Seeking Transitiona Justice In Indonesia: Lessons From The Cases of Aceh, Papua And East Timor

Munafrizal Manan
Universitas Al-Azhar Indonesia, Jakarta
munafrizal2003@yahoo.com

Abstract

This article analyses the Indonesian efforts to resolve past human rights abuses under the mechanism of transitional justice following the downfall of President Soeharto on May 21, 1998. The focus of analysis is the implementation of transitional justice in the cases of Aceh, Papua, and East Timor during the transitional period. This article shows that the efforts to enforce transitional justice in these cases have been faced with obstacles. Although there have been notable efforts in terms of both judicial and non-judicial to enforce transitional justice, the final results are not satisfactory. Transitional justice mechanism to resolve past human rights abuses was implemented only with half-baked and supported with half-hearted. As a result, it has failed to bring justice for the victims. There are lessons can and should be learned from these transitional justice cases for resolving other past human rights abuse cases in Indonesia today. The current Indonesian government should pay attention to the lessons in order to resolve past human rights violations in accordance with its promise during presidential election campaign in 2014. Otherwise, it is likely to repeat the same mistake and failure of justice dealing with past human rights violations.

Key words: Transitional Justice, Human Rights, Indonesia, Aceh, Papua, East Timor

I. INTRODUCTION

After the political turmoil in 1998, Indonesia has immediately been faced with how the best way to deal with past human rights abuses committed by the repressive predecessor regime.[1] The victims and civil societies have been pushing the post-Soeharto governments to enforce transitional justice since the early years of transition to democracy, which is popularly called *Era Reformasi* (the Reformation Age). A number of victim-based groups, community based-movements, and human rights non-governmental organizations (NGO) have emerged during this transitional period seeking justice and addressing human rights issues. In the meantime, international community has also pressured Indonesia to deal with transitional justice measures.

The issue of past human rights abuses remain relevant in Indonesia today. During the presidential election campaign in 2014, the issue was politicized to persuade the voters. The presidential and vice-presidential candidates of Joko Widodo dan M. Jusuf Kalla pledged to solve past human rights abuses if they are elected to be the president and the vice-president. Following their inauguration as the President and the Vice-President of the Republic of Indonesia on 20 October 2014, people have become impatient waiting for the implementation of their promise. It took six months after the inauguration the current government begins to take an initial step resolving past human rights abuses.[2] On 21 April 2015, the Indonesian Attorney General revealed that the government will prioritize seven cases of past human rights violations to be resolved, these of Talangsari, Wamena, Wasior, the forced disappearance of persons, the mysterious shootings, the G30S PKI, and the May 1998 riot.[3] In his first State of the Nation address at the Parliament Building on 14 August 2015, President Joko Widodo delivered that the government prefers to choose reconciliation mechanism dealing with past

[1] Satya Arinanto, *Hak Asasi Manusia dalam Transisi Politik di Indonesia*, Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum, Universitas Indonesia, 2003, p. 37 & 56.

[2] "Pemerintah Bertekad Tuntaskan Kasus Lama, *Kompas*, 22 April 2015, p. 4; "Presiden Pastikan Penuntasan Kasus Masa Lalu", *Kompas*, 29 May 2015, p. 3.

[3] "Ini Tujuh Kasus Pelanggaran HAM yang Akan Diusut Pemerintahan Jokowi", <http://nasional.kompas.com/read/2015/04/21/17120411/Ini.Tujuh.Kasus.Pelanggaran.HAM.yang.Akan.Diusut.Pemerintahan.Jokowi?utm_campaign=related&utm_medium=bp-kompas&utm_source=news&> (accessed 11 November 2015).

human rights violations.[4] It means that truth-seeking and criminal prosecution mechanism dealing with past human rights abuses is likely not a choice. It is therefore questionable whether it can be implemented on the basis of transitional justice mechanism. [5]

This article aims to explore the efforts and obstacles of the implementation of transitional justice in Indonesia especially in the cases of Aceh, Papua, and East Timor. This article argues that it is critically important to understand these cases as a mirror to resolve other past human rights violations. Despite there have been efforts to enforce transitional justice, it is apparently not easy to implement it successfully. With regard to the mentioned cases, the efforts to enforce transitional justice found obstacles and therefore it did not give satisfactory results. There are two central questions to be discussed here. First, to what extent transitional justice mechanism has been implemented to cope with past human rights abuses? Second, what lesson can and should be learned from transitional justice mechanism in the cases of Aceh, Papua, and East Timor? To answer the questions, the analysis of the article uses relevant studies, reports, and academic works that have been written by scholars and researchers.

The article is structured as follows. It begins by reviewing theoretically common responses to human rights violations under transitional justice mechanism. The article then proceeds by describing in general past human rights abuses committed by the Indonesian New Order regime. It is followed by focusing on three cases of the most notable of human rights violations: Aceh, Papua, and East Timor. The next section discusses the implementation of transitional justice mechanisms in Indonesia in protecting human rights especially in relation to the mentioned three cases. A conclusion will be provided at the end of the article emphasizing the lesson of the mentioned three cases.

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[4] "Presiden Inginkan Rekonsiliasi Nasional Terkait Pelanggaran HAM", <http://nasional.kompas.com/read/2015/08/14/10575231/Presiden.Inginkan.Rekonsiliasi.Nasional.Terkait.Pelanggaran.HAM> (accessed 11 November 2015).

[5] For example, see the opinions of Albert Hasibuan, "Penyelesaian Beban Sejarah", *Kompas*, 24 April 2015, p. 7; Mugiyanto, "Rekonsiliasi dan Partisipasi Korban", *Kompas*, 16 June 2015, p. 7; Albert Hasibuan, "Penyelesaian Pelanggaran Berat HAM", *Kompas*, 25 July 2015, p. 7; and Artidjo Alkostar, "HAM dan Keadilan Transisional", *Kompas*, 30 July 2015, p. 6.

II. DISCUSSION

A. Transitional Justice: Common Responses to Human Rights Violations

The Indonesian transitional governments inherited past human rights violations from the previous regime. As a consequence, there is legal and moral obligation to resolve past human rights violations in accordance with human rights values and standards. In addition, the amended Indonesian 1945 Constitution strongly guarantees human rights for all Indonesian citizens. The post-Soeharto governments have therefore been pushed to enforce transitional justice for the victims. In light of this, an overview on theory of transitional justice is necessary to examine its applicability to Indonesian transitional justice case. This section therefore concerns theory of transitional justice as formulated by scholars and used as a practical framework of transitional justice in other countries.

