Indonesian Journal of International Law

Volume 20 | Number 3 Article 5

5-1-2023

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Recommended Citation

Saibih, Junaedi; Danil, Elwi; Warman, Kurnia; and Mulyati, Nani (2023) "The Analysis of Transitional Justice Initiatives and The Flaw of Prosecution on The Past Human Rights Violation in Indonesia (Tanjung Priok Case)," *Indonesian Journal of International Law*: Vol. 20: No. 3, Article 5.
Available at: https://scholarhub.ui.ac.id/ijil/vol20/iss3/5

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Indonesian Journal of International Law (2022), Vol. 20 No. 3, pp. 173 - 216
http://doi.org/10.17304/ijil.vol20.3.1

THE ANALYSIS OF TRANSITIONAL JUSTICE INITIATIVES AND THE FLAW OF PROSECUTION ON THE PAST HUMAN RIGHTS VIOLATION IN INDONESIA (TANJUNG PRIOK CASE)

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Abstract

The transition from the New Order to the Reform Era has prompted inquiries from the public regarding the plans set aside by the government for implementing transitional justice initiatives. Therefore, this study examines the theoretical perspectives on transitional justice developed by many scholars in their publications, along with the various forms and institutions of justice in transitional regimes. These perspectives are crucial for assessing the effectiveness of transitional government initiatives toward achieving political stability and reconciling with the past. It also explores the concept of Victims-Centred Transitional Justice and raises the expectations and aspirations of victims regarding the transitional justice policy. The discourse sheds light on the Tanjung Priok case of 1984, where victims' experiences with human rights violations are recounted through the provision of a platform for them to express their version of events. The subsequent sections will narrate the approach used by the government to address past human rights violations and the efforts of victim supporters in the House of Representatives leading up to the enactment of the Law on Human Rights Court. This section is instrumental in formulating a conclusion regarding the adequacy of Indonesian transitional justice.

Keywords*: Human rights violation, Indonesia, Transitional justice*

Received : 17 January 2023 | Revised : 12 April 2022 | Accepted : 31 April 2023

I. INTRODUCTION

An understanding of the transition process is essential to discussions of transitional justice. Based on the political transition theory, transition refers to a shift or process by which a country moves from an authoritarian regime to a democratic one.[1] This shift is facilitated by a movement

[1] Nifosi, Ingrid. "A New Conceptual Framework for Political Transition: A Case Study on Rwanda". L'Afrique Des Grands Lacs. Annuaire 2004-2005. pp 71-94. Also see Carothers, Thomas. "The end of the transition paradigm," *Journal of Democracy* 13.1 (2002): 5-21.

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or change from dictatorship or fascism to democracy, resulting in a tangible shift from a despotic government to a more democratic one. Transitional justice serves as a necessary mechanism to strategically design policies for reforming the security sector and delivering justice to victims of past government violence.

Transitional justice has the potential to bring all national groups together by providing a shared understanding of past human rights abuses and atrocities. It also serves as a mechanism to prevent future human rights violations. Acknowledging and recognizing the victims of past atrocities is a crucial step in promoting peace, reconciliation, and democracy. The promotion of justice during the transition period is vital.[2] According to Bassiouni[3] the significance of transitional justice lies in its potential to prevent all forms of human rights abuses through various mechanisms. However, without this preventive aspect, transitional justice would lose its meaning.

In recent years, transitional justice has become a widely discussed phrase in legal and political literature. Its significance, particularly in the context of transitional governments, is to facilitate the transformation of a traumatized society that has long suffered from human rights violations and abuses.[4] Transforming society is crucial for establishing a better future that upholds human rights and delivers justice equally to all elements of the nation. However, the application of justice in this context occasionally hinders the goal of a fair and just future, particularly when retrospective laws are used.

In certain parts of the world, political transitions do not always result in a shift from an authoritarian regime to a democratic one. Instead, transitions may occur between one authoritarian regime and another. These transitions are instigated by a military coup, which arises from unresolved power struggles among military elites. In cases where transitions result from conflicts among military elites, political

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[2] P. Hayner, *"Fifteen Truth Commissions, 1974-1993: A Comparative Study", Human Rights Quarterly*, XVI, 1994, str. 600-655.

[3] C. Bassiouni, (ed.), "*Post-Conflict Justice*," (Ardsley: Transnational Publishers, 2002).

[4] Hilmar Farid and Rikardo Simarmatra, *The Struggle for Truth and Justice: A Survey of Transitional Justice Initiatives Throughout Indonesia, Occasional Paper Series (New York: ICTJ, January 2004).*

vendettas are likely to follow, leading to new forms of atrocities and abuses.

Zalaquett stated that during a political transition to democracy, whether it involved restoring an existing democratic government, reinstating a previously fallen administration from quasi-dictatorship, or establishing a new democracy, none of the old regimes should be included in the entire process.[5] This is to break the chain of crimes committed during the past administration and to prevent the emergence of a pseudo-democracy under the same regime. The new government must promise to respect human rights and practice a democratic system, but justice must also be served by prosecuting and convicting the perpetrators of past atrocities. Despite their attempts to distance themselves from the previous regime, new regimes often use the same repressive practices by relying on old regime actors to form transitional governments, albeit with different targets. An example is the transition of power in Indonesia from the Sukarno regime to the New Order in the early 60s. The New Order regime has been accused of repressive crimes, resulting in casualties over time. The previous regime, which implemented Guided Democracy and glorified Sukarno as the greatest leader of the Indonesian Revolution, was criticized by the New Order regime for being extremely fascist. On 5 July 1959, Soekarno reported that the Guided Democracy could only be implemented with the support of the 1945 Constitution. Soekarno forced the country to return to the 1945 Constitution unconditionally and dissolved the constitution assembly known as the Konstituante.[6] The New Order regime blamed Guided Democracy, and also forced the country to accept the 1945 Constitution without amendments. This suggested that the New Order regime essentially continued the Guided Democracy, or Guided Democracy Part 2. A comprehensive examination of the development and resources pertaining to transitional justice in different parts of the world would be advantageous for Indonesia in effectively addressing

[5] Jose Zalaquett. "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in Neil J Kritz, (ed.), "Transitional Justice: How Emerging Democracies Reckon with Former Regimes," (Washington DC: United States Institute of Peace Studies, 1995).

[6] Schwarz, Adam. *A Nation in Waiting: Indonesia's Search for Stability*. Routledge, 2018.

human rights violations from the past and implementing a future marked by dignity.

A. TRANSITIONAL JUSTICE IN PERSPECTIVES

Transitional justice is a term that consists of two distinct concepts, namely transition and justice. The notion of transition refers to the process of moving or changing from one condition or state to another. In the transitional justice context, justice is associated with providing substantive remedies to victims, including restitution, compensation, and rehabilitation, as well as instituting reforms to address the issues within the offending institutions. Transitional justice involves applying judicial and non-judicial policies to address human rights violations committed or permitted by previous governments in countries transitioning from autocratic to democratic rule.[7] All its measures related to human rights and the rule of law need to be implemented within a period of five years.

However, transitional justice has spurred the development of different theories and concepts, which are categorized based on the approach used. Some examples include the measures, mechanism, instruments, political change, and hybrid approaches by Hayner, Bassiouni, Gray, Teitel, and Aloyo, respectively[8]. The following approaches are briefly described.

The approach proposed by Hayner with respect to transitional justice emphasizes the importance of seeking the truth through victim participation, promoting peace, reconciliation, and democracy. The approach recognizes the status of the victim and aims to gather information from them to establish facts about the atrocities committed by the previous government. However, their experiences of human rights violations and government despotism are crucial to creating the possibility for peace. Hayner stated that truth-seeking was critical for national reconciliation because it provided a platform for the voices of victims to be heard. Reconciliation facilitates forgiveness when all

[7] International Centre for Transitional Justice (ICTJ), *"An International Non-Profit Organization Specializing In The Field Of Transitional Justice* ."Retrieved from: <http://ictj.org/about/transitional-justice?gclid=CNeNyL SkwLICFQlLpgodZ1Y-AAQ>, accessed 19 September 2012.

[8] Hayner P. *Fifteen Truth Commissions, 1974-1993: A Comparative Study,* "*Human Rights Quarterly*," XVI, 1994, str. 600-655.

parties affected by the conflict are identified. This approach can lead to the reform of government institutions and systems, including the military, police, and the judicial system.[9] The perspective of Bassiouni[10] and Hayner regarding transitional justice differs. Hayner stated that any mechanism used during political transition to address human rights abused constitutes transitional justice. The perspective of Bassiouni on transitional justice outlines how the new government can strengthen mechanisms to address human rights violations committed by the previous regime. According to Bassiouni, the transitional government must break the cycle of violence and end the legacies of the past which contributed to human rights abuses. Breaking the pattern of violence as a primary policy in the transitional government is crucial in reforming state institutions that have the potential to commit further atrocities in the future, such as the Police or the Military. This practice of reform is also instrumental in amending laws that violate human rights. The earlier-mentioned perspectives highlight the importance of transitional justice and the various mechanisms the government should adopt to address these violations.

Gray offers another perspective on transitional justice, suggesting that it serves as an instrument for successor regimes to investigate past atrocities committed by previous governments.[11] It was further noted that the transitional government would naturally seek to hold all wrongdoers accountable, including those previously untouchable. This is made possible through the implementation of new transitional justice laws that allow for prosecutions. Criminal prosecution is not always feasible, hence the combination of hybrid approaches with amnesties, truth commissions, and reparations in transitional justice. Such hybrid approaches are sometimes labeled as a form of compromise to justice.

The hybrid approach proposed by Aloyo proves that some transitional

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[9] Priscilla B. Hayner, *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions*. Routledge, 2010. P. 20-23.

