

# The Struggle against Impunity in Indonesia

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Conference Proceedings. Berlin, 23-24 September 2014

## IMPUNITY

in Indonesia

Berlin, 23. - 24. September 2014

Eine Kooperation von

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mit freundlicher Unterstützung von Amnesty International

**There's only one word left: Resist!**

- Wiji Thukul





# **'The Struggle against Impunity in Indonesia'**

**Conference Proceedings**

**Berlin, 23-24 September 2014**

## The Publisher

Watch Indonesia! ([www.watchindonesia.org](http://www.watchindonesia.org)) is a group made up of Indonesian and German nationals with the common interest of creating a forum where issues of democracy and human rights in Indonesia and East Timor are discussed. We support the development and up-keep of democratic structures in all political and social spheres, and aid similar efforts and initiatives of other groups and individuals. We supply information about the risks and damages to the environment, and support all measures that serve to protect and improve it. As well as concerning ourselves with Indonesia, we focus on the responsibility Germany and other industrialized countries have for the problems there.

Our work is oriented towards the needs expressed through interest groups and non-governmental organizations (NGOs) of those people persecuted and prejudiced against in Indonesia and East Timor. We co-operate closely with groups involved in democratization, human rights and environmental protection in Indonesia and East Timor.

The organization was founded in 1991 and established itself as a registered association in 1994.

## About this publication

This publication is a compilation of papers, presentations and discussions of a conference entitled »Impunity in Indonesia« which was held from 23-24 September 2014 in Berlin. The conference was organized by *Watch Indonesia!* in cooperation with *MISEREOR*, *Brot für die Welt* and *Amnesty International Netherlands*. Financial support for this event came from *Federal Ministry for Economic and Development Cooperation (BMZ)* and *Katholischer Fonds*.

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## 1. Addressing Impunity in Indonesia

### Background and an outline of the issues

On the 7th of September 2004 the Indonesian human rights activist Munir Said Thalib died on board of a plane headed for the Netherlands. An autopsy performed by the Dutch authorities established the cause of death to be arsenic poisoning. The first legal proceedings took place in August of 2005, almost a year after the killing. Investigations undertaken by the Indonesian police and the public prosecution office led to the criminal prosecution of Polycarpus Budihari Priyanto, a pilot of the Indonesian state airline company *Garuda Indonesia*. After being found guilty he was sentenced to 20 years imprisonment. His alleged employers in the Indonesian secret service (BIN) were acquitted of all charges.

Ten years have gone by and Polycarpus, whose prison sentence has been reduced, has been a free man since October 2013. The search for the persons responsible for Munir's death continues, as one question remains to be answered: who has orchestrated this crime and why was Munir murdered?

The victims of human rights violations in Indonesia and their families were full of hope as the court proceedings for Munir's murder began. They saw in it a chance to throw some light on the manifold human rights violations in Indonesia and, through it, to end the vicious cycle of injustice. However, their hopeful anticipation has soon proved to be a mistake.

Indonesia suffers under a long list of unresolved human rights violations, the beginning of which can be traced back to Suharto's bloody accession to power in 1965. That year's massacre claimed a minimum of 500.000 victims, while some sources claim that as many as a million people lost their lives between the years of 1965 and 1966, mostly on Java and Bali. The topic remains taboo in Indonesian society to this day. The government, as well as the anti-communist movement, forbid a public debate concerning the events of 1965.

Under the premise of 'looking into the future' the government rejects any attempts at facing and discussing the country's troubled past. Even nowadays the young generation is still exposed to the propaganda of Suharto's regime in schools. The survivors and the families of the victims have received no remuneration and their right to truth has never been addressed.

The Indonesian government still perceives the victims of the massacre as offenders and criminals and therefore sees no reason to make amends.

Human rights violations were not committed only during Suharto's takeover but also in connection to his overthrow and the fall of the dictator in the late '90s. The victims of that time include activists of pro-democratic movements, as well as students and unionists. Many of them were shot or abducted by the state security forces and Wiji Thukul, a pro-democratic activist, remains missing to this day. He had spent years hiding from the Indonesian military and one day vanished without a trace. His family is still waiting for an explanation of his disappearance.

The quest for justice fails on a regular basis due to the inadequacy of the Indonesian judicial system. Even the human rights court convened to address the crimes committed in East Timor proved to be very lenient - the culprits got mild sentences and some of them were even acquitted of all charges. A similar thing happened at the ad hoc court for the resolution of human rights violations in Tanjung Priok, Jakarta. It only came to light years later that many of the convicted officers weren't discharged from the military at all, but rather continued to occupy high positions in it.

### Why is it important to fight impunity in Indonesia?

Impunity is an international phenomenon. In 2013 a group of human rights experts demanded for the United Nations to take a stronger stance in the fight against it: *»It is time for the UN to take a more decisive role in combating impunity and focus on all dimensions of the problem, including the erosion of the rule of law and the violation of general principles of justice«.*<sup>1</sup> UN experts have already adopted principles that support the fight against impunity before that. The establishment of the International Criminal Court represents an important part of these efforts, but the challenges regarding this topic remain sizeable despite it.

The numerous human rights violations that take place in Indonesia receive little attention from the international community. This situation can be attributed to the fact that the *»new world order«* that followed the end of the cold war puts greater emphasis on economic development. Accordingly, the importance of Indonesia in international politics as well as in global economic relations has been increasing steadily over the

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<sup>1</sup> <http://freemassembly.net/rapporteurpressnews/un-impunity-pressrelease/>

years. Many heads of state and economy experts consider Indonesia's economic future to be highly promising, as the country's economy grows for about 6 percent every year. However, a similar progress is not seen in the domain of human rights and constitutionality.

Why does impunity continue to be a problem in Indonesia? One might attempt to answer this question by considering four crucial aspects. Firstly, the power structure in Indonesia has remained largely unchanged since the »*Orde Baru*« regime. Secondly, the continued practice of impunity is facilitated by the judicial system, as previously mentioned. Thirdly, some attention must be given to the societal norms - Indonesia's society is characterized by a culture of politeness that makes it difficult for individuals to denounce anyone as a criminal without feeling shameful about it. Finally, any attempts at eradicating impunity lack international support and attention (Meijer, 2006).<sup>2</sup>

Munir's murder proves that political assassinations happen even in democratic times. Furthermore, it shows that the democratic structures of Indonesia still aren't in any position to combat impunity. However, various initiatives introduced by the civil society of Indonesia are gaining ground and awakening hope for an improvement of the situation. *Omah Munir* (translation: Munir's House), for example, is a museum honouring Munir's memory and pertinent proof of the younger generation's struggle against injustice and human rights abuses in Indonesia. The museum offers alternative learning opportunities for school children who would otherwise only be exposed to the official school curriculum. Furthermore, Rusdy Mastura, the mayor of Palu, apologized to the victims of 1965 in his region and promised remuneration for the survivors and their families, providing another sign that the situation might be improving. And, last but not least, due regard must be given to the success of the movie »The Act of Killing«. It is the work of the American director Joshua Oppenheimer and represents an important document with the help of which further efforts can be undertaken to spread information about the massacre that took place in the '60s and that is capable of reaching a larger audience.

All of the aforementioned initiatives have received positive feedback, but resistance has also been organized to counter these new movements in an effort to continue restricting the freedom of expression and assembly.

The question is whether there is still a chance of combating impunity in Indonesia. What form do the efforts of the various human rights organizations in Indonesia take? Are they following certain strategies that allow them to overcome the manifold challenges they face? How does Indonesian society perceive impunity? Which judicial and normative UN mechanisms can be made use of? How can the international community, especially the German political sphere and civil society, contribute to the improvement of the situation?

## Event format

We at *Watch Indonesia! e.V.* wish to commemorate the 10th anniversary of Munir's death by organizing a conference on the topic of impunity in Indonesia, which will take place in Germany. We intend to discuss various human rights violations that have taken or are taking place in Indonesia, with special focus on Munir's murder, the massacre of 1965 and the human rights abuses happening in East Timor.

Germany plays a prominent role in this context, as it can influence actors within the civil society and make use of various initiatives to facilitate dealing with the past and ensuring that the Indonesian society never forgets the crimes that were committed. Moreover, the German society and government agree on the importance of past crimes being officially acknowledged.

This discussion-based conference is expected to expose new opportunities for action and practical approaches to ending impunity in Indonesia. In addition the event should highlight the lessons that Indonesia can take from German civil-society organizations in regards to coming to terms with the past.

## The goals of this conference:

1. Creating a discussion platform in Germany geared towards combating impunity in Indonesia, stimulating new ideas and approaches for the work of relevant organizations active in this field, as well as carving out a new, collective and internationally aligned strategy of advocacy against impunity in Indonesia.
2. Providing impetus for the continued cooperation of Indonesian and German organizations on the topics of commemorative culture and the process of dealing with past crimes.

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<sup>2</sup> Meijer, Martha. *The Scope of Impunity in Indonesia*. Netherlands Humanist Committee on Human Rights, 2006.

## Program

Day	Session	Issue	Speaker
1	10 Years of Munir Case: The progress of the advocacy	What kind of legal and non-legal approaches taken? How is the coming government deal with this case?	Suciwati (Omah Munir)
2	1. The development and analysis of the human rights situation in Indonesia and East Timor	What is the chance of attaining justice? What has been done so far and where does the root of the problem lie? What is the outlook in regards to the resolution of human rights abuses under the new president, elected in July 2014?	Prof. Dr. Saskia Wieringa (the 1965 massacre)  Aboeprijadi Santoso (East Timor)
	2. Civil society initiatives and the ways in which the Indonesian society perceives the process of coming to terms with the past	What initiatives exist and how have they arisen? How are they perceived by the Indonesian society and government? How can such initiatives be encouraged and expanded? What role should be taken on by the government or the state?	Indria Fernida (Kontras)  Suciwati (Omah Munir),  Anett Keller (Watch Indonesia!)
	3. The use of international mechanisms against impunity	Which mechanisms can be made use of in order to take effective action against impunity in Indonesia? To what extent are they effective in the short and long term?	Theo Rathgeber (Forum Menschenrechte)  Asmin Fransiska (University of Atmajaya, Jakarta)

## The expected outputs of this conference

1. Suggestions for further (new) approaches to an advocacy strategy against impunity in Indonesia and East Timor
2. Intensive contact and focused cooperation within organizations in Germany and the EU (at least with the Netherlands)

## Place and date

The conference was held in Berlin from 23-24 September 2014



## 2. The Progress of Munir Case: legal and non-legal approaches

The conference was held two days. The first day focused on the progress of Munir case, where Suciwati gave an overview on the progress of the case, both the legal measures and the non-legal activities, such as campaign and political education. Peter Sternagel, a former director of Goethe Institut in Bandung, read some of his translations of Wiji Thukul's poetries. Thukul is a disappeared Indonesian labor activist, who is believed to be killed by Indonesian military around 1998. Until today there is no clear information on his disappearance and there is no effort of the government to reveal this case. His family, children and wife, are still in waiting for clarification.

Munir's case, on the other side, has undergone some political and judicial processes which are proven not being able to find the master mind of the killing. It has been 10 years since he was murdered and there is no sign that Indonesia's justice system will come up with new findings. This is also one of the reasons why this conference was held: to remind people that the killers are still free and the state is unwilling to find them. Suciwati updated the audience on the judicial progress of the case. The killer of Munir is soon to be released on parole. The police and prosecutor are not able or not willing to present new proofs to reopen the case. The strong president candidate, Joko Widodo, did not really show a serious commitment on human rights. Since last year Suciwati launched *Omah Munir*, a human rights museum, in the house where Munir, she and their children used to live. The museum aims at promoting human rights through human rights education which take place in various forms, from art work, performances to learning modules for school children. Further information on *Omah Munir* would be presented by Suciwati on the second day of the conference. Her presentation can be found in the third part of this publication.

Still on the first day, an Indonesian shadow play *Wayang Rajakaya* directed by an Indonesian artist living in Berlin, Herlambang Bayu Aji, was performed for the conference participants and general public. The title was »*Jamakakarta- Das Land der Affen*«. It was played in German using some Indonesian and Javanese songs and instruments. The story of the shadow play exercises critiques to the corrupt democracy of Indonesia and also tries to deliver the message that consolidation of the people is necessary to fight against injustice.

The second day of the conference was divided in four main sections. There were in total seven presentations addressing the topic of impunity from the case sample (1965 and East Timor), the initiatives of the civil society and the use of international mechanism. The last session was aiming at collecting ideas and recommendations for further actions in Germany and Europe.



Jamakakarta Performance, Photo: Alex Flor

### 3. Development and Analysis of the Human Rights Situation in Indonesia and East Timor

This first part of the conference provides an introduction to the human rights situation in Indonesia by means of two major cases: the 1965 killings and the period of Indonesian occupation in East Timor. The discussion was based on following questions: What is the chance of attaining justice? What has been done so far and where does the root of the problem lie? What is the outlook in regards to the resolution of human rights abuses under the new president, who is to be elected in July 2014?

The speakers on this session were Prof. Dr. Saskia Wieringa from the University of Amsterdam, who presented the case of 1965 killings and Aboeprijadi Santoso, an Indonesian senior journalist living in the Netherlands, who shared his experience and analysis on the history of the Indonesian occupation in East Timor and human rights violations. This session was moderated by Norman Voß from the Westpapua Netzwerk.

This part consists of a written presentation from Prof. Dr. Saskia and additional information from her oral presentation, the presentation of Aboeprijadi Santoso and the minutes of the panel discussion.

#### 3.1. New perspectives on the genocide post 1 Oct 1965 and the propaganda campaign that demonized the PKI

By Prof. Dr. Saskia Wieringa

##### Introduction

Recently new information has become available that helps us to reassess a number of issues in relation to the Indonesian post 1<sup>st</sup> Oct 1965 genocide. In this presentation I will discuss two new sources: Firstly the work of Coen Holzappel on Soeharto's role in the purge/coup of 1<sup>st</sup> October 1965, secondly the 2014 thesis of Jess Melvin on the mass killings in Aceh. I will relate this to an analysis of the role of the propaganda war in which the PKI was demonized and particularly *Gerwani*, the progressive women's organization, vilified. I will conclude with an initial analysis of the present political situation in Indonesia and the role the IPT 1965 can hopefully play.

##### Preparations for the destruction of the PKI: the role of Soeharto

In the early morning of 1st October 1965 six generals (and a lieutenant) were kidnapped by a group that called itself the »September 30<sup>th</sup> Movement«. It was composed of some middle-ranking officers and a few members of the PKI politbureau. Apart from some members of the PKI's youth movement, the *Pemuda Rakyat* (Youth of the People, PR), ordinary PKI members and members of the mass organizations associated with the PKI, such as the labour unions, the farmers' organization or the cultural association, were not involved and were caught unawares by the subsequent events.

Communication between the two subgroups of the Movement (political and military) turned out to be very poor (Roosa 2006). Three generals were killed right away, the other three on a nearby training field, in an area called Lubang Buaya (Crocodile Hole). The field belonged to the Air Force and was used for the training of young leftwing volunteers for Sukarno's anti-Malaysia campaign. At that moment it was designated to primarily young female members of the PR; the training was held for the third time (see also Sukartingsih 2004). Similar training camps were established all around the country by various other mass organizations. Putsch-leaders Lieutenant-Colonel Untung and Colonel Latief explained that they wanted to bring their superiors to the President, based on rumours of a rightwing Council of Generals who allegedly planned to stage a coup, supported by the US *Central Intelligence Agency* (CIA). The purpose of the Movement was declared in various radio broadcasts on October 1<sup>st</sup>.<sup>1</sup> Apart from the abduction limited military action took place around the Freedom Square (a.o. the occupation of the radio station) and in Solo and Yogyakarta.

<sup>1</sup> In these broadcasts it became clear that the putschists had more wide ranging ideas than to just bring the generals to President Sukarno (see Crouch 1988, Hughes 2002 and Roosa 2006; Sundhaussen 1982). See for the full text: 'Selected Documents Relating to the 30 September Movement and Its Epilogue'. In Indonesia, Ithaca, NY: Cornell Modern Indonesia Project, 1:1, April 1966: 131–205, doi:10.2307/3350789, JSTOR 3350789. See also Dinuth (1997).