Theoretically, there is no a universal definition of transitional justice. Ruti G. Teitel defines transitional justice as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes".[6] According to Jon Elster, "[t] ransitional justice is made up of the processes of trials, purges, and reparations that take place after the transition from one political regime to another.[7] Roht-Arriaza prefer to define transitional justice as the "set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law".[8] For N. Kritz, as cited by Cynthia M. Horne, "[t]ransitional justice is most basically defined as the way a society confronts the wrongdoings in its past, with the goal of obtaining some combination of truth, justice, rule of law, and durable peace".[9] In the view of the UN Secretary-General Kofi Annan, transitional justice is defined as "the full set of processes and mechanism associated with a society's attempts to come to terms with a

[6] Ruti G. Teitel, "Transitional Justice Genealogy", *Harvard Human Rights Journal*, Vol. 16, 2003, p. 69.
[7] Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge: Cambridge University Press, 2004, p. 1.
[8] As cited by Clara Sandoval Villalba, "Transitional Justice: Key Concepts, Processes and Challenges", Briefing Paper, Institute for Democracy and Conflict Resolution, the University of Essex Knowledge Gateway, 2011, p. 3.
[9] Cynthia M. Horne, "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wresting the Ties that Bind?", *Europe-Asia Studies*, Vol. 66, No. 2, March 2014, p. 226.

legacy of large-scale past abuse, in order to secure accountability, serve justice and achieve reconciliation".[10]

Although there is no scholarly agreement regarding the definition of transitional justice, it is obvious that transitional justice dealing with human rights issues. Transitional justice is a concept to reckon past gross human rights violations committed by predecessor regime. It is often viewed as a crucial issue for new democracies that are struggling to get through transitional phase and pursue democratic consolidation successfully. Basically, the main purpose of transitional justice is to bring justice for victims and to end impunity to perpetrators. In the words of Eva Brems, "human rights norms require that a posttransition democratic regime bring to justice the perpetrators of gross human rights violations under the previous repressive regime".[11] In light of this, "[t]he actual prosecution and conviction of perpetrators after regime change and/or the end of armed conflict is the most spectacular aspect of transitional justice." [12]

Referring to a study conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2009, Clara Sandoval Villalba points out that the core of transitional justice basically has four processes as follows:

> Usually, a transition encompasses a *justice process*, to bring perpetrators of mass atrocities to justice and to punish them for the crimes committed; a *reparation process*, to redress victims of atrocities for the harm suffered; a *truth process*, to fully investigate atrocities so that society discovers what happened during the repression/conflict, who committed the atrocities, and where the remains of the victims lie; and an *institutional reform* process, to ensure that such atrocities do not happen again.[13]

Central to transitional justice is seeking justice for victims. Ruti G Teitel notes that "the conception of justice in periods of political change is extraordinary and constructivist: It is alternately constituted by, and constitutive of, the transition".[14] Teitel then distinguishes five types of justice under transitional justice framework:

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[10] As cited by Clara Sandoval Villalba, *loc.cit*.
[11] Eva Brems, "Transitional Justice in the Case Law of the European Court of Human Rights", *The International Journal of Transitional Justice*, Vol. 5, 2011, p. 298.
[12] *Ibid*.
[13] Clara Sandoval Villalba, *op.cit.*, p. 3. Original emphasizes.
[14] Ruti G. Teitel, *Transitional Justice*, New York: Oxford University Press, 2000, p. 6.

criminal justice, historical justice, reparatory justice, administrative justice, and constitutional justice.[15] To enforce transitional justice, these five types of justice should be taken into account throughout transitional justice processes.

With respect to justice, the establishment of truth commissions is believed as an important part of transitional justice framework. People, especially victims, need to know what exactly happened in the past, why they became the victims, and who must responsible for past atrocities. All this can be facilitated by a truth commission. Thus, "[t]ruth seeking is an essential aspect of a society's efforts to address a violent or authoritarian past".[16] According to Priscilla B. Hayner:

> A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.[17]

Ruti G. Teitel points out that "[a] truth commission is an official body, often created by a national government, to investigate, document, and report upon human rights abuses within a country over a specified period of time".[18] In the view of Hayner, the desired goals of truth commissions are "to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to "counter impunity" and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past".[19] Nonetheless, "the expectations for truth commissions are often much greater than what these bodies can in fact reasonably achieve".[20] Moreover, "[i]n practice, it is likely to occur that seeking justice to human rights violations of the past is sidelined by the urgent needs to pursue peace, security, stability and social cohesion."[21]

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[15] *Ibid.*
[16] Eva Brems, *op.cit.*, p. 287.
[17] Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Second Edition, New York: Routledge, 2011, p. 11-12.
[18] *Ibid.*, p. 78.
[19] *Ibid.*, p. 20.
[20] *Ibid.*, p. 5.
[21] Eva Brems, *op.cit.*, p. 282.

It should be added that seeking justice is not the only measure in transitional justice. Reconciliation is also an important element of transitional justice. The enforcement of justice can be meaningless if it is unable to prevent the same atrocities in the future. To be sure, reconciliation is needed to heal the trauma, to harmonize societies, to unite national integration, and to build a better future. Nevertheless, in practice sometimes there is a tension and dilemma between justice mechanism and reconciliation mechanism. Elin Skaar points out that "[j]ustice and reconciliation have been seen both as conflicting and as mutually reinforcing".[22] With regard to this notion, "publicly revealing the truth about past abuses has been considered an obstacle to reconciliation (especially in the short run) but also a prerequisite for reconciliation (in the long run)".[23] Several transitional justice cases suggest that "[r]econciliation may be conceived as a goal or a process or both".[24]

The experience of transitional justice in several post-communist countries in Central and Eastern Europe and the former Soviet Union shows that there is a relationship between transitional justice, lustration and social trust building. For these countries, lustration policy is an integral part of transitional justice measures. As a result of bitter experience living under totalitarian regimes, the levels of institutional and interpersonal trust among post-communist societies are very low and it is not conducive for new democracies. In this vein, "[l]ustration programmes are framed as intentional trust-building measures, designed to restore trust in public institutions, interpersonal trust, and trust in government, and thereby positively contribute to the process of democratisation."[25] To make it legitimate, lustration must be based on laws. Basically, "[l]ustration laws typically prevent individuals registered as collaborators in the files of former state security agencies from occupying certain positions in the post-communist government".[26] In European human rights system, lustration is allowed in principle under the European Convention of Human Rights (ECHR). However, the European Court of

[22] Elin Skaar, "Reconciliation in a Transitional Justice Perspective", *Transitional Justice Review*, Vol. 1, Issue 1, 2012, p. 64.
[23] *Ibid*.
[24] *Ibid*., p. 65.
[25] Cynthia M. Horne, *op.cit.*, p. 225-226.
[26] Eva Brems, *op.cit.*, p. 295.

