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LEGAL AID IN THE CONFLICT AREA

Lesson Learned on Conflict and the Concept of Structural Legal Aid

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Jakarta Legal Aid Institute
2015

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FOREWORDS

Conflict, could resulted serious impact for the civil society. During conflict, there are many potential serious violation of human rights, such as; right to feel safe, right to life, right to free from torture and other fundamental rights. Conflict could also result the damage of legal system and justice. These could be seen from various experiences happened in many places in Indonesia like Papua, Aceh, Timor Leste, Poso and Maulu. As it like what happen in Southern Thailand. These experiences on handling the conflict, is hopefully can be some lesson learned by the civil society in Southern Thailand.

This book on Legal Aid in the Area of Conflict is presented by LBH Jakarta in collaboration with Sasakawa Peace Foundation as a form of documentation of activities provided by offices of Legal Aid Institution supported by Indonesian Legal Aid Foundation at areas of conflicts in Indonesia, in the conflict areas in Indonesia, as the lesson learned for civil society in Southern Thailand.

Through Structural Legal Aid's analysis and approach, we try to describe to readers that there are other activities, which must be pursued aside from merely providing legal assistance through judicial process. Legal aid activities can be an empowerment of community, strengthening of legal knowledge of the community in question, research, campaign, and other factors that can support the process of conflict resolution.

This book covers five areas of conflict that occurred during the New Order, namely Papua, Aceh, East Timor, Maluku and Poso. All five regions were the areas wherein Legal Aid Foundations took part as one of conflict resolution actors.

With the presence of this book, it is expected to give a broader insight for society regarding the concepts of legal aid and structural legal aid. This book is also addressed to dedicated legal aid activists all over Indonesia, in regional Southeast Asia and international levels, to present the inspiration of structural legal aid works for the creation of peace.

Furthermore, we hope this book could be the reference for civil societies in Southern Thailand especially those dedicated themselves to provide legal aid, in their efforts to upholding human rights and justice, protect victims' rights, encourage peace and enforce the rule of law.

In the end, the book is also expected to be able to be a memorial of conflict and the structural legal aid that has been achieved in Indonesia. And, further discourse on legal aid in post-conflict era will be the most necessary as the continuity from what discussed in this book.

Sincerely Yours

Febi Yonesta

Director of LBH Jakarta

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ABBREVIATION

| | |
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| ABRI | : (<i>Angkatan Bersenjata Republik Indonesia</i>) Armed Forces of the Republic of Indonesia (established 1962, consisting of Army, Navy, Air Force, and Police; from April 1, 1999 to TNI excluding the National Police) |
| APBD | : (<i>Anggaran Pembelanjaan Biaya Daerah</i>) Regional Government Budget |
| Babinsa | : (<i>Bintara Pembina Desa</i>) Village Leadership NCO (fifth and lowest level of the Army territorial command system) |
| BHS | : (<i>Bantuan Hukum Struktural</i>) Structural Legal Aid |
| BIN | : State Intelligence Agency (established August 2001 as successor institution of <i>Bakin</i>) |
| Brimob | : Mobile Brigade (of the Police, an elite task force) |
| Bripda | : (<i>Brigadir Polisi Dua</i>) Police Brigade Two |
| Briptu | : (<i>Brigadir Polisi Satu</i>) Police Brigade One |
| DAP | : (<i>Dewan Adat Papua</i>) Papuans Customary Council |
| DI/TII | : (<i>Daarul Islam/Tentara Islam Indonesia</i>) the Darul Islam Movement/Islamic Troops of Indonesia |
| DOM | : Military Area of Operations (Aceh, 1989-1998) |
| DPR | : The House of Representatives |
| GAM | : (<i>Gerakan Aceh Merdeka</i>) Free Aceh Movement |
| GDP | : (<i>Pendapatan Domestik Bruto</i>) Gross Domestic Product |
| Golkar | : (<i>Partai Golongan Karya</i>) the Party of the Functional Groups; Golongan Karya Party |
| HIR | : (<i>Het Herziene Indonesisch Reglement</i>); Revised Indonesian Criminal Procedure; made in Dutch Colonial era |
| HPH | : (<i>Hak Pengusahaan Hutan</i>) forest utilization rights/ forestry concession area |
| IKADIN | : (<i>Ikatan Advokat Indonesia</i>) Indonesian Advocate Organization |
| Inpres | : (<i>Instruksi Presiden</i>) Presidential Instruction |
| IPM | : (<i>Indeks Pembangunan Manusia</i>) Human Development Index/HDI |
| JPU | : (<i>Jaksa Penuntut Umum</i>) Public Prosecutor; District Attorney |
| Keppres | : (<i>Keputusan Presiden</i>) Presidential Decision |
| KKP (Timor Leste) | : (<i>Komisi Kebenaran dan Persahabatan Timor Leste</i>) Timor Leste Commission of Truth and Friendship |
| Kodam | : (<i>Komando Daerah Militer</i>) Military Area Command (1 st and highest level of the Territorial Army command structure) |

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| Kodim | : (<i>Komando Distrik Militer</i>) Military District Command (3 rd level of the Territorial Army structure) |
| Komnas HAM | : (Komisi Nasional Hak Asasi Manusia) the National Commission on Human Rights |
| Koppasus | : (<i>Komando Pasukan Khusus</i>) Army Special Forces Command (set up 23 May 1985 as successor of <i>Kopassandha</i>) |
| Koramil | : (<i>Komando Rayon Militer</i>) Military Sub-District Command, Military Precinct Command (4 th level of the Army territorial structure) |
| Korem | : (<i>Komando Resor Militer</i>) Military Region Command (2 nd level of the Territorial Army structure, usually comprising a residency territory or a number of cities/regencies) |
| KPP HAM | : (<i>Komisi Penyelidik Pelanggaran Hak Asasi Manusia</i>) the Commission of Inquiry into Human Rights Violations in East Timor; a task force formed by Komnas HAM to investigate incidents that allegedly human rights violations contained therein. |
| KUHAP | : (<i>Kitab Undang-Undang Hukum Acara Pidana</i>) Criminal Procedure Code |
| KUHP | : (<i>Kitab Undang-Undang Hukum Pidana</i>) Penal Code; Criminal Code |
| KUT | : (<i>Koperasi Usaha Tani</i>) Farm Business Cooperation |
| LBH | : (<i>Lembaga Bantuan Hukum</i>) Legal Aid Foundation. In this book, it refers to LBH offices within the scope of YLBHI (see: YLBHI). |
| LSM | : (<i>Lembaga Swadaya Masyarakat</i>) Non-Governmental Organization |
| MIFEE | : Merauke Integrated Food and Energy Estate |
| MPR | : (<i>Majelis Permusyawaratan Rakyat</i>) the People's Consultative Assembly |
| MUI | : (<i>Majelis Ulama Indonesia</i>) Indonesian Ulema Council |
| NGO | : Non-Governmental Organization |
| NICA | : (<i>Nederlandsch Indie Civil Administratie</i>) Netherlands Indies Civil Administration |
| NKRI | : (<i>Negara Kesatuan Republik Indonesia</i>) the Unitary State of the Republic of Indonesia |
| OPM | : (<i>Organisasi Papua Merdeka</i>) Free Papua Organization |
| PBB | : United Nations |
| PDI | : (<i>Partai Demokrasi Indonesia</i>) Indonesian Democratic Party |
| Pdt. | : (<i>Pendeta</i>) Priest or Father/Fr. |
| PDI-P | : (<i>Partai Demokrasi Indonesia Perjuangan</i>) Indonesian Democratic Party of Struggle |
| Polri | : (<i>Kepolisian Republik Indonesia</i>) the National Police of the Republic of Indonesia |

