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# Preemptive Transitional Justice Policies in Aceh, Indonesia

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The peace agreement for Aceh included standard post-conflict measures, such as a human rights court and a truth and reconciliation commission (TRC). Why were they neglected? If they were going to be neglected, why did the negotiators initially agree on them instead of choosing amnesty or nothing? I argue that their nature as preemptive policies is key to understanding why they were introduced but not implemented. Preemptive transitional justice policies are adopted when reluctant policymakers attempt to trump “tougher” options with more acceptable alternatives, such as the following preemption in *reformasi* Indonesia: a domestic human rights court against an international tribunal, and reconciliation through amnesty against a domestic court. Preemptive policies are also mobilized to redirect pressure for other goals, such as a referendum for independence in *reformasi* Aceh. The process whereby preemptive policies were practically disabled in post-authoritarian Indonesia crucially influenced the non-implementation of transitional justice mechanisms in post-conflict Aceh. Meanwhile, aid measures have been implemented since the *reformasi* period, originally as attempts of preemption against the demands of the local society, and later as a less costly alternative to justice and truth.

**Keywords:** Aceh, Indonesia, transitional justice, truth and reconciliation commission, human rights court, *reformasi*, Komnas-HAM, preemptive policies

In 2005, the Indonesian government and the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) signed a peace agreement that included a truth and reconciliation commission (TRC) and a human rights court for Aceh. To date, neither institution has been established. Why was this requirement of the peace settlement neglected in Aceh? Furthermore, why did the negotiators of the 2005 Helsinki peace talks agree to these standard transitional justice measures instead of choosing a blanket amnesty or nothing at all? What is the relationship of this neglect to the general Indonesian situation, where existing legal clauses failed to deliver actual practices?

Another post-conflict measure in Aceh is economic compensation to civilian victims.

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The Aceh Integration Agency (BRA) distributed social and economic aid to civilian victims. This distribution bypassed the legal labyrinth of the national system that requires conviction of identifiable perpetrators in human rights tribunals before awarding compensation to victims of gross human rights violations.<sup>1)</sup> Until recently, there had been no comparable schemes for other groups of victims, except those who suffered from communal violence in Eastern Indonesia.<sup>2)</sup> How can we explain this divergence from the national pattern?

This paper examines the post-conflict justice measures in Aceh, emphasizing their characteristics as preemptive measures against different sources of pressure. The national laws for transitional justice mechanisms and, to a lesser extent, the clauses of the Helsinki agreement were primarily intended to frustrate stronger policies by replacing a possible international court with a domestic court and a domestic court with a TRC. If the goal of major legislation was to preempt introduction of less favorable mechanisms with “softer” alternatives, the origin of Aceh-specific measures is traceable to previous attempts to preempt post-authoritarian Aceh nationalism, especially the call for a referendum from the Acehnese society. These attempts could not prevent escalation of conflict at that time. However, after successful travels to areas of communal violence in Eastern Indonesia, they became a standard solution for Indonesian conflict victims in an era of faded hopes for the success of standard models.

A legalistic approach that focuses on whether a post-conflict or post-authoritarian society has introduced relevant legal clauses and whether the clauses are in accordance with international norms provides inadequate explanation as to why these clauses have failed to be implemented. Such an approach also fails to explain why ad-hoc measures such as economic aid to civilian victims in Aceh were implemented without strong legal grounds (i.e., separate legislation). The problem is not the lack of international human rights norms; many Indonesians made serious and partly successful efforts to adopt laws to address gross human rights abuses. International pressure for introducing standard models of transitional justice, such as a TRC and a special court for human rights abuses, is likely to result in mere introduction of these models by reluctant political leaders without implementation or utilization. To explain implementation of the models, we must carefully examine the source of the pressure and its nature. Specifically in Aceh, we

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1) The government regulation on compensation, restitution, and rehabilitation for the victims of gross human rights violations in 2002 (*peraturan pemerintah* No. 3/2002) is connected to the law on the human rights court (No. 26/2000).

2) Recently, the Witness and Victim Protection Agency (LPSK) began to provide medical aid (“*rehabilitasi*”) to victims of gross human rights violations, including but not limited to the 1965 Communist purges (the “65”). See Tim ELSAM (2013).

must look back to the “post-DOM” period—the era of liberalization between Suharto’s fall and intensified military operations—as a background to the post-conflict situation.<sup>3)</sup>

The case of Aceh shows that post-conflict societies may have their own trajectories of transitional justice going back to the previous juncture—in this case, the post-authoritarian transition of 1998. The Helsinki peace process, which ended the conflict between the nationalist GAM and the Indonesian security forces in the westernmost Indonesian province of Aceh, occurred years after intense international pressure on the Indonesian government concerning the East Timor militia violence in 1999 and the post-DOM Acehnese demands for justice and independence. It helps us to see the legacies of the international and local pressure after momentum of transition is largely gone.

This paper begins with a discussion of the backgrounds of preemptive transitional justice policies. Two Indonesian mechanisms for transitional justice, the (ad-hoc) human rights court and the TRC, were introduced as preemption of measures that were less preferable to policymakers. After looking into the legislation on the national level, I will examine the chain of preemption that repeated in the Helsinki peace talks. Then, I will discuss the absence of prosecution and the official truth-seeking of abuses of the Aceh conflict in the wider context of post-Suharto transitional justice, where transitional justice policies were adopted but practically disabled after pressure weakened. Lastly, I trace the origins of compensation measures in post-conflict Aceh back to the *reformasi* period, when the call for independence was strongest and reluctant political elites, who were unwilling to implement transitional justice policies, were faced with vocal victims.

## Preemptive Transitional Justice Policies

Legal scholars such as Orentlicher (1991) argue that states have “the duty to prosecute human rights violations of a prior regime” under international law. In reality, state leaders rarely make such a move out of pure commitment to the rule of law. Transitional justice mechanisms are often adopted as preemptive policies by reluctant political elites who want to block unwanted international pressure to address human rights abuses. As Roht-Arriaza (2006, 8–9) explains, with increasing consensus that “some kind of transitional justice measures were needed . . . by and large . . . the no-action option was no longer either desirable or viable.” Blanket amnesty for state and non-state agents at all levels is not an acceptable option either because it signals an unwillingness to prosecute

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3) For clarification on the widely-used term DOM (Military Operations Zone), see Bambang and Kammen (2000).

and, in the worst case, paves the way for intervention from foreign and international courts.

Preemptive policies mean policies adopted by reluctant transitional leaders in the face of worse alternatives without the intention to fully implement the adopted policies. When leaders believe that the costs of external pressure, such as international courts or threats of aid cut, are higher than the cost of introducing transitional justice mechanisms, they are likely to adopt some mechanism, such as truth commissions, trials, or a combination of the two. In this way, material and symbolic pressure “has succeeded in framing the states’ choice as one of which model of justice to adopt, not whether any should be adopted at all” (Subotić 2009, 22). Thus, more states become “instrumental adopters” (Subotić 2009) of transitional justice mechanisms.

However, as Levitsky and Way (2010) argue with the origin of “competitive authoritarianism” in the post-Cold War era as a response to external democratizing influence, pressure from donors or Western powers is usually selective, superficial, and, in the case of transitional justice, ephemeral. The transitional period is not infinite, and donor pressure moves from one transitional policy to another after a certain period of time. Therefore, reluctant leaders have strong incentives to adopt formal mechanisms of transitional justice and then wait until the external pressure goes away. If the adoption of formal mechanisms can be characterized as preemption against international pressure, full implementation of the mechanisms is not expected.