[10] Bassiouni, supranote 47.

[11] David C. Gray, (2006), An Excuse-Centered Approach to Transitional Justice. Fordham Law Review, Vol. 74, 2006; Duke Law School Legal Studies Paper No. 88. Available at SSRN: <http://ssrn.com/ abstract=840045>, accessed 16 September 2012.

justice theories have neglected the role of victims in the justice process[12]. As a result, there is a need to establish democratization with victim-centered justice. According to Aloyo, transitional justice encompasses various types of justice in a particular regime, depending on whether it is autocratic or democratic. This transition is also interpreted as a shift from a regime that has committed certain violations to one that upholds human rights.

Teitel defined transitional justice as a concept that was connected to political change.[13] During the transition period, laws are developed in different political phases, and it changes as a political product that cannot be separated from the evolving political context. In order to analyze legal development, an investigation of the political context is necessary. Additionally, Teitel stated that transitional justice often had reform aspirations such as the rule of law, legitimacy, liberalization, reconciliation, nation-building, and conflict resolution.[14] These aspirations arise when there is a shift or deviation from the original one. Teitel reported that the transitional justice literature focused on the objective of democratization, and this was often in line with other aspirations, such as conflict resolution and reconciliation[15]. It is essential to evaluate the implementation and implications of transitional justice in the context of these different aspirations.

The transitional period that follows the downfall of a despotic or authoritarian regime often does not entail a complete replacement of the executive apparatus of the previous regime. The officers of the previous regime may continue to hold positions in branches of

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[12] Eamon Aloyo, *"Transitional Trade-offs and Vital Victims: A Partially Democratic Theory of Transition Justice*." Paper Presented in One Earth Future Foundation, March 2010. Retrieved from <http://www.oneearthfuture.org/siteadmin/images/files/file_54.pdf>, accessed 19 September 2012.

[13] R.G. Teitel, *"The Law and Politics of Comtemporary Transitional Justice*," *Cornell International Law Journal*, Vol. 38, p. 837, 2005; NYLS Legal Studies Research Paper No. 06/07-10. Available at SSRN: <http://ssrn.com/abstract=943069>, accessed 17 September 2012.

[14] R.G. Teitel, "Transitional Justice," (New York: Oxford University Press, 2000).

[15] R.G. Teitel, *"Transitional Justice Genealogy*," *Harvard Human Rights Journal,* Vol. 16, 2003, p. 69-94. Retrieved the article from: <http://heinonline.org/HOL/Page?handle=hein.journals/ hhrj16&div=8&g_ sent=1&collection=journals>, accessed 17 September 2012.

government such as the judiciary and the legislature. This can lead to individuals experiencing human rights violations in forms other than outright violence, such as by state officials on behalf of the previous government.[16] It is imperative that the offenders be held accountable for their actions in order to establish a solid foundation for the democratic process and the rule of law. Additionally, the transitional government must address various legal and human rights issues and make necessary changes to ensure the success of the process.

This study aims to broaden the understanding of transitional justice beyond merely describing the shift from authoritarian to democratic governance.[17] It highlights the importance of addressing issues of democratic governance and human rights law inherited from the previous regime. The ultimate goal of transitional justice is to provide justice to victims of human rights violations and prevent similar atrocities from occurring in the future. This requires a nationwide commitment to prevention and policy reforms that uphold human rights and the rule of law. Transitional justice measures are critical in evaluating the progress of the transitional government and establishing sustainable democratic governance. Therefore, it should be viewed as an ongoing process rather than a temporary change.

B. TRANSITIONAL JUSTICE ELEMENTS

Failing to address large-scale abuses is likely to create social division and erode trust in state institutions. In addition, ignoring such abuses can hinder efforts to achieve political stability, security, and development. Implementing transitional justice measures can help build better relationships between different groups and state institutions, leading to peace, stability, and development.[18] It involves a range of

[16] L.E. Fletcher and H.M. Weinstein, *"Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*," *Human Rights Quarterly,* Volume 24, Number 3, August 2002. pp. 573-639. Retrieved from: <http://muse.jhu.edu/journals/hrq/summary/v024/24.3fletcher.html>, accessed 20 September 2012].

[17] Jens David Ohlin, *"On the Very Idea of Transitional Justice*," *Whitehead Journal of Diplomacy and International Relations*, Vol. 8, 1 June, No. 1, pp. 51-68, 2007. Available at SSRN: <http://ssrn.com/ abstract=1263347>, accessed 20 September 2012.

[18] Sari Kouvo, and Dallas Mazoori. *"Reconciliation, Justice and Mobilization of War Victims in Afghanistan," International Journal of Transitional Justice* 5, No. 3 (2011): 492-503.

interrelated elements that are both practical and conceptual in nature. The key components of transitional justice include:[19]

a) Criminal prosecutions target the individuals deemed most responsible for the abuses.

b) Reparations, which acknowledge and address the harm caused, often through both symbolic and material measures such as apologies, memorials, cash payments, and access to services.

c) Institutional reform of state entities such as the armed forces, police, and courts, which were involved in human rights abuses. This aims to dismantle the structures that facilitated the abuse and prevent its recurrence.

d) Truth commissions or similar mechanisms that investigate systematic patterns of abuse make recommendations for change and help understand the root causes of the violations.

It is worth noting that the list of elements for transitional justice is not comprehensive, as some countries have incorporated additional measures into the processes. Additionally, the importance of a memorial initiative cannot be overstated, as it helps keep the memory of victims alive and reminds future generations about past abuses.[20] In order to achieve this, countries can create memorials, museums, or other symbolic initiatives, such as renaming streets or public places.[21]

II. TRANSITIONAL JUSTICE AS PART OF THE REFORM AGENDA

A. TRUTH FINDING: KOMNAS HAM PRELIMINARY INVESTIGATION VERSUS INDEPENDENT FACT FINDING REPORT

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[19] ICTJ, supranote 50.

[20] Jeffrey Blustein, *"Human Rights and the Internationalization of Memory*," *Journal of Social Philosophy,* 43, No. 1 (2012): 19-32.

[21] See Katherine Hite and Cath Collins, *"Memorial Fragments, Monumental Silences and Reawakenings in 21st Century Chile"*, *Millennium-Journal of International Studies*, 38, no. 2 (2009): 379-400.

Following the establishment of the Reform period, government, legal and judicial institutions underwent significant changes with respect to various aspects of human rights. One significant change was the strengthening of the National Human Rights Commission or the legislative basis of Komnas HAM. Before the Reform period, the statutory basis of the Commission was Presidential Decree No. 50/1993, enacted during the Suharto era. However, under the Habibie Government, Law No. 39/1999 on Human Rights was passed, and the Commission was established and operated under its statute. This strengthened its position as an independent institution not under the supervision of the President, as provided for in the earlier Presidential Decree [22]. Law No. 26/2000 on Human Rights Courts further strengthened the Commission by giving it the role of conducting preliminary investigations into gross violations of human rights. The most important role of a preliminary investigation is to determine whether a particular case constitutes a gross violation of human rights. When the Commission determines that a case is a gross violation of human rights, it will pass its preliminary investigation file to the office of the Attorney General for further investigation.

The National Human Rights Commission requires police investigators to assist them in conducting preliminary investigations, specifically in areas where social circumstances are unstable, or conflicts are ongoing.[23] The presence of police investigators provides security to the Commission preliminary investigators while performing their duties.[24] In addition, the judiciary and courts play a crucial role in

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[22] Philip Eldridge, "*Emerging roles of national human rights institutions in Southeast Asia*, "*Pacifica Review: Peace, Security & Global Change*", 14, no. 3 (2002): 209-226.

[23] "*With the current vesting of the National Human Rights Commission with the power to conduct preliminary investigations, the police are often reluctant to provide assistance due to the lack of clarity in Law No. 26/2000 over the appointment of the police as a body from whom assistance can be requested*". From an interview with National Human Rights Commission Commissioner Nurkholis on 18.

[24] The presence of police investigators is particularly important in unstable regions where the security of the preliminary investigators greatly influences the completeness of a preliminary investigation conducted by Komnas HAM. This was the experience of Koesparmono Irsan while conducting preliminary investigations in Aceh with Baharudin Lopa, where the police ensured the security of Komnas HAM preliminary investigators. In this regard, there need to be further regulations providing for mechanisms for joint decision-making and the issuing of instructions or for determining a

providing legal security to the investigators of Komnas HAM during raids and seizures. These actions were carried out under the direction of the office of the Attorney General as the official investigating agency.[25]The enactment of Law No. 39/1999 on Human Rights gave a legal foundation to uncover past human rights violations by entrusting the National Human Rights Commission with the mandate to conduct preliminary investigations into case involving human rights abuses[26]. Based on this, Komnas HAM has established Commissions of Investigation into Human Rights Violations (KPP-HAM) on several occasions. These Commissions carry out preliminary investigations into allegations of human rights abuses not only in recent case but also in historic cases[27]. Some of the established Commissions include KPP-HAM for East Timor, the 1984 Tanjung Priok, the 1998 Trisakti-Semanggi, the 1989 Talangsari cases, the 1997 to 1998 disappearances of activists, and the case of the 1965 murder of members of the communist party.[28]As mentioned earlier in section 2(i), in respect to the Commission of Investigation for the 1984 Tanjung Priok Case, the National Human Rights Commission established two separate commissions of investigation. The first one, led by retired General Djoko Sugiyanto, concluded that no gross violations of human rights occurred at Tanjung Priok in 1984. The second commission, led by retired Police General Koesparmono Irsan, found some evidence and confirmed gross violations of human rights. This commission also discovered several burial sites of the victims. The findings of this

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clear relationship between the two agencies specified in the human rights law. Gatra news magazine, No. 41/IV, 29 Augustus 1998.