| | |
|--------|---|
| PP | : (<i>Pengacara Publik</i>) Public Interest Lawyer |
| PPP | : (<i>Partai Persatuan Pembangunan</i>) United Development Party |
| SK | : (<i>Surat Keputusan</i>) Decree |
| SMU | : (<i>Sekolah Menengah Umum</i>) General Senior High School |
| TNI | : (<i>Tentara Nasional Indonesia</i>) Indonesian National Army, the Armed Forces of the Republic of Indonesia (official name from 1 st April 1999) |
| TNI AD | : (<i>Tentara Nasional Indonesia–Angkatan Darat</i>) Indonesian Armed Forces-Land Forces |
| TNI AL | : (<i>Tentara Nasional Indonesia–Angkatan Laut</i>) Indonesian Armed Forces-Naval Forces |
| TNI AU | : (<i>Tentara Nasional Indonesia–Angkatan Udara</i>) Indonesian Armed Forces-Air Force |
| UNTEA | : United Nations Temporary Executive Authority |
| UP4B | : (<i>Unit Percepatan Pembangunan Papua dan Papua Barat</i>) Development Acceleration Unit of Papua and West Papua. |
| UUD | : The 1945 Constitution |
| WALHI | : (<i>Wahana Lingkungan Hidup</i>) the Indonesian Forum for Environment |
| WIT | : (<i>Waktu Indonesia Timur</i>) Eastern Indonesia Time Zone |
| YLBHI | : (<i>Yayasan Lembaga Bantuan Hukum Indonesia</i>) the Indonesian Legal Aid Foundation; The headquarter of LBH offices, which founded in fifteen areas in Indonesia, i.e., LBH Jakarta, LBH Surabaya, LBH Medan, LBH Banda Aceh, LBH Semarang, LBH Papua, LBH Padang, LBH Palembang, LBH Bandar Lampung, LBH Makassar, LBH Manado, LBH Bandung, LBH Denpasar, LBH Pekanbaru and LBH Yogyakarta. (See: LBH). |

INDONESIA MAP



Sumber: http://upload.wikimedia.org/wikipedia/commons/3/33/Bev%3C3%B6lkerungsdichte_Indonesiens.png

CHAPTER I: PROLOG

A. CONFLICT AND LEGAL AID

In conflicts that occur in Indonesia, we can find that they generally have roots in political background and originate from unfair policies. On the other hand, discrepancy on allocation of resources has caused a sense of injustice that set conflict in motion. Meanwhile, religion, ethnicity, and separatism issues are some triggering factors that wrap those conflicts to remain prolonged.

In situations of conflict, almost all Government functions cannot run effectively, including law enforcement activity. Prosecutors and judges thus leaving region in conflict due to the absence of security guarantees, while the police and military often favor in the proceeding conflict. Civil society who at all times become victims, are often marginalized from and by the fighting parties.

Therefore, in these situations, legal aid can not only focus on the utilization of formal legal channels. Because, this kind of approach will be very difficult to implement bearing in mind Government was ineffective in enforcing the laws. Legal aid should be targeted further towards the empowerment of civil society, as the marginalized faction, to merge with the joint voices regarding the current conflict. Civil society's capacity should be built in order to actively involve in conducting close watch and clarification on factual incidents on the field, as well as to enforce the peace toward parties in conflict.

Legal aid should be also focused to bridge communications among victim community with national and international networks that can support their efforts to stop the enduring violence and to have protection from potential threats. Legal aid should be able to facilitate the key actors of conflict and policy makers at national level, and certainly by engaging civil society in order to legitimize peace building efforts. On stages of conflict, legal aid can be aimed at mediation between parties in conflict. It is important to make sure there would be neutral zone where each party feels safe in these zones. Legal aid can also approach on needs, assuming that these

basic needs will always be fulfilled regardless the ongoing conflict and in favor of trust building to the conflicted parties.

The strategic position of legal aid institution enables it to consolidate various initiatives to encourage the peace. Economic empowerment and humanitarian aid can become gateways to commence such initiatives.

B. POST-CONFLICT CHALLENGES

Any conflict will ultimately reach post conflict phase. In many cases, conflict left behind the area in paralyzed condition such as devastated infrastructure, economy and administration.

Therefore, legal aid strategy must also be prepared to deal with the aftermath of conflict; including encouraging law as the commander in chief during a conflict upshot. Nonetheless, reformation failure in Indonesia is in the fortification of parliament, instead of law enforcement institutions.

A problem that commonly occurs in post-conflict phase is relating to the reign of law and human rights. The conflict that had been running so long has ravaged governance system and rule of law, socio-culture and legal awareness. These things cause violence to continue to happen and likely become sustainable. The conflict is not genuinely ended because there is no effective rule of law. Reconciliation to establish amity is not sincerely materialized because the peace process might not involve all factions of conflict, as a result some factions would not be satisfied. It creates potential of conflict that might still be livid.

Danger in post-conflict phase is the emergence of wicked new powers that inclined to violence to achieve political and economic interests. Conflict had changed political map and control of resources. Parties that acquired power in points of conflict could continue to maintain their strength in the aftermath. Whereas in reality they did not gain good value of power, which they attained from committing disorders hither and thither. The 'stowaways', and even the hijackers, and the profit takers can threaten the aftermath period. Aspirations and values which had been fought for during conflict time were then

forgotten under manipulation of those 'dark riders'. For example: sectarianism, ethno-nationalism, et cetera. They prompt security threats that frequently occur due to weak governance function.

Unfortunately, the parties in conflict are often unprepared to deal with the post-conflict phase. This is due to several issues:

1. Their experience is generally related to violence. Portions of diplomacy, politics, and bureaucracy are commonly bare minimum.
2. Minimum resources to establish new life after conflict.
3. The ruined infrastructure hinders the development,
4. Lack of knowledge and skills of the parties in conflict in governance system and rule of law,
5. Potential on disintegration between those who are in conflict.

C. LEGAL AID IN POST CONFLICT

The parties in direct conflict might collaborate to maintain justice acts to civil society; because source of conflict is usually driven by specific interests. Consequently, when the interest of parties in conflict is overlapping, they might combine forces to achieve those benefits.

Therefore, legal aid in post-conflict phase should pay attention to:

1. Encourage the creation of prerequisites that enable the realization of justice and law enforcement, such as:
 - a. Building legal awareness of all parties, especially at lower echelons, in order to have common understanding on the aspirations that have been fought for shall truly be accomplished at post-conflict phase,
 - b. Encourage improvement of legal system and structure,
 - c. Promote the establishment of institutions essential for monitoring justice and law enforcement; whether in the government, independent institutions, and institutions of civil society,

- d. Capacity building of human resources concerning the legal matters.
2. Urge for changes in policies which used to be a source of injustice and ignited conflict
3. Society consolidation by exploring local potentialities that enabling the arrangement.
4. Organize all elements to keep the peace. The media is one of essential elements to constantly uphold the peace.
5. Continue to monitor developments in area of conflict, every violation, injustice, policy, and progress.
6. Support the presence of truth seeking forum
7. Build a memorial to prevent recurrence of conflict
8. To anticipate the potentation of social disintegration and segregation.

Failure in utilizing post-conflict management as a perspective in developing the area may result in the return of similar conflict as its sequel. The pluralism education, for example, becomes one of rudiments that are necessary to maintain peace and cooperation between the parties to develop the country.

CHAPTER II: PERSPECTIVE AND STRATEGIC ROLE OF LEGAL AID

A. THE PURPOSE AND TYPHOLOGY OF LEGAL AID

The Purpose of Legal Aid

The practice of granting legal aid developing nowadays cannot be separated from how it evolved over time. Based on notes from Dr. Mauro Cappelletti says;

“Legal service programs for the poor have been started since Roman times. The granting of legal aid provided by the Patronus was driven by the motivation to gain influence in the community. Giving legal aid at all times is closely related with the applicable moral values, political views and philosophies. In medieval times, legal aid issues was influenced by Christianity, namely the desire of people to vie for giving alms (charity) in the form of helping the poor and at the same time also to educe values of greatness (nobility) and gallantry (chivalry) which was significantly glorified.¹

Up to the present moment, the granting of legal aid in general is still conducted as a form of generosity and mercy (charity), although after a while it encompasses a lot of progression, ranging from a professional responsibility, as a form of law firm’s prestige, to a development being instrument of social evolution. Paradigmatical shift of legal aid character which merely as charity beforehand into a social movement that comprises human rights values and democratic principles are very tantalizing to explore. Moreover, those ideas grow and interlink with the rest of the world without exception, whether in America, Europe, Africa or Asia, especially in countries that self-declare as State of Law or rule of law.

In Indonesia, legal aid develops in accordance with socio political progression. Colonial times the right of legal service had been regulated with *Het Indonesisch Herziene Reglement* (HIR). Following Indonesia’s independence in 1945, access to legal aid had been using *Het Indonesisch Herziene Reglement* (HIR) until it was revoked in 1981 and replaced by Code of Criminal Procedure (KUHP). One of

fundamental reasons for annulment of HIR was its feeble legal and human rights protection for suspect/defendant in a fair judicial process.