Preemptive policies do not necessarily indicate that domestic constituencies are hostile to transitional justice.<sup>4)</sup> Nor do they always target external pressure. Preemptive policies may be employed to trump less palatable transitional justice options—in this case, the promise of full implementation will evaporate once the “stronger” demands are gone—or to placate domestic pressure for policies other than transitional justice. To persuade reluctant political elites to implement preemptive policies, however, local pressure must be able to transform itself into a credible and sustainable threat.<sup>5)</sup>

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4) Grodsky (2009) characterizes truth commissions in Serbia and Croatia as compromise policies devised to placate both international constituencies that demand compliance with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and domestic constituencies that are against the ICTY. Not all preemptive policies involve such a contrast between international and domestic constituencies, however.

5) Simmons (2009, 78) discusses insincere ratification of human rights treaties that is “encouraged if governments are offered tangible benefits for ratification.” Preemptive policies as I introduce here differ from her “false positives” in that threats or possible costs, rather than benefits, are central in providing motives for introducing these policies. Moreover, preemptive policies do not involve miscalculation and poor information, as she assumes; I characterize reluctant governments as well-informed actors who are familiar with addressing their options against different sources of pressure.

The absence of a TRC and prosecution of past human rights abuses in post-conflict Aceh parallels a similar deficiency at the national level. The Indonesian TRC has never been formed after more than a decade of legislative process. Meanwhile, only three instances of human rights abuses—the East Timor militia violence in 1999, the Tanjung Priok shootings in 1984, and the violence in Abepura, Papua in 2001—reached the Indonesian human rights court. Commentators who attribute the failure of Indonesian transitional justice mechanisms to legal technicalities—such as the discrepancy between the Indonesian constitution and the law of the human rights court regarding retroactivity (Clarke 2008) or the incorrect adoption of international human rights instruments (Agung 2009)—overlook the nature of the mechanisms as preemptive policies, although legal technicalities provide good excuses for shelving inconvenient measures of justice and truth, as we will see with the Aceh TRC.

Alternatively, the failure of implementation may be because the responsible actors are different. In Indonesia, President Susilo Bambang Yudhoyono and his administration were not responsible for the major legislation regarding the human rights court (2000) and the TRC (2004). Nevertheless, the unwillingness to implement the predecessor's policies was not the only problem. The previous administrations were not enthusiastic to introduce and implement those policies either, as we will see. Moreover, the continuity of leadership was apparent in the Aceh peace process. The Helsinki agreement was a major achievement of President Yudhoyono, and the GAM has had a dominant presence in Aceh politics since then.

International Relations (IR) literature has extensively discussed the impact of international human rights norms and states' compliance with them (Hafner-Burton and Ron 2009). While the introduction of transitional justice is associated with the availability of international norms, it does not directly engage in the debates on the "compliance gap." Despite recent institutionalization, norms regarding transitional justice are closer to guidelines than codified treaties, which makes it tricky to discuss "enforcement" of international transitional justice norms.

What we can note from the literature instead is the critical quality of transitional democracies, when mobilization of human rights has a higher value than under stable regimes (Simmons 2009). The human rights legislation of Indonesian *reformasi*—the human rights law (1999), the human rights court law (2000), and the TRC law (2004)—were created under this mobilization, in addition to international pressure.

## Preemptive Legislation: 1999–2004

A brief human rights court provision first appeared in the draft of the human rights bill, which was passed before the East Timor referendum. The bill, prepared by the Ministry of Justice, was a component of a political reform package, together with new laws regulating elections and party politics (*Kompas*, April 12, 1999). The composition of the DPR (Dewan Perwakilan Rakyat; Indonesian parliament), elected under the New Order, was not beneficial to these ideas. Out of 499 members of the DPR, 75 were from the Armed Forces and 323 belonged to Golkar, the New Order's governing party.<sup>6)</sup> Hamid Awaludin, the future Minister of Justice in the Yudhoyono administration and the head of the Indonesian delegation team for the Helsinki peace talks, argued that the debate should be delayed until new members entered the DPR, because "old elements" might protect the interests of the New Order regime (*Kompas*, June 28, 1999). However, the government successfully sought support for this bill from all parliamentary factions except the Armed Forces, which consistently opposed the human rights court provision.

The crisis from the East Timor referendum hastened the legislation of the human rights court bill and strengthened its nature as a preemptive policy. The human rights court bill was one of the two-pronged strategies of the Indonesian government against international pressure for accountability. Another strategy was the inquiry team called KPP-HAM, which included members from the Indonesian human rights commission (Komnas-HAM) and NGOs. The formation of KPP-HAM was a response to the UN Commission on Human Rights special session, which issued a resolution demanding Indonesian accountability for human rights violations (KPP-HAM 2000, 13–14; Cohen *et al.* 2007, 12). The military did not obstruct KPP-HAM's activities out of concern that an international tribunal could intervene if the KPP-HAM's results failed to satisfy the international audience (Mizuno 2003, 136).

The lack of retroactivity in both Habibie's *perpu* (government regulation in lieu of law)<sup>7)</sup> and the subsequent draft of the human rights court bill indicates the unwillingness of the Indonesian government to actually establish a human rights court for the East Timor militia violence. The *perpu* could not be used as a legal basis for prosecution of the militia violence in East Timor, most of which occurred before October 8, 1999, the day President Habibie announced it. Although new Minister of Justice Yusril Ihza Mahendra replaced Habibie's *perpu* with a new draft law because of the absence of retroactivity, the

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6) PPP (Partai Persatuan Pembangunan; United Development Party) had 89 seats and PDI (Partai Demokrasi Indonesia; Indonesian Democratic Party) had only 10 because of the election boycott by the Megawati faction, which built the PDI-P (Indonesian Democratic Party-Struggle).

7) To remain effective, *perpu* must be approved by the parliament.

new draft, written in November 1999, also lacked a retroactivity clause. The new draft law stipulated that all past human rights abuses would be sent to a TRC. The retroactivity debate was revived only when Netherlands Minister of Foreign Affairs Jozias van Aarsten raised the issue (*Kompas*, January 21, 2000), which shows that both the Habibie and Wahid administrations may have planned to keep the human rights court option only until the international attention went away.

The 2000 law, a measure to block an international tribunal for East Timor, was intensively discussed and unanimously passed after the killing of three UN humanitarian workers in Atambua, West Timor attracted international attention once again.<sup>8)</sup> The parliamentary debate ended without much disagreement. Most factions, especially TNI-Polri (the Armed Forces) and PDI-P, indicated their strong support for the TRC as an institution to address past human rights abuses in the future, which implied their reluctant approval of the ad-hoc human rights court provision for past abuses.<sup>9)</sup>

Just as the human rights law anticipated the human rights court, the formation of the TRC was mandated by the law of the human rights court. Habibie's *perpu* made the TRC a strong alternative to prosecution. The TRC drafting team worked closely with the parliamentary discussion regarding the human rights court law.<sup>10)</sup> After the enactment of the human rights court law in November 2000, the TRC bill was shelved at the State Secretariat and then entered the DPR in May 2003. At that time, threats of prosecution still existed. For example, a Komnas-HAM team was extensively researching human rights abuses of the Suharto era going back to the Communist purge from 1965–66.

Amnesty was the central feature of the 2004 TRC law. The function of the Indonesian TRC as an alternative to prosecution is highlighted by the fact that it was designed to address the same set of cases—genocide and crimes against humanity that had occurred before the enactment of the human rights court law—with ad-hoc human rights courts and nothing more. Not only did the Indonesian government welcome the idea of amnesty

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8) In a parliamentary session, the Minister of Justice and Human Rights expressed his concern regarding the Atambua, West Timor case, which might revive calls for an international tribunal for East Timor (Sekjen DPR-RI 2009, 897–903).

9) The composition of the DPR changed dramatically after the 1999 parliamentary election. Golkar (26% of the seats), PPP (12.6%), and TNI-Polri (7.6%) remained strong; however, PDI-P won 33.1% of the seats, forming the largest bloc in the DPR. New parties, such as Wahid's PKB (National Awakening Party) and Amien Rais's PAN (National Mandate Party), also won a sizeable number of seats (11% and 7.4%, respectively).

