

THE IMPLEMENTATION OF TRANSITIONAL JUSTICE IN CONTEMPORARY INDONESIA: A LESSON FROM MALUKU EXPERIENCE

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ABSTRAK

Isu kekerasan saat ini terus menarik perhatian publik seiring dengan gelombang bebas berekspresi, terlebih sejak masa reformasi tahun 1998. Angka kekerasan meningkat drastis, terkhusus kekerasan atas nama agama. Salah satu contoh kasus yang menjadi sorotan publik global adalah kasus kekerasan berbasis etnik dan agama di Maluku dengan jumlah korban meninggal mencapai 5000 jiwa dan lebih dari 7 juta penduduk direlokasi. Dengan menggunakan teori transitional justice dan resolusi konflik sebagai kerangka analisis, artikel ini akan meneliti sejauh mana kekuatan dan kelemahan strategi yang diterapkan dalam proses keadilan transisional pasca insiden Maluku. Hasil analisis menunjukkan bahwa meskipun bentrokan antar kelompok dapat tertangani melalui penegakan hukum dan berbagai proses mediasi, banyak kendala di lapangan dalam penegakan keadilan transisional yang salah satu faktornya adalah karena kurang adanya komitmen stakeholders dalam menimplementasikan proses tersebut secara komprehensif. Sebagai konsekuensi, kejadian serupa dapat berpotensi terulang kembali. Untuk mengatasinya, beberapa tawaran rekomendasi diajukan sebagai langkah preventif.

Kata kunci: Keadilan Transisional, Kekerasan, Resolusi Konflik

ABSTRACT

Violence has been widely spreading across Indonesia following the wave of free speech and democratization after the collapse of Suharto regime in 1998. Previously known as a tolerant multicultural country consisting of various cultures, languages, tribes, ethnics and followers of different religions, Indonesia has currently become a country where mass violence attracts national and international attentions. One of the most destructive violence in modern Indonesia is the ethno-religious conflict in Maluku. Based on transitional justice and conflict resolution perspectives, this essay examines the strengths and limitations of the implemented strategies in dealing with this particular incident. The analysis concludes that even though physical contacts and violence among parties could be diminished by some initial judicial proceedings and mediations, future tensions appear to potentially occur as a result of a number of limitations in the implementation of post-conflict transitional justice. To cope with this issue, recommendations are provided as prevention approach.

Key words: Transitional Justice, Violence, Conflict Resolution

INTRODUCTION

Violence has been raising in Indonesia following the fall of Suharto regime in 1998. Previously known as a harmonious and multi-tribes country¹ consisting of a number of cultures, languages, tribes, ethnics and religions, Indonesia now become a “violence country” attracting national and international attentions. One of the most visible violence, which is also believed as one of the biggest communal wars in modern Indonesia² (Ernas, 2012; Lange, 2000; Wessel, 2001), is the ethno-religious conflict in Maluku within the issue of different ethnics and religions.

Given that this conflict has been causing many destructive impacts on the harmony of those involved parties, comprehensive evaluation of the conflict resolution approaches taken by the stakeholders is essential for community development. This essay, therefore, will try to analyze strengths and limitations of transitional justice approach that has been applied to deal with that particular conflict. For the purpose of this essay, the theory of transitional justice will be firstly discussed together with some other relevant conflict resolution theories. It will then come to the assessment

of the current implementations of conflict resolution approach for that ethno-religious conflict. This essay will then be concluded by some recommendations for future improvement.

Transitional Justice Framework

Transitional justice is defined by International Center for Transitional Justice as “the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses”³. Similarly, Fischer also identifies transitional justice as a broader concept of judicial process to address human right violence⁴. Human right itself, in this modern time, is meant to be an umbrella term of basic needs of human being which includes individual liberty, political and socio-economic rights⁵. From these definitions, therefore, it can be concluded that the term transitional justice is used to reform strategies for the purpose of victims’ recognition through a conflict resolution approach in recovering the impacts of massive human right abuses for the larger society.

