclusively and separately from other accountability mechanisms.[30]

Right to Reparations as an Instrument of International Human Rights Law

Photo 17. Human Rights for All Campaign by Amnesty International

The evolutionary development of international law instruments affirms the existence of reparation rights, which was only implied in many previous instruments. Here is a list of the various provisions of international human rights law—whether legally binding (conventions) or declarations—which state the right to reparations or the effective reparation of victims of human rights violations.

29 Magarrell, *Reparations in Theory*... (2007), 2; Redress Trust, *Implementing Victims' Rights*… (2006), 24.

30 Van Boven, *Study Concerning the Right to Restitution*… (1993), paragraphs 106–125. A similar case is applied in Indonesia to the victims in Aceh, who are implicated by the armed conflict between the Government of Indonesia and the GAM (Free Aceh Movement). Understanding the memorandum between the government of the Republic of Indonesia and the Free Aceh Movement was signed by parties in Helsinki, Finland on 15 August 2005, points 3.2.1, 3.2.4, and 3.2.5 (part of "Reintegration into Society").

Reparations and Effective Remedies in International Human Rights Law[31]

INSTRUMENTS	RELEVANT ARTICLES
Universal Declaration of Human Rights (UDHR)	***Article 8***: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*	***Article 6***: States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.
International Covenant on Civil and Political Rights (ICCPR)*	***Article 2 (3)***: Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. ***Article 9 (5)***: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. ***Article 14 (6)***: When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*	***Article 13***: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. ***Article 14 (1)***: Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. ***(2)***: Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

31 Not including regional human rights instruments that also have similar provisions: The EU Charter of Fundamental Rights (Article 47), the European Convention on Human Rights (Articles 5 [5], 13 and 41), the American Convention on Human Rights (Articles 24, 25, 27 [2], 63 [1] and 68), the Inter-American Convention to Prevet and Punish Torture (Articles 8 and 9), the Inter-American Convention on Forced Disappearance of Persons (Article X), the African Charter on Human and Peoples' Rights (Articles 3, 7 and 21 [2]) and the Arab Charter on Human Rights (Article 9).

Convention on the Rights of the Child (CRC)*	***Article 39***: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) •	***Article 15***: No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation. ***Article 16 (9)***: Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation. ***Article 18 (6)***: When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person. ***Article 83***: Each State Party to the present Convention undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.
International Convention for the Protection of All Persons from Enforced Disappearance[2]	***Article 8(2)***: Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation. ***Article 24(4)***: Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. ***Article 24 (5)***: The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as: (*a*) Restitution; (*b*) Rehabilitation; (*c*) Satisfaction, including restoration of dignity and reputation; (*d*) Guarantees of non-repetition.
Hague Convention on Land Warfare	***Article 3***: A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Protocol I (1977) of the Geneva Conventions of 1949•	***Article 91***: A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.
The International Criminal Tribunal for the former Yugoslavia (ICTY)	***Article 24(3)***: In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.[3]
International Criminal Tribunal for Rwanda (ICTR)	***Article 23(3)***: In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.[4]
Rome Statute of the International Criminal Court (ICC) •	***Article 75***: (1) The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting. (2) The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. (6) Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

*Notes: * Ratified by the government of the Republic of Indonesia; • Not been ratified by the government of the Republic of Indonesia;* 2) Not yet applicable. Currently, only ten countries have ratified it out of the twenty countries required; 3) The ICTY only dealt with the issue of restitution, not including any other forms of recovery. In addition, the Rules of Procedure and Evidence of the ICTY (Rule 106) allow these tribunals to send their decisions to an authority at the national level so that victims can get any compensation; 4) The ICTR only dealt with the issue of restitution, not including other forms of reparation. Rule 106 of the ICTR also can only send its decision to an authority at the national level so that victims can get any compensation.

The provisions for victims' rights to reparation are repeatedly reaffirmed by General Comments/ Recommendations—the authoritative interpretation of the international human rights treaty bodies. The most important thing that emantes from them is, first, the General Comment of the Committee on Human Rights (Human Rights Committee) No. 29 of the ICCPR article on derogation (limitation of rights) during times of emergency. In Article 4 (2) of the ICCPR there are seven categories of rights that cannot be reduced or restricted (non-derogable rights)[32] in any situation, including in emergencies.[33] In its General Comments, the Human Rights Committee considers that although it is not actually covered in the ICCPR's Article 4 (2), the "effective remedy" provisions in Article 2 (3) also cannot be limited or delayed because these provisions are in the ICCPR, which as a whole is an "inherent obligations treaty."[34]

Second, the Human Rights Committee issued General Comment No. 31 on the general legal obligations of the ICCPR states parties. In this comment it was stated that each state party must take positive steps[35] in providing an "effective remedy" mechanism for victims so that their claims can be processed or handled by

32 The seven non-derogable rights are: right to life (Article 6); freedom from torture and inhumane treatment (Article 7); freedom from slavery and forced labor (Article 8 [paragraphs 1 and 2]); freedom from criminal prosecution because of debt agreements (Article 11); freedom of the application of retroactive criminal prosecution (Article 15); the rights on recognition as subjects of law (Article 16); and freedom of thought, belief and religion (Article 18).

33 The absolute importance of Article 4 (paragraph 2) makes the Human Rights Committee forbid any application by a State Party to put a reservation on this provision, by considering that such action is a serious inconsistency of the goals and ideals of the ICCPR, as affirmed in Article 19 (paragraph c) of the Vienna Convention on the Law of Treaties (1969). See: UN Doc. CCPR/C/SR.550, 551, 555.

34 United Nations, *General Comment No. 29: Article 4: Derogations during a State of Emergency*, Human Rights Committee, UN Doc. HRI/GEN/1/Rev.7 (2001), paragraph 14.

35 Positive obligations of the state means that in protecting and fulfilling human rights, states should actively take the necessary steps through legislative, administrative or judicial approaches.

a domestic procedure.[36] Additionally, the Human Rights Committee also reaffirmed that the accountability to investigate, charge and prosecute perpetrators is an integral part of the effective reparation mechanism for victims, especially for cases of torture, extrajudicial execution and forced disappearance. Amnesty for the perpetrators of those crimes had violated the ICCPR.[37]

Third, the Committee on the Elimination of Racial Discrimination—the treaty body for the ICERD—in its General Recommendations XXVI on Article 6 of the convention also states that reparation should be given to those who become the victims of racial discrimination.[38]

Fourth, although it is not regulated in the text of the Committee on the Elimination of Discrimination against Women (CEDAW), the committee of this convention issued General Recommendation No. 19 in 1992 on Violence against Women. In this recommendation the Committee on the Elimination of Discrimination against Women also reaffirms the rights of reparation for women who become the victims of human rights violations, especially gender related violence.[39]

Granting the right to reparation has also been included in the decisions of international human rights treaty bodies and the court of human rights at the regional level.[40] The decisions have occurred in the context of quasi-judicial authority, which the treaty bodies possess, when individual complaints (from victims) have been exhausted without remedy at the national level. However, this mechanism applies only to states parties, which recognise the special authority (quasi-judicial) of the treaty bodies.

Right to Reparation in National Mechanisms

Reparation in the Framework of the National Normative Provision

The end of the New Order in May 1998 marked a significant change in human rights politics in Indonesia. A discourse on human rights issues, which had previously been taboo, began to be integrated into formal state policy. This is understandable since the New Order itself was the cause of systemic human rights violations. Whilst the past is behind us, human rights issues cannot be ignored. Human rights have been adopted in various legal instruments, including the constitution as the most important.

In the Second Amendment of the Constitution of 1945 (in 2000), human rights are placed in Chapter XA, starting with Article 28A to Article 28J. The categorisation of rights that are listed in that section covers most of the human rights as set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. All three instruments are known as the International Bill of Rights. Unfortunately, the rights of victims to an effective remedy when

36 United Nations, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. HRI/GEN/1/Rev.7 (2004), paragraphs 8 and 15.
37 Ibid., paragraph 18.
38 United Nations, *General Recommendation* XXVI *on Article 6 of the Convention*, Committee on the Elimination of Racial Discrimination, UN Doc. HRI/GEN/1/Rev.7 (2000), paragraph 2.
39 CEDAW, *General Recommendation No. 19 on Violence against Women*, UN Doc. HRI/GEN/1/Rev.7 (1992), paragraphs 9, 24 (i), 24 (k), 24 (r), 24 (s) and 24 (t).
40 Van Boven, *Study Concerning the Right to Restitution*… (1993), paragraphs 50–63.

a human rights violation has occurred is not provided for. As a result, Amendment II is also minimal in its enforcement of human rights. However, many countries in the world undergoing a similar democratic transition and which had huge human rights problems in the past have affirmed the right to reparation in their respective constitutions.[41]

Prior to Amendment II of the Constitution of 1945, the legislature validated Act No. 39/1999 on Human Rights, half of which affirmed the recognition of rights and the other half dealt with the issue of a National Commission on Human Rights. Nevertheless, in this law, the right to reparation is not stated.

Provisions on restitution, compensation and rehabilitation were first stated in Act No. 26/2000 on the Human Rights Court.[42] In Chapter VI on Compensation, Restitution and Rehabilitation, Article 35 of Act No. 26/2000 stated:

*(1) Every victim of serious human rights violations or their heirs **may** receive compensation, restitution and rehabilitation.*

(2) Compensation, restitution and rehabilitation as referred to in point (1) of the Human Rights Court verdict.

(3) Provisions on compensation, restitution and rehabilitation are set forth further by Government Regulation.

The regulation above does not necessarily recognise rights to compensation, restitution and rehabilitation of victims. In Article 35 (1), it is explained that a victim of human rights violations (or his/her family) "may" get compensation, restitution and rehabilitation. The word "may" does not express an imperative, whereas the right to reparation for a victim of human rights violations is imperative and integral (inalienable). The word "may" in the definition of this law means compensation, restitution and rehabilitation are not required to be given to the victim.

Further, Article 35 (2) explains that compensation, restitution and rehabilitation "can" be obtained by the victim(s) by integrating reparation into the "Human Rights Court verdict." This means reparation to victims depends on the judicial mechanism. The right to reparation, however, should not rely on court decisions, considering the definition of a victim is determined by the suffering endured and not determined by the relationship between victim(s) and perpetrator(s). This was affirmed in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, paragraph 9:

> *Someone must be defined as a victim regardless of whether the perpetrators of human rights violations can be identified, arrested, prosecuted, or convicted, and regardless of the kinship between the perpetrator and the victim.*

41 For example, Trinidad and Tobago, Paraguay, Ukraine, Portugal, Sri Lanka, Zimbabwe, Namibia, Nepal and India. Shelton, Remedies in International… (1999), 27–30.

42 This human rights court is a model of judicial mechanisms to resolve serious violations of human rights (limited to crimes of genocide and crimes against humanity). Act No. 26/2000 on the Human Rights Court is a Government Regulation Substitute of Act No. 1/1999, which was issued by President Abdurrahman Wahid to bend international mechanisms for solving the problem of serious human rights violations in the East Timor referendum in 1999. See: International Crisis Group (ICG), "Indonesia: Implications on the Timor Trials," ICG Asia Report No. 16 (Jakarta/Brussels: ICG, 2002), 4.

This provision clearly states that the right to reparation should not depend on the process of the trial of the offender. For many cases of human rights violations in which identifying the perpetrator is difficult, such as in the practice of enforced disappearance or summary killing,) it would be difficult to build a case for court. From the experience in Indonesia, this problem immediately emerges when a human rights court mechanism (including at the level of higher jurisdiction in the Supreme Court) cannot identify the perpetrator.

Article 35 of Act No. 26/2000 was then issued in Government Regulation No. 3 in 2002 on the Compensation, Restitution and Rehabilitation of the Victims of Serious Human Rights Violations. Government Regulation No. 3 is not without problems. There is a lack of clarity in definitions, types of loss and the process of counting the loss,[43] and ambiguities over which party has the authority to file for compensation, restitution and rehabilitation and how to document a loss or losses.

Recently there has been a Commission for Victims and Witnesses Protection, which is the mandate of Act No. 13/2006 on the Protection of Witnesses and Victims. This act provides for reparation for the victims:

> *Victims of serious human rights violations are not only entitled to the rights, as referred to in Article 5,*[44] *but are also entitled to obtain: a. medical assistance; and b. psycho-social rehabilitation.*[45]
>
> *(1) The victim, through LPSK, could claim in court: a. rights on compensation in cases of serious human rights violations; b. rights on restitution or loss recovery, which are the responsibility of the criminal perpetrators.*
>
> *(2) A decision on compensation and restitution awarded by the court.*
>
> *(3) Further provisions concerning the award of compensation and restitution are regulated by Government Regulation.*[46]

Unfortunately, the right to reparation in this act was based on the legal process or punishment of perpetrators, just like Act No. 26/2000 on the Human Rights Court. This means that according to Act No. 13/2006, reparation is not a "right" of a victim.

Reparation Practices within the Human Rights Court Mechanism in Indonesia

The Ad Hoc Human Rights Court was first held in 2002 for the East Timor case. Although only a small proportion of defendants have been found guilty by this court (1st level),[47] there has been no decision to provide compensation, restitution or rehabilitation for the victims of East Timor. There is an assumption that East Timor's independence

43 The definition of compensation, restitution and rehabilitation in Government Regulation No. 3/2002 has a weakness because of the lack of rules of international human rights standards on the reparation rights available at that time.
44 Article 5 describes the rights possessed by the victims in order to guarantee personal security, family and possessions during the judicial process.
45 Act No. 13/2006, Article 6.
46 Act No. 13/2006, Article 7.
47 The Ad Hoc Human Rights Court for East Timor gave the following sentences: three years imprisonment for Abilio Jose Soares (former governor of East Timor); five years imprisonment for Soedjarwo (former Dili military district commandant); three years imprisonment for Hulman Gultom (former Dili police chief); ten years imprisonment for Eurico Guterres (former deputy commander of the Aitarak militia); five years imprisonment for Noer Muis (former Wiradharma Military Resort commandant); and three years imprisonment for Adam Damiri (former Udayana regional commander).

(Timor-Leste) is a "gift" from Indonesia so the provision of reparation for the victims is thus unpopular.[48]

Although reparation is not a right for victims within the Human Rights Court (Act No. 26/2000), there was a legal breakthrough for the giving of compensation. It happened in the decision of the Ad Hoc Human Rights Court for the Tanjung Priok case in 1984.[49] In the decision on the Butar-Butar case, the judge[50] handed down a sentence of ten years imprisonment and asked the state to provide compensation to the victims and their dependents without mentioning a figure[51] or stipulating who was entitled to receive it. A decision for compensation was also made by the judges[52] in the case of Sutrisno Mascung and friends.[53] They laid down a figure of 1.15 billion rupiah for the thirteen victims whose names were detailed.[54] However, in their decision, the judges did not explain how they had come to count the losses. The decision was never implemented and, as the Supreme Court eventually freed all the accused, the compensation effort for the victims failed.

It is important to note that the initiative for demanding compensation is not held by the public prosecutor but by the victims and their partner, namely KontraS (the Commission for Missing Persons and Victims of Violence). At first, the victims and KontraS calculated the compensation at approximately 33 billion rupiahs, which included material losses such as property loss, loss of earnings due to job loss, financial loss relating to medical expenses on account of injury or illness in the aftermath of events, transportation costs incurred in an effort to find missing family and loss during the process of the human rights trial, as well as immaterial losses due to murder, arrests and arbitrary detention, torture, enforced disappearance(s), stigmatisation and psychological trauma.[55]

Similar initiatives were carried out by the victims of serious violations of human rights and their legal representative (the Civil Society Coalition for the case of Abepura) for the case of Abepura,[56] Papua. This time, they tried to file a merger claim on the losses sustained by victims of human rights violations in Abepura. Merger claims in compensation cases are based on the Criminal Procedure Code (sections 98–101) and mechanisms on filing a class action (based on Supreme Court Regulation No. 1 in 2002). This claim was filed because of the waiver request for the fulfillment of the rights of the victims in the indictment made by the public prosecutor.

48 In fact, the whole question of East Timor has never been in the public eye because of decades of political denial and misinformation. The "memory" Indonesia's public has about East Timor is the question of separatism. Meanwhile, the court process through the Ad Hoc Human Rights Court has failed to meet the requirements of justice. See: United Nations, *Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999*, UN Doc. S/2005/45826 (May 2005); David Cohen, "Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta," *ICTJ Occasional Paper* (2003); Commission for Friendship and Truth, *Final Report of the Commission of Truth and Friendship (CTF) Indonesia-Timor-Leste*, *Per Memoriam ad Spem* (July 2008).

49 These serious human rights violations occurred on 12 September 1984 in the area of Tanjung Priok, North Jakarta. At that time, the military blindly opened fire on a group who demanded the release of their friends who had been arrested by the military because they questioned the provocation of a Babinsa (Village Assistance Body) by the military, which is considered to be tainting a mosque. Dead or missing victims numbered more than a hundred people. The violations continued with the arrest and arbitrary restraint, torture and uncredible judicial proceedings (*peradilan sesat*) against those accused of a subversive act because they rejected the sole basis of Pancasila policy.

50 The judges for this case were Cicut Sutiyarso, Emong Komariah, Winarso, Ridwan Mansur and Kabul Supriyadi.

51 KontraS, *Reproduksi Ketidakadilan Masa Lalu: Catatan Perjalanan Membongkar Kejahatan HAM Tanjung Priok* (Jakarta: Commission for Missing Persons and Victims of Violence, 2008), 198.

52 The judges for this case were Andi Samsan Nganro, Binsar Gultom, Amirudin Aburaera, Sulaiman Hamid and Heru Susanto.

53 In this case, there were eleven accused who were sentenced to imprisonment of between two to three years.

54 KontraS, *Reproduksi Ketidakadilan Masa Lalu*… (2008), 45. The decision which is related to the compensation of dissenting opinion (the difference of opinion) in which judges Heru Aburaera and Amirudin Ssanto asked to set aside the decision of the compensation.

55 The process of determining the amount of compensation is through a series of consultations with legal, insurance and medical experts, and also by considering the Supreme Court Decision of 14 June 1969 No. 74/K/FI/169 on Assessment Money Done With Gold Prices and the Supreme Court Decision of 15 August 1988 No. 63 K/PDT/1987 on Indemnity Payments based on 6 percent per year. KontraS, *Reproduksi Ketidakadilan Masa Lalu*… (2008), 42–44.

56 This case involved torture, summary killings, persecution, arbitrary deprivation of freedom, arbitrary arrests and detention, deprivation of property and involuntary displaced persons by the members of the Jayapura police officers and Mobile Brigade Unit of the Papua Police. The victims were targeted because the police officer held them responsible for the assault committed by an unknown group on the Sector Police Headquarters (*Mapolsek*) in Abepura in December 2000, which resulted in the death of one policeman and the wounding of three others. The assistant to commissioner chief of police in Jayapura, Daud Sihombing, and the head of the Task Force of the Police Mobile Brigade Papua, Chief Commissioner of Police Johny Wainal Usman, were set to be the defendants in the case of the Human Rights Court for Abepura, which was held in Makassar, South Sulawesi.

This class action was divided into four categories based on the losses accepted:

1. Representatives of class I: victims by virtue of the death of a relative;
2. Representatives of class II: victims who suffered physical loss, specifically permanent physical disability due to torture or other inhumane acts;
3. Representatives of class III: victims who suffered a severe or mild injury and psychological trauma due to torture or other inhumane acts; and
4. Representatives of class IV: victims of losses, damage and destruction of personal property.

Importantly, the judges did not accept these claims. Yet again all the perpetrators were acquitted by a decision in the Supreme Court. Thus, in the history of remedy seeking through the mechanisms of the Human Rights Courts (Act No. 26/2000), a victim's right to reparation has never been acknowledged.

Actually, reparation is also regulated in legislation (Act No. 27/2004 on the Truth and Reconciliation Commission) relating to the settlement of serious violations of human rights issues from the past. Unfortunately, the provision of arrangements for reparations (compensation, restitution and rehabilitation) is not rigid or obligatory. In Article 27 of Act No. 27/2004 it was stated that an award for compensation and rehabilitation can be accepted after the petition on amnesty of the perpetrators is granted. This is clearly degrading the victim because it is assumes that compensation and rehabilitation can be traded with forgiveness of the perpetrators. The act was then repealed by the Constitutional Court after judicial review by the victims and human rights organisations.[57] Although it has been repealed, parliament should in the future endorse similar legislation by considering the decision of the Constitutional Court—as mandated by the Legislative Decree TAP MPR V/2000 on Stabilization of National Unity and Integrity.[58]

Closing: Challenges and Advocacy Opportunities for Future Reparation Rights

So far, there have been no adequate perspectives on victims' right to reparation from policymakers. This is caused by several things. First, ratification of international human rights instruments are mere window dressing. Post-Cold War, human rights are regarded as a "universal norm" and the hallmark of a democracy based on the rule of law. Ratification of human rights instruments by the post-New Order era of the government of Indonesia has become nothing more than a political declaration without direction or substantial legal policy. As a result, many generic implementations and obligations that are the consequence of ratifying human rights conventions are simply ignored by the parliament and the government.

Second is the poor commitment to implement legislative reform that accommodates international human rights obligations and the lack of capacity to ensure policymakers modify the statutory procedures or other regulations.[59] The effort to advocate for the right to reparation for victims, which is a rather complex business, is not sufficiently robust to effectively influence policymakers.

57 Supreme Court Decision No. 006/PUU-IV/2006 (4 December 2006).

58 In the hierarchy of the Indonesian legal system, an MPR Decree (TAP MPR) is higher than the laws made by parliament. The Commission of Truth and Reconciliation (KKR) mechanism is also required in accordance with the mandate of Act No. 11/2006 on the Aceh Government, which mandated the establishment of a KKR for Aceh (Article 229), and Act No. 21/2001 on Special Autonomy for the Papua Province (Article 46).

59 Also interesting is that in more than ten years of the post-New Order era, the human rights issue is still lacking in the universities, although human rights has become one of the normative standards in the state system in Indonesia. The issue of human rights is more visible in the advocacy conducted by the victim community and in NGOs.

Although there are many obstacles, there are also opportunities to advocate for victims' reparation rights. First, the right to reparation, though limited in scope, was given by the government to the victims of Aceh in the Helsinki Peace Memorandum of Understanding between the Government of Indonesia and GAM (the Free Aceh Movement) on 15 August 2005. One of the points mentioned was the following:

> *The Government of Indonesia will allocate funds for the rehabilitation of public and individual property that was destroyed or damaged by the conflict to be managed by the Government of Aceh (3.2.4).*[60]

This point can be used for the advocacy of victims' right to reparation at the national level.[61]

Second is the demand to bring the right to reparation for victims into a basic law. This is not an option but is demanded for the fulfillment of a state's obligations to international human rights as set down in various international human rights instruments that Indonesia has ratified. Indonesia has become a state party to six of the nine major international human rights instruments.[62] This means Indonesia has an responsibility at the national level to create complementary legislation and domestic human rights policies in line with its ratification obligations.[63] This responsibility extends to domestic and international accountability and scrutiny in respect of human rights protection.[64] This is explicitly regulated, for example, in Article 2 (2) of the International Covenant on Civil and Political Rights (ICCPR), which states:

> *If it is not yet regulated in statutory provisions or any other policies, each State Party in this Covenant promised to take the necessary steps, in accordance with its constitutional processes and with the provisions of this Covenant, to establish the statutory provisions or other policies required to enforce the rights application, which is recognized in the Covenant.*

The evolution of the modern legal system has recently also led to victim-oriented justice (reparative justice). The provisions stipulated by human rights conventions and the growing number of states that have ratified these conventions are also contributing significantly to the evolution.

The figure below summarises the challenges and opportunites presented in this section.

No.	Challenge	Opportunity
1.	Ratification of international human rights instruments for political reasons.	The right to reparation has never been bestowed by the Government of Indonesia, although limited in scope, for the victims of Aceh agreed in the Helsinki Peace Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement.

60 In this Helsinki MoU, reparation is also given to former combatants, political prisoners or any other parties affected by the ongoing conflict in Aceh. To determine the appropriate reparations, there is the "Body of Reintegration of Aceh," which is comprised of the relevant parties in the Helsinki MoU, the Regional Government of Aceh and so on. BRA programmes can be accessed at: http://www.bra-aceh.org.

61 The reparation model with local coverage has also been carried out by the government in the Declaration of Malino I and II as part of horizontal conflict resolution (religion-based) in Poso (December 2001) and Maluku (February 2002). Both provide rehabilitation programmes on the economic rights of ownership, which was affected by the conflict.

62 Indonesia has ratified the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). Indonesia does not recognise any mechanism of individual complaints to a treaty body.

63 This was also affirmed by Act No. 39/1999 on Human Rights in Article 7 (2), which states: "The provisions of international law which have been ratified by Indonesia's human rights into national law."

64 Implementation of generic obligations in ratifying a human rights convention must be guaranteed through the legislature, judiciary and administration.

2.	Low commitment to implement legislative reform that is accommodating of international human rights obligations.	The demand to make the right to reparation for victims into a basic law, which demands the fulfillment of international human rights obligations as called for in various international human rights instruments that have been ratified by Indonesia.

Action needs to be taken to recognise and address the absence of the right to reparation for victims either by the creation of a new act or the modification of an existing one. It is imperative to establish an administrative mechanism for the victims' claims, or reform the court system so that rights can be fully enjoyed by victims.

References

African Charter on Human and Peoples' Rights. 27 June 1981, http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf.

Aldana-Pindell, Raquel. "An Emerging Universality of Justiciable Victim's Rights in the Criminal Process to Curtail Impunity for State-Sponsor Crimes." *Human Rights Quarterly* 26 (2004).

Arab Charter on Human Rights. 15 September 1994, http://www.unhcr.org/refworld/publisher,LAS,,,3ae6b38540,0.html.

CEDAW. *General Recommendation No. 19 on Violence against Women*. 1992, http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19.

Cohen, David. "Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta." *ICTJ Occasional Paper*. 2003.

Colonomos, Ariel and Andrea Armstrong. "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations" in *The Handbook of Reparations*, Pablo de Greiff (ed.). Oxford: Oxford University Press, 2006.

Commission for Friendship and Truth. *Final Report of the Commission of Truth and Friendship (CTF) Indonesia-Timor-Leste, Per Memoriam ad Spem*. July 2008.

Constitutional Court Decree No. 006/PUU-IV/2006. 4 December 2006.

EU Charter of Fundamental Rights. 7 December 2000, http://www.europarl.europa.eu/charter/default_en.htm.

Falk, Richard. "Reparations, International Law, and Global Justice: A New Frontier" in *The Handbook of Reparations*. Pablo de Greiff (ed.). Oxford: Oxford University Press, 2006.

Government Regulation PP No. 3 Year 2002.

Government Regulation Replacing Law Perppu No. 1 Year 1999.

International Committee of the Red Cross (ICRC). "The Geneva Conventions of 1949." 12 August 1949, http://www.icrc.org/web/eng/siteeng0.nsf/html/genevaconventions.

International Committee of the Red Cross (ICRC). "Protocol I of the Geneva Conventions." 8 June 1977, http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079.

International Crisis Group (ICG). "Indonesia: Implications on the Timor Trials." ICG Asia Report No. 16. Jakarta/Brussels: ICG, 2002.

KontraS. *Reproduksi Ketidakadilan Masa Lalu: Catatan Perjalanan Membongkar Kejahatan HAM Tanjung Priok*. Jakarta: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan, 2008.

Law No. 11 Year 2006 on the Aceh Government.
Law No. 13 Year 2006.

Law No. 26 Year 2000 on the Human Rights Court.

Law No. 39 Year 1999 on Human Rights.

Magarrell, Lisa. *Reparations in Theory and Practice*. International Center for Transitional Justice (ICTJ), Reparative Justice Series. New York: ICTJ, 2007.

OECD DAC. *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*. 2007.

OECD DAC. *Security System Reform and Governance*. 2005, http://www.oecd.org/dataoecd/8/39/31785288.pdf.

Organization of American States. *Inter-American Convention on Forced Disappearance of Persons.* 9 June 1994, http://www.oas.org/juridico/english/treaties/a-60.html.

Organization of American States. *Inter-American Convention to Prevent and Punish Torture*. 9 December 1985, http://www.oas.org/juridico/English/treaties/a-51.html.

Organization of American States. *American Convention on Human Rights*. 22 November 1969, http://www.oas.org/juridico/english/treaties/b-32.html.

Redress Trust. *Implementing Victims' Rights: A Handbook on the Basic Principles and Guidelines on the Rights to a Remedy and Reparation*. London: Redress Trust, 2006.

Redress Trust. *Reparation: A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law*. London: The Redress Trust, 2003, http://www.redress.org/downloads/publications/SourceBook.pdf.

Registry of the European Court of Human Rights. *Convention for the Protection of Human Rights and Fundamental Freedoms.* June 2010, http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

Shelton, Dinah. "The Right to Reparations for Acts of Torture: What Right, What Remedies?" *Torture*. 17 (2) (2007).

Shelton, Dinah. *Remedies in International Human Rights Law*. Oxford: Oxford University Press, 1999.

United Nations. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* UN General Assembly Resolution No. 60/147. 16 December 2005, http://www2.ohchr.org/english/law/remedy.htm.

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

United Nations. S*et of Principles for The Protection and Promotion of Human Rights through Action to Combat Impunity*. UN Doc. E/CN.4/2005/102/Add.1. 2005.

United Nations. *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*. UN Doc. HRI/GEN/1/Rev.7. 2004.

United Nations. *Draft Articles on Responsibility of States for Internationally Wrongful Acts*. 2001, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

United Nations. *General Comment No. 29: Article 4: Derogations During a State of Emergency*. Human Rights Committee. UN Doc. HRI/GEN/1/Rev.7. 2001.

United Nations. *General Recommendation XXVI on Article 6 of the Convention*. Commitee on the Elimination of Racial Discrimination. UN Doc. HRI/GEN/1/Rev.7. 2000.

United Nations. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. UN General Assembly Resolution No. 40/34. 29 November 1985, http://www2.ohchr.org/english/law/victims.htm.

UN Doc. CCPR/C/SR.550, 551, 555.

Van Boven, Theo. *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of SevereViolations of Human Rights and Fundamental Freedoms.* UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth session, Item 4 of the provisional agenda. UN Doc. E/CN.4/Sub.2/1993/8. 2 July 1993.

Vienna Convention on the Law of Treaties. 23 May 1969, http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

World Courts. "Chorzów Factory Case (Germany vs. Poland)." 1927, http://www.worldcourts.com/pcij/eng/decisions/1927.07.26_chorzow.

Zalaquett, Jose. "Confronting Human Rigths Violations Committed by Former Governments: Principles Applicable and Political Constraints" in Neil J. Kritz (ed.). *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Vol. 1: General Consideration*. Washington DC: Institute of Peace Studies, 1995.

The Dilemma of the ECOSOC Budget versus Security Budget Fulfillment

Dian Kartikasari

Introduction

The easiest way to measure a government's commitment to development and human rights for its citizens is to look at its budgetary allocations for policymaking and programme implementation as a percentage of the total state budget. Greater discourse can be generated by analysing the form a programme takes, its goals and effectiveness, and its overall benefit, which can be measured. Thus if every monitoring and development discourse included the budgetary allocation for certain sectors, a governmet's commitment would be quite plain to see. For example, in a bid to monitor the commitment of the Government of Indonesia in implementing economic, social and cultural rights, civilians and academics are comparing it to the government's budgetary allocation.

As we know, the obligation to fulfill economic, social and cultural rights is more than just a constitutional obligation but a logical consequence of the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) through Law No. 12/2005.

Civil society continues to monitor reforms within the security sector. Besides the obvious problems posed by the Grand Development Strategy on Defence and Security, defence orientation, recruitment and education for security officers, as well as the Main Equipment and Weapon Systems (Alutsista), the problems of budgetary allocation and management remain.

In discussing the issues surrounding state security and the essential reform programmes that must accompany it, as well as the fulfillment of economic, social and cultural rights for all, it must be decided whether raising the security budget or raising the budget to fulfill the ICESCR should be prioritized. Looking at the legal basis for budgetary regulations both for the fulfillment of ECOSOC and state security reform, it would not be difficult to decide. It is important to remember the system of local government autonomy, as well as the financial balance regulation and power distribution between central and local government. Before we reach the issue of budgetary allocation, however, it is important to understand the budget itself.

Understanding the Functions of the Budget

The budget as a means of management and control includes tools for: planning, control, coordination and communication, measurement and evaluation of productivity and motivation. As a planning tool, the budget is arranged to organise any measures to be undertaken by the government, to decide the costs involved in carrying out the actions involved in these measures and to work out the total expense. In this manner, the budget—as a tool for planning—is being used for:

1. Formulating the goal and target of the policy to fit the vision and mission formulated by the government and society and documented in the Public Document on Development Plans. The determination of vision and mission must include cognisance of gender equality and justice;
2. Planning programmes and activities to achieve the target goal, and understanding the implications for resource utilisation;
3. Allocating funds for planned programmes and activities; and
4. Determining the indicator(s) of success via performance indicators, strategic achievement and activity.

As a tool for control, the budget is a detailed plan of programme(s) and associated activities with implications for funding and resource utilisation. Control over the implementation of these programmes and activities in the executive sphere is exercised by the head of central/local government. The budget is devised to: avoid inefficiency; enable the public to keep government accountable for its (the taxpayers') money and to ensure programmes do not miss their target.

The budget is also a political tool since it is a product of political decisions made by government and parliament. The budget is an executive and parliamentary (legislative) commitment to problem solving and is indicative of a government's political direction. Making a budget is part of the political process of decision making. It requires mastery in public finance, skill in presenting, the ability to negotiate and argue certain points, the ability to forecast future trends by reviewing background events and, ultimately, the capacity to build trust.

The budget is a tool for creating public space. For all that budgets enable—like policymaking, development programmes and their related activities—its formulation, by law, requires the active participation of society. This participatory right requires society to not just organise itself in the interests of one vociferous group but more widely within the locality in which they are placed. Using this participatory right in an organised manner is a certain way of creating a public space for discussing problems, needs and interests.

Furthermore, the budget is as a mechanism for accountability, facilitating the public's knowledge as to the condition of a country's balance of payments and what is allocated for what and where in future. In addition, it makes way for international evaluation on the progress of national development in each country.

For the government, accountability should mean the ability to demonstrate justice, openness and a relative correlation between expenditure and development in a manner that is measurable and fairly accessible.

Problems of ECOSOC and Security that Need to be Addressed

Economic and social rights are regulated in the International Convenant on Economic, Social and Cultural Rights, Articles 6–15, which are: the right to work (Article 6); the right to the enjoyment of just and favourable condition of work (Article 7); the right to form trade unions and join the trade unions of his/her choice (Article 8); the right to social security, including social insurance (Article 9); the widest possible protection and assistance for the family, mother, children and young people (Article 10); the right to an adequate standard of living, including food, clothing, and housing, and to the continuous improvement of living conditions (Article 11); the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12); the right to education (Articles 13 and 14); and the right to take part in cultural life (Article 15).

In terms of the right to work, data held by the Central Bureau of Statistics (BPS) shows that by the end of 2008, 9.43 million people (8.34%) were still unemployed in Indonesia.[1] The report from the Indonesian Employers Association (APINDO) states that the retrenchment rate had, by 13 March 2009, reached 41,109 workers. The garment and electronic sector are still the highest contributors to employment.[2] Meanwhile the number of temporary workers laid-off by 13 March 2009 had reached 16,229 people.[3] This number does not include the hundreds of thousands of Indonesian Workers (TKI) sent home to Malaysia, Brunei, Singapore, Hong Kong, Taiwan and Saudi Arabia, which totalled almost 500,000 people.

Social security for poor families and citizens is still unequally distributed. The total number of Indonesia's poor was recorded at 34.96 million people (15.4%) by the end of 2008. Approximately 26 million people possess public health insurance. These consist of participants within the Public Health Scheme (*Jamkesmas*) for which the government bears the costs. The number of beneficiaries of the scheme included: people receiving home care and treatment (24,961,224 people); people enjoying hospital treatment (987,668) and patients referred from Public Health Centres (*Puskesmas*) to the hospital (1,075,156); *Jamkesmas* holders who had had their babies in hospital (29,720); and *Jamkesmas* patients in emergency units (as many as 89,869).[4]

The right to the enjoyment of the highest standards of physical and mental health includes access to health services for mothers and children. Unfortunately, this seems very hard to obtain because of the insufficient number of health workers and the poor purchasing capacity of the public for goods and services to satisfy their daily needs as a result of inflation. Half of the Indonesian population still earns less than IDR 20,000 (USD 2) per day.

The Indonesia Health Profile 2007[5] stated that the forecasted number of health workers in the country for the next three years would still be insufficient to meet needs. The data below shows the shortfall, which needs filling by 2010. This consists of medical staff, nurses and public health staff.

1 Central Bureau of Statistics, "Tabel Penduduk menurut Jenis Kegiatan 2004–2009" (2009), http://www.bps.go.id/tab_sub/view.php?tabel=1&daftar=1&id_subyek=06&notab=1.
2 *Suara Pembaruan*, "Cegah PHK Massal dengan Inplementasi Stimulus" (23 March 2009).
3 *Media Indonesia*, "41 Ribu Pekerja telah di-PHK" (21 March 2009).
4 "Report of the Coordinating Minister for People's Welfare on Strategic Issues of Welfare in the Legislative Meeting" (13 January 2009).
5 Ministry of Health, Republic of Indonesia, *National Institute of Health, Human Resources, Empowerment & Development* (2007).