However, in practice the access to legal aid for all citizens is far from ideal conditions, even the Government does not allocate serious attention to various practices of arbitrariness of law against the poor and oppressed people. Based on empirical experience, granting of legal aid for the community, contribution of thought and concept of more progressive and contextual legal aid (not only as a mere service) in point of fact are primarily effected by non-governmental actors.² A range of innovations implemented by non-governmental actors enhances concept and practice of legal aid to increasingly growing. As of juridical-individual type of legal aid, in which legal aid is only given to protect interest of an individual – to legal aid concept that stands as constitutional right which must be fulfilled by the State. In addition, the actors involved in the provision of legal aid are increasing. Initially the advocates played a very dominant part, subsequently they are balanced by professors and students of law schools, paralegals and trained people with legal advocacy capability.

After a fairly lengthy public demand, Indonesia instigated a new history regarding legal aid with the passage of Act No. 16 of 2011 on Legal Aid in which the Government provides special state budget on legal aid for the needy.³ Although there are a few remaining problems and that it only accommodates legal aid with conventional disposition, at least the Law confirms Government's responsibility to provide and open up wider access to legal aid for all poverty stricken citizen.

Agreeing with Barry Metzger, Adnan said that the meaning and purpose of legal aid is essential condition for judicature function and integrity to do well; and that legal aid is sense of humanity demand. Other reasons suggested by Barry Metzger are:⁴

1. To build an integrated system of national law.
2. To implement social welfare regulations more effectively to benefit the poor
3. To foster a sense of greater responsibility from government officials or bureaucrats to the society.

4. To encourage bigger participation of community into governmental process.
5. To strengthen legal profession.

Adnan Buyung Nasution, as one of the founders of Jakarta Legal Aid Foundation (LBH Jakarta), Indonesia, said that the purpose of legal service conducted by the LBH is broader and clearer. In addition to providing legal service for people in need, LBH is eager to educate the public in the furthest sense of meaning with the intention to foster and promote awareness regarding the rights as subject of law, to participate in organizing legal reforms and improvements on the execution of law in all areas, and as a whole unity within national development framework.⁵

B. TYPHOLOGY OF LEGAL AID

Conventional Legal Aid

In its development, there are various types of legal support, i.e.:⁶

1. *Legal aid*, provision of legal assistance service to people involved in lawsuit for free for those who cannot afford it.
2. *Legal assistance*, a legal service to people whether they are needy or not by providing honorarium.
3. *Legal service* is measures taken to guarantee that law process is non-discriminatory due to differences on level of income, wealth and other resources controlled by individual in society.⁷
4. *A Legal Resources Approach* is an effort of legal resource development of society in order to present fortification in society that allows realization and protection of their rights fairly.⁸

There is a massive criticism against conventional legal aid because it did not bring a significant change for the poor and the oppressed. Legal aid workers were only as “fire brigade” of all existing legal issues without being able to prevent and solve the fundamental problems.

Structural Legal Aid

Structural legal aid, customarily abbreviated as BHS (Structural Legal Aid), is a type of legal assistance that goes beyond conventional legal support type abovementioned; whether its idea, concept, paradigm as well as conducted role and strategy in providing legal assistance.

The history of structural legal aid in Indonesia was started by LBH Jakarta in the 1970s that initiated a concept of appropriate legal service to answer the need of legal representation for impoverished people, which was finally settled to be called as structural legal aid. Definition of structural legal aid is a provision of legal service to the poor and vulnerable through an effort of changing lop-sided social, political, economic and cultural structure into a form that favors opportunity of legal resource development for the poor and vulnerable. Therefore, it is not a mere cultural action, instead constitutes a structural action which is expected to be able to transform into a more just society order.⁹ With the concept of structural legal aid, LBH Jakarta has affirmed itself as an “alternative movement ‘ in legal aid, whose paradigm, vision and orientation is different from numerous legal aid institutions in Indonesia.¹⁰

Todung Mulya Lubis believes that Structural Legal Aid (BHS) is a concept that was derived from a deep understanding on the purpose of society that actually wants to be a free nation in rightful meaning; no longer subjugated because colonialism cannot be justified.¹¹ Todung addressed further that independence is substantive, not only free from shackles of foreign physical colonialism, but also freedom from all forms of political, economic, legislation, and cultural oppressions. There are several indicators that show the absence of substantive independence when the Structural Legal Aid was first envisaged, namely:¹²

1. In political field, there were restriction on freedom of assembly, freedom of expression both oral and written, and decision-making process. Besides, at that time general election was not at liberty.
2. In economic subject, there were unfavorable economic policies to small and medium-sized businesses, as well as consumers.

Then, there were foreign loans from the World Bank and other financial institutions, which reduced the substantive independence in determining the direction of economic growth. People were increasingly marginalized because they did not have means of production.

3. In field of legislation, the law still favored the rich and powerful. Grass root people were somewhat alienated by law, and the exile continued as it was supported by bureaucratic apparatus. Local customs and traditional law were not accommodated. Even the law was applied repressively and it deprived the independence.
4. In cultural subject, the humanist, literati, and society were not at liberty. There was a tendency to underestimate cultural life by extolling economic growth, and also a predilection to particularly appreciate elsewhere opinions. Independence has been disconnected from its roots and many people stumbled in imposed silence.
5. National security approach has become repression tools to ward off people from substantial freedom. Due to some restraints made political parties, social organizations, research institutions, universities, the press, and people in general were being cautious and performed self-censorship. The hazard of waywardness was recalling, muzzling, and possibly imprisonment.
6. The world geopolitical influence, foreign aid, neo-conservatism triumph, protectionism in economical domain and global recession affected government's policies and impacted on the level of substantive independence.

Structural Legal Aid seeks structural changes, as well as transformation of formerly unjust social order into a fair system in which social, economic, political, legal, and cultural resources to be returned to majority of citizens. Consecutive coups, revolutions, and succession of power in various places in essence are also changes; however they don't indicate structural transformation. Structural Legal Aid should not be stuck in a formal power; instead it has to restructure patterns of oppressive social relationship.¹³ The reformation was conducted through the creation of power resources within society which started from the root level. Therefore, Todung believes that Structural Legal Aid must commit several issues:¹⁴

1. Change legal aid's orientation from urban to rural areas.
2. Engender legal aid to have active character.
3. Empower additional approaches beside legislation.
4. Organize further cooperation with other social institutions.
5. Manager legal aid as a movement that involved sizeable people's participation (facilitator).
6. Give priority to structural cases.
7. Accelerate responsive laws to support structural changes.

In 1980, The Indonesian Legal Aid Foundation (YLBHI) was founded as the foundation umbrella for numerous LBH offices located in provincial areas. Henceforward, the idea on Structural Legal Aid then developed. LBH later grew to be a political force that continuously critiquing the New Order and shove the reinforcement of democracy, human rights, and the State of law. Daniel S. Lev said that legal process is not an essential attribute in social and political life, so therefore LBH became an instrument that try to make it happen. Lev said the background notion of LBH is more of a political and social idea instead of legislation idea, to avoid lawyers' temptation to comprehend and exercise standard or conventional legal aid as it has existed since the period of colonialism.¹⁵ Adnan Buyung Nasution, as one of LBH founders, said;

“That in developing countries, legal aid for the poor is not based only on humanitarian motivation, but must also have political motivation. This political motivation aims to develop society so that people understand their rights, particularly their legal rights. In addition to understanding the rights, they should be encouraged to develop the moral courage to defend and claim those rights. For the political education, cultural change is needed.”¹⁶

Similar situation as in Indonesia, in Philippines also a similar concept to the Structural Legal Aid is budding. Lawyers not only play a part of providing merely conventional legal aid, but also be a factor in political process against dictatorship and neoliberal government. The lawyers even undertake a role to conduct people's power in overthrowing the regime. In Philippines the sprouting term of people's lawyers are lawyers who work in non-conventional

domain, or work in public or structural issues, have a high political consciousness and are committed to carry out revolution or social restructurization.¹⁷

C. THE SCOPE OF STRUCTURAL LEGAL AID

In addition to its far-reaching impact and scores of clients, Structural Legal Aid characteristics are, among other things, its particularly political nature and frequent collision with the ruler. Realizing its extensive scope of work, LBH Jakarta then set up The Indonesian Legal Aid Foundation (YLBHI) on October 26, 1970 which subsequently expected to become coordination center of LBH offices of other regions to develop into national scale Structural Legal Aid movement.