¹ Wessel, I., & Wimhöfer, G., *Violence in Indonesia*, Abera-Verlag Meyer, 2001

² Ernas, S, *Policy of Social Conflict Resolution: Implementation of the Malino Agreement in Maluku*, Jurnal Studi Pemerintahan, 2012, 3(2). See also Lange, K. M., 2000, *Prospects for Conflict Transformation in Maluku: Mapping Assets, Spaces and Moments for Peace Building*, and Wessel, I., 2001, *The politics of violence in New Order Indonesia in the last decade of the 20th century*, *Violence in Indonesia*, 2001, 64-81.

³ *International Center for Transitional Justice. What is transitional justice*. Retrieved from <http://ictj.org/about/transitional-justice> at 3 November 2017

⁴ Fischer, M., 2011, *Transitional justice and reconciliation: Theory and practice*. Advancing Conflict Transformation. The Berghof Handbook, 2

⁵ Barash, D. P., & Webel, C. P., 2013, *Peace and conflict studies*, SAGE Publications, Incorporated

TRANSITIONAL JUSTICE IN THE ETHNO-RELIGIOUS CONFLICT IN MALUKU

Maluku is one Indonesian archipelago consisting of many small islands located at the eastern part of Indonesia. These united islands were formerly populated by Ambonese ethnic group as indigenous community before a huge transmigration program was commenced by the government through sending people from Java to some other less populated islands in Indonesia in the beginning of 1960s, which made the islands become more diverse in terms of culture, ethnics and religion⁶. Maluku itself was previously well known as the name of one province in that area until the massive ethno-religious conflict occurred in Maluku in 1999 resulting in Maluku split into two provinces, North Maluku which is mostly populated by Moslems and Maluku province in which the majority populations are Christians⁷.

Maluku's Conflict at a Glance

It was in 12 December 1998 when the initial conflict between two groups of different religion from different village, Wailete village Moslems and Hative Besar village Christians

of Southeast Maluku, was originated by their reciprocity actions in burning and rioting other properties triggered by a military member⁸. This tragedy resulted in uncontrolled conditions among the community till in 14 January 1999, eight members of both groups were killed⁹. Afterwards, as Malik goes on to further describe, many episodes of more extensive conflicts happened in Maluku fueled by "unhealthy" interactions towards each other¹⁰.

The first period was in the beginning of 1999 when in 19 January 1999 the local conflict between two young gangster groups, Christians indigenous Ambonese and Moslems non-indigenous Ambonese, happened at the celebration of Islamic holiday Idul Fitri in Batu Merah transport terminal in Ambon, the largest settlement and the capital city of Maluku¹¹. It was then broadly perceived as a religious conflict which later spread out quickly causing many sporadic brawls throughout Ambon involving their religious community¹². In the end of this phase occur the expulsion of non-Ambonese community, consisting of Buton with more than 160,000 people¹³, Bugis and Makassar Moslems ethnic

⁶ Van Klinken, G., *The Maluku wars: bringing society back in*. Indonesia, 2001, 1-26

⁷ Pariela, T. D., (n.d.). *Political Process, Public Policy, and Peace Building Process: Case of Ambon City, Maluku*.

⁸ Malik, I., 2003, *Bakubae: The community based movement for reconciliation process in Maluku*: Published in cooperation [among] BakuBae Maluku, Tifa Foundation, and Yayasan Kemala

⁹ Van Klinken, 2001, *op.cit.*

¹⁰ Malik, I., 2003, *op.cit.*

¹¹ (Human Right Watch Asia, 1999) cited in (Van Klinken, 2001, *op.cit.*

¹² Malik, I., 2003, *op.cit.*

¹³ Palmer, B., *Memories of Migration: Butonese Migrants returning to Buton after the Maluku conflicts 1999–2002*. Antropologi Indonesia, 2004, Special Volume

groups, to their place origins or other secure place¹⁴.