10) In May 2000, the team already had the fourth version of the draft law (*Kompas*, May 3, 2000). The TRC had been promoted by NGOs, Komnas-HAM, and figures such as Abdurrahman Wahid since the early *reformasi* period.



by importing South Africa's world-famous model,<sup>11)</sup> but it also added the condition that to become eligible for compensation, victims must forgive the perpetrators who reveal whatever truths, closing the possibility of an ad-hoc human rights court for the concerned case permanently.<sup>12)</sup> Though not a body for amnesia (*lembaga amnesia*) as Golkar proposed earlier (*Kompas*, March 14, 2000) or a reconciliation commission without "truths" as the military faction suggested (Sekjen DPR-RI n.d., 596), the central vision of the Indonesian TRC was "reconciliation through amnesty."

Opposition from organized victims and many NGOs notwithstanding,<sup>13)</sup> parliamentary special committee members approved the bill in September 2004 as one of the last bills approved by parliamentarians whose term was about to end. All major parliamentary factions supported the final bill (*ibid.*, 923–945). The TRC would not have received such widespread support, particularly from Golkar and TNI/Polri, without the amnesty provision. As one of her last tasks as outgoing president, President Megawati signed the bill the following month after her defeat by Susilo Bambang Yudhoyono. The timing shows that neither parliamentarians nor the president was enthusiastic with the bill.

The three laws discussed here—the human rights law, the human rights court law, and the TRC law—were products of Indonesian *reformasi* and continuing international pressure. The Indonesian government had been familiar with international accusations of human rights violations and demands for accountability throughout the 1990s, starting with the Dili massacre in 1991. Furthermore, liberalization after Suharto's fall enabled Indonesian domestic forces to make similar and more detailed demands for accountability and truth-seeking against past human rights abuses under the New Order. In contrast to the hopes of the earlier *reformasi* period, however, preemptive transitional justice policies failed to bring the anticipated outcomes as credible threats disappeared.

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11) Among many similar institutions around the globe, the South African TRC is the only one with the power to grant amnesty to specific individuals (Wiebelhaus-Brahm 2010; Hayner 2011).

12) According to the law, amnesty is granted by the president upon recommendation from the TRC. The commissioners can make recommendations for amnesty even if victims do not accept an apology from the perpetrator(s). Amnesty is the precondition of compensation, though it does not automatically guarantee compensation.

13) Organized victims almost unanimously opposed the proposed TRC. In a public hearing of the parliament, representatives from the Trisakti shooting (1998), the Semanggi shootings (1998 and 1999), the May riots (1998), Talangsari (1989), and activist kidnappings (1997–98) made clear their support for prosecution and their opposition to the proposed TRC (Sekjen DPR-RI n.d., 1203–1261). Only the representative from one of the "65" groups indicated his conditional support and opposed only Article 27, which linked amnesty with compensation (*Berita KontraS* No. 05/IX-X/2004).

## The Helsinki Talks: “Reconciliation through Amnesty”

The 2005 Helsinki peace talks illustrate the ways the Indonesian government used different transitional justice options for the purpose of preemption. The Indian Ocean tsunami in December 2004 brought the Indonesian government and GAM to the negotiation table from January to July 2005.<sup>14</sup> Former Finnish President Martti Ahtisaari mediated the talks between the delegation of the Indonesian government, headed by Minister of Justice and Human Rights Hamid Awaludin, and GAM representatives, led by Malik Mahmud. Instead of independence or a referendum, GAM received a special provision permitting local political parties in the region, together with amnesty for political prisoners and reintegration funds.

The position of the Indonesian government delegation was firm. From the very beginning, it sought “reconciliation through amnesty” coupled with economic integration. Hamid Awaludin claimed that “the history of Indonesia is a history of amnesty from time past to the present” (Hamid 2009, 114). The Indonesian delegation opposed any idea of international participation and repeatedly emphasized that GAM also perpetrated human rights abuses, suggesting that an international court would be dangerous to the rebels as well. The usual chain of arguments appears clearly in Hamid’s memoirs. When the possibility of an international court was raised, he argued that Indonesia had a domestic human rights court (*ibid.*, 124). Later, it was advocated that human rights abuses must be settled through a TRC rather than a court (*ibid.*, 210). Then the basic principle that human rights is “a matter for the future and not a matter of the past” (*ibid.*, 229) was reiterated. Both the human rights court and the TRC were used to trump less palatable measures.

In the end, past human rights abuses were secondary. The GAM delegation raised the issue of a referendum in the first round of talks. After it became apparent, as expected, that the Indonesian government would never make such a concession, the issue of human rights abuses was addressed. Some GAM negotiators, such as the former political prisoner Nurdin Abdurrachman, argued that all offenders must be brought to an international court and an independent international organization should conduct an investigation (*ibid.*, 121). After the third round of talks, however, human rights disappeared from the agenda, and local political parties became the new agenda.

The provisions regarding human rights and justice were not contentious issues in

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14) Missbach (2012, 120–122) notes that, with President Yudhoyono’s inauguration, meetings and consultations occurred between GAM and the Indonesian government even before the tsunami. GAM was not in a position to continue armed struggle. Nevertheless, Missbach acknowledges that the tsunami facilitated the peace process.

the final rounds of negotiation (Aspinall 2008). Brief clauses regarding a human rights court (“a human rights court will be established for Aceh”) and a TRC (“a commission for truth and reconciliation will be established for Aceh by the Indonesian commission of truth and reconciliation with the task of formulating and determining reconciliation measures”) were included in the final version of the MoU.<sup>15)</sup> Provisions for compensation and restitution were also included.

The Indonesian government learned from interacting with the international community that introducing human rights provisions on paper as preemptive measures would not harm their position. Similarly, Acehese campaigners learned that raising human rights issues would help draw international support and mobilize widespread discontent against repression.<sup>16)</sup> The salience of the human rights issue in Aceh from 1998 to 2001 must have influenced GAM negotiators’ initial support for strong measures against past human rights abuses when civil society observers were watching. Nevertheless, human rights issues did not prevent GAM negotiators from moving to the next agenda item regarding power-sharing. At the same time, the final agreement still fully incorporated the language of human rights and post-conflict justice.

Post-Helsinki Aceh did not return to the violent past. Local power was transferred to the newly elected governor (elected in 2006 and 2012) and DPRA (Aceh Parliament) members (elected in 2009 and 2014) through elections arranged according to the Helsinki agreement. Still, the two major institutions for transitional justice, the Human Rights Court and the TRC for Aceh, have yet to be established.

### **Disabled Clauses: The Human Rights Court and the TRC**

International agencies played a limited, supporting role in post-conflict Aceh. They knew about the “allergic” response of the Indonesian government to their presence and made stability and peace, rather than human rights, their top priority (Barron and Burke 2008). This reprioritization does not mean that the impacts of international pressure and human rights norms were absent in post-conflict Aceh. The preemptive transitional justice policies of post-authoritarian Indonesia left profound legacies in Aceh. These policies

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15) The English translation is as in Hamid (2009, 314).

16) An anthropologist recalls her visit to the GAM commander-in-chief when she was introduced to victims of abuses by the Indonesian military. She was encouraged to listen to their stories and take their pictures (Drexler 2008, 24–25). Another researcher notes that Acehese frequently showed her pictures of maltreatment by Indonesian soldiers, though the sources of those pictures were unclear (Missbach 2012, 103).

formed a larger legal framework for post-conflict mechanisms and established the precedent of non-implementation of those clauses on paper.