Human Rights (ECtHR) "has set some limits on the allowed scope of lustration measures".[27]

Having described the concept of transitional justice, it can be argued that transitional justice has two different levels. At minimum level, transitional justice should consist of truth-seeking process, trial and justice process, and reparation process. At maximum level, transitional justice should also include reconciliation and lustration process. It is the view of this article that transitional justice in the case of Indonesia should have taken the maximum level in order to guarantee its successful implementation. In addition, this article argues that the implementation of transitional justice for the case of Indonesia should not be limited to the period of political change which is called as transitional period. The momentum of transitional justice has now out of dated if it is only limited to transitional period because Indonesia has been away from democratic transition phase and now continuing its democratic consolidation phase. For that reason, past human rights violations should remain be resolved under transitional justice mechanism even though Indonesian has now accomplished its democratic transition process. The question is to what extent the implementation of Indonesian transitional justice has been in conformity with transitional justice theory.

B. Past Human Rights Abuses of the New Order Regime

Before discussing transitional justice in the post-New Order era, it is important to overview the gloomy portrait of Indonesian human rights in the period of the New Order regime. Obviously, transitional justice in the post-New Order is dealing with human rights violations committed by the New Order regime. The New Order regime emerged out of the assassination of seven high-level Indonesian military officers on 30 September 1965 in an attempt to unconstitutionally seize the power and destabilize the country. Soon after this tragic event, General Soeharto, who had an important position in Indonesian military hierarchy at the time, took an initiative destroying the alleged Indonesian communist and leftist groups and then formally banning the existence of the Indonesian Communist

[27] *Ibid.*, p. 296.

Party (*Partai Komunis Indonesia*: PKI) throughout Indonesia. The chaos spread out across the country and was likely to become a civil war. Between 1965 and 1966 it is estimated 500,000 to a million people had been killed[28] and tens of thousands was imprisoned and sent to the detention camps without a fair trial. Furthermore, all manifestations of communism were strictly prohibited during the New Order regime. The anti-communism campaign was manipulated and legitimized by the regime to threaten, frighten and control its opponents.[29]

In relation to the issue above, it is important to note that the decision of the Indonesian Constitutional Court on 24 February 2004 has rehabilitated political right (right to be candidate) of the ex-PKI members to be elected as national and local parliament members. The Constitutional Court argued that Article 60 (g) of Law Number 12 of 2003, which prohibited the ex-PKI members to be parliament candidates, is a discriminatory provision and therefore it is unconstitutional.[30] In addition, an initiative to expose the 1965 mass atrocities is recently taken by civil society from Indonesia and also outside the country in terms of the so-called "the International People's Tribunal 1965" held in The Hague, The Netherlands, from November 10 to November 13, 2015. This is not a formal trial, but it is conducted resembling a court format. There are judges, prosecutors, registrar, witnesses, and expert witnesses during the hearing process of the Tribunal.[31] The Tribunal becomes an international forum to reveal the truth. Since it is only a pseudo-court, the decision of the Tribunal is certainly not legally binding. Perhaps the Tribunal will be a turning point to attract more attention from international communities on the 1965 case. Indonesians themselves have pro and contra comments regarding the Tribunal, however. Meanwhile, the Indonesian Government gives a negative response to the Tribunal.[32]

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[28] There is no exact estimation of the death victims, unfortunately. But it is believed that a moderate number is no less than 500,000 peoples had been killed at the time as a result of horizontal conflicts and the involvement of the Indonesian military. See, for example, Robert Cribb (ed.), *The Indonesian Killings 1965-1966: Studies from Java and Bali*, Clayton, Victoria: Centre of Southeast Asian Studies, Monash University, 1991; Mary S. Zurbuchen, "History, Memory, and the "1965 Incident" in Indonesia", *Asian Survey*, Vol. 42, No. 4, July/August, 2002, p. 565-566.

[29] See, for example, Ariel Heryanto, *State Terrorism and Political Identity in Indonesia: Fatally Belonging*, Oxon: Routledge, 2006; Wijaya Herlambang, *Kekerasan Budaya Pasca 1965: Bagaimana Orde Baru Melegitimasi Anti-Komunisme Melalui Sastra dan Film*, Serpong, Tangerang Selatan: Marjin Kiri, 2013.

[30] See, Case Number 011-017/PUU-I/2003.

[31] See, http://1965tribunal.org/1965-tribunal-hearings-the-judges/; http://1965tribunal.org/1965-tribunal-hearings-the-prosecutors/; http://1965tribunal.org/1965-tribunal-hearings-the-registrar/ (accessed 13 November 2015).

[32] "Government brushes off Hague tribunal on 1965 massacre", http://www.thejakartapost.com/news/2015/11/10/government-brushes-hague-tribunal-1965-massacre.html# (accessed 13 November 2015).