Major-General Suharto, the commander of the strategic army reserve, KOSTRAD, who, as it turned out had been informed of this manoeuvre by both Untung and Latief (if he hadn't been aware of events from other sources beforehand), but who had failed to warn his superiors (or inform the President), quickly managed to quell whatever remained of the insurgency (see Wertheim 1979). He immediately pinpointed the blame on the Indonesian Communist Party (PKI). To this day controversies surround these »events of 30 September 1965«.

Most present day scholars agree, though differing in details, that the affair was organized by a group of left-leaning army officers, fierce supporters of President Sukarno, with political backing from a few members of the PKI Politbureau. The evidence for this third version is most recently presented by Roosa (2006). This account comes closest to Latief's statement that he informed General Suharto, who only swung into action when he learned of the murder of his superiors. From this perspective the first skirmish, the abduction and murder of the generals, was mainly based on inter-army rivalry and should not be seen as a coup, but a purge. It was never intended to topple the president – in fact the plotters stated they wanted to protect the president. The actual coup is the mass murder of leftist people culminating in the handing over of power to General Suharto in March 1966. President Sukarno could be pushed aside then as his position was weakened by the eradication of a major group of supporters and constant allegations that he was involved in planning the first putsch.

To what extent Suharto himself was involved in the October 1965 events have so far remained unclear. Did he engineer the whole event, as Wertheim (1995) suggests, or did he mainly make use of the opportunity that presented itself to get rid of both the PKI and President Sukarno (Roosa 2006; Wieringa 2002)? What is clear is that Suharto could not advance to the Presidency without the propaganda campaign that he organized which led to the mass murder of between 500.000 and 3 million people associated with the »leftist family« in Indonesia.

New information points to a much more direct role of General Suharto. As Holzappel maintains (forthcoming 2014), Suharto actively supported Untung and his group from minimally mid-September onwards. He later turned against his former allies. The PKI was not aware of this and was intent on its own campaign of the *Nasakomisasi* of the army, which meant that a PKI official would be added to all army units. The army was vehemently opposed to such action.

Although the PKI was very proud of its active mass support in fact by that time they had already been outnumbered (and outmanoeuvred) by massive mobilization of right wing forces. These included both the *Ansor/Banser* units of the NU, as well as civil militias (*Hanra/Hansip*) and other militias (such as the *Pemuda Pancasila*). This is clearly borne out by the 2014 thesis of Jess Melvin, who analyzed the mass murders in Aceh. She concludes that Suharto already swung into action early morning of October 1, mobilizing the command structure that had been set up as part of the anti-Malaysia campaign. From early October onwards the PKI was swiftly annihilated in a close collaboration of militias and the army.

## The anti-PKI propaganda campaign

How was the volatile political and economic situation of 1965 Indonesia manipulated to turn into a mass murder? The purge in which the army's top brass was abducted and killed does not in itself provide enough motivation to engage in a killing spree of such a scale. The role of the military in organizing the mass killings has been documented elsewhere (Cribb, Douglas and McKammen). I am interested here in how the terror campaign was staged – who wrote the script? How was it so called »spontaneity« staged, and who were the raging actors? I have argued elsewhere that the spread of sexual terror was a major element in this script-making (2002, 2003, 2011). Still, almost 50 years after that fateful night, and while most army lies have been exposed, many Indonesians still believe that the socially and politically active women of *Gerwani* were evil whores and that the PKI was an atheist organization intent on destroying the nation (Wieringa 2002, 2011).

This campaign can be seen as a palimpsest, underlying the social and political texture of Indonesian society. The success of the psywar of the army under General Suharto is based on sexual slander which even now frames leftist women and communism in general as inhuman, perverse and atheist.

## Continued impunity: what difference can Jokowi make?

How is it possible that the murderers still walk Indonesian soil as free men and can boast of their impunity, and that the lies the army propagated at the time are still largely believed? Oppenheimer's film »The Act

of Killing« asks how a petty, spiteful criminal like Anwar Congo turns into a cheerful killing machine (though at times troubled by bad dreams). The film suggests Anwar and his fellow murderers are not psychopaths, monsters who if we had been able to somehow stop them, would never have committed the horrible crimes they did. The »law« of impunity Suharto established continues to this day, propped up by the terror the army-affiliated militias exercised. Even now communism is banned, school books echo the black propaganda against the PKI and *Gerwani*.

Will Jokowi, the president-elect, be able to turn the tide and ensure that human rights are respected in Indonesia? That impunity is lifted, truth-seeking is stimulated, the full extent of the genocide uncovered, and reconciliation attempted? Though he promised in his campaign that respect for human rights was important to him (which earned him the enthusiastic support of human rights activists) the signs are not immediately positive. His campaign team counted a great number of (retired) generals, amongst whom notorious human rights offenders such as Wiranto and Hendropriyono (who is associated with the murder of Munir). The latter has even become one of his main advisors, in the transition team. When queried about the human rights record of Hendropriyono, Jokowi brushed away the question – just an issue.

## The IPT 1965

Despite overwhelming evidence of the crimes against humanity committed in 1965, the Indonesian government has failed to prosecute the perpetrators for these crimes. The primary responsibility lies on the state of Indonesia both for its actions and for its continuing failure over the last 50 years to prosecute perpetrators of all ranks, to officially and fully apologize and to provide reparations and other meaningful remedies to the victims and survivors and their families. This failure and the unwillingness to act has persisted in spite of repeated demands made especially since the end of the Suharto regime in 1998, the so called »*reformasi*« era, by survivors and scholars, based on their careful research confirming the atrocities by the military and militia. Meanwhile, discriminatory policies and continued violence by Muslim and anti-communist groups against the 1965-66 victims/survivors and their families/descendants are pervasive till today. The latest attack of the victims and survivors and their advocates occurred in Yogyakarta, 27 October 2013 in which the *Forum Anti Komunis Indonesia* (Anti Communist Forum) managed to dissolve a meeting organized by the victims of what is known as »the events of 1965« and its aftermath to discuss their suffering, discrimination and the poverty they experience. Some victims present were tortured.

The experiences of other International People's Tribunals are that they contribute to creating a climate of respect for human rights and to the healing process of the victims. The *International People's Tribunal of Crimes Against Humanity 1965* (hereafter the Tribunal) is established out of the conviction that these failures of the Indonesian state must not be allowed to silence the voices of survivors nor allow the government of Indonesia to escape accountability for these crimes against humanity. It is established to redress the historic tendency to trivialize, excuse, marginalize and obfuscate these crimes against humanity, particularly the sexual crimes and torture against women prisoners. It is also established out of the belief, expressed repeatedly by the brave yet tormented survivors and their families who are now in the last stages of their lives, that acknowledging and assigning responsibility for the crimes will help to ensure that they live out their remaining years in greater peace and security. Furthermore, the suffering of the arbitrary revocation of their passports experienced by hundreds of Indonesian people who refused to support the New Suharto Order must be acknowledged as a crime against humanity as well. This Tribunal aims to affirm the uncompromising hope that justice is still possible and that such atrocities will never be repeated.

As a People's Tribunal, the power of the Tribunal lies in the capacity to examine evidence, develop an accurate historical record and apply principles of international law to the facts as found. Further, this Tribunal steps into the lacuna left by the State of Indonesia and does not purport to replace their role in the legal process. The tribunal has the following objectives.

1. To ensure international recognition of the crimes against humanity committed in and after 1965 by the State of Indonesia, possibly in the form of a UN Resolution;
2. To contribute to the healing process of the victims/survivors and their families of the crimes against humanity in Indonesia in and after 1965;
3. To compile evidence about the crimes against humanity in Indonesia in and after 1965 according to standards of national and international law;
4. To contribute to the creation of a political climate in Indonesia where human rights are recognized and honoured; in particular to follow up on the recommendations of the Commission report;
5. To prevent the re-occurrence of violence against victims of the crimes against humanity in and after 1965 and the persecution of perpetrators of such violence;

6. To stimulate sustained international attention to the crimes against humanity committed by the state of Indonesia in and after 1965 and the continued inaction of that state to bring the perpetrators to justice, for instance by inviting a special rapporteur on past human rights violations in Indonesia.

## Conclusion

In Indonesia only a handful of brave human and women's rights activists have been able to withstand the pressure of the military and their gangs. The des-identification campaign that triggered the mass killings still results in the dehumanization of leftist people in general. I maintain that a better understanding of the country's gruesome past cannot grow without realizing the full impact of the myth of the singing, dancing, castrating *Gerwani* members, as Anwar himself stressed.<sup>2</sup> This myth is the core of the army's campaign which transformed an apparent inter-army clash (with some political meddling) into a gruesome mass murder, targeting the PKI and left wing people in general, sweeping away the Old Order of President Sukarno. The sexual moral panic created by the army shamed the nation into silence.

That silence must now be broken. The campaign must be deconstructed, the PKI re-humanized and murderers and particularly those who instigated the murders brought to atone for their deeds. Though the election of Jokowi as Indonesia's next president has raised the hopes of many that human right will finally be respected in Indonesia, it is clear that the forces that aim to prevent this from happening are still very strong. The IPT 1965 can hopefully contribute to pushing towards a climate in which all Indonesians can live with dignity, and past human rights abuses dealt with in a transparent, accountable and fair way.

### 3.2. Additional information taking from the oral presentation

Initially Dr. Wieringa clarified that she is attending the conference as an activist, therefore she wore an action symbol on her T-Shirt and pointed to her hope for an end of impunity in Indonesia.

The progressive women's organization of the PKI, the so called *Gerwani*, had a key role in the dehumanization of the communists. They were blamed to seduce and castrate the generals. In a couple of pictures Dr. Wieringa showed evidence of these urban legends. In picture one, one could see a communist couple arguing, they were both drawn very ugly and inhumanly and the woman was sexualized. She was not the »typical« Indonesian she ought to be, that stereotype was shown in another picture, where one could see a »characteristic« woman, she looked down and had no cleavage. Doing the »dance of the fragrant flowers« *Gerwani* was accused of seducing and then killing/castrating poor generals.

Another issue was the unresolved numbers of the killing. Those figures vary from 500.000 to 1.000.000, the main organizers might think up to 3.000.000. There were killings, mass detentions, and terrible torture. Prisoners were classified into certain categories from A (directly involved with the communists, they were hanged) to B (immediately detained) and C (detention postponed). Of course those victims did not undergo any trial. Also universities were entangled with classifications from A (die hard communist) to D (not communist at all), even Indonesian psychologists were participating.

Even though nine forms of crimes against humanity were committed in that period, the government is still ignoring reports and impunity continues. The aforesaid film »Act of Killing« has almost no review in Indonesia. The climate is still of ignorance, people still lower their voices when they talk about »those evil women«. In an interview, Dr. Wieringa faced a young activist woman, even she was whispering. Some people do not talk to their own family members, because they have been »whores«. Communist phobia is widespread, victims suffer from stigma and many of them are left by their own family. Even in schoolbooks communist phobia is still present. The effort to rewrite schoolbooks peaked in the cremation of those books.

So what can be done? Dr. Wieringa argues, that not a criminal court and getting people into prison is the best solution - as the real perpetrators are dead already - but rather pressurizing the state to come to terms with the past, apologize, set history straight and agree on compensation for the victims. Public awareness must be established like in Cambodia or Ruanda, in order to prevent a second happening of genocide in the future.

Which role does Jokowi play? He wants to solve the 1965 human rights violations, but there are some Generals around him. Human rights, therefore, are not on his list of priorities anymore, he said the government cannot deal with it now. That makes the task of raising consciousness even more important, putting pressure on the state is needed, as it is the only institution powerful enough to end impunity.

<sup>2</sup> The documentary 'The Women and the Generals' by Maj Wechselmann is based on this perspective.

### 3.3. Indonesian Occupation in East Timor and the committed human rights violations

by Aboeprijadi Santoso <sup>3</sup>

Some pointers for the discussion are that the beginning of East Timor's struggle with Indonesia was a consequence of the March Revolution in Portugal, how the internet community dealt with it and how Indonesia responded to it. In the case of East Timor 24 years later we saw series of human rights violations and Indonesia's occupation as well the whole event of mass deportations and killings.

East Timor received first media attention in 1975 with bombardments of Indonesian military, then in '76-'79 media covered war persecution, mass displacements and famine. People just ran away, fleeing the battle field and joined the guerrilla. They literally walked to the hills, when the Indonesians came in. When the biggest massacre in Matebian hills took place, not only guerrillas became victims. At that incident alone 180,000 people were killed, altogether during the occupation 300,000 people were put into military camps. In 1983 it was very easy to crush the guerrilla, because the Indonesians occupied all of Timor. The military even used a metaphor for crushing the guerrilla was like having breakfast, lunch and dinner.

It was never one event in Timor, rather always a series of events that lead to an »explosions« such as the Santa Cruz killings. The 1999 UN referendum held by Indonesia, Portugal and the UN was also followed by some killings and clashes. The pro-Indonesian groups were going from village to village damaging anything they were passing like in a celebration. The aftermath saw 70 percent of the infrastructure was destroyed.

After the independence because of the instability East Timorese were not able to govern properly. There were also fights between army and police (police from north Timor, and southwest Timor), troubles within the police and army to add to the challenges they face.

To deal with the past atrocity in East Timor, KPP HAM (the Investigative Commission into Human Rights Violations) faced problems inviting the generals, of about 10 people, - 7 of them military generals -were invited, only to be acquitted 10 years later. It was only the UN Serious Crimes Unit that had actually solved the cases of around 70 people perpetrators.

Until today there exist only promises by the Indonesian government. If human rights had been taken seriously, all generals should have been brought to court. To this day some prosecutors have been in various important government positions, for example, one of them was the national defense minister. They have implicated that East Timor should have been belonged to Indonesia.

The case of Maternus Bere (2009), a former militia, illustrates this relationship. He was indicted for crimes against humanity. He fled to West Timor but was implicated by three levels of laws: customary law, religious law and nation building. The case says a lot about what East Timor can do. <sup>4</sup>

In 1999 about 120,000 people, mostly Indonesians were forced to run away to West Timor. They ran to the hills and to strategic pieces of land in the very west of the country. The future of the relationship between East Timor and Indonesia should depend on the 100,000 ex-militias and their families, the resolutions, and for the East Timor not to bring the generals to court but to bring reparation and compensation.

### 3.4. Discussion

Norman Voß: *We are slightly behind schedule, but we'll have enough time for discussions. My first question is for Dr. Wieringa: the 1965 killings are one of the most serious crimes against humanity ever recorded. How was such cruelty possible?*

Saskia Wieringa: Indonesia was a country in struggle back then. Sukarno was ill. He was the one keeping the nation together. So, the big hero was vulnerable. The communist party was getting stronger, never as strong as they proclaimed, but they were very visible (notwithstanding internal weaknesses). The actual strong group, the real power holder was the army. They were quietly training militia underground to conquer their arch enemy, the communists. Aceh for example was a heavily militarized area, that's why the strike there was so efficient. In November no communist party member was alive. In the rest of the country the genocide couldn't be performed so efficiently, that's where propaganda entered the game. Small militant Islamic groups were founded; socially the army had already set up many anti-communist groups. With the

<sup>3</sup> Activist and independent journalist, freelance for Radio Netherlands. This is a note of his oral presentation

<sup>4</sup> More on the case: [www.easttimorlawandjusticebulletin.com/2011/09/usgov-embassy-in-jakarta-gives.html](http://www.easttimorlawandjusticebulletin.com/2011/09/usgov-embassy-in-jakarta-gives.html)

arrogance of power holders, they opposed the »threat« of 20 million communists with 40 million mobilized people. Suharto knew that Untung was preparing a purge, but turned against his friend afterwards. In Aceh he started ordering, a chain of command was in place to eliminate the communist party. First panic was created via public beheadings and murders. After that every member of the communist party was told to go to the police in order to subscribe to a list, but they were kept or murdered as well. Second the survivors were killed in death spots. That's why there are so many mass graves, I am currently writing an ethnography of one mass grave. There was a big pond, every night 40 people would come from the prison, then be murdered, after they were tortured. Many of them were castrated, as revenge for the generals. In the third phase the bureaucracy and administration was purged, so that the total left organization was destroyed. It was called war at that time. The West would have never invaded Vietnam if they knew the military could handle it so well, that's why they have supported Suharto. Australia was in danger, if communism swashed from Vietnam to Indonesia, that's why they fulfilled every wish the army had. The US had a CIA man, who updated all of them. They knew everything, also the situation in Aceh. Every request was granted: communication, money and small weapons.