### *Human Rights Court: An Abandoned Path*

Regarding the human rights court for Aceh, the 2006 Law on Governing Aceh (LoGA) stipulated that it would not apply retroactively. Many in Aceh felt that the LoGA betrayed the MoU agreement because of this lack of retroactivity. Contrary to the initial understanding of some Acehnese groups such as the SIRA (Aceh Referendum Information Center) that “all those responsible for human rights violations in the past have been given immunity from prosecution” (Murizal 2010, 304), however, the LoGA did not neutralize the national law regarding the human rights court. As long as the 2000 law regarding the human rights court remains in effect, there has always been a mechanism to prosecute abuses in the national court. Therefore, criticisms against the human rights provisions in the LoGA—such as “the MoU’s provisions on human rights were virtually abandoned by the DPR” (Crouch 2010, 310)—are exaggerated. A local academic who drafted the human rights section in the DPRD’s (provincial council) version of the LoGA confirmed that changes in Jakarta were largely “matters of paraphrasing.”<sup>17)</sup>

In principle, human rights abuses occurring after the enactment of the human rights court law can be prosecuted in the permanent court of human rights located in four cities throughout Indonesia, including Medan in neighboring North Sumatra. Prior to prosecution, a “pro-justicia” inquiry by Komnas-HAM must occur.<sup>18)</sup> Similar abuses that took place before November 2000 can be sent to an ad-hoc human rights court established by the president upon recommendation from the parliament.

Why was the existing national human rights court system not used for Aceh? Certainly, the peace versus justice dilemma was considered. A leading Komnas-HAM commissioner admitted that the body did not conduct preliminary inquiry for Aceh because of this dilemma.<sup>19)</sup> However, the dilemma does not fully explain the absence of prosecu-

17) Author’s interview, November 16, 2010 (Banda Aceh). In accordance with the Institutional Review Board (IRB) procedure under which the data collection activities of this research were regulated, I do not reveal identities of the interviewees. Unless otherwise indicated, Indonesian was used for the interviews, and I translated them. After the Helsinki talks, the DPRD—later called DPRA to put an emphasis on its special status—formed a special committee to produce a local draft of the autonomy bill (Rusdiono and Mujiyanto 2009, 305–306; Crouch 2010, 307–308; Drexler 2008, 258–259). The draft was sent to the Ministry of Home Affairs in Jakarta, and then to the parliament by the president with revisions by the ministry.

18) Both KPP-HAM and the pro-justicia inquiry refer to preliminary investigation by Komnas-HAM according to the human rights court law.

19) Author’s interview, January 7, 2011 (Jakarta).

tion in post-conflict Aceh. If peace talks had been conducted in the early *reformasi* period or in late 2002 when Komnas-HAM commissioners just began their new term, abandoning prosecution altogether would have been much more controversial. To understand the notable absence of prosecutions, we must consider the trajectories of Indonesian transitional justice since *reformasi*, which influenced post-conflict justice in Aceh in crucial ways.

To explain the absence of a preliminary inquiry as in the 2000 law, we must first consider the weaknesses of the national human rights court system, the timing of the transition to peace, and the (un-)development of the prosecutorial approach at the national level. This special court, which incorporated international norms into a national law by duplicating the Rome Statute of the International Criminal Court (ICC) to preempt an international court,<sup>20)</sup> ceased working after international pressure was gone.

By late 2005, the failure of the human rights court was apparent. Only two ad-hoc human rights courts—one for referendum violence in East Timor (1999) and another for the Tanjung Priok shooting of Muslim protesters (1984)—were formed. The permanent human rights court was used only once for a case in Abepura, Papua. The records of all these courts disappointed supporters of the new court system. Indictments were very weak, almost guaranteeing acquittals despite some judges' attempts to convict (Cohen 2003; Cammack 2010). Only two individuals were prosecuted in the Abepura case, and both were acquitted in September 2005. The ad-hoc courts made several convictions only to be overturned on appeal. In 2006, the year the LoGA was passed, the only conviction that had not yet been reversed was that of East Timorese militia leader Eurico Guterres, who was released in March 2008.

Therefore, when Aceh finally achieved negotiated peace, Komnas-HAM commissioners were not prepared to lose face again by producing another report doomed to fail. New pro-justicia reports by the Komnas-HAM were ignored by the Prosecutor General's Office and neglected by the parliament and the president when their recommendations were necessary.<sup>21)</sup> This indifference embarrassed the Komnas-HAM and its commis-

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20) As far as I know, the Indonesian human rights court had no contemporary parallels. A great majority of transitional trials against human rights abuses use the existing criminal laws rather than special laws incorporating international human rights norms into domestic legal systems. Since 2009, Bangladesh, Uganda, and Kenya established or attempted to establish a special domestic court for international crimes, under the threat of ICC prosecution in the case of Uganda and Kenya.

21) The report on the May 1998 riots was submitted in September 2003 and another followed in September 2004 regarding a recent case in Papua ("Wasior/Wamena"), which does not require recommendations by the parliament and the president. The 2009 DPR recommendation of an ad-hoc human rights court for 1997–98 activist kidnappings was an exceptional move.

sioners. The commissioners, who were “extremely cautious in pro-justicia inquiries”<sup>22)</sup> from the beginning, hesitated to produce more pro-justicia reports, fearing the credibility of the institution would be lost if prosecutors refused to take up the cases.

Komnas-HAM, the gatekeeper for the human rights court system, has not played a major role in inquiries into human rights abuses in Aceh for the past two decades. The commission was established in 1993, several years after the peak of the counter-insurgency campaign in Aceh. Except for a surprise visit to Lhokseumawe to inspect a detention center (Jones 1994, 128–129), there is no sign that the institution paid any attention to Aceh before *reformasi*. In its annual reports from 1994 to 1997, Aceh does not look different from other provinces in Indonesia. No special section was devoted to Aceh, unlike East Timor (NCHRI 1995; Komnas-HAM 1995; 1996; INCHR 1997).

During *reformasi*, Komnas-HAM responded to the human rights advocacy regarding Aceh by making a three-day trip to witness the excavation of mass graves in August 1998 (INCHR 1998); however, the commission failed to take significant initiatives. The Komnas-HAM sent two commissioners to the independent investigation team formed in the aftermath of the Bantaqiah killings in 1999, but did not lead the team.<sup>23)</sup> The situation did not change substantially even after the 2000 law on the human rights court gave a crucial mandate of pro-justicia inquiry to the institution. A pro-justicia team for Aceh was never established, except one for the Bumi Flora killings in August 2001.<sup>24)</sup> Between 2002 and 2007, the Komnas-HAM plenary session (*paripurna*) refused all proposals to put ongoing and past abuses in Aceh on the human rights court track.<sup>25)</sup>

22) Author’s email correspondence with a former Komnas-HAM commissioner, September 8, 2010. The 2002–07 Komnas-HAM was very careful with forming pro-justicia teams. It usually required at least one or two non-pro-justicia teams, variously called study teams or monitoring teams, to conduct research before commissioners formed preliminary inquiry teams according to the human rights court law.

23) The killing of Teungku Bantaqiah and more than 50 of his pupils on July 23, 1999 in West Aceh is also called “Beutong Ateuh.” Bantaqiah was one of the few independent Islamic scholars in Aceh who was set free upon Habibie’s amnesty. Aspinall (2009a, 99) notes that “soldiers, who apparently believed the stories of Bantaqiah’s invulnerability, used high-powered weapons and explosives to kill him.” KontraS revealed the killings in a press conference in Jakarta, opening the way for an independent commission.

24) See HRW (2002) and Komnas-HAM (2003, 124–129) for the Komnas-HAM response to the Bumi Flora massacre. In August 2001, 31 people were shot by an unidentified group of armed men on a plantation of Bumi Flora, East Aceh. Komnas-HAM commissioners began inquiries upon the request from its regional office but postponed the decision to create a pro-justicia team several times, particularly after an official letter from the Aceh governor asking to stop inquiries. In April 2002, they finally formed the team, which stopped activities without progress when the commissioners’ term expired. For more on Komnas-HAM teams for Aceh, see Amnesty International (2013, 35–37).