LBH Jakarta - YLBHI in its line of works often counseled several cases that particularly come into contact with the authoritarian regime under President Soeharto administration. There are two areas observed in the perspective and study of conflict, wherein Structural Legal Aid have worked and provided significant contribution to support resolution and peace. They are normal area and conflict area. The normal area does not necessarily signify the absence of conflict. Conflict might continue to occur but the law and all institutions can still work well; while the conflict area is an area in which the law cannot work properly or its role has been replaced by other institutions upholding violence that exactly in opposition to the law.

D. STRUCTURAL LEGAL AID IN NORMAL AREA

In normal area, some examples of cases handled by YLBHI and provincial LBH offices using Structural Legal Aid (BHS) approaches, inter alia:

1. The January 15 Catastrophe (Malapetaka 15 Januari - Malari) (1976)

In January 1974, there was a sizeable student's demonstration to refuse inflow of funds and foreign investment to Indonesia. Beyond the student plan, then there were riots and arsons in

some areas in Jakarta (concentrated in Senen districts in Central Jakarta and the Roxy in West Jakarta). LBH Jakarta was accused to be involved in the protest and arson that crippling Jakarta for days. Students' leaders, Director of LBH Jakarta together with 3 other officials were arrested by the army. The newspapers supporting the LBH Jakarta were banned from publication by the Government.

2. The Case of Jihad Command (1976)

This case was a factual form of authoritarian New Order government's effort to utilize radical groups as underground organizations that aim to seize power by means of violence. Based on LBH Jakarta data at the time, Jihad Command had been deliberately manufactured by General Ali Murtopo (Soeharto's chief assistant) as a justification for his action in destroying Muslim opposition, because at the beginning of the era Islam is the only political force in Indonesia that have potential to mobilize itself as a serious competitor of Golkar Party- the political vehicle of New Order which guaranteed success in general election. LBH Jakarta provided legal aid for the people exposed to or subject to "Jihad Command" stigma.

3. Cases of Criminalization against 50 Students (1978)

In 1978, as many as 50 students in Jakarta, Bandung, Yogyakarta, Surabaya and Palembang were tried simultaneously in each city under allegation of insulting President Soeharto and his family, as well as sabotaging government programs.¹⁸

4. Mysterious Shooting Case (1982 – 1985)

The mysterious shooting (Petrus) was a secret operation in during Soeharto Administration in 1982-1985 to dealing with high rates of crime. Troops were making arrests, torture, and killing of people who had been deemed as disturbing peace and order of the society. National Commission on Human Rights released their investigation result indicating that Petrus cases are gross human rights violations, with the number of victims of more than 10,000 people, who died, tortured, arrested or subjected to enforced disappearance. LBH Jakarta counseled and gave protection to people who become targets or victims of Petrus.

5. Case Of Tanjung Priok (1984)

In mid-1984 a plan of implementing sole principle emerged in Indonesia. Various Islamic groups rejected the plan and addressed it in a variety of sermons and pamphlets. Problem occurred when a soldier tried to get rid of a pamphlet in a mosque by not taking his footwear off. A group of youths who ran into the soldier then quarreled with him up until arson on motorcycle happened. Four people afterward were arrested. In responding to the detention of those men, on September 12, 1984, thousands of people were conducting public prayer then decided to perform a rally and demonstration to Military District headquarter in order to release their colleagues in prison. Soldiers then opened fire toward demonstrators. Hundreds of people allegedly were shot dead, but the Government only admitted of killing 18 people and injuring 53 people.

6. Case of AM Fatwa (1984)

Andi Mappetahang (AM) Fatwa, born in 1939, is one of political-Islamic figure, who was arrested, tried and sentenced to 18 years of imprisonment under Soeharto's regime with accusation of committing subversion. AM Fatwa and his colleagues at the Petition of Fifty signed a White Sheet of September 1984 Tanjung Priok Incident, so therefore he was considered as subversive. He also criticized Government of Soeharto's attitude that he believed as marginalizing political rights of Muslims, accordingly he and his colleagues at the Petition of Fifty concluded that Soeharto must "step down" from Presidential Chair. AM Fatwa finally served nine years of imprisonment, followed by a parole and was declared to be completely free as well as to obtain political rehabilitation on August 17, 1998.

7. Case of H.R. Dharsono (1984)

In 1984 General (Ret.) HR Dharsono was accused of subversion and participating in detonating a bomb at a bank in Central Jakarta. He was sentenced to 10 years, and then appealed to seven years. A lot of people assessing the charges against Dharsono believed that it was fraudulently devised case owing to his critical thoughts toward Soeharto.

8. Subversion Case of Sri Bintang Pamungkas (1995)

In 1995, DR. Ir. Sri Bintang Pamungkas was brought before the law under criminal indictment of committing subversive crime against Article 1 (1) a, b, and c of Act No. 11/PNPS/1963 due to his action of sending an Eid ul Fitr greeting card which also contained political messages for instance rejecting Soeharto's candidacy as President in next election and insulting President Soeharto when he had been in Germany. Sri Bintang was convicted with 2 years and 10 months of imprisonment on May 8, 1996.

9. Case of People's Democratic Party (PRD) (1996)

The case of People's Democratic Party was an incident which originated from a statement deeming PRD's involvement in '27 July 1996 Incident' as well as accusation saying that they bear communist ideology. The first PRD Chairman, Budiman Sudjatmiko, on April 28, 1997 was sentenced to 13 years in prison by the judge because he had been found guilty of contorting facts on New Order Government, assembling labor movement, founding the People's Democratic Party, and disowning Pancasila as the sole basis. After the New Order collapsed and subsequent to 3.5 years in detention, Budiman was given amnesty by President Abdurrahman Wahid on December 10, 1999.

10. Subversion Case of Muchtar Pakpahan (1996)

On December 19, 1996, DR. Muchtar Pakpahan was brought before the law under allegation of "overthrowing or undermining State power or the legitimate Government"; in opposition to Article 1 paragraph 1 of the Act of Subversion. It was caused by his statement saying that Soeharto should not be nominated again, demanding Soeharto to be put on trial, publishing and distributing flyers on Fraudulent Extraordinary Congress of PDI. Muchtar was acquitted from State Court to the Supreme Court's verdict, however State Prosecutor appealed for judicial review to the Supreme Court and Muchtar was finally convicted for 4 years in prison.

Some examples of case advocacy aforementioned indicate that legal aid is not only given to the poor based exclusively on mercy (charity), but it is also used as a political tool to

encourage democratization and against the Government's authoritarianism. LBH even provides political space for the establishment of political parties such as the Democratic Union Party of Indonesia (PUDI) and People's Democratic Party (PRD), notwithstanding that establishing another party under New Order regime (save three parties allowed by the Government: PPP – the United Development Party, PDI – Democratic Party of Indonesia and Golkar – Golongan Karya) was a subversive act. In addition, LBH was also organizing to encourage consolidation of various elements of civil society, ranging from students and academics, to fishermen, labors, peasant groups, and urban poor. For that reason, in the era of New Order authoritarian regime, a lot of parties called YLBHI and LBH offices as the locomotives of democracy.

E. LEGAL AID IN THE AREA OF CONFLICT

In area of conflict the law generally could not serve thoroughly due to pressure from forces that renounce the existence of law. Therefore the law can't function properly, because there was no room for legal institutions to execute law enforcement. Some occurrence in Indonesia, for example, at the times of conflict in Aceh, Poso and Ambon confirmed that bylaw was no longer a commander in resolving issues endured by society and was replaced by violent approach against the law as main preference.

Such situations, based on empirical expertise, failed to be approached by conventional legal aid method. On the other hand, structural legal aid model which had been implemented in some areas of conflict demonstrated obvious contribution to the society and conflict settlement process. This indicates that Structural Legal Aid (BHS) in addition to be capable of contributing to cases of vertical conflict, i.e. between the authority and civil society, such as in Aceh, East Timor and Papua, it can also play an active role in resolving horizontal conflict, such as in Poso and Ambon; in which YLBHI/LBH Jakarta is one of key actors on the commencement of *Bakubae* Movement, LBH Bakubae (in Ambon) and Titian Perdamaian Institute in particular in committing to solve the dispute in area of conflict and building peace in Indonesia.