Norman Voß: *Did they also support the occupation of East Timor?*

Aboeprijadi Santoso: Yes, they did support that. President Carter was the one to pressurize releasing the prisoners, but at the same time he delivered fighter jets to the Indonesian army.

Norman Voß: *The public media has developed since then, in Papua we observe violence against civilians, is the army ready and waiting to do something like that again?*

Aboeprijadi Santoso: Yes it is possible.

Norman Voß: *But there are several legal organizations now.*

Aboeprijadi Santoso: The army is more accountable now, yes. But also the new president is influenced by the military. There is no guarantee that human rights will be observed.

Norman Voß: *The perception of the Indonesian public of East Timor is very different to the academic one.*

Aboeprijadi Santoso: Indeed, it's very poor.

Saskia Wieringa: There's an extra element to it: they are ashamed that they acted as a colonizing force. Indonesia was colonized and now Indonesians acted as colonizers as well.

Norman Voß: *What's the self-perception of Indonesians?*

Saskia Wieringa: They see themselves as a good nation that came out of a struggle against the Dutch. People don't want to hear the nasty things like racism and so on. The main concern is that Indonesia has to become a responsible and ethical state. The state affects the morality of the people. If corruption is everyday business you cannot grow up ethically. Indonesia needs to come to terms with the past. We need to do that for the youth.

Aboeprijadi Santoso: Also important in becoming an ethical nation is the education in human rights. The problem in Indonesia is that a certain kind of nationalism develops. What can we do? What can we hope for? Once we have economic and political stability we can think about human rights. So those issues will be left with the next generation. Right now we are busy with nation building. In East Timor almost everyone has suffered and reparation must be possible.

Henry Schürmann: *Do you have any information on the role of the international community? In the 80s an Australian writer revealed that the American embassy has given a list of names and communists to Suharto. Is Germany really so much more ethical? Can you say that about a country selling military equipment?*

Asep Ruhyat: *Is it true that there were forced adoptions?*

Soenarto: *Sukarno was based on national revolutionary politics, Suharto on bourgeois politics. Sukarno based his power on the principle of standing on the own feet, Suharto's regime was based on economic development. That's a very important point of view, they had different economic principles. Suharto won and based his power on the principle of national bourgeois, violence was his power.*

Saskia Wieringa: Firstly, yes, the list of names was in existence, it is a proof that the CIA was involved. But you have to state that it was no secret who was a member of the PKI, people were open about it. They used to tick off the killed ones.

Sukarno was a very bad economist but a rhetorical figure. There was inflation and famines so something had to happen. Anti-Sukarno riots took place proclaiming: »Where is our food?« Also due to his anti-

imperialist politics spare parts were missing, which created a big chaos. Suharto on the other hand is still around everywhere today. Britain, the US, the Netherlands were all directly involved for geopolitical reasons in the cold war. The sea in Indonesia is so deep, that Soviet's submarines could cross the ocean from the Philippines to Australia.

The adoptions really happened. Many people went missing, no one knows what happened.

Anett Keller: *Will the international people's tribunal also be investigating the western involvement?*

Dr. Saskia Wieringa: Yes in the long run the problem should be tackled from all points of view. We have 25 people in our research team and do our best. The tribunal is only a step for further activities, such as an education program and so on.



<http://1965tribunal.org>



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## 4. Civil Initiatives and the Perception of the Indonesian Society for the Sake of Coming to Terms with the Past

The current development of human rights in Indonesia will never be at this current state without the thorough and persistent involvement of the civil society. From time to time various human rights organizations and victim's organizations work together and push for better human rights policy. However, the state still preserves the old structure and mentality. Moreover, people from the former regime still dominate strategic government positions, if not very influential. The demand of civil society for state's recognition of past human rights violations remains omnipresent, which means significant progress is still lacking until today. The following session of presentation and discussion focuses on questions: What initiatives exist and how have they arisen among the civil society? How are their activities perceived by the Indonesian society and government? How can their initiatives be encouraged and expanded? What role should be taken on by the government or the state?

The session was opened with a presentation from Anett Keller, a German freelance journalist, who lived for some years in Indonesia and wrote many articles on the topic of 1965 killings. Her written presentation can be found in point 4.1. of this proceedings. The second presentation was delivered by Indria Fernida, an Indonesian activist from the human rights organisation *KontraS*. She presented the development of the civil society movement and her reflections on it. The third presentation was given by Suciwati, the widow of the late human rights activist Munir. Her demand of justice for the murder of her husband remains the main focus of her struggle. However, she does not rely on the current system as the only means to pursue justice as it is far from just, transparent and accountable, she then begun to elaborate more using the approach of human rights education. She presented the establishment of *Omah Munir* (English: Munir's house), a museum dedicated to the development of human rights situation in Indonesia.

### 4.1. The 1965 mass violence and local initiatives for reconciliation <sup>1</sup>

By Anett Keller

#### Historical Background

It is impossible to understand the events in the mid-sixties in Indonesia without bearing the setting of the Cold War in mind. In 1965 Indonesia had the third biggest communist party worldwide, after China and the Soviet Union. The PKI had 3 million members; together with affiliated groups it was supported by 20 percent of the Indonesian society.

Sukarno, Indonesia's first president, at that time tended towards more confrontation with the West and got closer to China. The western world and the pro-western part of Indonesia's political elite and military were very afraid that Indonesia would turn into a communist state. In the morning of the 1st of October 1965 the so called 30th September movement kidnapped and killed seven high ranking military members. The so called *coup d'état* was blamed on the communist party by pro-western military forces including Suharto, who later became president for more than 30 years. The pro-western general Suharto and his allies blamed the communists for spreading violence and launched horrible stories about the torture of the kidnapped generals. One of the stories that fuelled hatred especially against leftist women was, that members of the women organization, *Gerwani*, had cut off the penises of the generals as well as the claim that they cut out their eyes – which is definitely wrong according to the autopsy results. But the autopsy results were – of course – not published because they were not helpful in Suharto's psychological warfare.

Suharto's de-humanization campaign against communists was very effective in spreading fear and hatred. In the bloodbath that followed the events of the 30th September around one million people were killed. Hundreds of thousands were imprisoned, many of them without a proper trial and for more than ten years. Suharto's military could not do this dirty job alone, they were helped by civilians, mostly members of religious and nationalist organizations.

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<sup>1</sup> Paper presented at the conference: »Impunity in Indonesia«, Berlin, 23-24 September 2014

For more than 30 years Indonesian citizens were exposed to only one narration of history: Suharto's version of how he saved the nation from communism. The extrajudicial killings of hundreds of thousands and the situation of the imprisoned were tabooed.

In 1998 Suharto was ousted from power. The victims of 1965 started to create alternative narrations of history together with human rights campaigners and progressive historians. During the last 15 years many books, films, theater plays and other artworks, created in Indonesia were dealing with this dark chapter of history. In 2012 there was a report released by the National Human Rights Commission (*Komnas HAM*) that classified the events of 1965 as »gross human rights violations« and recommended further investigation through the Attorney Generals' Office<sup>2</sup>. It was the first time that an official entity acknowledged that »gross human rights violations« had taken place and that the military was the main force behind them.

At the international level, in the same year the documentary »The Act of Killing« (TAoK), screening perpetrators telling about their role in the 1965 purge and how they killed their victims for the first time, raised a lot of attention.

## Current situation for survivors of 1965 massacre

The victims and their families are still not rehabilitated and the perpetrators remain untouched. After the Komnas HAM report, there is no further serious effort by the state for a follow up. There has been a ping-pong between Komnas HAM and the Attorney General's office with no results so far. On national level, there is no rehabilitation and no compensation. Briefly before the Komnas HAM report came out, a presidential advisor was signalling, that President Susilo Bambang Yudhoyono is considering a public apology<sup>3</sup> – which has not happened up to now.

However, there are many promising initiatives driven by the Indonesian civil society. There are organizations involved in writing an alternative version of history through collecting testimonies from victims and eye witnesses. They are advocating victims' rights and trying to start reconciliation between families of victims and perpetrators. There are local filmmakers who are trying to make the victims heard and seen, and bringing the topic to the young generation in class rooms and universities. There are artists and activists finding lots of creative ways to spread the word about the dark past. And, last but not least, there is a growing young generation that is critical, contests the old narration of history, and is smartly and effectively distributing information through digital media.

There is increased media attention in Indonesia as well. Parallel to the international launch of TAoK, *Tempo*, Indonesia's biggest news magazine, released a special edition on the 65 purge with a collection of testimonies from former perpetrators<sup>4</sup>. Long before TAoK many civil society initiatives in Indonesia have been dealing with the past. This reality stands in contrast with the impression spread by most international media referring to TAoK as the first documentary dealing with 1965. Most foreign correspondents are Jakarta-based, many are generating news only from English sources, which is perhaps one of the reasons why smaller, local initiatives are often overlooked.

During the last years in Indonesia, I had a different impression, namely that it is increasingly hard to count the number of publications, projects and initiatives dealing with 1965. But the radius of influence of these initiatives is still very limited in Indonesia, and most of them seem to be almost not recognized outside of Indonesia.

Three decades of dehumanization of the victims and of brainwashing the society remain very effective. In large parts of the Indonesian society, communists still have an image of infidels and violent troublemakers. This image is cemented in the form of »*Orde Baru*«-monuments like the *Pancasila*-Monument in Jakarta. There are even new initiatives of those whose power roots in Suharto's *Orde Baru*. Last year for example Suharto's family opened a new museum close to Yogyakarta where Suharto is celebrated as a hero.<sup>5</sup> Entrance is free and there seems to be a good cooperation with education departments and principals: school children are flocking the museum.

Militant groups are still threatening and attacking those who are communists in their eyes. In January 2011 the FPI were threatening organizers of an international conference on 1965 in Jakarta.<sup>6</sup> In Yogyakarta, in October 2013, members of the *Indonesian Anti-Communist Front* (FAKI) dispersed a meeting of survivors,

<sup>2</sup> Statement by Komnas HAM on the results of its investigations into grave violations of human rights during the events of 1965-1966 (unofficial translation)

<sup>3</sup> Rabby Pramudatama: SBY to apologize for rights abuses, The Jakarta Post, April 26<sup>th</sup> 2012

<sup>4</sup> <http://theactofkilling.com/wp-content/uploads/2012/09/TEMPO-UK-Edition-HiRes.pdf>

<sup>5</sup> Lilik HS: Senyium Soeharto, Indoprogess, March 3<sup>rd</sup> 2013

<sup>6</sup> Conference on 1965 overshadowed by FPI threat, The Jakarta Post, January 19<sup>th</sup> 2011

hurting three of them.<sup>7</sup> Their leader, Burhan ZR, was among the perpetrators featured in the *Tempo* »Algojo 1965« edition in October 2012. After the attack in October 2013 he was quoted, saying »For as, it is »halal« to kill communists«.<sup>8</sup>

## New government, new approach?

During the campaign for the presidential election, many human rights campaigners were – some more openly than others – supporting Joko Widodo's bid for the presidency. From the Jokowi camp there was a lot of rhetoric about »mental revolution«, »new democracy«, and about resolving past right violations during the presidential election campaign. Now, briefly before Jokowi's inauguration, disappointment is already growing. In mid of September 2014, Andi Widjajanto, deputy head of Jokowi's transition team, acknowledged that past human rights abuses were not a priority for the future government. He said the lack of existing legal and organizational instruments was a stumbling block to the effort, and added: »To declare something a human rights violation, we need to identify, not only the victims, but also the perpetrators. We do have many claiming to be victims or the family of victims but we have never had anyone admit that they have killed hundreds of people.«<sup>9</sup>

## National deadlock – local dynamics

»If the government is half-hearted, we must not be like them«, said Nurlaela Lamasitudju, Coordinator of SKP-HAM, referring to the deadlock on the national level.<sup>10</sup> SKP-HAM, based in Palu, (Central Sulawesi) means *Solidaritas Korban Pelanggaran Hak Asasi Manusia/Solidarity for Victims of Human Rights Violations* and is the main driving force behind the apology of Palu's mayor, Rusdy Mastura on March 24<sup>th</sup> 2012, which is seen as a real breakthrough. At an event to remember the victims of human rights violations, organized by SKP-HAM, Mastura issued the following statement in connection with 1965:

*»On behalf of the government of Palu, I address my apology to you, who became victims of what happened in 1965. You can call me a perpetrator because I was among those who were chasing the victims and keeping them under guard. I'd like to ask SKP-HAM to assist the local government with collecting data of the victims. Please tell us what we can do to ease your burden.«<sup>11</sup>*

What followed was a long struggle for the details of a regulation. At the end of 2013 a local regulation was issued to facilitate the rights of victims of human rights violations.<sup>12</sup> The regulation was initiated by SPK-HAM and supported by KKPK (*Coalition for Justice and Truth*). What happened in Palu was possible because of a strong role of civil society, namely the local NGO SPK-HAM, which was founded in 2004. SKP-HAM decided to focus on the victims of 1965, because, according to SKP-HAM, in Central Sulawesi there was no assistance for them at all. Since then, SKP-HAM is documenting cases of human rights violations that happened in connection with 65. They have collected more than 1200 testimonies from victims, witness-

<sup>7</sup> Anti-communist group disperse meeting, The Jakarta Post, October 28<sup>th</sup> 2013

<sup>8</sup> Pertemuan Korban 1965 Bubar, FAKI Tanggung Jawab

<sup>9</sup> Bagus BT Saragih and Margareth S. Aritonang: Attempt to form rights task force blocked, The Jakarta Post, September 16<sup>th</sup> 2014

<sup>10</sup> Nurlaela Lamasitudju, interviewed by Anett Keller, Oct 13<sup>th</sup> 2013

<sup>11</sup> Nurlaila Lamasitudju: Peraturan Walikota Palu bagi Korban Peristiwa 1965 - Jalan Terjal Inisiatif Lokal, <http://www.skp-ham.org/588/peraturan-walikota-palu-bagi-korban-peristiwa-1965-jalan-terjal-inisiatif-lokal/>, Übersetzung Anett Keller

<sup>12</sup> The Peraturan Walikota (Perwali) Kota Palu No 25 tahun 2013 is based on the RANHAM (Rencana Aksi Nasional Hak Asasi Manusia) - document, a presidential decree, issued first in 1998 and extended 3 times since then. There was a long discussion, why RANHAM was used as a judicial basis, although it has many weaknesses. First SKP-HAM tried to propose an SK (Surat Keputusan) issued by the mayor of Palu to acknowledge the atrocities of the past and the rights of the victims. The mayor of Palu was willing to sign such a decree but there was a lot of resistance from other elements of the local government. As a next step and after the city government started a campaign with the slogan »City for All» SPK-HAM issued a declaration in May 2013 that named Palu the City that is aware of Human Rights«. There was a growing support for a local regulation in the form of a Perwali, but an agreement on it could still not be reached because of its weak legal basis. The 1965 killings is seen as a political issue, therefore a regulation with regard to it has to be based on a regulation at the national level. Instead of having a local regulation that easily could be skipped because of its legal weakness, SKP-HAM extended the discussion about a regulation and tried to find ways together with Komnas HAM, Komnas Perempuan, Lembaga Perlindungan Saksi dan Korban (LPSK), KKPK and some individuals who were supportive to their cause. There were also consultations between the local government of Palu and the Ministry of Law and Human Rights. In the end, a compromise was reached. The Perwali that was finally issued, names victims of human rights violations in general and does not refer specifically to victims of the 65 purge, Nurlaela Lamasitudju, interviewed by Anett Keller, October 2013, December 2013 and September 2014

es and also perpetrators.<sup>13</sup> Their accounts, telling of extrajudicial killings and arrests, of sexual violence, of forced labour and of continued stigmatization of the victim's families are important parts to solve the puzzle of the Central Sulawesi happenings of 1965 and the following years.