In the second and third episodes, the situations were more destructive since the religious issues widely affected the conflict and broader community was involved. While the second episode started from June 1999 when each community tried to physically defend the other party through offensive actions against each other within the involvement of the police from each group in conducting their actions, the third episode occurred in January 2000 indicated by separatism issue from separatist groups wanting the sovereignty of Maluku¹⁵.

There were, in this last conflict period, many movement associations prosecuting the independence of Maluku, some of which were Front Kedaulatan Maluku (Maluku's Front for Sovereignty) and the movement of Republik Maluku Selatan (The Republic of South Maluku). The situation in this phase was even getting worse exacerbated by the involvement of many religious groups from other provinces to support their community¹⁶ such as Laskar Jihad (Islamic fighters) in supporting

Moslems community¹⁷ leading to an armed war¹⁸. After all, this massive community conflict resulted in over 3,000 people brutally murdered, and around 500,000 people displaced in North Maluku province¹⁹, or 5,000 people death with more than seven million, one third of that province population, were displaced for a whole Maluku regions²⁰.

Restorative Justice and Conflict Handling Strategies

There have been several strategies undertaken by both government and non-government institutions dealing with this ethno-religious conflict. Mostly based on the data report revealed by the joint team of ICTJ (International Center for Transitional Justice) and KontraS (commission for the Disappeared and Victims of Violence), an Indonesian NGO established in response to the increasing number of violence after the fall of Suharto regime (2011), the undertaken mechanisms of transitional justice in Maluku's conflict will be provided as follows.

1. Truth-seeking

According to ICTJ and KontraS, there had been many efforts taken by

¹⁴ Duncan, C. R., 2008, *Where do we go from here? The politics of ending displacement in post-conflict North Maluku*, Ithaca, NY: Conflict, Violence, and Displacement in Indonesia, Cornell University Southeast Asia Program Publications, & Malik, I., 2003, *op.cit.*

¹⁵ Malik, I., 2003, *ibid.*

¹⁶ ICTJ, 2011, *Transitional justice in the United Nations Human Right Council: International Center for Transitional Justice*

¹⁷ Van Klinken, 2001, *op.cit.*

¹⁸ Malik, I., 2003, *op.cit.*

¹⁹ Reid, A., 2011, *Southeast Asia. The Singapore and Melaka Straits: Violence, security and diplomacy in the 17th century*. By Peter Borschberg. Singapore: NUS Press, and Leiden: KITLV Press, Pp. 394, Maps, Illustrations, Index. *Journal of Southeast Asian Studies*, 2010, 42(03), 543-546.

²⁰ ICTJ, 2011, *op.cit.*

stakeholders in coping with this conflict in regards to seeking the truths and finding the facts²¹. The action for this stage was initiated by the establishment of National investigation team on Maluku. It was on 12 February 2002 when the national government legalized Malino peace agreement II, an agreement between two opposing parties to end the ongoing conflict and create peace in Maluku, which also included an independent team established by the national government for investigating the conflict²². The investigation team consisted of 14 members under the president mandate to find facts and analyze relevant issues and events in Maluku for one-year period. However, it was lately found that the final report of this investigation was canceled to release and the whole findings of that report remained unknown²³.

2. Judicial proceedings

The establishment of Human Right Court in Indonesia in 1999 following the UN permission to prosecute their citizens' violations crime seems to be one important step of the Indonesian government

in giving more attention to the human right abuses. However, there is no clue that the perpetrators of the ethno-religious violence in Maluku were prosecuted in this court. Having four offices located in Jakarta, Surabaya, Aceh and Makassar, this institution appears to be incapable to further proceed Maluku's case²⁴. One example of judicial proceedings in the post-war Maluku was the persecutions of key perpetrators in Maluku conflict by arresting those who responsible for their conducting violence²⁵.

3. Reparations

Reparation is identified by UN General Assembly as a recovery process in transitional justice "to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law"²⁶. It is aimed to acknowledge the trauma and pain of the victims of violence in order to help them repairing the consequences of the past events²⁷. Therefore, this method should be adequate and effective in achieving those goals.