Several examples of case handled by LBH by using structural legal aid (BHS) approach in the area of conflict, inter alia;

1. Case of Dr. Thomas Wanggai (1988)

Dr. Thomas Wanggai of Free Papua Movement (OPM) proclaimed the State of West Melanesia in 1988. Thomas was sentenced to 20 years in prison and died in prison in 1996 due to chronic ulcers. His wife was also sent to eight years in prison for her part in sewing the flag of West Melanesia.¹⁹

2. Subversion Case of Santa Cruz (1991)

It was the shooting of East Timorese pro-independence demonstrators in Santa Cruz cemetery in provincial capital of Dili on November 12, 1991, whom was organizing their protest act against the Government of Indonesia at the funeral of their peers, Sebastiao Gomes, who had been shot dead by Indonesia troops a month earlier. Throughout the incident, it was estimated that 200 people were killed and more than 400 people were injured. However, five participants of the protest instead were alleged with criminal subversion by New Order Government, namely, Joao Freitas da Camara, Fernando de Araujo, Virqilio da Silva, Aqapito Gordoso, and Dominggus Barreto. YLBHI/LBH conducted mutual defense in the company of Indonesian Bar Association (IKADIN). After the New Order was knocked down, President Abdurrahman Wahid gave amnesty by Presidential Decree No. 158/1999.

F. LEGAL CONDITION IN THE AREA OF CONFLICT

The state of law in conflict situations would vary, depending on the phase of tension. On a specific conflict situation the laws was still running and able to subdue the fight. However, in time of peaking conflict situations, the law could not take place or even deemed as absent; because legal structure could not serve properly and effectively. The following are descriptions of conflict situations and the law in situation of conflict:

1. Crisis Phase

Crisis phase is a period where conflict has been characterized by acts of violence in the process of claims by opposing groups. The existing institutional mechanisms in this phase are ignored by the parties to the dispute and incidents of violence occur sporadically. The community still can move freely and there are secure zones. This phase becomes foreshadow to status alteration of the region from a conflict-prone area into an area in conflict.

Legal situation in this phase is characterized by the abundance of common criminal acts that perpetrated by parties in conflict, such as murder, kidnapping, robbery, arbitrary detention and so forth. Yet there is possibility of parties who are willing to engage in mediation; state apparatus still respects the law, and legal structure still takes place properly/effectively.

2. Limited Violence Phase

In this phase of limited violence, disparity between groups is intensified and skirmish to claim or annexation of obtainable resources is no longer conducted using peaceful means and applicable settlement mechanism but executed by regular and systematical violence. Both parties believe that the use of violent behavior is a legitimate mechanism for the sake of resolving current disputes instead of official and peaceful settlement mechanism.

During this phase acts of violence perpetrated by both parties occurs systematically and recurrently, although not all violence act could be justified. The use of military force should only be aimed specifically against those who are involved in violent conflict, for example to destroy rebel forces, yet keep protecting people who are trapped within areas of conflict. This phase is typically characterized by implementation of the law of war or emergency law.

3. Massive Violence Phase

In this phase, violence is used as the only means or mechanisms to resolve differences among both groups and executed with no heeding for the presence existence of people who get caught up

in it. Any effort to curb the use of violence in order to resolve the conflict is none and the number of casualties caused by violence on both sides is getting bigger because of systematic, recurring and limitless violence. It leads to the elimination of particular group, even be susceptible to genocide or politicide.

Legal situation in this phase reaches the nastiest point of conflict, since positive law is no longer applicable and law enforcement institutions are not in charge at all. Police Department does not exercise its functions, the Courts are even downright paralyzed because the judges could not or are afraid to give a ruling.²⁰

Inside the phase, social structure might turn into a war structure. The groups in conflict self-organized themselves resembling military configuration, which is divided into divisions for the war such as: Commander in Chief, commanding officer, soldiers, troops, and the like.

4. Resolution Phase

Before the resolution stage, there is a phase of diminishing violence. In reduction of violence stage, the clash and use of aggression by parties in conflict are no longer occurring, although it is only temporary and there is still a possibility to switch again into a limited or massive violent conflict.

In resolution phase, there have been efforts to establish or rebuild authoritative government institutions in post-conflict areas attained in collaboration by both parties formerly in conflict. The expectation is the mutual work conducted in this phase shall generate stable amity in post-conflict zone.

Table 1 Phases of Conflict with Indicators

| Phase of Conflict | Legal Structure | Substantiality of Law | Legal Culture |
|---------------------|--|---|--|
| Crisis Phase | <ul style="list-style-type: none"> - State apparatuses still operational. - Law enforcement continues to function effectively. | Substantiality of Law is still normal, although subversive law has been issued in this phase. | <ul style="list-style-type: none"> - The Law and apparatuses are still respected, even though there are some acts of distrusting the law. - Regulation can become a channel to prevent conflict. |

| | | | |
|----------------------------------|--|---|--|
| Phase of Limited Violence | <ul style="list-style-type: none"> - Law enforcement officers start to become ineffective. - Military forces begin to be put into operation. | <ul style="list-style-type: none"> - Instigation of war law. - Implementation of military operational area, subversive act, martial law, and other emergency regulations. | <ul style="list-style-type: none"> - The law is no longer measured as channel to resolve conflict. - Violence is believed as proper by the parties in conflict. |
| Phase of Massive Violence | <ul style="list-style-type: none"> - Law enforcement apparatuses are no longer operational. - The court and prosecutor are afraid to act upon their duty, otherwise absent. - Military takes over all functions, particularly authority stations. | <ul style="list-style-type: none"> - Local laws can be said as no longer exist. - Humanitarian laws subsist. | <ul style="list-style-type: none"> - The community already knows no law. - Violence is considered to be the only way to settle disputes. |
| Resolution Phase | <ul style="list-style-type: none"> - Law enforcement agencies begin to function. - Military returns its functions to civil authority. | <ul style="list-style-type: none"> - Substantiality of law begins to reinstate to peacetime. - Emergency laws begin to be deducted. - New regulations emerge to prevent conflict. - The administration of amnesty, pardon, and abolition. - The presence of Truth and Reconciliation Commission. | <ul style="list-style-type: none"> - The community begins to respect institutions of law. - The law is once again accepted as measures to resolve conflicts. - The community plays an active role of encouraging law enforcement. |

The aforesaid phases are not tiered stages amid cyclical character, but can materialize either randomly, fluctuatively, or move back and forth. For example, limited violence phase can twist into a crisis phase, and then rapidly upsurge to limited violence and massive violence phases. Limited violence phase might directly reach resolution phase until at some point, however, conflicts can reappear.

Since each conflict phase have different forming factors, indicators and different socio-political implications, the provision of legal aid should recognized prior to the stages of the conflict and the indicators of socio-political facing. And in every phases of conflict, clearly determined the legal aid strategy that could be taken.

Indonesia's experience illustrates that the provision of legal assistance in conflict areas in the authoritarian rule of law assistance in the future will be different from the law assistance on conflicts that arise during the political transition. In the authoritarian political regime, when the law is only used to protect the interests of power and conflict are often engineered to reinforce the legitimacy of the government, legal assistance in conflict areas is much more difficult because of the limited choices of advocacy that can be used. In the period of political transition to democracy, when political openness began to evolve, advocacy opportunities become vaster. However, on the other hand, this period was also marked by the growing role of non-state actors as perpetrators of violence in conflict areas in Indonesia.

G. IN CONTEXT OF INDONESIA: CIVIL EMERGENCY AND MILITARY EMERGENCY

In Indonesia, during phases of limited and massive violence the civil emergency status or martial law and policy were applied. These conditions would determine the form of legal structure and culture in the region of conflict. The civil emergency in Indonesia had been established in Aceh, Papua, East Timor and Ambon; whereas military emergency (martial law) had been enacted in Aceh until 2004. Act No. 23 Prp of 1959 provides that declaration of civil emergency status or military emergency or state of war if:

- 1) The security or law and order all over the territory or in a part of the territory of the Republic of Indonesia are threatened by rebellion, disturbances or the effects of natural disaster, so that they cannot be overcome in the normal way by existing apparatus;
- 2) A war or danger of war arises due to the territory of the Republic of Indonesia being violated in any manner whatsoever;
- 3) The life of the State is threatened or it is clear from specific factors that there is a threat to endanger the life of the State.