Some of these testimonies were published in the book »*Sulawesi Bersaksi*« edited by Putu Oka Sukanta, himself a survivor of 1965 and passionate writer and publisher. I had the pleasure to join the book launch in Jakarta last year at the Goethe Institute, where I met the mayor of Palu, Rusdy Mastura. Back in 1965 he was 16 and active as a scout. When Rusdy Mastura was told to chase and guard political prisoners by the military, he was proud to do it.<sup>14</sup> Coming from a religious family, he saw the communists as traitors and infidels. During the launch of »*Sulawesi Bersaksi*« it was very moving to see, how Putu Oka Sukanta was awarded a T-Shirt by the mayor of Palu with the crest of the City of Palu and the Slogan »*Kota sadar HAM*« which means »City aware of Human Rights«.

I also met Gagarisman, whose father, Rahman Maselo, was the First Secretary of the PKI in Palu and was killed in 1967. Gagarisman told me that he still remembers how he was running after the truck that took his father away, crying that his father should take him along. Gagarisman's family did not know what really has happened to Rahman Maselo, until 2005, when a former soldier approached them. He was the one, who had been ordered to dig the grave for Maselo<sup>15</sup>, he stayed silent for almost 40 years. Finally, Bantam, then in his late 70's and active as an Imam in the local mosque, wanted to tell the truth. After approaching the family of Maselo, Bantam also testified in front of Komnas HAM. Nowadays he is often involved in activities of SKP-HAM in Palu, like victims meetings and public discussions.

## Further steps and reactions to the local regulation

From January until March 2014 Palu's planning authority (*Bappeda*) and a team of academics from Tadulako University worked together and conducted a judicial research to formulate further principles for implementing the city major instruction (*Perwali*). The budget of the city administration for 2014 allocates a housing allowance for 30 victims. More steps to fulfill the victims' rights are planned for 2015. Currently SKP-HAM and *Bappeda* are verifying the data of victims of the 65 purge in Palu to specify which cases will be prioritised in the budget for 2015. Although the *Perwali* did not specifically mention the victims of 65, another decree was issued by the mayor of Palu to form a working group especially for fulfilling their rights. Head of the working group is Nurlaela Lamasitudju from SKP-HAM.

The victims' reaction was joyful but also cautious. Many doubted that the new regulation would ever be implemented. The public did not really know about the new regulation because there was no socialization from the local government's side. Activists and the media were supportive at the local level and there was also a lot of media attention at the national level<sup>16</sup>. Also the book »*Sulawesi Bersaksi*« received a lot attention and was launched and discussed in several cities.

In June 2014 a Memorandum of Understanding (MoU) between the local government of Palu and Komnas HAM, the Witness and Victim Protection Institution/LPSK and the National Commission on Violence against Women (*Komnas Perempuan*) was signed. KKPK organized a workshop for the implementation of the *Perwali* with different stakeholders. At the moment SPK-HAM is preparing a photo exhibition, where victim's portraits will be shown in the central place (*alun-alun*) in Palu. The exhibition will be accompanied by public discussions where victims from eight regions will share their testimonies.

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<sup>13</sup> 1.210 cases were documented until 2010 in four areas of Central Sulawesi (544 victims in Palu, the others in Donggala, Sigi and Parimo). In 2013 320 victims' names were documented in Poso, Nurlaela Lamasitudju, interviewed by Anett Keller, Sept 19<sup>th</sup> 2014

<sup>14</sup> Rusdy Mastura, interviewed by Anett Keller, Sept 19<sup>th</sup> 2014

<sup>15</sup> Gagarisman, interviewed by Anett Keller, Sept 19<sup>th</sup> 2014

<sup>16</sup> e.g.: Sebuah Pengakuan dari kerumunan pohon kapuk, Tempo Magazine, Oct 7<sup>th</sup> 2012 | L. Siregar: Sulawesi's Testimony a Testament to History, Jakarta Globe, Oct 9<sup>th</sup> 2013 | R. Sangadji/E. Mariani: Rusdy Mastura: The mayor who said 'sorry' for 1965, The Jakarta Post, Oct 25<sup>th</sup> 2013 | E. Mariani: Nurlaela AK Lamasitudju -Truth and justice for 1965 victims, The Jakarta Post, Dec 17<sup>th</sup> 2013

## More information on Sulawesi and 1965

Website of SKP HAM, Palu: <http://www.skp-ham.org/>

Indria Fernida: Local initiatives for truth: SKP HAM Palu, p. 40-43, in: Calling for truth about mass killings of 1965/6, Thesis at Faculty of Law, University of Oslo, 2014 <http://www.jus.uio.no/smr/english/about/programmes/indonesia/docs/thesis-indria-fernida.pdf>

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## 4.2. Civil Society Initiatives in Dealing with Impunity in Indonesia

By Indria Fernida, KontraS

### Introduction

The New Order's take-over of power from the previous regime was marked by massive human rights violations and abuses. Prior to the establishment of the New Order regime, mass violence of 1965/6 occurred. Furthermore, the new government restricted the civil and political freedom. The regime used the need for political stability as a justification to suppress freedom of expression and violated human rights, some of which being considered as crimes under international law. Subsequently, Suharto maintained his 32 years of power by using security forces that committed systematic, large-scale human rights violations.

In 1998, Suharto was forced to resign due to mass demonstrations from Indonesian people initiated by student movements in several large cities in the country. The *Reformasi* process started with a period of considerable transformation of political and legal system, which marks the post-Suharto time. Furthermore, since *Reformasi*, the discourse of human rights emerged and was integrated in an early agenda of legislative and institutional reform. Numbers of legislative and institutional reforms were carried out to conform to the principles of democracy, rule of law and international human rights standards. In addition, the Indonesian government became a significant player in the promotion of human rights in regional and international arena. This was meant to complement its domestic reform and mostly to gain the international community's trust in how Indonesia has changed its image. Human rights' language became a tool of political campaigns as well as a tool for building the country's image internationally. On the other hand, this kind of political situation had been supportive to civilian supremacy meaning that civil society has abundant opportunities to involve and to contribute to the process of political transition in Indonesia. They could use human rights discourse openly including raise demands for state accountability on past human rights violations.

### The Role of civil society

After the mass killing of 1965/6, the civil society was weak and suffered from restrictions due to suppression to freedom of expression, assembly and association. However, the situation of the civil society was improved, when the state applied martial law and committed human rights abuses in East Timor, Papua and Aceh started from the 1970s. As response to these massive violations, civil society performed a critical function as watchdog and chose to act as agent of change. Even though civil society organizations were working underground, discussions and reflection activities rose up and were able to formulate new forms of political manifestation, including dealing with the cases of human rights violation.

In »*reformasi era*« human rights NGOs in particular grew in number and carried out principally the activity of legal aid organizations. They provided legal services to the underprivileged and marginalized people. However, in the beginning of that period, most of the organizations were still reluctant to build strategic relationships with government institutions, whereas the government had also started to establish a

democratic governance system. The state of distrust between the government and civil society organizations had been continuing under the new regime.

In the transitional justice framework, NGO's and victims organization, supported by media and scholars, have taken the initiatives on the issue of truth seeking mechanisms, prosecution, legal and institutional reform, reparation, rehabilitation and reconciliation. The truth seeking mechanisms include activities of statement and testimonies taking, fact-finding missions, archival research and documentation, public event commemorations and monuments, publication and dissemination of information. Activities aiming at the realization of the prosecution are also carried out. These include legal claim, legal drafting, training of law enforcement personnel, public education and campaign and court monitoring. Furthermore, the proposal for legal and institutional reform has been also pursued and covered various activities such as policy research, monitoring, public education and campaign and technical assistance. In addition to those, the efforts to guarantee reparation and rehabilitation take place in form of activities such as medical treatment, psychological treatment and trauma counseling, socio-economic activities, legal advocacy and legal drafting of new regulations. Finally, the preparation for the reconciliation includes the initiatives of grassroots for peace building, public education, political lobbying and legal drafting.

Civil society has been active on demanding a comprehensive strategy in dealing with the past human rights violations. The government enacted the resolution TAP MPR V/2000 on Strengthening National Unity and Integrity which was acknowledged in the policy in dealing with the past abuses. In this regard, the Law on the Truth and Reconciliation Commission (Law No. 27/2004) and the investigation process by National Commission of Human Rights were considered as the first step to establish the ad hoc Human Rights Court (Law 26/2000).

On the other hand, based on the strong pressure from civil society and victims groups, the National Commission on Human Rights established a pro justitia investigation team. Up to now, the commission has concluded six cases as crimes against humanity. They are 1) The Trisakti 1998, Semanggi I 1998, and Semanggi II 1999 incidents, 2) May Riots 1998 incidents, 3) Wasior 2001-2002 incident and Wamena 2003 incidents, 4) The case of Enforced Disappearances 1997-1998, 5) Summary execution-style killings 1982-1985, and 6) The case of 1965-1966 tragedies.

Civil society strategy for advocacy has been divided into the roles at local, national and international level. On the other hand, the strategy also includes the effort to build coalition with other stakeholders. Civil society and victims groups have been maintaining hopes to look for various alternatives advocacy in pushing the state accountability on their case.

## Susilo Bambang Yudhoyono's administration

During two terms of the President Susilo Bambang Yudhoyono's (SBY) administration, there has been no progressive development in the establishment of the Law on the Truth and Reconciliation Commission (TRC) after it was annulled in 2006. On the other hand, state's attorney general refused to investigate six cases of crimes against humanity due to various political (and legal) reasons.

However, in the beginning of his second term, SBY seemed to show increasing awareness to settle gross human rights violations cases. In March 2008 President SBY invited *KontraS* and several victims to the presidential palace. The victims' community has been consistent in demanding justice by holding the »*Aksi Kamisan*« (Thursday Virgil)<sup>17</sup> since January 2007 (up to now). With regards to the issue of past abuses, the President promised to follow up the recommendation with his cabinet members, including with the attorney general, the chief of the Indonesian national police, the minister of justice and human rights and other relevant state agencies to discuss about the resolution of the cases. Since the meeting with the President *KontraS* had actively engaged with personal advisors of the President, including with the expert staff in legal and human rights affair, Denny Indrayana.

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<sup>17</sup> *Aksi Kamisan* (the Thursday Virgil) is a regular silent peace demonstration in front of the Presidential Palace held every Thursday between 4 and 5 pm. It was initiated by some the victims of past human rights violations. Initially they demanded justice for all of the past abuse cases, but now they also support demands for justice for ongoing violations taking place in the country. As part of the silent demonstration, they send a letter every week to the President reiterating their demands. Since the vigils started on 17 January 2007 up to 17 July 2014 (and it is still on-going) they already sent 360 letters to the president. Getting support from other groups in different regions, the initiative of *Aksi Kamisan* has been also adopted in various provinces.

Further, the President invited Ihdhal Kasim (The Chairman of *Komnas HAM* period 2007-2012) and Usman Hamid (former Coordinator of *KontraS*) to discuss about strategic approaches to dealing with various human rights violation in July 2010. However, in that meeting the president stated that:

»I think I can do something for 1998 cases, such as Trisakti uprising, May riot and even cases of Student Disappearances (in 1997/8). I believe the military institution would not refuse it. Even if it is about to establish a Human Rights Court and to bring Prabowo<sup>18</sup> to justice or to bring Muchdi PR<sup>19</sup> to court in Munir's case. I do not mind at all to enact the Presidential Degree (for ad hoc Human Rights Court)... However, for the mass killings of 1965/6 cases, to be honest, I frankly do not want to be seen challenging my former »mentor«. Do you know what I mean?«<sup>20</sup>

Furthermore, through his personal advisor on legal and human rights affairs, Denny Indrayana, the president received the proposal of the strategic approach to settle the past human rights abuses from civil society. The recommendations in the proposal *Kebijakan Presiden untuk Keadilan bagi Korban Kasus HAM Masa Lalu* (Presidential Policy for Justice for the Past Human Rights Abuse Victims),<sup>21</sup> are:

1. To give official apology statements by acknowledging and recognizing the past human rights abuses.
2. To strengthen the accountability process by enforcing the law
3. To provide restorative justice for victims, including the urgent need for victims such as medical treatment and psychological support.
4. To guarantee the non-recurrence of past abuses by removing all discriminatory policies and regulations.

As a follow up meeting, the President held another meeting with *Komnas HAM* to discuss the acceleration of solution for past human rights abuses cases. Subsequently, the President established teams to settle those cases under the supervision of the Coordinating Ministry of Politics, Legal and Human Rights. The Ministry then established an inter-departmental team to implement the policy. The president also appointed Denny Indrayana to become the deputy minister in the Ministry of Human Rights, who emphasized that he had been given a special mandate from the president to deal with the settlement of the cases.

Furthermore, the president appointed Albert Hasibuan as a member of his advisory council dealing with law and human rights affair. He stated that the president had a commitment on this issue and assigned him to formulate a national apology for past human rights abuses. The appointment of these two persons had initially raised hope among the human rights' community in the country considering their integrity and past experiences in human rights field. However, SBY did not implement any strategic policy to settle the cases in his administration.

## Conclusion

Civil organizations in Indonesia undertake a range of activities to advocate the cases of past human rights abuses. However, the situation of prolonged impunity has just led to strengthen state's denial. Furthermore, people in Indonesia generally do not give sufficient attention on this issue.

As conclusion, there is some portrait of civil society movement in Indonesia. *Firstly*, the strategy to enhance themselves to advocate the past abuses case. The current situation shows that, generally, civil society is still in a weak position to push for implementation of transitional justice framework for past abuses in In-

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<sup>18</sup> Prabowo was a commander of the *Kopassus* (Special Forces of Indonesia Army), 1995-1998. Later he was dismissed due to his involvement in the case of the disappearances of student activists 1998. However, he refused to become a witness during *pro-justicia* investigation. Subsequently, he was running for the Deputy Presidential candidate (in the 2009 election) and the Presidential candidate (in the 2014 election).

<sup>19</sup> Muchdi was a commander of the *Kopassus*, 1998, who was accused being involved in the disappearance of student activists 1998, but he was never brought to justice. He became a Deputy V of the BIN (State Intelligent Body) and was suspected as one of the masterminds in the killing of Munir, a prominent human rights defender in Indonesia, who was killed by poisoning in 2004. In 2008 the South Jakarta District Court acquitted him in the murder cases. There are many critics say that the judiciary was intimidated and manipulated during the legal proceedings.

<sup>20</sup> Note August 2010.

<sup>21</sup> The final written proposal for President was submitted to the staff of legal and human rights affairs on 18 August 2012. Later, this proposal was also submitted to the Presidential Advisory Council on November 2012.

Indonesia. Internally, civil society is fragmented in their own concerns and lack of effort to establish a common strategy. Furthermore, civil society organizations are decreasing both in numbers and capacities since they received less support from international donors and international agencies due to different interests and strategic priorities. Therefore, building coalition, common strategies, aims and objectives in their work are essential.

However, a few civil society organizations have played – and continue to play – a significant role in Indonesia's political transition. Improving engagement with policy makers in the government is also important for demanding the state to address past abuses. Therefore, while the expertise and experiences on specific theme of dealing with the past is increasing, the strategy to build a critical engagement with the government is also developing.<sup>22</sup>

*Secondly*, civil society's initiatives have played an important role in pushing the accountability for past abuses. However, after *reformasi*, the framework of transitional justice has not yet been able to function properly as an integral approach in settling past human rights abuses in Indonesia. What civil society had done during the *reformasi* era highlights that to be able to achieve an integrated approach takes a long time and requires a gradual process.