²¹ *Ibid.*

²² *Ibid.*

²³ ICTJ, *ICTJ Interview with a former member of the investigation team*, Jakarta, 2008, cited in ICTJ, 2011, *ibid.*

²⁴ ICTJ, 2011, *ibid*

²⁵ McRae, D., *Criminal justice and communal conflict: a case study of the trial of Fabianus Tibo, Dominggus da Silva, and Marinus Riwu*. Indonesia, 2007, 79-117

²⁶ UN General Assembly, 2005, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> at 3 November 2017

²⁷ ICTJ, 2011, *op.cit.*

In terms of selecting the most suitable strategies in implementing this method, many approaches are introduced by scholars to be applied in reparation programs. UN General Assembly, in particular, mentions that reparation programs could be formed as “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”²⁸. Those are the standards of reparation approaches that are hoped to be implemented in many conflicting regions under the United Nations.

Adapting other reparations programs in other countries based on international consensus, Indonesian government integrates its reparations forms into legislation, court proceedings and peace agreements²⁹. In this regards, one of reparations programs applied for Maluku’s mass violence was the creation of monuments and martyrs cemeteries in memorizing the deaths of Maluku’s conflict victims in North Maluku³⁰. Another form of reparations was compensations given to the community and victims to rebuild their vandalized houses and their burnt Churches and Mosques, to replant their lands and farms, and to reimburse

financial loss of their other properties³¹. Returning back non-indigenous community from many different ethnic groups to their original lands also seems to be one strategy of both local and regional government in these reparations programs, even though the accommodations of their new settlement were mostly inadequate as they were placed in camps as refugees³².

4. Institutional reforms

There have been some reformations undertaken in the institutions of Indonesia proved to be involved in the human right violence. Those reformations are mostly on the security system bodies since they often have direct involvement in the ongoing conflict. In regards to this, ICTJ and KontraS frame those institutional reforms following Maluku’s conflict and other mass violence in Indonesia based on three different presidential regimes³³. The first stage was shown by the initiative to reform security sector initiated by president Habibie in 1998 through separating the police institution from military bodies, reviewing military involvement in politics and sharing military great power with civilian authorities³⁴. Whilst, president

²⁸ *Ibid.*

²⁹ ICTJ, 2011, *Op.Cit.*

³⁰ Duncan, C. R., *Monuments and martyrdom: Memorializing the dead in post-conflict North Maluku*, *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, 2009, 165(4), 429-458

³¹ *Ibid.*

³² Duncan, C. R., 2008, *Op.Cit.*

³³ ICTJ, 2011, *Op.Cit.*

³⁴ *Ibid.*

Abdurrahman Wahid reformed the security institutions by establishing a regulation against military's impunity and creating Ad Hoc Human Rights Courts in 1999. Under president Megawati leadership replacing former president Abdurrahman Wahid in 2001, however, those institutional reformations programs decreased significantly shown by few efforts of the government in prosecuting past events and focusing more on the future orientation³⁵.

Some other institutional reforms to stop the violence were also applied in both police and military regional bodies, such as the regional chief of Maluku police replacement for seven times and the Maluku commander of regional Military replacement for five times³⁶. Furthermore, the commander of Pattimura military region, which was a Muslim, was replaced by a Balinese-Hindu to stabilize the tensions between two religious groups involved in that conflict. Those are the examples of institutional reforms strategies in regards to de-escalating the conflict situation.

ASSESSMENT OF TRANSITIONAL JUSTICE IMPLEMENTATION IN MALUKU

There have been a number of potential strategies effectively implemented by stakeholders in dealing with this mass violence. However, evaluating and reviewing those strategies are still needed to maintain the effectiveness of that implementation. In fact, apart from some strength on each transitional justice stages, there are still a number of limitations that should be taken into account. Below are some general assessments of transitional justice application in post Maluku's mass violence.