25) The plenary session of the Komnas-HAM did not approve the recommendation for pro-justicia ↗

In 2008, new commissioners formed a team for DOM Aceh (Tim Pengkajian Kekerasan di Aceh), together with teams on “Petrus” and the 1965 communist purges.<sup>26)</sup> The commission also widened its scope to the pre-DOM era (from 1976) and the later post-DOM era (from 1998 to 2003). Unlike the “Petrus” and 65 teams, which produced pro-justicia reports in July 2012, the Aceh team stopped its activities before the pro-justicia stage. Instead, the Aceh team merely suggested “the third way,” allegedly a combination of the human rights court and the TRC, but practically abandonment of the human rights court track (Asiah *et al.* 2010, 21–23).<sup>27)</sup>

Five years later, Otto Syamsuddin Ishak, an Acehnese sociologist and researcher at Jakarta NGO Imparsial who actively wrote about human rights abuses in Aceh, became the head of Komnas-HAM. Finally, Aceh got its own KPP-HAM, just like East Timor. Although the legal status of the two teams is similar, in practice, the 2013 pro-justicia team for Aceh is very different from the KPP-HAM for East Timor in 1999. Except for the team’s five priority cases that occurred between 1998 and 2004 (*Kompas*, November 21, 2013),<sup>28)</sup> few details about the team are known to the public.<sup>29)</sup> It is an exclusively Komnas-HAM team, which includes no single member from outside the institution (KontraS 2014). Even if the team produces recommendation for a human rights court based on evidence of gross human rights violations, the possibility that such a court will actually materialize is very low, which leads us back to the larger problem: the failure of the preemptive human rights court.

Meanwhile, the human rights court in the LoGA was not established either. No one has a stake in a court for the post-Helsinki era only. Instead, the institution expected to

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↘ inquiry from the Ad-hoc Team for Aceh, which monitored ongoing violence and compiled 70 cases of abuses. Instead, the commission decided to make four new teams regarding different categories of abuses—which is synonymous with disapproval of a pro-justicia inquiry team (plenary session decisions, March 31, 2004, in Komnas-HAM 2004). The Suharto team (Tim Pengkajian Pelanggaran HAM Soeharto Komisi Nasional Hak Asasi Manusia) and the disappearance team (Tim Pengkajian Penghilangan Orang Secara Paksa 2004) also made frustrated recommendations to conduct further inquiries on Aceh.

26) Komnas-HAM formed these two teams after reviewing the “Suharto team” case file from 2003. “Petrus” refers to extrajudicial killings of alleged criminals in the eighties.

27) In 2012, the 65 team made similar “third way” suggestions, though they were recommendations from a pro-justicia team, if it matters at all.

28) The five cases are Rumah Geudong, Simpang KKA, Bumi Flora, Jambo Kepoh, and Bener Meriah. The 1999 Independent Commission already covered Rumah (Rumoh) Geudong and Simpang KKA, while Komnas-HAM made some inquiries into Bumi Flora.

29) As of July 2014, the team finished inquiries into just one case, Simpang KKA, out of the prioritized five. Komnas-HAM Commissioner Roichatul Aswidah’s comment, July 3, 2014, at a public forum hosted by Imparsial in Jakarta.



assume a major role in settling past accounts in Aceh was the second half of the “third way”—the TRC.

*Truth and Reconciliation Commission: The Permanent Alternative*

For more than a decade since the *reformasi*, the TRC has been a permanent alternative to or a preemptive policy against prosecution. The TRC law existed for two years from 2004 to 2006, until the Constitutional Court repealed the law. For the rest of the period, the TRC as an alternative has survived in written drafts in various stages. After the 2006 decision, the TRC bill was never revived, complicating the fate of the Aceh TRC. Truth-seeking, reconciliation, and amnesty through a TRC were frustrated after threats of international and domestic prosecution disappeared.

While the government opposed prosecution in a human rights tribunal in Helsinki, an explicit amnesty for crimes perpetrated during the conflict was not given. The absence of an amnesty clause for state agents can be explained in two ways. First, the Indonesian government knew well the international law claims against impunity and did not want to include such a controversial provision in the MoU.<sup>30)</sup> Second, if an Aceh TRC were established by the 2004 national TRC law, amnesty would have been granted to perpetrators and the human rights court would be accordingly closed, at least for crimes before November 2000. An amnesty provision would have been redundant.

The TRC was a reality to come in the near future from the perspective of participants in the Helsinki talks and the legislation of LoGA. The activities of the TRC commissioner selection committee coincided with the Helsinki peace process. The Ministry of Justice and Human Rights was responsible for both the Helsinki talks and completion of the candidate list. According to the 2004 TRC law, commissioners were supposed to take their oaths in April 2005, but the committee for commissioner selection was formed on March 28, 2005 between the second and third round of the Helsinki talks. Then, in August 2005—the month the MoU was signed—the list of 42 candidates was sent to the president, who had to select 21 from the list. Did this preliminary list come out because of the Helsinki talks? For the next 16 months until the Constitutional Court repealed the TRC law, President Yudhoyono never proceeded to the next phase of commissioner selection.<sup>31)</sup>

NGOs and victim representatives filed for judicial review of specific provisions of

30) Amnesty for GAM and Acehnese political prisoners cannot be interpreted as amnesty for crimes against humanity. See Jeffery (2012) for amnesty in post-conflict Aceh.

31) Selection of 21 commissioners by the president was not the final stage. The list was then to be sent to the parliament where candidates could be rejected and replaced with additional candidates from the original list.



the TRC law—those linking compensation and amnesty and closing the possibility of ad-hoc human rights tribunals. They were patient observers in the beginning. In March 2006—after 18 months from the enactment of the law—they went to the Constitutional Court. In December 2006, the court repealed the entire law rather than specific clauses. It was four months after the LoGA was enacted that the Constitutional Court annulled the TRC law.

The legal-technical question that arose from the Constitutional Court decision has been difficult for Aceh. In Aceh, there have been generally two positions regarding the future of the Aceh TRC in the face of the Constitutional Court decision. Some believed that the Aceh TRC must be formed under a properly established national TRC, because the LoGA stipulates that the Aceh TRC is an inseparable part of the national TRC. Others supported an independent Aceh TRC as soon as possible. Unlike the Helsinki MoU, which stipulated that the Aceh TRC should be formed by the national TRC, Article 229 (1) of the LoGA—“to seek the truth and reconciliation, a Truth and Reconciliation Commission shall be established in Aceh by virtue of this Law”—already established the Aceh TRC. Thus, according to this position, Aceh needs only the working procedures of the TRC by provincial regulation (*qanun*), not another legal umbrella at the national level.

The slow but positive progress in Jakarta strengthened the national-TRC-first position. The Directorate-General of Human Rights, an office under the Ministry of Justice and Human Rights, formed a drafting team in 2007, which produced an “academic draft” of the new TRC bill early in 2008 (*VHR News*, February 4, 2008). Throughout 2009 and 2010, public hearings for the new bill were held several times in Jakarta and Banda Aceh, to which representatives of the Aceh government were invited (Aspinall and Fajran 2014, 103). Then the bill was submitted to the president in July 2010 and entered the 2011 National Legislation Program (*prolegnas*).