Status of Health Workforce in 2006 and Estimated Demand of Health Workforce: 2007–2010[6]

No.	Type	Workforce indicator/ 100,000 people in 2010	Workforce Demand by 2010	Total Workforce in 2006	Ratio in 2006	Value Added Ratio/yr	Additional Workforce Demand			
							2007	2008	2009	2010
A	**MEDICAL**		***117,969***	***68,227***			***12,664***	***12,047***	***12,358***	***12,674***
1	Specialist	9	21,234	12,374	5.53	0.87	2,258	2,145	2,200	2,257
2	Generalist	30	70,782	44,564	19.93	2.52	6,765	6,322	6,483	6,648
3	Dentist	11	25,953	11,289	5.05	1.49	3,640	3,580	3,674	3,770
B	**NURSE**		***587,487***	***395,688***			***59,583***	***53,919***	***38,542***	***48,369***
4	Nurse	158	372,783	308,306	137.87	5.03	18,731	14,903	15,247	15,597
5	Midwife	75	176,954	79,152	35.40	9.90	33,677	31,762	15,848	25,128
6	Dental Nurse	16	37,750	8,230	3.68	3.08	7,176	7,254	7,447	7,644
C	**PHARMACY**		***63,703***	***49,313***			***3,975***	***3,389***	***3,471***	***3,555***
7	Pharmacist	9	21,234	10,207	4.56	1.11	2,756	2,687	2,757	2,828
8	Pharmacist Assistant	18	42,469	39,106	17.49	0.13	1,219	703	714	726
D	**PUBLIC HEALTH**		***42,469***	***27,833***			***3,808***	***3,519***	***3,609***	***3,700***
9	Bachelor of Health Science	8	18,875	9,739	4.36	0.91	2,297	2,222	2,279	2,338
10	Sanitarian	10	23,594	18,094	8.09	0.48	1,511	1,298	1,329	1,361
E 11	**Nutritionist**	**18**	**42,469**	**15,342**	**6.86**	**2.78**	**6,676**	**6,641**	**6,816**	**6,995**
F 12	**Physical Therapist**	**4**	**9,438**	**5,290**	**2.37**	**0.41**	**1,052**	**1,006**	**1,032**	**1,058**
G 13	**Medical Technician**	**6**	**14,156**	**10,318**	**4.61**	**0.35**	**1,030**	**913**	**936**	**959**

The right to housing has yet to be fulfilled. There are huge slums in Indonesia, spread over 10,065 locations in several of the metropolitan centres. The estimated area of slums has reached 47,393 acres with an estimated population of 17.2 million people.[7] The number increased to 25 million people in 2008.[8]

Fulfilling the right to education has also not been without its challenges. Low participation in the middle and higher levels of education continue. More than 49% of the school buildings and classrooms are unfit for this purpose. Conditions pertaining to the general and social welfare of teachers are also poor and very few opportunities to increase capacity exist.

In addition, Indonesia faces some serious security problems that pertain to facilities, infrastructure and resources. The total number of police officers in the whole country includes thirty-one provincial police (Polda), twenty-one regional police/city regional police (Polwil/Polwiltabes), 456 city/district police (Polres), 4,576 sub-district police (Polsek) and 2,763 police posts (Pospol).[9] Article 2 (2) of Government Regulation (PP) No. 23/2007 on the Legal Area of the Indonesian National Police states "distribution of the police legal area can be based on the local government area distribution and integrated criminal court instrument." The explanation of Article 2

6 Ministry of Health, Republic of Indonesia, "Report in Limited Meeting on Health with the President and Vice President of the Republic of Indonesia" (13 June 2007). Ratio/100,000 people.
7 Address by the director of housing development, Cipta Karya, Department of Public Works, for the Local Housing and Estate Development Workshop (RP4D) for World Habitat's Day (25 September 2007).
8 Minister of Public Works Djoko Kirmanto, for the Workshop on World Habitat Day, Bali (30 October 2008).
9 Police General Inspector Nanan Soekarna, "POLRI dan Keamanan Humanis dalam Transisi Demokrasi Indonesia," INFID Public Discussion, Jakarta, 19 June 2008.

(2) states that the police legal area has to correspond with the distribution of local government administration areas but local government in Indonesia consists of thirty-three provinces, 349 regencies, ninety-one cities, 5,656 sub-districts, 7,143 *kelurahan* and 70,296 villages.[10] It is clear that the number of police officers is not proportionate to the local government administration areas. The provincial police can be found in almost every regency/city in Indonesia. But not all sub-district wards and villages have police officers.

Based on the Central Bureau of Statistics 2005/2006, the Indonesian population totalled 229,101,000. The size of the police force is 374,113 personnel[11] with a 1:613 ratio of police officers to citizens. The ratio is different in each area. In Java, for example, the ratio of police officers compared to people can be as much as 1:1100, while the ideal ratio, according to international standards, is 1:400.[12]

The police force is still facing problems in the quality of its human resources and in creating equal opportunities for all police personnel to obtain education and training to increase capacity. Another problem the Indonesian Police force has to contend with is inadequate funding for the conduct of their function. In particular, poor resources affect its operational fund, case management fund and society service fund. Police personnel also face similar difficulties to teachers in relation to their welfare. Minimum salary and benefits do not correspond to the concomitant needs of family for food and nutrition, proper housing and educational fees for their children. The Indonesian Armed Forces (TNI) and Department of Defence are in the same position. Again, inadequate numbers and suitably qualified personnel combined with a lack of facilites and infrastructure to perform their functions afflict this institution.

Considering the most basic of problems still remain unsolved, it is hard to envisage the improved quality of police performance and strategy based on study and research, or improvements in security technology.

Comparison of the Security Budget and the Economic, Social and Cultural Budget

If we look at the budgetary allocation of the central government in the State Budget of Revenues and Expenditure (APBN), there is a significant difference between the budget allocated to health compared to defence, the TNI and the Indonesian National Police:[13]

Year	Total Debt	Installment and Interest Rate	Budget for Department of Education	Budget for Department of Health	Budget for Dept. of Defence and TNI	Budget for Indonesian National Police
2005	1.313	102,312	29,30	5,83	21,97	11,63
2006	1.302	131,763	45,30	12,18	23,22	16,44
2007	1.389	137,728	50,85	16,00	31,30	17,80
2008	1.637	151,865	49,70	16,03	36.39	23,30
2009	1.700	179,525	51,46	19,43	35.00	25,70

It can be seen that the budgetary allocation for education is far greater than that allocated to defence/TNI and the police.

10 Ministry of Internal Affairs, *Wilayah Administrasi: Lampiran Peratutan Menteri dalam Negeri No. 8 tahun 2005* (28 April 2005).
11 *Media Indonesia*, "Survei LSI atas Kinerja Polisi: Layanan Membaik, Citra masih Buruk" (30 August 2005).
12 United Nations General Assembly, Resolution No. 34/169 on the Code of Conduct for Law Enforcement Officials (17 December 1979).
13 Department of Finance (APBNP), 2010 + various sources (in IDR trillion).

For example, the budgetary plan 2010 is to fulfil the requirements of the 20% allocation required under the constitution. This sum amounts to IDR 201,930,649,204,000, of the total state expenditure of IDR 1,009,485,709,06. From that amount, only IDR 51.54 trillion is managed by the Department of Education and the rest, IDR 22.69 trillion, is managed by the Department of Religion. IDR 3.19 trillion is managed by other departments and IDR 122.79 trillion has been transferred to the provinces through a local finance distribution mechanism such as the Education Revenue Sharing Fund (DBH), the Special Education Allocation Fund (DAK), Additional Education Benefits for Teachers, the Additional General Allocation Fund (DAU) for Teacher Benefits and the Special Education Autonomy Fund.

The health budget, apart from what is managed by the Department of Health, is also augmented by transfers to the province through the Health Special Allocation Fund.

According to the source of funds allocation, there are differences between the main fund resources for economic, social and cultural needs and security. In terms of local autonomy, fulfilment of economic, social and cultural rights is obligatory for local government and is thus regulated by Government Regulation No. 38/2007 on Government Matters Distribution between Central Government, Local Province Government and Local City/ Residence Government. Thus, the funds for fulfilling these needs comes from three official budgetary channels, which are the Local Revenue and Expenditure Budget (APBD), transfers from central to local government through the DBH, DAK and DAU mechanisms and the Special Autonomy Fund (*Dana Otsus*). Moreover, it obtains external funds from foreign grants, society, religious organisations and private donations (generally through corporate social responsibility programmes).

The official source of funding for the TNI, according to the regulations, is the State Revenue and Expenditure Budget (APBN), as regulated in Article 66 of Law No. 34/2004 on the TNI. Meanwhile, Law No. 2/2002 on the Indonesian National Police does not explain the funding source of the institution. Article 155 (1) and (2) of Law No. 32/2004 on Local Government states that affairs that become the authority of local government are funded by the Local Revenue and Expenditure Budget (APBD) while affairs within the authority of the central government are funded by the APBN.

In practice, the TNI and POLRI receive assistance from local government through Assistance for Vertical Agency. Even the minister of domestic affairs, as guarantor for the implementation and development of local government, has prohibited this scheme through the Letter of the Minister of Domestic Affairs No. 903/2429/ SJ of 21 September 2005. The allocation for the TNI and POLRI in the APBD is still made by local government in Indonesia.

Besides the APBN fund and the allocation of assistance for the TNI and POLRI, Dylan Hendrickson and Nicole Ball (2002) state that there are ten other sources: (1) parastatals or non-military revenue, including revenue from companies managed by the authority for military service; (2) military business/involvement in non-military business, including foundations that manage commercial businesses to provide funds for military and military personnel to conduct security for government departments; (3) creation of special funds, which are supposed to benefit civil interest but is used to fund military needs; (4) barter trade, exchanging farm commodities for military instruments; (5) direct funding from the utilisation of natural resources involving military/state

organisations including diamond exploitation, precious stones, lumber, fish and oil; (6) war levies, or a security levy from citizens and business not stated in the budget; (7) foreign aid, including military equipment obtained as aid not stated in the budget and funding from multinational corporations for state security personnel; (8) donor aid for demobilisation programmes and military integration; (9) informal/criminal business, including fuel smuggling, gambling, drugs trafficking, human trafficking, weapon smuggling, wood smuggling, kidnapping, fraud, prostitution, money laundering and hijacking; and (10) under-valuation of economic resources, like exploitation of workers paid under the regional minimum wage to build military infrastructure.[14]

Unfortunately, ten other sources apart from the national and local budget (APBN and APBD), as stated by Hendrickson and Ball, have never been detected from the amount of the fund, mechanism, or even the impact for security and defence development.

Measuring Proportionality Principles

Local and national government budgets (APBD/APBN) are arranged according to the needs of society. The budget then has to be organised efficiently, effectively, credibly and in a timely manner. The sorting between routine expenses and capital/developmental expenses must be clearly classified in order to avoid inefficiency and the leakage of funds. Planned revenue is the measured estimation, which can be obtained from every revenue source, while budgeting expenditure is the highest limit on expenses.

To implement a budget in an orderly fashion requires the process to be regulated for the purposes of uniformity. An orderly budget also means that the local budget (APBD) synergises with the national budget (APBN) and ultimately produces information on economic resources at the disposal of the central and local government to fulfil economic, social and cultural rights as well as security and defence rights.

Besides the elements listed above, it is important to measure the proportionality and success of "planning and budgeting" on which the fulfillment of security and economic, social and cultural budgets are based. Consideration needs to be given to three standards, namely performance achievement, expenditure analysis and cost.

The *performance achievement standard* is used to indicate outcomes in security and economic, social and cultural rights fulfilment by viewing the size of the allocated budget from an input, output, outcome, benefit and impact perspective. This performance indicator can only be effectively set up if the general policy on security development and also economic, social and cultural rights fulfilment are in place. Without a clear general policy, the indicator is useless because it will not be up to measuring developments.

The *expense analysis standard* is being used to view budget amounts and priorities and the expenditures in one sector compared to another sector in a working unit. The main measure is based on principles of general appropriateness and justice. For example, the head of the local government chooses to prioritise the purchase

14 Dylan Hendrickson and Nicole Ball, "Off-Budget Military Expenditure and Revenue: Issues and Policy Perspectives for Donors" in *Conflict, Security and Development Group Occasional Paper #1* (UK: DFID and King's College, January 2002).

of vehicles for the commander of the military district rather than providing medication and food assistance for his people. His decision is, of course, violating the general principles of appropriateness and justice.

Meanwhile the *cost standard* is generally made to prevent mark-ups, corruption or abuse of power.

Advocacy of Civil Society Organisations (CSOs) on Security and Economic, Social and Cultural Budget Issues

There are many civil society organisations involved in budget advocacy. They include groups on pro-poor budget advocacy, gender budget advocacy and transparent budget advocacy.

These three groups focus predominantly on improving budgetary allocation to facilitate the fulfillment of economic, social and cultural rights. There has never been a civil society organisation whose agenda has permanently focused on security budget advocacy. If there has been, efforts were temporary and unsustained or the organisastion did not last.

Generally, budget advocacy is focused on the local budget (APBD) by regency/city. This is so certain CSOs realise that the real hindrance to the realisation of economic, social and cultural rights is negligence at the local level. Therefore, solutions are sought through advocacy at the local level.

The Drawbacks, Strengths, Challenges and Opportunities for Budget Advocacy

The drawbacks of budget advocacy are: (1) most of the advocacy workers/activists have not read or mastered the legal regulations on financial management and the state budget; (2) most of the activists do not relate fiscal politics to wider state defence politics; (3) the activists think and act more pragmatically and technically, without conducting analyses from the side of budgetary politics, so that most of them end up acting as budget consultants for local government; (4) by acting as a budget consultant, they have inadvertently hijacked the public space for public and civil society; (5) some of the efforts by activists have concentrated on accessing funds for their own organisations; and (6) generally, activists do not relate budgetary allocation advocacy with more comprehensive auditing and financial management.

On a more positive note, advocacy workers are able to sustain their work every year and so are able to observe their achievements. Furthermore, this group is continuously learning about budget issues.

The more groups involved in budget advocacy, the more open the space for people's participation in generating government accountability. But the main challenge is accessing information and budget plans which are still in progress. Any successful attempts to glean information yield only general data, which is difficult to analyse according to standards of performance achievement, cost and expense analysis.

Conclusion

From the basic regulations of the budgets for security and economic, social and cultural rights, there is no dilemma over prioritisation as the scope, goals and authority of the budget rest at different levels.

There is no obligation to decide which of the two have to be prioritised, since the realising of economic, social and cultural rights is funded by a national and local budget (APBN and APBD) with other sources of funds coming from international/national cooperation or grants. The security budget, if followed according to regulations and with integrity, should come solely from the national budget (APBN).

Therefore should the security budget be increased? The main problem is not a question of whether to raise the security budget or not but rather to first formulate a general policy and strategic plan on defence. Afterward, the decision about performance indicators must be made to assess outcomes and standards of achievement followed by an expense and cost analysis standard.

References

Central Bureau of Statistics. "Tabel Penduduk Menurut Jenis Kegiatan 2004–2009." 2009, http://www.bps.go.id/tab_sub/view.php?tabel=1&daftar=1&id_subyek=06&notab=1.

Hendrickson, Dylan and Nicole Ball. "Off-Budget Military Expenditure and Revenue: Issues and Policy Perspectives for Donors." *Conflict, Security and Development Group Occasional Paper #1*. UK: DFID and King's College, January 2002.

"Laporan Menteri Koordinator Bidang Kesejahteraan Rakyat tentang Isu Strategis Kesejahteraan Rakyat Dalam Sedang Kabinet Paripurna" (*Report of the Coordinating Minister for People's Welfare on Strategic Issues of Welfare in the Legisative Assembly Meeting*), 13 January 2009.

Media Indonesia. "41 Ribu Pekerja Telah di PHK." 21 March 2009.

Media Indonesia. "Survei LSI Atas Kinerja Polisi: Layanan Membaik, Citra Masih Burk." 30 August 2005.

Ministry of Internal Affairs. *Wilayah Administrasi: Lampiran Peratutan Menteri dalam Negeri No. 8 tahun 2005*. 28 April 2005.

Soekarna, Irjen Pol. Drs. Nanan. "POLRI dan Keamanan Humanis dalam Transisi Demokrasi Indonesia." Public Discussion INFID, Jakarta, 19 June 2008.

Suara Pembaruan. "Cegah PHK Massal dengan Implementasi Stimulus." 23 March 2009.

UN General Assembly, Resolution No. 34/169 on the Code of Conduct for Law Enforcement Officials, 17 December 1979.

Conflicts over Natural Resources, Indigenous Land (*Ulayat*) Rights and Traditional Society versus Violent Practices of Officials

Muhammad Islah

Introduction

Agrarian conflict is one of the oldest forms of conflict in world history. Ancient wars always began with some struggle to acquire more land. The level of soil fertility and the goods derived from it were a symbol of glory and grandeur. The amount of crops produced by a landlord, a governor general or a king became the symbol of the extent of their authority.

From time immemorial, the motive of war has not moved far from land and control over natural resources. The United States of America's aggression toward Iraq is a case in point. Whatever reasons were given for the war, the reality remains that after the war there was a division of oil wells. The military forces become the ultimate means for breaking through after the means of modern subjugation failed.

Old-fashioned methods of subjugation through the use of weapons are gradually diminishing with the emergence of the dominant power's acquisition of weapons technology post-World War II and the dominant power of capitalism post-Soviet disintegration. The emergence of a dominant power in world politics does not in reality mean the end of the real objectives of war. Colonialism, or the desire to have total control over a territory, and slavery, total control over individuals, is still happening in a different form. The first way is to strip all possibility of others empowering themselves through the acquisition of war and non-war technologies, making it impossible to have a balanced war. The second is total control of the world's economic system via capitalism.

In the new phase of economic warfare, the main actors of the capitalist system make puppets of states in order to accumulate capital. Major corporations put pressure on governments, forcing them to submit and serve their interests.[1] Agrarian resources, rich natural resources, and human resources in the third world are used to boost the prosperity of a few major corporations. The state is no longer a threat to capital but to the people, particularly those of the third world. These people fight because they have no options left.

1 For more on this subject, see: Dani Setiawan and Longgena Ginting, "Ekonomi Partikelir di Era Neokolonialisme," *Jurnal Tanah Air* (January 2009).

Therefore, "capital" needs a guardian to ensure the continuity of its absolute power. For that purpose, the state provides legal regulations and a legal umbrella for neo-colonialism, while the armed forces, police and other security actors become the loyal guards of capital. There are no significant changes in the actors of conflict over natural resources: capital state security actor: all come together in fighting a common enemy, namely the people of the third world.

Pictures of the Problems of Natural Resource Exploitation, Conflicts of *Ulayat*[2] and Traditional Society in Indonesia

> *Unlike the government or the people who had plenty of money, they treated people unfairly. They came robbing the land, cleared away and cut down the forest at their will. They said this belonged to the state, we had papers and if you block our way you would be arrested.*[3, 4]

One of the causes of agrarian conflict in Indonesia is the injustice of ownership structures and the method of control of agrarian resources. The control over plantations, forests and mines is dominated by a few individuals and major national and international companies such as London Sumatera, Exxon, Newmont, Freeport, Caltex and others whose land covers millions of hectares.[5]

The unbalanced structure of control over agrarian affairs and natural resources of independent Indonesia has based its legitimacy on the free interpretation of the state's controlling right (Hak Menguasai Negara/HMN).[6] The *ulayat* rights concept in customary law is not yet acknowledged as one of the people's collective rights as the HMN has lost its socialist essence. The agrarian reform based on the Agrarian Principles Act (Law No. 5/1960) has not been implemented. With the regime change to the New Order, the state ideology was changed and Indonesia's socialist ideal vanished from memory. The HMN has come to be defined as "everything is the property of the state" so that the people's collective control is non-existent. The New Order divided agrarian resources between wealthy groups and priority was given to foreign capitalists.

It was the *ulayat* land of the people of Papua that was the first to fall victim. With its HMN, the state gave control of natural resources through a working contract (*kontrak karya*) to the American company, PT Freeport. The state seemed to give control of uninhabited or empty land as if the Papuan society that lived on it was fictional. This pattern has continued until the present, not only over *ulayat* rights but also over land for cultivation, fishing grounds, residences and working places of the common people in the city.

To ensure the continuity and sustainability of exploitation, the sectoral regulations in managing and controlling natural resources were made. That is, the policies that respect foreign capital and ensure nationalisation are

2 *Ulayat* is land owned by indigenous people.
3 Anton Tadurante is a coordinator in the Kasolua region in the depths of the Kamalisi Mountains, Central Celebes. He has been organising the traditional society, in particular the Da'a society, since 1994. Open struggles have occurred since the organisation of Kamalisi traditional society, which reclaimed the plantation lands of PT Sapta Unggul to make residential areas and a plantation for 200 family heads at the end of 1998. Currently, Anton is the organisation coordinator of Kamalisi traditional society.
4 Ridha Saleh, *Dari Insidental ke Perlawanan Terorganisir* (Jakarta: WALHI, 2003), 56.
5 Henry Saragih in Ahmad Ya'kub, *Konflik Agraria: Tinjauan Umum Kasus Agraria di Indonesia* (Jakarta: Federasi Serikat Petani Indonesia, 2007), vii.
6 "The land and water and the contained natural resources in it are under the control of the state and to be used to its best for the prosperity of the people," from the Constitution of 1945, Article 33: 3.

history.[7] As compensation, the foreign capitalists would include private national Indonesian companies. What transpired next was that these companies turned out to be a handful of family companies owned by politicians[8] and military elite. At the time, the military was engaged in social politics and the economy as a guardian of stability in development. The military was not only employed by the government but also by several national companies and as partners in foreign companies. Military business was not just confined to the security sector but extended to active participation within business. All facilities and military assets (land owned by the state for the use of military forces) had been transformed into capital and business supporting infrastructure.

Conflict Causing Regulations

In the ten-year period of Reformation, more sectoral regulations have been issued. *Sectoral policy* is policy made in certain sectors, to the exclusion of other sectors, to control and manage natural resources. The support of foreign capital in the legislative process is obvious from the resulting laws. Five sectored regulations are clearly meant to guarantee the interests and legitimate control of major corporations and foreign capital over natural resources, which are currently under the "control of the state." These five regulations are Law No. 20/2002 on Electricity, Law No. 18/2004 on Plantations, Law No. 7/2004 on Water Resources, the Minerals and Coal Mining Act, and the Investment Act.

Law No. 20 of 2002

This regulation entrusted matters pertaining to electricity to private parties to create competition. The assumption is that competition makes way for efficiency and keeps energy prices for the consumer down. This intends to reduce the role of the state to that of mere referee in an unbalanced competition.

Law No. 18 of 2004

In Law No. 18/2004 on Plantations, it is recognised that plantations need to be guaranteed "sustainability." This guarantee is meant for the prosperity and sustainability of plantation corporations. The data from Sawit Watch proved that the conflict between the plantation owners and the public increased drastically up to 2009, from 100 cases to 576 cases since the regulation was issued.[9] These conflicts resulted in many casualties, shootings, arrests and torture for which the plantation owners bore no responsibility. Even the police, the military and company security guards managed to escape the law. The public was always the wronged and defeated party. The state, via the law, had been giving land rights over to companies, land which had long been inhabited by the people.

On the other hand, responsibility for the environment does not appear to be demanded of these plantation companies. One example is the forest fire case in the concession area, for which no one has been penalised. This matter was referred to the Plantation Act, which included sanctions that were difficult to implement

7 Nationalisation occurred during the presidency of President Soekarno, in 1957 (the Dutch company in Papua) and from 1964–65 (companies that belonged to the British and Americans), but that nationalisation did not bring prosperity to the people. It caused the worst open conflict between the people and the military over the nationalised companies as military officers were recruited to fill the managerial positions of those nationalised companies. See: Danang Widoyoko, "Mempertanyakan Restrukturisasi Bisnis Militer" in *Praktek-Praktek Bisnis Militer*, Moch. Nurhasim (ed.) (Jakarta: The Ridep Institute, December 2003).

8 See: Arianto Sangaji, "Historis Korporatokrasi di Indonesia," *Jurnal Tanah Air* (January 2009).

9 *KapanLagi.com*, "UU Perkebunan Dianggap Gagal Bawa Kesejahteraan" (11 February 2009), http://www.kapanlagi.com/h/uu-perkebunan-dianggap-gagal-bawa-kesejahteraan.html.

given that the legal process was still bound by the *Kitab Undang-Undang Hukum Pidana* (KUHP/Penal Code), which required the existence of evidence, such as matches, gasoline, eye witnesses, etc. Finding evidence for a fire that occurred over a relatively large area is like looking for a needle in haystack.[10]

Law No. 7 of 2004

Law No. 7/2004 on Water Resources legalised the privatisation of water resources through the instrument of "water for business utilization." As a result of giving rights to the control of water to private and foreign parties, a heavy burden was laid on small farmers who needed to irrigate their land.[11] This regulation is believed to have raised many rejections from the public, especially farmers. This regulation to comercialise water regulation was one of the terms proposed by the World Bank to enable Indonesia to pay back a US$300 million loan. The substance of the articles on water privatisation would further destroy the livelihood of the farmers and villages, after the farming subsidy was removed. Privatisation would clearly pave the way for a water monopoly and thus the water would only flow to those who could pay for it.[12]

Law No. 4/2009 on Minerals and Coal Mining

For the last forty years, specifically since the enactment of Law No. 11/1967 on Principal Rules on Mining, the levels of exploitation in this country have become comensurate with pollution, destruction of the environment and sources of livelihood, and human rights violations. Those who have suffered most are the local populations from around the mines to the areas downstream and along the coast to the smaller islands. Many parties demanded a change in the policy of mining arrangements. Unfortunately, the successor to Law No. 11/1967—the Minerals and Coal Mining Act—is still outdated. The regulation still fails to acknowledge that the public has the right to decide whether mining investment can be made on their land or in other areas if that would threaten their livelihoods. The public is only given two options in this regulation: accept the compensation unilaterally set by the government/corporations or take the matter to court. This is clearly a violation of the International Covenant on Economic, Social and Cultural rights. This rule only regulates the sustainability of the exploitation (the regime of "exploit completely, sell cheap") of the minerals, and instant profits through taxes or royalties. This can be seen in in the authority by which the government at all levels can issue mining permits for corporations and individuals (Chapter IV, Article 38), with concession areas ranging from 1 hectare to 100,000 hectares.[13]

Law No. 25 of 2007

Law No. 25/2007 on Investment has the potential to create yet another catastrophe for Indonesia. The development paradigm, which rests on economic development, national stability and the distribution of income, enables the government to create measures for maintaining the security of capital and development projects. In the name of national stability, there occurred various forms of oppression, human rights violations, natural resources exploitation, violence, the impoverishment of women and the mobilisation of the military apparatus to ensure the safety of the capital owners.[14]

10 "Pembakaran Hutan: Cenderung Menyalahkan Petani Tradisional," Press Release WALHI (29 August 2006).
11 Raja P. Siregar, et al., *Politik Air: Penguasaan Asing Melalui Utang* (Jakarta: WALHI-KAU, 2004), 154.
12 WALHI, *Menuju Keadilan Ekologis: Laporan Pertanggungjawaban Eksekutif Nasional WALHI 2005–2008* (Jakarta: WALHI, 2008), 78.
13 Teguh M. Surya., "Catatan UU Minerba" (Unpublished, 2009).
14 WALHI, *Menuju Keadilan Ekologis…* (2008), 71.

Natural Resources Conflicts 1998–2009

In the ten years of reformation, post-New Order, agrarian and natural resources conflicts have manifest even further. Apart from the emergence of people's increasing awareness and courage to fight injustice, brutality by security actors has become the major source of conflict. The source of agrarian, *ulayat* of traditional society and natural resource conflicts can at least be viewed in the following patterns:

1. *The State Hands the People's Land Over to Corporations*
   Traditional societies existed in Indonesia before the creation of the state back in 1945. The ownership and control over land has been regulated collectively in a communal way. People have lived as part of the forest, the river, the sea and nature as a whole. Therefore, to maintain the continuity of nature is part of maintaining life. The cutting down of trees, hunting and collecting the produce of nature is a way of life ruled by customary law, ensuring this is not excessive or detrimental to the environment.

   For thirty years of the New Order government, customary orders were regarded as non-existent. The rights of customary control were taken away and major plantation companies were given the business utilisation right (HGU) and working contracts (*kontrak karya*) in mining for years on the land of traditional societies. Thus the conflicts emerged.

   In 2003, a land conflict between the Kajang traditional society in Bulukumba, South Celebes and PT London Sumatera erupted. The company, which had begun to take over land from as far back as the 1970s with the support of the HGU policy given to it along with state officer safeguards, was met with resistance. The peoples' legal struggle dates back to early 1980 and ended with a successful verdict by the Supreme Court in 1999.

   However, the legal win was not followed up in the field. Therefore, on 21 July 2003, the public took over the property of PT Lonsum. The joint and brutal response from police officers and Brimob (Mobile Brigade) of South Celebes Police Region resulted in the shooting of five people and the death of two others. Twenty-four people were arrested and twenty-six others put on a list of wanted persons.[15]

   Incidents like Bulukumba also arose in Bahotokong, Central Celebes (2008), Wasior, Papua (2001), Bengkalis, Riau (2008), Runtu I and II, Central Kalimantan (2005 and 2008), Labuhan Batu, North Sumatera (2004) and Takalar, South Celebes (2008).

2. *Eviction using Conservation as the Excuse*
   On 10 March 2004, five farmers died after having been shot by Ruteng police officers of Manggarai, NTT. The incident began when some members of the public arrived at the Ruteng Police District Headquarters demanding the release of their seven colleagues who'd been arrested whilst visiting Tangkul Rende Nao, Poco Ranaka Sub-district.[16]

15 Investigation of KontraS-WALHI, 2003.
16 Press release of the Advocacy Team for the Manggarai People (WALHI, Imparsial, KontraS, TAPAL, SKEPHI, STN, AMAN, PRD, PBHI, YLBHI, LMND, ELSAM, FSPI, RACA, SPM, SANKARI, Petani Mandiri), 11 March 2004.

The conflict between the farmers, the regional government and the police officers of Manggarai began with unilateral decisions by the Minister of Forestry declaring the people's land as a conservation area (21 January 1986) and as a natural tourism park (Ministerial Decree of the Minister of Forestry No. 456/Kpts-II/1993). These unilateral decisions over the people's land by the central government were followed up by the regional government of Manggarai forcibly evicting people from their productive plantations between October 2002 and March 2004.

The operations were conducted systematically by involving the regional government officers, Indonesia's Armed Forces (the TNI), the Indonesian Police (POLRI), the prosecutor's office, the Natural Resources Conservation Office (BKSDA/*Balai Konservasi Sumber Daya Alam*), the Forestry Police, the Municipal Police Unit (*Pamong Praja*) and paid thugs. The results of this saw the destruction of 5,000 hectares of productive plantations of coffee, vanilla, bananas and horticultural plants, destruction of the farmers' huts and mass arrests accompanied by acts of violence and plundering of the crop. In the two years of operations, at least 154 farmers were arrested and imprisoned in Ruteng Penitentiary; fifty-seven people suffered severe injuries, including three amputations; and seven people died.[17]

Repeats of these incidents also occurred on Komodo Island (2003) and Timor Tengah Selatan, NTT (2008); on the Wakatobi Islands, Southeast Celebes; and in the open green space in Jakarta, which affected small traders but not the SPBU (public gas station), entrepreneurs and elite residences (2007).

The police criminalised the public who truly wanted to conserve the forests and waterways. Cases highlighting this fact are those of Tambolongan, South Celebes (2005); the fishermen of Bengkalis, Riau; and the people who were opposed to the environmental degradation caused by the waste of PT Freeport in Papua. Meanwhile, in Porsea, North Sumatera, the people who wanted to preserve nature by rejecting the re-operation of Indorayon under a new name (PT Toba Pulp Lestari) were intimidated and the local police arrested at least twenty-six people in 2003.

3. *The Scale of Violence: Perhutani, the Conflicts of Javanese Farmers and Violence against Farmers in Indonesia*

> *Yaimin was shot to death by the forest security officers in the teak forest of Perhutani KPH Madiun, on Tuesday (May 6th, 2008). In Yaimin's chest were found four bullets. Yaimin was suspected of stealing timber with his partners. The people denied that Yaimin was with others in the forest, Yaimin was alone according to them. Four bullets! For Yaimin alone. Not even a fortnight thereafter, on April 23rd, 2008, three timber seekers were shot in the teak forest of Perhutani KPH Bojonegoro. Two were killed and one left in critical condition.*[18]

17 Kertas posisi Tim Advokasi untuk Rakyat Manggarai, *Mencoba (Lagi) Menjadi Orang Manggarai: Rekaman Kejahatan Operasi Kehutanan di Manggarai, Nusa Tenggara Timur*, position paper of the Advocacy Team for the Manggarai People (2004).

18 Lidah Tani, "Protes Keras Terhadap Pembunuhan Rakyat Desa Sekitar Hutan Oleh Perum Perhutani" (May 2008).

The culpability of Perum Perhutani, a state-owned corporation that controls most of Java's forests, cannot be denied for its role in agrarian and natural resources conflicts. The areas controlled by Perhutani are plantations that used to be under Dutch control before independence and until Soekarno's nationalisation projects (in the 1960s). The acquisition of millions of hectares of land by Perhutani in Java is problematic given the population is increasing and access to land remains unchanged. The farmers in Java have become landless, owning under two hectares of land or none at all.

According to the records of Lidah Tani, between 1998 and 2006 there have been at least fifty-seven cases of violence and human rights violations against the farmers in Java by the Forestry Police and POLRI officers. Of the fifty-seven cases, ten were cases of maltreatment, fifty-one were shootings, sixty-nine people sustained injuries and thirty-one others died.[19]

The violence against farmers in Java is a portrait of the overall violence that continues in Indonesia. Over the last ten years, hundreds of agrarian and natural resources conflicts in Indonesia involved violence by the security officers, the TNI/POLRI, the Forestry Police and the Municipal Police Unit. This is because the conflicts were handled in a sectoral way by the government and other state institutions. There is not one institution that has the right of veto in conflict settlement. In one case, the regional government gave the right to the people, while the Department of Energy and Mineral Resources gave recommendations to corporations. In other cases, the Department of Farming wished to protect farmers, while the regional government gave permits to plantation companies. In yet another case, the National Land Body (BPN) had not issued the HGU but the company involved had already cleared the land. Other cases involving inter-sectoral institutions were ultimately settled by security officers deciding the fate of the farmers.

The records of the KPA reveal that acts of violence have occurred in nineteen provinces in Indonesia since 1998. Many more acts of violence against farmers and their activist defenders still occur—ranging from maltreatment to murder, from terror and intimidation to shooting and from the burning of houses/huts to the clearing and burning of crops.

- Maltreatment in forty-one cases of dispute/agrarian conflict was experienced by at least 479 farmers and activists;
- The murder of farmers in fourteen cases of dispute/agrarian conflict, which caused at least nineteen casualties;
- The shooting of farmers/people in twenty-one cases of dispute/agrarian conflict, which happened to at least 134 farmers and activists;
- The kidnapping of farmers and activists in seven cases of dispute/agrarian conflict, which was experienced by at least twenty-five farmers and activists;
- The arrest of farmers and activists in seventy-seven cases of dispute/agrarian conflict, which happened to at least 936 farmers and activists;
- The burning and destroying of farmers' houses or huts in twenty-one cases of dispute/agrarian

19 Collection of mass media news and reports tabulated by Lidah Tani and LBH Semarang.

conflict, which happened to at least 275 houses or huts;

- The destroying, cutting down and burning of crops belonging to the farmers in seventeen cases of dispute/agrarian conflict on areas of land not less than 307,109 hectares;
- Direct terror tactics aimed at farmers and activists in 140 cases of dispute/agrarian conflict, experienced by no less than 1,224 farmers and activists;
- The direct intimidation of farmers and activists in 184 cases of dispute/agrarian conflict, which was experienced by no less than 1,354 farmers and activists;
- Other acts of violence, including the forced disappearance of persons and rape in seventy-six cases of dispute/agrarian conflict;
- Fourteen farmers and activists have been declared missing without a trace and a female farmer was raped.[20]

4. *Hereditary Assets of Colonial Forces, Acquisition of Land and Military Business*

The conflict between the Naval Forces (TNI-AL) and the people of Alas Tlogo has been going on since 1965. The land was inhabited by the people but was claimed by the TNI-AL and used as combat training ground for the TNI-AL. To displace people, the TNI-AL resorted to intimidation, culminating in 2007 when shootings killed five people and severely injured another six. The investigation conducted by KontraS revealed that other than clearing the land for combat training, the ulterior motive was to lease the land to PT Rajawali and to provide security for the leaseholder.

No different from the Alas Tlogo case was the conflict over land between the people and the air forces (TNI-AU) Atang Sanjaya in Rumpin, West Java, where evidence was found of the existence of sand mining in the area. Not far from Rumpin in Bojong Kemang, in Bogor Regency, the TNI also claimed that the land inhabited by the people was the property of the TNI-AU. Therefore, the people needed ousting because the TNI-AU had planned to extend the Air Force base. According to the people, the land was theirs. During the Japanese occupation (1940–1945), the Japanese Air Force rented the land to hide its airplanes, afterwhich the land was restored to its rightful owners.

Besides the problematic assets, the business of "backing" illegal mining activities was happening in other regions. A coal mining company in South Kalimantan employed the services of military-based security to safeguard and smooth over its activities in dealing with illegal miners in that area. The military would organise the illegal miners using force and intimidation to keep them in order and later became the "broker" for the illegally mined coal. The military officials refused to take resolute actions on these activities or to punish those who were involved.[21] Similar activities took place in Pongkor, West Java, where TNI officials were suspected of "backing" the illegal miners.[22]

20 Noer Fauzi, "Restitusi Hak Atas Tanah: Mewujudkan Keadilan Agraria di Masa Transisi," paper presented at the National Workshop on Human Rights VI on "Transitional Justice to Determine the Quality of Democracy in the Indonesia of the Future," organised by the National Commission on Human Rights Studies and the Center for Human Rights at the University of Surabaya, Surabaya (21–24 November 2000).

21 Human Rights Watch, *World Report 2003: Indonesia (Laporan Human Rights Watch 2003)* (New York: HRW, 2003), http://www.hrw.org/wr2k3/download.html.

22 http://radar-bogor.co.id/index.php?ar_id=MjY2NDc=&click=MTc4.

Role of Security Actors in Natural Resource Exploitation, Conflicts of *Ulayat* and Traditional Society

The security actors in Indonesia consist of the military (the TNI), civil security (POLRI, the Forestry Police, the Municipal Police Unit) and private security advanced by the police and the military, both on a formal and personal basis. The role of private security actors was beginning to grow at the time when security instability occurred because of the decreasing role of the military and the police post-1998. On the other hand, these private security actors were being utilised so that state actors could avoid charges of human rights violations.

Simply, the role of security actors in the exploitation of natural resources as reflected in the cases of agrarian and natural resource conflicts are as follows:

1. Security actors become a tool of the government and/or capital in taking away and condemning the people's land when exploration and exploitation are about to begin.
2. Security actors become the means of safeguarding the stability and continuity of development, business and capital.
3. Security actors are the ones in direct conflict with the public in relation to the business of the military forces and the use of military assets for business purposes.

In the three-pronged theory of military business—the institutional, the non-institutional and the criminal economy/grey business[23]—the three roles as highlighted in points 1–3 above can be pursued. Even though the security actors have developed many partners, autonomy still remains very close to home with the military as the paramount chief of security actors. The police and even the Municipal Police Unit imitate this three-pronged strategy.