Lack of Effective Criminal Prosecution And Incomplete Judicial Proceedings

The term criminal prosecution of International Center for Transitional Justice and Fischer can be linked to the legal justice and accountability concept introduced by Lambourne and Boraine³⁷. In this regard, this mechanism is determined by them as a process in which the perpetrators of the crime are encouraged to admit their crimes so that they will be judged and or punished following their actions. As Boraine goes on to further explain, there are several goals of this method, and one of them is to prevent perpetrators in repeating their actions³⁸. However, since merely applying this method is often insufficient in

³⁵ *Ibid.*

³⁶ Bhakti, I. N., Yanuarti, S., & Nurhasim, M., 2009, *Military Politics, Ethnicity and Conflict in Indonesia*, University of Oxford: Centre for research on inequality, human security and ethnicity (CRISE)

³⁷ ICTJ, & KontraS, (n.d.), *op.cit.* See also Fischer, M., 2011, *op.cit.*, Lambourne, W., *Transitional justice and peacebuilding after mass violence*. International Journal of Transitional Justice, 2009, ijn037, and Boraine, A. L., *Transitional justice: a holistic interpretation*. Journal of International Affairs, 2006, 60(1), 17

³⁸ Boraine, A. L., *Ibid.*

recovering the impacts of the violence for the victims or larger community³⁹, applying some other approaches is still needed. Therefore, this method could be identified as one initial stage in achieving transitional justice after violence.

In regards to Maluku's case in particular, while the establishment of Human Right Courts seems to be potential in proceeding human right abuses and violations, it is found that there are actually other possible mechanisms to proceed human right crimes, which are criminal courts trials, and military and joint military-civilian trials⁴⁰. As a result, there seems to be some overlapping roles among those institutions to prosecute the judicial proceedings of the violence's perpetrators, especially for those who act beyond institutional mandates.

In addition, there appear to be some pressure and intimidation of those justice institutions in prosecuting the perpetrators of Maluku's conflict from some particular parties presumably involved in that conflict⁴¹. As a result, only few cases related to Maluku's conflict were persecuted in the court. Indeed, it is clear that there seem to be some elites' involvements in the ongoing conflict in Maluku indicated by the unknown report result of

investigation team on Maluku. One example of this is that it was strongly indicated that there was direct involvement of military personnel in helping Laskar Jihad (Islamic fighters) who came from Java in attacking police weaponry warehouse to steal police weapons⁴². However, there was no clue of whether or not those personnel were prosecuted to judicial proceedings.

The failure to release findings by the Commissions of Truth investigation team

Government initiatives in establishing the Truth Commissions to find facts and seek the truths is actually quite effective. The investigation teams had been created following the standard of Truth investigation commission implemented in the global world. However, since it also appears that there were many elites' involvements in that case which led to manipulation of investigation results, the report of that investigation findings was not released to the public⁴³.

Indeed, since the conflict in Maluku was apparently triggered by the involvement of national political figures, including military personnel under former president Suharto mandate, considering some political issues in the analysis of transitional justice approaches would be important to identify some

³⁹ Anderlini, S. N., Conaway, C. P., & Kays, L., *Transitional justice and reconciliation*, Inclusive security, sustainable peace: A toolkit for advocacy and action, 2004, 12

⁴⁰ ICTJ, 2011, *op.cit.*

⁴¹ *Ibid.*

⁴² Bhakti, I. N., et al., 2009, *Op.Cit.*

⁴³ ICTJ, 2011, *Op.Cit.*

connections of the tragedy with the involved elites in order to gain some possible solutions. In relation to this, many believe that the involvement of security force, which was generally believed to act beyond Suharto regime, in the battle field of Maluku conflict was one strategy of the opposite elites against the ongoing government under both Habibie and Abdurrahman Wahid regime⁴⁴. Furthermore, Bhakti et al. also suggest that “the riots in Maluku were triggered by the presence of political-military powers in society that deliberately maintained tensions and the conflict potential of the society” (p.25)⁴⁵. Thus, given that conflict resolution is also aimed to prevent the repeated tragedy, gathering the evidence of relevant conflict factors such as political tendencies in order to be used to evaluate institutions credibility for the purpose of institutional reforms is undoubtedly crucial for future orientation.