The difference between a civil emergency and military emergency (martial law) is about ruler of the region, specified authority, and regulations that put into effect. In civil emergency status, the ruler is Regional Head as the Regional Civil Emergency Authority, which assisted by a board consisting of highest Military Commandant of the relevant region, the Police Head of relevant region, and Head of District Attorney's Office of the relevant region. While in emergency military status, the Regional Military Emergency Authority is held by the highest Commandant of Regional Military, as a minimum the Commander of Military Region Command, assisted by the Head of Region, Chief of Police of the relevant region, and the Head of District Attorney's Office of relevant region.

Every Emergency Authority reserves the right to create legal products that deemed necessary for public order and security of its territory. The Civil Emergency Authority has the right to establish regulations to prohibit performances/shows, the printing, publication, announcement, transmission, storing, distribution, trading and posting of writings in any form, and paintings, negatives and pictures. In addition the Civil Emergency Authority shall be entitled to conduct searches and confiscations, to scrutinize all conversation, to restrict or prohibit information and news, to restrict meetings and people's movement, et cetera. In Military Emergency situation, the Regional Military Emergency Authority has similar control as Civil Emergency Authorities, coupled with the power to militarize all agency and corporation, to arrest people up until twenty days and to execute detention for fifty days. In contrast to normal circumstances in Indonesia in which the arrest is only valid for twenty-four hours, and detention is up until twenty days. Unlike normal situation where

civil liberties and human rights are upheld, yet in civil emergency and military emergency situations the restriction of human rights is justified by the authority.

Emergency circumstances aforementioned, surely determine how to conduct advocacy strategies by legal aid workers in area of conflict. Threats to legal aid workers and human rights activists are certainly getting bigger. The entire structure of law is centered absolutely on the Authority (civilian/military), therefore violations of human rights in the region are difficult to process. As an example, YLBHI play a part in Jakarta and international communities to criticize and litigate the Military Emergency in Aceh.

The above mentioned condition definitely is quite different from legal situation in normal condition. In a normal situation law enforcement function effectively, law enforcement agencies work as normal and there is no centralized law enforcement or they are always accompanied by checks and balances and multi-levelled system. In normal circumstances there is no Subversion Act, military law or emergency law. The public trust legal process to resolve emerging problem or conflict.

Grafik 1 Legal Conditions in Normal Situations



H. STRATEGIC VALUE OF USING LEGAL AID

There is an assortment of strategic values in using legal advocacy approach or legal aid in promoting for peace. The strategic values i.e.:

1. Reducing Risks

Utilizing legal advocacy approach can reduce risk in promoting peace or in resolving conflict. This is because legal advocacy approaches often take formal available channels and recognized by the parties in dispute. Approach of non legal advocacy is frequently considered as a political method that usually induces resistance from the parties in conflict. Besides, security risk is also minimized, because the laws protect profession of Public Attorney in performing its advocacy work. If the conflict is between the Government and civil society, then the Government will take the risk of harvesting a wide-ranging outcry if they intend to impair the work of public interest lawyer, such as making arrests or detentions. Despite the fact that security threat remains inevitable, its status as a legal aid worker gives more protection than a non legal aid activist.

2. Possessing Stronger Legitimacy and More Bargain Power

Legal aid work in situation of conflict comprises a strong legitimacy and more bargaining power due to several factors: first, the role of public interest lawyer. Lawyer is a profession considered as a prestige and not everyone is capable to or can easily become a lawyer. Furthermore, it is considered as a noble profession (*officium nobile*). In addition, a lawyer in Indonesia is regarded as one of law enforcement instruments in comparable position with the judge, prosecutor, and the police. Legal aid workers also have legitimacy in conducting investigations and revealing facts for peace. Second, legal aid in area of conflict requires the existence of community organizing or community awareness. The consolidation of society brings forth a stronger and more bargaining power compared to the use of approach beyond legal advocacy.

3. Minimizing Stigma

Those who defend rebel groups are commonly deemed as part of the rebellion. As well as in horizontal conflicts, people who criticize violence committed by a party are often assumed

as defender of the opposing faction. Munir Thalib, for example, in the Ambon conflict was presumed as defender of Christian groups when criticizing the violence perpetrated by Islamic groups. Conversely, he was considered as defender of Islamic groups when criticizing the violence perpetrated by Christian groups.

It also occurs in terms of defending cases of political prisoners in Papua, where legal aid workers or legal aid organizations are regarded as foreign lackeys, un-nationalist, and rebel supporter. Nevertheless, legal advocacy approach can reduce those stigmas because the law is believed to be neutral. In Ambon, legal aid movement is accepted as neutral so that it can bring together warring parties; from religious leaders, indigenous rulers, women, journalists to lawyers who give preferentiality to one of the groups in discord.

4. Creating a Lot of Opportunities

Legal aid always welcomes various opportunities for the achievement of a prosecution. At least there are 2 steps of advocacy that continually deployed in legal aid in area of conflict. First, the litigation i.e. by taking judicial channels, whether in civil, criminal, state administrative or public administration courts; with a variety of theories, for example, the theory of unlawful acts; we can sue various forms of detrimental action resulted from conflict; second, non-litigation i.e. taking a non-judicial or outside of court approach. Non judicial method can have semi-judicial characters such as mediation, arbitration, and conciliation. Non judicial measures can also have political nature, for instance, audience, lobby, public campaign, press conference, demonstration, and other activities to raise support for the peace. Even legal advocacy can justify an unlawful act because the required substantiality goes beyond the existing formal laws, such as civil disobedience to refuse paying taxes, to conduct a strike and massive mass mobilization, to occupy government offices and strategic places, and various other forms of social revolution or of correcting unjust policies.

I. LEGAL AID ACTORS IN THE AREA OF CONFLICT

In the concept of Structural Legal Aid, Public Interest Lawyer is not the main actor in advocacy. Public interest lawyer in fact plays a role in empowering and involving other actors rather than lawyers, such as paralegals, community figures, religious leaders, students, youth, peace activists, journalists and other team members. Public interest lawyer in providing legal aid in the area of conflict should be capable of organizing the stakeholders in order to proceed synergistically to encourage appeasement. In Ambon conflict, public lawyers in point of fact assembled key actors from the warring parties in a planned and purposeful dialogue so those core actors would be able to transmit the spirit of peace to their group. Public lawyers gathered women of the groups in conflict, organized meeting between religious leaders, amid journalists, among refugees, and finally among lawyers; which generating Bakubae Legal Aid Foundation. Therefore, unlike other conflicts in general, in a social conflict the lawyers can act as facilitator, mediator, as well as the compelling actors of peace through the lines outside judiciary system.

In the area of conflict, civil society organizations have a very significant role; although civil society organizations frequently thus caught in a rivalry among themselves and in concepts that are not in accordance with the will of community. The public interest lawyers repeatedly also become a facilitator between civil society organizations.

It is an error if a lawyer or a legal aid institution would like to resolve conflicts in a region, but still deploy conventional approach and confine themselves to the work in courts by advocating parties in conflict or political prisoners. Counseling in trials shall only solve problems that emerge on the surface. A more basic problem would still subsist and will appear at any time as long as the root of problem or the source of conflict is not resolved.

CHAPTER III: LEGAL AID STRATEGY DURING CONFLICTS IN INDONESIA

A. EXPERIENCES IN PAPUA INTRODUCTION

Geography and Demography



Papua, that is how people call the island located on the easternmost part of Indonesia with total area of 413,577.34 km². Most of this region is still covered by natural or tropical forest. Its landscape is beautifully arranged and consists of mountainous area with eternal snow on the top, and big valleys where big and small rivers run through. Most of the region has a land structure of swamps in lowlands and rocks with mineral content and other natural wealth with high economic value.

This big island is located in between Pacific Ocean and Arafura Sea that lie in the north and south side. In the east side located Papua New Guinea (PNG) and in the west side, there lie an array of islands that are part of the administrative region of Maluku and North Maluku.