[25] This was also revealed by Koesparmono Irsan when he opened graves suspected of being the burial places of victims of the Tanjung Priok incident, which was attended by officers from the prosecutor's office, the courts, and the police to secure the exhumation process. *Tempo: Indonesia's weekly news magazine* 12 September 2000. Retrieved from http://www.library.ohiou.edu/indopubs/2000/09/12/0066.html. [Accessed 20 January 2014]

[26] Hikmahanto Juwana, "Human Rights in Indonesia," In Randall Peerenboom, *et al.* (eds), "*Human Rights in Asia: A Comparative Legal Study of 12 Asians Jurisdictions, France, and the USA*", (New York: Routledge, 2006), pp. 364–383.

[27] Mark Cammack, "The Indonesian Human Rights Court", in Harding, Andrew, and Penelope Nicholson, (eds.), "*New courts in Asia*" (Routledge, 2010), p. 201.

[28] Irene Istiningsih Hadiprayitno, *Defensive Enforcement: Human Rights In Indonesia,* pp. 373-399.

investigation caused the office of the Attorney General to conduct a probe to bring offenders to justice through the Ad Hoc Human Rights Court for the Tanjung Priok Case.

Since 1999, NGOs such as the Institute for Policy Research and Advocacy (ELSAM) and other victim advocacy groups have conducted several private investigations alongside the National Human Rights Commission. These inquiries have enriched the preliminary investigations by Komnas HAM, as each organization reported its findings to them. The Islamic Advocacy Association was an example of an NGO that conducted a thorough three-month investigation, interviewing 58 victims or eyewitnesses. Their inquiry revealed evidence of military officers engaging in summary killings by firing directly into crowds of civilians. The military hospital was also found to have been used as a center for treating all wounded or deceased individuals, and patient information was destroyed within five years of the case.

During the investigation, the Komnas HAM commission also examined the records held by the military hospital. The commission found that patients' information had been destroyed after five years, although no official documents were available to confirm this. Furthermore, the commission report concluded that the head of the military hospital was accountable for the destruction of documents pertaining to the patients treated during the case. Despite this recommendation, the prosecutor did not include the head of the military hospital in the prosecution file as a defendant.The first step towards prosecuting the Tanjung Priok case was to conduct a pre-investigation mechanism, as stipulated in the procedures law. The human rights court laws designate the National Human Rights Commission, instead of the police officers, as in criminal procedure laws, to carry out this mechanism. The National Human Rights Commission established the Commission of Investigation (KP3T) to investigate human rights violations at Tanjung Priok. However, the pre-investigation of KP3T had several flaws. One of them was the background of its members, which was closely associated with the institution responsible for the case. According to Suparman Marzuki [29], the human rights court was established to grant impunity to such cases.

[29] Suparman Marzuki, "*Pengadilan HAM di Indonesia: Melanggengkan Impunity",* (Penerbit Erlangga, 2012).

The investigation of the KP3T was also flawed as its members could potentially be part of the old regime responsible for state atrocities, ultimately leading to the failure of the prosecution.

Attorney General Marzuki Darusman formed the KP3T, with H.R. Djoko Soegianto as its chairman. Djoko had previously served as a judge and was an Under Chairman of the Civil Chamber at the Supreme Court before retiring and joining the Legal Service Charitable Foundation (*Yayasan Amal Pelayanan Hukum*) established by Vice President Sudharmono. However, the closeness of Djoko to Sudharmono raised concerns about his impartiality as Sudharmono was Golkar Party General Secretary from 1983 to 1988. It is crucial to note that the Tanjung Priok case occurred in an area where Islamic parties held significant electoral influence. The prohibition of Islam as an ideological foundation for political parties and Islamic symbols significantly impacted the election results of the United Development Party. Golkar was interested in gaining votes from Islamic parties and increasing its results in the 1987 election. Djoko's closeness to Sudharmono was aimed at securing votes from those with this political background and directing them towards a normal clash that ultimately led to repressive measures by the military, who were compelled to act due to a violent crowd wielding knives and other weapons.

Another member of the KP3T investigation was BN Marbun, a former Indonesian Democratic Party (PDI) politician who had a close relationship with LB Moerdani, the Armed Forces Commander, at the time of the case. Moerdani had provided significant support to Marbun throughout his career[30]. Albert Hasibuan, another KP3T member, was a figure within the Golkar Party and acted as a contact person for the Christian community to support the party. The closeness of Hasibuan to LB Moerdani is evidenced by his having been tasked by President Suharto to work with Moerdani on the Pertamina corruption case[31]. Hasibuan

30 *Detik Magazine*, *Investigate Priok, Protect the Generals [Memeriksa Priok, Melindungi Jenderal],* Jakarta, 7 May 2000 http://www.library.ohiou.edu/indopubs/2000/05/07/0082.html and http://www.library.ohiou.edu/indopubs/2000/05/06/0100.html Accessed 10 November 2014.

31 Syamsuddin Haris, and Lembaga Ilmu Pengetahuan Indonesia. *Partai dan Parlemen Lokal Era Transisi Demokrasi di Indonesia: Studi Kinerja Partai-partai di DPRD Kabupaten/Kota* [Parties and local parliaments in the era of translational de-

and Moerdani were responsible for withdrawing billions of rupiah in bank funds owned by Pertamina, which was controlled by Kartika Tahir, the wife of Ahmad Tahir, who was notorious for his massive corruption within Pertamina, through the Singapore courts. Retired Major General Samsuddin, another investigation member, was the former Commander of the Cendrawasih (Papua) and Mangkurat (Kalimantan) Military Area Commands, making his independence questionable due to his closeness to the military. Syafroedin Bahar, also a member of the investigation, was a retired Colonel and former public servant who had worked at the State Secretariat during the Suharto era. He had served as the deputy secretary to the Commander for the Restoration of Security and Order Operations (Pangkopkamtib), [32] who, as discussed in Chapter Four, was the military organization responsible for national security, including the Tanjung Priok case.

Based on the previous explanation about the background of the commission, it can be concluded that the prosecution process was flawed due to the composition of the commission. Since the commission members were closely linked to the institution responsible for the atrocities committed against the victims, it would have been more appropriate to have representatives from civil society organizations that focus on human rights violations, such as ELSAM, Kontras[33], Imparsial[34], LBH Jakarta[35], and MaPPI[36]. Additionally, organizations working with the victims of the Tanjung Priok case and lawyers who have shown concern for the case, such as SONTAK (National Solidarity for the 1984 Tanjung Priok case) and the Islam Defenders' Association

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mocracy in Indonesia: a study of the performance of parties in municipal/regency legislatures], (Lembaga Ilmu Pengetahuan Indonesia, Jakarta, 2007).

[32] A. A. Sudirman, "*Ketegangan 27 Juli, Lima Tahun Komnas HAM: Catatan Wartawan*" *[Five Years of the National Human Rights Commission: Journalists' Musings]* (1999): 46.

[33] The Commission for the Disappeared and Victims of Violence (Kontras) is human rights NGO established in 1998.

[34] Human rights NGO established in 2002.

[35] The Jakarta Legal Aid Institute (LBH Jakarta) was established in 1970 by the Indonesian Lawyers Association to provide legal aid services to indigent members of the community and to promote the rule of law.

[36] The Indonesian Justice Monitoring Community (MaPPI) is a national law reform project of the University of Indonesia's Faculty of Law.

(*Asosiasi Pembela Islam* or API), should have been included in the commission.

B. AD HOC HUMAN RIGHTS COURT FOR TANJUNG PRIOK FAILS TO BRING JUSTICE FOR VICTIMS

Presidential Decree No. 53/2001 played a crucial role in addressing past human rights violations in Indonesia. It provided a legal basis for the establishment of an ad hoc human rights court to address two cases, namely the 1999 post-referendum events in East Timor and the 1984 Tanjung Priok case. The decree recognized the victims, families, and supporters for their years of hard work, particularly in the Tanjung Priok case, which was classified as a past gross violation of human rights under Article 7. The establishment of the ad hoc court ensured that all judicial measures relating to the prosecution of the cases had a clear legal basis. For families of the victims, the decree brought a glimmer of hope that they would uncover the truth about the cases and locate their missing relatives.