RECOMMENDATION ON TRANSITIONAL JUSTICE

It could be clearly seen that both national elites and local stakeholders played an important role in de-escalating the conflict situations, and later led to its resolution, in Maluku⁴⁶. Apart from national government efforts to resolve this conflict by proceeding

those four transitional justice mechanisms, local government of Ambon City under the leadership of the elected Mayor and Vice Mayor in 2001 also regulated public policies in preventing further conflicts by managing a collaborative communication among law enforcement bodies (police), defense institution (military) and some other local stakeholders including religious scholars⁴⁷. Thus, maintaining those constructive actions organized by both national and local elites should be always taken into account as main program in order to prevent reoccurrence of the conflict. For the effectiveness of that program, involving community participation in designing and implementing transitional justice mechanisms would be worthy.

It is also useful to adopt some other transitional justice approaches taken by other conflicting countries. In this regards, one example of the potential strategies to be adapted is the approach applied by the Council of Libya, Cote d’Ivoire, and Syria in establishing independent commissions of truth-seeking and criminal investigations⁴⁸. To ensure that those commissions are effectively managed and provide positive outcomes, they established clear directions of the relevant standards from the experts for the commissions to be

⁴⁴ Bhakti, I. N., et al., 2009, *Ibid*. See also Sharp, S., 2011, *Framing religious conflict: Primordialism writ large*, and Van Klinken, 2001, *Op.Cit*.

⁴⁵ Bhakti, I. N., et al., 2009, *Ibid*.

⁴⁶ Pariela, (n.d.), *Op.Cit*.

⁴⁷ *Ibid*.

⁴⁸ ICTJ, 2011, *Op.Cit*.

followed, and the involvement of supervision team to ensure that recommendations provided by the commissions would be approachable and sustainable⁴⁹. As a result, the implementation of transitional justice through truth commissions would be more effective, transparent and manageable.

Finally, evaluating the current justice institutions by formulating clear directions of each institution would be needed in order to avoid overlapping among them in prosecuting the cases. By this, it is hoped that pursuing perpetrators to the judicial proceedings following their violent actions would be more well-handled.

CONCLUSION

To conclude, this essay has analyzed the implementation of transitional justice on Maluku's ethno-religious conflict by describing the four undertaken strategies in de-escalating the conflict consisting of truth-seeking, judicial proceedings, reparations programs and institutional reforms. Those mechanisms were adopted from the standard of transitional justice published by the United Nations. While

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some of those implementations seem to be well organized, such as the establishment of Truth Commissions and some Institutional reforms in security systems, others are not effectively conducted, including the judicial proceedings which seem to avoid persecuting military personnel who had been involved in triggering the violations.

Furthermore, those mechanisms seem to be left behind without any further actions resulting in incomplete conflict handling system as a result of the elite's involvement. Therefore, for future development, those who are in charge in transitional justice implementation should be an independent body without any outside intimidations so that the comprehensive transitional justice could be effectively implemented. Finally, since many other reconciliation processes were also conducted by local community, such as Christian-Muslim Alliances in Ambon Island⁵⁰, Bakubae movement (Malik, 2003), and sport activities as a means for reconciliation⁵¹, combining transitional justice, non-violence and reconciliation could be more effective in the conflict resolution process.

Anderlini, S. N., Conaway, C. P., & Kays, L., *Transitional justice and reconciliation*, Inclusive security, sustainable peace: A toolkit for advocacy and action, 2004, 12.

⁴⁹ *Ibid.*

⁵⁰ Al Qurtuby, S., *Peacebuilding in Indonesia: Christian-Muslim Alliances in Ambon Island*, Islam and Christian-Muslim Relations, 2013, 24(3), 349-367

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