Obviously, the emergence of the New Order regime was started by gross human rights violations. Throughout the New Order regime period, repressive and oppressive manner against civilians had been used as an effective measure to consolidate and preserve the dominant and hegemonic power of the regime. It was also used to guarantee economic policies and development programs as well as to preserve political stability and national unity.[33] In doing so, "Soeharto's New Order regime used terror and violence to control the people and oppress various social layers and sectors that opposed it."[34] Human rights violations committed by the state during the authoritarian New Order regime were therefore rampant both in terms of both individual detentions and mass killings. The scale and the variety of human rights violation occurred during the period of the regime show clearly that the regime had a notorious human record. Such a condition demonstrated what Ariel Heryanto calls as "state terrorism" which is defined as "a series of state-sponsored campaigns that induce intense and widespread fear over a large population".[35] The most notable violations of human rights are including the mysterious shootings (known *penembakan misterius* or *Petrus*) of suspected criminals in urban centres, the massacre of Moslem demonstrators in Tanjung Priok, North Jakarta, in 1984, the massacre of villagers in Talang Sari, Lampung, in 1989, the attack on the office of the Indonesian Democratic Party (PDI), the forcibly disappearance of pro-democracy activists in 1997-1998, the killing of student demonstrators of Trisakti University in 1998 as well as the incidents of Semanggi I in 1998 and Semanggi II in 1999, and the riots in Jakarta in May 1998.[36]

The other most notable of human rights violations are in Aceh, Papua, and East Timor, which will be elaborated in the next paragraphs. Different from the human rights violations mentioned above which dealing with political reasons, human rights violations in these three provinces are more related to separatist issues. It is noted that "[s]ecurity forces committed systematic, large-scale human

[33] Mohtar Mas'oed, *Ekonomi dan Struktur Politik Orde Baru 1966-1971*, Jakarta: LP3ES, 1989.
[34] Hilmar Farid and Rikardo Simarmatra, *The Struggle for Truth and Justice: A Survey of Transitional Justice Initiatives Throughout Indonesia*. International Center for Transitional Justice Occasional Paper Series, January 2004, p. 15. Available at [http://ictj.org/].
[35] Ariel Heryanto, *op.cit.*, p. 19.
[36] See, for example, ICTJ and Kontras, *Indonesia Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto: A Joint Report*, March 2011, p. 94-102. Available at [http://ictj.org/]; Suzannah Linton, "Accounting for Atrocities in Indonesia", *Singapore Year Book of International Law*, 10 SYBIL, 2006, p. 1-3.

rights violations against civilians in the context of operations against independence movements in East Timor, Aceh, and Papua."[37] Consequently, it created a hostile relationship between Indonesian central government and these areas.

Human rights violations in Aceh were as a result of the conflict between the disgruntled Acehnese and the central government began on 4 December 1976. Led by a charismatic leader Hasan di Tiro, the Acehnese formed *Gerakan Aceh Merdeka* (GAM) (Free Aceh Movement) and then declared unilaterally Acehnese independence from Indonesia. The dissatisfaction with the central government policies was the reason for separatist aspiration. It was justified by historical claim that Aceh had never been acceded to Dutch colonial rule. As a consequence, for them, Aceh was never become part of Indonesia as proclaimed by Indonesian state founders on 17 August 1945. Acehnese believed that they were discriminated and their rich natural resources were greedily exploited by Indonesian central government.[38] In response to this, President Soeharto sent thousands of troops to Aceh to suppressing the separatist movement. As a result, the military wing of the GAM and the Indonesian security forces had involved in weapon conflicts for years. Innocent civilians had become the victims of this protracted conflict. In the middle of the army conflict, di Tiro and a few GAM leaders fled to Sweden in 1980 and continued their struggle from there. The army conflict in Aceh still continued, however. To strengthen its suppression to the GAM, President Soeharto in 1989 declared Aceh as a Military Operation Area (*Daerah Operasi Militer*: DOM). The declaration justified sending more troops, weapons, and other military equipment to Aceh. Many human rights abuses occurred during the period of DOM. The military operation was then stopped just after the fall of President Soeharto in 1998.[39]

Human rights violations have also occurred in Papua and West Papua, formerly Irian Jaya (hereafter referred as Papua). Papua is located in the eastern-most of Indonesia. Ethnically and historically, Papua is different from the rest of the

[37] ICTJ and Kontras, *ibid*., p. 11.
[38] Scott Cunliffe, *et. al*., *Negotiating Peace in Indonesia: Prospects for Building Peace and Upholding Justice in Maluku and Aceh*, ICTJ and ELSAM, June 2009, p. 17. Available at [http://ictj.org/].
[39] *Ibid*.

country. Papua is rich in natural resources such as gold, timber, and oil. It has attracted multinational corporations to exploit it, such as Freeport McMoran, a US based multinational company. Initially, Papua was not part of Indonesia when it declared its independence on 17 August 1945 and gained sovereignty recognition from the Dutch on 27 December 1949. Papua has officially become part of Indonesia based on the agreement between the Dutch and the newly country Indonesia stating that what was the Dutch East Indies becoming parts of Indonesia. However, Papua remained under Dutch authority until it was handed over to Indonesian control in 1962 after achieving an agreement between the two which was mediated by the United Nations. As part of the agreement, a referendum of self-determination under the UN auspices was held in 1969 to determine the final status of Papua. The result is Papua become a part of Indonesia which is endorsed by the UN. This is not the end of the story of Papua, however. Conflicts and discontents have been arising in this region since then.[40] As a result, "[f]rom the early 1960s through the present, Papua has been the site of numerous human rights abuses by Indonesian security forces in the context of both military operations against a small armed separatist movement and the suppression of nonviolent independence activists."[41]

The next region where human rights violations also occurred is East Timor (also known as Timor-Leste). Unlike Papua, the status of East Timor as part of Indonesia from the very beginning was disputed by international community. East Timor was colonized by Portuguese, not by the Dutch, and therefore it was not part of Indonesia. The integration of East Timor into Indonesia was a result of Indonesian occupation and annexation in 1976 with the support of pro-integrationist East Timorese factions and the silent support of anti-communist western countries such as the USA and Australia. However, the majority of countries did not recognize East Timor as the 27th province of Indonesia. Only several countries, such as Australia, had initially recognized it either de facto or de jure. The UN never endorsed it, however. The East Timorese opponent factions had

[40] ICTJ and ELSHAM, *The Past That Has Not Passed: Human Rights Violations in Papua Before and After Reformasi*, June 2012, p. 3. Available at [http://ictj.org/]; ICTJ and Kontras, *Indonesia Derailed:, op.cit.*, p. 48-49.
[41] ICTJ and ELSHAM, *ibid*.

resisted the integration and then committed to armed struggle against Indonesia until 1999. Fighting between the two was therefore unavoidable. Human rights abuses had occurred since the beginning of the occupation in 1976 until the end of rule of Indonesia in the region in 1999 in terms of arbitrary detention, torture, violence sexual offence, forced displacement, enforced disappearance, and murder that took hundred thousand lives. The most notable human rights abuses were the cases of the Dili massacre or also known Santa Cruz massacre in 1991 when the Indonesian military cracked down East Timorese who were attending a pro-independence march and the violence and destruction of 1999 after the referendum to determine the final status of East Timor. The result of the referendum, held on 30 August 1999, was 78 per cent of the East Timorese population had rejected special autonomy within Indonesia offered by the Indonesian government. It means that East Timorese people chose to be an independent state from Indonesia. Soon after that Indonesia withdrew from the East Timor after ruling the region for 23 years.[42]