The prolonged impunity and political constraints in addressing the past abuses have brought a special concern for civil society in terms of having a realistic advocacy strategy in demanding state's accountability by focusing on only very few priorities.

Indonesia will soon have a new political administration in October this year. The role of the president is very significant in dealing with this crucial issue. Since the president-elect does not have any connection with the past human rights problems and offered a proper program of addressing the past abuses. However, the effectiveness of civil society's strategy to deal with the matter will be tested.

### 4.3. Omah Munir: Paving the Way for Human Rights in Indonesia

By Suciwati

#### Background

*Omah Munir* is a museum dedicated especially for the promotion of human rights in Indonesia. The museum was initiated by Suciwati, the wife of late human rights activist Munir. As one of the founders Suciwati represents a breakthrough in her long fight to ensure the memory and the work of her late husband is preserved, especially among the younger generation. After years of struggling to bring Munir's murderer(s) to justice, Suciwati is turning her attention to a wider perspective; one that fosters a greater understanding and awareness of human rights in society so as to ensure similar cases of injustice do not befall others.

*Omah Munir* is designed to become a medium for human rights education in Indonesia. Why? Internationally the importance of human rights education can be found as an integral part of human rights' promotion:

*»Human rights can only be achieved through an informed and continued demand by people for their protection. Human rights education promotes values, beliefs and attitudes that encourage all individuals to uphold their own rights and those of others. It develops an understanding of everyone's common responsibility to make human rights a reality in each community.*

*Human rights education constitutes an essential contribution to the long-term prevention of human rights abuses and represents an important investment in the endeavour to achieve a just society in which all human rights of all persons are valued and respected.*« (UN Office of the High Commissioner for Human Rights)

The Museum was open for public for the first time on December 7th, 2013. It was the house where Munir and his family used to live from 2001-2002 before moving to Jakarta. Munir bought the house one year after being granted the *»The Rights Livelihood Award«* in 2000.

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<sup>22</sup> Critical engagement is a concept to engage with the governance institution while keeping critical stance, particularly in public on advocating the issue of human rights.



The museum shows not only the private belongings of Munir and his life stories, but it also provides the chronology of three decades of struggle for human rights under authoritarian regime. Furthermore it presents the development of one and a half decades of *Reformasi*. Important issues such as state violence against individuals and the problem of impunity, which are until today barely separated from Indonesian politics, frame the exhibition.

The museum is equipped with an office, a café and merchandise shop for fund-raising purposes. Moreover, there is also a library which most current collections are originated from Munir's private collections. The current management of *Omah Munir* would like to expand this library for more collections. This library has a reading room, which also regularly functions as meeting room.

## Vision and Mission and Purposes of Omah Munir

*Omah Munir* has the vision to strengthen the respect for promotion and protection of human rights in Indonesia. Its mission is to deliver human rights education to Indonesians especially youths, through exhibition, trainings, research, publications, campaigns, performances, workshops, study tours and other.

### Purposes:

1. The public could learn the values of universal human rights in an easy way and an understandable language through the figure of Munir as a person who dedicated his life for humanity and the universality of human rights in Indonesia.
2. To build the character of anti-violence, tolerance for differences and respect for human dignity. Those are the character of Munir presented in the museum.
3. To remind the public that the struggle for human rights continues even in the period after *reformasi*, that is always claimed as a democratic one. There are still some parts of the society which let the perpetrators of past human rights violations free from trial or in other words, impunity is still an integrated part of political culture in Indonesia until today.

## The Museum and the exhibition

In the front entrance a bust statue of Munir welcomes the visitors of *Omah Munir*. This is one of visitor's favorite photo spot at the museum. The museum provides the chronology of the last 2 hours prior to Munir's death on the *Garuda Indonesia* airplane. »Two last hours on the air« is the title of the story of his struggle for life when the poison went into his blood and made him very sick. His personal belongings are also part of the exhibition. Beside the biography of Munir the museum also exposes some cases of human rights violations that remain unresolved until today. In the main room of the exhibition there are several main topics aim to explore the development of human rights movement in Indonesia. It relates to the work of Munir and the cases he dealt with during his life.

1. The birth of human rights movement in Indonesia is explained in the section »In Search of JUSTICE«. It describes the establishment of the *Institute for Human Rights Defenders* (LPHAM) in 1966 by Yap Thiam Hien and *The Legal Aid Foundation* (YLBHI) by Adnan Buyung Nasution in 1970 to provide legal aid to victims of political persecution by the New Order Regime. These two institutions led the fight for justice for human rights victims in Indonesia. The Indonesia Human Rights Awards for Human Rights Defender is named after Yap Thiam Hien.
2. In the section of »KNOW YOUR RIGHTS« a rolling animation video about universal basic rights is shown in the main exhibition room. The video presents the 30 basic rights in a simple, popular language. *Omah Munir* made this video viewable online on Youtube through this link: <https://www.youtube.com/watch?v=CcgBdXSjQIk>
3. The next section is named after Marsinah. Marsinah was a worker in the industrial zone in Sidoarjo, East Java, who led a labor movement to fight for worker's rights in her factory since 1992. She disappeared after leading a strike in her factory when some of her fellow workers were arrested and detained by the local military. Marsinah protested these arrests. She disappeared soon after this incident and her body was found four days later. It was widely believed that her death was related to her work in fighting for workers' rights.

Those responsible have never been brought to justice. In 1993 Marsinah was awarded posthumous Yap Thiam Hien human rights award.

4. There is a section addressing the human rights violations and impunity in East Timor

5. Another section is dedicated to »The Disappeared«. Munir established *KontraS*, an NGO that dedicates its work to investigate the kidnappings of student activists by the military at the end of the New Order period and advocate for the plight of the victims and their families. *KontraS* has since then continued to work to advocate for the plights of victims of political kidnappings and violence.

## The Programs of Omah Munir

Having longstanding experience in the social movement in Indonesia Suciwati and the team members of *Omah Munir* share the idea that there should be new approaches applied to reach more people and to get more audience in the promotion of human rights. Film for instance could be very effective as a new medium for learning. On the last anniversary of Munir's death *Omah Munir* conducted various activities including:

(1) Human rights photo exhibition and art installation: Refuse to silence by Yaya Sung dan Fanny Octavianus,

(2) Discussion on art works,

(3) screening of the film »The Look of Silence«

(4) screening of the Film »Cerita Tentang Cak Munir« (A story about Munir).

These all are held from 8th-14th December 2014.

Film screening, discussion and art exhibition were the informal education methods used by *Omah Munir* to carry out the human rights education for society. For the formal education *Omah Munir* launched in 2015 a learning module on human rights for 7<sup>th</sup> and 8<sup>th</sup> grade elementary school pupils. The pilot project will take place in 4 cities in Indonesia. This program was supported by *Ford Foundation*.

## 4.4. Discussion

*Q: What do high school children learn about 65 in school?*

Suciwati: In 2008, a text book for schools was developed by the victim's organization JSKK and distributed to some high schools in Jakarta. In 2010, the cooperation continued with the association of history teachers. It gave new information to the current official history and shared the method on how to teach such materials to children. In *Omah Munir* we have the plan to distribute leaflets to facilitate a better understanding of human rights. Munir Museum in Batu becomes a tourist destination in Batu.

Indria Fernida: The young generation is surprisingly resourceful; they also learn from the internet. The government is reluctant to provide better education about human rights. Maybe we shouldn't expect that it comes in the first place through formal education, nevertheless the strategy should be to integrate it in children's education.

Suciwati: Many schools, SMP or SMA, they come with the whole class to the museum and sometimes they have assignments to write a small report about what they learned. Now, it is easier to put these ideas in the mind of children than in minds of adults.

*Q: How free is the media now to report about HR violations and past violations?*

Anett Keller: Media play a big role in this regard. Many have changed in the recent years. However, the press in Indonesia is quite free compared to the neighbor countries. More and more media enjoy this freedom. More of a problem is the media ownership. Media conglomerates tend to hinder the press freedom. However, this is not a specific Indonesian problem. On the other side, young people are very creative in using modern media and there are a lot of ways to deal with past abuses in these digital media. There was an exhibition in Yogyakarta two years ago called »Slap exhibition« on 65 and other abuses. They created stickers.

*Q: What is the freest media in Indonesia? Jakarta Post often published misleading posts?*

Anett Keller: It is hard to say which media in general is the best. I trust the local and online media more, but they are overlooked by foreign media, because they are written in Indonesian. As a foreign journalist you have to be based in Jakarta

*Q: How about Jokowi (current president elect)?*

Indria Fernida: Many people voted for Jokowi, but we do not trust him. We talked to him and he is a nice man. But media coverage is very complicated. For Jokowi it is difficult to deal with human rights issue. We expect that he would start with soft approach like establishing a truth commission. We have hopes but on the other side we must be realistic and not expect a judicial court and trial of perpetrators, because the supporters of Jokowi are involved in human rights violations. Most of the victims of 1965 had died, but the seek for justice for them remains.

*Q: How is the situation of the law/justice system?*

Indria Fernida: Compared with other countries they follow this path of laws. Human rights organizations in Indonesia do not always reflect on what they achieved. Sometimes we have to stop and think about the best strategy. This may be the process.

*Q: From the »black Thursday protest«, what is your reflection to this and what kind of action should be taken?*

Indria Fernida: We have many opportunities, if we take it, because the government is at the moment quite open. As NGOs we try to influence them and sit together, not only protest. We can sit together and think about implementations.

*Q: What do you expect from the book you publish?*

Anett Keller: Motivation was reflected in the research, that it was hard to count the number of initiatives in Indonesia. We want to build a bridge between media and individuals, hope for exchange and international involvement.

*Q: What is your main concern and main hope for direction of pushing for better human rights situation?*

Indria Fernida: Main hope is to confront impunity, although it will not end in the next few years. It is important to inform people (public) and victims. In terms of international support, I do not know what kind of support should be helpful. Organizations such as *Watch Indonesia!* have to support the Indonesian society from the outside. By bringing the case outside of Indonesia with the goal to push and pressure the Indonesian government to change.

Suciwati: Engaging the young generation. When we see the lack of enforcement of the legal system, we have to give hopes to the young generation.

Anett Keller: Assessment of what has been done nationally and internationally. I find it interesting that NGOs have been supporting Jokowi in the election process instead of being critical. A goal will be to enhance exchange and develop strategies for the future.

Further Questions:

- 1. Did we lose the kind connection of NGOs amongst each other? Where is the leadership of HR Movement?*
- 2. Advocacy strategies: Indonesia is a democratic country and a Muslim rich country. It is said to be a good example for democracy. It has therefore a responsibility and still tolerates strict sharia law. We have to stress that responsibility.*
- 3. Asking for a truth commission is the result of highest commission in 1999, 15 years ago, and not an idea of some small NGOs. Excuses that there is no money are not to be accepted! 4-5 governments did not do anything.*
- 4. The Link of human rights violations in the past and now. Impunity has an influence on business men and military now. If we discuss past cases, what is the influence on and link to the human rights violations now?*

Anett Keller: Connections of past and present human rights violations are strong. Impunity has for sure a big influence on the recent cases. We see a lot of violence cases without court decisions. Still victim's gatherings are attacked by anti-communist organizations like FAKI, and nobody was tried for it.

Suciwati: We have seen in the last elections that strong candidates came mostly from political dynasties. There is hope in Jokowi's government, because it is the first government that is not coming from a dynasty. We have to look at the ministries and supporters surrounding him. We still have to be resistant. It is true that 10 years ago we had strong people like Munir, but this fact does not mean that NGOs are weak. I be-

lieve they are stronger and even better connected today. NGOs are more fluid. The time and the dynamics are different today.

Indria Fernida: This is part of the strategy. Talking about past human rights abuses will not be effective without relating to the present. We are engaging with other NGOs to create a bigger impact. For example: Black Thursday. Every week they send the old and new human rights cases in a letter to the government. It is also an opportunity for other NGOs to join the movement. We try to get the mainstream human rights movement to deal with land conflicts and *adat* (traditional) rights too.



## 5. Application of International Mechanisms against Impunity

Indonesia is a party to several important international covenants such as the ICCPR and the ICESCR. Nowadays the capacity and the access of the civil society organizations to international human rights bodies and international instruments for human rights are much better than before. Furthermore good networks with bodies and international organizations at the regional and international level have been well established along the years. It is noteworthy to mention that there's still a big gap between local and national NGOs (or Java and outside Java) in this respect and efforts to accelerate this have been carried out until today.

The increasing capacity has given the chance to voice the human rights situation in Indonesia to the regional and international level. Nowadays, NGOs are able to file reports and complains through various procedures. The impact of those activities is proven to push for more state accountability, however at the micro level there is no meaningful change yet. This third part of the conference is based on following basic questions: Which mechanisms can be used to take effective action against impunity in Indonesia? To what extent are they effective in the short and long term?

In this session which was moderated by Karl Mertes from DIG Köln, Dr. Theodor Rathgeber from Forum Menschenrechte started his presentation on various international human rights mechanisms which address the problem of impunity. He basically recognized that the instruments so far are less effective in bringing immediate change to the addressed situation, however, they are still useful to prevent the impact of worse situation. The second presentation was given by Asmin Fransiska, from Atmajaya University, Jakarta explaining the current development in Indonesia in the application of the national, regional and international mechanism. She highlights »It is not impunity, but de facto amnesty which is now applied in Indonesia«.

### 5.1. International Human Rights Mechanisms against Impunity

By Theodor Rathgeber

#### Introduction

There is a certain common worldwide understanding that crimes - at least against humanitarian law, as well as systematic and gross violations of human rights - should not go unpunished. Rhetorically, there is not a State in the world that supports impunity for serious crimes. Considering the documents and resolutions adopted by the United Nations General Assembly (UNGA) as well as the majorities of the voting process, the UN member States seem to have accepted that principle. Indeed, there is a good number of procedures, on domestic as well as on international level, which were established over the years in order to combat impunity. Also at the level of institutions truth, justice and reconciliation commissions, or special (regional) tribunals based on international criminal law were framed towards that end. These endeavours found a provisional end in terms of legal procedure by establishing the Rome Statute and the International Criminal Court (ICC) in order to end impunity for perpetrators of the worst criminal acts. The serious difficulties and deadlock faced by the ICC in adequately addressing a number of relevant cases - e.g. USA / Donald Rumsfeld, Kenya / Uhuru Kenyatta, Sri Lanka / Mahinda Rajapaksa, Bosnia / Milorad Trbic - illustrate, however, the ongoing unbalance between power politics and normative challenge.

After dictatorship or authoritarian rule, new governments are confronted with a number of problems in terms of rule of law and governance. In relation to the issue of impunity, the former perpetrators of human rights violations often are shielded from sanction because the new government may be more interested in domestic political stability and security compared to justice. Sometimes, the perpetrators still enjoy an official status or are politically too relevant and, thus, prevented from sanctions. However, what might be gained for the new government in terms of stability in governance will contribute vice versa to refrain from actively combating impunity and therein generating an obstacle for a reconciled society. In terms of human rights, the new government is challenged to determine who of the perpetrators should be brought to justice, at least for the worst crimes, while this may mean annulling a previous amnesty law or risking a violent backlash by military or security forces. The next question relates to how the victims of previous crimes should be compensated. Whatever decision will be made, the challenge by the human rights standard remains.

What does that mean for the practice? There are various lessons learned in recent history. For instance, the German experience with the Nazi regime is saying, in synthesis, that prosecution should, at best, be carried out immediately after the previous (criminal) regime collapsed while the same example also says that Germany needed the allied forces and its authority under an occupation regime at that time in order to legally go ahead against the most prominent criminals. The process of self-critical reflection inside the German society and action upon Shoa and crimes against humanity started only at the end of the 1950s (first trials on Auschwitz). It should be emphasized that this start was due to the courageous commitment of individuals than a collective concern but embedded within a political and social environment rather hostile against such endeavors.