In addition to the natural richness, this island is also prominent with its natural beauty and abundant number of unique and distinctive flora and fauna. This island is a big home for *cendrawasih* bird (lit. bird of paradise) and cassowary, as well as various types of other endemic flora and fauna of Papua. At the south side of this island, precisely in Merauke, we can find kangaroo that is considered as endemic to Australia.

Administratively, the width of this region is 413,557.34 km², consisting of two provinces, namely Papua, which capital city is Jayapura and West Papua, which capital city is Manokwari. Papua Province has 29 regencies/cities, while West Papua Province has 13 regencies/cities.

The population of Papua Province is 2,928,750 people. In detail, it consists of 1,544,785 male 1,383,965 is female. Its neighbor, West Papua Province, consists of 816,280 people with 431,957 male and 384,323 female. This makes the total population inhabiting this island is 3,745,030 people.

From the composition of religion in Papua province, in 2011, the follower of Protestant Christianity constitutes the largest percentage, which is 62,19%. Meanwhile, the percentage of Papuans who practice Catholic Christianity is 24,39%. Papuans who practice Islam is 13,15%, and the remaining are practicing Hinduism and Buddhism. Meanwhile in West Papua Province, the percentage of Protestant Christianity is 53,22%, Islam 36,86%, and Catholic Christianity 9,48%, and the rest practice Hinduism and Buddhism.

Papua Island is inhabited by various ethnics and tribes, whether native people that we call as Papuan, or migrant who comes from outside Papua. They are usually called as '*pendatang*' (lit. newcomer/immigrant). The existence of migrant groups is very dominant in densely populated regions and urban centers/downtown. Their existence in Papua is particularly due to transmigration, an excellent

program by the New Order Regime, carried out in the mid 1960s. Many of these transmigrants reside in Merauke, Mimika, Jayapura, and Keerom in Papua Province, as well as in Manokwari and Sorong in West Papua Province. In addition, it is also due to spontaneous migration of population outside Papua which is heavily influenced by the economic needs. These migrants typically work as civil servant officer or private employee, member of TNI/Polri (military/police), player in business sector and employees in other informal fields of work.

The percentage of migrants in Papua is growing from year to year. In 1971, their number was not more than 4%, yet the number was rising sharply from 35% in 2000 to 53.5% in 2011.

Socio-Cultural System

The main characteristic of native Papuan is the diversity of ethnic groups where they live in small groups. This does not allow them to build relationships of grouping with other group in another place which is geographically difficult to reach. Thus, every ethnic groups is culturally autonomous from each other. Moreover, every ethnic group has a cosmology in perceiving themselves as the center of the universe.

Josh Manzoben categorizes Papuan which consists of approximately 250 ethnic groups to 4 ecological zones which influence the characteristic of ethnic groups in Papua, namely ecological zone of swamp, coastal and estuary, foot of a mountain and small valley, and zone of high mountains. People who live in their ecological zones will create a different pattern of life from one another. Native Papuans who live in swamp ecological zone (Asmat and Mimika) earn their lives by gathering sago. Meanwhile, Papuans who live in high mountains ecological zone (middle mountain area of Papua) has their main livelihoods as farmer of tubers, and people living in the foot of mountain and valley (Arso, Genyem, Muyu) are in the field and gathering sago as their main livelihoods. And last, people who live in coastal area ecological zone (Biak, Serui and Raja Ampat) catch fish as their main livelihoods.

In general, the people of Papua is very appreciative to their nature and environment. People of Amungme in Mimika regency, for

instance, consider that nature and their land as the mother who gave birth, nurtured and educated, and raised them. Nature is actually a womb, and a fetus that shape and create Papuan. People of Amungme see from the array of mountain, expanse of land and valley to lowlands in coastal as a body of a mother who lies down but stays awake to give them life and strength.

Not only that, nature is the dwelling place for the spirit of their ancestors and ancestral, which is also the source of strength of human being. Therefore, when human destroy the nature, and then automatically the nature will destroy them selves. A perspective towards nature which more or less is the same can be found throughout the worldview of different tribes in Papua.

The people of Papua, in a general assembly of indigenous people, has divided Papua in seven indigenous regions. First is the indigenous territory of Mamberamo Tami that covers city and regency of Jayapura to Kerrom and Sarmi. The second indigenous region is called as Saireri, consists of Regency of Biak, Numfor, Supiori, Yapen Islands and Waropen. The third indigenous territory is Bomberay that covers areas around Manokwari, Sorong, Raja Ampat and Bintuni. The next one is Domberay that covers areas around Fakfak, Kaimana and Mimika. The fifth indigenous territory is Animha that covers area around Merauke, Mappi and Asmat. The sixth indigenous territory is called as La Pago that covers Regency of Bintang Mountains, Jayawijaya and Mamberamo. And the seventh indigenous territory is called as Me Pago with area near Puncak Jaya, Tolikara, to Nabire and Paniai.

From Nueva Guinea to Irian and Papua

The naming of the region itself is actually done through a long and meaningful process. Several literatures mentioned the origin of this naming, started from 'Nueva Guinea', given by European sailor that refers to the physical similarity of Papua with Guinean in West Africa. The Dutch changed the name to New Guinea in 1545. In other literature, it is mentioned that the pronouncing derived from 'Pua-pua', refers to an individual who has curly hair, at one a name for the entire Papua. Other source mentions, Papua derives from Biak language, 'sup i pawa', which means 'land where the sun rises'.

The name of Irian itself was introduced for the first time by Frans Kaisepo during Malino Conference in 1946. Meanwhile, Marcus Kaisepo assessed that the word of 'Papua' tend to degrade Papuan, because the name is more connoted to 'black', 'stupid', 'curly hair' and used by government officer and teachers who at that time came from East Indonesia to insult the Papuan. Nevertheless, some said that Irian itself has a political propaganda meaning from the Government of Indonesia. It is said that Irian is an abbreviation of Ikut Republik Indonesia Anti Nederland (Following the Republic of Indonesia and Anti-Netherlands). Perhaps because of this, then President Soekarno's administration preferred to call this island as 'West Irian'. Later, during the 32 years of reign, President Soeharto changed it to 'Irian Jaya'.

In its journey, the political turmoil that occurred in 1998 in Jakarta marked as the ending of Soeharto's power and his new regime, an the name of Papua became another option to use in calling the area. This occurred after President Abdurrahman Wahid agreed to use the name of Papua. Its nomenclature then authorized through a Local Parliament (DPRD Tingkat 1) of Irian Jaya Decree No. 7/DPRD/2000 on "Returning the Name of Irian Jaya to Papua" on August 16, 2000. This becomes the reference of Laws on Special Autonomy to call this beautiful land. And from that moment, this area is known as Papua. In fact, Papuan feel proud with the name of Papua whose hair is curly and skin is dark. This pride presents itself in one of the song lyrics popularized by Edo Kondologit, titled 'Aku Papua', which continues to be sung in the everyday life of Papuan.

PAPUA IN THE BEGINNING OF INDONESIAN INDEPENDENCE

Independence of Indonesia: 1945

Papua Island has been discussed and becomes a topic of political debate in several international negotiating tables since mid 1940s. The debate began when Soekarno proclaimed the independence of Indonesia on August 17, 1945. At that time, the Government of Indonesia claimed that the entire colonies of Dutch East Indies from Sabang in the westernmost of Sumatera to Merauke at the farthest point of the island of Papua belong to the new Republic.

On the other hand, Government of the Netherlands rejected that unilateral claim by the newly established of Government of Indonesia. Government of Netherlands thinks that Papua region is not a part of Dutch East Indies, but rather directly under the authority of the Kingdom of the Netherlands since around 1944. The rejection from Dutch was because the political influence from Indonesian independence in Papua was relatively meaningless at that time. Government of Netherlands' posts and religious activities from *zending* group and Christian missionary have returned back to normal after Japanese left and NICA re-entered Papua. Meanwhile, the political activities of Government of Netherlands in bringing themselves to people of Papua through education for Papuan elite were continued.

Round Table Conference and United States of Indonesia 1945 - 1951

One of the political debates related to Papua region was seen in the negotiation of Round Table Conference (KMB) on December 27, 1949. In this negotiation, Government of Netherlands eventually admitted the sovereign territory of Indonesia, except Papua. Netherlands still asserted their desire to make Papua is integral part of the Kingdom of Netherlands. Both parties faced a dead end, and Papua was in status quo.