The role of security actors in paving the way for the exploitation of capital can take the form of institutional or non-institutional activities, or a combination of the two, whether legal or illegal. Its presence can become blurred along with the development of its mode of business operation. The abolition of institutional business has enabled the military and the police to cultivate a safeguarding business sector that is "institutional" and "legal." Military operations and/or law and security enforcement operations of the police were made into a business. For example, the assault, condemning of land and arrest operation against the inhabitants of Suluk Bongkal Village in Bengkalis, Riau by the officers of the Riau Police Region on land that was claimed to be the property of PT Arara Abadi can be considered an operation that was institutional and legal. However, the operation was turned into a business operation when the PT Arara Abadi Company gave support to the operation. Non-institutional business was also involved when the company security, owned by retired police officers, entered the scene. Another clearer example can be viewed from the confession of PT Freeport Indonesia, which confessed to financing the operation of Indonesia's military safeguards.

The old pattern of the New Order in recruiting retired or former security officers in non-institutional business continues. This has a negative effect on the reform of the security sector as a whole. On 18 August 2008,

23 *Jurnal Wacana*, "Soldiers' Country," George J. Aditjondro (ed.), No. 17 (May–August 2004), 86–87.

the "*Tragedi Kota Bangun Berdarah*" occurred in Kutai Kertanegara, East Kalimantan in which the police shot demonstrators in conflict with PT Arkon Mineratama. Of the victims, one died, four were injured and twenty-two others were arrested.

Whether it was related or not, at the end of August 2008 the Regional Police Chief of East Kalimantan, Gerenral Indarto was discharged from his position and, on the very same day, took up a position on the Commissary Board of PT Pupuk Kaltim (PKT).[24]

The Problem of Human Rights

The legal position of human rights in Indonesia is fully acknowledged. This can be seen in the Constitution of 1945 after amendments, Law No. 39/1999 on Human Rights, Law No. 26/2000 and the ratification of the ICESCR, the ICCPR, CEDAW, the UNCRC, CAT and others.

Nevertheless, various human rights violations keep occurring because only Law No. 26/2000 applies sanctions. The biggest problem of Law No. 26/2000 is that it only regulates severe human rights violations, which are crimes against humanity and genocide. In its implementation—this being its 9th year—not one verdict of the ad doc human rights court convicted human rights violators in the cases of East Timor, Tanjung Priok and Abepura. In other cases, the investigation results could not be brought to the examination stage in the Supreme Court due to the excuse that there was insufficient evidence and incomplete elements (Wasior case, Wamena, May 1998, the Trisakti-Semanggi Tragegy and kidnapping).

Many cases of human rights violations that were primarily caused by disputes over agrarian and natural resources were considered common violations, police disciplinary violations (Bulukumba case), military disciplinary violations (Kulon Progo case) or not even considered violations because they complied with the standing procedures or were regarded as efforts aimed at self-defence (cases like Ambolongan, Suluk Bongkal, Riau, Kontu-Muna and Manggarai).

In attempting to prove that severe human rights violations actually occurred, the "systematic element" must be satisfied. The "systematic element" translated rigidly means that there must be oral/written orders to carry out slaughter, killing, kidnapping or torture. Written and/or oral orders are made to secure an area or plantation for a company. However, it is in the execution of that order that various forms of human rights violations like torture, killing and the destruction of sources of livelihood occur. But because of the wording in the law, these violations cannot be regarded as human rights violations.

Therefore, in reality the realisation of human rights is not just the implementation of legal regulations. The protection, respect for and fulfillment of human rights require the presence of perspective and values on the part of law enforcement officers, the Konmas HAM, the police, the prosecutor's office and judicial institutions.

24 *Tribun Kaltim*, "Lepas Kapolda, Indarto jadi Komisaris PKT" (28 August 2008), http://www.tribunkaltim.co.id/read/artikel/5202.

Civil Society Organisations' Advocacy on Natural Resources, *Ulayat* and Traditional Society Conflicts

The use of advocacy in conflicts involving natural resources, *ulayat* and traditional societies was growing and gathered momentum in the 1980s. However, advocacy efforts aimed at bringing resolution to emerging conflicts reached the saturation point because conflicts have tended to rise. Legal advocacy as a reliable option came under review post-New Order. Attempts by WALHI (Wahana Lingkungan Hidup Indonesia or the Indonesian Forum for the Environment) are a case in point. "Since WALHI used its right to claim in the jungle of Indonesia's judicature, not a single claim has been settled/won. In a few cases, only part of WALHI's demands were accepted by the panel of judges whilst they were denied and/or defeated in others."[25]

Therefore, civil society organisations are searching for the root of the conflict and attempting to tackle it from that point. Civil society organisations working on the settlement of agrarian problems agree that the key to solving the agrarian problem is "true agrarian reform" and the proper implementation of Law No. 5/1960 on Agrarian Principles.

Along those lines, WALHI views the source of natural resource conflicts and environmental degradation as crises of sovereignty and justice. Therefore, it is necessary to carry out comprehensive environmental management reform that consists of:[26]

1. Reasserting the mandate of the state according to the objectives of the Constitution of the Republic of Indonesia to protect the entire nation and its land and to promote general prosperity, to improve the nation's livelihood, and to participate in accomplishing world order based on independence, peace and social justice. Thus, the state is put into a position to guarantee human rights—specifically, civil, political, economic, social and cultural rights.

2. Conduct a re-organisation of the relations between the state, the capital and the people. In this relationship, the people must be placed as the principal interest. The state right of control (HMN) must be subjected to the basic rights of the citizens so that access to basic rights, to sources of livelihood, and to land, water and the natural riches contained therein is made the final objective of the HMN. Thus, the role of capital is secondary and complementary in nature, not a substitution of management by the people.

3. Developing economic independence and freedeom from foreign debt. The state's dependency on foreign credit causes a deficit in its sovereignty so that creditor countries and international financial institutions feel free to dictate the economic policies that benefit transnational corporations. Therefore, the government needs to immediately remove its dependency on foreign credit and to prioritise the preparation of infrastructure supporting the potential of local entrepreneurs, people's economic potential and the agenda of foreign debt eradication.

25 Andhiko, SH, *Advokasi Lingkungan Melalui Jalur Peradilan*, an analysis byWALHI (March 2008).
26 For complete information, see: "Reformasi Pengelolaan Lingkungan Hidup," WALHI Position Paper No. 2 (September 2004).

4. Agrarian-natural resource conflict resolution must be aimed at efforts to strengthen the resilience and sustainability of social ecology and not neglect the rights of the people in that context. Conflict resolution must involve the recovery of people's rights to balance the scales of sovereignty and justice so that the state will acquire legitimacy and support in renewing the management of the environment.

5. Institutional reform is required. The government's institutional environmental management has not been able to function effectively owing to its limited authority in coordinating policies on the environment at the national level. In policymaking, the interests of the environment have always been marginalised by the interests of profit. Thus, institutional reform must be conducted taking into account the following points: (a) the institutions dealing with macro policies on the environment should merge and be coordinated under one portfolio at the national level; (b) to establish an institution whose function is to protect and conserve the environment and whose authority includes planning, determining standards, mitigating the effects of environmental quality degradation and renewal. The functions of supervision and enforcement of environmental law need to be integrated to authorise the temporary operational permit postponement, if there is suspicion of breaches to environmental law; and (c) to integrate the institutions with the function of guaranteeing access to fair and sustainable use of the environment. As a consequence, the existing sectoral institutions need to be reviewed and downsized. The ideal image is that all sectored institutions are under one roof, from the issuing of permits, planning and implementation to monitoring. This institution must closely coordinate and synergise with the institution in point (b).

6. Regulation reform is needed because of the varying viewpoints about the environment as a *means of livelihood*. Partial understanding of this concept has consequently caused sectoral and myopic approaches in its management. Reform in this area needs to come under one umbrella: (1) regulation to implement agrarian reform; (2) regulation to manage agrarian and natural resources with reference to the principles of care, intra- and inter-generation justice, legal certainty, protection of traditional societies, openness, inter-sectoral integration and sustainability; and (3) regulation by the authority on the protection of the environment and the people's sources of livelihood.

Aside from the agenda listed above, direct advocacy for the people is still needed in a bid to solve the crises of sovereignty and justice. This can be done through the establishment of societal organisations and the building of resistance in crucial ecological areas, as well as through awareness raising about the potential disasters that can follow the mismanagement of the environment.

Natural Resource Conflict and the Weaknesses, Strengths, Challenges and Opportunities in Advocating Security Sector Reform

The reform of the security sector cannot stand in isolation of the major framework of environmental advocacy. This is because the security sector is only one of the actors in conflicts pertaining to national resources. In many cases, the security actors are the tool of the capital and the state, which means that theirs is only an intermediary role. Should reform be carried out in this sector alone, it will not have any direct influence on natural resource conflicts. Retaining the TNI/POLRI's current position under the control of the state with the

state beholden to the corporations will change nothing. Capital does not directly exercise control of the security sector but through the state, capital will have indirect control over the security sector. The security actors will be the tools utilised by the state to safeguard the interests of the corporations and thus conflict will continue. Therefore, in the short term, it is imperative that the security sector is reformed. The agenda, *inter alia*, is:

1. Breaking the direct connection between security actors and corporations or other actors in the chain of conflict. This is possible by making the security actors the neutral party and not part of the agrarian/natural resource conflict, so that the people do not end up being sacrificed, criminalised and/or blamed.
2. Strengthening the legal regulations for human rights by establishing supporting instruments so all types of rights—civil, political, economic, social and cultural—are upheld.
3. Enforcing the law on illegal activity and human rights violations so that the intended discouraging effect and education through punishment can be achieved, ensuring that the security actors of the TNI/POLRI/Forestry Police/Municipal Police Unit cannot enforce laws arbitrarily. This agenda also requires good intentions so that human rights values are internalised by both law enforcement officers and officials of the judiciary.
4. For the last ten years, the reformation in the TNI has made some progress in several sectors, like the prohibition of the TNI in business and withdrawal by the military from political activities. However, great challenges still exist in relation to the territorial command structure that is still maintained by the army. In several cases, the territorial command is still actively conducting surveillance and labelling farmers, fishermen and the movements within traditional society. To allow the territorial command to act in this way is analogous to a tiger waiting for its prey to be careless.
5. Reviewing the troubled assets of the TNI, which has inheirited assets from the Dutch and Japanese. The conflict between the air forces/naval forces versus the farmers and the fishermen is still happening. The cases in Alas Tlogo and Rumpin showed that these conflicts occur not only because the military wants to secure their assets for military bases and training needs but also for the interests of plantation and mining businesses.
6. Separating POLRI from the military is also required. Post-reformation, the Republic of Indonesia Police Forces have become the foremost actor in conflicts with civilians, notably after the withdrawal of the TNI from securing strategic assets of the state and when this role was handed over to the police. This separation does not automatically make POLRI a civilian police force because the hereditary traits of ABRI are still strong. In many cases, the police use direct assaults on civilians as though they were facing the enemy. The existence of the National Police Commission (*Kompolnas*) has had positive effects in that people are more courageous about reporting the arbitrariness of police actions. However, the cooperation of *Kompolnas* in solving cases and encouraging internal settlement within the POLRI has negatively impacted efforts to reduce acts of violence committed by police officers, especially as internal settlements cannot be monitored by the public.

Closing and Conclusion

Security sector reform isolated from the changing world economic order will not mean much for natural resource conflicts. Professional security sector actors will still remain the guardian of capital via the auspices of the state. Therefore, security sector reform needs to be implemented along with the settlement of sovereignty and justice crises. Shu-cho-kan once said: If the people of Lampung do not like the Dai Nippon soldiers, they can go elsewhere.[27]

References

http://radar-bogor.co.id/index.php?ar_id=MjY2NDc=&click=MTc4

Andhiko, SH. *Advokasi Lingkungan Melalui Jalur Peradilan*. An analysis by WALHI. March 2008.

Constitutional Law UUD 1945.

Fauzi, Noer. "Restitusi Hak atas Tanah: Mewujudkan Keadilan Agraria di masa Transisi." Paper presented at the National Workshop on Human Rights VI on "Transitional Justice to Determine the Quality of Democracy in the Indonesia of the future." Organized by the National Commission on Human Rights Studies and the Center for Human Rights at the University of Surabaya, Surabaya, 21–24 November 2000.

Human Rights Watch. *World Report 2003: Indonesia (Laporan Human Rights Watch 2003).* New York: HRW, 2003, http://www.hrw.org/wr2k3/download.html.

Jurnal Wacana. "Soldiers' Country." George J. Aditjondro (ed.). No. 17 (May–August 2004).

KapanLagi.com. " UU Perkebunan Dianggap Gagal Bawa Kesejahteraan." 11 February 2009, http://www.kapanlagi.com/h/uu-perkebunan-dianggap-gagal-bawa-kesejahteraan.html

Kertas posisi Tim Advokasi untuk Rakyat Manggarai. *Mencoba [lagi] Menjadi Orang Manggarai: Rekaman Kejahatan Operasi Kehutanan di Manggarai Nusa Tenggara Timur*. 2004.

Lidah Tani. "Protes Keras Terhadap Pembunuhan Rakyat Desa Sekitar Hutan Oleh Perum Perhutani." May 2008.

Malaka, Tan. *Dari Penjara ke Penjara II*. Yogyakarta: Teplok Press, 2000.

Reformasi Pengelolaan Lingkungan Hidup. WALHI Position Paper No. 2. September 2004.

Saleh, Ridha. *Dari Insidental ke Perlawanan Terorganisir*. Jakarta: WALHI, 2003.

Sangaji, Arianto. "Historis Korporatokrasi di Indonesia." *Jurnal Tanah Air*. WALHI, January 2009.

Setiawan, Dani and Longgena Ginting. "Ekonomi Partikelir di Era Neokolonialisme." *Jurnal Tanah Air*. WALHI, January 2009.

Siaran Pers Tim Advokasi untuk Rakyat Manggarai (WALHI, IMPARSIAL, KONTRAS, TAPAL, SKEPHI, STN, AMAN, PRD, PBHI, YLBHI, LMND, ELSAM, FSPI, RACA, SPM, SANKARI, PETANI MANDIRI). 11 March 2004.

Siregar, Raja P., et al. *Politik Air: Penguasaan Asing Melalui Utang*. Jakarta: WALHI-KAU, 2004.

27 Tan Malaka, *Dari penjara ke Penjara II* (Yogyakarta: Teplok Press, 2000), 279.

Surya, Teguh M. *Catatan UU MINERBA*. (Unpublished, 2009).

Tribun Kaltim. "Lepas Kapolda, Indarto jadi Komisaris PKT." 28 August 2008, http://www.tribunkaltim.co.id/read/artikel/5202.

WALHI. *Menuju Keadilan Ekologis: Laporan Pertanggung jawaban Eksekutif Nasional WALHI 2005–2008*. Jakarta: WALHI, 2008.

WALHI. *Pembakaran Hutan: Cenderung Menyalahkan Petani Tradisonal*. 29 August 2006.

Widoyoko, Danang. "Mempertanyakan Restrukturisasi Bisnis Militer dalam Praktek-Praktek Bisnis Militer" in *Praktek-Praktek Bisnis Militer: Pengalaman Indonesia, Bruma, Filipina dan Korea Selatan*, Moch. Nurhasim (ed.). Jakarta: The Ridep Institute/FES, December 2003.

Ya'kub, Ahmad. *Konflik Agraria: Tinjauan Umum Kasus Agraria di Indonesia*. Jakarta: Federasi Serikat Petani Indonesia, 2007.

Municipal Police Unit (*Satpol PP*) and Violence in Urban Areas

Nurkholis Hidayat

Introduction

The violence shown by the Municipal Police Unit (*Satuan Polisi Pamong Praja* or *Satpol PP*) captures the attention of many groups. The Municipal Police ("Satpol PP") has become the principal player in the day-to-day culture of violence in Indonesian society. In urban areas, they have replaced the dominant military and police forces that also had been no stranger to violence. Violence has often been used in operations involving eviction, capture or raids, particularly toward the poor, and has made Satpol PP the number one enemy of the lower economic groups of society as reported in the LBH (*Lembaga Bantuan Hukum* or Law Advocate Body) annual report of 2006.

Limiting the freedom of civil society became an integral part of the strict regime of control of the New Order era. The adoption of standard military practices became part of Satpol PP's developing character. Now Satpol PP is often seen as an enemy of society because of the apparent arbitrariness of its actions. The question is whether that has arisen as a result of regulations/policy or from individuals abusing the system. This paper attempts to examine such issues.

In the study by LBH Jakarta on Satpol PP in the Jakarta area in 2007, these two issues come up. There are guidelines in force that seek to regulate behaviour within Satpol PP (*Prosedur Tetap Pelaksanaan Tugas Pemasyarakatan* or Protap). However, these provisions have not proved adequate to prevent abuses. Government Regulation No. 32 of 2004 on Guidelines for the Municipal Police Unit (Sheet of the Republic of Indonesia 2004 Number 112, amending Sheet of the Republic of Indonesia Number 4428) stated that in carrying out its duties, the municipal police must respect human rights. However, the way in which it has been incorporated into internal procedures under the Ministry of Internal Affairs regulations (specifically No. 26 of 2005 on Fixed Operational Procedure Guidelines of the Municipal Police Unit) has provided some opportunities for abuse. Furthermore, there is an issue surrounding the suitability of the regulations put in place in some urban areas by the governors of those areas.

The obligations to respect human rights contained within the guidelines are not sufficiently detailed to set out properly the obligations of the state to protect human rights. As a result, Satpol PP officials rarely understand the basic principles of human rights and their implementation. This is the principal reason for the emergence of violent policing by Satpol PP officials and members. A further problem arises because of the uncertainty of the code of conduct, especially relating to the accountability of officers (including commanding officers) when violations occur. This renders the law ineffective in dealing with Satpol PP violations. The police are often reluctant and, it is said, find it difficult to acknowledge or deal with society's claims concerning the abusive behaviour of Satpol PP.

Currently, matters are becoming even worse with the provincial government's tightening of control and strengthening of the regime by implementing broader and harsher regulations. Many people—including academics, spiritual leaders and even state institutions such as the National Commission on Human Rights (Komnas HAM)—are speaking out against the emergence of a greater threat through the adoption of District Regulation 8 of 2007 on Public Order.

The adoption of Government Regulation No. 11 of 1988 (a revision to Government Regulation No. 8 of 2007) shows how laws give justification and legitimacy for broad acts of repression that violate human rights and that are often carried out by Satpol PP. High budget allocations to law and order within district income and expenditure budgets, including the budget leak level, illegal picking practices and corruption, have accompanied Satpol PP practices of arbitrary arrest and detention, destruction of property, looting and eviction of the poor from their homes and businesses. Everything is done as part of a broad policy to combat the poor in urban areas.

Looking at the overall situation, it is probably time to try forcing policymakers to make strategic, effective and efficient moves towards institutional reform and, more particularly, municipal police unit institutional reform. In the past, some initiatives have been carried out, such as that begun by LBH Jakarta on several occasions, which tried to enter into dialogue on this issue with the government of DKI Jakarta and to find a solution to the Satpol PP problems.

Placing the existence of Satpol PP in the security sector reform framework is one thing that could have occurred recently. Almost all of the focus of security sector reform is aimed at the military, especially the Indonesia National Military and police forces, but some attention has been paid to civil society and to donors and other stakeholders in Satpol PP's existence. Therefore, this paper will also look at the framework's relevance and consider the most appropriate steps to allow the integration of Satpol PP into general security sector reform.

Satpol PP's Legal Base and Historical Existence

a. History

The history of the municipal police unit cannot be separated from the establishment of the whole concept of policing in the colonial era. The concept of "police" was first introduced by the British Governor General,

Raffles.[1,2] The pre-colonial societies were not familiar with such a concept; they were more familiar with the military concept of officers, knights and warriors.[3]

In contrast to the original purpose of modern policing to fulfil the needs of an English society undergoing major change due to the industrial revolution, in Indonesia, as in other colonies, the institution of the police was in response to the urgent need of the colonial power to secure control of a new area. Such needs can also be defined as the process of state-making in the colony areas.

The process of state-making was then continued by the Dutch, better known as *Pax Neerlandica*. They wanted to bring normality and civility to a new society they were now controlling.[4] Normalisation in society is realised by reorganising the society's structure and culture so that it fits with the needs of the economic expansion of colonial rule. The focus of this colonial government was to control and maintain access to the human and natural resources of the country, considered to be essential to the development of an economic supporting infrastructure and economic expansion of the colony. For this end, the police are very important. Therefore, the governor general had absolute power over the police agencies. He operated a repressive regime when it came to breach of the peace and public order disturbances and imposed harsh deterrent punishments on the perpetrators. Police stations therefore had several functions—they acted as courtrooms, detention centres, torture chambers and execution suites.[5]

The extent of police authority, which was almost absolute under the control of the governor general, was limited by the establishment of the Dutch East Indies Supreme Court (*Hoogerrechetshof*). The organisation of the colonial police then developed into several branches: f*irst*, the municipal police unit (*Bestuurpolitie*), which was part of the native administration and was supported by village chiefs, night guards, and police agents who assisted the civil service officials; s*econd*, the general police (*Algemeene Politie*) as a special unit responsible for organising all police activities; and *third*, the armed police (*Gewapende Politie*).[6] Both the civil service police unit and the public police were placed under the authority of the attorney general (*Procureur Generaal*) at the Supreme Court (*Hoogerrechtshof*) who was the person ultimately responsible for maintaining the peace and public order.

The Civil Service Police (*Bestuurpolitie*) was set up to support the functions of indigenous government run by the village chiefs and to help the officials of the civil service. It was organisationally part of the civil function emphasising its ability to lead the people rather than watch them—the function of the modern police.[7] That services function continued into the post-colonial era. On 3 March 1950, in Jogjakarta, the government formally established the Municipal Police. It was founded to fulfil some of the duties of the district government.

It developed into three branches in fulfilling the duties of the district governments for maintaining public

1 In 1814, Raffles established the regulations on Justified Effort at the District Court on Java Island and the Police Order System. Santhy M. Sibarani, et al., *Antara Kekuasaan dan Profesionalisme* (Jakarta: Dharmapena, 2001), 10.
2 B. Berg, *Law Enforcement: An Introduction to Police in Society* (Boston: Allyn & Bacon, 1998).
3 Bhayangkara is the name of the King's escort unit at the time of the Majapahit Kingdom. See: Indrotjahyono, "Lahirnya Kelompok Bisnis Penyandang Dana Kekuatan yang Mengaku Sayap Tengah," *Buletin Tanah Air*, No. 3 (September 1986).
4 M.C. Ricklefs, *A History of Modern Indonesia Since c. 1300* (Stanford: Stanford University Press, 1993).
5 Alwi Shahab, "Kamar Penyiksaan di Balai Kota," *Republika* (16 November 2003).
6 Ali Subur, et al., *Pergulatan Profesionalisme dan Watak Pretorian (Catatan KontraSs terhadap Kepolisian)* (Jakarta: KontraS, 2001), 4.
7 Yesmil Anwar, "Revitalisasi Satpol Pamong Praja," *Pikiran Rakyat* (18 March 2004).

order, under the authority of the governor and the mayor. The first was the Police Unit of Tranquility and Order (TRANTIB), the second was the Police Unit of the Civil Services (SATPOL PP) and the third was Community Protection (LINMAS).

Legal Order

To date, there has been no law specifically providing for the existence of Satpol PP unlike the other Indonesian police and military forces, which are provided for in separate acts. Satpol PP's governance is still integrated with the regulations of district government. Act No. 32 of 2004 on District Government remains the principal legal act governing the existence of Satpol PP. More recently, some government regulations have been passed complementing those regulations.

Article 148 of Act No. 32 of 2004 on District Government states:

(1) To assist the village chiefs in the enforcement of district regulations and the implementation of peace and public order in society, the civil service police unit was established.
(2) The establishment and organisational structure of the civil service police unit as referred to in clause (1) is based on government regulations.

In the Act of District Government it was also affirmed that the municipal police unit may be appointed as a Civil Service Investigator (*Penyidik Pengawai Negeri Sipil* or PPNS). Article 149 states:

(1) The members of the civil service police unit may be appointed to civil service investigator in accordance with the provisions of the act.
(2) Investigation and prosecution of violations of provisions of the district regulations are in the hands of the investigation officials and the general prosecutor in accordance with the provisions of the act.
(3) With the district regulations, it can also appoint other officials, who are assigned to conduct some investigations of violations within the provisions of the district regulations.

The consequence of that policy is that Satpol PP is regulated only very generally and has become one of the heavyweight executives being regarded as a type of government regulatory body. Furthermore, it has become increasingly vulnerable to abuses of power because the technical rules for its management depend on the policy of related departments and district governments. Parliamentary control is in turn weak at the middle level because it intersects with the district government while at the district level, the district parliament controls the implementation of district regulations, which govern the presence of Satpol PP.

The Guidelines of Satpol PP

Rules derived from the provisions of Satpol PP in the Act of District Government are outlined in Government Regulation No. 32 of 2004 on Guidelines for Civil Services Police Unit (Sheet of the Republic of Indonesia in

2004 Number 112, Additional Sheet of the Republic of Indonesia Number 4428).

These guidelines include more detailed functions and powers of Satpol PP. Below are listed some of the functions of the civil service police unit:[8]

A. The formulation and implementation of programs to deal with peace and public order, and enforcement of district regulations and the decisions of the district chief;
B. The implementation of maintenance policies and the enforcement of peace and public order in the district area;
C. The implementation and enforcement of district regulations and the decisions of the district chief;
D. The maintenance, coordination and implementation of peace and public order and the enforcement of district regulations, decisions of the district chief in cooperation with the state police apparatus, civil service investigator (*Penyidik Pengawai Negeri Sipil* or PPNS) and/or other agencies; and
E. The surveillance of the community in complying with district regulations and the decisions of the district chief.

These guidelines give authority to Satpol PP to do the following:[9]

A. Order and take action against citizens or legal entities that disturb the peace and public order;
B. Interview and interrogate citizens or legal entities that violate district regulations or a decision of the district chief; and
C. Take repressive and otherwise non-justified action against citizens or legal entities that violate district regulations or a decision of the district chief.

From these regulations, there is not to be found any further explanation of what is meant by non-justified repressive action. The regulations also provide for other violations and arbitrary acts. There is also debate in cases involving Satpol PP violence arising from differing interpretations of these regulations by Satpol PP themselves and those acting for victims of Satpol PP violence.

The guidelines governing Satpol PP also grant them the authority to use firearms, the use of which comes under the supervision of the Republic of Indonesia Police Unit.[10] Therefore, these guidelines have provided greater opportunity for the spread of violent practices used by Satpol PP in the field.

These guidelines, in practice, often negate some obligations, which should be incumbent upon Satpol PP in doing its job, such as:[11]

A. upholding the legal rights, religious rights, human rights and other social norms that exist and have developed in the society;
B. Helping to solve disputes among civil society, which could disrupt the peace and public order;
C. Reporting to the state police on the discovery of or reasonable suspicion of criminal conduct; and

8 Government Regulation No. 32 of 2004 on the Guidelines of the Civil Service Police Unit, Article 4.
9 Ibid., Article 5.
10 Ibid., Article 18.
11 Ibid., Article 7.

D. Delivering to the PPNS on the discovery of or reasonable suspicion of violation of district regulations or decisions of the district chief.

This government regulation forms the main guidelines for Satpol PP and has been set out in technical detail within the Regulations of the Home Affairs Minister No. 26 in 2005 as "Operational Fixed Procedure of the Civil Service Police Unit."

Fixed Operational Procedure and Equipment

Fixed procedures are regulated in the Regulation of the Internal Affairs Minister Number 26 Year 2005 on Guidelines for Operational Fixed Procedure of the Civil Services Police Unit. That Operational Fixed Procedure of the Civil Services consists of:[12]

A. Operational procedure on peace and public order;
B. Operational procedure implementation in handling demonstrations and riots;
C. Operational procedure implementation in escorting officials/important persons;
D. Operational procedure implementation for policing important places;
E. Operational procedure implementation for patrols; and
F. Operational procedures for dealing with violations relating to peace, public order and district regulations.

Thus, based on the operational fixed procedures, Satpol PP has a very wide authority stretching beyond merely running operational functions relating to peace and public order. On the other hand, this wide authority intersects with many other institutions, such as the police, traffic police, the Office of Landscaping and many other institutions. It is the governor and mayor then that have the authority to set out operational technical guidelines in the provinces and at the municipal level.[13]

All costs associated with the implementation of the Operational Fixed Procedure of the Municipal Police Unit in the province and at the district/municipal level are charged to the District Income and Expenditure Budget.[14]

Meanwhile, the guidelines regulating the uniforms, equipment and tools of the Municipal Police Unit are set out in the Regulation of Internal Affairs Minister No. 35 Year 2005 on Guidelines for Clothing, Equipment and Tools of the Municipal Police Unit. These guidelines set out the complete operational code for individuals within the civil service police unit and for the institution. Within the category of equipment for individuals, the Satpol PP is given the authority to use firearms.[15]

12 Regulation of the Home Affairs Minister Number 26 of 2005 on the Guidelines of Operational Fixed Procedure of the Civil Service Police Unit, Article 4.
13 Ibid., Aricle 6.
14 Ibid., Article 7.
15 Ibid. Article 33 of the Minister of Internal Affairs Regulation No. 35 of 2005 on the Guidelines for Office Clothing, Equipment and Tools of the Municipal Police Unit states, "Firearms are barrel shaped and long-handled shape. Barrel shaped includes revolvers that can be used with sharp bullets, tear gas and hollow bullets. Meanwhile, long-handled firearms include air rifles that can be used with sharp bullets, hollow bullets, rubber bullets and gas bullets."

Satpol PP as a Civil Service Investigator (PPNS)

The enforcement process of district regulations is conducted by the Civil Services Police Unit together with the Civil Service Investigator (PPNS). The main activities undertaken by the civil service police with the PPNS in dealing with district regulation violation cases can be classified as follows:

a. Commence the investigation
b. Investigation
c. Examination
d. Prosecution
e. Settlement, sealing and delivering the case file

Implementation

When a situation relating to a violation of district regulations (peace and public order) becomes known, the steps that must be taken are:

a. Investigation

1. In principle, based on Article 149 of Act No. 32 Year 2004 on District Government (on the authority of the law), the PPNS have the authority to conduct the investigation.
2. In order to investigate violations of district regulations, PPNS may act as a supervision authority and/or use surveillance to discover whether the criminal conduct falls within the scope of the legislation, which provides its locus to act in law.
3. In certain cases, if PPNS needs to undertake investigations, it may also ask for assistance from police unit investigators.

b. Investigation of a District Regulation Violation

1. After it is known that an incident is actually a violation of district regulations, the PPNS takes action within the scope of its powers and responsibilities in accordance with the law governing its operations. Violations of district regulations can be ascertained from:
    a) Reports, which can be given by:
        1) Any person
        2) Officers
    b) The offender having been caught "red-handed"; and
    c) Direct knowledge by the PPNS.
2. The details of the district regulation violation shall be included in an incident report signed by the complainant and the relevant PPNS officer.
3. In the case of the offender having been caught "red-handed," each member of the civil service police unit and PPNS may:
    a) Undertake the first step of the investigation at the place of the incident;
    b) Undertake all necessary actions in accordance with its authority set out in the act of law governing joint civil service police unit and PPNS investigations;
    c) Immediately conduct investigations and coordinate with the related institutions affected by the relevant type of district regulation violation.

c. Examination

The examination of suspects and witnesses is conducted by the relevant PPNS, in the sense that it should not be delegated to other officers who are not the investigators. After that, the examination by the PPNS of the suspect takes place and, if the suspect admits violating the district regulations and promises to comply with them in accordance with the type of business/activity in question (and does so within fifteen days and admits their mistake to the relevant party), a formal statement is made.

d. The Summons

1. The legal basis for the summons is the criminal code provision on summonsing.
2. The basis for summonsing suspects and witnesses in accordance with the act becomes the basis in law.
3. The person with the authority to sign a summons is the civil service investigator of the Municipal Police Unit.
4. In a case where the Civil Services Police Unit is the investigator (PPNS), the summons is signed by its leader as investigator.
5. Where the Civil Services Police Unit is not the investigator (PPNS), the summons is signed by the civil service investigator of the Municipal Police Unit, with the consent of his leader.
6. The summons is prepared by PPNS officers, so that those whose obligation it is can fulfil that responsibility (so as not to contravene Criminal Code Article 216).
7. In the case that the summons is unsuccessful without any valid reason after the second attempt, the PPNS may request assistance from the police investigators to make an arrest. After the arrest is made, the police investigators have immediately to investigate the absence of suspects/witnesses. After that, the investigation relating to the district regulation, within the scope of PPNS' powers and responsibilities, is conducted by the PPNS.
8. In the case that the person summonsed is domiciled outside the jurisdiction of the PPNS, the summonsing is carried out with the assistance of police investigators and the further investigation, as far as possible, is carried out by the relevant PPNS officer.
9. The summons must be received by the person being summonsed at least three days before the specified attendance date.
10. The summons should be numbered in accordance with the provisions relating to agency registration by the relevant PPNS officer.
11. The summonsing of suspects or witnesses who are abroad is assisted by police investigators.

e. The Arrest

1. In principle, the municipal police unit has no authority to arrest, except in the case of the offender being caught red-handed.
2. In the case of a red-handed violation of a district regulation, not by the relevant municipal police unit but has occurred in the work and scope of authority of the municipal police unit, then it should be handed over to the municipal police unit and the subsequent step should be handed over to the relevant PPNS to immediately conduct the examinations.
3. In the case of the PPNS needing assistance with the arrest from the police investigators, then a letter of assistance needs to be addressed to the head of the district police, marked for the special attention of the police head of the Department of Investigations.

Satpol PP does not have the authority to make arrests. Even in its capacity as the civil service investigator, some district regulations in Jakarta, such as District Regulation 11 of 1988 on public order and District Regulation 4 of 2004 on citizen and civil registration, do not allow the PPNS to carry out arrests, detentions or body searches (frisks).

- Article 30 Clause 3 of DKI District Regulation No. 11 of 1988 on public order states: *"In performing their duties, the investigators, referred to Clause (1), do no have the authority to carry out arrests, detentions and/or body searches (frisks)."*
- Article 53 Clause 3 of District Regulation No. 4 of 2004 on citizens and civil registration states: *"In performing their duties, the investigators, referred to Clause (1), do no have the authority to carry out arrests, detentions and/or body searches (frisks)."*

Thus far, the power of arrest has been regulated by the penal code (KUHAP). Article 1 Number 20 of KUHAP defines arrest as an act by investigators (police) in the form of temporary suppression of a suspect's or accused's freedom if there is sufficient evidence for investigation, prosecution and/or a court appearance in accordance with the act.

In KUHAP, the parties who have the authority to make arrests are:

1. Investigators
    a) State police officials of at least second inspector police rank
    b) Civil service officials given special authority by the act of at least junior manager level 1 (class II/b or equivalent) rank
2. Investigator Assistant
    a) Police officials of at least brigadier II rank
    b) Civil service officials given special authority by the act of at least junior manager (class II or equivalent) rank
3. Investigators (all police officials)

Based on the operational fixed procedures, Satpol PP may only make an arrest where the offender is caught red-handed. Meanwhile, Satpol PP, which also acts as the PPNS, may make an arrest with the assistance of the police.

f. Foreclosure

The legal basis for foreclosure is the act which has become the basis in law of the PPNS and its procedure is stipulated in the penal code (KUHAP).

1. A letter of request to the chairman of the court is issued by the PPNS and delivered directly to the chairman of the court with copies to the police investigators.
2. In the case of the PPNS needing the assistance of police investigators, the PPNS will request foreclosure assistance from police investigators.
3. The signing of the Command Letter of Foreclosure is set as follows:
    a) In the case a member of the civil service police unit is the investigator (PPNS), then the Command Letter of Foreclosure is signed by the head of the civil service police unit as the investigator.
    b) In the case a member of the civil service police unit is the investigator (PPNS), then the

signing of Command Letter of the Foreclosure is conducted by the member of the civil service police unit, who is also the PPNS, being known by his chief.

4. Related to the execution of that foreclosure, the PPNS provides a "property received receipt" to those from whom the property was seized as evidence or it is returned depending on the court decision.

Cases of Satpol PP Violence (Motive, Victim)

Arbitrary Arrest and Detention

Satpol PP does not have any authority to make arrests or detain people. However, in daily life, Satpol PP has made arbitrary arrests and detained the poor who they assumed were Social Welfare Disabled (*Penyandang Masalah Kesejahteraan Sosial* or PMKS).

Some cases of arbitrary or illegal arrest and detention were conducted by Satpol PP with the involvement of other official institutions. The location for some of the detentions was a social house in Kedoya and Cipayung.

At these locations, which did not satisfy international norms for places of detention, victims were subjected to inhumane treatment.[16] Various testimonies from victims express the maltreatment of the social house officers, inhumane and degrading treatment, poor health and safety conditions and the failure of rehabilitation programmes.

The arbitrary arrests and detentions that Satpol PP conduct illustrates an inherent abuse of power on the part of the Municipal Police.

Arbitrary Searches and Violation of Privacy

Satpol PP and Tranquility and Public Order (Trantib) officers do not have the authority to conduct searches. However, Satpol PP are often involved in random searches and violating rights of privacy. Satpol PP is part of a joint team with demography service officers, the civil registration district and the district government that conducts annual and lawfully justified civil operations such as random checks on boarding houses to check demography identity documents of residents.[17] Those who are found without identity cards or any other valid documents are sent by Satpol PP to the Kedoya Social House and effectively forced out of Jakarta.

The Destruction of Personal Belongings and Arson

Arson is one of the methods of evicting slum dwellers. "*Arson or bumi hangus is one of the tactics in ... controlling... the slums, such as on the banks of a river. In an emergency, the arson of buildings is conducted*

16 UNHCHR, *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials* (Geneva: United Nations, 2003).
17 www.media-indonesia.com/berita.asp?id=117149

to facilitate the dismantling operation."[18]

Every year in Jakarta, cases of slum fires continue to occur and lead to speculation among the poor as to the cause. These fires are often associated with eviction plans. In 2002, there were 591 cases of fire and arson: 71% (424 cases) were in slum areas and 29% (168 cases) in places of business and public facilities, including eighteen traditional markets, twelve public facilities and six social facilities.[19]

Public order officers who carried truncheons, kindled fires or directed the bulldozers also destroyed or stole the personal property of the slum dwellers, including furniture, appliances and clothing. This arbitrary destruction and foreclosure of citizen's property is a violation of Indonesian law and those who perpetrate such crimes deserve to be punished for their unlawful actions. After an eviction, the people face the added trouble of having their property taken by scavengers who come to the demolition site looking to collect any objects that can be resold. Police and public order officers sometimes fail to protect the people from these scavengers, even though the officers are still guarding the demolition site.[20]

Arbitrary Confiscation and Looting of Property

The looting cases show that the practice of arbitrary property foreclosure still exists. Almost every eviction, arrest of street vendors or raid on street children and the poor is accompanied by the confiscation of property owned by the poor.