The issuance of the Decree was a significant display of the post-Reform government initial commitment to enforcing its reform agenda, particularly regarding the examination of past human rights violations. Its promulgation is inseparable from the efforts of the victim to gain official recognition of the case as a past gross violation of human rights. These efforts represent an example of establishing a caucus between victims, NGOs involved explicitly in human rights issues, and members of the DPR. Another factor contributing to the eventual official recognition of the case was the activities of political parties and the struggle of some to become members of the DPR. As earlier mentioned, some key figures related to the case were members of the DPR, and in fact, one even became the Deputy Speaker, as in the case of A.M. Fatwa. However, their membership status contributed to passing a vote in favor of a letter of recommendation from the DPR acknowledging the case as constituting an Article 7 past gross violation of human rights. A.M. Fatwa emphasized this process of recognition during the interview sessions, as follows:

> *"After considering the matter, we concluded that the Tanjung Priok case met the criteria to be classified as a past gross violation of human rights.*

As members of the DPR Commission for Law and National Affairs, we unanimously agreed to recommend the case for recognition. This decision was taken after we heard the opinions of all the members, including the community who had come to us."[37]

President Abdurrahman Wahid issued Presidential Decree No. 53/2001 after receiving a recommendation from the DPR to establish ad hoc human rights courts for East Timor and Tanjung Priok. Subsequently, it was revised by President Megawati Soekarnoputri through Presidential Decree No. 96/2001 to specify the location and timeframe of the subject cases. Legally, this meant that the ad hoc human rights court could only examine matters within the specified locus and tempus as laid down in the Decree. Limiting and localizing the Tanjung Priok case meant that related events or security policies need not be the subject of prosecution or judicial findings. As earlier discussed in Chapter Two, a number of security operations accused several individuals of being involved in the Tanjung Priok case. A.M. Fatwa referred to these efforts in an interview, as follows:

"… I was arrested by security officials despite not being present during the sermon in Tanjung Priok at the time of the case. I was apprehended and detained a week after the case while attending a meeting with some Islamic student organizations, including the Islamic Students Associations (HMI), Indonesian Islamic Students (PII), and H.R. Darsono was in my Musholla. Later I discovered that I was put on trial because of the publication of the White Paper[38] *about the Tanjung Priok case as referred to in the primary charge before the court".*

The Ad Hoc Human Rights Court was limited in its jurisdiction by the Decree, which excluded the prosecution of acts related to the destruction of documents containing data about patients brought to RSPAD Gatot Subroto military hospital after the Tanjung Priok case. The destruction of such documents had a significant impact on the

[37] Personal interview 2012 at his DPR office. This was taken from the writer's research on Tanjung Priok, as mentioned in the Tanjung Priok Research Report with the Indonesian Judicial Monitoring Society (MaPPI).

[38] The White Paper was a report and criticism of a number of prominent figures at the time of the Tanjung Priok incident. All were associated with the organization called the Petition of 50 (Petisi 50). At the time, AM Fatwa was secretary, and HR Darson was chairman of the Petisi 50 group.

investigation as they contained information on the wounds sustained by the victims and the death rate, as well as helped identify them for compensation purposes. The jurisdiction of the court was limited to only the deeds that occurred on 12 September, 1984, at Tanjung Priok. Even though the forced detention of some victims was related to the case, it could not be prosecuted due to jurisdictional limitations. This was an issue, as such actions constituted a series of arbitrary acts with a close relationship to the case or its aftermath.

The indictment was flawed in not explaining how social and political problems were used to perpetrate violence against the Tanjung Priok community.[39] This issue was exacerbated by insufficient examination of the evidence of both widespread and systematic actions and the responsibility of the commanders assigned to the defendants. Furthermore, there were procedural law violations, such as witnesses contacting each other and their statements being withdrawn suddenly without court sanction. Prior to the trial, an Islamic reconciliation agreement (*Islah*)[40] was reached in March 2001 between the victims, their families, and security officials responsible for the case. This agreement created difficulties in proving all aspects of human rights violations in court. It was clear from the beginning that those involved intervened by giving money and other support to the victims.

The Tanjung Priok Ad Hoc Human Rights Court made various decisions in the first instance, which showed the main contradiction of

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[39] The indictment limited the place of jurisdiction (*locus delictie*) to only Tanjung Priok, Guntur, and Cimanggis, even though the aftermath of the incident included arrests spread over other districts, including the cities of Garut, Cimais, Lampung, and Ujung Pandang. The systematic element was not explained, such as the imposition of Pancasila as the only legal, ideological foundation for community and political organizations. Political conditions at Tanjung Priok were clearly connected to Suharto's policy of making Pancasila the only legal foundation for all community organizations. This was not referred to in the indictment. The imposition of Pancasila as the sole legal foundation was, in fact, related to all government policy and the actions of all government officials, including those in North Jakarta.

[40] Discussion of this term in Waterson, Roxana "Reconciliation as Ritual: Comparative Perspectives on Innovation and Performance in Processes of Reconciliation", in Kennedy, R., Lynne Bell and Julia Emberley (eds.), "*Humanities Research*", Vol. XV. No. 3, "Decolonising Testimony: On The Possibilities and Limits of Witnessing," ANU E-Press, (2009).

what had occurred. In April 2004, the court handed down the first verdict against North Jakarta Military District Commander Rudolf Adolf Butar-Butar, who was found guilty of gross human rights violations against 23 dead civilians and 53 injured by gunfire. RA Butar-Butar was also found to have permitted the abuse of civilians arrested during the riot and was sentenced to ten years in prison. The decision was different for the accused Special Forces Major General Sriyanto, who was not found guilty of gross human rights violations. The court found Captain Sutrisno Mascung guilty of gross human rights violations,[41] although this decision was made by the majority of the panel[42]. The Jayakarta Military Area Command Chief of Military Police, Major General (Ret.) Pranowo was found not guilty and released from the charges. The findings of the court to release the accused were influenced by the testimony of witnesses about the Islamic reconciliation agreement (*Islah*)[43] reached over the case and the withdrawal of some statements in court.

The Tanjung Priok case was a dispute, with two opposing views concerning the September 1984 case. One view held that there was enough evidence to show the arbitrary killings and torture were committed as part of a government policy, constituting crimes against humanity. The other view argued that the acts could not be classified as crimes against humanity since they arose from an incidental clash between protestors and government troops, therefore, the ensuing killings and torture could not have been part of a plan. The Appeals Chamber ultimately ruled that the acts did not amount to crimes against humanity. The reasoning was based on the absence of a policy to attack and the spontaneous nature of the killings and torture carried out by

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[41] The incident was a spontaneous clash between officials and a crowd, operational control of the army, and the use of force facilitated by the state, including but not restricted to firearms and all such actions must not be categorized as preparation for criminal offenses, as referred to as crimes against humanity. In this instance, the defendant had not given orders to the troops to fire, and the defendant had tried to stop the gunfire being carried out by the soldiers in group 3.

[42] Following discussions among the panel of judges, there was a dissenting opinion with two judges, Judge Heru Susanto and Judge Amirudin Aburaera finding that the defendants' actions did not constitute crimes against humanity and that the accused should be released.

[43] Supranote 25.

government troops.[44]

The main weakness of the prosecution case in the Tanjung Priok trials was their inability to prove the existence of a systematic and widespread element, including the lack of evidence of a government policy to commit the criminal acts. This weakness was present in almost all of the decisions made by the Ad Hoc Human Rights Court. The presentation of charges by the prosecutor restricted the physical location (*locus delicti*) of the crimes and presented separate indictments for each defendant without establishing connections between their cases, further complicated the situation. Without considering all the crimes and examining the big picture, the lack of systematicity and the widespread element could not be established. This practice also hindered the deliberations of the tribunals by preventing an examination of the connectivity and interrelatedness between defendants.

The Court encountered difficulties deliberating on the Tanjung Priok case due to the interchangeable use of terms and the confusion between the meanings of attack (*serangan*) and clash (*bentrokan*). An attack requires intention, while a clash does not. In this case, conflicting decisions arose from the differing conclusions of fact, with one verdict finding a systematic and planned attack, while another verdict found only a spontaneous clash based on self-defense.[45] The defendants in the case

44 In the Appeal Court decision on Sutrisno Mascung and others, no evidence proving a policy of the commander to attack victims was found, but the court found the incidents had occurred because of self-defense in the face of an attaching crowd, gunfire from the troops had occurred without an order from the commander, and it had not been into the crowd but into the air. The clash had only occurred in the limited area affected and had only lasted for five to ten minutes.

45 The elements of an attack are: 1) an act that is either systematic or widespread, carried out multiple times (multiple commission of acts), which is the result of, or forms part of, a policy or organization. Multiple acts mean that the action must not be a single or isolated action, and 2) an "attack" which is either widespread or systematic is not solely a "military attack" as regulated by International Humanitarian Law. However, an attack may also have a broader meaning, for example, a campaign or operation carried out against civilians which need not only involve armed forces or armed groups, and 3) the requirements are considered satisfied if the civilian population is the primary object of the attack. See Pedoman Unsur-unsur Tindak Pidana Pelanggaran HAM yang Berat dan Pertanggungjawaban Komando [Guidelines on the elements of criminal offenses constituting gross violations of human rights and command responsibility], Mahkamah Agung RI, 2006, p. 24.

were charged with command responsibility under Article 42 of Law No. 26/2000, and some were charged with complicity under Article 55(1) of the Criminal Code. However, the failure to bring the defendants to justice was also due to the inability of the prosecutors to prove command responsibility under Article 42. There were four patterns of relationships between the accused commanders and the perpetrators varied, including direct subordinates who allowed military officers to commit atrocities, lack of either *de facto* or *de jure* relationships between defendants and perpetrators, negligence resulting in atrocities, and responsibility for actions committed by direct subordinates. Upon review in the Appeals Chamber and the Supreme Court, only two defendants from the civilian government were found guilty, and the patterns of relationships between the accused commanders and perpetrators changed.

During the Tanjung Priok case, commanders who were defendants faced charges of complicity under Article 55(1) of the Criminal Code. In contrast, those who committed atrocities were charged with attempting to commit a crime under Article 53(1) of the Criminal Code.[46] The ability of the prosecution to prove that the crimes were against humanity determined the responsibility of the commanders in the case.