C. TRANSITIONAL JUSTICE MECHANISMS IN INDONESIA TO THE PROTECTION OF HUMAN RIGHTS

In response to public demands and to certain extent international pressures, Indonesian finally agreed to reopen several past cases of human rights violations. The post-Soeharto governments provided and established supporting instruments for the implementation of transitional justice. A number of notable achievements are providing legal base for commissions of inquiry, truth and reconciliation commissions, an agency for the protection of victims and witnesses, establishing permanent human rights courts and ad hoc human right courts for specific cases, inserting human rights guarantees into the amended national constitution, and ratifying international conventions on human rights.[43] In addition, the Indonesian parliament passed the Law Number 26 of 2000 which gave the National Human Rights Commission (Komnas HAM) the power to conduct

[42] Caitlin Reiger and Marieke Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect*, ICJT, March 2006, p. 4-6. Available at [http://ictj.org/]; ICJT, JSMP, *Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference?*, June 2010, p. 7. Available at [http://ictj.org/].
[43] ICTJ and Kontras, *op.cit.*, p. 1.

inquiries and determine whether crimes against humanity or genocide were committed, and then recommend investigation and prosecution to the Attorney General's Office (AGO).[44] In short, as Ehito Kimura points out, "[t]ransitional justice mechanisms in the Indonesian experience can be grouped into four major categories: investigations, trials, truth and reconciliation, and apology".[45]

The sub-section below focuses on three major cases of human rights violations as illustrated above: the cases of Aceh, Papua, and East Timor. It discusses transitional justice mechanisms in relation to the mentioned cases.

1. Transitional Justice in Aceh

In 1999, the Indonesian government officially apologized to Acehnese for past human rights abuses during the military operations in the area. However, the military conflict between the Indonesian government and separatist GAM was still continued. Although there was a series of meeting between the Indonesian government and the GAM facilitated by the third parties to end the old conflict and reach a peaceful resolution, it was only after an earthquake of 9.0 on the Richter scale hit Aceh and followed by Indian Ocean tsunami swept over much of Aceh on 26 September 2004 the peaceful resolution could be achieved by both parties. It is estimated approximately 150,000 Acehnese dead and thousands more displaced in one day. As a result of this tragic tsunami, both parties had agreed to go to the table talking about peace agreement. The next year after tsunami, on 15 August 2005, both parties finally signed a perpetual peace agreement in Helsinki (the Helsinki Memorandum of Understanding) after five rounds of meeting brokered by the former Finnish President Martti Ahtisaari. The thirty years conflict between the government of Indonesia and GAM has now been over.[46] Under the MoU Aceh enjoys self-government and special autonomy.

It is admitted that, "[f]rom the perspective of transitional justice, the Helsinki MoU appeared to represent a step forward in Indonesia's attempts

[44] *Ibid.*, p. 3.
[45] Ehito Kimura, "The Problem of Transitional Justice in Post-Suharto Indonesia", *Middle East Institute*, 2014, http://www.mei.edu/content/problem-transitional-justice-post-suharto-indonesia, (accessed on March 12, 2014).
[46] Scott Cunliffe, *et. al.*, *op.cit* , p. 17.

to address past human rights violations".[47] The Helsinki MoU contains many transitional justice elements, including:

- Amnesties for those imprisoned for their participation in GAM activities, with a reaffirmation of the government's obligations to adhere to international human rights instruments.
- Specified benchmarks and timetables for the demobilization, disarmament, and decommissioning of GAM and Indonesian security forces in Aceh.
- A reintegration program for former combatants, political prisoners, and "civilians who suffered a demonstrable loss".
- Provisions for the establishment of the Human Rights Court and Truth and Reconciliation Commission (TRC) for Aceh.
- Specified institutional reforms to help strengthen the rule of law.[48]

Related to truth and justice seeking, the MoU mandated Indonesia to establish a TRC and human rights court for Aceh whose jurisdiction over human rights violations committed only after 2000. This obligation was included in the Law on the Governing of Aceh, a law that transferred most provisions of the MoU into national law, passed in August 2006 by the Indonesian Parliament. Yet, the government has not created either one.[49] The provision of the establishment of human court itself subjected to different interpretation on the court's jurisdiction, whether retroactive or non-retroactive. The Indonesian parliament decided that the prosecution could not be enforced retroactively. Such limitation has made the prosecution "by and large meaningless as a tool to provide accountability for abuses committed during the conflict".[50]

In the meantime, the legality of the Law Number 27 of 2004 on Truth and Reconciliation Commission as a legal base to establish a TRC both for Aceh and for other cases was deemed unconstitutional by the Constitutional Court due to it allowed an amnesty for perpetrators before being eligible for

[47] *Ibid*., p. 22.
[48] International Center for Transitional Justice (ICTJ), "The Need for Accountability: The Helsinki Memorandum Five Years", August 2010, [http://ictj.org/sites/default/files/ICTJ-Indonesia-Aceh-MoU-2010-English.pdf], (accessed on April 13, 2014).
[49] ICTJ and Kontras, *op.cit.*, p. 51.
[50] Ross Clarke, Galuh Wandita, and Samsidar, *Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective*, Occasional Paper Series, International Center for Transitional Justice, January 2008, p. 33. Available at [http://ictj.org/].

reparations and therefore considered against human protection guaranteed in Indonesia's 1945 Constitution. Unexpectedly, the Constitutional Court invalidated the whole of the Law, rather than only the related provision.[51] Such a decision created legal uncertainty regarding the establishment of a national TRC, while the members of the TRC had not been appointed yet.[52] To make a new legislation on the TRC, a new draft law has been prepared by the government for a discussion with the parliament, but not much political support to pass it.[53] Disappointed with such a condition, victims' groups and civil societies in Aced then initiated to establish a local TRC by and for Aceh within the framework of the Helsinki peace agreement.[54] However, it is not clear about the progress of the proposed local TRC.