Arbitrary arrests are carried out by seizing the property of street vendors with no guarantee that the goods seized can be obtained once again by the traders. LBH Jakarta recorded some patterns of Satpol PP treatment of property that was arbitrarily looted and seized. For example, some goods were not returned to the owner at all, were only returned after being asked for, or property was damaged and/or returned with an illegal ransom.

The conditional requirements in General Comment No. 7 Article 11 of the UN Economic, Social and Cultural Covenant state that any eviction should provide certainty for victims to identify and keep their property from any eviction.[21]

Violence against Children, LGBT Groups and Human Rights Defenders

Children become one of the parties most seriously affected in the post-eviction time. Before the eviction occurs there is an atmosphere of fear, people are disturbed by the arrival of Trantib/Satpol PP officers and many of the children are forced to leave school. After the eviction, parents are unable to send their children back to school because it is impossible to travel the huge distances to the school.

18 Statement by the head of the Tranquility and Public Order Office (*Kasudin Trantib*) of North Jakarta, Toni Budiono. Kompas (2 November 2001).
19 Forum Keprihatinan Akademisi, *Menata Kembali Hak Warganegara* (Jakarta: 2003).
20 Human Rights Watch, "Masyarakat yang Tergusur: Pengusiran Paksa di Jakarta," *Human Rights Watch Report*, Volume 18, No. 10 (C) (September 2006).
21 Niken Widya Yunita, "Trantib DKI Bantah Siksa Joki 3 in 1 Hingga Tewas," *Detik News (11 January 2007), http://www.detiknews.com/index.php/detik.read/tahun/2007/bulan/01/tgl/11/time/135239/idnews/729246/idkanal/10.*

Street children who work as singers, three-in-one jockeys and beggars become the most vulnerable groups during raids. It is recognised that some of the street children in the Grogal, Kebon Nanas and Jakarta Centre for Street Children joint community suffered arrests and detentions in Kedoya and Cipayung Social House more than once. Those children described their awful treatment at the hands of Satpol PP/Trantib officers and the social house officers whose actions were often violent and inhumane.

The case of beating and abuse resulting in death is alleged to have been conducted by Trantib/Satpol PP officers against Irfan (a three-in-one jockey).[22] Although the provincial government and the tranquility and public order officers denied these accusations,[23] the evidence reveals and witnesses have testified to the officers' persecution of Irfan before his arrest and subsequent death.[24]

Apart from street children, violence, sexual harassment and extortion by Satpol PP are often experienced by the LGBT (lesbian, gay, bisexual and transgendered) community and commercial sex workers (PSK).[25] Furthermore, there have even been some cases of violence against human rigts defenders in which Satpol PP was implicated.[26]

Questions about the Existence of Violence and the Cases against Satpol PP

Several cases, both judicial and non-judicial, are pending and focusing on the violence of Satpol PP in executing its function and questioning its institutional existence.

Legal efforts have been undertaken by LBH Jakarta and its network to hold perpetrators of the violence accountable both personally and institutionally. They have attempted to take legal action via both the civil and criminal routes. Criminal legal efforts are done continuously to encourage the police to ensure the victims' rights to justice. Besides administrative law, it also requires supervision to prevent impunity. Meanwhile, in civil legal efforts, various acts of arbitrary enforcement, evictions and arrest of the poor (who often break the law) in urban areas are filed with the court as violations of the law to encourage the accountability of institutions and the emergence of policy change.

Meanwhile, a test case is needed to consider the existence of Satpol PP and whether it needs to be retained or dissolved. The bases of the arguments are whether Satpol PP is no longer needed in the present context, into which the police have moved and attained the ability to function like a modern civil police, or that Satpol PP is still needed but that it has to be returned to a basic civil function or a combination and re-contextualisation of the civil function.
The first possibility seems to present greater challenges, not only from the perspective of Satpol PP institutions but from the intricacies and complexities of integrating the normative Satpol PP functions into a modern

22 Ibid.
23 Liputan6.com/view/2,135686,1,0,1169909085.html
24 *United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7 on forced evictions*, UN Doc. E/C.12/1997/4 (16 May 1997).
25 See: LBH Jakarta, "Memerangi Rakyat Miskin Kota," *LBH Jakarta Report* (2007).
26 Ibid.

municipal police function. As a consequence, district regulation enforcement, which has up till now been handled by Satpol PP, will be the task of the police unit. An in-depth study about this possibility is definitely needed.

The second alternative is to make institutional reforms by retaining the Satpol PP institution and making variations on overall improvement, including regulatory changes, reform changes, aligning and adopting international human rights standards into the guidelines, creating fixed procedures and a Satpol PP code of conduct.

Strengths, Weaknesses, Opportunities, and Threats (SWOT) in Advocating Against Cases of Violence by Satpol PP

Here is a SWOT analysis on advocacy efforts to settle cases of violence instigated by Satpol PP. These analyses are not just aimed at issues surrounding the victim's defence but at other basic problems within the system that allow Satpol PP to do its worst.

Weaknesses

- The number of cases of violence against Satpol PP has not been balanced by a systematic and coordinated advocacy network. The alliance with cultural groups, intellectuals, spiritual leaders, politicians and others, who have a more significant impact in accelerating the policy change and ending violence, should be expanded.
- Advocacy has not seriously addressed policy and institutional reforms yet. This factor is one of the fundamental problems in the culture of violence that is manifest in Satpol PP.
- The activists defending the urban poor tend to be in a confrontational position with the government, which is not a strategic place from which to encourage policy changes to Satpol PP.

Strengths

- The network of civil society, which has a strong grip on urban issues and urban communities, is strong enough to do the monitoring and defending work, including encouraging policy changes and institutional reform of Satpol PP.
- The basis of support for reforming the Satpol PP is strong enough. This is related to the range of groups who have been made vulnerable by and/or have become victims of Satpol PP violence. These are people/groups in the informal sector in urban areas that includes street vendors, street children's associations, rickshaw drivers, street singers and members of the LGBT community.

Threats

- The settling of Satpol PP violence cases are constrained by efforts of the Satpol PP corps, who prefer administrative law and attempt to avoid criminal law, which then becomes the jurisdiction of the police. The numbers abused by Satpol PP are often processed administratively and there is no adequate information for victims about the process of conviction and forms of punishment.
- The settling of cases involving Satpol PP is often hampered by the poor performance of the police in processing the violence by the Municipal Police. In some control and raid operations, the police are even

in cohoots with the Satpol PP and turn a blind eye to violations.
- The possibility of resistance from the hardliners in the Satpol PP to institutional reform is related to the loss of or decreasing regular budget, which it manages both legally and illegally, and in the biased use of funds and control operations.
- District governments actively encouraging and taking advantage of Satpol PP for district regulations and enforcement issues underpinned by Islamic Shari'a regulations.

Opportunities
- The success of security sector reform in the military and the police would be a good example for Satpol PP advocacy. Placing Satpol PP within the framework of security sector reform will encourage the establishment of policy changes and the institutional reform of Satpol PP.
- Some district governments (such as DKI Jakarta) are open to input and assistance in reforming Satpol PP policy and the institution, though this is still very limited.
- The membership of Indonesia in the UN Human Rights Council requires all departments, including the Ministry of Home Affairs and district governments, to encourage the promotion and respects for human rights.

Closing: Conclusion and Recommendations

The main message of this paper is that it is possible to end the violence by Satpol PP and prevent future recurrences. This is the time to try putting pressure on policymakers to implement strategic, effective and efficient moves toward the institutional reform of the civil service police unit.

The identification of legal issues on which the existence of PP is based shows the weakness of legal institutions and the need for policy change, both substantially in the form of laws and other regulations and structurally in the form of other institutional improvements.
Putting advocacy efforts against violence conducted by the Satpol PP in the scope of security sector reform is having its relevancies, not only substantially by aligning advocacy with security sector reform, but also strategically, which makes it possible to accelerate the institutional reform process of the Satpol PP body.

The most important recommendations of this paper are aimed at the government. That is, central and district governments need to immediately conduct some thorough evaluations on the existence of Satpol PP, revise and review all the provisions that underlie and legitimise its existence and adjust them according to the standards of other human rights instruments. The following are recommendations for future action:
For the Central Government
- Coordinate with donors to create Satpol PP policy and institutional reforms, including amending regulations and making a blueprint for Satpol PP capacity building that promotes the respect and protection of human rights.
- Review and audit the regulations of Satpol PP to ensure it complies with the application standards of international law, such as the UN Code of Conduct for Law Enforcement Officials and the Basic Principles of Strength and Weapon Use.
- Amend or revise government regulations on the guidelines of Satpol PP.

- Amend or revise the decision of the minister of home affairs on Satpol PP Operational Fixed Procedures, including the decision of the minister of home affairs on the uniforms and attributes of the Satpol PP.
- Provide training for Satpol PP officers on human rights and knowledge about the needs and problems of the urban poor.

For the District Government

- Limit the use or deployment of Satpol PP in control operations, including reducing the number of personnel therein.
- Ensure that the officers and members of Satpol PP obtain the appropriate professional training to implement public safety responsibilities.
- Investigate and litigate the Satpol PP, Trantib and Linmas (Society Protectors) officers responsible for arbitrary violence, and confiscation and destruction of personal property during control operations. There must be consequences, including criminal prosecution and dismissal, if suspects proved guilty.
- Review the funds allocation in the safety and public order sector in the district income and expenditure budget (APBD) and divert it to the sectors that are directly related to the fulfillment of economic, social and cultural rights.
- Evaluate and review the existence of social houses. Investigate and impose sanctions on the officers and officials who permitted human rights violations, torture, inhumane acts and degrading treatment that occurred in the social house environment.

For the National Committee on Human Rights

- Issue an urgent recommendation to revoke certain district regulations concerning public order (including the similar district regulations in various areas) to all agencies and relevant government institutions.
- Investigate the various acts of violence, evictions, arbitrary arrest and detention (affected by Trantib and Satpol PP officers on behalf of District Regulation No. 11/1988) and other human rights violations.

References

http://www.liputan6.com/view/2,135686,1,0,1169909085.html

www.media-indonesia.com/berita.asp?id=117149

Anwar, Yesmil. "Revitalisasi Satpol Pamong Praja." *Pikiran Rakyat*. 18 March 2004.

Berg, B. *Law Enforcement: An Introduction to Police in Society*. Boston: Allyn & Bacon, 1998.

Forum Keprihatinan Akademisi. *Menata Kembali Hak Warganegara*. Jakarta: 2003.

Government Regulation No. 32 Year 2004 on the Municipal Police Guideline (PP No. 32 Tahun 2004 tentang Pedoman Satuan Polisi Pamong Praja).

Harian *Kompas*, 2nd November 2001.

Human Rights Watch. "Masyarakat yang Tergusur: Pengusiran Paksa di Jakarta." *Human Rights Watch Report*. Volume 18, No. 10 (C). September 2006.

Indrotjahyono. "Lahirnya Kelompok Bisnis Penyandang Dana Kekuatan yang Mengaku Sayap Tengah." *Buletin Tanah Air*. No. 3. September 1986.

LBH Jakarta. "Memerangi Rakyat Miskin Kota." *LBH Jakarta Report*. 2007.

Minister of Internal Affairs, Regulation No. 26 Year 2005 on the Municipal Police's Fixed Operational Procedure (Peraturan Menteri Dalam Negeri Nomor 26 Tahun 2005 tentang Pedoman Prosedur Tetap Operasional Satuan Polisi Pamong Praja).

Minister of Internal Affairs, Regulation No. 35 Year 2005 on the Municipal Police's Operational Uniforms, Equipment and Tools (Peraturan Menteri Dalam Negeri Nomor 35 Tahun 2005 Tentang Pedoman Pakaian Dinas, Perlengkapan dan Peralatan Satuan Polisi Pamong Praja).

Ricklefs, M.C. *A History of Modern Indonesia Since c. 1300*. Stanford: Stanford University Press, 1993.

Shahab, Alwi. "Kamar Penyiksaan di Balai Kota." *Republika*. 16 November 2003.

Sibarani, Santhy M., et al. *Antara Kekuasaan dan Profesionalisme*. Jakarta: Dharmapena, 2001.

Subur, Ali, et al. *Pergulatan Profesionalisme dan Watak Pretorian (catatan KontraS terhadap kepolisian).* Jakarta: KontraS, 2001.

United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7 on forced evictions. UN Doc. E/C.12/1997/4. May 1997.

UNHCHR. *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials.* Geneva: United Nations, 2003.

Yunita, Niken Widya. "Trantib DKI Bantah Siksa Joki 3 in 1 Hingga Tewas." *Detik News, 11 January 2007, h*ttp://www.detiknews.com/index.php/detik.read/tahun/2007/bulan/01/tgl/11/time/135239/idnews/729246/idkanal/10.

Women in Armed Conflict

Meirani Budiman

Abstract

Women are the most vulnerable to sexual violence in armed conflict. Various case studies in at least seven conflict areas in Indonesia from 1998 to 2008 have shown that there was sexual violence during the conflict period. Some explanations for sexual based violence are that it is a tool for conflicting parties to weaken their enemies or it is planned as part of the conquest or war strategy. Sexual violence results because of a lack of control, discipline and poor functioning of the law.

In periods of armed conflict, the state has an obligation based on international humanitarian law or national constitutions to ensure human rights protection for those regarded as most vulnerable, including women. Unfortunately, the state, through its security actors and the military, is responsible for much of the sexual based violence (and severe human rights violations) during armed conflict. Soldiers misuse and exploit their power.

In this paper, the author focuses on sexually-based human rights violations conducted by the state through its military personnel in various conflict areas in Indonesia. The paper tries to employ a human rights analysis to security sector issues in the context of armed conflict.

Introduction: Women and Armed Conflict

The year 1998 will go down as the most historic in the nationhood of Indonesia. That year marked a watershed after thirty-two years of the New Order regime as Indonesia began to reconstruct itself as a nation. Through a mass movement commonly known as *Gerakan Reformasi* (reform movement), Suharto's regime collapsed, pushing the nation into a period of transition with its own opportunities and challenges.

Transition invariably creates the potential for conflict and Indonesia, which is a large and culturally diverse nation, was not going to be without its predicaments. The latent potential for conflict is very real. Conflict can arise as a result of social transformation and differences of authority, interest and culture. This is especially true after the collapse of the New Order regime, when people are enjoying greater freedom and the new authority

has been less stable, making the existence of conflict inescapable. There are many variants of conflict but the focus of this paper is on armed conflict, especially those that occurred from 1998–2008.
According to the definition provided by UCDP/PRIO, armed conflict is:

> *...a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.*[1]

Meanwhile, Pietro Verri defines armed conflict as several confrontational dimensions consisting of: parties, for example between two states or more; a state and a non-state entity; a state and a rebellious faction; or two different ethnic groups under the authority of the state.[2]

Based on Verri's classification in particular, armed conflicts in Indonesia have two dimensions: (1) conflict between the state and a rebellious faction (more popularly called non-international armed conflict) like those in Aceh, East Timor (now Timor-Leste), West Timor and Papua; and (2) conflict between two different ethnic groups under the authority of the state (mostly known as communal conflict). But this classification can turn into non-international armed conflict if it happens over a protracted period, with a wide escalation of victims and government involvement as third party. On the basis of this classification, the communal conflicts in Indonesia—such as those in Jakarta (May 1998), Sambas (West Borneo), Poso (Central Celebes) and Ambon (the Molucaas)—can be counted as non-international armed conflicts because they occurred over a short period.

Over the last ten years, there have been at least eight armed conflicts in Indonesia. Although these conflicts have de-escalated, we can at least reflect on the experiences and consequences of that time. This paper will discuss these armed conflicts from the perspective of women as victims.

Women have become the subject of human rights crimes as a result of the violence they experienced during the period of armed conflicts. Much of the literature claims that women have always been the most vulnerable party. Although men are usually the involved parties per se and have suffered during conflict, the suffering endured by women is on a broader spectrum.[3] This is true especially for those women who became targets and found themselves on the receiving end of gender-based violence. Such actions against women occur because of the nature of war and power. Those actions are tools used to weaken the enemy, to spread terror, to encourage ethnic/racial/community cleansing, to "reward" male combatants, to intimidate and/or as an effort to elicit more information from the enemy.

Although gender-based violence occurs due to an imbalance of power on gender grounds, it has a broad impact for both men and women. As in every armed conflict situation, however, the impact on women is far greater in both the number of victims and intensity compared to men.

1 Definition from the Centre for the Study of Civil War of the Peace Research Institute Oslo (PRIO) and the Uppsala Conflict Data Program of Uppsala University (September 2006).
2 Pietro Verri, *Dictionary of the International Law of Armed Conflict* (Geneva: ICRC, 1992), 34–35.
3 At the time, women were far more than just the subjects of violence. In various conflict areas, women actively participate as combatants, commit to war, act as volunteers supplying food and weapons (Aceh), and are medical volunteers (various areas), spies, intermediaries between communities (Papua and Ambon), mediators, or even agenda supporters of peace and post-conflict resolutions.

Sexual Violence

Sexual violence can be defined as "all forms of violence, both physical and psychological, conducted sexually or with sexuality as the target." According to the Inter-Agency Standing Committee (IASC) task force for Gender and Humanitarian Problems, sexual violence is defined as:

> *...any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or trafficking with the purpose of sexual exploitation, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including, but not limited to, home and work.*[4]

If it is related to a conflict situation, sexual violence involves:

- Sexual harassment, like forced removal of clothes or a virginity test;
- Sexual exploitation, such as trading sexual service for food or protection;
- Rape, gang rape, or attempted rape;
- Sexual slavery;
- Forced pregnancy, abortion, sterilisation, or the use of contraception; and
- Human trafficking for the purpose of sexual exploitation.

Looking at the list above, it is obvious that sexual violence can also take place in times of peace as well. Yet in times of peace, sexual violence takes on other specific forms and is differently motivated from that which occurs in periods of armed conflict. Sexual violence is an ancient phenomenon. Looking at wars through history, sexual violence occurred because women were treated as "war loot," spoils of war and as the property of combatants.

Another reason for sexual violence is to destroy the enemy's men, thus depriving the enemy community as a whole of its dignity. A man who fails to protect his woman is perceived as being weak and disreputable. Sexual violence is a form of punishment, especially for woman who are actively involved in politics or as combatants. Moreover, sexual violence is orchestrated to spread terror amongst specific communities. That terror will then spread fear into the community, which will then voluntarily migrate from the place/land of their birth. Sexual violence can also form part of a strategy aimed at genocide and as an overall effort towards ethnic cleansing.

Recorded below is the experience of women in various armed conflicts in Indonesia.

DKI Jakarta (May 1998)

Jakarta was not actually classified as a conflict area but ever since it became home to the mass rape of 168 people[5] of *Tionghoa* ethnicity in the immediate aftermath of Suharto's fall from power in May 1998, it has been labeled as such.

4 Reproductive Health Response in Conflict Consortium, *Gender-based Violence Tools Manual: For Assessment & Program Design, Monitoring & Evaluation in Conflict Affected Settings* (New York: RHRC, 2005).

5 Data from Relawan untuk Kemanusiaan (The Volunteers Team for Humanity).

In her book *Sex, Power and Nation*,[6] Julia I. Suryakusuma presents Jakarta's horizontal conflict in a special chapter, "The Mass Rape of May: Revealing the Ills of Indonesian Society," previously published in *Media Indonesia* (18/7/98) as "Rape and the State."

According to Suryakusuma, the main cause of the conflict in Jakarta is attributable to a fragile moral and economic structure, political instability and a monetary crisis. Social jealousy due to an increasing economic gap between locals and the *Tionghoa* migrants who controlled seventy percent of the economic sector was the motive. But another source claimed that the following reason could not be precluded. This was the involvement of the military apparatus, dressed in civilian clothing and provoking riots, to create a situation of chaos after the collapse of Suharto's regime—hence, a political motive. Twelve hundred people became victims in this conflict, which involved the mass rape of *Tionghoa* women, the burning of buildings and mass robbery. The son-in-law of former President Suharto (now former son-in-law), General Prabowo, is suspected of being a puppet—overseeing the Indonesian military's involvement so as to discredit anti-Suharto groups and the pro-democracy movement. This conflict continued with the shooting of several pro-democracy activists in September 1998 and the shooting of Trisakti's students.

Female activists who tried to help victims and to investigate the cases of rape are still living with murder threats. A young *Tionghoa* woman of eighteen, Martadinata Haryono, is one such example. The daily newspaper *Kompas*, on 10 October 1998, reported that Martadinata and her mother planned to help rape victims by testifying against the perpetrators to international human rights groups.[7]

Nangroe Aceh Darussalam (1976–2005)[8]

The conflict in Aceh lasted a long time. The pro-independence wave by the anti-central authority movement has been growing since the beginning of Indonesia's independence. This wave has not dissipated throughout the twenty years of conflict. Counting back from 1998, there are several periods that can be marked: the policy to stop the military operation zone/DOM (1999); agreement to deliver a humanitarian break (2000); agreement to stop the rivalry (2002); the initiation of another DOM (2003–2005), the lowering of critical status to civil emergency (May–August 2005) and the peace agreement between the government of Indonesia and the Free Aceh Movement (GAM) in Helsinki in August 2005.

The data collected reveals that those several periods of lull cannot erase the suffering of civil society, especially that of women, even today as Aceh struggles with a post-conflict and post-tsunami situation.[9]

During the conflict, the suffering of Aceh's women was compounded. Data gathered by *Komnas Perempuan* (the National Commission for Women) from 1999–2007 highlighted the fact that sixty percent (or more than 200 cases) involved sexual violence. That number, however, is just the tip of the iceberg of the Aceh cases.[10] During

6 Julia I. Suryakusuma, *Sex, Power and Nation* (Jakarta: Metafor Publishing, 2004), 225–235.
7 Ibid.
8 Amnesty International, *Indonesia: New Military Operations, Old Patterns of Human Rights Abuses in Aceh (Nangroe Aceh Darussalam, NAD)* (7 October 2004). This report comprehensively presents human rights violations in Aceh, including sexual violence, since the initiation of DOM (Daerah Operasi Militer or Military Operation Zone) in May 2003 until the transition to Darurat Sipil (Civic Emergency) in 2004.
9 *The Jakarta Post*, "Aceh Women Still Face Huge Hurdles After Tsunami, Conflicts" (23 January 2009), http://www.thejakartapost.com/news/2009/02/23/aceh-women-still-face-huge-hurdles-after-tsunami-conflicts.html.
10 Komnas Perempuan, *Catatan Tahunan Kekerasan terhadap Perempuan (Annual Report of Violence against Women)* (Jakarta: Komnas Perempuan, 2007).

DOM, there were forty cases[11] of sexual torture, harassment in investigation, capture, charges of involvement because of family activity, human trafficking and military corruption.

The security apparatus is acknowledged as being the main actor behind the sexual violence. The violence and/or sexual torture came to pass whenever it conducted village encirclements or attacks. Sexual violence was meted out as punishment for women who were involved in *Inong Balee* (the local woman's movement) or for those whose relatives or family were suspected of being members of GAM.

Foto 18. Aceh Woman with Her Baby in the Middle of Conflict Situation That was Forced to Flee Her Home to a Shelter, 2004

Poso, Celebes/Sulawesi (1998–2003)

Sectarian tension is at the heart of this bloody conflict that began in 1998 in Poso. The first phase lasted until 2001 with implications for violence against women, especially at the time of the inter-community attack. *Komnas Perempuan* stated that at least 200 women had their clothing forcibly removed only to clarify whether they were wearing amulets on their breasts and vagina.[12] In 2000, there were large scale murders in communities along Poso's coast. *Komnas Perempuan* also reported that hundreds of women had had their hair cut off from 2000–2001.[13]

11 *Kompas Daily*, "Tim Konsultasi Presiden untuk Aceh (Consultation Team President for Aceh)" (12 May 2003).
12 Komnas Perempuan, *Catatan Tahunan…* (2007), 42.
13 Komnas Perempuan, *Laporn Komisi Nasional Anti Kekerasan terhadap Perempuan (National Commission on the Elimination of Violence Against Women)* (2002).

The second phase of conflict lasted until 2002, during which time *Komnas Perempuan* stated that the murder of women was becoming a tool to provoke and terrorise society. In 2003, there was a sexual harassment case at the Islamic Centre Km 9, where fifty women had their clothing forcibly removed while simultaneously watching their husbands being murdered.[14]

Although there are no bloody conflicts in Poso today, random bombings and the murder of women are still used as a means of spreading terror. For example, in July 2004 a female priest was shot while leading worship, the Tentena market bombing in May 2005 caused the deaths of twenty-three people (eleven of whom were women), three female students were beheaded in October 2005 and two female students were shot in November 2006.[15]

Ambon (1999)

Another bloody sectarian conflict took place in Ambon. Although this conflict—like those in Poso and Papua—ended several years ago, it still has the potential to be reignited. This potential has been escalated by the separatist movement RMS (*Republik Maluku Selatan*/Republic of Southern Moluccas) over rumours of flag-raising and Jakarta's excessive control, etc.

After the 1999 conflict there was support for DOM in Ambon. According to the NGO *Arikal Mahina*, there were incidents of sexual violence in the Sul refugee camp, with girls being raped by their fathers.[16] Moreover, in 2004, 150 women became victims of seduction by soldiers and were left pregnant during the DOM period in Moluccas. This case came to be known by locals as promise-violation. This data was drawn from the NGO called Vrouwen voor Vrede (*Perempuan untuk Perdamaian* or Women for Peace), introduced by members of the Dutch parliament when visiting Moluccas at the end of 2004.[17]

Conflicts that lasted until 2002 left 3,000 casualties with 5,000 wounded. Half of them were permanently disabled. Data from *Komnas Perempuan* has found that besides becoming the target of murder by attack or sniper shootings and random bombings, women also suffered sexual violence in the form of genital mutilation (two women) and rape (one woman).[18]

East Timor and West Timor (1999–2006)

Conflicts on Timor cannot be separated from the history of Indonesia, particularly as it occupied East Timor from 1975. From that time, there were several separatist movements such as the UDT and *Fretelin* pushing to opt out of Indonesia. After the eradication of the UDT, only *Fretelin* remained in direct confrontation with the military, which declared East Timor a military zone.

14 M.B. Wijaksana, "Reruntuhan Jiwa: Truma Perempuan Poso," *Jurnal Perempuan*, "Women and Conflict Recovery," 24 (2002): 55.
15 Komnas Perempuan, *Catatan Tahunan…* (2007).
16 Ina Soselisa, "Perempuan Cacat: Konflik di Ambon dan Upaya Pemulihan" (Disabled Women: Conflict in Ambon and Recovery Efforts)," *Jurnal Perempuan*, "Women and Conflict Recovery," 33 (2004): 52.
17 Reports from www.jurnalperempuan.com, contributor from Ambon, Joanny Latupessy.
18 Komnas Perempuan, *Catatan Tahunan…* (2007), 41.

At the end of 1999 Indonesia, under the presidency of Habibie, agreed to conduct an open referendum to determine the status of East Timor. The result was overwhelming support by the people of East Timor to form their own nation. This reality disappointed several pro-Indonesian militia groups. With support from the military, they reacted to the rejection of Indonesia with murder and acts of violence, resulting in the United Nations calling an end to the action. East Timor declared its independence in 2002. Thereafter, the Commission on Acceptance, Verification and Reconciliation (*Komisi Penerimaan, Kebenaran, dan Rekonsiliasi* or KPKR) was established to handle the cases of human rights violations from April 1974 to October 1999.[19]

From Indonesia's annexation of East Timor in 1975 until after the 1999 referendum, Indonesian military and pro-Indonesian militia groups continuously violated human rights by resorting to torture, murder, forced disappearance(s) and rape.

KPKR documents have highlighted the vast scale of sexual violence against East Timor's women. During the occupation, many women and girls became victims of sexual harassment and sexual torture whereby objects were stuffed into their vaginas or their genitalia were burnt, they were raped, and/or were forced into sexual slavery and prostitution to service the Indonesian military or pro-Indonesian militia. Woman suspected of supporting East Timor's independence and those who lived in villages were most vulnerable. Some women also became the object of forced sterilisation and contraception.[20]

From reports by the KPKR, there were at least 853 cases of sexual violation. Rape was the most reported, comprising just over forty-six percent (393 out of 853) of cases. Sexual harassment followed at approximately twenty-seven percent (231/853) of cases, with sexual slavery comprising just under twenty-seven percent (229/853) of cases. The report also showed that the Indonesian military and their supporters were implicated in over ninety-three percent (796/853) of cases, while two-and-a-half percent were related to *Fretilin* (21/853), just over one percent to *Falintil* (10/853), just less than one percent to the UDT (8/853), one tenth of a percent to *Apodeti* and nine-tenths of a percent to the rest (8/853). The KPKR states that the total cases in 1999 reached 15,681 with approximately fifty-six percent conducted by militia, fourteen percent by the Indonesian army, over twenty-four percent by the militia and army, two-tenths of a percent by independence movement groups and four percent by the rest.[21]

Increasingly, sexual attacks could be found occurring in 1999—both before and after the referendum. KPKR's 1999 data records a time-series pattern with two peaks of sexual violence. Specifically, in April and September of 1999 the army and militia carried out mass rape. If we compare the episodes of sexual violence with the violence in general,[22] consistent patterns in April and September of 1999 are obvious. This demonstrates that rape was designed and not random.

19 United Nations Human Rights Commission, "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women," report by the Special Rapporteur on violence against women, Radhika Coomaraswamy, E/CN.4/2001/73 (23 January 2001), 79, http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/8a64f06cc48404acc1256a22002c08ea?Opendocument.

20 UNIFEM, *Gender Profile of the Conflict in Timor Leste* (13 July 2007).

21 The Commission for Reception, Truth and Reconciliation (CAVR) gathered information from 1999–2005 by approaching and assisting victims. Data related to the army's involvement during the East Timor conflict can be found in "Pemerkosaan, Perbudakan Seksual, dan Bentuk-bentuk Lain Perbudakan Seksual," http://www.ictj.org/static/Timor.CAVR.Indo/07.7-Pemerkosaan-perbudakan.seksual-dam-.pdf.

22 Violation here involves murder, forced disappearance, torture, arrest, inhumane attitudes, sexual violence, forced mobilisation, forced recruitment and robbery. See: Galuh Wandita, "Rape and Sexual Violence in the Context of the Popular Consultation in East Timor 1999 (Perkosaan dan Kekerasan Seksual dalam konteks Jajak Pendapat di Timor-Timur 1999)" (March 2007), http://www.ictj.org/static/Asia/Indonesia/Galuh.hearing.eng.pdf.

Considering the number of victims and the patterns, the incidents of sexual violence in East Timor fully satisfy the criteria under the law for defining crimes against humanity because:[23]

- They are *attacks* (in the form of murder, arrest, etc., including sexual attacks) against civilians (mostly refugees, including women, who were unarmed);
- *Wide-scale* attacks were conducted collectively, with large number of casualties. Incidents of rape were recorded in nearly every district. In certain cases, perpetrators committed acts jointly. There was also a responsible commander who knew the crimes were going to occur but failed to prevent or punish the perpetrators;
- The attacks were *systematic*. The KPKR's findings show that both peaks of sexual crimes are consistent with peaks of other crimes in April and September 1999. This shows design and intent were present. The location of rape in the military bases and the use of vehicles, arms and assets of the state in conducting these crimes have also shown that it was conducted systematically; and
- The actors *knew* the wider context within which the attacks occurred and acknowledged that their action was part of the attacks. Also, the actors acknowledged that they could commit rape without fear of sanction.

East Timor gained its independence from Indonesia in 2002, though in 2006 it was still experiencing conflict. After a year of widespread violence in East Timor, 100,000 women were still refugees in West Timor, which is predominantly under the control of the pro-Indonesian militia. Reports reveal that many female refugees were forced to work or became sexual slaves. "According to refugees returning from West Timor, women were regularly taken from refugee camps to be raped by the Indonesian military and militia. One member of the military personnel was reported to have detained several women in his house. One woman there testified that one of them is Filomena Barbosa (an ex pro-independence activist of East Timor).[24] Unfortunately, the Indonesian government has been inclined to ignore the West Timor situation and had made no real effort to prohibit or to investigate any reports of sexual violence.

Papua (1987–present)

The troubles with Indonesia as a result of the movement by the Papuan separatist group *Organisasi Papua Merdeka* (OPM or the Free Papua Movement) are still not over, although the situation has de-escalated. During the DOM in Papua, sexual violence was not uncommon. Ten women were raped at gunpoint by soldiers in Jillad during the army's pursuit of the OPM leader, Kelly Kwalik, between 1987 and 1988. An eyewitness to the event was Beatrix Koibor, president of the Papua Council.[25] Women suffered rape in Mapundema and Alama. Ita F. Nadia from *Komnas Perempuan* found photos of women on a wall at the military checkpoint in Mindiptana. This has caused the women involved great stigma and as such they are imprisoned within their villages, afraid to leave.[26]

23 Ibid.
24 Amnesty International Canada, "Refugees at Risk: Continued Attacks on East Timorese."
25 Budie Santi, "Perempuan Papua: Derita tak Kunjung Usai" (Women of Papua: A Never Ending Suffering), *Jurnal Perempuan*, "Women in Conflict Areas," 24 (2002): 76–77.
26 *Kompas Daily*, 15 August 2003.

After May 1998, *Komnas Perempuan,* together with Abepura's Investigative Commission into Human Rights Violations (*KPP HAM*) formed by the National Commission of Human Rights (*Komnas HAM*), conducted research on the incidents of hounding and arrest of people in Abepura on 7 December 2000. The KPP HAM found that gender-based torture featured among other various severe violations of human rights. From 2000 to 2006, women also became targets of intimidation conducted by security actors in order to counter separatism. Wives and relatives of the OPM's members and/or supporters were specific targets. During this time, the wife and children of Y.I. Meraudje, director of ELSHAM Papua (an NGO), were shot. Fransina Sawen, the wife of an OPM member, was detained in 2004.[27] Indonesian military personnel also intimidated and tortured civilians near Wamena, West Papua in 2003.[28]

Sexual Exploitation

Definition: Action or attempt to use vulnerabilities, differences in power capacities or trust for sexual purposes, including but not limited to gaining financial, social and political advantages (UN Security Council Resolution No. 57/306 on Investigation of Sexual Exploitation toward Refugees by Humanitarian Workers in West Africa).

Sexual Exploitation Patterns in Indonesia: Always exists where there is a security personnel presence, like in Poso, Moluccas and Aceh.

Perpetrators, who are security personnel themselves, look for local women, especially teenagers, with promises of marriage; perpetrators ask victims to conduct sexual acts; and perpetrators abandon victims when they are pregnant or upon delivery of a baby. Abandonment can be in the form of an unfulfilled marriage promise, or illegal/unauthorized marriage and abandonment after the period of work has ended. In Poso, there were two cases where perpetrators using violence asked victims to terminate their pregnancy.

Accountability and Law Enforcement

A decade of *Reformasi* has passed in Indonesia and one thing remains: Indonesia still owes huge debts to female victims of past human rights violations and conflict. The first half of the *Reformasi* era was filled with various and extensive political violence, about which women have kept silent. There have been very few efforts to support the comprehensive rehabilitation of victims, to help women out of poverty or to discover the truth about what actually went on.[29]

Meanwhile, on the basis of principles developed by the United Nations, victims have three rights: right of verification, of justice and of reparation. Because of the nature of crimes against humanity there is no statute of limitations for them. They are legalised as having universal jurisdiction, which means that all nations are obliged to secure justice and/or extradition for those wanted in connection with such crimes. All three rights noted above are inseparable and are the essence of the self-rehabilitation efforts of victims and indeed of the nation.[30]

27 ELSAM, *Catatan Kondisi HAM di Papua*, dalam catatan Komnas Perempuan, 40.
28 Ibid.
29 Ibid., 1.
30 United Nations General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights

Article 46 of the Additional Protocol of the 4th Hague Convention states the obligation to protect and respect "family honour and rights, the lives of persons...." Sexual violence is a violation of personal dignity according to Protocol 3 of the Geneva Conventions. The Furundzija Judgement (1998) also states this position and, in addition, paragraph 137 of the decision states that the general prohibition against torture has evolved in customary international law.

It has been clearly stated that various sexual violence cases perpetrated against women deserve very serious attention in this country. Yet, until today, law enforcement toward perpetrators is still weak. *Komnas Perempuan* states, *inter alia*, several of those weaknesses:[31]

- The state rejected the investigative team CFT's findings about the May 1998 tragedy concerning fifty-two rape victims, fourteen victims of sexual torture, ten who suffered sexual attacks and nine cases of sexual harassment.
- The Ad-Hoc Court of East Timor did not track sexual violence cases that had occurred from the time the referendum option had been agreed until the legalisation of the referendum's result, including the following cases found by East Timor's KKP HAM: the sexual slavery of groups of female refugees by the Laksaur militia, two girls sexually enslaved by the Mahidi militia, twenty-three women sexually enslaved by the BMP militia and a group raped by the Laksaur militia.
- Only two out of 2000 rape cases went through legal proceedings in Aceh, through the military court. The first resulted in a prison sentence of less than four years each for the perpetrators and their dismissal from the army. In the case of three soldiers who had gang raped four women, the only sanction was that one of the perpetrators had to make a payment of Rp 50,000 a month, without any mechanism to enforce it.
- The Abepura Ad-Hoc Court reduced the number of people that the KKP Abepura suspected, from twenty-five to only two, without giving attention to gender, race and/or religious non-discrimination.

Generally, this travesty occurred becausee of a lack of gender understanding by the patriarchal society of Indonesia. Efforts to campaign for gender mainstreaming will remain static, although Indonesia has ratified CEDAW. The provisions of CEDAW state that it is important for the government to take measures, actions and develop policies to provide protection for women and children from every form of gender discrimination.

Sexual violence in certain regions of Indonesia is of no importance. It tends to be neglected, based on a false assumption that it is "private" violence not violence against humanity. On the part of women, virginity myths, shame, fear, frailty and economic dependency have become variables hindering them against openly discussing anything related to their experiences of sexual violence. Stigma is also a factor hampering efforts to elicit the suffering endured and felt by victims.

Law and Serious Violations of International Humanitarian Law," Resolution 60/147, 16 December 2005.

31 Komnas Perempuan, *Catatan Tahunan...* (2007), 38.

The UN Approach to Sexual Violence and Armed Conflict

What is the "law of armed conflict"?

The "law of armed conflict" is the body of international legal principles found in treaties and in the practice of states that regulates hostilities in situations of armed conflict. "Armed conflict" is the preferred legal term rather than "war" because the law applies irrespective of whether there has been a formal declaration of war. Other terms with the same meaning include: international humanitarian law, the humanitarian laws of war and *jus in bello*. Different rules apply depending upon whether a conflict is internal (i.e., a civil war) or international (i.e., a war between two or more states or state-like entities). Internal conflicts are regulated by fewer laws than international conflicts.