In the Tanjung Priok case, the court reached different conclusions for two accused individuals, Sutrisno Mascung et al. and Sriyanto. Sutrisno Mascung et al. were found guilty of committing widespread and systematic attacks against civilian demonstrators, and it was established that these assaults were part of a government policy. On the other hand, Sriyanto, the superior of Sutrisno Mascung and present at the case scene, was acquitted entirely due to a lack of an order to shoot given to Sutrisno Mascung. Despite this, Sriyanto had given orders to cease firing. The verdict for Sriyanto highlighted the illogical separation of charges for individual defendants in the trials. In a situation where the two defendants were tried together based on the issue of command responsibility, Sriyanto should have received the same guilty verdict

[46] In the Tanjung Priok case, the defendants charged by prosecutors under Article 42(1) were RA Butar-Butar and Pranowo, who were both former District Commanders of North Jakarta Military District and former heads of the Jayakarta Military Area Command Military Police Office. On the other hand, Sriyanto and Sutrisno Mascung were charged under Article 55, paragraph 1.1, and Article 53 of the Indonesian Criminal Code.

as the subordinate. These decisions emphasized that even for the same criminal events, the outcome of a trial could differ due to the separation of charges for individual defendants. However, the discrepancy was later straightened out by the Supreme Court when Sutrisno Mascung was acquitted, with the court finding that the actions of Mascung did not constitute crimes against humanity.

The decisions made by the Supreme Court regarding command responsibility have raised several significant legal concerns. Firstly, there is ambiguity in distinguishing the appropriate application of either Article 42 of Law No. 26/2000 or Article 55(1) of the Criminal Code, which pertains to command responsibility and complicity, respectively. These legal concepts are distinct from one another, but the confusion surrounding them has posed challenges in meeting the required burden of proof in court.

Additionally, there were inconsistencies in interpreting the concept of offenses of omission. The failure to act should be interpreted to include the omission of any action to prevent the commission of atrocities, thereby holding the commander responsible for inaction. This is crucial in defining the element of self-defense of the troops, the proportionality of actions, and acts consistent with operational procedures.

The third legal issue concerns the impact of the presence or absence of actual perpetrators on the trial of commanders. In the East Timor case, the failure to establish a strong connection between superiors and subordinates or other perpetrators resulted in the commanders being acquitted, despite the commission of crimes against humanity). However, in the Abepura case, the acquittal of the commanders made it even more difficult to achieve justice as there was no one left to be held accountable, despite the clear bloodshed.

The decision to grant compensation to victims played a significant role in the ruling of the Court at first instance. In the RA Butar-butter case, the Court authorized compensation for the victims without specifying the amount or the recipients. However, in the Sutrisno Mascung et al. case, the Court identified the individuals who would receive compensation and the exact amounts to be received. The Supreme Court concluded that all defendants were not guilty and did not address the issue of compensation. It also rejected the request for an

appeal by the prosecutors.[47]

C. TRUTH AND RECONCILIATION COMMISSION LAWS CONTRAVENE THE CONSTITUTION

In 1999, the Habibie government initiated the establishment of a human rights court through the enactment of Law No. 39/1999. Subsequently, Law No. 26/2000 on Human Rights Courts was passed by the government to formalize the establishment of these courts. Prior to this, President Habibie had used the presidential authority to introduce Government Regulation in Lieu of Law No. 1/1999 on Human Rights Courts, which was prompted by the political policy of the government in terms of resolving many past cases of gross human rights violations in 1998. The development of this law was guided by national and international interest considerations, aiming to address past violations and restore peace and security in Indonesia. 39/1999 paved the way for the enactment of Law No. 26/2000, which established both permanent and ad hoc human rights courts to try gross human rights violations.

After the laws establishing human rights courts were passed, ad hoc courts were convened to try two cases that had occurred prior to their enactment, namely the 1999 East Timor and the 1984 Tanjung Priok cases. In the trial of the East Timor case, a total of 18 defendants - consisting of ten military personnel, four policemen, and four civilians - were tried, but all were ultimately released following the completion of all levels of the judicial process. The second case, involving alleged gross human rights violations at Tanjung Priok in 1984, was tried in an ad hoc human rights court in 2004. The court tried 14 military defendants, but ultimately all of them were acquitted by the appellate and cassation courts, despite 12 of the defendants having been found guilty in the first instance. Notably, no decision was made regarding victim compensation.

In addition to creating a legal framework for accountability through courts, Law No. 26/2000 on Human Rights Courts also allowed for

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47 The chairman of the panel of judges, Artidjo Alkotsar, argued differently from the four other judges, finding that the defendants had been proven guilty of gross human rights violations. The other four judges were Dirwoto, Sumaryo Suryokusumo, Ronald Zelfianus Titahelu, and Sakir Ardiwinata.

extrajudicial resolution of past human rights violations by forming a truth and reconciliation commission, in line with MPR Decree No. V/2000 on National Unity and Integrity. The government and parliament started to discuss a draft law on the commission in 2003, with a Special Committee made up of 50 members from different political factions. After more than 18 months of discussion, a law was finally passed on 7 September 2004. Before the commission could be established, the Constitutional Court declared Law No. 27/2004 on the Truth and Reconciliation Commission unconstitutional on 7 December, 2006 (case No. 006/PUU-IV/2006).

The ruling of the Constitutional Court found that a particular article in the Truth and Reconciliation Commission law was unconstitutional. Since that article was crucial to the objectives of the law, the entire law was deemed unconstitutional and could not achieve its intended goal. However, to ensure the resolution of past and ongoing human rights violations and to continue the process of truth-seeking and reconciliation in the transition of Indonesia to democracy, the Court clarified that the abrogation of the law[48] did not apply to past human rights violations settled through the reconciliation process. Various options were proposed for achieving reconciliation, such as enacting legal policies or legislation consistent with the 1945 Constitution and international human rights instruments or pursuing reconciliation through political policies such as rehabilitation and general amnesties.

III. *ISLAH:* BETWEEN RESTORATIVE JUSTICE EFFORTS AND THE AD HOC HUMAN RIGHTS COURT

A. FORGIVENESS IN THE CONTEXT OF *ISLAH*

The concept of forgiveness, in the context of reconciliation, refers to the internal process of restraining oneself from taking revenge, accompanied by a change in perspective towards the past. This change

48 The striking down of Article 27 in Law No. 27/2004, the Court said it would be impossible to reveal the truth about the past. See Tomoe Otsuki, *Memory of justice: dealing with the past violation of human rights: the politics of Indonesia's Truth and Reconciliation Commission,* (Thesis: University of British Columbia (2008).

leads to the restoration of relationships between oneself, the perpetrator, and others in the pursuit of a better future.[49] Political forgiveness is often used to describe this process. It is an integral part of the reconciliation process, along with truth, justice, and peace.[50] According to Lederach[51] reconciliation is based on a conceptual framework inspired by Psalm (85:10), which comprised virtues *truth and mercy, peace and justice*. Truth is critical, as conflict cannot be resolved, assuming it remains concealed.

The truth and reconciliation commissions in countries such as South Africa,[52] El Salvador[53] and Northern Ireland,[54] proved that the process of collective political forgiveness could not be achieved without the revelation of the truth and an acknowledgment by the perpetrators[55]. The absence of these elements hinders the process of reconciliation. For the process of healing to occur, victims must also be willing to forgive and show love.[56] Forgiveness must also be accompanied by justice to ensure that the wounds caused by conflict are healed and not further deepened.[57] Ultimately, reconciliation should lead to a resolution for everyone involved, and not just a few individuals or groups.[58]

Political forgiveness is not equivalent to the common phrase forgive and forget as it can trigger the negative memories of victims and fail to

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[49] Mark S. Rye *et al.*, "Religious perspectives on forgiveness." *Forgiveness: Theory, research, and practice* (2000): 17-40.

[50] Daniel Levy, and Natan Sznaider. , "Forgive and Not Forget: Reconciliation Between Forgiveness and Resentment", supranote 431.

[51] John Paul Lederach, "Building Peace: Sustainable Reconciliation In Divided Societies", suprnaote 432.

52 Brandon Hamber, *Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland,* supranote 433.

[53] Julie M. Mazzei, *Finding Shame in Truth: The Importance of Public Engagement in Truth Commissions,* supranote 434.

[54] Colm Campbell, and Fionnuala Ni Aolain, *Local Meets Global: Transitional Justice In Northern Ireland,* supranote 435.

[55] Glen Pettigrove, *Hannah Arendt and Collective Forgiving,* supranote 436.

[56] Peterson Armour, Marilyn, and Mark S. Umbreit, *Victim Forgiveness In Restorative Justice Dialogue,* supranote 437.

[57] Heather Strang, *Justice For Victims of Young Offenders: The Centrality of Emotional Harm and Restoration,* supranote 438.

[58] Ari Kohen, Michael Zanchelli, and Levi Drake, *Personal and Political Reconciliation in Post-Genocide Rwanda,* supranote.

erase the trauma they experienced, leading to a desire for retaliation. On the other hand, political forgiveness promotes the idea of remembering and forgiving, which is more effective because remembering the past can be used positively as a shared reminder to prevent future conflicts, despite the pain it may cause.

Hannah Arendt, a prominent philosopher, places great emphasis on the idea of forgiveness in political philosophy.[59] According to Arendt, forgiveness is an act designed to benefit both the individual and the community by allowing them to move forward from past events that cannot be changed, leading to a better future. Arendt argues that forgiveness serves as a remedy for humanity to overcome trauma and free itself from the effects of past events. In the public sphere, forgiveness plays a vital role in rebuilding public spaces destroyed by a thoughtless mass society lacking identity and in reversing the hierarchy of action (action-labor), which results in the victory of *animal laboran over zoon politicon*. Arendt also recognizes that mistakes are an inherent aspect of being human and occur regularly in relationships, making forgiveness essential for life to continue moving forward properly.

In addition to forgiveness, the political philosophy of Hannah Arendt also includes the concepts of promise and rebirth, perceived as a type of medicine. While forgiveness is about rehabilitating past actions, a promise represents a commitment or guarantee for a better future. Arendt acknowledges the limitations of human action to predict the future but believes that promise can provide a sense of certainty in the midst of uncertainty. Rebirth, on the other hand, represents the potential for human action that a child possesses and is bound to be realized in adulthood. It offers hope for healing the wounds of the past. Arendt agreed with Martin Luther King Jr. that love was the force behind forgiveness and found in the private sphere. The concept of respect was proposed to enable forgiveness to occur in the public sphere. Respect is a form of friendship without intimacy and closeness. Forgiveness is an action that represents a sense of responsibility towards humanity.