The MoU also provided a reparation mechanism in terms of compensation payment to those affected by the conflict such as former combatants, political prisoners, and all civilian who suffered a demonstrable loss. The compensation consist of suitable farmland, employment, or social security for those who unable to work. To implement the compensation and an extensive reintegration program, the central government had established the Aceh Reintegration Agency (BRA). Some $26.5 million had been disbursed to 1,724 villages that received the money approximately from 60 million to 170 million rupiahs.[55] However, the implementation was not too successful since it did not address victim-specific needs or provide any kind of acknowledgement of their suffering. It was then discontinued in 2007. Outside the scheme of the MoU, previously there was another form of reparation initiated by the governor of Aceh in 2002 for the death or disappeared victims' family members. Under the so-called *diyat* compensation, meaning traditional Islamic compensation, approximately 20,000 victims had received an annually

[51] See, the Decision of the Constitutional Court on Case Number 006/PUU-IV/2006 promulgated on December 7, 2006. The Petitioners were civil society groups and human rights defenders asking the Constitutional Court to invalidate Article 1 Section (9), Article 27, and Article 44 of the Truth and Reconciliation Commission Law since the Articles were considered unconstitutional. According to the Decision of the Constitutional Court, the whole of the Law is unconstitutional, not only the Articles asked by the Petitioners. As a result, the Law is invalid wholly and cannot be applied to establish a TRC.
[52] Scott Cunliffe, *et. al.*, *op.cit.*, p. 21.
[53] ICTJ and Kontras, *op.cit.*, p. 14.
[54] Ross Clarke, Galuh Wandita, and Samsidar, *op.cit.*, p. 41-45.
[55] ICTJ and Kontras, *op.cit.*, p. 66.

payment of between $200 and $300 for limited years and transferred directly to recipients' bank account.[56]

What can be underlined from the explanation above is that, since the Helsinki MoU, the voices of the victims have not been heard before a TRC and the perpetrators have not been brought to the court for prosecution and, if found guilty, punishment. It shows that after the signature of the agreement, not all provisions have been implemented. Interestingly enough, there is no public complaint from former GAM leaders since they prefer to maintain good relationship with Jakarta. Also no massive complaint from the victims and civil societies which seems as if they are enjoying the peaceful condition after the agreement and unwilling their complaint would be manipulated for political purposes.[57] Indeed, the current situation of Aceh, in terms of infrastructure and security, seems better than ten years ago. Perhaps, this is a reason why Acehnese prefer to look forward for better future rather than to look backward for the past story.

2. Transitional Justice in Papua

As other parts of Indonesia enjoyed political liberalization after the fall of President Soeharto in 1998, Papuans have also a chance to express their long-suppressed feelings and aspiration through public protests regarding their future. They raised sensitive issues such as the responsibility of human rights abuses, the equal distribution of Papua's natural resources revenue, self-government or self-determination, and even independence. To address the grievances as well as to weaken the support for independence, the central government agreed to grant a special autonomy which allows Papuans to have greater political, economic, and cultural power as long as Papua remains the part of Indonesia. In 2000, the People's Consultative Assembly, the upper chamber of parliament, issued a resolution (TAP MPR No. IV of 2000) stating its approval to granting a special autonomy law to respond to Papuan demands and aspirations. On 21 November 2001, the parliament

[56] *Ibid.*.
[57] Scott Cunliffe, *et. al.*, *op.cit.*, p. 22.

enacted the Law Number 21 of 2001 on Special Autonomy for the Province of Papua giving Papua self-government and special autonomy.

The Law is also a legal foundation for the implementation of transitional justice in Papua. Pursuant Article 46, entitled "Human Rights", there are three mechanisms provided by the Law to address transitional justice in Papua:

1) A Human Rights Court, which would make a contribution to judicial accountability for past violations of human rights.
2) A Papua Truth and Reconciliation Commission to clarify and establish the history of Papua and formulate and determine reconciliation measures.
3) A Papua branch of the National Human Rights Commission, a body that has both a truth-seeking and a judicial accountability function.[58]

Like the Helsinki MoU of Aceh, the Law accommodates the establishment of a TRC and a human rights court for Papua. Interestingly enough, the idea of a TRC was not supported by some activists "because of the fear that it will create conflict between the various groups fighting for independence and weaken the movement".[59] As a matter of fact, as in Aceh, a TRC was never established for Papua since the legal foundation for its establishment had been annulled by the Constitutional Court. The annulment of the Law "became a convenient justification for not establishing local truth commissions for Papua or Aceh, even though they were specified in the Special Autonomy Laws for both regions".[60]

With respect to the establishment of a human rights court in Papua, the government has also failed to comply with the mandate of the Special Autonomy Law. In the absence of a human rights court for Papua, it is difficult to seek judicial accountability for past violations of human rights in Papua. The only good news for Papuans was the creation a regional Human Rights Court in Makassar, South Sulawesi, located outside Papua, under the Law Number 26 of 1999 which allowed to bringing very limited human rights case before the Court. The only case heard in this permanent human

[58] ICTJ and ELSHAM, *op.cit.*, p. 9.
[59] Hilmar Farid and Rikardo Simarmatra, *op.cit.*, p. viii.
[60] ICTJ and ELSHAM, *op.cit.*, p. 11.

rights court was the alleged violations in Abepura, Papua. However, only two suspects were indicted, even though the National Commission of Human Rights (hereafter referred Komnas HAM) found many more. Unfortunately, both suspects were acquitted.[61]

In fact, it is difficult for Papuans to enforce a judicial approach of past human rights violations. At least there are two reasons for this. First, there are no serious efforts among Papuans themselves to bring human rights violations as collective initiatives. They tend to work separately and as a consequence it is difficult to work together for a long term. Second, "Papua's justice system lacks capacity" and "judges and prosecutors do not have an adequate understanding of human rights norms".[62] Thus, there is a reasonable doubt to conduct legitimate human rights trials.[63] Whatever the reasons, the fact is, as in Aceh, transitional justice mechanism for Papua has not been established appropriately. Besides, in contrast to Aceh, separatist issue in Papua is not resolved completely yet. It remains a sensitive issue until today.