Is the law of armed conflict different from international human rights law?

Yes, the law of armed conflict and international human rights law have historically developed as separate bodies of law, with the former directed at the alleviation of human suffering in times of armed conflict and the latter directed at the alleviation of human suffering during times of peace. Since the establishment of the UN, there has been a tendency to regard the law of armed conflict as part of the broader international human rights law framework.

Does the law of armed conflict explicitly regulate sexual violence?

Yes, the relevant provisions are: Geneva Convention IV Relative to the Protection of Civilian Persons; Article 27: "*Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.*" Additional Protocol I of 1977; Article 76(1): *"Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.*" And Additional Protocol II of 1977; Article 4(2)(e) prohibits: "*Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.*"

Roles of Civil Society Organisations (CSOs) in Responding to Sexual Violence in Conflict Zones

When conflict occurs a security actor, who is placed to provide service and shelter for people, cannot always accomplish that task. In fact, they tend to be behind sexual-based human rights violations. In post-conflict situations, the state authority has obligations to handle sexual violence cases that occurred during the period of conflict from law enforcement, victim rehabilitation and the reconstruction of society. States, however, are not always willing to do what they are obliged to both during and after conflict. This is where the role of CSOs[32] becomes very important.

32 A CSO is defined here as a voluntary group that speaks out in society's interest, according to its priorities and values. It includes non-governmental organisations (NGOs), social movements, political parties, advocacy groups, religious groups, professional associations, academia and women's groups. Related to security sector issues, CSOs can act as an outlet for public expression and contribute to the accountability of state authorities in providing security.

CSOs are actively committed to the tasks of documenting sexual violence cases, lobbying for better legislation, giving assistance and attention to victims and taking the initiative to ensure a more secure environment. CSOs whose constituent group is women represent the latter along with the interests of children, as well as focusing on gender specific security needs. The importance of the women's movement in matters pertaining to security and peacetime reconstruction has been regulated in the United Nations Declaration on the Elimination of Violence against Women:

> *...Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women... Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.*[33]

Security Council Resolution 1325 also emphasises:

> *...Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution...* Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: *...Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements...* [34]

The CSOs dedicated to women's issues have proved their worth by facing up to the cases of sexual violence in conflict zones, and handling various cases creatively and effectively to fulfill the basic needs of victims—despite being rejected by the powers that be. This is the group that pressures the government to implement certain international instruments, national laws and programmes designed to improve services for victims of sexual violence.

Civil society organisations are also relatively more active in documenting sexual violence cases to establish advocacy needs and victims' needs. CSOs frequently lobby for legislation to ratify international law instruments or to create legislation against sexual based violence. They also actively participate in training and provide special services as a continuation of case documentation; for example, by giving health care or psychological counselling to survivors. The OMS, for example, offers security and justice training for police personnel in order to improve their service when dealing with cases of sexual violence. CSOs are actively involved in promoting awareness and understanding of the root problems of sexual violence by inviting women to take an active role to improve their bargaining position.

In various military operational zones such as in East Timor, Aceh and Papua, the role of CSOs is vital. The Commission of Acceptance, Truth and Reconciliation (KPKR), established in 1999, documented the cases of violence that had occurred in East Timor for nearly twenty-five years (1974–1999). One of the ways of doing this is through interviews with the survivors. Another women's organisation actively involved in the reporting

33 United Nations General Assembly, "Declaration on the Elimination of Violence against Women," A/RES/48/104 (23 February 1994), article 4 (o) and (p).
34 United Nations Security Council, "Security Council Resolution 1325 on Women, Peace and Security," S/RES/1325 (31 October 2000).

of cases of sexual violence in the East Timor cases before the referendum is *Fokupers*, or the Communication Forum of the Timor Loro Sae Women.[35] Other organisations involved are *Jurnal Perempuan*, *Komnas HAM*, *Komnas Perempuan* and various international organisations.

Flower Aceh, a women's CSO, has engaged in many activities from the period of conflict until today. Besides providing assistance to survivors of trauma or women in villages, documenting various cases and lobbying the government, Flower Aceh also pursues its vision to include women's rights as human rights. Rights equality between men and women in law, public and domestic matters is very difficult to realise in the middle of a military occupation and in an area with a strong Islamic tradition. To improve democratisation, CSO activists ask for more votes for women in the decision-making process.[36] It is also Flower Aceh that has initiated "Duek Ureung Pakat Inong Aceh" (2000), the first seminar to be held in Aceh with the aim of finding a resolution to conflict. Their premise is that the women of Aceh reject being continuous victims of the conflict and seek for parties to reconcile.

In Ambon, the women's groups support women to be peacekeepers while men are still at war by initiating economic activities in the marketplace where they can hug and cry together. Women from Kei, Southeast Moluccas were camped in the middle of a bridge for a month until two conflicting parties agreed to renegotiate.[37]

The *Kelompok Kerja Perempuan* (KKP or Woman's Working Group) claims conditions for women are even more difficult owing to geography, cultural diversity and male dominance in the community.[38]

The Future of Women's Human Rights Advocacy in Conflict Zones

According to *Komnas Perempuan*, after the collapse of the Suharto regime, human rights mainstreaming in Indonesia gained some success in terms of institutional and legislative outcomes. The same can also be said about support for women's human rights. Yet, most national policies relating to women are not adequate in substance or implementation because these are still blind to gender. Great challenges still remain. *Komnas Perempuan* states that there is continuous silencing of human rights activists, especially defenders of women's human rights. The methods are no different from those of the New Order era. Murder, intimidation, criminalisation and torture still occur.[39]

Meanwhile, women's advocacy in conflict zones still encounter ineffective laws because there are no specific policies for the rehabilitation of female victims as a result of discrimination, armed conflict and past human rights violations. Efforts to fulfill the rights of rehabilitation, verification and justice for the victims still face many challenges. The road ahead is long.

35 Forum Komunikasi untuk Perempuan Timor Loro Sae (Fokupers), "Kekerasan terhadap Perempuan di Timor Timur: January–July 1999" in *Violence in Indonesia*, Inggrid Wessel and Georgia Wimhofer (eds.) (Hamburg: Abera-Verl, 2001), 218.
36 Flower Aceh, "Duek Pakat Inong Aceh, Jalan Menuju Proses Demokrasi Perempuan Aceh" in *Violence in Indonesia*, Inggrid Wessel and Georgia Wimhofer (eds.) (Hamburg: Abera-Verl, 2001).
37 Julius Lawalata, "Fakta tak Terlihat: Posisi Perempuan dalam Konflik Sosial di Maluku," *Jurnal Perempuan* 33 (2004): 16–19.
38 Wessel and Wimhofer, *Violence…* (2002), 223.
39 Komnas Perempuan, *Catatan Tahunan...* (2007), 50.

Certain initiatives have been taken by the government, such as the establishment of *Komnas Perempuan* by Presidential Decree (*Keppres*) No. 181/1998 and Presidential Regulation (*Perpres*) No. 65/2005 as a lawful institution to conduct human rights advocacy, especially for women. This institution came about as the result of the pressure by CSOs demanding government responsibility for the *Tionghoa* ethnic rape and sexual violence in Jakarta in May 1998 and also in several other large cities in Indonesia. *Komnas Perempuan* still struggles to fulfill its tasks because of the state's inadequate facilitation.[40] Another initiative came in 2006 when Indonesia finally issued its Law on Witness and Victim Protection. But the law's substance is still not enough, especially for the violence-based cases against women. Furthermore, there are still many victims who maintain silence in order to protect themselves. These conditions ultimately complicate the struggle of human rights advocacy for the future.

Conclusion

For over ten years now women in Indonesia, particularly those who have lived through armed conflict, have endured great suffering as a result of sexual violence. Sexual violence—whether conducted by state or non-state armed forces, police, border guards or even by members of the victims' family—has become symptomatic of every armed conflict. The experience of women in Jakarta, Aceh, East and West Timor, Poso, Ambon and Papua are testament to this reality.

The suffering continues long after the conflict has ended when women bring their cases to court. This is evidenced through the number of failed cases at the investigation and sentencing stages. Those failures, directly or indirectly, have created a climate of impunity that allows sexual violence to continue. In line with this, the 2006 human rights report of the Commission for Forced Disappearance and Victims of Violence (*KontraS*) states that impunity is proof that human rights have not yet become part of the political ethic of this nation.

Limited political will to end the culture of impunity has been the main obstacle to the law enforcement process. This can be seen from the fact that there are almost no cases of violence against women and severe violations of human rights that proceed through court, although generally there have been improvements in policies regarding violence against women. There are still various setbacks, including the implementation of legislation, non-strategic violence prevention, incomplete data systems and case surveillance, outstanding delivery of justice to victims, limited rehabilitation services and limited witness and victim protection mechanisms.

After all, the harshness of a gender-biased culture of law, limited human resources, limited institutional support, limited awareness and the skill of law enforcment bureaucrats in handling cases of violence against women and enforcing women's human rights has highlighted that the law enforcing apparatus is not ready to be comprehensively involved in efforts to eradicate violence against women and guarantee their human rights.

40 Ibid.

Recommendations for the Security Sector

1. Inter-sector coordination and cooperation. This cooperation includes basic services to survivors of sexual violence, including that provided by health agents, psychological counselling, protection and temporary shelter, and socio-economic and legal support. It also includes inter-cooperation in preventing and responding to sexual violence itself.
2. Adopting a gender-sensitive approach to respond to all cases of sexual violence in conflict zones. This is to be applied when conducting planning, implementation, and monitoring and evaluation.
3. Gender training of all security personnel to enhance gender-sensitive capacity in the security services. This training should be delivered taking account of the various basic needs of victims of sexual violence.
4. Promoting full and equal participation of women in the security sector.
5. The security sector should develop operational protocols and procedures to assist and support victims of sexual violence. This includes interviewing and investigating sexual crimes, documenting cases, and providing social, health and legal services.
6. There is a necessity to consider measures of the highest degree to special groups, such as children, ex-combatants and male victims of sexual violence.
7. Make sure there is access to justice, including mental rehabilitation of sexual violence survivors.
8. Security sector institutions should develop and prioritize operational strategies to prevent sexual violence in armed conflicts.
9. Code of conduct enforcement that prohibits every form of sexual crime and sexual exploitation by security personnel, police, security guards and DDR staff, which should be formulated and implemented with special training and enforced.
10. To support civil society and community participation, including women, in handling the problem of sexual violence. Civil society can provide suggestions or training to security personnel, conduct awareness raising involving the community and provide basic services for victims.

References

Amnesty International. *Indonesia: New Military Operations, Old Patterns of Human Rights Abuses In Aceh (Nanggroe Aceh Darussalam, NAD).* 7 October 2004, http://www.amnesty.org/en/library/asset/ASA21/033/2004/en/939d6f42-d593-11dd-bb24-1fb85fe8fa05/asa210332004en.pdf.

Amnesty International Canada. *Refugees at risk: continued attacks on East Timorese*. www. amnesty.ca/women/freedom5b.html.

Bastick, Megan; Grimm, Karin and Rahel Kunz. *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*. Geneva: DCAF, 2007.

Commission for Reception, Truth and Reconciliation in East Timor. *CAVR Final Report*. 30 January 2006, http://www.ictj.org/en/news/features/846.html.

Flower Aceh. "Duek Pakat Inong Aceh, Jalan Menuju Proses Demokrasi Perempuan Aceh" in *Violence in Indonesia.* Inggrid Wessel and Georgia Wimhofer (eds.). Hamburg: Abera-Verl, 2001.

Forum Komunikasi untuk Perempuan Timor Loro Sae (Fokupers). "Kekerasan terhadap Perempuan di Timor Timur: January–July 1999" in *Violence in Indonesia,* Inggrid Wessel and Georgia Wimhofer (eds.). Hamburg: Abera-Verl, 2001.

The Jakarta Post. "Aceh Women Still Face Huge Hurdles After Tsunami, Conflicts." 23 February 2009, http://www.thejakartapost.com/news/2009/02/23/aceh-women-still-face-huge-hurdles-after-tsunami-conflicts.html.

Komnas Perempuan. *Catatan Tahunan Kekerasan terhadap Perempuan*. Jakarta: Komnas Perempuan, 2007.

Komnas Perempuan. *Laporan Komisi Nasional Anti Kekerasan terhadap Perempuan*. 2002.

Kompas Daily. August 15th, 2003.

Kompas Daily. "Tim Konsultasi Presiden untuk Aceh." 12 May 2003.

Lawalata, Julius. "Fakta tak terlihat: Posisi Perempuan dalam Konflik Sosial di Maluku." *Jurnal Perempuan* 33 (2004).

Reproductive Health Response in Conflict Consortium. *Gender-based Violence Tools Manual: For Assessment & Program Design, Monitoring & Evaluation in Conflict-Affected Settings.* New York: RHRC, 2005, http://www.rhrc.org/resources/gbv/gbv_tools/manual_toc.html.

Santi, Budie. "Perempuan Papua: Derita Tak Kunjung Usai (Women of Papua: A Never Ending Suffering)." *Jurnal Perempuan* 24 (2002).

Soselisa, Ina. "Perempuan Cacat: Konflik di Ambon dan Upaya Pemulihan (Disabled Women: Conflict in Ambon and Recovery Efforts)." *Jurnal Perempuan* 33 (2004).

Suryakusuma, Julia I. *Sex, Power and Nation.* Jakarta: Metafor Publishing, 2004.

United Nations General Assembly. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." Resolution 60/147 (16 December 2005).

United Nations General Assembly. "Principles on Right to Reparations for Victims of Gross Human Rights Violations Approved by Third Committee." GA/SHC/3838, 10 November 2005, http://www.un.org/News/

Press/docs/2005/gashc3838.doc.htm.

United Nations General Assembly. "Declaration on the Elimination of Violence against Women." A/RES/48/104, 23 February 2004.

United Nations Human Rights Commission. "Integration of the Human Rights of Women and the Gender Perspective: Violence against Women." Report by the Special Rapporteur on violence against women, Radhika Coomaraswamy. E/CN.4/2001/73, 23 January 2001, http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/8a64f06cc48404acc1256a22002c08ea?Opendocument.

United Nations Development Fund for Women (UNIFEM). *Gender Profile of the Conflict in Timor Leste*. 2007, http://www.womenwarpeace.org/webfm_send/749.

United Nations Security Council. "Security Council Resolution 1325 on Women, Peace and Security." S/RES/1325, 31 October 2000, http://www.un.org/events/res_1325e.pdf.

Verri, Pietro. *Dictionary of the International Law of Armed Conflict*. Geneva: ICRC, 1992.

Wandita, Galuh. "Rape and Sexual Violence in the Context of the Popular Consultation in East Timor 1999 (*Perkosaan dan Kekerasan Seksual dalam konteks Jajak Pendapat di Timor-Timur pada tahun 1999*)." March 2007, http://ictj.org/static/Asia/Indonesia/Galuh.hearing.eng.pdf.

Wessel, Inggrid and Georgia Wimhofer (eds.). *Violence in Indonesia.* Hamburg: Abera-Verl, 2001.

Wijaksana, M.B. "Reruntuhan Jiwa: Trauma Perempuan Poso." *Jurnal Perempuan* 24 (2002).

Post-Conflict Management in the Framework of Indonesia's Security Sector and Civil Society: Case Studies of Poso and Aceh

Syamsul Alam Agus & Puri Kencana Putri

Introduction

Communal conflict and separatist movements, also called non-international armed conflicts, are considered a major threat to the security and integrity of Indonesia. In the New Order under Suharto, the army was placed as the main actor to determine the direction of security in the name of national interest. But now, the concept of security is no longer a state monopoly and has shifted to the concept of human security.[1] These conditions provide a large space for civil society to play a role. The failure of the state in ensuring individual security for every citizen has legitimated a third-party role in building peace. Law enforcement and the guarantee of human rights became a central issue in peace building.

The peace-building agenda is a concept that has been applied since former Secretary-General of the United Nations (UN) Buotros Buotros-Ghali launched the report titled *An Agenda for Peace* in 1992. From his report, we learn that peace building is a manifestation and implementation of activities that aim to identify and support structures for strengthening peace and thus preventing the recurrence of conflict.[2] In its development, however, the basic concept of peace building is starting to find its own form and develop alternatives. Peace building not only includes space for activities like reconciliation, social transformation and capacity building of stakeholders in conflict areas but also attempts to support and enable society to cope with the side effects of conflict and to eliminate conflict trigger factors.[3]

During the conflict cycle, peace building focused on conflict intervention through mediation (facilitation) and reconciliation. The objective is to manage and localise the conflict and stop it from extending; from being

1 Human security emphasises the principle of global security, which will be improved when a nation's leaders focus their policies on reducing vulnerabilities and thereby threatening individuals is the best way to improve national security. See: Peter Albrecht and Karen Barnes, "National Security Policy-Making and Gender," *DCAF Gender and SSR Toolkit*, Tool 8 (Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008), 2.

2 Boutros Boutros-Ghali, *An Agenda for Peace* (New York: United Nations, 1992), 11.

3 Peacebuilding work is very broad and is not limited to the cessation of conflict and peace maintenance. Furthermore, it emphasises comprehensive work at a time of conflict or post-conflict. It is, as Kofi Annan said, "…a multifaceted approach, covering diplomatic, political and economic factors." See: Albrecht Schnabel and Hans-Goerge Ehrhart, P*ost-conflict Societies and the Military: Challenges and Problems of Security Sector Reform* (Tokyo: United Nations University, 2005).

an open conflict with great potential and for violence.[4] It is also expected that through the process of peace building, efforts exist to simultaneously speed up the resolution process of roots of conflict to build a sustainable peace process (*self sustaining*).[5] Peace is not merely the absence of war and all other negative physical contact but true peace is that which is dynamic, has long-term participatory space and approaches the various aspects of life adapting to the context of the social structure of society. Social and environmental dimensions of daily life such as family, school, community and state are expected to be the medium to transform the human values of universal peace by creating sustainable development.[6]

Re-structuring society in post-conflict areas is a challenge that has to be faced up to by civil society and government. It is important to remember that Indonesia has never escaped the threat or reality of communal conflicts. The pluralistic structure of society and differences have made Indonesia friction-prone. So it is not surprising that inequalities in wealth, ideology, political domination and cultural hegemony are still the dominant factors causing social conflicts to be sustainable. Competition for power and resources has made for violent conflicts among community groups in recent years.

The tendency to narrowly stereotype the complexity of conflict situations will result in a minimalist reading of the realities and social dynamics that have occurred in those communities. It is important for us to redefine the conflict more broadly. There is a need to put the conflict in terms that can be distinguished from the violence itself. Conflict can be defined as a principle of discrepancy, ideas, conflicts of interest and inter-personal disagreements.[7] The definition is clearly different from a straight line of violence with clashes, fights and riots. Conflict does not have to be ugly and destructive if it can be dealt with in non-violent ways and is well-managed as a first step to produce brilliant ideas and establish strategies to manage Indonesia. Herein lies the difference with violent conflict. Violence will always be manifested in the form of destructive behavior. Conflicts are thus combined with the same activity to reproduce the new violence on a massive scale.

Making security a priority in the community is an obligation of policymakers. The aspect of security is a major one in creating a situation conducive to peace post-conflict. Government and other policymakers are expected to realise the security dimension, which holds the principle of humanitarian values. The dimension of security itself is also going to help the recovery process of social-economic life. Along with the peace building process in post-conflict areas, local governments are expected to develop initiatives to reorganise their work towards good governance. This may take the form of increasing the degree of public participation in local political processes and meeting their needs, especially in relation to social and cultural rights including access to health care, education, environment and basic rights specifically reserved for children, women and the elderly.

No less important is to evaluate options and provide critical notes on the security institutions. Security sector reform became one of the key agendas in the middle of a country restructuring its democratic system. State security actors such as the military (TNI), police (POLRI) and intelligence are expected to become security actors

4 Irfan Abubakar, "Menuju Paradigma Peacebuilding Pascakonflik Kekerasan (Review Terhadap Kerja-kerja Perdamaian di Daerah Konflik)" (26 October 2007, http://www.csrc.or.id/artikel/index.php?detail=072610025546.

5 Hugh Miall, Oliver Rahmsbotham and Tom Woodhouse, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 1999), 187–188.

6 European Centre for Conflict Prevention, International Fellowship of Reconciliation and the State of the World Forum, *People Building Peace: 35 Inspiring Stories from Around the World* (Utrecht: European Centre for Conflict Prevention, 1999), 22.

7 See: Houghton Mifflin Company, *The American Heritage Dictionary of English Language Fourth Edition* (Boston: Houghton Mifflin Company, 2006). University of Colorado, The International Online Training Programme on Intractable Conflict of the Conflict Research Consortium (Boulder: University of Colorado, 2000). In the book, the conflicts are defined as primary: "The disagreement interests, the needs which are not met, fundamental differences in values, or the struggle to obtain justice."

that are competent, reliable, professional and able to maintain accountability subject to democratic systems and mechanisms. State institutions have an obligation to provide public services in the field of security while prioritising principles of protecting and serving the public.

With these principles, people are expected to be able to improve their welfare by having their security guaranteed by government and thus able to create a favourable climate for itself as a community. However, these expectations will be hindered if security sector reform does not find the right formula. The lack of civilian control of the security sector, especially in guarding the legal and institutional framework as a foundation to control the direction of security sector reform, needs to be addressed. Furthermore, a concept that is still embedded in the strong security sector and one that needs to change is that it should hold politics command style *a la* status quo in the New Order period. Such conditions as have been described above would complicate the security sector space and, in order to align its activities with the government and put forward the values of transparency, accountability and democracy, they must be tackled.

Linking the elements of the security sector in conflict events into one will impel us to examine various issues carefully because, in exploring conflict resolution, all elements are required to perform conflict categorisation well rather than just a desire to reduce conflict by building a conflict categorisation structure that can actually reduce and simplify events that have happened. These things can happen if we are not able to read the map of conflict and analyse developments in the post-conflict stage to finding effective solutions, especially for the multi-dimensional issue of violence and severe human rights violations.

To provide clarity, this chapter will process the various sources of conflict discussion and the dynamic of its management in two post-conflict areas, namely Poso and Nanggroe Aceh Darussalam. The author appreciates that in Indonesia other areas vulnerable to conflict remain, whether on the basis of previous conflict or because they are still in a conflict cycle. They are: Sampit, Ambon, Papua and Alor East Nusa Tenggara. Reading the reports of the two post-conflict area case studies, writers could use it as a means of seeing the transformation of post-conflict management in the context of the Indonesian security sector and civil society. It is hoped that this paper can provide a new perspective to the government of Indonesia and civil society to building its social commitment—to further the values, humanity and spirit of reconciliation in the life of nation and state.

Poso and Aceh: Overviewing Indonesia Post-Conflict

Imagine Poso and Aceh united in the Republic of Indonesia with all of its interests: social, political, economic and cultural clash which are linked to each other and created space between the daily polemics with its growing dynamic by celebrating the diversity of the elements; then it becomes a necessity presented continuously not to run away which then can spit antagonism in the future.[8]

Efforts to overcome the overwhelming tensions are indeed challenges that must be taken up by not just the government but by all of us to put the existing plurality together by minimising polarisation, fragmentation and

8 Carl Schmitt, the German philosopher, said that antagonism cannot be equated with personal animosity, which can be resolved with a handshake. Antagonism also denies taking a liberal democracy deliberative prototype and is a discourse that promotes a conflictual framework.

other non-integrative attitudes. In looking at post-conflict developments in Poso and Aceh, the writer will give readers the opportunity to look at some important events related to efforts in responding to the development of conflict resolution in the two regions.

Reading the Poso and Aceh Conflict Map

In the midst of increasing sectarian and tribal sentiments, efforts to probe the strategic issues and actors involved in the conflict in Poso and Aceh is necessary. In this case, unifying or integrative factors also have a role, though sometimes we are still troubled by the complexities of revitalising these factors. Yet protagonists who gain legitimacy from the existing political discourse in order to resolve conflict are continuously reproducing a relationship of dominance.

In this paper, the author has tried to classify some basic things that are used to facilitate the reading of the conflict map in Poso and Aceh. Some key points are as follows: first, the source of conflict; second is the dynamics of security actors in conflict and/or post-conflict areas; third is the handling of the conflict-prone and/or post-conflict areas; and fourth is the role of civil society in security sector review and the conflict or post-conflict areas.

1. Sources of Conflict

Conflict in Poso had begun before the New Order regime ended. It produced volumes of stories of conflict that resulted in physical and material losses to the community in Poso. It can be said that conflict was triggered in mid-1992 with a paper blaspheming the Prophet Muhammad. The author of the paper was Labolo Rusli, a priest who was formerly a Muslim. However, the security sector command structure of the New Order could still tame the public outcry in Poso so that conflict did not arise. A few years later, on 14 February 1995, an event shocked the public when a group of young men from the village of Madele and trained in self-defence attacked a mosque and a madrasah in Tegalrejo, Poso.

The group, which was identified as Christian, met the resistance of 300 Tegalrejo Muslim youth and residents of Lawanga, Poso who had also burned down houses of Madele residents. At the time, the event did not generate a serious response from the Poso community. Predicting that the groups represented two religious elements, the security forces immediately responded by sending in a number of troops from Battalion Camp 711/Kawua Poso.[9] Three years later, Poso was again rocked by local power struggles. On 13 December 1998, Arif Patanga, the mayor of Poso, resigned. As the battle between opposing candidates vying for the prestigious seat widened, it became apparent that sectarian interests were being polarised. In the midst of a deepening and heated political gathering, at the end of December 1998 a social conflict broke out in Poso. An event occurred on Christmas night that changed society, making Poso an arena of combat for the entire community. One conflict followed another and was exacerbated by religious and ethnic differences. Events took a fast turn so that by the end of 2001 Poso was firmly rooted in conflict.

9 Batlyon 711/Kawua Poso actually was to be sent to Papua but this was eventually cancelled, remembering that at any given time the Poso conflict would ignite. See: Tahmidy Lasahiod, et al., *Suara dari Poso, Kerusuhan, Konlfik dan Resolusi* (Jakarta: Yappika, 2003).

Viewed from the annals of history, it can be seen that the conflict in Aceh was rather drawn out. In Indonesia, the regime change from Sukarno to Suharto created one political hope in the minds of the people of Aceh. Hope alone, however, does not always end ideally. Centralised policy action coupled with monopoly only made the Acehnese objects of exploitation. Poverty, political and social inequality led to repetitions of violence that became an everyday reality for the people of Aceh.

Resistance to injustice began to surface in Aceh. The Free Aceh Movement began demanding the declaration echoed by the Free Aceh Movement (GAM) on 4 December 1976.[10] GAM, which at the time was led by Hasan Tiro, had a primary motivation: to free the people of Aceh from the shackles of the Indonesian government's injustice. GAM advocacy was quite aggressive and was receiving fierce resistance from the Indonesian government. The government began sending troops to fight back the resistance. However, counter-action mostly occurred by improving the form of psychological attack (*psy-war/psy-attack*). The attack was directed not only at GAM activists but at all the people of Aceh. The purpose of these methods was to weaken the support of the people of Aceh for GAM. The method was generally violent and employed physical torture, arrest, detention and intimidation by security forces.

GAM will be known later as the separatist movement that caused disintegration in the region of Aceh.[11] The Aceh conflict created mass riots. This is apparent from the tonnes of cases of violence and severe human rights violations there. The period of violence in Aceh can be classified into six phases, namely: pre-DOM violence (1976–1979), DOM period violence (1989–1998), post-DOM violence (1998–2000), humanitarian pause (2000–2003), martial law (2003–2004) and civil emergency (2004–2005). The typology of violence in Aceh has placed culpability at the feet of the state apparatus, the main perpetrator of every violenct act there. The downward spiral was increasingly hurling the Acehnese people into escalating situations of violence. If the government had not taken political initiative, the separation of Aceh from the Republic of Indonesia could have happened.

2. Security Actors in Conflict and/or Post-Conflict Areas

During the conflict, various efforts were made to supress the anger of each of the feuding groups. The question now is why the conflict in Poso perpetuated for four years. What steps did the parties take, particularly the government, in caring for peace? Do they recognise the core of the conflict that overturned both the social systems in Poso and Aceh?

When traced further, there is a strong impression that the state only acted when the conflict in Poso was raging. But when the situation in Poso had stabilized, the state (government) stopped caring about the conflict. This inaction by the state created the image that the conflict in Poso had ended. The New Order government was seen to be successful in handling conflict over race-religion-ethnicity (SARA) by integrating security values with managed public order in society. But the practices and policies developed during the New Order could not be employed when the present political instability and social turmoil began to secretly arise at several critical points in the conflict.[12]

10 Another version states that GAM declared on 24 May 1977 by former DI/TII leaders in Mountain Halimun, Pidie, Aceh. See: Al Chaidar, *Gerakan Aceh Merdeka, cet. 2* (Jakarta: Madani Press, 2000), 143.

11 Another way the New Order reduced GAM aggression is by delivering reinforcement transmigration of military personnel and civil servants, especially from Java. See: Amnesty International, *Shock Therapy: Sebagai Tindakan Pemulihan Ketertiban di Aceh 1989–1993* (London: Amnesty International, 1993), 6.

12 As has been previously described, mistakes in managing the political economy and the administration triggered a variety of tensions. The ever-widening crisis led to socio-political de-organisation in the state bodies. Friction arose not just in the body of the political elite but also within the Indonesian military bureaucracy from top to bottom,

In addition, the managing of security and choices of policy in the conflict areas always focused on "safe and controlled." Cases often occurred in areas of conflict: if chaos seemed to arise in a region, police and soldiers would stay on guard. On the other hand, subjective statements appeared from civilian government officials about security indicators in the region. Some officials stated that the indications of a secure area were the absence of war between groups of the population that had the potential to create chaos and take victims. Even if there was a bombing (even though it was a low explosive type), it would be regarded as a normal occurrence in post-conflict areas.

These conditions were viewed as an everyday event by communities in post-conflict areas. New collective anxiety will appear after a violent conflict re-emerged. Of course, the number of victims will indicate the intensity of the conflict. Public opinion rose and emerged in response to the repetitive events. Therefore, a situation of security becomes only a feeble imagining in the minds of the community in post-conflict areas.

In this case, absolute physical security could be a prerequisite to revive the social wheels in the middle of post-conflict societies. But unfortunately, there are many differences in opinion about security needs. For a long time the security sector was dominated by the apparatus of law enforcement—the military, police and state intelligence.[13] But does civil society also have the responsibility to create a form of security? Creating security is not purely a matter for the police; public participation is also needed in achieving security in post-conflict areas.[14]

Indicators that can be used to view the conditions of post-conflict situations and to find the secure point are hardly found by a developing government that is working to create peace. The security situation is not determined in a statement by the Regional Police in post-conflict areas, and neither by the absence of fighting militia or the rain of gunfire and bombs. In reality, a conflict could be ignited by a trivial incident that could have happened anytime and anywhere. In a matter of hours, people can gather to fight over sensitive issues in their minds. Equipped with organic weapons, Molotov bombs and much foolhardy courage, they are ready to clash with those who are identified as the enemy.

Security becomes a risky business when the government has not managed the security planning. The security plan has a long-term dimension that consists of: (1) identifying the security issues; (2) identifying the actor or actors associated with the security sector; and (3) arranging follow-up after discovering the findings of points 1 and 2. Here the involvement of civil society plays an important role in the realisation of the security plan. As we all know, the conflicts in Poso and Aceh were what is called *a protected social conflict*.[15] These conflicts are caused by various factors (multi-dimensional factors), not only linked with ethnic-religious conflicts but also overlapping with a variety of other factors, such as economic inequalities, the crisis of political institutions,

throwing a horizontal dimension into the conflict that accompanied the political and social turmoil.

13 Development of national security systems are often followed by the development of personnel and improved military technology. This development used to create safety that could be felt by each and every citizen but instead now encourages war and violence against citizens. Indonesia's security sector development in the New Order period is generally more focused on securing assets and industrial large-scale economies. This condition was also applied in the strengthening of state institutions. Even in industrialised countries, the position and role of the military tend to be more powerful because it is linked into the system of bureaucracy and administration. See: Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity Press, 1985).

14 Goerg Sorensen believes the strengthening of state and military institutions becomes a threat to nationals. See: Goerg Sorensen, "Contradiction in a Rich Concept of Development, Problems of Welfare and Quality of Life," *Bulletin of Peace Proposals* 18 (1) (1987).

15 For more information about the concept of protected social conflict, see: G. Dale Thomas, "Conceptualizing and Identifying Crisis in Protracted Social Conflict" in Harvey Starr (ed), *The Understanding and Management of Global Violence: New Approaches to the Theory and Research on Protracted Conflict* (London: Macmillan Press, 1999).

values and cultural disorientation, and the security crisis that developed there.

During conflict, complex roots spread the conflict from one region to another due to the bipolarisation that generally occurs in ethnic-religious conflict areas. Bipolarisation creates tension and insecurity when the group members that are involved in the conflict come and go into areas of conflict. This should be properly identified by the actors of national security, to see which parties are responsible for the bipolarisation of the region itself.[16]

Furthermore, to build a sense of security and trust between the disputing parties requires actors other than just state security actors. The mark of a good society is when dialogue can be bridged with daily activities. For example in the market—which is a central focus for the daily needs of society—there were gathered a great many people from diverse social backgrounds coming to visit and conduct trade almost on a daily basis. They are connected to each other without religious restrictions and if they are involved in the process of building peace, improving security and trust it can create a more lasting and peaceful situation than reducing the number of organic military forces and police.

Psychologically, the physical presence of security forces also gives affect to "security shadowing" of the community in conflict and/or post-conflict areas. The presence of massive-scale apparatus guarding the border areas of conflict will only increase anxiety and tension. Therefore, community involvement is widely expected to become a social-cultural base to bridge the ongoing peace efforts. Another problem that also must be the focal point of creating peace is that of civilian disarmament. A sense of security is often presented for the possession of weapons in case the conflict recurs. According to the people in conflict and/or post-conflict areas, the anxiety is reasonable because the conflict can explode anytime and anywhere.

The absence of disarmament (*disarmament policy*) does have its own polemic. When a community is fueled by emotion, then what remains of their weapons will be used as tools to re-ignite conflict. The government did not set this policy, although the mass media often publicised the process of transferring weapons from civilian to security authorities or government officials, but it did not have serious enough implications for building awareness in the community to stop the armed conflict.[17]

Disarmament policy is related to the economic situation in conflict and/or post-conflict areas. Government should be able to provide compensation when the process of transferring weapons begins. Not only does it enable the weapons to be withdrawn from civilians but, in the absence of conflict, the community will be able to

16 Conflict has the ability to impact large-scale evacuation. As a comparison figure, UNSFIR has estimated 1.3 million people fled from their homes in fifteen provincial areas of conflict in 2001. According to Bakornas-PB, in the year 2003 the number had been reduced to 740,000 inhabitants and, according to the Social Department, in 2005 the number dropped to around 342,000 inhabitants. See: Christopher Wilson, *Overcoming Violent Conflict: Peace and Development Analysis in Indonesia*, Vol. 5 (Jakarta: CPRU-UNDP, Bappenas, CSPS, Lab Socio UI and LIPI, 2005). Security and economic reasons are also major factors in the population having to leave the area. From 1999 to 2000, the population of Maluku province decreased nineteen percent from 1,476,859 people to 1,200,756 people. In Ambon, during the same period, the population fell from 314,417 to 206,889 (down thirty-four percent), while in Poso in 2001 there were about 110,000 displaced people outside the region. See: Garaham Brown, et al., *Overcoming Violent Conflict: Peace and Development Analysis in Maluku and North Maluku,* Vol. 4 (Jakarta: UNDP, Bappenas, LIPI, 2005). See also: Graham Brown, et al., *Overcoming Violent Conflict: Peace and Development Analysis in Maluku and North Maluku*, Vol. 3 (Jakarta: UNDP, Bappenas, LIPI, 2005). Besides looting, acts of residential vandalism had the largest visible impact when the conflict took place. Approximately 41,000 homes were destroyed in the province of Maluku. In Poso, the number reached 16,474 while in North Maluku it was approximately 23,300.

17 Not excessive if we declare a simple light weapon circulating in society as "the real weapons of mass destruction." Weapons can be used directly to ignite conflict and violence. Besides, in a peaceful situation, easy weapons circulating in the community can be used to terrorize, control and influence public policy. Here we should examine how the circulation of light weapons is gathering popularity in conflict/post-conflict areas. These types of weapons are not circulating by themselves; certainly there are systems that regulate the circulation and purchase of guns in society.

build their economy. A sense of security allows people to be able to work, and to start looking for and creating economic resources to be free from poverty. Security will also provide an opportunity for the seeds of freedom from domination and repression.[18]

3. State Management of Conflict-Prone and/or Post-Conflict Areas

The eastern part of Indonesia, particularly North Maluku, Maluku Province and Poso, is now entering a new post-conflict phase that has destroyed the social, economic, cultural and political life of communities living there. Economic recovery and the development of local political systems are beginning to take place as open conflict decreases (at least on the surface), despite the social tensions that still occur in the community. To initiate change in areas of conflict, the Indonesian government plurality agenda started with a peace agreement between the parties in the conflict. The public view of the conflict in eastern Indonesia was that it had been one dominated by more ethnic-religious elements. The conflict also involved disputes between indigenous communities and immigrant communities whose people actually possess a different culture and set of beliefs.

The difference is then viewed as a conflict between the Muslim community and the Christian community. Ethnic-religious identity is inherent in the anatomy of conflict in Eastern Indonesia. Basically, it is just one of the main conflict issues and we are not able to generalise or narrow the description of actual socio-political situations in conflict-prone areas. We should be able to unravel the sources of conflict to see how large the impact of competition among interest groups with a pattern of discriminatory application of development policies is, which in turn would trigger conflict.[19]

Various efforts have been made to overcome the conflict. Various parties, such as the government, civil society organisations and international donor agencies have participated to find ways of preventing conflict and ways out of it. Various amounts of humanitarian aid, social rehabilitation and economic recovery efforts for the communities are also sought in the midst of many obstacles. In the case study of Poso, the government has made various efforts at reconciliation like security forces mobilisation and continuous humanitarian assistance to support the peace efforts. One of the greatest efforts and success stories of the journey of reconciliation in the nation is the Malino Declaration, facilitated by Jusuf Kalla as a representative of the Indonesian government. This declaration has indeed been said to have succeeded in stopping the fighting among civilians. We can, however, still see the government's unpreparedness in many places, especially in anticipation of post-conflict policy that has not been systematic (due to the government's persistence in using a top-down strategy and approach), so they have not been able to get to the root of the conflict in an effective and systematic way.