According to Molly Andrews[60] forgiveness is possible for all perpetrators of past mistakes, provided there is regret and repentance.

[59] Glen Pettigrove, supranote 436.

[60] Molly Andrews, *Forgiveness in Context,* supranote 441.

Any criminal case involves action, person (agent), and situation. The action cannot be forgiven, even though person who carries it out can be forgiven, when there is an understanding of the situation.[61] It is not rational, metaphysical, or psychological to reduce a criminal case to the agent alone,[62] as this ignores the capacity for human transformation and the ability to repent and make better choices.

In summary, it can be inferred from the previous discourse that forgiveness is an internal process of self-control or practicing forbearance[63] to avoid seeking revenge, accompanied by a transformed perspective towards the past, resulting in the restoration of oneself and relationships with others and ultimately leading towards a better future. This conclusion is congruent with the viewpoint of Donald Shriver and Mary Lean:[64]

> *Forgiveness is an act that encompasses moral-historical-truthful aspects, refraining from revenge, an ability to empathize with wrongdoers, and commitment to restoring the fractured human relationships.*

Shiver and Lean propose that forgiveness encompasses four aspects. The first is historical truth, indicating that forgiveness lacks meaning, assuming the truth is not acknowledged. The past must be remembered, discussed, and not suppressed or distorted. The second dimension is empathy for the wrongdoers, as they are still humans capable of wrongdoing and committing sin. The third dimension involves freeing the heart from seeking revenge against those who have caused pain. Finally, the fourth dimension consists of a commitment to repairing damaged human relationships.

Baumeister stated that forgiveness should be considered in a religious context as it is not only a mechanism but also serves as a

61 David Mendeloff, *Trauma, And Vengeance: Assessing The Psychological And Emotional Effects Of Post-Conflict Justice,* supra note 442.

62 Masi Noor *et al., On Positive Psychological Outcomes: What Helps Groups With A History Of Conflict To Forgive And Reconcile With Each Other?,* supra note 443.

63 Audrey R. Chapman, *Truth commissions and intergroup forgiveness: The case of the South African Truth and Reconciliation Commission,* supranote 444.

64 Donald W. Shriver Jr., *ls There Forgiveness in Politics? Germany, Vietnam, and America,* supranote 445.

reminder.[65] It is believed that the religious values of people influence forgiveness perceived as an attribute of the human mind. On the other hand, Meek and McMinn stated that many clinical psychologists had separated forgiveness from its religious roots, catering to non-religious clients and therapists[66]. Phillips maintained that forgiveness is an unconditional value for many Christians, an act of love and compassion offered regardless of context or situation.[67]

Azyumardi Azra[68] stated that forgiveness had four distinct dimensions. Firstly, it starts with a moral assessment, known as *muhasabah* in an Islamic context, which involves reflecting on and evaluating the moral implications of a hurtful event. Secondly, a decision must be made regarding restitution, compensation for victims, or punishment for perpetrators. Forgiveness does not necessarily remove the need for punishment, but it must prevent revenge. The third dimension involves cultivating empathy for the perpetrators, who are ordinary people irrespective of their actions. Lastly, true forgiveness is essential for renewing relationships and requires the willingness to coexist peacefully, accepting the weaknesses and mistakes of one another.

B. *ISLAH* AS A BREAKTHROUGH BETWEEN THE ACTORS IN THE TANJUNG PRIOK CASE

The preceding chapter discussed that the *Islah* agreement is an example of victim-centered justice, as it emerged from an agreement between the victims and military officers responsible for the case. The settlement was reached with the goal of forgiveness, reconciliation, and a better future. The previous chapter also explored the contents of the *Islah* Charter, which proved both parties acknowledged the tragedy as an unwanted event and accepted it as the will of God. Additionally, they expressed deep regret about the case, and this was crucial in establishing

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65 Roy F. Baumeister, Julie Juola Exline, and Kristin L. Sommer, *The Victim Role, Grudge Theory, and Two Dimensions of Forgiveness,* supra note 446.

66 K.R. Meek and McMinn, MR., *Forgiveness; More Than A Therapeutic Technique,* supranote 447.

67 A. Phillips, *Forgiveness Reconsidered. Christian Jewish Relations,* supra note 448.

68 Chris Manning, and Peter Van Diemen, (eds.), *Indonesia in Transition: Social Dimensions of the Reformasi and the Economic Crisis,* supra note 449.

a mutual understanding that either party did not desire the tragedy.

The *Islah* Charter was a significant development in the aftermath of the Tanjung Priok case as it facilitated an agreement between the parties through mutual consent. The signatories sought to prioritize the brotherhood of all Muslims and to promote harmony between them. The Charter can also be seen as a form of mediation aimed at resolving the confrontation between victims and offenders as well as avoiding a lengthy court trial.

In a television interview held on March 2001, Dewi Wardah stated that the *Islah* agreement was a way for the government to alleviate the burden of resolving past human rights violations through legal channels.[69] Under the agreement, victims agreed not to pursue legal action against the defendants and instead opt for a settlement before trial. Wardah also stated that the agreement mainly benefited the impoverished residents who could now live without fear of harassment, surveillance, intimidation, or political exploitation. Signing the Charter was seen as the best option for disabled victims, children, and their heirs. The consent of all signatories to the *Islah* agreement was based on sincerity, mature consideration, clarity of thought, and a sense of responsibility for the national interest and future generations. In addition, the agreement reflects their forward-looking approach to resolving the conflict. The signatories also requested that the government clear their names and those of the former prisoners arrested concerning the case. They also asked for some form of fair and just compensation to all victims as a sign of humanity and civilization. The parties expressed hope in the closing section of the *Islah* Charter that the success of the agreement could serve as a model for resolving other unresolved conflicts.[70]

Nurcholish Madjid, a well-known Islamic scholar, opined that the Islah agreement was ideal from an Islamic perspective and obviated the

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[69] Dewi Wardah is the widow of Amir Biki, who was killed at Tanjung Priok. Dewi was also the chairman of the victims' association, which organized and united some victims in accepting the Islah agreement as an Islamic settlement. http://news.liputan6.com/read/9163/dewi-wardah-islah-adalah-pilihan-terbaik. [Accessed 29 October 2014].

70 "Kompas Daily", *Islah Kasus priok Bisa Jadi Model Penyelesaian*, Friday 9 March 2001, p. 1. Retrieved from http://docs.perpustakaan-elsam.or.id/kkr/files/fileMM.2001.pdf. [Accessed 22 November 2014].

need for further legal action. It was believed that the Charter would foster harmony between the parties involved. Nurcholish Madjid also stated that the settlement realized through the *Islah* had great value in terms of religion, philosophy, and even ideology and would be recognized and appreciated by all of humanity and civilization.[71]

C. ISLAMIC CRIMINAL LAW VIEW OF THE *ISLAH*

The *Islah* mechanism proposed by one of the victims of former General Try Sutrisno, the commander of the Jayakarta Military Area Command, failed to resolve the problem from a legal perspective,[72] as a judicial mechanism for resolving the dispute was still a possibility based on human rights law. Nurcholish Madjid believed that *Islah* would be a humane and moderate option, as well as a middle ground between parties in dispute.[73]

The actions taken by Try Sutrisno could be interpreted not only as an *Islah* or an act of reconciliation but also as a step towards an *a*wful or forgiveness.[74] This is because, during the meeting between Try Sutrisno and colleagues, the victims and their successors issued a statement of pardon. In Islam, *a*wful is explained in Surah al-Baqarah verse 178 of

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[71] *Ibid*.

[72] Syarifuddin Rambe mentioned this in the interview held on 10 May 2012 at his house in Tanjung Priok. He mentioned that at the meeting with Try Sutrisno, he explained the initiative to conclude an Islamic settlement agreement called an *Islah* and proposed that the prominent Islamic teacher and scholar Nurcholish Madjid serve as a mediator between the victims and the military officers who had been involved in the incident. The *Islah* mechanism was a way to reconcile all the actors in the 1984 Tanjung Priok incident and would prevent the victims from continuing to be turned into a political commodity for the benefit of certain individuals and groups who kept raising the issue. We wanted to live in peace and give our forgiveness for all that had happened in the incident, said Rambe during the interview. This was taken from the writer's research on Tanjung Priok, as mentioned in the Tanjung Priok Research Report with the Indonesian Judicial Monitoring Society (MaPPI).

[73] *Pesan Moral dari Islah Try Sutrisno dan Korban Kasus Tanjung Priok,* [The moral message of the Islah between Try Sutrisno and the victims of the Tanjung Priok case], "*Kompas"*, 9 March 2001.

[74] Etymologically *afwun* means they vanish or erase; pardon. In Islamic jurisprudence (*fiqh),* the term is discussed in relation to the issue of punishment for murder (*Jarimah fi' qishash*). See Abdul Aziz Dahlan (1996). *Ensiklopedi hukum Islam [Encyclopaedia of Islamic Law]*, (Jakarta: Ichtiar Baru van Hoeve*,* 1996), p. 30.

the Qur'an (Qs. 2:178) in the following terms.