Nevertheless, a lasting effect of German history on combating impunity in the context of Nazi crimes was the establishment of a prosecutor's office (Ludwigsburger Zentralstelle fuer NS-Verbrechen) in order to systematically investigate the crimes of Nazi collaborators and, thus, keeping the pressure on the perpetrators. A second aspect relates to a legal shift. The first element was to identify »murder« as a crime which remains unlimited in terms of criminal prosecution. The second, rather recent element was to assume that already the membership and active involvement within Nazi organizations in concentration camps meets the characteristics of »complicity on murder« and can, therefore, be prosecuted without time limit (emerging with the trial on John Demjanjuk in 2011; a former guard at the concentration camp of Sobibór). A lesson learned was afterward the treatment of state crime committed under the dictatorship of the socialist regime, although the dimension of crimes differs in quality and quantity compared to the Nazi regime.

The following text will neither go into legal details nor into the discussion on impunity in general. The text provides an overview of the international standards, emphasizing human rights standards and procedures which are accessible even for people, rights holders and victims from the ground. Referring to human rights, the State as institution is the predominant counterpart for the pertinent complaints.

## Impunity and State Accountability

Impunity, the absence of justice, removes important guarantees for the sovereignty of the people and is expression of a fundamental crisis in the State's affairs. Various levels are concerned while not necessarily all levels are in the same dimension adversely affected and not necessarily altogether either. Areas of crisis in brief:

- law and procedures / legal protection
- deterioration in the rule of law
- restrictions on i.e. freedoms of expression (including media), assembly, association, religion or belief
- exemptions from punishment / escape from fines
- victims are denied their right to justice and redress
- judiciary
- deterioration of its independence and impartiality
- violation of general principles of the judiciary system
- institutions relevant for checks and balances
- politicization and arbitrariness of institution such as audit mechanisms, supervision in administrative matters
- erosion of or lack of checks against arbitrary use of power
- governance
- lack of investigation and prosecution into serious human rights abuses
- centralization of power by the Executive
- introduction of draconian security laws
- obstruction of remedy for victims
- obstruction of civil society protests / involvement.

Thus, people who have suffered serious violations of their most fundamental rights are not able to receive justice and accountability. Such situations constitute a serious breach of international obligation to protect and promote human rights. Accountability for violations of international humanitarian or human rights law is not a matter of choice or policy but is a duty under domestic and international law.

## International legal protection and countering impunity

### UN Treaty Bodies

At the level of the United Nations, there are a number of instruments and mechanisms which provide protection against violations of human rights as well as (complaint) procedures on accountability including access for grass root people. Among those UN institutions there are the so called UN Treaty Bodies. These bodies are committees of independent experts that monitor the implementation of the core human rights standards by the State party. The treaty bodies consider the reports of the State parties and individual complaints, conduct country inquiries and adopt general comments by which the committees interpret the treaty and its provisions. By ratification, the State party assumes the legal obligation to implement the rights recognized in the corresponding treaty and to report to the relevant treaty body. The treaty bodies may also receive information on a country's human rights situation from other sources, such as national human rights institutions (NHRIs), civil society organizations and other stakeholders like academic institutions. Based on a dialogue, each committee publishes its concerns and recommendations, referred to as concluding observations.

There are nine UN treaties considered as core international human rights standards. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment may be added, established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) in 2002 which is entitled to autonomously visit places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The core standards are (in chronological order of being adopted by the UN General Assembly (UNGA) and coming into force); status as of November 2014:

- International Convention on the Elimination of All Forms of Racial Discrimination ([adopted by the UN General Assembly in] 1965 / [in force since] 1969, [ratified by] 177 [UN member States])
- International Covenant on Economic, Social and Cultural Rights (1966/1976, 162)
- International Covenant on Civil and Political Rights (1966/1976, 168)
- Convention on the Elimination of All Forms of Discrimination against Women (1979/1981, 188)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987, 156)
- Convention on the Rights of the Child (1989/1990, 194)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990/2003, 47)
- Convention on the Rights of Persons with Disabilities (2006/2008, 151)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006/2010, 43)

Each State party, by ratification, is obliged to take steps in order to ensure that everyone in the State can enjoy the rights set out in the corresponding treaty. All treaties comprise (individual) complaint procedures, either by a special paragraph within the text or others are supplemented by an optional protocol. All nine Treaty Bodies can receive petitions from individuals provided that the State has recognized the competence of the committee to receive such complaints and that domestic remedies have been exhausted. Six of the committees - on Economic, Social and Cultural Rights (Optional Protocol Art. 11), Torture (Art.20), Women (Optional Protocol Art. 8-9), Persons with Disabilities (Optional Protocol Art. 6-7), Enforced Disappearance (Art. 33), and Rights of the Child (Optional Protocol Art. 13) - are entitled, under certain conditions, to initiate by their own country inquiries if they receive reliable information containing well-founded indications of serious, grave or systematic violations of the conventions in a State party. The Committees on Women's rights and on Racial Discrimination are further entitled to initiate so called Early Warning and Urgent Action Procedures in order to start a political dialogue with the concerned government.

### UN Human Rights Council

The UN Human Rights Council (HRC) is the main UN body for the promotion and protection of human rights. For this monumental task, the HRC encompasses a broad range of human rights topics, which is addressed through the HRC agenda setting, its instruments and mechanisms. Composed of 47 governments, elected by the UNGA, the HRC always remains an ambiguous institution in the sense, that the decision making in the HRC considers normative standards as well as States' interests and corresponding

(real-)political aspects. Nevertheless, the attributed functionality according to the normative standards of the HRC, its instruments and mechanisms raises high expectations. Predominant expectations to the HRC from a victim's perspective are justice, and, inter alia, support for the reconstruction of their life including restitution, compensation, and satisfaction. In singular cases, the priorities may gradually diversify but in relation to the United Nations, there is an overwhelming expectation that this institution shall guarantee the non-recurrence of what happened in terms of human rights violations and perpetrators should be held accountable; either by a domestic or by an international procedure. Over the years, the HRC has gained particular expertise in the early warning mechanisms and follow-up procedures.

Within the HRC, the UN Special Procedures, independent experts with a mandate by the HRC to investigate, to report, and to advise on human rights from a thematic or country-specific perspective. They are attributed the highest value. The Special Procedures cover all human rights, i.e. civil, political, economic, social, and cultural. As of November 2014, there are 39 thematic and 14 country mandates. In particular interesting and relevant, related to the issue of impunity and State accountability, are the mandates on »independence of judges and lawyers«, on »the promotion of truth, justice, reparation and guarantees of non-recurrence«, and of the freedoms of expression (including media), assembly, association, religion or belief. The mandate on justice, truth, reparations and guarantees of non-recurrence deals, among others, with the issue of transitional justice addresses countries which recover from armed conflict or repressive rule. A recent empirical analysis of the Special Procedures turned out that around 40% of their invested efforts and time resulted in a positive affect fostering the human rights standards, including victims' concerns.

Within the HRC mechanisms, the Universal Periodic Review (UPR) aims to improve the human rights situation on the ground. Each member state of the United Nations is regularly reviewed and evaluated in relation to its human rights situation. The UPR is a State-driven scrutiny and carried out predominantly by peers. The UPR is based on the core human rights standards. The State under review presents a report which is accompanied by a compilation of information produced by UN entities and a summary of information provided by Non-Governmental Organizations (NGOs) and National Human Rights Institutions (NHRIs), both summarized and prepared by the Office of the High Commissioner for Human Rights (OHCHR). The State's national report shall provide information on how far the government has complied with its legal and political duties and how far the government has implemented the recommendations it accepted in a previous review. While the quality of engagement by certain States differs drastically, 100 per cent of the countries are participating in this review. Currently, no other mechanism of this kind exists at UN level. By October 2011, the human rights records of all 193 UN member States were reviewed. Whereas it is up to the governments and other stakeholders to make the commitment of combating impunity a mandatory topic.

## **Office of the High Commissioner for Human Rights**

The Office of the United Nations High Commissioner for Human Rights has the mandate to promote and protect all human rights, and the High Commissioner for Human Rights is the principal human rights official of the United Nations. The OHCHR's thematic priorities are strengthening international human rights mechanisms; enhancing equality and countering discrimination; combating impunity and strengthening accountability and the rule of law; integrating human rights in development and in the economic sphere; widening the democratic space; and early warning and protection of human rights in situations of conflict, violence and insecurity. Within the context of combating impunity, the following structure and tasks are of special relevance. The OHCHR provides:

- country desks with genuine expertise;
- special engagement on country level in relation to rule of law, strengthening accountability, witness protection, protection of victims;
- share examples of good practice and provide technical advice in relation to the administration of justice, law enforcement agencies, NHRIs and civil society stakeholders
- principles of accountability and the rule of law;
- policy, normative guidance and capacity-building for judges, prosecutors, defense lawyers and law enforcement agencies;
- support for establishing Human Rights Action Plans and national accountability mechanisms;
- support on transitional justice processes in more than 20 countries which included assistance in carrying out national consultations, the design and implementation of judicial accountability mechanisms, truth-seeking processes, reparations programs and institutional reform;



- support to individuals and groups facing discrimination, in particular women, minorities and indigenous peoples and people of African descent, in order that they may have increased access to justice.

## Topics Related to Impunity at United Nations

In 2012, the member States of UN pledged in the UN Declaration on the Rule of Law (A/RES/67/1) to ensure that impunity for serious violations of international human rights and humanitarian law is not tolerated but that such violations are properly investigated, prosecuted and sanctioned. The UN also established an International Day to End Impunity which calls to action for demanding justice and to shed light on impunity. The day marks the anniversary of the massacre in 2009 in Maguindanao (Ampatuan) when 58 people – including 32 journalists and media workers – were murdered in the Philippines. To date, none of the perpetrators have been brought to justice. On the eve of the anniversary (November 22, 2013), a group of mandate holders of the UN Special Procedures called on the UN to adopt a more central role in the fight against impunity, and urged Member States to strengthen efforts to ensure accountability and justice for human rights violations.

The issue of impunity is directly linked to **transitional justice**, a topic, which has kept the United Nations occupied since years and produced a large number of conferences, declarations and reports. The following selection of reports is not meant to be exhaustive but may provide an overview about the range of aspects dealt with at UN level.

- Report of the UN Secretary-General (2004) on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616);
- OHCHR (2006) study on human rights and transitional justice activities undertaken by the human rights components of the United Nations system (E/CN.4/2006/93);
- OHCHR (2009) analytical study on human rights and transitional justice (A/HRC/12/18; plus Addendum A/HRC/12/18/Add.1); annual Report of OHCHR and the UN Secretary-General;
- Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (March 2010).

Impunity is also an inherent aspect when the issue of **counter terrorism** is touched. The UNGA included some provisions to prevent impunity into its Global Counter-Terrorism Strategy, adopted in 2006 and accompanied by a Plan of Action in 2008 (A/RES/60/288). Within the action plan, the »Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism« was established. The Working Group aims to ensure the promotion and protection of human rights in the context of counter-terrorism and to support governments in national assessment processes, capacity building or providing a compilation of documents and relevant treaties and reports. In 2010, two Basic Human Rights Reference Guides were published.

The approach of **Responsibility to Protect (R2P)** was promoted in 2005 by the then UN World Summit, and is an international norm grounded in international law. R2P says that State sovereignty is not a right but rather an obligation in order to make States protecting their populations from mass atrocity crimes such as genocide, war crimes, crimes against humanity, ethnic cleansing. If the State manifestly fails to protect its citizens from the atrocities and peaceful measures have failed, the international community is entitled and has even the responsibility to intervene through coercive measures such as economic sanctions in order to increase the State's ability to respect, protect and fulfill its human rights duties. Different to the high attention in public debates, the military component is considered the last resort, based on an in-depth analysis of the crisis and considering the proportionality of the measure to be taken. The concept of R2P understands »intervention« primarily in terms of civil conflict prevention in order to support and encourage the State concerned at three subsequent levels: Responsibility to Prevent, Responsibility to React and Responsibility to Rebuild.

## Conclusion

Obviously, despite the setting of the international legal framework and procedural institutions, gross violations of human rights as well as severe crimes against humanity continue to be committed, justice for the victims is rather a rare phenomenon, and the proper treatment of the perpetrators is absolutely inadequate

and biased. Considering the current conflicts, the question retains whether the international framework has been a deterrent and even further whether it can ever fulfill its function. Considering a larger period of time, and taking the legal aspect into account, there is now an institutional framework which addresses the commission of serious crimes and impunity. There have been a number of cases where violators were brought to trial and sentenced. Although the dimensions are different, the system of these international norms needs to be established in a similar way as domestic laws and legal institutions are challenged by reality and no national court system has deterred murders and assaults in every part of a country. In both aspects, the existence of the legal accountability measure is essential. Thus, the international law provides guidance in taking appropriate measures against perpetrators and protecting victims and witnesses, to ensure the right to the truth, to take necessary steps to prevent the recurrence, to stress objectivity and non-selectivity in identifying abuses, and not at least to shed light on forensic capacities, and training for law enforcement personnel.

Nevertheless, a mere legal viewpoint is not sufficient. There are still politically motivated barriers which make good governance in terms of rule of law and adherence to international human rights standards a critical challenge. Vice versa, governance retains to be predominantly understood in terms of State stability. Constitutional provisions, rule of law and legal procedures are frequently instrumental mainly to such aim. Unfortunately, this setting of priorities and focus on the State-centred functionality of public order is shared by a large number of States, occasionally including the European Union and other Western countries. To be fair, these same countries are also engaged in establishing and strengthening institutions such as an effective domestic judiciary system, to enhance the investigative and prosecutorial capacity of the jurisdiction, to support the priority of civil jurisdiction in relation to military jurisdiction, to establish effective remedies and pertinent procedures, or, finally, to promote the jurisdiction of the International Criminal Court and the ratification of the Rome Statute.

In addition, the emerging with and implementation of legal provisions has always been a question of social commitment, or rather of social mobilization, too. That means that civil society actors are needed in order to progressively use the UN mechanisms whenever possible, to continue with research and archiving evidence, submitting reports to the UN Treaty Bodies, Special Procedures, UPR, and OHCHR, to make NHRs effectively functioning, and, lastly, to seize the timely opportunities for an incremental advance of the domestic situation. There is an increasing number of civil society organizations and actors worldwide, though not a critical mass, showing its preparedness to continue with the tough, long-term quest for an effective rule of law system, good governance, and utilizing the UN human rights system. It may be worth to remind that actively engaged non-state actors succeeded in some opportunities to peacefully overcome dictatorships; e.g. 1989 in East Germany, 1998 in Indonesia, 2011 in Tunisia. The list of NGOs, contributing, for instance, to the UPR report, is continuously increasing. Therefore, there is hope that individuals and groups of civil society persist and keep being committed in order to turn the international human rights standards into life experience. The UN human rights standards may not get us to heaven but help saving us from hell.

## 5.2. Indonesia's Accountability on Human Rights: From Impunity to *De Facto* Amnesty

By Asmin Fransiska

### Impunity and *De Facto* Amnesty: Definition and International Criticism

Indonesia has been moving backward from the realization of human rights protection. Within 15 years after the »reform of democracy« in Indonesia, practically and conceptually there are no signs the country is progressing in the advancement of the rule of law and human rights protection. Perhaps, this paper might give a cynical view regarding the democracy's euphoria in Indonesia; however we could find many examples on how Indonesia deals with human rights and it will drive us to this point of view.

Bringing the perpetrator before the court and conducting fair criminal prosecution to the wrongdoers in human rights abuses is a fundamental aspect of a victim's right to justice. The United Nations (UN) Special Rapporteur on Transitional Justice, Mr. Pablo De Greiff, states that:

»It is crucial for States to adopt effective prosecutorial strategies to bring to justice the perpetrators of such atrocities and to prevent a recurrence of violence«.<sup>1</sup>

<sup>1</sup> Pablo de Greiff, The Special Rapporteur on Transitional Justice, »Few Perpetrators of mass violations face justice, UN Expert warns«, the Office of the High Commissioner for Human Rights, Geneva, available at, [www.ohchr.org/EN/NewsEvents/Pages/Display/News.aspx?NewsID=15019&LangID=-E](http://www.ohchr.org/EN/NewsEvents/Pages/Display/News.aspx?NewsID=15019&LangID=-E), accessed 15 September 2014.