The momentum of transition had long gone in Jakarta. In a survey of nine individual parliamentarians from all major factions that comprised the 2009–14 DPR, seven respondents—except those from Golkar and Hanura—indicated their support for the TRC (*Asasi*, March–April 2011). However, nominal support from legislators may in fact conceal complex layers of political positions, or no position. A representative from the ruling Democratic Party compared the court and TRC strategies and supported the TRC: “I think it is not necessary to bring them [cases of past human rights abuses] to court. . . . [Because] our court system is bad and corrupt . . . therefore, the TRC is more likely to guarantee processes that are fairer, and outputs are more likely to fulfill the sense of justice, *close to fair justice*.”<sup>32)</sup> Later, when asked regarding the willingness of the govern-

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32) Author’s interview, January 4, 2011 (Jakarta). Italics originally in English.

ment to establish the new TRC, his answer was rather different:

The problem is, *what is the relevance, what is the significance* . . . also, it seems like the bill does not get support from society [*masyarakat*], and society is not concerned with it any more . . . there must be a process of public pressure towards the government, the parliament, and the president to accelerate discussion of this bill. I believe this bill lost its legitimacy. . . . If you talk about [transitional justice], it is not solely to be seen through the TRC law. For me, the TRC law is, please go ahead [*silahkan saja*], [but] not necessary, no.<sup>33)</sup>

For him, there would be no point of proceeding with the TRC bill without public pressure. Meanwhile, TRC supporters were already disappointed to see the proposal of a truth commission being used as a tool for preemption and foot-dragging. Instead of a TRC, one of the human rights workers who previously led the TRC campaign supported a “fast-track” alternative:

About the TRC bill, I personally feel now it is not so necessary to submit the bill. Why? Because it is like giving . . . an alibi to the state for not handling past violations in a prompt manner, because they can say this bill is now being discussed. The bill is still in the process of discussion, so wait for the bill to be finished. Because of that, they are able to do nothing during the period the law is being made. Therefore, we are giving time for the government or the state to avoid responsibility, to get away from responsibility—this is a sort of alibi. However, making this law will take a long time. . . . I believe, politically, it is not so urgent to discuss this bill now. What is more urgent is that the current government finds a pragmatic policy to resolve past cases, so that Indonesian society is not burdened with the history of the past cases. Therefore, there must be a political exit for the past, and it is not necessary to form a truth commission by making a law—it is enough if the president can issue a government regulation or a presidential decree, establish a commission, and this commission is assigned to clarify what happened in the past, and the government gives apologies and also rehabilitation and compensation to victims. Case closed, so that one does not keep being brought to the past. . . . Without something like this, I believe Indonesia will just spin around [*saya kira Indonesia ini berputar-putar*].<sup>34)</sup>

The idea of a TRC had officially existed since the early *reformasi* period—as a draft law, a law, an academic draft law, etc. Although the TRC was never formed in practice, the alternative was always conveniently used as an “alibi” for government inaction, or a preemptive alternative against prosecution. As one human rights activist states: “[when they demanded prosecution] the Prosecutor General’s Office and the DPR said several times, ‘Wait for the TRC to come’ (*Nanti tunggu KKR*).”<sup>35)</sup>

Currently, the slow and protracted legislative process has halted once again as

33) Author’s interview, January 4, 2011 (Jakarta). Italics originally in English.

34) Author’s interview, January 7, 2011 (Jakarta).

35) Author’s interview, December 20, 2010 (Jakarta).

President Yudhoyono withdrew the bill from the DPR and sent it back to the Coordinating Ministry for Legal, Political and Security Affairs (Wahyuningroem 2013, 128). It is unlikely that the bill will be revived after so many years of indifference. Neither would a “fast-track” alternative—an administrative measure that supposedly will offer reparations and an official apology from President Yudhoyono to victims of past human rights abuses—materialize without threats or vigorous pressure.<sup>36)</sup>

Those who believed early on that waiting for the national TRC was not very promising supported a stand-alone Aceh TRC. In December 2008, Aceh NGOs and victim associations submitted a TRC bill to the DPRD and the Aceh provincial government. The Aceh parliament put this bill into the local legislative program in February 2011.<sup>37)</sup> The bill remained dormant for two years before the TRC suddenly became a hot issue in the middle of the conflict between Jakarta and Banda Aceh over Aceh’s decision to adopt the GAM banner as its official flag (ICG 2013). The Aceh parliament invited local and national human rights activists for a public hearing on the local TRC bill. After declaring that the bill for a stand-alone Aceh TRC should be passed, Aceh representatives travelled to Jakarta to consult with the central government, where they were told once again to wait for the national TRC (*KBR68H*, April 19, 2013; April 25, 2013).

Against Jakarta’s will, Aceh passed the TRC qanun at the end of the year. The qanun challenges the way truth and reconciliation has been treated in Indonesia as a preemption against prosecution. The body of the qanun is largely based on the 2008 draft from Aceh NGOs and victim groups; however, the amnesty provision of the 2008 draft is nowhere to be found.<sup>38)</sup> Truth-seeking and reconciliation are reserved for human rights violations of the non-gross varieties—social, economic, and cultural rights first, and then civil and political rights.<sup>39)</sup> Moreover, the TRC qanun explicitly denies that reconciliation forecloses the possibility of prosecution.<sup>40)</sup> The Aceh TRC will adjust itself accordingly once the national TRC is formed;<sup>41)</sup> until then, the new idea of “TRC-for-non-gross-violations” will be a guiding principle for Aceh.

36) See Wahyuningroem (2013, 128–129) for dialogues for “fast-track” alternatives between the human rights community and the Yudhoyono administration since 2010, which started out as a discussion of follow-up measures of the 2009 parliamentary recommendations on the forced disappearance of activists (1997–98).

37) The outgoing provincial councilors put it in the 2009 legislation program, but it was missing in the 2010 program of newly elected members.

38) Another major difference is the period for truth-seeking. While the 2008 draft proposed to cover the period between 1989 and 2005, the new qanun covers the period going back to 1976 and before. My gratitude goes to Chairul Fahmi, who kindly forwarded the new qanun to me.

39) See Article 19 on revealing truth (*pengungkapan kebenaran*) of the 2013 qanun.

40) See Article 31(4) of qanun Aceh.

41) See Article 48(4) of qanun Aceh.

Is the qanun another bargaining chip of the Aceh government to mobilize against Jakarta? Or, have Aceh politicians begun to feel that some local reconciliation initiatives are necessary? If Aceh politicians wanted to avoid responsibilities or risks that would disrupt the mutually beneficial relationship with political elites in Jakarta, with whom they make allies for presidential and national parliamentary elections, it is difficult to see how and why this preference for avoidance has changed. Furthermore, newly excavated pieces of truth or even a compilation of widely known facts will bring embarrassment to individuals and groups involved in grave events of the past, including former GAM cadres who dominate Aceh politics today. Clearly, Jakarta is not happy with the new TRC qanun. Minister of Home Affairs argued that Aceh should have waited until the national legislation would materialize (*BBC Indonesia*, December 27, 2013). The Ministry also sent a letter of clarification to Aceh governor, indicating that all clauses on truth-seeking, reparations, reconciliation, and data management—i.e. virtually all substances of the qanun—must be eliminated from the qanun (Menteri Dalam Negeri 2014). Whether the TRC qanun would be implemented despite these barriers is yet to be seen.

In sum, the national TRC was a preemptive policy against the court mechanism, and it complicated truth-seeking in post-conflict Aceh too. While many observers emphasize the constitutional court decision that repealed the law, it should also be noted that the progress with setting up the commission and making a new law has been extremely protracted. Faced with procrastination at the national level, political elites in Aceh withheld the Aceh-only TRC proposal from civil society for five years before the Aceh parliament approved the TRC qanun in December 2013.

The absence of two major institutions of transitional justice, trials and truth commissions, however, does not mean utter indifference to conflict victims in post-Helsinki Aceh. Without narratives, conflict victims entered the administrative system as numbers.

### **Strong Sense of Justice and Aid for Civilian Victims in Aceh**

Compared to the absence of the human rights court and the TRC, the implementation of aid for civilian victims in post-Helsinki Aceh is impressive. These measures were stipulated in the Helsinki MoU, but there are other MoU clauses such as the TRC that were never implemented. The reparation measures in the LoGA are compensation, restitution, and rehabilitation for victims of human rights violations whose status shall be granted by the nonexistent human rights court. Thus, the implementation of economic and social aid for tens of thousands of civilian victims must be explained by something other than the presence of legal clauses. Aceh nationalism in the *reformasi* period is the

indispensable background to the origins of these measures.