> *Hey faithful people! You are obliged to qishash*[75] *in cases of murder. This means that the punishment should be proportional to the crime, with free individuals receiving retribution from other free individuals, servants from other servants, and women from other women. However, assuming the relatives of the murdered person chooses to pardon the accused, the accused must still pay diyat, or blood money, to the relatives of the victim. Adhering to this lighter sentence is a blessing from Allah. Whoever violates it afterward will be severely punished.*

Islamic legal experts, known as *fuqaha*, reported that pardoning a murderer in accordance with *qishash* must be accompanied by payment of *diyat* to the victim or their family. Similarly, in the case of *Afwun*, certain principles and conditions must be upheld. These experts stated that *a*wful involves a statement by the family of the victim pardoning the perpetrator of the murder. While this statement does not necessarily need to follow a specific form, it may be declared as I forgive him, I cancel the *qishash* on him, or I liberate him.[76]

Fuqaha, or Islamic jurists, have established specific requirements for the act of pardoning, known as *awful.* These requirements include that the person granting the pardon must be an authorized adult of sound mind. However, there are differing opinions among major groups of Islamic scholars, or *jumhur ulama fiqh*, regarding who has the right to grant pardon. While the Maliki school of Islamic law, or *mazhab*, asserts that only male beneficiaries who are patrilineal blood relatives (or *ashabah*) [77] have the right to grant pardon, other scholars believe that both male and female beneficiaries of the person who was murdered have this right.[78] Any actions taken by Try Sutrisno towards the victims and their beneficiaries must comply with these well-established principles and requirements of *Afwun* in Islam.

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[75] *Qishash* means the punishment of murderers with the death penalty (Bachtiar Surin, *Terjemah dan Tafsir Al-Qur'an [*Translation and Interpretation of the Qur'an], (Bandung: Fa. Sumatra, 1978), p. 55.

[76] Dahlan, supranote 424, p. 30.

77 See Sajuti Thalib, *Hukum Kewarisan Islam di Indonesia,* supranote (darimana???).

78 Dahlan, supranote 424, p. 30.

The existence of mechanisms available for settlement under the current legislation covering gross human rights violations means that the actions of the parties involved in the 1984 Tanjung Priok case do not absolve them of the crime committed. While these actions may be taken into account as mitigating factors during sentencing, they should not have prevented the legal process from pursuing justice for the victims. The settlement mechanisms for past gross human rights violations are well-defined by law, including the availability of extra-judicial mechanisms. Therefore, the measures taken by the parties can be regarded as political rather than legal, resulting in a settlement based on Islamic law instead of positive law. The *Islah* agreement reached in this case cannot be equated with a truth and reconciliation commission as provided for by Article 47 of Law No.26/2000 because every human rights violation requires different mechanisms for resolution based on its unique characteristics. The implementation of a truth and reconciliation commission in the country requires further in-depth studies in order to identify appropriate mechanisms for each case of human rights violation.

Although an *Islah* agreement was made to settle the 1984 gross human rights violations at Tanjung Priok, it did not eliminate the criminal acts committed because the existing legislation provides mechanisms to address such acts. The Court considered the *Islah* agreement as a mitigating factor during the trial and imposed minimum sentences on the defendants. As a result of the implementation of the *Islah* process, many witnesses changed their testimony, forgave the defendants, or asked the judges to release them. The positive effects of the process included the provision of houses, employment, and scholarships for the victims and their families, covering education up to tertiary level.

D. THE *ISLAH* AND ITS IMPLICATIONS FOR THE AD HOC HUMAN RIGHTS COURT

States hold the responsibility of prosecuting and preventing crimes through their judicial systems. This responsibility serves as a form of protection for citizens and acts as a deterrent to potential offenders. The duty of the state is not limited to representing the interests of victims but also to represent the interests of the public as a whole. Even when victims

choose to forgive individual suspects, the collective responsibility of the state persists. Therefore, settlements should be implemented to ensure a valid and responsible mechanism for forgiveness.

Law No. 26/2000 of Indonesia on Human Rights Courts defines crimes that qualify as gross human rights violations and offers mechanisms for investigating and punishing the offenders, such as human rights courts and truth and reconciliation commissions. However, the *Islah* agreement signed by the parties in the 1984 Tanjung Priok case is not included among the mechanisms outlined in the law for the settlement of gross human rights violations. Despite this, during the trial, several victims and family members referred to the *Islah* agreement, even though it was initially proposed by the victims and offered to the military officers involved in the case.

The court hearings were marked by a sharp divide between two factions of victims. One group supported the *Islah* agreement and advocated for its recognition by the Ad Hoc Human Rights Court as an out-of-court settlement. They also demanded the release of the defendants on trial. However, another group of victims and their families refused to accept the *Islah* and did not want to use it to pre-empt judgment or release the defendants. This disagreement between the two sides caused chaos in the courtroom.

It is indisputable that the witnesses and family members of the victims held varying opinions on how to resolve the dispute, and these opinions were influenced by their particular circumstances and the wishes of the victim. This difference in perspectives had a significant impact on the investigation of the court, as those who accepted the *Islah* changed the testimony they had previously provided during the investigation stage. The retraction of evidence submitted in the investigation briefs was due to a shift in the emotional and psychological circumstances of the witnesses before and after accepting the *Islah*.

A comparison of the evidence used during the February 2001 investigation stage to the witness testimony given during the November 2003 court hearings reveals a shift in the way testimony was presented. This shift is directly linked to the signing of the *Islah* Charter in March 2001, which played a significant role in changing the testimony of several victims, witnesses, and their family members. The changes

in testimony were particularly crucial for proving the criminal acts committed by the defendants. For instance, Ahmad Sahi, a witness, altered his previous testimony about torture during the investigation stage. In court, he claimed that even though torture had occurred, it was only done infrequently.

During the trial, Muchtar Matuna Dewang, a witness, admitted to feeling remorse for exaggerating his testimony during the investigation stage, which had fueled resentment and animosity towards the security forces.[79] Dewang also stated that he had come to terms with the loss of his foot and had sincerely reconciled himself to the situation. He appealed for the accused to be released due to the Islah settlement agreement that had been reached. In contrast, during the trial, witness Syarifuddin Rambe was hesitant to show the scars resulting from torture by military personnel, claiming that he had none when asked about them.[80]

During the trial, witnesses frequently mentioned the *Islah* Charter, which eventually caught the attention of the judges. They even asked witnesses further questions about it, and as a result, the court was distracted from exploring the facts about the crimes committed by the accused. The judges also considered the existence of the *Islah* agreement in their verdict for the Ad Hoc Human Rights Court for the Tanjung Priok case.

It can be concluded that the *Islah* Charter played a significant role during the trial. The evidence presented suggests that the defendants who signed the *Islah* Charter were successful in using it to disrupt the judicial process. This interference not only distracted attention from the verification process of the criminal acts but also caused division among the witnesses, leading them to put pressure on each other during the trial. As a result, disputes regarding the *Islah* agreement often led to bickering and chaos in court.

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79 Attorney General Office, *Criminal Sentencing Statement for Defendants Sutrisno Mascung, et.al.*, Jakarta, 9 July 2004.
[80] *Ibid*.

III. CONCLUSION

The process of democratization in Indonesia is shaped by a universal view of democracy and the transitional procedures that follow. This view is heavily influenced by liberal democratic ideas and the notion of inherent human rights as a foundational principle. The primacy of universal behavior is seen as essential for the establishment of democratic political power and the recognition of individual rights, which can increase the capacity of the public to be critical of the government. State politics that impede social capacity building are considered the root cause of violence under past administrations. Therefore, the recognition of individual rights is seen as a means to enhance the capacity of the public to hold the government accountable.

The model of the political process in post-authoritarian societies ultimately leads to the establishment of a new political system, which assumes the availability of full democracy once democratic political security is achieved.[81] Transitional phases are characterized by fragments and periodic intervals between authoritarian political change or dictatorship and the transition towards democracy.[82] Therefore, it is assumed that during this transition phase, the authoritarian regime will shift towards partial democracy, and this eventually paves the way towards a full democracy.

Democracy is not a sudden outcome of the collapse of an authoritarian regime, but rather a continuous process that grows and evolves over time. The transition to democracy is often accompanied by political struggles among various groups, and the progress of the democracy movement has a direct impact on the development of respect for human rights. Initially, progress may be slow due to the lingering influence of old power structures, national security concerns, and a government

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[81] Samuel P. Huntington, *Gelombang Demokratisasi Ketiga* (Jakarta: Grafiti Press, 1991).

[82] If we follow the Huntington perspective in the context of the democratic transition in the world can be mapped in three stages according to the three waves of democratic transitions that have occurred that gave birth to the first wave of democratization that occurred in the period 1828-1826 that is historically rooted in the French Revolution and the American Revolution; then transition to a second wave of democratization in the period 1943-1962, and the last is the third wave of democracy that began in 1974 which began during the fall of the dictatorship in Portugal. Huntington, supranote 97.

dominated by the thinking of the previous regime. In such cases, efforts to restore the rights of victims of human rights abuses may be met with skepticism and resistance, viewed as a threat to national security and potentially damaging to the state.

The aforementioned attitudes resulted in perpetrators of past human rights violations enjoying impunity due to the influence of the military and the emergence of an increasingly conservative political force. To address this, a new political struggle with equal power is necessary. [83] This serves as an illustration of the different theoretical implications between transitional views that consider democracy as an illusory end-phase and political perspectives viewing democracy as a concept. Hayner implicitly acknowledges the antagonistic forces present in the transition when describing how truth commissions are responded to by existing political regimes in different countries. This illustrates that the political process of authoritarian regimes cannot be described in a uniform or standard model, as every state faces unique challenges and political contradictions.[84]

This study proposes a novel approach to transitional justice known as Victim-Centered Transitional Justice. As the name suggests, this approach prioritizes the experiences of the victims of human rights violations, including their narratives, reconciliation with offenders, and response to Truth and Reconciliation Commissions. By centering the focus on victims, this approach aims to develop new methods of reconciliation to address the past human rights abuses of the past government.