He added, »Many countries in transition have been, and remain, greatly tempted to adopt with universal jurisdiction not to backtrack on their accomplishments and on others to adopt relevant legislation expeditiously«.<sup>2</sup>

Impunity or amnesty is one of the ways that violate the victims' rights to justice and furthermore to uphold human rights and the rule of law is another one. Adama Dieng, a Registrar of the International Criminal Tribunal for Rwanda (ICTR) defines impunity as the failure to punish violations of established norms. In addition to that, he states that, »it is, in a sense, the act of not being punished, hiding from or escaping punishment either due to circumstances or to the law«. He clearly states:<sup>3</sup>

»Impunity occurs sometimes by legal means (by adopting measures of amnesty, of clemency, of pardon, of mercy or any other measure taken to prevent the Prosecution of perpetrators of violations) and sometimes *de facto* (refusal to undertake investigation to determine the facts, refusal of the Courts to punish perpetrators because of political motives or through intimidation)«.

If we take an examination of the following cases it becomes clear that Indonesia human rights violators enjoy impunity from the state. For instance, there were no proper investigation and fair judgment in the Munir case, Tanjung Priok case, East Timor case; there is no follow up from the Attorney General's Office on the 1965/1966 cases, Talang Sari case, Wamena and Wasior cases, Trisakti, Semanggi I and II and May Riots case to mention just a few.

Moreover, what Indonesia has done now it is not only impunity but it also has granted *de facto* amnesty to the human rights perpetrators. Amnesty is mostly discussed when it relates to the crime against humanity or genocide by imposing a law relates to the human rights cases. There are several definitions about amnesty. A Salvadorian court defines amnesty as follow:

»Amnesty consists in the pardon or forgiveness of a crime granted by the Public Power – by virtue of the right of grace – in determined cases prescribed by law, which extinguishes completely the action and the penalty, and eliminates the quality of condemned in favor of whom or whose it is decreed«.<sup>4</sup>

In Indonesia, amnesty has been tried by imposing the law on Truth and Reconciliation Commission. Fortunately, the law was annulled by the Constitution Court. However, the amnesty in practices is still active and furthermore it is stronger than before. Patrick Burgess wrote that:

»In Indonesia, unlike the other cases..., efforts to introduce formal amnesties for perpetrators of gross human rights violations have not succeeded. But the purpose that such amnesties have served elsewhere – to protect those responsible for mass human rights violation and suppress the truth about the pass – has been achieved. Despite failing to adopt an official amnesty law, Indonesia is not a case of doing nothing«.<sup>5</sup>

In those reviews, clearly we can conclude that Indonesia has granted *de facto* amnesties for the crimes against humanity cases or the gross human rights human law cases. Based on international law the amnesty whether *de jure* or *de facto* should be prohibited if it will violate victims' rights to justice. United Nations claims that, under various sources of international law and under United Nations policies, amnesties are impermissible if they:<sup>6</sup>

- (1) Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations;
- (2) Interfere with victim's right to an effective remedy, including reparation; or
- (3) Restrict victims' and societies' right to know the truth about violation of human rights and humanitarian law.

UN adds that »that seek to restore human rights must be designed with a view to ensuring that they do not restrict the right restored, or in some respects perpetuate the original violations«.<sup>7</sup> We should bear in mind that the purpose of amnesty should relate to the peace building, national reconciliation, rehabilitation and reunification of the State. In other words, without those purposes amnesty should be never be granted to the wrong doer. By imposing *de facto* amnesty or impunity Indonesia has violated international law and international human rights law.

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<sup>2</sup> Ibid.

<sup>3</sup> Adama Dieng, CLARIFICATION OF CONCEPT: Justice, Reconciliation and Impunity, Unites Nations Under Secretary General, Registrar of the International Criminal Court for Rwanda, 24 May 2002

<sup>4</sup> See, Faustin Z. Ntoubandi, »Amnesty for Crimes against Humanity under International Law«, Martinus Nijhoff Publisher, p. 10-11, 2007; see also, Judgement of the Salvodarian Supreme Court on the Amnesty Law, excerpts in N.J. Kritz, chap. I, n. 3 at 552;

<sup>5</sup> Patrick Burgess, »De Facto Amnesty? The Example of Post Soeharto Indonesia«, Cambridge University Press, p. 263.

<sup>6</sup> The Office of the United Nations High Commissioner for Human Rights, »Rule of Law Tools for Post Conflict States: Amnesties«, United Nations Publication, Sales No. E.09.XIV.1, 2009.

<sup>7</sup> Ibid.

## Indonesian Human Rights Abuses and Domestic Judiciary Mechanism: One step forward - two steps backward

The dangerous stage of impunity or *de facto* amnesty is that the victims who seek justice are being ignored and furthermore it will create a culture in which future human rights abusers will not face accountability before the courts. It seems that Indonesia is far from the justice expectation. The human right strategy is weak and is not even foreseeable in the near future.

There are many challenges regarding Indonesian obstacles to fulfill the victims' rights. Firstly, the law regarded the victims' right to find truth and justice (e.g. The Human Rights Court and The Law on Truth and Reconciliation Commission) was designed to be failed and ineffective. It reminds us about what Prof. David Cohen found in his research on why the Indonesian Ad Hoc Human Rights Court failed to bring the wrongdoer in the crime against humanity in East Timor Case and until now they are untouchable.<sup>8</sup> Since the Law on Human Rights Court has been imposed, there is no other single court which exercises on human rights cases in Indonesia, except the East Timor Case that at the end the Judges released the »big fish«. One of the obstacles of this issue is the lacking of political will from the government and the state to reveal the truth and justice.

Secondly, the national institutions which are supposed to protect people and criticized human rights perpetrators in some extent have been in the stagnancy position, in other words, they run nowhere. Almost all the National Commission on Human Rights' (*Komnas HAM*) recommendations and finding on human rights cases are being ignored by the national institutions. Komnas HAM's investigations finding on human rights cases are not being observed by the Attorney General, President and other national institutions. The May Riot Case 1998 is a good example on how Komnas HAM's finding have never been followed up by the Attorney General. Komnas HAM should be the pioneer of the human rights protection. It is one of its objectives. However, referring to the performance of current Commissioners of Komnas HAM, there is none of human rights cases that is brought before the Human Right Court, instead its internal conflict appeared in the media. That clearly shows the situation would be the same in the coming years.

Thirdly, Human Rights cases are being used or abused as campaigning agendas during general election but not as a national Strategy. Post-Suharto governments show no political goodwill with regards to human rights past abuses. Human rights issue is being used for winning the election in legislative or in presidential election by almost all candidates. In 2004, after being elected as the new president, Susilo Bambang Yudhoyono declared that the »Munir case would be a test of our history in the context of Indonesia's democratic reform process«. <sup>9</sup> However, until his term was over, he had not done anything to resolve the case.<sup>10</sup> It seems hoping that the new president, Joko Widodo, and his vice president, Jusuf Kalla, will be able to fulfill victims' wishes on human rights, is too far-fetched. Joko Widodo has promised during his campaign to find the way to uphold human rights and to re-examine human rights cases in the past.

However funding is the stumbling block to establish a Human Rights Court. In addition to that, Andi Widjajanto, one of the deputy heads of Jokowi-Kalla's transition team acknowledged that human rights issues, particularly past abuse cases, were not on the priority list. He argued that the lack of existing legal and organizational instruments to handle cases was a stumbling block to the effort«. <sup>11</sup> Furthermore, he claimed that, »some of the cases had actually been >judicially resolved«. <sup>12</sup> He continued by citing the Munir case as an example, »The judicial process ruled in a final and binding decision to declare Pollycarpus [Budi Priyanto] guilty. So the case can be considered closed. The suggestion that Muchdi [Purwopranjono] and [AM] Hendropriyono should also have been sentenced is entirely a different issue«. <sup>13</sup>

Fourthly, is the issue of corruption. There are many researches on the relationship between corruption and transitional justice process in Indonesia. However, corruption is one of the primary legacies that the Suharto

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<sup>8</sup> David Cohen, »Intended to Fail: The Trials Before The Ad Hoc Human Rights Court in Jakarta«, ICTJ, August 2003, available at [www.trial-ch.org/fileadmin/user\\_upload/documents/trialwatch/cohen.pdf](http://www.trial-ch.org/fileadmin/user_upload/documents/trialwatch/cohen.pdf)

<sup>9</sup> See, Amnesty International, »Indonesia: Authorities have failed the >test< to resolve Munir's case«, Amnesty International, 7 September 2012, available at [www.amnesty.org.au/news/comments/29691](http://www.amnesty.org.au/news/comments/29691).

<sup>10</sup> See, The Jakarta Post, »After 10 years, Munir Murder unresolved«, The Jakarta Post, 02 September 2014, available at [www.thejakartapost.com/news/2014/09/02/after-10-years-munir-case-murder-unresolved.html](http://www.thejakartapost.com/news/2014/09/02/after-10-years-munir-case-murder-unresolved.html).

<sup>11</sup> Jakarta Post, »Attempt to from rights task force blocked«, September 16, 2004, available at <http://www.thejakartapost.com/news/2014/09/16/attempt-from-rights-task-force-blocked.html>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

regime has delivered to Indonesia. It is estimated that Suharto has stolen between US\$ 15 to US\$ 35 billion.<sup>14</sup> During the Suharto regime, corruption, nepotism and bribery as well as impunity have penetrated into almost all domestic mechanisms on justice. Additionally, Burgess finds that, »The new regime has left a legacy of unwillingness to reveal the lessons of the past and hold those responsible accountable. The breadth of the network created by the web of corruption, nepotism, and impunity and the fact that the police, military, and judiciary were so closely linked during the Suharto periods means that any investigation of serious crimes by the Police or AGO [Attorney General Offices] may in some way involve the very individual tasked to investigate member of their families, colleagues, and superiors«. <sup>15</sup> It is clear that the corruption has strong connection with Indonesia's unresolved past human rights abuses cases.

Fifthly, is the transforming of the military's role in the Indonesian democratic reform process. During the Suharto era, Indonesian military and intelligence were granted powerful positions through so-called »*dwi-fungsi*« or dual-function. This was seen as a tool of making the Indonesian military politically and economically powerful. Although this policy has been annulled, the reform of Indonesian intelligence and military has not been achieved.<sup>16</sup> As a result, it is hard to exercise and investigate serious mass crimes when the military or police officers were implicit in those cases. In the Munir case, the Tanjung Priok or East Timor case, we can find that the military's role in Indonesia's politics and justice is still strong. In those cases, none of the high ranked military officers, who should have been responsible of the crime, have been brought before the court. Burgess wrote that »In some cases junior, and in a few cases mid-level, military officers have been tried by military courts and have received relatively lenient sentences«. <sup>17</sup> In short, the domestic justice mechanism has established *de facto* amnesty for military high rank officers and showed the evidence that the military still has a crucial stronghold in Indonesia. They are transforming, hiding, and changing tactics and methods, which obscured their role in some of the mass violations. This way military power in Indonesia has become stronger and more dangerous, and it's hard to take their accountability.

The domestic justice mechanism is still the important way available. It will be easier to find the strategy and support in some cases, especially in pushing for progress of Komnas HAM in tackling human rights cases. Pushing the new government to reinvestigate cases, such as the Munir case, Talang Sari and Tanjung Priok, needs to be done. On the 1965 cases, the discussion about communism should be brought to public domain and revealing the truth of history should be taken into account. On other cases involving human rights defenders in Wamena and Wasior, it is important to urge Komnas HAM to reveal the finding to public. The government was also urged to review and replace the current Human Rights Court Law with a new law, which contains a stronger inquiry mechanism and institution as well as limiting access of interference from political institutions to court system. This idea should be followed up by analyzing the obstacles and the way to overcome challenges.

To push dealing with human rights cases from within also needs a strong and powerful civil society. As we learn from the past, the government cannot be left alone because it has its own interest and lacks of political will. It is important to build civil society with the same goal but different strategy. Cooperation and cross-issue work related to rule-of-law, human rights and economic development are important.

Regarding the judicial reform, to achieve impartiality of the Indonesian criminal justice mechanism, we should take steps to monitor and review the link between corruption and the criminal justice system. The involvement of judges who were cronies of Suharto regime and complicit in corruption cases should be criticized. In other words, the vetting mechanism of judicial officers should be considered as a way to eliminate partial and unfair judgment.

On executive reform, there are several ways that should be taken into account. We agree that during this new government the door is open to resolve human rights violations. However there is not enough guarantee. Dealing with past human rights abuses will lead us to see power relations between government officials and members of parliament. A strong legislative body will balance the power of the executive. To suggest and urge the new government to re-investigate, giving proper budget to investigate, open the discussion and discourses on some sensitive human rights cases should be taken into account. It is crucial to repeal the weak human rights law.

There are many struggles to overcome, however, we still have the hope that impunity or amnesty will be less dominant in the transformation of Indonesia. There are many human rights organizations and victims'

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<sup>14</sup> United Nation Office on Drugs and Crime, »Stolen Assets Recovery Initiatives Launch«, available at [www.unodc.org/documents/corruption/STAR-Septo7-full.pdf](http://www.unodc.org/documents/corruption/STAR-Septo7-full.pdf); see also Burgess at p. 288

<sup>15</sup> Ibid, Burgess.

<sup>16</sup> Detik News, »Komnas HAM: 14 Tahun Reformasi, Penegakan HAM Kita Jalan di Tempat«, 22 May 2012, available at [www.news.detik.com/read/2012/05/22/080014/1921369/10/komnas-ham-14-tahun-reformasi.html](http://www.news.detik.com/read/2012/05/22/080014/1921369/10/komnas-ham-14-tahun-reformasi.html)

<sup>17</sup> Op cit, Burgess.

families who keep moving and struggle to uphold human rights and bring the human rights perpetrators to justice. The global view on accountability has changed. The Philippines and Cambodia are good examples. In those countries, the court succeeded to bring the high rank military officers and superiors to be accountable for human rights cases in the past. Indonesia will not escape from this wave of reform. However the question remains how to make it happen and how long from now it will happen. It is clear that Indonesian civil society cannot walk alone. We need the regional and international assistance to create a strong wave in order to change the *de facto* amnesty into accountability.

## What should be done for Fostering Human Rights Accountability in Indonesia?

### a) Regional Level: ASEAN (Association Of Southeast Asian Nations)

Asia is the only region where an intergovernmental human rights regime does not exist. In November 2007, the Southeast Asian Nations (ASEAN) put forward the ASEAN Charter which was provided as a legal foundation for an ASEAN human rights body. ASEAN Charter itself imposes the obligation to member states to adhere to the rule of law, good governance, the principles of democracy and constitutional government.<sup>18</sup> Furthermore, the Charter urges the states to respect fundamental freedoms, and the promotion and protection of human rights.<sup>19</sup> Moreover, specifically the ASEAN Charter obliges the ASEAN member states to take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provision of the Charter and to comply with all obligations of the membership. ASEAN Charter rules on upholding the UN Charter and international law, including international humanitarian law.<sup>20</sup> Furthermore, ASEAN Charter governs that all the member states should respect fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.<sup>21</sup>

Following that, in 2009, the ASEAN Intergovernmental Commission for Human Rights (AICHR) was created. Its role is an overarching body to promote and protect human rights in ASEAN,<sup>22</sup> obtaining information from ASEAN member states on the human rights situation<sup>23</sup>. However, the challenges remain: the ASEAN member states are known with their non-interference, no shaming and naming principles.<sup>24</sup> Moreover, the AICHR is designed with no outlook of moving forward regarding human rights protection, because this body is very weak in investigation, monitoring and receiving complaints regarding human rights issues in their jurisdiction. AICHR's mandates are limited to develop the ASEAN Human Rights Declaration, as well as capacity building for the effective implementation of international human-rights obligation.