The fall of Suharto in May 1998 changed the political atmosphere of Aceh in a very short time. Student activism grew, and local human rights groups were soon formed. Local and national politicians jumped on the human rights bandwagon too, strongly denouncing military abuses in Aceh.<sup>42)</sup> General Wiranto, then Minister of Defense and commander-in-chief of the Indonesian military, apologized to the people of Aceh and announced withdrawal of non-territorial troops on August 8. The national parliament and Komnas-HAM sent fact-finding teams in July and August. By September 1998, proposals from those teams included nearly every element of standard transitional justice measures and more: to put decision-makers and perpetrators of abuses on trial and investigate abuses thoroughly, to provide aid or compensation to victims and their families, to grant amnesty to political prisoners, and to adjust allocation of revenues from natural resources between national and provincial governments.<sup>43)</sup>

The inquiry teams of the parliament and the Komnas-HAM were similar to a beginning of official inquiries into DOM violence rather than a conclusion, which the teams themselves acknowledged. However, further breakthrough measures did not come. Only the killing of Bantaqiah and his pupils in July 1999 made President Habibie establish the Independent Commission for the Investigation of Violence in Aceh (Komisi Independen Pengusutan Tindak Kekerasan di Aceh, hereafter the Independent Commission),<sup>44)</sup> which was late in timing.

If human rights and military abuses were the defining issues of the early *reformasi* period in Aceh, after President Habibie announced a referendum for East Timor in January 1999, the Acehnese civil society promoted a similar referendum for Aceh. On November 8, hundreds of thousands of people marched on the streets of Banda Aceh for the largest protest Aceh had ever seen. The Independent Commission findings were released the very next day, far ahead of schedule.<sup>45)</sup> President Abdurrahman Wahid met

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42) For example, H. Muchtar Aziz, a PPP parliamentarian from Aceh, mocked the government: "Imagine that around 3,000 soldiers are deployed to confront 27 rebels. That is excess" (*Harian Pelita*, August 10, 1998).

43) Two lists of recommendations that came out in September (DPR-RI 1998; INCHR 1998, 74–76) are very similar. Both recommend trials for human rights abuses, although only the Komnas-HAM recommendation makes it explicit that the hierarchy of decision-makers must be brought to court. Komnas-HAM uses the English term compensation, while the DPR team uses the term *santunan* (aid/assistance). Only the DPR list mentions the problem of political prisoners.

44) See note 23 for the Bantaqiah killings. The five cases that the Independent Commission strategically focused on covered different types of abuses that occurred in different districts (Pidie, North Aceh, East Aceh, and West Aceh) throughout the DOM period and thereafter, though collection of evidence was largely limited to four years from 1996 to 1999.

45) It meant that the team announced findings and recommendations within less than three months, in the middle of its first six-month term.

Independent Commission members on November 10, where he encouraged them to keep up investigation into recent abuses and passed on their findings directly to the new Prosecutor-General Marzuki Darusman. With political support from the president, prosecution proceeded in a relatively prompt manner. The trials for the Bantaqiah killings began on April 19, 2000 in Banda Aceh, with 1,000 soldiers on guard. Twenty-five defendants, 24 soldiers and one civilian, were charged with premeditated murder.<sup>46)</sup> On May 17, 2000, all of them were convicted of the secondary charge of individually and collectively committing murder (Drexler 2008, 148). They received sentences from 8.5 to 10 years in jail.

In terms of public support, the trial was a total failure. The “*koneksitas*” (civil-military) court was a result of compromises among multiple goals and models. As civilian prosecutors and judges participated in the processes, the major disadvantages of the military court, such as exclusive dominance by the military hierarchy and the lack of openness, could be avoided.<sup>47)</sup> If the goal of an anticipated human rights court on East Timor was to satisfy the international audience with trials matching international standards within a reasonable time, the goal of Aceh trials was to satisfy the Acehnese “sense of justice” as soon as possible to assuage the demand for a referendum. Thus, waiting for a new human rights court law to be passed was not a very strategic option for the government. There is no reason to believe that the whole process was a conspiracy to cover the truth or to prevent human rights abuses in Aceh from being sent to a human rights court. Similarly, there is no guarantee that a KPP-HAM and human rights court would have produced better outcomes.

Nevertheless, as long as the possibility of human rights tribunals for Aceh existed, the Independent Commission and the *koneksitas* trial were regarded as inferior measures to the human rights court for East Timor and, thus, discrimination against Aceh. International and national human rights NGOs were not satisfied either. Human Rights Watch (November 24, 1999) argued that “if accountability is to have any meaning, the Indonesian government will have to conduct a comprehensive investigation going back to 1989, and going all the way up the military chain of command . . . this crisis is not going to be defused unless there is a sense in Aceh that justice has been done, and not just for a handful of cases.” On the day the trial opened, Munir from the Jakarta NGO KontraS commented that “the trial is only to show that there is already a trial, while it ignores substantive

46) Two commanding officers of the operation were not indicted, however, to say nothing of their superiors.

47) The ground for the *koneksitas* court was that the Bantaqiah killing was a joint civil-military operation, involving a civilian informant. Since *reformasi*, a similar court opened only for two cases: the Bantaqiah killings and the July 27, 1996 affair.

demands of Aceh's people who want justice, not just a court" (*Kompas*, April 20, 2000). Between NGOs with the maximalist position and conservative cliques of the military, President Wahid and his reformist administration failed to address human rights abuses in Aceh successfully. Follow-up measures to the Independent Commission findings ended with the Bantaqiah trial.<sup>48)</sup> After two years since the end of DOM, settling human rights abuses disappeared from the agenda of Indonesian government policies on Aceh.

As an observer noted, "though human rights groups rarely admit this, there have been some positive changes" (Barter 2004, 83), and the background to these "positive changes" was strong pressure and anger against the Indonesian government from the Acehnese society. Challenging the GAM rebels militarily was one thing; placating the vocal and disgruntled voters was another. Disgruntled voters were a particularly serious problem to local politicians, who were being marginalized as irrelevant collaborators as conflict escalated (McGibbon 2006). Some initiatives from the provincial government overlapped with those of the central government, such as a local fact-finding team into the Bantaqiah killings.<sup>49)</sup> Other initiatives were novel, such as aid projects to conflict victims from new resources of the special autonomy funds. A large portion of the post-Helsinki aid schemes originated in post-DOM local politics, where disbursement of compensation was used to placate discontent among the electorate.

The *diyat* and the housing projects, which took up more than half of the BRA funds between 2005 and 2009 (Avonius 2011), began as initiatives of the provincial government in the post-DOM period. In 1998, the provincial government of Aceh announced programs of scholarships and medical assistance for DOM victims (Amnesty International 2013), which continued to be provided by the BRA. In addition, between 1998 and 2000, hundreds of DOM victims were given houses worth 15 million rupiah (*Serambi Indonesia*, June 6, 2000).

When a peace negotiation team led by then Coordinating Minister for People's Welfare Jusuf Kalla arrived in Malino, Central Sulawesi, to settle the violence in Poso, they had the housing program in Aceh in mind. Immediately after the Malino Declaration on December 20, 2001, Coordinating Minister for Economic Affairs Dorodjatun Kuntjoro-Jakti said that "the method of rehabilitation for Poso will be more or less the same with the one we used in Aceh" (*Kompas*, December 22, 2001). The rehabilitation measures

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48) Except for a military tribunal for the rape case in Medan, there were no trials for three other priority cases of the Independent Commission, despite Marzuki's earlier announcement that the Rumoh Geudong trial was being prepared along with the Bantaqiah trial (*Kompas*, January 4, 2000).

49) After two months of inquiry, the local team announced its finding that Bantaqiah and his pupils had not resisted to the one-sided military attack, a few days before the Independent Commission's findings came out (*Kompas*, October 31, 1999).



included, among others, housing aid of five million rupiah for each family and two million rupiah for those who lost family members (*Kompas*, December 27, 2001). Later, in February 2002, the Jusuf Kalla team led another peace accord for communal violence in Maluku and implemented similar rehabilitation packages for victims of conflict. In Aceh, further housing schemes were introduced, e.g., the 2003 plan to rebuild 6,000 houses for refugees with funds from both central and provincial government budgets (*Kompas*, September 5, 2003). The BRA housing program for conflict victims is a continuation of these earlier schemes, which preceded the Tsunami rehabilitation programs of 2005.