The current literature on transitional justice primarily focuses on the available mechanisms and processes for addressing human rights violations by transitional governments and outlines the steps required

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[83] Political battle in this sentence is different way to express the battle in democracy that so called as general election because General election is the way to compete amongst political party or politician to be seat in house of representative (DPR) and as a ruling party in the government. In that battle so then the forces that equal is political party that contested in the general election. In New order (soeharto government), military faction in the DPR have certain number of seating member without compete in the general election, all the seating members was appointed by President as a head of state.

[84] Hayner, supranote 48.

to establish a democratic government that can address past abuses. However, existing study highlights the need for a new transitional justice framework in the country. The Victim-Centered Transitional Justice model is not merely a tool for the temporary government but rather aims to fulfill expectations of the victims and achieve sustainable societal and political reforms. It recognizes the cultural, religious, social, political, and economic context embedded in legal frameworks and the different interpretations of justice.

The transition from the New Order to the Reform period presented Indonesia with a significant opportunity to clarify its Constitution, which had been unaltered for over 50 years. The New Order regime had utilized the Constitution to legitimize its governance by creating its own interpretation and presenting the Constitution as a product of the 1945 war and revolution era. The authors of the Constitution had stated that it was provisional and subject to change once the nation established a stable government. After disbanding the Constituent Assembly (Konstituante) in 1959[85], President Soekarno proclaimed that the 1945 Constitution was the sole constitution suitable for Guided Democracy. However, the New Order accused the Guided Democracy government of Soekarno, of deviating from the intended operation of the 1945 Constitution by electing the President for life, yet they failed to amend the Constitution and instead deliberately mystified it. The decision of the New Order decision was hypocritical since they publicly disavowed the government based on Guided Democracy as undemocratic while

85 The Constituent Assembly (*Konstituante*) was formed after the very first democratic general elections in Indonesia in 1955. It had the role of formulating a new Constitution and of designing the form of democratic government for Indonesia. The Assembly subsequently failed, however, to gain agreement for the draft constitution due to friction in the internal committees and disagreements with the President following his decision to form the National Council and declare Guided Democracy in 1957. The military then asked President Soekarno to re-impose the 1945 Constitution. After the Assembly was in recess, the President issued Order of the Supreme Military Commander No. 40/1959 forbidding all party-political activities. One month later President Soekarno issued the Presidential Decree dissolving Constituent Assembly, re-impose the 1945 Constitution, convening a Provisional People's Consultative Assembly (MPRS) and establishing the Provisional Supreme Advisory Council (DPAS). See Adnan Buyung Nasution, "*Aspirasi Pemerintahan Konstitusional di Indonesia: Studi Sosio legal atas Konstituante 1956-1959*", supranote. Also see Muhammad Yamin, "*Proklamasi dan Konstitusi Republik Indonesia",* (Djambatan, 1953).

mystifying the 1945 Constitution, which Soekarno had stated was the only constitution capable of supporting Guided Democracy.

The first priority of the post-Reform government was to amend the 1945 Constitution, specifically by adding a chapter on human rights. According to Nasution[86], this amendment provided normative guarantees for human rights protection and successfully adapted certain fundamental rights from international conventions. However, the process of amendment was disorganized from a constitutional democracy standpoint, and Nasution believed that the chapter structure still had conceptual weaknesses. [87] Nasution also considered it to be a more democratic constitution than before the amendment.[88] Nasution suggested that a fifth amendment was necessary to restructure and reconceptualize the human rights chapter of the constitution. He also recommended better preparation for amendments through the establishment of a constitutional commission and the application of democratic constitution-making principles and processes.[89]

Despite the disorderly process of amending the Constitution, the Amended Constitution included normative guarantees that protect human rights, specifically the rights to freedom of assembly and association by allowing the establishment of organizations or associations. These guarantees should be further implemented in the organic law, without imposing the same specific ideological foundation or ideology as the government on organizations, as long as they do not engage in illegal activities. A truly democratic constitution should not restrict the establishment of associations or limit the ideological foundation of organizations. In the future, laws regarding mass

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[86] Adnan Buyung Nasution, "Constitutional Values and an Islamic State", *Islam Beyond Conflict: Indonesian Islam and Western Political Theory* (2008): 17.

[87] Ibid

[88] Adnan Buyung Nasution, "Towards Constitutional Democracy In Indonesia", (Asian Law Centre, Melbourne Law School, The University of Melbourne, 2011). Also see Tim Lindsey, *Indonesian Constitutional Reform: Muddling Towards Democracy,* "*Sing. J. Int'l & Comp. L.",* 6 (2002): 244.

[89] Adapted from Indrayana. Democratic constitution-making process includes organized amendment schedules, clear objectives or plans, national interest being above the political interests of political factions and more public participation in the process. See Denny Indrayana, "*Indonesian Constitutional Reform, 1999-2002: An Evaluation of Constitution-Making in Transition",* (Jakarta: Penerbit Buku Kompas, 2008).

organizations should not impose restrictions on the ideology of an organization, as was the case in 1985. The fundamental principles to be observed are that community organizations and associations should not engage in illegal activities, human rights must be respected, and people should not face discrimination based on their eligibility to join. The restrictions imposed on religious organizations in the past sparked community protests and disagreements, culminating in the tragic events at Tanjung Priok in 1984. The victims of the case are still haunted by the memories and continue to demand justice and truth. In response, post-Reform governments established an ad hoc human rights court and a truth and reconciliation commission, but their efforts have been insufficient in providing justice for the victims. However, the collective policy of the People's Consultative Assembly (MPR), which recognizes historic gross violations of human rights and aims to settle the Tanjung Priok case through a judicial process and a truth and reconciliation commission, is commendable. The legislative process to implement this policy was messy, which hindered efforts to settle the case. The messiness is evident in the adaptation of the Rome Statute of the International Criminal Court, the need to clarify uncertain provisions on the establishment of an ad hoc human rights court, and the need to correct the flawed conceptualization of the truth and reconciliation commission.

The Elucidation of Law No. 26/2000 on Human Rights Courts states that Articles 7 and 8 should be interpreted in the same way as in the Rome Statute of the International Criminal Court. However, the procedural law still follows the outdated Law No. 8/1981 on Criminal Procedure, leading to many challenges in proving crimes and admitting evidence. Andi Samsan Nganro, former chairman of the panel of judges, faced difficulties in leading the panel and admitting evidence. The procedural law used in the Ad Hoc Human Rights Court should have referred to the provisions of the International Criminal Court on procedural law and empowered the panel of judges to create methods and types of evidence needed to deliver justice. Nganro believes that in the Tanjung Priok case, while victims and witnesses asked for forgiveness and release of the defendants, the law did not recognize such settlements. The prosecution team also faced a dilemma, as Chief Prosecutor Widodo Supriyadi demanded compensation only when the

defendants were convicted and sentenced.

To address the aforementioned challenges, it is imperative to revise the legislation on human rights courts. A comprehensive draft law, developed by legal experts, is urgently needed to clarify the elements of crimes that need to be proven and the role of the panel of judges in the legal proceedings. This would ensure that the criminal procedure is not overly rigid and can be adapted by the panel of judges to deliver justice for the victims. Additionally, the procedures for compensation should be clearly specified, including the possibility of awarding compensation without a conviction. These measures would promote the principles of victim-based justice in the human rights court.

Although the human rights court law provides the possibility of prosecuting past gross human rights violations, the current provisions regarding the mechanisms for establishing an ad hoc human rights court create the possibility of political intervention in the law. The lack of a clearly defined mechanism for arranging an ad hoc human rights court provides a blank check for politicians to interfere in its establishment. To address this issue, an amending draft law should specify the mechanism for establishing human rights courts. The preliminary commission of investigation (KP3T) is the first mechanism for initiating the establishment of an ad hoc human rights court. It was established at the request of the National Human Rights Commission to gather information from witnesses, identify victims, and define the crimes committed based on the elements of criminal offenses specified by law. The National Human Rights Commission also recommended that prospective suspects be identified for further investigation by prosecutors. The composition of the preliminary joint commission of investigation must include public or prominent figures from the community around the victims.

Once the preliminary investigation recommends that an case is classified as a gross violation of human rights, the Office of the Attorney General initiates an investigation based on the preliminary. When the Attorney General confirms the violation and identifies suspects, a report is sent to the President for further action. The DPR then evaluates the report and the interests of the victims, considering the budget required for an ad hoc human court rights. When the DPR

recommends establishing a court, it advises the President accordingly. However, when the political situation does not support establishing an ad hoc human rights court, the DPR holds hearings with the victims to determine their expectations for case settlement. When the victims choose to settle the matter through means other than an ad hoc human rights court, the DPR must still recommend that the President establish a truth and reconciliation commission to provide compensation, acknowledge and rehabilitate the victims, promote better relationships and commemorate the case.

In order to properly acknowledge cases of human rights violations in the future, the process should begin with a preliminary investigation conducted jointly by the National Human Rights Commission and the Office of the Attorney General. The focus should be on providing justice to the victims through compensation and rehabilitation, and ensuring that their rights are acknowledged. The victims of the Tanjung Priok case still hope for a settlement through the court system, therefore, it is essential that the President establish a truth and reconciliation commission, as previously discussed.

The concept of Victim-Centred Transitional Justice goes beyond a transitional justice framework and involves addressing the needs and expectations of both sides in past abuses through reconciliation processes. This approach is particularly valuable for victim-based justice studies in the country, as it raises important questions about how to adapt and integrate cultural beliefs and values into studies on justice.

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