3. Transitional Justice in East Timor

Similar to Aceh and Papua, an opportunity to demand the responsibility of human rights violations in East Timor emerged only after Indonesia taking a path to democratic transition in 1998. Transitional justice mechanism to deal with past human rights abuses was provided as a response to international pressure to prosecute serious crimes committed in the area soon after the result of the referendum released in 1999. Initially, a UN Commission of Inquiry recommended an international criminal tribunal to prosecute the perpetrators of mass violations. But, the representatives of the Indonesian government were able to convince the UN Security Council to skip the recommendation and replacing it with national trial. Accordingly, the government quickly issued a regulation in-lieu-of-Law (known as *Peraturan Pemerintah Pengganti Undang-Undang* or *Perppu*) Number 1 of 1999 on Human Rights Court, which later replaced by the Law Number 26 of 2000, to establish a mechanism

[61] ICTJ and ELSHAM, *loc.cit.*; ICTJ and Kontras, *op.cit.*, p. 4.
[62] Hilmar Farid and Rikardo Simarmatra, *op.cit.*, p. viii.
[63] *Ibid.*.

investigating and prosecuting gross human rights abuses in terms of crime against humanity and genocide, excluding war crimes.[64] However, "[l]ike all other judicial mechanisms in Indonesia, the Human Rights Courts are strictly domestic enterprises—there is no international participation in the investigation process, the prosecution, the defence or on the bench."[65] With regard to the mechanism of investigation and prosecution under the Law Number 26 of 2000, it is stated that:

> Komnas HAM may form a pro justicia team to undertake inquiries and make findings on whether gross human rights violations have been committed. If the team finds "sufficient preliminary evidence that a gross violation of human rights has occurred," it has seven days to pass the results to the AGO, the only body with the power to conduct a formal investigation and prosecution. If the AGO receives the Komnas HAM report and declares it to be complete, prosecutors must then complete an investigation within 90 days. However, the AGO may delay the investigation and return the file to Komnas HAM if it finds the evidence insufficient.[66]

An investigation was conducted in September 1999 by Human Rights Violations Investigations Commission (*Komisi Penyelidik Pelanggaran Hak Asasi Manusia*: KPP HAM) for East Timor under direction of Komnas HAM to human rights abuses committed in East Timor between January and October 1999. After conducting rigorous cross-examination of high-level officials and exhuming of the victim's bodies, KPP HAM sent the final report to the AGO in January 2000. The report found that crimes against humanity had taken places committed by the members of military, police, militia and civilian. In response to the report and increasing international pressure, the Indonesian President issued a decree to create an ad hoc court for East Timor in accordance with the mandate of the Law Number 26 of 2000.[67] There were 18 mid- and senior-level officials, mostly security forces members, charged by the prosecutor and six of them were convicted at trial.

[64] ICTJ and Kontras, *op.cit.*, p. 38.
[65] Suzannah Linton, *op.cit.*, p. 10.
[66] ICTJ and Kontras, *loc.cit.*
[67] ICTJ and Kontras, *ibid.*, p. 46.

But, they were acquitted on appeal, meaning no one had been convicted.[68] In contrast, there were 84 convictions and three acquittals decided by the UN-sponsored trials in Timor-Leste during the same period for similar cases.[69]

Another transitional justice mechanism provided for East Timor is the establishment of truth commissions. In August 2005, following the pressure of the UN Commission of Experts, the Indonesian and Timorese governments agreed to establish jointly a truth commission namely the Commission of Truth and Friendship (CTF). It was consisted of ten commissioners who were appointed proportionally of five representatives from each country. This unique commission was the first example of a TRC established bilaterally by two countries. The CTF reviewed what have been found by four previous mechanisms: the Special Panels for Serious Crimes in Dili, the Ad Hoc Human Rights Court trials in Jakarta, the Komnas HAM inquiry, and the report of Timor-Leste's Truth and Reconciliation Commission (known by its Portuguese acronym CAVR: *Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste*). The final report of the conclusive truth and recommendation of the CTF was based on this review. The CTF did not have an authority to investigate and prosecute, but allowed to recommend amnesties and rehabilitation for cooperative people in revealing the truth.[70]

Although the establishment of the CTF was criticized and doubted at the very beginning, its final report surprised the opponents. The report was accepted by both President Indonesia and Timor-Leste, but it was not released for public.[71] The findings of the CTF courageously stated that:

- Crimes against humanity, including murder, torture, rape, and forced transfer or deportation, were committed throughout East Timor in 1999.
- These crimes were not spontaneous or random, and were not the result of retaliatory actions.

[68] *Ibid*., p. 47.
[69] Megan Hirst, *Too Much Friendship, Too Little Truth: Monitoring report on the Commission of Truth and Friendship in Indonesia and Timor-Leste*, Occasional Paper Series, January 2008, p. 8. Available at [http://ictj.org/].
[70] ICTJ and Kontras, *op.cit.*, p. 26; Suzannah Linton, *op.cit.*, p. 25-26.
[71] ICTJ and Kontras, *ibid.*, p. 27.

- The main perpetrators were pro-autonomy militia groups that targeted supporters of independence and acted with the involvement and support of the Indonesian military, police, and civilian authorities.
- Indonesian support for pro-autonomy militia groups included money, food, and weapons.[72]

In light of this, the establishment of the CTF and its results demonstrated the will of both parties (Indonesia and East Timor) to seek negotiation and compromise dealing with past human rights violations in East Timor. As Megan Hirst observed, "the new nation's leaders [of East Timor] prioritized good relations with its neighbor Indonesia over the pursuit of justice".[73] In this regard, Timorese leaders believed that the pressure of international and domestic for accountability regarding the 1999 violations as a threat to bilateral relations with Indonesia. In addition, they were aware that it was difficult to have a broad international support, especially from all permanent members of the UN Security Council, to establish an international tribunal given significant position and role of Indonesia for the interests of international communities.[74] Reasonably, "[f]aced with this reality and desiring friendly relations and economic cooperation with Indonesia, the Timorese leaders chose not to support the establishment of an international tribunal."[75] Moreover, the East Timor's top political leaders had pardoned the perpetrators of crime against humanity who had been sentenced by a Dili court. They were freed on parole which means that their terms in jail for crimes against humanity committed in 1999 were not served fully in accordance with the sentence of the court.[76] This proves that transitional

[72] *Ibid.*.
[73] Megan Hirst, *op.cit.*, p. 1.
[74] *Ibid.*, p. 1 & 11.
[75] *Ibid.*, p. 11.
[76] *The Sunday Age*, "Not diplomatic: was Ramos Horta a contender or a pretender?", June 29, 2008, p. 8.

justice in East Timor became more reconciliatory than judicially.[77] Even though there was a criticism to such transitional justice approach, in fact it worked.