The origin of *diyat* in Aceh goes back to 2002, when Vice-Governor Azwar Abubakar launched the program with the new special autonomy budget (UNDP and Bappenas 2006, 38). It is not clear whether Azwar Abubakar was aware of similar programs in Poso and Maluku. However, the aids in eastern Indonesia preceded the introduction of *diyat* in Aceh, though it was not called *diyat* in regions of Christian-Muslim conflict. The *diyat* program was allegedly rooted in Islamic tradition. The punishment for murder according to *qisas* (*qishash*) is the death penalty, but victims' families and the perpetrator may reach a settlement through an alternative process in which the families forgive the perpetrator and accept compensation amounting to 100 camels (Azhari and M. Jafar 2003, 5–13). According to this interpretation, *diyat* involves acknowledgment of responsibility from the perpetrator. Whether the *diyat* program means acknowledgment of state responsibility in civilian deaths was, however, far from clear in practice. Although *ulama* in Aceh may have interpreted *diyat* in this way, Jakarta was silent regarding the point.

Moreover, if we take the interpretation seriously, receiving *diyat* is equivalent to a promise that victims will not bring the case to court—a promise reminding us of the annulled TRC law. Again, this meaning of *diyat* does not seem to have been widely shared among victims in Aceh. Victims' communities in Aceh did not experience serious internal disputes with *diyat*.<sup>50)</sup> The recipients tended to dismiss the idea of alternative Islamic conflict resolution through *diyat* (Clarke *et al.* 2008, 23). Then, for conflict victims in Aceh, there would be no contradiction between receiving *diyat* and demanding justice for perpetrators. For the state and the victims alike, the *diyat* program was just another ad-hoc aid scheme.

Since 2005, the Department of Social Affairs in Jakarta had taken up the *diyat* pro-

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50) Avonius (2012, 230) argues that civil society activists and family members of victims turned down *diyat*, criticizing its goal of maintaining impunity. It is true that NGOs and victim groups have criticized *diyat*, arguing that real reparations based on international human rights principles will come only after the TRC, because *diyat* does not involve acknowledgment of wrongdoings. It seems they did not discourage victims from receiving *diyat*, however. If they had actively tried to discourage victims from receiving the money, it would certainly have split victims' groups.



gram and channeled the budget through its local office, and then BRA, until the funds ran out at the end of 2009. The BRA estimates civilian deaths during the conflict to be 30,128, and 29,292 family members have received various amounts of *diyat*. An even larger portion of reintegration funds for civilian victims was dedicated to the housing project. The amount of aid per house increased from 35 million rupiah to 40 million rupiah, and the target of the housing aid became 29,378 units (Ketua BRA 2010, 7). In addition, the BRA distributed 10 million rupiah for victims of disabilities (*korban cacat*). Considering that political prisoners and anti-independence militias also received 10 million rupiah from reintegration funds, the amount of compensation for civilian victims is not small.<sup>51)</sup>

Aid schemes for civilian victims in post-Helsinki Aceh belong to enduring legacies from post-DOM politics, when the central and provincial political elites attempted to fulfill the Acehnese sense of justice with all possible measures except for a referendum for independence. Why do they endure when the target of preemption, i.e., the threat of independence, is largely gone, unlike trials and truth-seeking measures? Stand-alone compensation in general is less costly than trials or TCs. As long as compensation is disbursed by the state rather than private parties, it involves little cost on the side of the outgoing regime or perpetrators. The ambiguous meaning of *diyat* and other schemes makes it even more convenient to continue the compensation schemes, which were implemented without acknowledgment of any wrongdoing. Strong demands from victims in the face of strong resistance from status-quo forces may result in stand-alone compensation. This compensation has the advantage of prompt implementation without having to wait for the implementation of a truth commission or criminal trials.

The continuity of these schemes in post-Helsinki Aceh despite their origin as preemptive policies can be traced back to the activism of the vibrant civil society in post-authoritarian Aceh. These compromise, not necessarily corrupt, policies do not give us a clue on the backgrounds of the suffering, nor the narratives of the victims—not even an accurate description of aggregated number of damages.<sup>52)</sup> For now, however, these numbers are all that post-Helsinki Aceh added to what we officially knew about the decades-long conflict.

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51) Three thousand ex-combatants of GAM were to receive 25 million rupiah each, but some individuals received less than that, due to under-reporting of the number of combatants.

52) Compensation without truth-seeking does not necessarily involve corruption, but BRA officials confess they have difficulties with the verification process and, as a consequence, the number of new houses being built far exceeds actual damages from the conflict. Personal communication with BRA officials, November 29, 2010 (Sabang). The 30,000 target of *diyat* was also much—from 150% to 375%—higher than the then-existing estimates of the conflict death tolls. Author's interview with a local human rights worker, November 26, 2010 (Banda Aceh).

## Conclusion

When President Megawati visited Banda Aceh in 2002, she said “all law violations, including abductions and murders, must be tackled”; her Coordinating Minister for Political and Security Affairs, Susilo Bambang Yudhoyono, agreed, saying “all major violations of human rights in the past would be brought to court” (*Jakarta Post*, December 19, 2002). Since then, no major human rights violations of Aceh’s past have been brought to court; nor were official truth-seeking commissions launched. Post-conflict Aceh is fully equipped with transitional justice measures, but only on paper. Years after President Yudhoyono’s successful peace process with Aceh, the situation there was described as “non-truth and reconciliation” (Braithwaite *et al.* 2010).

Preemptive transitional justice policies appear when reluctant policymakers attempt to trump “tougher” options with more acceptable alternatives. An implication is that familiarity with international norms and models does not guarantee implementation of transitional justice policies. Post-conflict Aceh did not lack exposure to international actors and norms. Domestic actors—political elites and human rights groups in Jakarta and Banda Aceh—have been well aware of international norms on human rights and transitional justice. They accordingly introduced proper models, which were to be abandoned when the target of preemption disappears. Thus, to explain transitional justice fully, one should not stop at the point of adoption because the presence of legal clauses does not always lead to implementation.

Will delayed justice come to Aceh? Post-conflict transition in Aceh was an Indonesian transition, and transitional justice in post-Helsinki Aceh was conditioned by the rise and fall of two preemptive policies on the national level—the human rights court and the TRC. If what hampers prosecution is only the fear of potential spoilers as the commonly discussed dilemma between peace and justice posits, we can expect that the possibility of prosecution will increase as time passes. An increase in prosecutions is not likely to be the case in Aceh, as the absence of prosecution there is closely related to the dismal performance of the national human rights court system, which was originally designed to preempt an international court. Similarly, the recent adoption of the Aceh TRC qanun makes us wonder whether it will be implemented, unlike previous laws that stipulate a TRC. Threats of court do not exist, and the central government makes a clear opposition to the Aceh-only TRC. Local elites, in particular those who do not want to face uncomfortable truths, will not act to implement the qanun under these circumstances.

The vibrant civil society in post-DOM Aceh contributed to the origin and development of aid schemes for conflict victims. Stand-alone compensation, an anomaly when first implemented in Aceh, became the standard solution for victims of communal vio-

lence throughout Indonesia. They are less costly than trials or a TRC because its ambiguous meaning incurs little cost to perpetrators of violence and their supporters. These are the only measures available for conflict victims in the current state of transitional justice in post-conflict Aceh, which reflects the situation of transitional justice of post-authoritarian Indonesia. The schemes also show that where commitment to rule of law is weak, as in many transitional societies, organizing and maintaining political pressure is as important as proper introduction of human rights norms.

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