On the other hand, the power of civil society also has a strong influence—especially in collaboration with international donor agencies—with their participation in providing humanitarian assistance, conducting training for conflict resolution and empowerment of refugees, bridging the advocacy policy at national and local levels. Good efforts made by the government and civil society organisations are not yet effective because they have not been able to find the synergy in coordinating their peace efforts. Segregation and classification often

18 Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (London: Sage Publications, 1996).

19 To see conflict and religious peace in Maluku and North Mauluku, see: Coat Trijono and Pieter Tanamal, "Religious Conflict in Maluku: In Search of a Religious Community for Peace" in *The Making of Ethnic and Religious Conflict in Southeast Asia: Cases and Resolution*, Lambang Trijono (ed.) (Yogyakarta: CSPS Books, 2004). To read on the conflict and peace in Poso, see: Lambang Trijono, *Conflict Analysis and Peace Building Responses, The Case of Poso Central Sulawesi: Report for JICA's Peace Building Assessment in Indonesia* (Jakarta: JICA, 2005).

become obstacles to implementing the follow-up. Therefore, the right strategy is still needed to engender transformation. Long-term reconciliation is a requirement that needs to be realised, particularly associated with democratisation efforts and local participation in the spirit of regional decentralisation.

The effort is similar to peace conditions that they have tried to initiate in Aceh. Although the post-Suharto government continues to tighten security patterns there, various peace efforts keep being designed. The first effort was under President Abdurrahman Wahid's government, which aimed at a breakthrough by involving the international community in reaching an agreement with GAM. It started with the Geneva Agreement (12 May 1999) that produced a "humanitarian pause" agreement, in which both sides agreed to stop the armed conflict and focus more on maintaining human values. However, these agreements have been violated by a series of cases of violence.

On the other hand, the political crisis that swept Abdurrahman Wahid's government hampered the perpertuity of peace in Aceh. In face of the political furor that continued to undermine his cabinet, Abdurrahman Wahid issued Presidential Decree No. 4/2000, which contained a comprehensive treatment for Aceh. The decree contained more opportunities for the Indonesian government's security institutions based in Jakarta to take military action in Aceh.[20]After Abdurrahman Wahid resigned, Megawati Sukarnoputri, as the new president, continued the effort to sustain the negotiations that had begun under the previous government.

Further negotiations produced the humanitarian pause treaty, called the *Cessation of Hostility and Violence* (CoHA). The treaty was agreed on 9 December 2002. But CoHA is difficult to implement because there are some parties who do not want the involvement of the wider civil society to promote peace in Aceh. Finally, Megawati issued a presidential decree declaring Aceh under martial law from May 2003. Unilateral decisions by the government of Indonesia resulted in the absence of convergence that should have been achieved in an advanced follow up of negotiations with GAM. During this phase, violence in Aceh increased and the Indonesian military played a huge part in the violence and human rights violations that ensued. Attempts at peace talks in Tokyo in May 2003 and the offer by Jakarta of special autonomy to Aceh was a failure as GAM neglected to respond owing to the fact that some of its members had been arrested in Aceh before and after the Tokyo negotiations.

It took a long time to re-stabilise the situation after the failed negotiations in Tokyo. Substitution of political conditions to the tsunami disaster in Aceh apparently brought major changes to the dynamics of conflict in Aceh. President Susilo Bambang Yudhoyono and Vice President M. Jusuf Kalla re-opened negotiations using humanitarian values and the tsunami disaster in Aceh as focal points. The Helsinki Agreement of August 2005 is one of the most remarkable breakthroughs ever made by the Indonesian government. The agreement included things that had focussed the attention of the entire community and prolonged the conflict in Aceh.

Issues such as independent natural resource management, local government decentralisation, the recognition of identity and culture of the Acehnese people, the handling of the problem of violence, the handling of human rights abuses and reconciliation became the backbone of the agreement. All parties hoped that after

20 See: Afridal Darmi, *Di balik Kulit Politik Hukum Jakarta terhadap Aceh: Analisis Sosiologis Yuridis Inpres No. 4/2000 dan Kaitannya dengan Pembentukan Kodam Iskandar Muda*, in the Aceh Human Rights NGO Coalition and CSSP Jakarta.

the Helsinki Agreement, the political burdens of the past could be gradually resolved. Although we must admit that problems in Aceh took time to resolve, it is worth remembering that the re-integration process between Indonesia and GAM required a great period of time too.

The Role of Civil Society in Reviewing the Security Sector in Conflict and/or Post-Conflict Areas

Continuous violent conflict in Poso and Aceh had huge impacts on the community for both perpetrators and victims. Generally, great lessons have been learned and people agree that the bitter history was a mistake and that there are no benefits to be derived from ever repeating it. In Aceh, for example, this is indicated by the smooth running of the peace processes that began with the Helsinki agreement, the transfer of weapons and the withdrawal of military forces supervised by the Aceh Monitoring Mission (AMM) to the culmination of the secure and democratic election. In Ambon, after the conflict subsided, people began to once again look at the values and cultural symbols that united them and to revitalise them. Today, the concepts of local wisdom such as "We are Brothers" (*Katong Basudara*), *Pela Gandong*, *Salam-Sarani* and *SIWALIMA* have been revived. This is clear evidence of local initiatives and efforts to encourage and protect the peace from the grassroots level.

Besides the breakthrough in building public awareness, civil society must also form the new approach to security in the post-conflict areas. Approaches that make the security actors the solo party in settling conflict are not a solution. Increasing military activity, intelligence operations, ambushes and various forms of activities involving aspects of surveillance that have been employed in post-conflict areas are limiting the space for local initiatives aimed at re-building communities after the long phases of conflict.

ABRI Masuk Desa (AMD) activity, like building social facilities in villages, is an approach to security that was heavily promoted by the New Order government. Armed forces were expected to control social functions at the village level to fortify the lines of security in keeping with the paradigm of the New Order. The pattern is also applied in conflict areas such as Aceh and Eastern Indonesia. This model will not cut the chain of violence in conflict areas but will exacerbate the problems and increase resistance.

From the Aceh experience we can learn how the pattern of resistance, which eventually creates a group, perpetrating violence with the ability to mutiply (re-generation), is actually formed. The "resistance" approach to security increases exponentially the potential for human rights violations as experienced in Aceh and Papua and bloodies the landscape beyond physical limits.

It is for us to review the security and defence sectors of Indonesia using four basic principles: the separation of powers, the principle of legality, accountability and transparency. The position and tasks of the security forces must also be guarded by civilians in conflict/post-conflict areas to enable more effective control of their functions. Putting the peace dialogue into motion, as attempted in the Aceh conflict, provides an alternative at least. From a purely economic view, this option can greatly minimise the expenses that direct combat accrues.

After the efforts of peace dialogue, steps to withdraw the number of non-organic troops in conflict/post-conflict areas need to be put in place. It is expected that the withdrawal of some troops can reduce tensions and enable peace efforts through dialogue to be viewed as the government's commitment and consistency for a better Indonesia.

Conclusion

Peace activists are keenly aware that post-conflict peace building must be directed at efforts to reconstruct the structure of peace in the community to build a solid foundation for lasting peace. However, a change in dynamic can occur as a result of changes to the social, economic and political contexts that require peace actors to respond and make adjustments immediately. As a result, almost all the energy is channeled at overcoming the new problems that also require attention and support. The most obvious example is the emergency response towards victims of natural disasters.

At the same time, some peace activists are still struggling with handling the direct impact of the conflict on victims in the evacuation and relocation sites in the aftermath of the earthquake and tsunami. As a result, efforts to consolidate long-term peace are somewhat static. The absence of change or simply "waiting till the time is right" reflects the views of peace building actors in the former conflict areas. It appears that the model for future developments in peace building needs to be based on the strengthening of civil society. This paradigm assumes that civil society is the determining party in whether or not the potential conflicts in society will result in violence or be managed in creative ways and transformed into constructive social-political relations.

A civil society that will support long-term peace is characterised by organisational relations between associations that are open, voluntary and modern. Social relations solely based on communal bonds are somehow no longer sufficient foundations for civil society, particularly in the context of political systems of post-colonial nation states. Therefore, rather than maintaining communal institutions as they are now, it will be more useful to transform civic values, which are inherent in local initiatives (or local wisdom), to more modern and rational associations.

We understand this effort is not easily realised. Various vulnerabilities within the community remain and need to be noted as factors that could affect the ability to re-position the problem. But in the context of Poso and Aceh today, the vulnerable community recovery option and the option to place responsibility on the state are not two things that can be viewed separately. Additionally, the security sector does not provide a solution to conflicts without a violent dimension. Dialogue as a form of peace must be a priority to raise awareness by citizens of their rights and also awareness of the practices that undermine their capacity to manage conflicts and differences.

References

Abubakar, Irfan. "Menuju Paradigma Peacebuilding Paskakonflik Kekerasan (Review Terhadap Kerja-kerja Perdamaian di Daerah Konflik)." 26 October 2007, http://www.csrc.or.id/artikel/index.php?detail=072610025546.

Albrecht, Peter and Karen Barnes. "National Security Policy-Making and Gender." *DCAF Gender and SSR Toolkit*, Tool 8. Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008.

Amnesty International. *Shock Therapy: Sebagai Tindakan Pemulihan Ketertiban di Aceh 1989–1993*. London: Amnesty International, 1993.

Boutros-Ghali, Boutros. *An Agenda for Peace*. New York: United Nations, 1992.

Brown, Graham, et al. *Overcoming Violent Conflict: Peace and Development Analysis in Maluku and North Maluku.* Vol. 4. Jakarta: UNDP, Bappenas, LIPI, 2005.

Brown, Graham, et al. *Overcoming Violent Conflict: Peace and Development Analysis in Maluku and North Maluku*. Vol. 3. Jakarta: UNDP, Bappenas, LIPI, 2005.

Chaidar, Al. *Gerakan Aceh Merdeka, cet. 2*. Jakarta: Madani Press, 2000.

Darmi, Afridal. *Di balik Kulit Politik Hukum Jakarta terhadap Aceh: Analisis Sosiologis Yuridis Inpres No. 4/2000 dan Kaitannya dengan Pembentukan Kodam Iskandar Muda,* in NGO HAM Aceh Coalition and CSSP Jakarta.

European Centre for Conflict Prevention, International Fellowship of Reconciliation and the State of the World Forum. *People Building Peace: 35 Inspiring Stories from Around the World*. Utrecht: European Centre for Conflict Prevention, 1999.

Galtung, Johan. *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*. London: Sage Publication, 1996.

Giddens, Anthony. *The Nation-State and Violence*. Cambridge: Polity Press, 1985.

Houghton Mifflin Company. *The American Heritage Dictionary of English Language Fourth Edition*. Boston: Houghton Mifflin Company, 2006.

Lasahiod, Tahmidy, et al. *Suara dari Poso, Kerusuhan, Konflik dan Resolusi*. Jakarta: Yappika, 2003.

Miall, Hugh; Rahmsbotham, Oliver and Tom Woodhouse. *Contemporary Conflict Resolution*. Cambridge: Polity Press, 1999.

Schnabel, Albrecht and Hans-Goerge Erhart. *Post-Conflict Societies and the Military: Challenges and Problems of Security Sector Reform*. Tokyo: United Nations University, 2005.

Sorensen, Goerg. "Contradiction in a Rich Concept of Development, Problems of Welfare and Quality of Life." *Bulletin of Peace Proposals* 18 (1) (1987).

Starr, Harvey (ed.). *The Understanding and Management of Global Violence: New Approaches to the Theory and Research on Protracted Conflict*. London: Macmillan Press, 1999.

Trijono, Lambang. *Conflict Analysis and Peace Building Responses, The Case of Poso Central Sulawesi: Report for JICA's Peace Building Assesment in Indonesia*. Jakarta: JICA, 2005.

Trijono, Lambang (ed). *The Making of Ethnic and Religious Conflict in Southeast Asia: Cases and Resolution.* Yogyakarta: CSPS Books, 2004.

University of Colorado. The International Online Training Programme on Intractable Conflict of the Conflict research Consortium. Boulder: University of Colorado, 2000, http://www.colorado.edu/conflict/peace/index.html.

Wilson, Christopher. *Overcoming Violent Conflict: Peace and Development Analysis in Indonesia*. Vol. 5. Jakarta: CPRU-UNDP, Bappenas, PSKP UGM, Lab Sosio UI and LIPI, 2005.

The Commission of Truth and Friendship (CTF) and the Unveiling of Human Rights Violations in East Timor

Zainul Maarif

Prologue

The Commission of Truth and Friendship (CTF) is one of the commissions that was established to reveal the level of human rights violations in East Timor (currently known as Timor-Leste) in 1999. The CTF was described as "one of the" because, before its creation, there were already several similar commissions and investigations. Examples of those former commissions are: (1) the United Nations (UN) Special Rapporteurs; (2) the UN International Investigator Commission; (3) the Human Rights Violation Investigator Commission in East Timor (HRV IC); (4) the East Timor Acceptance, Truth and Reconciliation Commission (*Commissio de Acolhimento Verdade e Reconciliaçio, CAVR*); (5) the James Dunn Report for the United Nations Transitional Administration in East Timor (UNTAET); and (6) the UN Experts Commission.

Why have there been so many commissions to reveal the level of humanitarian tragedy in East Timor in 1999? Because there was no doubt that the incident was very important and, as such, many parties handled the disclosure. Could it be assumed that the idea of creating one new commission after many similar ones was to perfect the results of former investigations? Would the CTF's findings and recommendations have more positive implications for the honouring of human rights in the future compared with the findings and recommendations of the former commissions?

This chapter attempts to answer the last question by studying the CTF findings and recommendations and comparing them with the former commission's findings and recommendations. Considering that there were several civil organisations from Indonesia, Timor-Leste and the international community that gave responses to the CTF, this chapter reviews their responses and evaluates them. At the end of this chapter, the author will present some recommendations on further efforts to manage the 1999 East Timor case. To begin, the author will provide a brief context of the issues that were discussed by the several commissions for East Timor.

East Timor

East Timor was a Portuguese colony for approximately 400 years.[1] From 25 April 1974, East Timor began to move towards independence from Portugal. By that time, the Flower Revolution had occurred in Portugal and overthrown the regime of Salazar and that of his successor Caetano. Democracy emerged after this event and it resulted in Decree No. 203/1974 on decolonisation and self-determination. The people of East Timor, affiliated with Fretelin (*Frente Revolucionaria do Timor-Leste Independente*), used this moment to proclaim East Timor's independence from Portugal on 28 November 1975.

On the other side, Indonesia—allied with the UDT (*Uniao Democratica Tomorense*), Apodeti (*Associacao Popular Democratica de Timor*), Trabalista (labor Party) and KOTA (*Klibur an Timor Aswain*)—tried to integrate East Timor with Indonesia. Operations Komodo and Seroja, conducted by the Indonesian military, effectively annexed East Timor to Indonesia on 7 December 1975.[2]

The UN Security Council condemned Indonesia's annexation and asked Indonesia to withdraw its forces based on UN Resolution No. 384/1975. Indonesia responded to the UN condemnation and request by making East Timor the twenty-seventh province of Indonesia on 17 July 1976.

The UN General Assembly rejected Indonesia's claim on East Timor and asked for an execution of self-determination rights for East Timor according to UN General Assembly Resolution No. 31/53 dated 1 December 1976. But the United States, France and Britain supported Indonesia's annexation of East Timor in order to prevent the expansion of communism that Fretelin was espousing there.[3] In the Western countries's terms of reference, Indonesia colonised East Timor until 1999.

During its colonisation (1975–1999), Indonesia contributed to the development of East Timor but it also advanced various types of violations on the East Timorese, in particular to those affiliated with Fretelin. CAVR records show that during the Indonesian colonisation of East Timor, at least 18,600 persons were abducted and killed and 84,200 injured because of violations by the state's apparatus.[4]

The repressive conditions were alleviated somewhat after the overthrow of President Suharto. On 27 January 1999, the Indonesian government under B.J. Habibie's presidency gave two options to the peoples of East Timor—autonomy or independence. Furthermore, on 11 March 1999, Indonesia and Portugal agreed to make the UN the executor of the referendum.

In the field**,** the Armed Forces of the Republic of Indonesia (ABRI), pro-integration groups and pro-independence groups agreed to stop the conflict by means of the Peace and Stability Commission for East Timor, established on 21 April 1999. At the state level, Indonesia, Portugal and the UN Secretary-General met in New York on 5 May to decide on the mechanism of the East Timorese people's consultation and stated that Indonesia

1 Unfortunately, world attention to Portuguese colonialism in East Timor is not as focused as the attention paid to Indonesian colonialism in East Timor.
2 See: Julius Por, *Benny Moerdani: Profil Prajurit Negarawan* (Jakarta: Yayasan Kejuangan Panglima Besar Sudirman, 1993), 381–386, 397.
3 CAVR, *Chega!* (Dili: CAVR, 2005), 18–19; Geoffrey Robenson, *Kejahatan Terhadap Kemanusiaan: Perjuangan untuk Mewujudkan Keadilan Global* (Jakarta: Komnas HAM, 2002), 353.
4 CAVR, *Chega!* (2005), chapter 7.2, point 24.

(especially its security actors) had the responsibility of guaranteeing security, freedom and neutrality in the referendum process in East Timor. At the technical level, on 11 June 1999, the UN created UNAMED (the United Nations Mission in East Timor) to carry out the people's consultation.

After several postponements, the referendum was held on 30 August 1999. The referendum, with 446,666 voters, had successfully encouraged ninety-nine percent of the voters to exercise their democratic right. The UN Secretary-General announced the result of the referendum on 4 September 1999, with seventy-eight percent of voters rejecting autonomy and opting for independence.

Prior to and after the announcement of the referendum result, pro-integration militia and the Indonesian military engaged in violence against the pro-independence group. Besides creating Interfet (the International Force East Timor) as a peacekeeping force in East Timor and UNAMET (the United Nations Transitional Administration) as the transitional government in East Timor, the UN and several Indonesian, Timorese and international institutions also established some commissions to investigate suspected human rights violations in East Timor, especially before and after the 1999 referendum.

Investigation Commissions for the East Timor Tragedy

As was stated in the prologue, there were many commissions and investigations of suspected human rights violations in East Timor. The conclusions and recommendations from those investigating commissions will be discussed in this part and used in the comparison with the CTF later.

A. UN Special Rapporteurs[5]

According to UN Human Rights Commission blank No. S-41/1 dated 27 September 1999, the UN Human Rights Commission assigned the following individuals to observe human rights conditions in East Timor: (1) a special rapporteur for extrajudicial, uncertain, and arbitrary execution, Ms. Asma Jahangir; (2) a special rapporteur for torture, Sir Nigel Rodley; and (3) a special rapporteur for violence against women, causes and consequences, Ms. Radhika Coosmaraswamy.

In sequence to this mission, the UN High Commission for Human Rights sent a letter to the Indonesian Government on 26 October 1999 asking the government to meet the UN Special Rapporteurs. On 3 November 1999, the government replied to the letter calling for a postponement of the visit by the Special Rapporteurs. It also stated that the government was committed to ending the East Timor problem with the new government of East Timor. Even so, the UN Human Rights Commission still assigned the Special Rapporteurs to conduct the fact-finding mission from 4–10 November 1999. As a consequence, the Special Rapporteurs could not meet the Indonesian government in Jakarta and had a limited time to visit the places relevant to the investigation in East Timor.

5 Taken from: United Nations General Assembly, "Situation of Human Rights in East Timor," A/54/660 (10 December 1999).

The Special Rapporteurs could only meet UNTAET officials, Bishop Belo, the CNRT (East Timor People Council of National Resistance), Commander Falintil Taun Matan Ruak (East Timor National Liberation Armed Forces), Interfet Commander Major General Cosgrove, the UNHCR, the WFP, UNICEF, the ICRC, Médecins Sans Frontières, Timor Aids, Amnesty International, the HAK Foundation, Fokupers and the East Timor National Commission of Human Rights. They could only visit Dili, Suai, Maliana, Oecussi, Aileu, Tibar and Liquica.

From the short visit, the Special Rapporteurs concluded human rights violations in East Timor before and after the referendum occurred as an attack on pro-independence civilians. The violations included murder, torture, sexual violence, forced eviction, chasing and other humanitarian violations, including the destruction of property. All those violations happened on a wide scale.

According to the International Court Assembly standard, the Special Rappoteurs also confirmed the evidence that proved the direct operational involvement of the Armed Forces of the Republic of Indonesia (the TNI) and militia in those crimes. However, the Special Rappoteurs recommended a sustainable investigation process to prove just how much the TNI was responsible for human rights violations.

Regarding the judicial process, the Special Rapporteurs also concluded that the competency of the East Timor and Indonesian judicial process needed to be tested in adjudicating human rights cases.

Based on these findings, the Special Rapporteurs recommended the Indonesian government provide access to the UNHCR to manage the refugees and to obey the Republic of Indonesia's Human Rights Commission's (Komnas HAM) demand in relation to the dissolution of the militia to enable the territorial integrity of East Timor to be free from any further disturbance.

The Special Rappoteurs recommended that the UN establish an investigation commission for those responsible for human rights violations in East Timor within the International Criminal Court.

To UNTAET, the Special Rapporteurs recommended medical and psychological management of the victims. To the international community, the Special Rapporteurs recommended support and assistance for UNTAET in restoring East Timor.

B. International Investigation Commission[6]

The International Investigation Commission for East Timor was mandated by the Human Rights Commission (No. S-4/1999/1) to: (1) systematically collect information regarding the human rights and international humanitarian law violations in East Timor; (2) give the UN Secretary-General conclusions and recommendations for East Timor's settlement; and (3) cooperate with the Republic of Indonesia's Human Rights Commission and the Special Rappoteurs.

6 Summarised from: United Nations General Assembly, "Identical Letters Dated 31 January 2000 from the Secretary-General Addressed to the President of General Assembly, the President of the Security Council and the Chairperson of the Commission on Human Rights," S/2000/59/726 (31 January 2000).

The commission—which consisted of Sonia Picado from Costa Rica (chairperson), Ms. Judith Sefi Attah from Nigeria, A.M. Ahmadi from India, Mari Kapi from Papua New Guinea, and Sabine Lautheusser-Schnarrenberger from Germany—was established on 15 October 1999 and was given a deadline of 31 December 1999 to submit its final report.

The UN Human Rights Commission procedural Investigation Commission concentrated on violations of the right to life—assassination, torture, destruction of property, violence against women, forced eviction, intimidation and terror, affects of violence on the economy and social rights (health and education), and the relations between the militia and the Indonesian armed forces.

Compared to the UN Special Rapporteurs, the UN International Investigation Commission was free to meet Indonesian officers (for example, the minister of defense, the minister of foreign affairs and the attorney general) and to visit East Timor (25 November–3 December 1999) and Jakarta (5–8 December 1999).

On the basis of meetings and visits, the Investigation Commission concluded that there were several different human rights and humanitarian law violations that continuously and systematically occurred in the form of intimidation, degradation of human dignity, terrorising, destruction of property, violence against women and eviction. The commission also concluded that there were patterns of evidence destruction and the involvement of both the TNI and the militia in the violations.

In their conclusion, the Investigation Commission recommended the UN to:

(1) Return the refugees immediately;
(2) Urge militia disarmament in West Timor and the dissolution of non-regular forces in East Timor;
(3) Further investigate human rights violations regarding the emergence of new witnesses;
(4) Give firm sanctions to any member of the UN Security Council that disobeys the Security Council's decision;
(5) To act upon human rights violations with human rights principles: (a) individual right for recovery, including state responsibility to investigate the violation, adjudicate and punish those responsible; (b) individual right to reparations and compensation from the responsible state; and (c) rejection of immunity from the law to prevent human rights violations in the future;
(6) Help UNTAET to fulfill judicial systems that are needed in East Timor;
(7) Establish an international independent prosecution and investigation board; and
(8) Establish an international criminal court.

C. Human Rights Truth and Friendship Commission[7]

The Human Rights Truth and Friendship Commission of East Timor (HR CTF) was established by the Indonesia National Human Rights Commission (Komnas HAM) on 22 September 1999 based on Regulation No. 39 Year 1999 on Human Rights, Article 89 (3) and Regulation No. 1 Year 1999 on the Human Rights Tribunal, Article 10 (1).

7 Summarised from: KPP HAM, *Laporan Akhir* (Jakarta: Komnas HAM, 2000).

The HR CTF was mandated to: (1) find facts and information on human rights violations in East Timor from January 1999 to October 1999, especially for genocide, assassination, torture, forced eviction, violence against women and children and burning/scorched earth policy; (2) investigate the level of state involvement and/or of the national and international board in the human rights violations; and (3) write a report to form a foundation for the investigation and prosecution process of the Human Rights Tribunal.

In fulfilling its mandate, the HR CTF could: (1) investigate and examine the suspects of the human rights violations; (2) request information from victims; (3) collect evidence regarding a human rights violation indictment; (4) check any necessary places/areas with the agreement of the head of the Human Rights Court; (5) protect witnesses and victims of human rights violations; and (6) process and analyse discovered facts for the prosecution and announce the results.

The CTF—which included Marzuki Darusman, Todung Mulya Lubis, Asmara Nababan, Albert Hasibuan, Nursyabani Katjasungkana, Zoemrotin, H.S. Dillon Koeparmono Irsan and Munir—accomplished its duty and concluded that:

(1) The human rights violations and crimes against humanity were planned and conducted systematically and extensively. These took the form of massacres, torture and violence, abductions**,** violence against women and children (including rape and sexual slavery), forced evictions, burning/scorched earth and destruction of property.

(2) Crimes had occurred for which evidence had disappeared and/or was destroyed.

(3) The civilian military and police apparatus cooperated with the militia to create conditions and situations for the crimes against humanity that these groups then carried out.

(4) Militia groups that committed direct and indirect crimes against humanity were armed, trained, supported and funded by civilian, military and police apparatuses.

(5) There were three suspects who were responsible for all the crimes against humanity: (a) the agent at the scene of the crime (the militia, military apparatus and police); (b) the controller of operations (the civilian bureaucratic apparatus, namely the regent, governor, military commander and local police); and (c) the authorised officer for national security, including military commanders who actively or inactively committed crime.

(6) The individuals who are suspected of directly committing the crimes in the field are named by the CTF in appendix No. 5 [P:] of the CTF Final Report.

(7) At the local level, the individuals suspected of controlling or coordinating crimes against humanity are: Major General Adam Damiri (Commander in Chief, Udayana Military Area Command. Was suspected of supporting militant activities, did not prevent or act upon the involvement of the TNI in militant activities); Police Colonel Timbul Silaen (Chief of Area Police in East Timor whose duty, according to the New York agreement, was to protect order and security and who failed in this duty); Infantry Colonel M. Noer Muis (Commander of Military Region Command 164/WD, did not prevent or stop his troops from helping militias); Infantry Colonel F.X. Tono Suratman (Commander of Military Region Command 164/WD, did not prevent or stop his troops from helping militias); Infantry Lieutenant Colonel Yayat Sudrajat (Commander in Chief of Tribuana Task Force, gave weapons and direct support to militias); Infantry Lieutenant Colonel Sudrajat (Lautem Commander of a Military District Command, provided weapons and base camps for militias); Infantry Major Yakraman Yagus (Commander in Chief

of Battalion 744/Dili, did not stop or remprimand troops that committed terror and intimidation); Infantry Lieutenant Colonel Jacob Joko Saroso (Commander in Chief of Battalion 745/SYB Los Palos, with the involvement of his troops was suspected responsible for the murder of Dutch journalist Sander Thoenes); Infantry Captain Tatang (Commander in Chief of Company B Battalion 744/Dili, knew that there were 4 human corpses in his battalion base camp); Abilio Soares (East Timor Governor, created, facilitated and supported militia in each regency); Domingos Soares (Second Level Head of Regency in Aileu, established and funded a militia by the name of Pamswakarsa); Guilherme dos Santos (Second Level Head of Regency in Bobonaro, facilitated militant activities); Infantry Colonel Herman Sendyopo (Regent in Covalima involved in the Suai Church massacre on 6 September 1999, prepared the logistics and transportation of the people who had been forcibly evicted); Infantry Lieutenant Colonel Asep Kuwandi (Commander of Military District Command Luquica, involved in acts of violence in Liquica during April 1999); Infantry Lieutenant Colonel Ahmad Mas Agus (Commander of Military District Command Covalima, was involved in the Suai Church massacre and armed the Laksaur militia); Edmundo Conceicao E. Silva (Lautem Regent, led the Alfa Team militia meetings and patrols); Suprapto Tarman (Second Level Head of Regency in Aileu, used the local budget and social security budget to fund Pamswakarsa); Lieutenant Colonel Kav. Burhanudin Siagian (Boborano Commander of a Military District Command, was suspected of directly murdering civilians in Bobonaro, April 1999).

(8) The individuals who were suspected of involvement and responsibility at the central level in controlling and coordinating crimes against humanity are General Wiranto (former Minister of Defence and Security/Commander-in-Chief of the Indonesian Armed Forces, suspected of knowing the propensity of conditions for the crimes in East Timor much earlier but did nothing to prevent or act upon the suspects); Lieutenant General Johny Lumintang (Army Deputy Chief of Staff, gave the "use of force" command in the name of the army chief of staff on 5 May 1999 to prepare for preventive and repressive action if the people of East Timor chose independence); Major General Zacky Anwar Makrim (member of the P4OKTT Task Force and the security advisor of the P3TT Task Force, conducted intelligence surveillance and operations outside his main duties of P3TT advisor); Retiree Major General H.R. Garnadi (the deputy of P4OKTT and P3TT task forces, supported the repressive policy if the people of East Timor rejected the autonomy option).

(9) The crimes against humanity in East Timor, directly or indirectly, occurred because of: (a) the failure of the commander-in-chief of the Indonesian Armed Forces to maintain security; and (b) the police structure under the minister of defence command has undermined the police in executing the New York Agreement. This was the reason why General Wiranto, as the commander-in-chief of the Indonesian Armed Forces, has to be held responsible.

(10) The TNI Human Rights Advocacy Team had more or less prolonged the investigation, factfinding and enforcement of law and justice.

In light of the above, the HR CTF recommends:

(1) The Office of the Attorney General to carry out an investigation of the person(s) suspected of involvement in serious human rights violations.

(2) The government to draft a protocol that will improve access to all new facts and evidence of human rights violations.

(3) The parliament and the government to establish a Human Rights Tribunal.

(4) The government to ratify international instruments that are crucial for the enforcement of human rights in Indonesia.
(5) The government to guarantee the security of all witnesses and victims.
(6) The government to rehabilitate and provide fair compensation to victims and their families.
(7) The government should adopt a firm position that states gender-based violence is a violation of human rights and provide various support services and compensation to victims.
(8) The Indonesia Human Rights National Commission (Komnas HAM) to investigate all human rights violations in East Timor from 1975.
(9) The government to conduct efforts to reposition, redefine and re-actualise the TNI as a defence institution within a democratic country that upholds human rights and remove the additional functions of the TNI, especially its territorial function that hampers the effective functioning of police and civil government.
(10) The government to guarantee upholding law and public order and enforcing security by separating the Indonesian armed forces and police, and empowering the Indonesian Police via training and demilitarisation.
(11) The parliament to make laws and the government to conduct intelligence gathering and activities based on those laws that guarantee "intelligence" for the welfare of the people and state security and not as a tool for the ruling power to violate human rights.
(12) The government to facilitate the return of refugees to their homes/places of residence safely and voluntarily. At the same time, UNTAET is asked to guarantee and secure their passage back to East Timor.

D. CAVR[8]

CAVR (*Comissio de Acolhimento, Verdade e Reçonciliacio* [Acceptance, Truth and Reconciliation Commission]) was officially ratified by the National Council RDTL on 13 June 2001 with strong support from all leading parties in East Timor, non-governmental organisations, the Catholic Church and other religious communities, the UN Mission, the UNHCR, the UN High Commission for Human Rights, international organs and other donor countries.

According to UNTAET Regulation No. 10/2001 and the RDTL Constitution, Article 162, CAVR was mandated to: (1) investigate and decide the truth relating to human rights violations in the political conflict in Timor-Leste from 25 April 1974 to 25 October 1999; (2) prepare a "comprehensive report on the Commission's activities and findings, based on factual and objective information with evidence collected and accepted by or provided for the Commission;" (3) put together the recommendations for change and initiatives designed to prevent the recurrence of human rights violations and to respond to the needs of victims; (4) recommend prosecution if needed to the Office of the Attorney General; (5) promote reconciliation; (6) implement the Community Reconciliation Procedural (CRP) that was aimed at supporting the acceptance and reintegration of persons who have harmed their community by committing lesser crime(s) and other harmful actions; (7) help to recover victims' dignity; and (8) promote human rights.

8 Summarised from: CAVR, *Chega!* (2005).

UNTAET Regulation No. 10/2001 in particular obliges CAVR to pay special attention in its factfinding function to three main political conflicts, which are: (1) the events before, during and after the People's Consultation on 30 August 1999; (2) all party events and experiences before, during and after Indonesian infiltration of Timor-Leste on 7 December 1975; and (3) the impact of the policy and practice of Indonesia and its armed forces in Timor-Leste from 7 December 1975 to 25 October 1999.

To carry out its mandate, CAVR was given special powers related to factfinding and community reconciliation activities.

Having accomplished its mandate, CAVR finally reported to the Timor-Leste (RDTL) government and parliament on 31 October 2005. In a 2800 page report titled *Chega!*, which means "stop," "not anymore" or "enough," CAVR revealed various human rights violations in East Timor from 1975 to 1999.

From those findings, CAVR recommended, *inter alia*, that:

(1) The RDTL government must disseminate the CAVR report throughout the entire international community to ensure that the tragedy of Timor-Leste does not recur and to learn lessons from it.

(2) Countries that enjoyed military cooperation with the Indonesian government from 1974–1999, whether that cooperation was directly used against Timor-Leste or not, to make an international apology to the people of Timor-Leste for failing to uphold their basic rights and freedoms during the Indonesian occupation.

(3) The permanent members of the UN Security Council—not only the US but the United Kingdom and France, which provided military support to Indonesia from 1974 to 1999, and those who are bound to uphold important principals of world peace and order, and to protect those who are weak and vulnerable—should help the government of Timor-Leste in reparation efforts for the victims of human rights violations during the Indonesian occupation.

(4) The companies that obtained advantage from the sale of arms to Indonesia during the Timor-Leste occupation, especially the company whose products were used in Timor-Leste, to contribute to the reparation programme for the victims of human rights violations.

(5) All UN member countries should reject applications for visas by any Indonesian military officer mentioned in the CAVR report or those who were responsible for commanding the troops and prosecuted for transgressions, as well as those who took such steps as bank account concealment, until that person has been independently and unquestionably been proved innocent.

(6) Countries in the world should effectively arrange military transactions and cooperation with the Indonesian government and ensure that this support will be the prerequisite for the full growth of democratisation, military obedience of the law and civil government, rigorous obedience of international human rights and honouring the right to self-determination.

(7) The Australian government should return documents and other materials related to the 1999 events and militia activities that were suspected of having been moved to Australia for safekeeping after the Interfet arrival in 1999.

(8) The government of Timor-Leste, with support from the UN, to honour the contributions of international CSOs to promote human rights in Timor-Leste, especially in relation to the right to self-determination, and invite civil society organisations to present their documentations about this struggle to the

people of Timor-Leste as a memorial, for posterity, and to maintain sustainable relationships and solidarity.

(9) The Indonesian government officially admit that it has received the report and put it on the Indonesian Parliament's working agenda.

(10) In order to generate a spirit of reconciliation, the GoI send a delegation to Timor-Leste to admit to the human rights violations during the Timor-Leste occupation and apologise to the victims and their families for the violence.

(11) The Indonesian government should revise its official notes and educational materials that relate to Indonesia's presence in Timor-Leste and to guarantee that those materials give an accurate and complete description for the people of Indonesia from 1974–1999, including the role of the UN in executing the 1999 referendum and making significant contributions to the reconciliation.

(12) Indonesia and Timor-Leste continue efforts to develop cooperation between their peoples in the social, cultural, economic and political spheres.

E. The James Dunn Report[9]

The UNTAET Serious Crime Unit encountered problems during its investigations into suspects up the chain of command as Indonesia failed to cooperate and limited access to channels of information. To assist its process, UNTAET hired the services of a former Australian consul to East Timor to document the involvement of the Indonesian Military in the events that occurred there in 1999 and to report the truths and reasons behind the crimes against humanity.

In executing those tasks, James Dunn scrutinised the documents possessed by UNTAET, the Serious Crimes Unit archives, UN reports and investigations, the results of interviews with UN officers, Interfet soldiers, the East Timorese people, the HR CTF, Fakupers, non-governmental organisations and the mass media.

On 14 February 2001, the James Dunn report concluded that:

(1) Movements to instigate crimes against humanity in East Timor in 1999 were planned operations, executed by the Indonesian Armed Forces with assistance by militia groups to punish the people of East Timor who voted against integration.
(2) Crimes against humanity included murder, torture, abduction, sexual harassment, attacks towards children, mass deportation, forced displacement, destruction of homes and centres of public health and education, and stealing from properties.
(3) The Indonesian government failed to prosecute those responsible for the crimes in East Timor in 1999.

Based on the conclusions, James Dunn recommended:

(1) Increasing the effort to make decisions about those who were responsible or collectively responsible for the crimes in East Timor in 1999 and to begin adjudication with special attention to the generals of the Indonesian Armed Forces, as well as to the structural changes to the units that handled the case (the Office

9 Summarised from: James Dunn, "Crimes against Humanity in East Timor, January to October 1999: Their Nature and Causes" (14 February 2001).

of the General Prosecutor and UNTAET's Serious Crimes Investigation Unit).

(2) The acceleration of adjudication against East Timor militia groups while confirming the impact of militia/ Indonesia Armed Forces command structure on their actions and acknowledging collective errors.

(3) The creation of an international tribunal for those responsible for the crimes, given that Indonesia has failed to progress matters to the judicial level.

(4) Giving attention to the question of reparations and compensation during the meetings with the GoI.

(5) Enhancing international support to UNTAET and the UNHCR's efforts to the East Timor refugee settlement process.

(6) Supporting the HR CTF recommendation about a complete investigation regarding the events and persons responsible for the crimes against humanity that occurred during the Indonesian occupation in East Timor (1975–1999).

F. The UN Commission of Experts[10]

The UN Security Council requested the UN Secretary-General to inform the prosecution of violations of international humanitarian law and human rights in East Timor in 1999. The UN Secretary-General responded to the request by creating the Commission of Experts consisting of Judge P.N. Bhagwati (India), Dr. Shaista Shameem (Fiji) and Professor Yoso Yokota (Japan) on 18 February 2005.