It is clear that ASEAN and human rights violations are still not walking along the same track due to this limited role of AICHR. There's a lack of political will by the ASEAN member states, overshadowed by various cases of human rights violations in their respective countries, where jurisdiction is overwhelmingly broad and huge. Until now, ASEAN is reluctant to deal with political and hard cases. ASEAN does not yet have a sufficient tool to monitor or to communicate in accordance to one of the minimum standards of Regional Human Rights Mechanisms. Referring on the monitoring task, the mechanism should observe the general human rights situation, request the state to provide information, carry out on-site visits when human rights violation occurred, publish fact-finding reports, and it also should function as an early warning system in order to prevent further gross violation of human rights.<sup>25</sup> Accordingly, the regional mechanism should also contain means of communication to receive, investigate, analyze and decide on human rights cases which are raised by individuals, groups of persons or NGOs, enabling it to give recommendations based on specific findings and to receive reports from State Parties.<sup>26</sup> Some scholars stated that ASEAN has not yet focused on human rights and is taking a slow progress in the field of human rights.<sup>27</sup> Furthermore ASEAN never views human rights issues as part of »native« ASEAN culture. Instead the general view is

<sup>18</sup> ASEAN Charter, Article 2:2 (h)

<sup>19</sup> Ibid, Article 1 (7)

<sup>20</sup> Ibid, Article 2:2 (j)

<sup>21</sup> Ibid, Article 2:2 (i)

<sup>22</sup> See The Term of Reference of AICHR para 6 (8)

<sup>23</sup> Ibid, para 4 (10)

<sup>24</sup> See ASEAN Charter, article 2 (e, f)

<sup>25</sup> For substantial information regarding the principles for regional human rights mechanism, it can be seen at the Office of the High Commissioner for Human Rights, »Principles for Regional Mechanism (Non-Paper)« OHCHR available at [bangkok.ohchr.org/programme/asean/principles-regional-mhuman-rights-mechanism.aspx](http://bangkok.ohchr.org/programme/asean/principles-regional-mhuman-rights-mechanism.aspx)

<sup>26</sup> Ibid.

<sup>27</sup> Dr. Sriprapha Petcharamesree, »The Human Rights Body: A Test for Democracy Building in ASEAN«, IDEA, 2009, available at [www.idea.int/resources/analysis/loader.cfm?csmodule=security/getfile&pagid=37839](http://www.idea.int/resources/analysis/loader.cfm?csmodule=security/getfile&pagid=37839).

that human rights are part of foreign influence which are best dealt with at the national level.<sup>28</sup> In addition to that, Dr. Sriprapha, the Thai representative and chairperson for the AICHR states that, »including human rights causes in the Charter does not help ASEAN to develop a human rights discourse or to change its perception of human rights«.<sup>29</sup>

Assuming the issue of human rights in ASEAN is very weak; frankly speaking ASEAN human rights mechanism is not the ideal way at this time to solve Indonesia past human rights abuse cases. We could urge the ASEAN to change its mind set on the importance of human rights cases while we struggle our cases through domestic mechanism as well. Although we should bear in mind that there are many organizations pushing ASEAN to improve its human rights mechanisms, but it will take time. On the one hand, Indonesian human rights cases can be used as a tool to develop the ASEAN human rights discourse, but on the other hand, ASEAN through its AICHR can be used as well as a vehicle for advocacy and campaign of human rights cases in Indonesia. However, the mutual advocacy and equal relation should be established between ASEAN bodies and civil society, especially with victims and families of human rights violations.

## b) International Level

Since many years ago, Indonesia civil society organizations and the victim's families have been using the United Nations mechanisms on human rights cases to seek justice. This included UN Treaty-based mechanisms<sup>30</sup> and UN Charter-based mechanisms<sup>31</sup>. There have been many oral interventions before the United Nations meetings with some success. These mechanisms are still needed and will be more effective, if the advocacy is open to public discourse. Working with the media will make people more aware on this mechanism. The Civil Society still needs to send shadow reports for the UPR, send representatives to the United Nations Meetings in Geneva, and also deliver individual complaints through UN Charter-based mechanisms. In addition to that, it needs to make sure that the United Nation representatives will get countermeasure reports on the human rights situation in Indonesia.

Regarding the International Criminal Justice Mechanism, to resolve some past human rights abuses, it is hard to bring them before international criminal justice forums such as the International Court of Justice or establishing special tribunals for Indonesia such as the ICTY or ICTR. The last court for human rights abuses is the Hybrid Court in Cambodia to bring Khmer Rouge perpetrators under the Pol Pot regime into the International Criminal Law standard. The International Criminal Court means to try individuals who committed human rights crimes that are regulated under international law provision. The Nuremberg Judgment declared that, »Crimes under international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced [...] individuals have international duties which transcend the national obligations of the obedience imposed by the individual states«.<sup>32</sup>

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<sup>28</sup> See the opinion from Daniel Aguirre, »Human Rights the ASEAN Way«, available at <http://www.jurist.org/forum/2013/01/human-rights-the-ASEAN-way.php>.

<sup>29</sup> Op cit, Dr. Sriprapha.

<sup>30</sup> UN Treaty Based mechanisms based on eight cores of international human rights treaties with own independent experts, known as a treaty body that monitors of its treaty. Indonesia has ratified these eight international treaties on human rights which are The Committee on Human Rights (reviews implementation of the International Covenant on Civil and Political Rights); The Committee on Economic, Social and Cultural Rights (Reviews implementation of the International Covenant on Economic, Social and Cultural rights); The Committee on the Elimination of Racial Discrimination (Reviews implementation of the International Convention on the Elimination of Racial Discrimination); The Committee Against Torture (reviews implementation of the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); The Committee on the Rights of the Child (Reviews implementation of the International Convention on the Rights of the Child); The Committee on Migrant Workers (reviews implementation of the International Convention on the Elimination of Discrimination Against Migrant workers and All Members of their families); The Committee on the Rights of Persons with Disabilities (reviews implementation of the International Convention on the rights of persons with disabilities)

<sup>31</sup> The mechanism has power to review human rights practices of all members of the United Nations by three mechanisms. (1) The Human Rights Council is an Inter-governmental body within the UN System made up 47 States responsible for strengthening the promotion and protection of human rights.; (2) The Universal Periodic Review (UPR); (3) Special Procedures is the general name if the mechanism to address specific country situation or thematic issues.

<sup>32</sup> Nuremberg IMT, Judgement and Sentences, (1947) 41 AM. J. INT'L. L. 172; see also, International Criminal Law Services, »International, Hybrid and National Courts Trying International Crimes«, available at [www.wcjp.unicri.it/deliverables/docs/Module\\_4\\_International\\_war\\_crimes\\_court.pdf](http://www.wcjp.unicri.it/deliverables/docs/Module_4_International_war_crimes_court.pdf).

However, the standard of human rights violations that can be brought before the International Criminal Court is mainly focused on 4 (four) crimes namely, Genocide, Crimes against Humanity, War Crimes and Aggression.<sup>33</sup> The ICC does not have universal jurisdiction, instead a limited access to jurisdiction if:

- (1) The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the court.
- (2) The Crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the court; or
- (3) The United Nations Security Council has referred the situation to the prosecutor, irrespective of the nationality of the accused or the location of the crime.

Therefore, human rights violation in the past or appeared before the ratification of ICC by Indonesia, cannot be brought to the ICC except the UN Security Council imposes a Resolution on the case in order to ask ICC examine the case. On the other hand, urging Indonesia to become a party of the ICC is important in order to prevent the impunity or blanket amnesty related to mass human rights cases. However, Indonesia civil society could do advocacy and campaigning in order to make Indonesia a party to several international treaties, and ICC ratification, which is needed to prevent gross human rights violations and abuses in future.

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### 5.3. Additional Information from the oral presentation

Cases of past human rights violations and their progress:

Human Rights Cases	Komnas HAM Finding / Court Decision	State/Government Accountability
1965/1966 Cases	Komnas HAM has concluded the investigation. No further actions	None
East Timor	The Ad Hoc Court Tribunal have imposed judgement to the lower ranks of military officers and civilians	The Case is closed No Commander Responsibility No Superior Responsibility
Talang Sari	Komnas HAM has not yet finished the finding, no further actions. »Reconciliation«	»Islah/Islamic Reconciliation« by granting some amount of money to some victims
Tanjung Priok	Human Rights Court and »reconciliation«. Supreme Court release ALL Defendants	Case closed No Commander Responsibility No Superior Responsibility No acknowledgment of the crimes
May Riot 1998	Komnas HAM has delivered the inquiry to AGO, No follow up from AGO	None
Semanggi I & II	Komnas HAM has delivered the inquiry to AGO, but no follow up from AGO	None
Wamena & Wasior	Komnas HAM has not yet finished the inquiry	None

<sup>33</sup> See the jurisdiction of the International Criminal Court, Art 5-8 of Rome Statute.



## Indonesia's *de facto* Amnesty

- The law regards the victims' right to find truth and justice was designed to be failed and ineffective.
- The stagnancy of National Human Rights Institution.
- Human Rights cases are a periodic agenda, NOT a National Strategy.
- Corruption and Failing Transitional Justice Relationship
- The transforming of the military's role in Indonesian democratic reform process

## What should be done?

### Domestic Movement

- Empowering of Komnas HAM: Investigate/inquiry cases, Public Dissemination on Human Rights Cases, Monitoring cases, The Commissioners Human Rights mind set; Pushing the Human Rights Court
- New Government to: Re-investigate Human Rights Cases, Acknowledgment on human right cases and the victims/families; establishing Ad Hoc Court on Human Rights, Sufficient Budget for establishing and empowering human rights court. Implementing National Human Rights Agenda (human rights through education system);
- Monitor, Review and Criticize: Military Role (economic, politic and social cultural)
- Judiciary: Criticize the criminal human rights prosecution and its functions.
- »vetting« mechanism for State Officers (on legislative, judicative and executive)
- Empowering Civil Society
- Media
- Indonesian Diaspora and Accountability on Human Rights cases in Indonesia

### Regional

- ASEAN is still a weak regional organization for advocating Indonesian Human Rights past abuses. However, we still need:
- Sending, delivering, monitoring Indonesian cases through AICHR or other high level meetings within ASEAN procedure
- Creating equal partnership among Human Rights Mechanism in ASEAN with Victims and Family Organizations

### International Level

- United Nations
- The UN Treaty Based Mechanism & Charter Based Mechanism.
- Delivering Indonesia Human Rights Case before the UN Meetings
- Lobbying / disseminating human rights cases with other UN State Members
- UNODC on Democracy and rule of Law Unit
- EU and EU Member States
- Collaboration in work to urge Indonesia to ratify ICC, implementing human rights law, re-investigating human rights cases, open inquiry and monitoring the court on human rights proceeding.
- Conditionality for Human Rights protection and its implementation in granting or giving donor funds for Indonesian Government.
- Open discussion and taking concrete action to assist victims and family of human rights cases:
- Monitoring and delivering notes or parliament briefing papers for Indonesia-EU-ASEAN as a political agenda on human rights cases.

## 5.4. Discussion

*Q: How far do human rights belong to curricula in education for future lawyers in Indonesia?*

Asmin Fransiska: In student's movements, they design curricula. Human rights are obligatory in the studies and mandatory for students. Actually, this is quite good. They can learn a lot with the material, but they do not learn about the practical implementation of human rights. Internships, for example, should be required to make human rights more vivid to the students. It is based on the fact that they do not know about the situation and what hides behind human rights. The other challenge is to encourage them to be engaged in activism. They know already that there is no money for being an activist.

*Q: What does Impunity means if it comes to state accountability?*

Theodor Rathgeber: First of all there should be a split between military and civilians. Especially that Indonesia rejects victims to redress. Audits are highly important to deal with the situation in Indonesia. In Indonesia we see a tendency towards the improvement of implementation of the rule of law. However, this is just an impression.

*Q: What is the meaning of all those mechanism for civil society?*

We need to proceed and use all UN mechanisms. State's sovereignty is limited in these mechanisms. It is important to keep researching as we see on the example of Chile, after years the cases have been read-dressed.

*Input from Saskia Wieringa about the International People's Tribunal:*

We have a strong Indonesian team divided up in various tasks such as media and propaganda and creative and fund raising team. The organization is being set up in Europe and the website is almost finished. There are still some language problems, but we are preparing the cases to bring them up to Den Haag. There are in total 12 cases and they cover Bali, Buru, sexual abuses, etc. We are writing reports and preparing the form of the tribunal. Due to very small national and international attention, we want to expose the cases, because the government did not do anything to expose these cases.

*Q: How to access the UN mechanism for people from the grass root?*

Theodor Rathgeber: On the UN website there is a part showing how to address the states and procedures and the ratification status of all countries. Following the discussion about Pinochet, although Indonesia is not a party to International Criminal Court, every state has the obligation to address civil rights violations and humanitarian law violations in its own country. In Germany we have these institutions. As soon as generals from Indonesia come to Germany they may be tried.

*Q: Prabowo always comes to the Netherlands. Can we use these procedures?*

Theodor Rathgeber: German prosecutor is hesitant, if there are no victims living in Germany. If they are living here, it should work.

*Q: Besides the legal perspective, how far could the politics hinder legal persecution?*

Theodor Rathgeber: If you leave it to German politics, the future is dark, because Indonesia is needed to encourage other neighboring countries. They do not want controversies or struggles and they try to find a diplomatic way to encourage them to bring them to ratify more and open up the minds of the governments. But all are needed, the ones (NGOs) that push the government and the diplomatic ones.

*Q: What role does the ASEAN have in human rights?*

Asmin Fransiska: Not right now. It does not yet have a strong role. There are human rights regulations but it is mostly left to national level. The use of language already shows the soft approach of ASEAN. With IS, they talk a lot about it, but there is not happening much. UN is reporting a lot to Africa and Middle East, but on Asia they are rarely reporting. We struggle to ring the doorbell of the UN.

## 6. Agenda for Civil Society in Germany and Europe

Due to limited time this session, which initially was planned for group discussions, was changed to a general discussion. Ideas and recommendations were collected from participants on concrete actions to do in the next future. The discussion was directed to answer the question: What can we do in Germany to address the situation in Indonesia?

These are some points of recommendation and discussions:

- There should be a more strategic approach in addressing the cases. There is for instance a lack of reports of the past violations.
- The *Weltrechtsprinzip* should be applied. The cases should be able to be brought to a court in Germany – bring up cases and approach them to testify on the cases and bring the perpetrators to a court.
- Strengthen the case here in Germany, because of international connections and companies.
- Donor agencies should extend support for civil society in Indonesia. The programs are shifting on the donor side. It is difficult to get long-time support.
- There must be more awareness-raising in the younger generation about the cases in Indonesia and the human rights situation in general.
- Knowledge exchange in the formal education system, for instance the material for school books.
- Embed Indonesia in the ASEAN process - when it comes to HR Violations, it is more attention rising, when you speak about human rights violations in a region, not only a country. ASEAN may be used for involving it in the HR process to raise more attention on the cases.

### Further Discussion:

- On embedding ASEAN in the process:
- Alex Flor addressed the statement of Theo Rathgeber about the effectiveness of ASEAN in terms of human rights. When ASEAN is in this case seen comparable to EU then it will not work.
- On engaging younger generation: Henry Schürmann testified that some years ago, in a meeting in Köln, Hilmar Farid was a speaker. It was extremely difficult to get students to the conference, because they do not want to discuss difficult political issues in public. Now, 2014, there are Indonesians students in the audience. This is a positive achievement.
- Addressing the 50<sup>th</sup> year anniversary of 1965 killings Basilisa Dengen informed the campaign plans of Watch Indonesia! and invited the participants to get involved.
- Bayu Aji Rajakaya questioned whether there will be some activities to the Frankfurt Book Fair 2015. It would be a great opportunity to get broader attention. Alex Flor explained that since Indonesia is the guest of honour, the organizers already asked Watch Indonesia! to meet them. On the other side the Indonesian organizing committee is facing problems regarding finance, translation, publishers, etc.. The concrete idea is to present Anett Keller's book on 1965 that will be published by *regiospectra*. The book and the topic should be presented at book fair or outside in cooperation with others.
- Reminder to involve in the International People's Tribunal Tribunal in Den Haag next year.

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