III. CONCLUSION

As has been demonstrated throughout this article, the implementation of transitional justice in post-Soeharto Indonesia is a complex one. Transitional justice in Indonesia has been directed to the minimum level only. Unfortunately, it is implemented with half-baked. While there have been efforts in terms of both judicial and non-judicial achieved by the government of Indonesia to apply transitional justice, the final results are not satisfactory. There is no serious political will to address Indonesia's legacy of human rights abuses. The military, police, prosecutors, judges, parliament, and even the president supported the implementation of transitional justice only with half-hearted. The case of Indonesia shows that "the progress has been largely restricted to form, but not to action."[78] It is therefore not surprising that no single case has been prosecuted successfully during transitional period. As a matter of fact, "neither Suharto nor any of the high-ranking officials of the New Order era have ever been put on trial or held accountable for human rights abuses during 32 years of authoritarian rule".[79]

With regard to the implementation of Indonesian transitional justice, some analysts have come to the same pessimistic conclusions expressed in such terms: "de facto amnesty",[80] "intended to fail",[81] "has not had a coherent "transitional

[77] Such an approach was also applied by East Timorese political leaders in the implementation of transitional justice in Timor-Leste itself. The Timor-Leste's Truth and Reconciliation Commission (CAVR) including the Community Reconciliation Program (CRP) underlined the importance of reconciliatory measure. The application of transitional justice mechanism was highly contested by domestic political leaders. A charismatic leader like Xanana Gusmao once said that "the people would forgive former militia members if only they received an apology" and he agreed to grant amnesties. See Eva Ottendorfer, "Contesting International Norms of Transitional Justice: The Case of Timor Leste", *International Journal of Conflict and Violence*, Vol. 7 (1), 2013, p. 29. In addition, a report published by the UNDP Timor-Leste concluded that "[t]he CRP has reinforced the importance of local justice mechanism and the notion that justice in Timor Leste not always about punishment, but also compensation, contrition and other forms of reciprocity". See Piers Pigou, *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation*, Report for UNDP Timor-Leste, April 2004, p. 102. Available at [http://www.cavr-timorleste.org].

[78] ICTJ and Kontras, *op.cit.*, p. 84.

[79] Ehito Kimura, *op.cit.*.

[80] Patrick Burgess, "De Facto Amnesty? The Example of Post-Soeharto Indonesia", in Francesca Lessa and Leigh A. Payne (ed.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, Cambridge: Cambridge University Press, 2012.

[81] David Cohen, *Intended to Fail: The Trials Before the Ad Hoc Human Rights in Jakarta*, Occasional Paper Series, International Center for Transitional Justice, August 2003. Available at [http://ictj.org/].

justice" strategy",[82] "has largely failed",[83] "a defensive enforcement approach in promoting human rights",[84] "the culture of impunity and the lack of political will or courage to bring about justice",[85] and "the failure of international justice".[86] In short, a significant final result of Indonesian transitional justice has not been achieved and justice has not been done so far.

However, Indonesia is not the only case where the implementation of transitional justice has failed. As Duncan McCargo illustrates, such a failure has also occurred in the cases of Cambodia and Thailand. In Cambodia, a hybrid tribunal namely the Extraordinary Chambers in the Courts of Cambodia was created for the trial of mass killing during 1975-1979 committed by Khmer Rouge regime. But the result was not successful. In Thailand, the Truth for Reconciliation Commission was formed in order to investigate the deaths of 92 people during April and May 2010 demonstrations committed by the military officers. Similarly, the result has also failed. Surprisingly enough, the Commission blamed the demonstrators rather than the military officers. Previously, in order to examine the resurgence of separatist violence in the country's Muslim majority southern provinces, the Thai government created a National Reconciliation Commission in 2005. But the result was also not satisfactory.[87]

Indeed, it is difficult to implement transitional justice if old regime actors, both civilian and military, still have significant position in state institutions and political influence in policy making. In Indonesian case, lustration is not applied to prevent them from involving in new transitional regimes. Instead of this, the lack of broad and solid public support for transitional justice also made it more difficult to implement. Transitional justice is not viewed as the aspirations of the whole Indonesians, but rather limited to the victims and their family and

[82] Suzannah Linton, *op.cit.*, p. 20.
[83] Ehito Kimura, *op.cit*..
[84] Irene Istiningsih Hadiprayitno, "Defensive Enforcement: Human Rights in Indonesia", *Human Rights Review*, Vol. 11, 2010, p. 397.
[85] Priyambudi Sulistiyanto, "Politics of Justice and Reconciliation in Post-Suharto Indonesia", *Journal of Contemporary Asia*, Vol. 37, No. 1, February 2007, p. 90-91.
[86] Elizabeth F. Drexler, "The Failure of International Justice in East Timor and Indonesia", in Alexander Laban Hinton (ed.), *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, New Brunswick, New Jersey, and London: Rutgers University Press, 2010.
[87] Duncan McCargo, "Transitional Justice and Its Discontents", *Journal of Democracy*, Volume 25, Number 2, April 2015, p. 5 & 16.

human rights activists. Meanwhile, international pressures for transitional justice are understood by many as an unexpected foreign intervention.

The case of Indonesia suggests the lessons that the implementation of transitional justice is likely to be unsuccessful it there is no extensive support from nation-states actors, national institutions, the majority of citizens, and the victims themselves. Unless such obstacles are considered properly, the effort to resolve past human rights abuses will likely to lead to the same mistake and failure of justice. To overcome the obstacles, the current government have to convince them first so that they will support the effort to resolve past human rights violations. Furthermore, in order to resolve past human rights violations, it is necessary to firstly fulfil the minimum level of transitional justice (truth process, trial process, and reparation process) before suddenly jumping to reconciliation process. Arguably, justice cannot be brought to the victims unless such a minimum level of transitional justice has been fulfilled prior to reconciliation.

The lessons above should be considered wisely by the current government under President Joko Widodo and Vice-President M. Jusuf Kalla who intends to resolve past human rights abuses as has been promised in their presidential election campaign in 2014. Since transitional justice measures have not been resolved appropriately, past human rights abuses would remain a nightmare for the country and even for the generations. Ultimately, Indonesia cannot run away from its own history for better or worse.

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