The mandate of the commission was:

(1) To observe the results of the Human Rights Ad Hoc Tribunal judicial process for East Timor in Jakarta and the Serious Crime Unit (SCU), a national-international hybrid panel comprised of a Defense Law Unit (DLU) and Special Panel for Serious Crimes (SPSC) in Dili;

(2) To study how effectively the two institutions collaborate;

(3) To identify the obstacles and difficulties faced by the two institutions;

(4) To evaluate the ability of the two institutions to secure justice and responsibility for the crimes in East Timor;

(5) To recommend measures and mechanisms to hold accountable those responsible for serious violations of international humanitarian law and human rights in East Timor and promote reconciliation; and

(6) To consider ways of assisting the CTF to make recommendations that will be accepted by the UN.

After the collection and analysis of primary materials, the establishing of facts and meetings with various parties, the UN Commission of Experts presented its report on 26 June 2005 with the following findings and conclusions:

Regarding the SCU, the judicial process was not entirely responsible for failing to secure justice for the serious human rights violations in East Timor in 1999. It was because of: (1) the limited resources; (2) the lack of independence of the Attorney General's Office; and (3) the limited access to evidence and suspects in Indonesia, along with the inexistence of extradition agreements between Indonesia and Timor-Leste.

10 Summarised from: Commission of Experts, "Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999," S/2005/458 (15 July 2005).

In relation to the Human Rights Ad Hoc Tribunal, the prosecutions were not adequate because of: (1) the lack of commitment by prosecutors; (2) a lack of expertise, experience and training on the part of the prosecutors; (3) the lack of investigation competency; and (4) a lack of experience in presenting evidence to the court.

The Commission of Experts also found that the environment within the Ad Hoc Human Rights Tribunal was not one that imbued the public with any confidence or trust. This was obvious from the absence of adequate law facilities and equipment to protect both eyewitnesses and victims.

Additionally, the Commission of Experts found that the Human Rights Ad Hoc Tribunal was inconsistent, the tribunal technique was muddled as a result of various interpretations of the same issue, and there was a lack of willingness, capability and understanding of international court practices in the evaluation of legal facts. As a result, the judicial process was ineffective and failed to secure justice for victims.

Regarding the CTF that was established by the Indonesian and the RDTL government in parallel with the UN Commission of Experts, the commission found: (1) the framework contradicted international standards of rejecting impunity; (2) incompetence of the witness mechanism; and (3) that the spirit of reconciliation and the granting of reparation should be supported to develop improved relations between Indonesia and Timor-Leste.

Based on those findings and conclusions, the Commission of Experts recommended Timor-Leste accept international assistance in the proceedings of the Human Rights Serious Crime Tribunal. Moreover, the Commission of Experts urged the UN Security Council to retain the SCU, the DLU and the SPSC until the investigation and prosecution of the suspects had been concluded. If the investigation was not accepted, the Commission of Experts recommended: (1) new investigations and prosecution mechanisms for human rights violations; and (2) mechanisms that enable the government of Timor-Leste to obtain the sovereignty of its courts by facilitating the development of institutional capacity and to offer the international community the chance to facilitate the process.

For the Indonesian government, the Commission of Experts recommended: (1) strengthening of the prosecution and judicial capacity via a team of international judges and legal experts, including Asian ones recommended by the UN Secretary-General and appointed by the Indonesian government with a mandate to train and advise the attorney general on international criminal and humanitarian law, international human rights standards and procedural standards of evidence; (2) re-examination of prosecutions by the Attorney General's Office according to the legal foundations of Indonesia; (3) re-adjudicate suspects according to national and international standards; (4) transfer the relevant evidence and documents in Wiranto and his associates' prosecution letter; (5) give the entire report to the UN Secretary-General in relation to the investigation report on the SCU's prosecutions that detail reasons to prosecute the suspects (or not) and whether to re-adjudicate the suspects (or not); and (6) execute the Commission of Experts' recommendations over a six month period after the date set by the UN Secretary-General.

If the GoI, government of Timor-Leste and the UN Security Council do not accept the recommendations, the Commission of Experts recommended the UN Security Council to adopt Chapter VII of the UN Charter Resolution

on the establishment of an International Criminal Ad Hoc Tribunal for Timor-Leste, situated in a neutral location. In this circumstance, the UN Security Council can consider using the International Criminal Court.

Besides the recommendations above, the Commission of Experts also thought it important to put into effect international jurisdiction. This means that, in accordance with national law, a member country of the UN can execute investigation into and prosecution of those responsible for the human rights violations in East Timor in 1999.

CTF[11]

After numerous commissions were established to investigate the nature and suspects of human rights violations in East Timor in 1999, a truth commission was formed. The Truth and Friendship Commission was the initiative of the government of the Republic of Indonesia and the Democratic Republic of Timor-Leste (RDTL). Its mandate was to investigate human rights violations by Indonesia and its armed forces during the occupation of East Timor, particularly the events and atrocities leading up to and surrounding the 1999 referendum on East Timor's independence, and the process of independence. Its terms of reference describe it as a mechanism that has the role of further promoting friendship and cooperation between governments and peoples of the two countries, promoting intra and inter-communal reconciliation to heal the wounds of the past and to ensure that similar events will not recur.

To achieve its overall aims, the CTF was mandated to:

(1) Reveal the truth about the essence, reasons and nature of the human rights violations that had been reported as occurring before and after the referendum in East Timor in August 1999. The truth was confirmed by:

   i. Checking all materials that were documented by the HR CTF and the Human Rights Ad Hoc Tribunal, CAVR and the SPSC/SCU.

   ii. Scrutinising documented evidence by related Indonesian institutions and the SPSC on the human rights violations that had been reported, including behaviour patterns, with a view to recommending further steps to promote friendship and reconciliation between the people of the two countries.

(2) Release an open and public report available to the people in Indonesian, Tetum, English and Portuguese that would be a collective history about the events before and after the referendum in East Timor on 30 August 1999.

(3) Formulate the means and recommend the steps to heal old wounds, rehabilitate and recover human dignity, for example:

   ii. Recommend amnesty for those who committed human rights violations but fully cooperated in revealing the truth.

   iii. Recommend steps for rehabilitation for those who were prosecuted for human rights violations but

11 See: Pemerintah RI and Pemerintah RDTL, "Terms of Reference for the Commission of Truth and Friendship" (10 March 2005); KKP, *Laporan Akhir* (Jakarta-Dili: KKP, 2008).

proven innocent.

iv. Recommend the means to promote friendship among people based on cultural and religious values.
v. Recommend innovative and cooperative contact among people to achieve peace and stability.

While carrying out its mandate, the CTF was ordered to base its work on these principles:

(1) Principles in the Republic of Indonesia Constitution No. 27/2004 about the Truth and Reconciliation Commission, and in the RDTL Constitution No. 10 Year 2001 on the Acceptance, Truth and Reconciliation Commission, which are appropriate with the mandate of the CTF.
(2) The principle to consider the complexity of "'transition" in Indonesia in 1999 in order to strengthen the reconciliation and friendship between the two countries and nations.
(3) Based on the future approaches to reconciliation, the CTF process will not target prosecution but aim to enhance institutional responsibility.
(4) Enhance friendship and cooperation between the two governments and people from both countries and enhance reconciliation for the people both inside and among them to heal the wounds of the past.
(5) Not *a priori* to the judicial process of human rights violation cases that has been reported in Timor-Leste in 1999 and not recommending the establishment of any judiciary.

From August 2005, the CTF accomplished its tasks by: (1) examining the historical background, the dynamic of politics and the institutional structures that influenced the violence that occurred before and after 1999; (2) reviewing the documents of the HR CTF, CAVR, the SPSC-SCU and the Human Rights Ad Hoc Tribunal; and (3) eliciting the facts through open and closed hearings, statement taking, interviews and written submissions.

From those activities, the CTF finally finished the report on 15 July 2008 and concluded the context of violations as follows:

(1) The essence of the violent acts was caused by horizontal and vertical conflict patterns that had existed before.
(2) The violence that occurred was also created by the transitional situation in Indonesia from authoritarian state to democratic state (process of reform) in 1998, in which there was still no effective mechanism to depart from the repressive strategies and to reorder the power structure, especially that of the police and military. This uncertainty affected the effort by the government to execute its new power appropriately in a democratic climate.
(3) The Armed Forces of the Republic of Indonesia (formerly ABRI, then the TNI) claimed to have reformed itself into a professional military as of 1999. But the dynamic of politics, defence and security was still dominated by the former ABRI system with its dual function of total defence and security.
(4) The strong influence of ABRI's dual function system meant that the military was still robust and able to undermine control by civillian government because of flawed accountability policies, which facilitated unbridled violence.
(5) The strong influence of total defence and security systems enabled the creation of paramilitary groups that acted as the official supporting power for the military and government, and also as a means to obtain public funding.

(6) Institutional actions that caused the violence to climax in 1999 were the result of personal actions using violence. But, given that the mandate of the CTF was only to reveal institutional responsibility for violence that was organised and politically motivated, it noted the actions as the responsibility of institutions.

Concerning the human rights violations and institutional responsibility, the CTF concluded:

1. Serious human rights violations in the form of crimes against humanity occurred in East Timor in 1999. The violations included murder, rape and other form of sexual violence, torture, illegal arrest, forced eviction and deportation.
2. There was institutional responsibility for those violations.
3. Concerning the crimes that occurred to support the pro-autonomy movement, the CTF concluded that pro-autonomy militant groups, the TNI, the Indonesian government and the Indonesian police have to take institutional responsibility for the serious human rights violations against pro-independence civilians. Those crimes included murder, torture, illegal arrest, forced eviction and deportation.
4. Concerning crimes that occurred against supporters of the pro-independence movement, the CTF stated that the pro-independence movement groups were responsible for serious human rights violations in the form of illegal arrests of civilians suspected of being pro-autonomy.
5. The repeated patterns of organised involvement by institutions in serious human rights violations were the foundation for the CTF's conclusions about institutional responsibility. The commission concluded—because of the character, scope of involvement and from a moral and political perspective—that the state should take responsibility for human rights violations that relate to those institutions, as identified in the report.
6. Considering that from the time of Timor-Leste's independence there were no pro-integration and pro-independence groups left, the CTF stated that the institutional responsibility for those groups would be only symbolic. The state had a political and moral obligation for serious human rights violations that had been committed by groups, which have historical links with the state, even when those groups no longer exist or have been transformed significantly. Consequently, the government of Timor-Leste is responsible for the illegal arrests, which is a serious violation of human rights on the part of pro-independence groups. Meanwhile, the government of Indonesia is responsible for serious human rights violations that were conducted by militant groups with the support and/or knowledge of Indonesian institutions and the participation of their members.

The CTF makes some recommendations, which can be thematically categorised:
(1) Accountability and institutional reform;
(2) Joint border and security policy;
(3) Conflict resolution and the provision of psycho-social services for victims;
(4) Eonomy and asset problems;
(5) A commission for persons who have disappeared;
(6) Admission; and
(7) Long-term aspirations.

For improved accountability in the institutions that are responsible for maintaining peace and security, the CTF did not recommend amnesty or rehabilitation for anyone.

The CTF recommended a series of urgent institutional reform steps: (1) human rights training, focusing particularly on the role of armed forces and intelligence organisations in political conflict; and mass demonstration and civil riots, emphasising the roles and obligations of military and intelligence personnel to maintain their neutrality in political constellations; (2) human rights training, focusing particularly on the role of certain civil institutions in the planning and prevention of civil and political conflict through mediation, conflict resolution methods and development of a culture of understanding; (3) enhancing the capability and effectiveness of institutions or boards that are assigned to investigate and prosecute human rights violations committed by security actors; (4) special training programmes for military, police and civil officers to enhance protection for women, children and other vulnerable groups; and (5) military doctrines, institutional practices and transformation of attitudes from independent or revolutionary army to professional armed forces appropriate to a modern democratic state.

In relation to border and defence policy, the CTF recommended the government of Indonesia and the RDTL: (1) create a Visa Free Peace Zone, which already exists informally on the Timor-Leste and West Timor border, to build bilateral communications, cultural exchange and economic development; (2) enhance security on the border of the two countries with field cooperation mechanisms, coordination and training that involves joint patrols and joint border posts; (3) make an agreement on water and land boundaries of the two countries; (4) develop the professionalism of border security personnel; and (5) consider a process to enable "safe crossing" by an Indonesian citizen with a Timor-Leste descendant and/or a Timor-Leste citizen with an Indonesian parent, based on the law.

Related to encouraging conflict resolution and allocating psycho-social services for the victims, the CTF recommended a Centre of Documentation and Conflict Resolution, which was designed to enhance the inclusive and comprehensive understanding of the past between the people of the two countries during programmes for the victims.

Related to the economic and asset problem, the CTF recommended that both governments hasten closure of the problem through decisions on the status of state and private assets and the management of retirement programmes for former state employees.

Related to the establishment of the commission for missing persons, the CTF recommended the governments of the two countries cooperate in fact-finding and information seeking, and establish a commission for missing persons.

For the recommendation on admission, the CTF recommended various parties related to the violence in 1999 to admit to their actions, officially apologise and commit to taking every step to prevent similar events from recurring.

Finally, related to the long-term general aspirations of enhancing friendship and reconciliation between the people of Indonesia and Timor-Leste, the CTF suggested an educational cultural exchange, cooperation and

support for the health sector, efforts to promote a culture of peace, honouring the supremacy of law and human rights and developing bilateral programmes to honour and preserve the memory of those who died in 1999.

Follow up by the Government of Indonesia and the RDTL to the CTF Report

After receiving the CTF report, the government of Indonesia and the RDLT made a joint statement in Nusa Dua, Bali on 15 July 2008 admitting their acceptance of the CTF's findings, conclusions and recommendations.[12] President Susilo Bambang Yudhoyono, as the representative of the government of Indonesia, and President Jose Ramos Horta and Prime Minister Xanana Gusmao, as the representatives of the RDTL government, stated their deep regret to all parties and victims, which directly or indirectly had experienced physical and psychological wounds because of the serious human rights violations.

They stated their commitment to execute the recommendations by the CTF and other initiatives that are needed to further enhance friendship and reconciliation. Both countries will follow up the CTF report by executing actions that emphasise victim-oriented programmes. Those programmes will be discussed in the Joint Ministerial Commission agenda. The government of Indonesia and the RDTL also stated that they would convey the report to each parliament and would assign their respective ministers of foreign affairs to make joint presentations to the international community.

In other words, both governments would not demonise the suspects of human rights violations in East Timor. They would only remember that there were suspects and victims and thereafter they would encourage optimism for a better life for the victims and generate friendship between the people of both countries, in accordance with the CTF's motto *Per Memoriam Ad Spem*: from memories to hope. This signals that the road to the investigation and adjudication of those suspected of human rights violations in East Timor will be more difficult to cut.

Civilians' Responses to the CTF

Most civilians in Indonesia, Timor-Leste and the international community condemned the establishment of the CTF until it presented its report.

When the CTF was due to be created, there was much criticism by the HAK Association (Legal Aid Foundation in Timor-Leste), labelling it "a sophisticated manipulation by the rulers to deny the truth which already exists and prevent the suspects from the process of responsibility."[13]

Whilst working from August 2005–July 2008, the CTF received negative responses from the UN. In a press release dated 26 July 2007, the UN Secretary-General Ban Ki-moon stated that the CTF Terms of Reference included possible amnesty for suspected parties of human rights violations in East Timor. Therefore, the UN

12 See: Pemerintah RI and Pemerintah RDTL, *Pernyataan Bersama Pemerintah RI dan Pemerintah RDTL tentang Laporan KKP* (Nusa Dua, Bali, 15 July 2008).
13 Perkumpulan HAK, "Pengantar Penerbit" in *Kebenaram bukan Pembenaran: Kumpulan Laporan Penyelidikan Pelanggaran Berat Hak Asasi Manusia di Timor Leste 1999* (Dili: Perkumpulan HAK, 2005), x.

would not approve the existence of the CTF and would not send UN staff to give evidence unless the framework was revised according to international standards and respect for human rights and the law of the international humanity.[14]

In the course of its duty, strong criticism was leveled at the CTF from several representatives of civil society organisations (*organisasi masyarakat sipil* or OMS) in Indonesia, Timor-Leste and the international community.[15] On 23 July 2007, they sent an open letter to the president of the Republic of Indonesia and the president of the RDTL that consisted of rejections of the CTF because:

1. There was no legitimacy for the CTF. This statement was based on three main factors: there was a thought that the CTF was established to prevent the International Criminal Court from adjudicating those accused of committing crimes against humanity in Timor-Leste in 1999; there was no effort to investigate the crimes that had occurred before 1999; and the possibility for amnesty, or the avoidance of accountability.
2. There was no clear procedure in the CTF to review the evidence related to the violence in 1999 and to reach an agreement about those facts. Moreover, the significant Indonesian institutions failed to give relevant letters.
3. The CTF general session was flawed because: some of its members were not impartial; evidence that was irrelevant to the CTF's mandate was heard; there was no process to compare the existing evidence with the facts that had been revealed in former court proceedings; there was conflict among the members of CTF-Indonesia and the members of CTF-Timor-Leste; there was no support or protection for the victims who gave evidence; the evidence was of an ad hoc nature; there was an imbalance in the number of victims to suspects who gave evidence; and the CTF was used as a court thus providing the opportunity for suspects to blame the UN and other institutions for the violence.
4. There was no transparency, clear objectives or clear schedule to the execution of the CTF's tasks.[16]

On the day before the CTF gave the report to the president of Indonesia and the president of the RDTL, ETAN (the East Timor and Indonesia Action Network)[17] called for real justice for the victims of Indonesia's occupation and declared the necessity for an international tribunal to respond to the CTF report. That was because the CTF was forbidden to mention suspects' names or recommend the best way of serving the interests of justice. It

14 United Nations Secretary-General Press Release, "Secretary-General says UN Officials will not Testify at Timor-Leste Commission, as Terms of Reference Include Possible Amnesty for Human Rights Violations," No. SG/SM/11101 (26 July 2007).

15 The civil society representatives are: Yasinta Julinta (La'o Hamutuk [Timor-Leste Institute for Reconstruction and Analysis]), Rosa Maria de Sousa (FOKUPERS [Communication Forum for Timor-Leste Women]), Jose Luis Oliveira (HAK Assiociation, Timor-Leste), Casimiro Dos Santos (JSMP [Judicial System Monitoring Programme], Timor-Leste), Nicolau Alves (Timor-Leste National Alliance For International Tribunal), Edio Saldanha (victims' family representatives, Timor-Leste), Maria Afonso de Jesus Rate Laek (Liquisa Victim Group, Timor-Leste), Carolina do Ceu Brito (Nuno Rodriguez [Institution for Popular Education], Timor-Leste), Sisto do Santos (front Esdutante Timor-Leste, Timor-Leste), Maria Angelina Sarmento (Timor-Leste NGO Forum [FONGTIL]), Dr. Mark Bryne (Australian Coalition for Transitional Justice in East Timor), Sister Josephine Mitchell and Sister Susan Connelly (Mary MacKillop East Timor), Rob Wesley-Smith (AFFET [Australians for a Free East Timor], Darwin), Antonio Dias and Bruno Kahn (Agir pour East Timor, France), John M. Miller (East Timor and Indonesia Action Network, USA), James Goldston (Open Society Justice Initiatives, USA), Sharon Silber & Eileen B. Weiss (Jews Against Genocide, USA), Sr. Sheila Kinsey (Justice, Peace & Integrity of the Creation Office of the Wheaton Franciscans, USA), James Kofski (Maryknoll Office for Global Concerns, USA), Ed McWilliams (West Papua Advocacy Team, USA), Mark C. Johnson (The Fellowship of Reconciliation, USA), Gabriel Jonsson (Swedish East Timor Commission), Ivan Suvanjieff (PeaceJam Foundation, USA), Rafendi Djamin (HRWG [Human Rights Working Group], Indonesia), Usman Hamid (KONTRAS, Indonesia), Rusdi Marpaung (Imparsial, Indonesia), Garda Sembiring (PEC-People's Empowerment Consortium), Mugiyanto (IKOHI [Ikatan Keluarga Orang Hilang Indonesia]), Muridan S. Widjojo (Research Institute for Democracy and Peace [RIDEP], Jakarta), Gus Miclat (Asia-Pasific Solidarity Commission [APSOC]), Anselmo Lee and Tadzrul Tahir Hamzah (Asian Forum for Human Rights and Development [FORUM-ASIA]), Roger S. Clark (International League for Human Rights), Graeme Simpson (International Center for Transitional Justice), Charles Scheiner (International Federation for East Timor [IFET]), Maire Leadbeater (Indonesia Human Rights Committee, New Zealand), Carmel Budiarjo (TAPOL, the Indonesia Human Rights Campaign, UK), and Christine Allen (Progressio, UK).

16 "Open Letter to the Presidents of the Republics of Indonesia and Timor-Leste regarding the Indonesia-Timor-Leste Truth and Friendship Commission" (23 May 2007), http://www.etan.org/news/2007/05ctf.htm.

17 ETAN, *Etan menyerukan kembali tuntutan keadilan sesungguhnya bagi korban pendudukan Indonesia: Pengadilan Internasional Perlu untuk menyikapi laporan KKP* (14 July 2008), http://www.etan.org/news/2008/07ctf.htm#Bahasa.

meant that impunity was to prevail for the countless number of Indonesian suspects of various crimes against humanity in Timor-Leste. Therefore, the CTF report was not improved upon to advocate justice for thousands of victims and their families.

After the CTF gave its final report on 15 July 2008, ANTI (the Timor-Leste National Alliance for an International Tribunal) sent an open letter to the higher officers and the people of Timor-Leste.[18] In the letter, titled "The truth is there, now we need justice,"[19] ANTI rejected the CTF report because:

(1) The CTF did not carry out a public consultation with the victims and their families therefore it was identified as a non-starter as far as the interest of justice for the victims was concerned.

(2) The CTF was not in agreement with the provision of the Timor-Leste Constitution as it was established only with the signature of the president of the RDTL and the Republic of Indonesia without any agreement from the National Parliament of Timor-Leste.

(3) The CTF's findings and recommendations were nothing new for the people of Timor-Leste as most of these were already contained in the reports of CAVR, the HR CTF, the UN High Commission for Human Rights and the SPSC, which stated that all crimes that happened in 1999 were systematically organised against humanity and in accord with the definitions of the Statute of Rome and the International Criminal Court.

(4) The CTF only concentrated on institutional responsibility and not on individual responsibility. It was contradictory to the principles of international law that had been ratified by Timor-Leste and Article 160 of the Timor-Leste Constitution, which states that the courts were obliged to process all cases of crimes against humanity.

ANTI rejected the recommendation of the CTF on the establishment of a monitoring and disseminating commission assigned to carry out the CTF's recommendations for five years. This was because ANTI saw the new commission as a drain on money, making some people richer, without bringing justice to the victims and the families who were still living. Therefore, ANTI hoped the UN would not give any help to the commission. ANTI recommended the UN to fund the institutions that fulfilled the mandate of CAVR because CAVR, unlike the CTR, promised justice.

Moreover, ANTI requested the National Parliament of Timor-Leste to implement the recommendations of CAVR immediately, in accordance with the Constitution of Timor-Leste, which stated that justice must be upheld and the national reparation movement for the victims and their families must be executed. Besides that, ANTI pushed for parties who were responsible for the crimes against humanity in East Timor to be judged in the International Criminal Court and asked the CTF to report to the citizens about their USD 2.125 million budget for the sake of transparency and accountability in accordance with the principles of good governance.

18 The President of Timor-Leste Jose Ramos Horta, the President of Timor-Leste's National Parliament Fernando Lasama, Prime Minister Xanana Gusmao, the President of Timor–Leste's Special Tribunal Caludio Ximenes, the East Timor Attorney General Longuinhos Monteiro, the UN Representative in East Timor Atul Khare, all ambassadors in Timor-Leste, all political parties in Timor-Leste, the mass media and citizens.

19 ANTI, "An Open Letter in response to the CTF report: The truth is there, now we need justice" (15 July 2008).

Civil Society Advocacy Evaluation for the CTF

Civilian responses emerged not exclusively from Indonesia and Timor-Leste but from the international community as well. By virtue of this response, the transition of Timor-Leste has become a communal one. The solidarity for justice from civil society across many parts of the world was a sign that the advocacy efforts of civil society in Timor-Leste were acknowledgeded and were a force to be reckoned with. It was because of global solidarity networks that civil society advocates for the East Timor cases also had an authoritative and alternative reference point, such as the CAVR report and the UN Commission of Experts, to critique and posit solutions on the status quo of decisions by the government of Indonesia, the Government of the RDTL and the CTF.

The civilians of Indonesia and Timor-Leste have strong international networks and UN support, which can wield great influence. If they are dissatisfied with the settlement for East Timor, they could internationalise this sentiment via their international networks. If their advocacy is globalised already, then the government of Indonesia and the RDTL could be pressured more easily to implement a more ideal settlement. And if the pressure were stronger and yielded positive responses, civil society advocacy would then have fulfilled its *raison d'être*.

However, advocates for the East Timor case faced more complex challenges than in 1999. In the past, it was "easier" to rally the international community to urge the Indonesian government to pay more attention to human rights conditions in East Timor because of the support from the pro-integrated people in East Timor. Now, some of those pro-integrated people have become part of the political elite of Timor-Leste. In the political field, they sometimes chose pragmatism and abandoned their previous idealism. It can be seen from the establishment and responses to the CTF report that those Timor-Leste elites chose to maintain good relations with the elites of Indonesia in the interests of "the friendship of the two nations," rather than deliver judgement on the suspects of human rights violations.

The advocacy efforts of OMS advocacy can be seen in this table:

Power	Opportunities	Challenges
Civil society in Indonesia and Timor-Leste has strong international networks	Transitional Justice issue is a communal issue	The changes of Timor-Leste elites from political idealism to pragmatism
Have an authoritative alternative referral	Obtain support from the UN	

Epilogue

Even though human rights advocacy in East Timor is hampered by numerous challenges, it still continues with intensity.

The CTF findings and recommendations that had been accepted by the governments of Indonesia and the RDTL are apparently not so final.[20] Because the report accentuated friendship more than the truth,[21] it consequently ignored the investigation of human rights violations in East Timor and did not deserve to be called the "perfection" of all efforts to reveal the truth.

It would be far better if the civil society of human rights defenders in Indonesia, Timor-Leste and the international community supported the UN in implementing the recommendations of the UN Commission of Experts and CAVR. Its outcomes presented more positive implications for the honour of human rights in the future than the report of the CTF. In other words, CSOs have to push the UN in creating the legal process to adjudicate crimes against humanity, war crimes and other serious crimes that were committed by the Indonesian armed forces during the occupation of Timor-Leste.

References

ANTI. "An open letter in response to the CTF report: The truth is there, now we need justice." 15 July 2008.

CAVR. *Chega!,* Dili: CAVR, 2005.

Commission of Experts. "Report to the Secretary-General of the Commission of Experts to Review the Prosecutions of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999." S/2005/458. 15 July 2005.

Dunn, James. "Crimes against Humanity in East Timor, January to October 1999: Their Nature and Causes." 14 February 2001, hhttp://www.etan.org/etanpdf/pdf1/dunn.pdf.

ETAN. *ETAN menyerukan kembali tuntutan keadilan sesungguhnya bagi korban pendudukan Indonesia: Pengadilan Internasional Perlu untuk menyikapi laporan KKP*. 14 July 2008, http://www.etan.org/news/2008/07ctf.htm#Bahasa.

Hirts, Megan. *Too much Frienship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste*. New York: ICTJ, 2008.

"International Coalition Urges UN to be Active for Justice for East Timorese" (1 June 2008), http://www.etan.org/news/2008/056moon.htm.

KKP. *Laporan Akhir.* Jakarta-Dili: KKP, 2008.

KPP HAM. *Laporan Akhir.* Jakarta: Komnas HAM, 2000.

Pemerintah RI and Pemerintah RDTL. *Pernyataan Bersama Pemerintah RI dan Pemerintah RDTL tentang Laporan KKP*. Nusa Dua, Bali, 15 July 2008.

Pemerintah RI and Pemerintah RDTL. "Terms of Reference for the Commission of Truth and Friendship." 10 March 2005.

Perkumpulan HAK. *Kebenaran bukan Pembenaran: Kumpulan Laporan Penyelidikan Pelangggaran Berat Hak Asasi Manusia di Timor Leste 1999.* Dili: Perkumpulan HAK, 2005.

20 See: "International Coalition Urges UN to be Active for Justice for East Timorese" (1 June 2008), http://www.etan.org/news/2008/056moon.htm.

21 Megan Hirts, *Too much Frienship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste* (New York: ICTJ, 2008).

Por, Julius. *Benny Moerdani: Profil Prajurit Negarawan.* Jakarta: Yayasan Kejuangan Panglima Besar Sudirman, 1993.

Robenson, Geoffrey. *Kejahatan terhadap Kemanusiaan: Perjuangan untuk Mewujudkan Keadilan Global.* Jakarta: Komnas HAM, 2002.

"Surat Terbuka kepada Presiden Republik Indonesia dan Presiden Republik Demokratik Timor Leste tentang Komisi Kebenaran dan Persahabatan Indonesia-Timor-Leste (Open Letter to the Presidents of the Republics of Indonesia and Timor-Leste Regarding the Indonesia-Timor-Leste Commission of Truth and Friendship)." 23 May 2007, http://www.etan.org/news/2007/05ctf.htm.

United Nations General Assembly. "Identical Letters Dated 31 January 2000 from the Secretary-General Addressed to the President of the General Assembly, the President of the Security Council and the Chairperson of the Commission on Human Rights." S/2000/59 and A/54/726. 31 January 2000.

United Nations General Assembly. "Situation of Human Rights in East Timor." A/54/660. 10 December 1999.

United Nations Secretary-General Press Release. "Secretary-General says UN Officials will not Testify at Timor-Leste Commission, as Terms of Reference Include Possible Amnesty for Human Rights Violations." No. SG/SM/11101. 26 July 2007, http://www.un.org/News/Press/docs/2007/sgsm11101.doc.htm.

DDR in Aceh and Justice in the Transition Period

Saiful Haq

DDR and Human Rights

Disarmament, demobilisation and reintegration (DDR) is an approach designed to return combatants[1] to the community. DDR is an integral programme in peacekeeping operations and in post–conflict situations. DDR has been implemented in several countries that had their share of either social, ethnic or secessionist conflict. Some countries used a DDR programme as a part of national security sector reform in an effort to reduce the number of its armed forces. Therefore, DDR can be used not just for post-conflict programmes but also for peacetime or transitional periods. This programme does not always use all three elements simultaneously. In practice, each aspect can be pursued separately based on specific needs and goals. There is no fixed model outlining the execution of a DDR programme. Its application is heavily influenced by the nature of the conflict, local context and the agreement of the disputing parties. Sometimes a DDR programme is part of a reconstruction and reconciliation post-conflict programme. DDR is an important combination of military and civilians in a peace process,[2] the substance of which is the continuation of the peace and development process.

> **Disarmament/decommissioning** is an activity or programme that is designed to disarm combatants. Weapons are given to an authorised party or to the party who has agreed to accept, safely store, redistribute or destroy them. The target of this activity includes small arms, heavy weapons, explosives and ammunition etc. This phase is aimed at reducing the distribution of small arms and light weapons (SALW) in public. This action is the main condition before entering the next phase.

> **Demobilisation** in the context of DDR is the discharge of fighting activity and the effort to reduce and disperse a military unit or armed forces. The goal of the demobilisation programme is to undertake registration, calculate the total number of personnel and monitor the activities of combatants post-disarmament. This programme also undertakes to verify combatants' documents and simultaneously collect information about their needs before their return to the community. This programme provides for medical check ups to ensure combatants do not have any communicable or transmittable diseases

1 In this chapter, the definition of combatant is not only an individual who uses weapons during conflict but includes all individuals who join in (including in logistics, administration and communication). A combatant is an individual who is actively involved in armed conflict, who uses not only heavy weapons but also small arms and light weapons (SALW).

2 Ian Douglas, et al., *Disarmament, Demobilisation and Reintegration* (GTZ, 2004).

that could potentially cause an outbreak or epidemic in the community.

This further enables appropriate medical treatment to combatants who have health problems. It also provides aid towards the cost of short-term living and transportation back to the community. A demobilisation programme has to guarantee the reduction of the number of military personnel and the dispersion of a combat unit.

Reintegration is a programme via which combatants can reclaim their social, political and economic status as civilians and be equal with other community members. Not only for ex-combatants, this programme is also directed at internally displaced person (IDPs). Reintegration is a social and economic process that occurs over an unlimited period. Post-conflict reintegration has to be an inseparable part of area development, which is also part of the state's responsibility. The main goal of a reintegration programme is to support ex-combatants in their efforts to achieve social and economic integration within the community. After disarmament/decommissioning and demobilisation, the reintegration process is expected to be able to help combatants find their life pattern as civilians. This is based on the individual ex-combatant and includes a guarantee of the needs and skills for social and economic integration.

At this point, a DDR programme will be linked to human rights principles, either through political, civil, economic, social and cultural rights. Because DDR is a long-term programme (especially reintegration), the principle of human rights fulfillment in this process is the main condition. In the practice of reintegration, the transition from demobilisation to reintegration needs a short-term programme to fulfill the needs of ex-combatants on their return to the community. In the orientation process, almost all cases of ex-combatants who lost their orientation felt secluded in their neighborhood and uncomfortable in that particular place. This is the psychological impact of conflict. It is necessary to think about the reconciliation plan to overcome these problems.

In the effort to reintegrate ex-combatants into the community, guarantees of resettlement and land access, which represent physical and social assurance, have to be made. When the returned ex-combatant no longer possesses a house or land, then the reintegration process must ensure the provision of such, particularly when the community into which they are being reintegrated is nervous about their return. Afterward, this programme can be integrated with national land reform programmes. In addition, there is also a necessity for access to training and employment, which guarantees that an ex-combatant has the necessary training for his/her return to society so that they will not become a social burden or unemployed—which may push them to return to conflict. Besides, the government has to provide the incentive for working and facilitate access to the economy and labour market.

The most decisive point in the reintegration process is promoting social integration within the state. This effort can be started with reconciliation programmes to find what has been called "social equilibrium" to achieve integration and cohesion between individuals, social groups, political entities and other parties that were once in confrontation. Reconciliation programmes prioritise truth revealing, compensation for loss, forgiveness and commitment to live together in the future. Hence the campaign about tolerance, pluralism, mutual respect and togetherness to embody perpetual peace is needed. In some cases, these programmes are facilitated by state

commissions and combined with truth revealing, the judicature of human rights violations and crimes as well as peacebuilding programmes.

One of the most important things that has to be utilised in this process is social capital; in particular, the values that occur in the community can be used to promote reconciliation and social reintegration. Special concern has to be given to the victims of the conflict who still suffer from psychological trauma or post-traumatic stress disorder (PTSD). If this factor is one that has the potential to hinder the social reintegration effort, then it is necessary to put in place a trauma healing programme or provide psychological consultations with various approaches.

A Brief Review of the Aceh Conflict

Soekarna and Hatta[3] announced the independence of the Republic of Indonesia on 17 August 1945. Not long after, in October 1945,[4] Tengku Daud Beureuh—together with several socio-political leaders in Aceh such as Tengku Ahmad Hasballah Indrapuri and Tengku Hasan Krueng Kalee—made an announcement that stated their support for the independence of the Republic of Indonesia and faithfully pledged to defend the republic under Soekarno. Three years after the proclamation of independence, the people of Aceh donated a plane called *Seulawah*.[5] In 1949, through the initiatives of Tengku Daud Beureuh,[6] the people of Aceh collected for the government of Indonesia as much as US$250,000 for the Indonesian Armed Forces (the TNI), US$50,000 to build the Indonesian government office, US$100,000 to move the central government of Indonesia from Yogyakarta to Jakarta and US$100,000 for the operational budget for officials of the Indonesian government.[7]

Then why did they revolt against the Indonesian government? In 1950, the government of Indonesia released the Government Regulation to Replace Law No. 5/1950,[8] which dissolved the Province of Aceh and joined it with the North Sumatran Province. It also discharged Tengku[9] Daud Beureuh from his position as military governor.[10] The people of Aceh saw these decisions as acts of betrayal. They thought the government of Indonesia had broken its promise as two years before, on 16 June 1948, Soekarno had visited Aceh and pledged, in the name of Allah and in front of the people of Aceh, that they had the right to conduct their religion under Islamic Law. Those feelings of betrayal caused Tengku Daud Beureuh to declare on 20 September 1953 the establishment of the Indonesian Islamic State (NII) or Darul Islam/Indonesian Islamic Armed Forces.[11] This declaration was also

3 Soekarno and Hatta declared Indonesian independence and became the first president and vice president of the Republic of Indonesia. The declaration of independence of the Republic of Indonesia was announced at 10 AM in No. 55 Pengasaan Street, Jakarta.

4 This event is known as "Makloemat Oelama Seluruh Atceh." In that proclamation it was stated "… to defend the Republic of Indonesia is a holy struggle and believed as Sabil war." This proclamation was closed with a call for all people of Aceh to obey the command of the leader of Indonesia for the salvation of the countries, religion and nation. (Neta S. Pane, "Sejarah dan kekuatan Gerakan Aceh Merdeka" (Grasindo, 2001), x; *Majalah Tempo*, Special Edition (17 August, 24 August 2003), 48).

5 "Seulawah" in Aceh languages means "gold mountain."

6 Teungku Muhammad Daud Beureuh was born in Beureuh Village in 1898. He was the leader of DI/TII who declared war against the Government of Indonesia since 1953. He was also the leader of the Union of Moslem Scholars for Entire Aceh (PUSA). He was the military governnor of the Province of Aceh from 1949 until the government of Indonesia discharged him in 1950. He died in 1987 (*Tempo Magazine*, Special Edition (17 August, 24 August 2003), 40).

7 Pane. "Sejarah dan kekuatan…" (2001), x.

8 The dispersal of Aceh Province was done by the Halim Perdanakusumah cabinet, signed by President Official Mr. Asaat and Minister of Internal Affairs Susanto Tirtoprodjo (Ibid., 8).

9 "Teungku" is a title given to a Muslim scholar because of his firmness to uphold Islamic values.

10 Teungku Daud Beureuh became the military governor through the Republic of Indonesia's Emergency Government Decree No. 8/Des/WKPH of 7 December 1949, which was signed by the President of the Emergency Government the Republic of Indonesia (PDRI) Syafrudin Prawiranegara in Banda Aceh (Ibid.).

11 NII or DI/TII was declared by Kartosuwiryo in West Java on 7 August 1949. Although separate and independent, Daud Beureuh in Aceh and Kahar Muzakkar in Makassar supported the establishment of an Indonesian Islamic State (NII) and each of them conducted the separatist movements in their own region.

one of war against the Republic of Indonesia and became a signal of the end of the Indonesian government's authority in Aceh. This war raged until 26 December 1962 when Aceh was given Special Area status.

Under Suharto's regime,[12] the centralist government controlled any economic development needs from Jakarta through the exploitation of natural resources in Aceh. The people of Aceh felt that Suharto had denied them Special Area status and the ability to implement Islamic Law in Aceh. They felt that Suharto had neglected the welfare of three million people in Aceh. In this situation, ex-DI/TII who had returned to the community felt it was important to consolidate forces against the central government in Jakarta. The result of the consolidation was the declaration of independence by the Free Aceh Movement (*Gerakan Aceh Merdeka* or GAM) or the Aceh Sumatera Liberation Front (ASNLF) on 4 December 1976 when Hasan Tiro[13] became the leader.

The government of Indonesia stated that GAM/ASNLF was a separatist movement and in June 1977 military operations were immeditely undertaken to destroy GAM by sending the Army Paratrooper Command (RPKAD).[14] The Indonesian government decreed Aceh as a Military Operation Area (DOM) from 1989 to 1998.

Even after the fall of Suharto, brought about by the reform movement in May 1998, conflict in Aceh was not over. In the transition era from 1998–2000, since the government of Habibie (1998–1999) and to the government of Abdurrahman Wahid (1999–2001), military operations were still being carried out. These included the Wibawa Operation (since January 2001), the Sadar Rencong I Operation (May 1999–January 2000), the Sadar Rencong II Operation (Februari 2000–May 2000), the Sadar Rencong III Operation (June 2000–February 2001), the Cinta Meunasah Operation (June 2000–2001) and the Cinta Damai Operation (2001–2002).[15]

In 2002, Megawati Soekarnoputri[16] became the president of Indonesia through the victory of the Indonesian Democracy Party (PDI) with nationalist leanings. The situation in Aceh was getting volatile and, through Presidential Decree No. 28/2003 (issued in May 2003), Aceh came under the State of Military Emergency status. The civil government at the provincial level was replaced by the commander of the State of Military Emergency and Aceh became a zone of militarisation. The Indonesian Armed Forces (TNI) deployed 50,000 personnel to Aceh. Military emergency status was maintained until May 2004. On 19 May 2004, President Megawati lowered the State Military Emergency to State Civil Emergency. This lasted until 19 November 2004. The State Civil Emergency status was not discharged until the Helsinki Peace Agreement on 15 August 2005.

In December 2004, Susilo Bambang Yudhoyono[17] became the president of Indonesia and, on 26 December 2004, an earthquake and tsunami destroyed Aceh. More than 200,000 deaths and severe losses occurred. This incident was the catalyst to the prospect of peace between GAM and the Government of Indonesia. Finally, on 15 August 2005, a peace agreement between the Indonesian government and GAM was signed, which

12 Suharto was the president of Indonesia for thirty-two years. He fell from power because of a reform (Reformasi) movement.

13 Hasan Tiro was born in Pidie on 4 September 1930. He studied law at Columbia and Fordham University, he was the ambassador of the Aceh Islamic State for the UN in 1954, and he was also the president of a big oil company, Doral International, which also worked in Agricultural and Banking Field. Hasan Tiro got a master's degree in law in 1975 and now lives in Sweden from where he controls GAM's struggle (Shane Barter, "Embracing Civil Society in the Aceh Conflict," *The Asian Forum Report* (Bangkok, 2002), 33.

14 RPKAD is one of the elite units in the Indonesian Army, now known as the Special Force Command (KOPPASUS).

15 KontraS, "Aceh Damai Dengan Keadilan?" (Jakarta: KontraS, 2006), 93–149.

16 Megawati Soekarnoputri is the daughter of Soekarno (Indonesia's first president). She replaced Abdurahman Wahid as president after the People's Consultative Agency of the Republic on Indonesia discharged Wahid.

17 Susilo Bambang Yudhoyono, a general of the Indonesian Armed Forces, was the minister of politics and security coordinator in the government of Megawati. Susilo Bambang Yudhoyono agreed to deploy 50,000 troops in Aceh in 2003.

manifested itself in a memorandum of understanding (MoU)—a peace agreement that was undertaken by the mediation of the Crisis Management Initiative (CMI), the European Union (EU) and some ASEAN countries. This agreement was signed by both parties in Helsinki.

Seven months after the signing of the MoU in Helsinki, GAM handed back 840 weapons to the Aceh Monitoring Mission (AMM) and then, as stated under the terms of the peace agreement, 31,680 TNI personnel and police personnel were withdrawn from Aceh. All GAM combatants returned to the community.[18]

After the process of disarmament/decommissioning and demobilisation, the MoU was also given the mandate to implement the reintegration process for ex-combatants of GAM and political prisoners in Sumatra and Java. The planning of the reintegration programme also had conditions for compensation programmes for the people of Aceh for damage to houses, the loss of property, public facilities that were damaged and also compensation for the victims of the conflict—either dead, missing or physically disabled. Until today, the reintegration programme goes on with many notes about the obstacles and dissatisfaction experienced.

DDR and Peace in Aceh

The legal foundation for the DDR programme in Aceh began in the memorandum of understanding (MoU)—to build trust upon the political will of the Indonesian government. Point 3.1 of the MoU stated that all persons who had participated in GAM activities be granted amnesty and released no later than within fifteen days of the signature of the MoU. All political prisoners and detainees held due to the conflict were also to be released unconditionally within fifteen days.

Point 3.2 on reintegration stated that the government of Indonesia was obliged to provide rehabilitation. As citizens of Indonesia, those freed and/or to whom amnesty was granted will have all political, social and economic rights, as well as the right to freely participate in the political process in Aceh and at the national level. Additionally, persons who renounced their Indonesian citizenship during the conflict had the right to regain it, to the provision of economic facilitation to former combatants, to the allocation of funds for the rehabilitation of public and private property destroyed or damaged, to the allocation of suitable farming land, to adequate social security and the right to seek employment in the organic police and organic military forces without discrimination and according to national standards.

Point 4 of the MoU on the security arrangement stated that all acts of violence between parties should end at least at the time of the signing of the MoU. GAM undertook to demobilise all of its 3000 military troops immediately and GAM members were not to wear uniforms or display military insignia or symbols after the signing of the MoU. GAM had to: hand over its 840 arms; carry out the decommissioning of GAM armaments (to begin on 15 September 2005 and to be concluded by 31 December 2005); the Indonesian government had to withdraw the elements of non-organic military and non-organic police forces from Aceh; the number of organic military forces to remain in Aceh after the relocation could not exceed 14,700; and the number of organic police

18 Aceh Monitoring Mission (AMM) report, "Decommissioning and Redeployment," http://www.aceh-mm.org/english/headquarter_menu/decom.htm.

forces to remain in Aceh after the relocation could not exceed 9,100. It also stated that there would be no major movements of military forces after the signing of the MoU, the government of Indonesia was to undertake the decommissioning of all illegal arms, ammunition and explosives held by any possible illegal groups, organic police forces would be responsible for upholding internal law and order in Aceh while military forces would be responsible for upholding the external defence of Aceh. In this context, the members of the Aceh organic police force were to receive special training in Aceh and overseas, with emphasis on respect for human rights.

Accordingly, on 17 August 2005, 289 political prisoners were released and granted amnesty and about 2,000 more prisoners were dischared on 31 August 2005.[19] Disarmament/decommissioning was implemented in four steps, starting in September 2005. The table below reveals the number of weapons that were handed over by GAM to AMM (the Aceh Monitoring Mission).

The Total Number of Weapons Handed Over by GAM in the Disarmament/Decommissioning Programme

Stage	Weapons Handed Over	Weapons Disqualified	Weapons Received
I (September 2005)	279	36	243
II (October 2005)	291	58	233
III (November 2005)	286	64	222
IV (December 2005)	162	20	142
Total	**1018**	**178**	**840**

To end the disarmament/decommissioning process, on 27 December 2005, GAM officially stated that it had dispersed its Aceh Freedom Movement's military wing (*Teuntara Neugara Atjeh* or TNA). At the same time, GAM demobilised its 3000 military personnel to return to society. While GAM handed over their weapons, the government undertook the redeployment of the non-organic army of the TNI and POLRI from Aceh. Redeployment was done in four steps.

The Total Number of Indonesian Armed Forces Personnel Withdrawn From Aceh

Stage	TNI Personnel	POLRI Personnel	Total Number of Personnel Withdrawn
I (September 2005)	6,671	1,300	7,971
II (October 2005)	6,097	1,051	7,147
III (November 2005)	5,596	1,350	6,964
IV (December 2005)	7,628	2,150	9,778
Total	**25,890**	**5,791**	**31,681**

19 AMM Report, *Amnesty, Reintegration and Human Rights*, www.aceh-mm.org.

Overall reintegration in Aceh involved: (1) the facilitatation of political integration for the people of Aceh post–conflict; (2) facilitating economic and social access to former GAM combatants so that they could be integrated within the general social and economic system; and (3) ensuring the safety of civilians after continuous conflict. These three points form the basis of the strategic framework in the reintegration of the Aceh security sector.[20]

There are several points worthy of note in the assessment of the DDR programme in Aceh. In the disarmament/decommissioning process there was some debate on the number of weapons possessed by GAM. In some cases, the *one combatant one weapon* pattern was very difficult to implement. In fact, the number of weapons handed over amounted to less than one per combatant. In Afghanistan, the level of weapons handed over is 0.75 per combatant, in Colombia 0.61, 0.28 in Liberia and 0.26 in Aceh.[21] However, the decommissioning process in Aceh is not expected to erase the existence of all weapons in Aceh but to be a symbol to all parties that war is over and therefore the society's confidence may be restored.

There is no exact number of TNI/POLRI organic personnel in Aceh after the military demobilisation. Since May 2006, some parties—including the KPA and NGOs in Aceh—have questioned the stance of the TNI that extended its Iskandar Muda (the Military Area Command [KODAM]) structure to the village level and the desire of the Aceh Provincial Police Area to recruit 500 new police personnel. Interestingly, the incidence of criminality has increased by 400% since the peace arrangements. These factors demonstrate the poor success of the reintegration process, especially in creating employment opportunities and creating social integrity within society.

Human rights violations are still occurring in Aceh, despite the implementation of the DDR programme. A working plan to overcome Aceh's human rights violations from the past, either in the form of a human rights court or the establishment of a commission of truth and reconciliation in Aceh, has yet to be formulated. Regretably, AMM's working period, which ended in December 2006, has not created sufficient momentum. Therefore, efforts to stimulate more programmes to maintain the peace process and keep political dialogue between GAM and the Indonesian government open, as well as establishing the settlement mechanisms after AMM, are swiftly passing by.

At the time of writing, the reintegration programme was still happening in Aceh. The mandate now is in the hands of the Aceh Peace Reintegration Board (BRDA). Despite a myriad of problems in implementing the DDR programme, it has made, nonetheless, some important contributions:

DDR created a demilitarisation zone in Aceh where previous endeavours, CoHA and also JUHP, did not facilitate disarmament and instead established cease-fire or weapon free zones. At the time of writing there were no reports of direct weapons contact between GAM and the TNI or other parties. There is little doubt that demilitarisation is vital and through the DDR programme, a crucial foundation to further the peace process has been laid. Without demilitarization, Aceh's development and democratisation process will be impossible to implement.

20 Bappenas, "Reintegrasi dan Pemberdayaan Sosial Ekonomi Masyarakat Aceh," presented at the Dialogue to Build Peace in Aceh, Banda Aceh (11–13 December 2005).
21 IANSA and Biting the Bullet, *Reviewing Action on Small Arms 2006: Assessing the First Five Years of the UN Programme of Action* (2006), http://www.iansa.org/un/review2006/redbook2006/index.htm.

The continuous conflict in Aceh has polarised various sides. In these terms, the DDR process in Aceh provided fundamental conditions for the creation of political, economic and social integration. The "violation trends" of the post-conflict area are an unpreventable phenomenon but the aims of reintegration—particularly the aspects of social and political integration through local elections and the establishment of local parties in the 2009 elections—convinced all parties that Aceh had returned to the state system of the Republic of Indonesia.

The DDR programme in Aceh also laid the foundations for the post-conflict development of a model where issues of security, democracy and development are prerequisite to the policy for maintaining and continuing the peace process. Some reintegration working agendas include the democratisation of the political system in Aceh, security arrangements within a human rights framework and respect for the Helsinki MoU. The most crucial development in post-confict Aceh is the obligation to peace as outlined in the DDR programme.

The DDR programme in Aceh directly contributes to the laying of foundations in three vital areas. These are political transformation towards democracy, post-conflict security arrangements and development transformation towards welfare. The context of democratisation in Aceh post-Tsunami and the continuous conflict is not a matter of political freedom, elections, a political party or a representative's institution but one related to the devolution (decentralisation) of economic and political resources from central control to the government of Aceh under the MoU and Aceh governmental law. At the same time, democratisation at the level of the Nangroe Aceh Darussalam Province is also a precondition for and consequence of the shifting power from central government to the people of Aceh. The government of Aceh should be supported with preconditions of democracy, democratic political institutions, accountability and transparency and active participation from its people. The area management under new authority has to fit in with the aspirations of the people and direct development for all. Without these considerations, decentralisation will only bring the people of Aceh from a centralised national oligarchy to a new decentralised local oligarchy.

The democratisation and development programme in Aceh has to be supported by security sector reform. The scope of security reform, especially in the post-conflict area, is open to much interpretation. Thus there are two things that need to be explained in relation to Aceh's security. First, every effort in the creation of peace to support political transition in Aceh towards democratisation and the development of justice has to prioritise the fulfillment of *human security* (economic security, food security, health security, environmental security, personal security, community security and political security). Second, efforts by law enforcement agents have to guarantee demilitarisation in Aceh as part of the DDR programme. The democratisation process in Aceh also has to assume the enforcement of civil supremacy over conduits of violence, such as the military, and promote the national formation of a professional military that is uninvolved in the political sector. Supporting the control of political and local bureaucracies over the tools of state defence is imperative in the context of post-conflict Aceh.

The Conflict Settlement in Aceh and the Fulfillment of Justice

As mentioned earlier in this chapter, the reintegration agenda can only be successfully achieved when the reintegration process combines: (1) the post-conflict reconstruction agenda; and (2) truth revealing and the fulfilment of justice. The reconstruction agenda in Aceh was fairly well conducted, though the truth and justice

agenda is unfortunately off target. The agenda that supports the establishment of a human rights court and the Commission on Truth and Reconciliation (CTR) for Aceh has been stated in the MoU (Memorandum of Understanding) in Helsinki. At the national level, this vital agenda is collapsing because of the abolition of the Commission on Truth and Reconciliation Law by the Constitutional Court that caused the Aceh CTR to lose its constitutional foundation. In Aceh itself, the formulation of draft local regulations (*Qanun*) on the CTR did not receive a warm welcome from the local political authority. This inclination to neglect the truth and satisfy the justice agenda has not only been made obvious by national or local policymakers. In the whole reconstruction and peace process in Aceh, very few international donors have stepped forward to support the truth revealing efforts.

The implication is that the peace process in Aceh, especially the reintegration programme, is a time bomb waiting to explode. Old wounds and collective memories cannot be simply erased by economic development and a secure environment. The desire for justice runs deep and is at the heart of every individual. Therefore, reconciliation is crucial in this context. At the very least, the establishment of the human rights court and the CTR will provide an important foundation to the continuation of the peace process in Aceh. The success of the DDR programme is not only measured by the weapons that have been destroyed or by the number of TNI personnel or members of GAM who have put down their weapons. While these things matter, what is more important is to integrate all parts that were once fighting into the same political, economic and social system. What is also vital is to integrate all within the framework of justice in order to create a brighter future.

Steps in political and socio-economic integration have been taken for quite some time. But the obstacle that remains is the process of social reconciliation that—in Aceh Law UUPA Article 229—confers authority to create a Commission on Truth and Reconciliation in Aceh. This step is crucial to end the memories of the old conflict, and give "fright effect" to all who try to reignite the flame in the future. However, the law is still the main obstacle because the constitutional court has repealed the CTR law. So effort from all parties is needed, especially from civil society organisations to promote the establishment of the CTR in Aceh. Reconciliation and truth are imperative to complete reintegration in Aceh and, without these vital factors, integration will remain nothing but a dream.

References

Aceh Monitoring Mission Report. "Decommissioning and Redeployment," http://www.aceh-mm.org/english/headquarter_menu/decom.htm.

AMM Report. *Amnesty, Reintegration and Human Rights*, www.aceh-mm.org.

Bappenas. "Reintegrasi dan Pemberdayaan Sosial Ekonomi Masyarakat Aceh." Presented at the Dialogue to Build Peace in Aceh, Banda Aceh, 11–13 December 2005.

Barter, Shane. "Embracing Civil Society in the Aceh Conflict." *The Asian Forum Report*. Bangkok, 2002.

Douglas, Ian, et al. *Disarmament, Demobilisation and Reintegration*. GTZ, 2004.

IANSA and Biting the Bullet. *Reviewing Action on Small Arms 2006: Assessing the First Five Years of the UN Programme of Action*. 2006, http://www.iansa.org/un/review2006/redbook2006/index.htm.

Ketetapan Pemerintah Darurat Republik Indonesia No. 8/Des/WKPH. 7 December 1949.

KontraS. *Aceh Damai Dengan Keadilan?*. Jakarta: KontraS, 2006.

Pane, Neta S. "Sejarah dan kekuatan Gerakan Aceh Merdeka." Grasindo, 2001.

Photo Sources

Photo 1. http://202.152.32.84/~rakyat/photo/1242956315f-21-Aksi_Mahaiswa,_Kamis-idris%20bendung.jpg

Photo 2. http://www.presidenri.go.id/imageGalleryD.php/5400.jpg

Photo 3. http://3.bp.blogspot.com/_uibrwX9T97M/SVegkEzB2JI/AAAAAAAABqs/JN1wD7gDWT4/s1600-h/z+28+Dec.08++Photo2+Masa+Revolusi++01++res.200.jpg

Photo 4. http://panmohamadfaiz.files.wordpress.com/2009/05/63710_atribut_kampanye_pemilu_partai.jpg

Photo 5. http://media.photobucket.com/image/tentara%20aceh/radenladen/tentara/PIC-149.jpg

Photo 6. http://stopterrorism.in/wp-content/uploads/2008/12/stop_terror.png

Photo 7. http://media.vivanews.com/images/2008/12/31/62060_kasus_munir.jpg

Photo 8. http://foto.detik.com/images/content/2008/12/10/464/wanita02.jpg

Photo 9. ANTARA/Basrul Haq/ss/ama/09

Photo 10. http://www.wrrcat.org/images/How%20Many%20Tortured.jpg

Photo 11. http://tbelfield.files.wordpress.com/2008/01/lubang-buaya-12.jpg

Photo 12. http://myaminpancasetia.files.wordpress.com/2009/07/tal.jpg

Photo 13. http://media.photobucket.com/image/daerah%20operasi%20militer%20aceh/bantalkasur/tni-aceh/aceh.jpg

Photo 14. http://www.imparsial.org/gallery/index.php?lang=id-8859&id=gallery4625bfaeae522&year=&month=&action=READ

Photo 15. http://2.bp.blogspot.com/_2SGIrdWGRLU/R-oPNcDcNHI/AAAAAAAAALM/v_dnhli8yC4/s400/263PhotoSidangAlasTlogo_JPIndraHarsaputra080326001.jpg

Photo 16. http://ahmadnurcholish.files.wordpress.com/2008/08/monas-0013.jpg

Photo 17. http://202.152.32.84/~rakyat/photo/1233144852f-28-nginap-imran%20joni.jpg

Photo 18. http://202.152.32.84/~rakyat/photo/1233144852f-28-nginap-imran%20joni.jpg

BIOGRAPHIES

Agung Yudhawiranata

He obtained his Bachelor's degree in Politics with major of International Relations from the Faculty of Social and Political Science, Gadjah Mada University, Yogyakarta, Indonesia in 1998. Agung continued his Master's degree in laws (LL.M), majoring International Human Rights Laws in the Faculty of Laws, University of Hong Kong, HKSAR, China and graduated in 2001. Then three years later he took advanced course on Security Sector Reform and Defense Management in Clingendael Institute for International Relations in The Hague, Netherland. Currently Agung is working as a researcher in Lembaga Studi dan Advokasi Masyarakat (ELSAM) and also a member of Perkumpulan Seni Indonesia (PSI) and Communal Learning Forum Prakarsa Rakyat. His activities are writing news and journal's articles, conducting research, and also being a freelance consultant in the field of law and international relations. Some of his books are "*Penyiksaan dan Mereka yang Selamat*" (Torture and Those Who Survived) (Jakarta: LSPP and ICMC, 2003), "*Terorisme: Definisi, Tindakan, dan Peraturannya*" (Terrorism: Definition, Action and Regulations) (et.al., Jakarta: Imparsial, 2004), "*Menguak Warisan Otoritarianisme Orde Baru*" (Opening the Legacy of New Order Authoritarianism) (et.al., Jakarta: ELSAM dan PusDEP Universitas Sanata Dharma, 2007), and "*Hukum Hak Asasi Manusia Indonesia*" (Human Rights Law in Indonesia) (et.al., Yogyakarta: PusHAM UII dan NCHR, 2008).

Ahmad Suaedi

The writer is Head of the Wahid Istitute and activist of Alliance for Freedom of Religion and Faith (*Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan*–AKKBB).

Amdy Hamdani

He is a member of Joint Committee for Security Modalities, Kuala Tripa Banda Aceh and Senior Official for Verification Team at Joint Security Committee, Kuala Tripa Banda Aceh. Amdy Hamdani is also founder of Student Solidarity for Solve Aceh Conflict (Somaka), Jakarta. He was working as an Editor in Acehkita (newspaper, website) and a Vice Chairman of the Human Resource Empowering for Lakpesdam NU in Jakarta. Currently he is the Program Manager in Institute for Defense, Security and Peace Studies (IDSPS), Jakarta, Indonesia.

Asfinawati

She was the chairperson for Law Assistance Body (*Lembaga Bantuan Hukum*–LBH) Jakarta for the period of 2006-2009. Asfinawati is an alumni of Law Faculty, University of Indonesia and co-writer of a book titled "*Menunggu Perubahan dari Balik Jeruji: Studi Awal Penerapan Konsep Pemasyarakatan*" (Waiting

for Changes from Behind Bars: Preliminary Research on Socialization Concept) published by Partnership, 2007. She also wrote a book titled "*KUHAP: Hak-Hak Anda di Dalamnya*" (Criminal Code: Your Rights in It) and "*Bila Anda Harus Bercerai: Hak-Hak Perempuan Seputar Perceraian*" (If You Must Divorce: Women Divorce Rights) in the year 2004.

Bhatara Ibnu Reza

He is a researcher for Imparsial-the Indonesian Human Rights Monitor, Jakarta, since November 2002. In the year 2007, he became Imparsial's Research Coordinator for Human Rights. Bhatara is also a guest lecturer in Social and Politic Faculty, International Relations Department in Al Azhar University in Jakarta, Indonesia; Pelita Harapan University in Karawaci, Tangerang; Parahiyangan Catholic University, Bandung; and University of Indonesia, Depok. He is also the Vice Chairman for Center of Defense and Peace Studies in Al Azhar University Indonesia and member of the Expert Team for Indonesia Civil Society Coalition for International Criminal Court. Bhatara obtained his Bachelor degree in International Law from Faculty of Law, Trisakti University, Jakarta in 1998. In 2005, he received Fulbright scholarship for taking his Master of Law (LL.M) degree in Northwestern University School of Law, Chicago, US, with the concentration in International Human Rights Law and obtained the Honors distinction in 2006. Before, he had received the title M.Si from Social and Political Science Faculty, International Relations, University of Indonesia in 2002.

Dian Kartika

She is the Deputy Director of International NGO Forum on Indonesian Development (INFID). Dian Kartikasari is also one of the members of Committee of Solidarity Action for Munir (*Komite Aksi Solidaritas untuk Munir*–KASUM). The writer obtained her Bachelor degree in 2002 from the Faculty of Law, Gajah Mada University, in State Administration Department with field research of Environmental Law. In 2004, she was working as Analytical Consultant for National Economic Team of Unifem and UI, while in 2001 to 2004 she was the Coordinator of Public Policy Advocacy for Indonesia Women Coalition for Justice and Democracy.

Dimas Pratama Yuda

He is a graduate from Political Science Department, Faculty of Social and Political Science, University of Indonesia. Beside his active involvement in Institute for Defense, Security and Peace Studies (IDSPS) as analyst and database administrator, Yuda is also a member of lecturer team in Bachelor Degreee Program of Political Science Department, University of Indonesia on the subject of "Introduction to Political Science" and "Western Political Thoughts".

M. M. Billah

Writer was a member of National Commission of Human Rights (Komnas HAM) for the period of 2002-2007. He was the Chairman of Sub Commission of Observation (2002-2005) and Political Rights Commissioner (2005-2007). He ended his period as member of Komnas HAM in October 2007. He wrote the book titled *"Kelas Menengah Digugat"* (Appeal for Middle Class) and *"Membalik Kuasa Negara ke Kendali Rakyat"* (Turning the State Power to the Hands of People).

Meirani Budiman

Since the beginning of 2007 she joined the Institute for Defense, Security and Peace Studies (IDSPS). Meirani obtained her Bachelor degree from Department of Politic, Faculty of Social and Political Science, University of Indonesia in 2006. Her experience in participating in International Human Rights Training Program in Quebec, Canada, June 2008 had given her the necessity knowledge to analyze certain issues in regards of the security sector using human rights perspective. Some of her writings had been published in various mass media, IDSPS website and monthly publications.

Mufti Makarim

The writer obtained his Bachelor degree on Islamic Law. He has joined Commission for Involuntary Disappearance and Victim of Violence (KontraS) since 2000, started from the position of Head of Division of Study and Monitoring (2000-2001), Member of the Coordinator Presidium (2001-2003), Head of Operational Bureau (2003-2004) and being the General Secretary for KontraS Federation for period of 2004-2007. Since August 2007, he became the Executive Director of Institute for Defense, Security and Peace Studies (IDSPS). His knowledge of human rights, defense and security issues was gained by autodidact while working in KontraS and SSR advocacy network, and also from short courses such as Short Course on "Security Sector Reform", Clingendael Institute, Den Haag, Netherlands, April-May 2003, 13th New Generation Seminar and Workshop on "Conflict in Asia-Pacific", East-West Center, Honolulu, USA, August-September 2003, Danish Institute for Human Rights (DIHR) Course on "Ensuring Human Rights in Police Practices", Copenhagen, June 2007, etc.

Mugiyanto

He is the Chairperson for Indonesia's Involuntary Disappearance Victims' Family Association (Ikatan Keluarga Orang Hilang Indonesia–IKOHI). Since the year 2006, Mugiyanto is elected as the Chairperson of the Asian Federation against Involuntary Disappearances (AFAD) at its 3rd Congress in Kathmandu, Nepal, December 2006. The Chairmanship lasted until 2009. In 2008, he was appointed as the Coordinator of Indonesian Civil Society Coalition on the International Criminal Court (ICC).

Muhammad Islah

The writer is National Executive Monitoring Cases Officer for Indonesia's civil society organization in the field of environmental and ecological named WALHI.

Nawawi Bahrudin

Coordinator of Civil Supremacy and Security Sector Refrom in INFID, Jakarta. Currently he is a student in Defense Studies Magister Program in Indonesia Defense University, Jakarta.

Nurkholis Hidayat

The writer was elected as Chairman of Law Assistance Body (Lembaga Bantuan Hukum–LBH) Jakarta for the period of 2009-2012.

Oslan Purba

He is the General Secretary for Federation Commission for Involuntary Disappearance and Victim of Violence (Federasi KontraS). Oslan Purba is an alumni of Social and Political Science Faculty, University of North Sumatera and had been the Coordinator for KontraS Sumatera Utara (2000-2007), the Director for Education Center for Civil Society (1999-2000), the Consulate for North Sumatra Labor Solidarity (1999 – 2001), and Head of Marginalized People Foundation (Yayasan Pembela Rakyat Pinggiran, 1999 – 2007). His education on human rights and security sector reform was obtained from several trainings, short courses and workshops such as "Medical Aspect in Human Rights Violation and Forensic Familiarization" conducted by PIRD-YLBHI Jakarta (1999), "Model of Human Rights Cases Reportage and the UN" conducted by PIRD-YLBHI Jakarta (1999), "Organization Development and Program Management Training" conducted by TDH Medan (2001), "International Human Rights Law and the UN System" conducted by Asian Human Rights Commission (2001),"Security Sector Reform" conducted by INFID-Kontras-Imparsial (2005), "11th Asian Training and Study Session on Human Rights" conducted by Forum Asia (2007), and "6th Annual Global Linking & Learning Program on Human Rights in Development" conducted by Dignity International (2007).

Papang Hidayat

He is Head of Research and Development Bureau of Commission for Involuntary Disappearance and Victim of Violence (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan–KontraS). Papang was born in May 15th, 1974 in Teluk Betung, Lampung. He obtained his Bachelor degree in Sociology Department, Faculty of Social and Political Science, University of Indonesia and Master degree in Essex University, UK for Master of Administrative on Human Rights Theory and Practice. Currently he is focusing the issues of human rights related to transitional justice and security sector reform.

Puri Kencana Putri

She spent her Bachelor degree in Sociology Department, Faculty of Social and Political Science, Gadjah Mada University from 2002 to 2008. In her study days, Puri Kencana Putri was actively engaged in qualitative-participatory researches based on society empowering. She was also working as research assistant in several institutes of peace and conflict studies, and also South East Asian studies, such as civil society organization Peace and Development Initiative Indonesia (Padii Institute) and Center for Southeast Asian Social Studies (CESASS) Gadjah Mada University. Since July 2008, she has joined KontraS as junior researcher.

Rusdi Marpaung

The writer is holding the position as Managing Director of Imparsial, a non government organization in Indonesia which moves in the field of human rights and focuses to conduct monitoring on government policy seeing from the human rights perspective. Rusdi Marpaung has much experience in media field, as reporter, photographer, and also editor in various publications. These activities triggered him to join the human rights movement after the Soeharto government had posed limitation on press freedom in 1994. In the same year, the writer formed Institute for Press and Development Studies in Jakarta, in which he was being the Executive Director for the period of 1997-2002. In 2002, Rusdi Marpaung, together with other renowned Indonesian human rights activists, such as Kamala Chandrakirana, Poengky, Rachland Nashidik, Wardah Hafidz, Otto Syamsuddin Ishak, Todung Mulya Lubis and also the late Munir, had established Imparsial. Marpaung obtained his Bachelor degree from Sociology Department, University of Indonesia.

Saiful Haq

Alumni of Universitas Hasanuddin, Higher Technical Education School of Dharma Yadi and Defense Studies Magister Program, Bandung Institute of Technology in collaboration with Cranfield University, UK. From 2007-2008, Saiful is a fellow researcher in Political Science of Justus Liebig University Giessen and University of Jena, Germany. Currently he is working as Program Officer in Aceh Province for social-democratic organization Friedrich Ebert Stfitung (FES) and expert consultant for KontraS Aceh Security Sector Reform program in cooperation with CAFOD, UK.

Septi Silawati

The writer conduct her Bachelor degree in International Relations Department, Social and Political Science Faculty, University of Indonesia and her Master degree in Defense Studies Magister Program, Bandung Institute of Technology in collaboration with Cranfield University, UK. Septi was also a fellow researcher in Political Science of Justus Liebig University Giessen and University of Jena, Germany in the year 2008-2009. She had been working for Centre for Electoral Reform, PACIVIS, and Center for Research on Inter-groups Relations and Conflict Resolution. Currently she is the staff of Peace through Development Program of BAPPENAS-UNDP.

Syamsul Alam Agus

He conducted his law education in the Faculty of Law, Tadulako University, Central Sulawesi. In the Reformasi 1998 movement, he and several other activists established human rights research and advocacy body LPSHAM of Central Sulawesi, in which he became the chairperson for the period of 2003-2005. When conflict between civilian occurred in Poso, he and other human rights activist in Central Sulawesi were actively conducting conflict advocacy and mediation between the opposing parties. In 2006, Alam began his activity in Jakarta in Indonesia Legal Assistance Association (Perkumpulan Bantuan Hukum Indonesia–PBHI) and in the same time actively involved in movements to reveal Munir case through Solidarity Committee for Munir Case. Since the end of 2006 until now he is teaming with Commission for Involuntary Disappearance and Victims of Violence (KontraS) as working staff in the Social Political Law and Human Rights Division.

Usman Hamid

He is the Coordinator of Commission for Involuntary Disappearance and Victim of Violence (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan–KontraS). He is an alumni of Faculty of Law, Trisakti University and was graduated in 1999 with final writing on Agrarian Reform.

Zainul Maarif

He was the Program Officer for International Studies IDSPS (Institute for Defense, Security and Peace Studies). Zainul accomplished Bachelor degree in Philosophy Aqidah Department Al-Azhar University, Cairo, Egypt and accomplished his Master degree in Philosophy Department University of Indonesia, Depok, Indonesia. His writings about defense and security issues were published in Koran Tempo, Newsletter Media dan Reformasi Sektor Keamanan, Backgrounders IDSPS, and IDSPS website. Related to The Commission of Truth and Friendship (CTF), he already wrote (1) IDSPS policy paper titled "Reformasi Sektor Keamanan dalam Laporan KKP" (Security Sector Reform in Commission of Truth and Friendship Report), and (2) IDSPS weekly analysis titled *"Mempertanyakan 'Kebenaran' dan 'Persabahatan' KKP"* (Questioning the 'Truth'" and 'Friendship'" in Commission of Truth and Friendship). He can be contacted via cellphone: +6287877468415 or via email: zen.maarif@gmail.com.

Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was established by the Swiss government in October 2000. The Centre's mission is to promote good governance and reform of the security sector in accordance with democratic standards.

The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the range of security sector actors such as police, judiciary, intelligence agencies, border security services and the military. The Centre works with governments and civil society to foster and strengthen the democratic and civilian control of security sector organisations.

DCAF is an international foundation with 48 Member States (including the canton of Geneva).
Their representatives compose the Foundation Council. The Centre's primary consultative body, the International Advisory Board, is composed of experts from the various fields in which the Centre is active. The staff numbers over 70 employees from more than 30 countries. DCAF's main divisions are Research and Operations which work together to develop and implement DCAF's programmes as follows:

- By conducting research to identify the central challenges in democratic governance of the security sector, and to collect those practices best suited to meet these challenges.
- By providing support through advisory programmes and practical work assistance to all interested parties, most commonly to governments, parliaments, military authorities, and international organisation.

The Centre is directed by Ambassador Dr. Theodor H. Winkler. DCAF's head office is located in Geneva, Switzerland and the Centre also has subsidiary offices in Beirut, Brussels, Ljubljana, and Ramallah .

The Institute for Defense, Security and Peace Studies (IDSPS) was established in 2006 by several activists and academics concerned with security sector reform advocacy post-1998.

The establishment of the IDSPS was based on: 1) that the transition to democracy in Indonesia should engage civil society groups and non-governmental organisations so that it is in accord with public expectations and democratic values and principles; 2) that reform of the security sector comprises legislative and policy reform, professionalism and political control over civil political actors and the authority protecting them, and public involvement; and 3) that the principles of law and human rights enforcement related to the abuse of authority, policy and approaches to security sector problem solving have not been developed as desired by the public after the fall of the New Order government.

Based on some views that the condition of security sector reform in Indonesia is problem-ridden and needs more serious attention, it is considered necessary to establish one working group combining academic work and advocacy on security sector issues (comprising security actors and institutions, defence and intelligence, and policymakers at the executive and legislative levels) with a mandate to: 1) carry out research, reinforce security sector reform discourse and develop a support system for civilian groups that have concerns for and focus on such issues; and 2) introduce a human rights approach as discussed in many international as well as national instruments as part of important principles and values in developing concepts and policies for the security sector. Considering that the aforesaid mandate will only be effective in the form of programmes and planned activities and if it is supported by one powerful institution, this working group was developed into one institution called the Institute for Defense, Security and Peace Studies.

IDSPS believes that all processes and efforts to reform and transform policies, actors and approaches in the security sector—from the authoritarian old system to a democratic system according to the principles of civil supremacy, professionalism, accountability and respect for human rights—are the state's obligation pursuant to the constitutional mandate, demands from the 1998 reform movement, and also the certainty of a country that claims to be democratic and civilised.

Indonesia's NGO Coalition for
International Human Rights Advocacy

Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG) was established by the majority of NGOs sharing a common interest in human rights with the aim of maximising goals and putting more pressure on the Indonesian government to execute its international and constitutional obligations to protect, fulfil, respect and promote human rights in the country.

Vision

- For state administrators to better fulfil their constitutional and international obligations to promoting, fulfilling and protecting human rights in Indonesia.

Mission

- To increase the effectiveness of human rights advocacy work in Indonesia with the intention of encouraging the government of Indonesia to carry out its international and constitutional obligation to promoting, fulfilling and protecting human rights by:
- Collaborating with human rights advocacy workers and those who support it at the local, national and international levels.
- Building coordination among human rights advocacy workers in order to maximise impact, particularly at the international level.
- Increasing the capacity of working group participants and other human rights advocacy workers at the international level.
- Increasing the effectiveness of control on the state's fulfilment of its obligation to enforce and promote human rights.

KOMNAS HAM

Indonesia's Human Rights National Commission (Komnas HAM) is an independent institution, on an equal level to other state institutions and which carries out research, study, education and information, monitoring and mediation of human rights.

Komnas HAM aims to:
a) Develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter and the Universal Declaration of Human Rights;
b) Enhance the protection and upholding of human rights for the personal development of Indonesians as human beings and their ability to participate in various aspects of life.

The organs of Komnas HAM are the Plenary Session and Sub Commissions. Additionally, it has a Secretariat.

PLENARY SESSION
The Plenary Session is the highest authority of Komnas HAM. It consists of all members of Komnas HAM. The Plenary Session determines the procedures, working program and mechanism of Komnas HAM.

SUB COMMISSIONS
Since its establishment in 1993 until early June 2004, the activities of Komnas HAM have been carried out by sub commissions established following the functions of Komnas HAM, namely the Sub Commission of Research and Study, the Sub Commission of Education, the Sub Commission of Monitoring, and the Sub Commission of Mediation. Subsequently, the Plenary Session of Komnas HAM, in its meeting on 2–3 June 2004, decided to restructure the sub commissions of Komnas HAM based on the categories of human rights and groups of the society whose human rights protection should be given special attention. The restructured sub commissions are as follows:

1. Sub Commission of Research and Study
2. Sub Commission of Education and Public Awareness
3. Sub Commission of Monitoring
4. Sub Commission of Mediation