Then on August 17, 1951, the Republic of the United States of Indonesia (RIS) which had been formed as the result of KMB 1949 was annulled by President Soekarno and the country's name was changed to Republic of Indonesia, implying the sovereignty of Papua region is valid. With this change, the attempt to seize Papua from Netherlands stepped into more offensive phase done by deploying military power. In Papua, there was Cendrawasih Batallion and Silas Papare Batallion as the mobilization media for their resistance against Dutch. To support this confrontation, Bureau of West Irian was established by Prime Minister Ali Sastroamijoyo on March 4, 1954. At that time, the power of Indonesian military started to develop with the full support of Soviet Union that was in the middle of Cold War against the US.

On December 1950, the UN decided that west region of Papua has their independence rights according to the Article 73 e of UN Charter. As Indonesia always claimed that the west region of Papua

was their area, then Netherlands invited Indonesian Government to explain their claim before the International Court, which Indonesia rejected.

Presence of Papua Council: 1956 – 1961

In the middle of tough negotiation, Government of Netherlands in Papua facilitated the establishment of Papua Council (*Nieuw Guinea Raad*) that was initiated since 1956. The Council consisted of 16 people, among others were Nicolas Jowe (Holandia), M. Suway (Nimboran), Marcus Kaisiepo and F. Mofu (Biak Islands), MB. Ramandey and EJ. Bonay (Yapen Waropen), P. Torey (Ransiki), A. Arfan (Raja Ampat), AE. Onim (Teminabuan), D. Deba (Ajamaru), Nicholas Tanggahma (Fakfak) and AK. Gebze (Merauke) and M. Ahmad (Kaimana). Furthermore, The Government of Netherlands also appointed 12 other people, namely Kamma and C. van Den Berg (priest) who represented the population in mountainous region of Jayawijaya, Dorcas Tokoro-Hanasbey who represented women, VPC. Maturbongs (Amentar), H. Womsiwor (businessman), and Karel Gobay who represented Wissel lakes (now Nabire, Paniai and Enarotali).

Papua Council was inaugurated on April 5, 1961. When the inauguration occurred, Young Minister of Netherlands, Bot, conveyed message to the Council that it should prepare process to determine Papuan's fate. The establishment of this Council was then followed by the establishment of political parties as the media to channel aspirations of the Papuan. The newly established political parties were led by new elites of Papuan who had been taught and prepared by the Government of Netherlands.

Papua Council worked quickly in establishing Papua National Committee (KNP) that consisted of 17 people and led by Willem Inuri. The establishment process involved members of Papua Council, leaders of political parties and elite figures of Papua in that era. On October 19, 1961, for the first time, KNP held a National Congress I of Papua at Holandia (Jayapura) and decided 'Crowned Pigeon' as the state symbol, 'Morning Star' as national flag, and 'Hai Tanahku Papua' (O My Land Papua) as the national anthem of Papua. Moreover, KNP also determined that December 1, 1961 as the raising day of Morning

Star flag. The result of KNP was then handed over to Papua Council and later on it was authorized on October 30, 1961. On December 1, 1961, for the first time, Morning Star flag rose in Papua, side by side with the flag of the Kingdom of Netherlands.

The entire political process occurred in Papua triggered anger in Government of Indonesia's side. On December 19, 1961, President Soekarno arrived in Yogyakarta and released a decree known as Three People's Command (Tiga Komando Rakyat) a.k.a. Trikora. The content of the decree was; first, disband the puppet state created by the Dutch, West Papua. Second, raise the sacred and inheritance flag of Red and White across West Papua. And third, prepare for common mobilization to seize West Irian. To implement Trikora, Soekarno then appointed Maj. Gen. Soeharto as the Chief in Command of Mandala which was stationed in Makassar, South Sulawesi.

New York Agreement (NYA) and time of Government of UNTEA: 1962

The military confrontation that created tension in Papua after President Soekarno's decree finally forced the US, which worried that it would expand the power of Communism in Asia Pacific through the influence of Soviet Union, to insist the Government of Netherlands to bring the issue of Papua onto negotiation table. Previously, in UN General Assembly in 1961, UN General Secretary, Thant, requested Ellsworth Bunker, a US diplomat, to submit a proposal so the Government of Netherlands would hand over Papua to Indonesia through UN.

The diplomatic efforts, added with armed tension that occurred in Papua, finally resulted something after the New York Agreement (NYA), signed by the representative of Indonesia, Netherlands and UN on August 15, 1962. The agreement basically stated that Netherlands would hand over Papua region to Government of Indonesia through UN. NYA also required an act of free choice (*Penentuan Pendapat Rakyat / PEPERA*) to be held in 1969 to decide whether the people of Papua want to join the Government of Indonesia or establish their own government.

As an initial step of that agreement, UN then established an institution, UNTEA (United Nations Temporary Executive Authority). On October 1, 1962, two months after NYA was signed, Papua was

under the responsibility of UN through UNTEA. On that time, UNTEA was headed by Jose Rolz Bennet, a high officer in the office of UN General Secretariat. During the administration of UNTEA, Bennet was then replaced by an Iranian diplomat, Dr. Djalal Abdoh.

During UN transitional government, demonstrations to support, as well as to reject, the presence of Government of Indonesia in Papua were often conducted by the people of Papua in Holandia. Groups that opposed the presence of Indonesia were pioneered by Nicolas Jowe and Ben Tanggahma. Meanwhile, groups that supported the presence of Government of Indonesia in Papua were Silas Papare and Marthen Indey, and E.J. Bonay.

On May 1, 1963, UNTEA handed over Papua to Indonesia. From that moment on, UN flag that was raised with Indonesian flag during UNTEA's presence in Papua was lowered. Nonetheless, it did not mean that Papua was eligibly a part of Indonesia, as first, the Government of Indonesia must conduct the so-called Act of Free Choice in 1969 in Papua, as one of the provisions agreed in NYA in 1962.

The Act of Free Choice (*Penentuan Pendapat Rakyat/Pepera*): 1969

As a form UN's responsibility to the implementation of NYA to implement the Act of Free Choice, UN Secretary General sent its representative, Fernando Ortiz-sanz to monitor the whole implementation process of PEPERA which would be held in 1969. Ortiz-sans then arrived in Papua on August 1968.

To begin the implementation of PEPERA, the Government of Indonesia established a Consultation Council of PEPERA (DMP) at district level, which in that era, consisted of 8. The total number of DMP members was 1,025 people representing 809,327 people, with 982 men and 43 women. They were chosen by the representatives of tribe, region and politics, and mass organization existed in Papua back then.

The Government of Indonesia under the supervision of UN representatives then implemented PEPERA which started from July to August 1969. The implementation began on July 14 in Merauke, then subsequently at Jayawijaya on July 16, Paniai on July 19, Fakfak on July 23, Sorong on July 26, Manokwari on July 29 and Cenderawasih

Bay on July 31, and the last one was in Jayapura on August 2. The whole process of consultation was witnessed directly by Fernando Ortiz-Sanz as UN special representative. Final decision of this DMP was 'people of Papua aspired to stay together with the Government of Indonesia.' The implementation result of PEPERA that was reported to Fernando Ortiz-sanz then became the foundation of PBB to issue a UN Resolution of General Assembly Number 2504 on November 19, 1969 which stated Papua region as a legitimate part of integral part of Republic of Indonesia. This resolution was created after the implementation report of PEPERA was accepted by 84 countries (including Netherlands), while 30 other countries abstained and no single country gave any rejection.

The Government of Indonesia then followed up this UN resolution, by enacting Law No. 12/1969 on the Establishment of Autonomous Province of West Papua and Autonomous District in West Irian. Furthermore, the name of West Irian was replaced by President Soeharto in 1973 with Irian Jaya.

Indonesian Policies at Papua and the Birth of OPM: 1969 - 1998

PEPERA that was implemented by the Government of Indonesia in a form of 'discussion' was considered as wounding the spirit of NYA as it required an election that was held in a form of one man one vote representing the entire people of Papua. This disappointment then led to numerous demonstrations that rejected the implementation result of PEPERA, addressed to the Government of Indonesia. This disappointment strengthened the opposition of Papuan to the Government of Indonesia which started in the beginning of 1960s. An event that became widely known was an attack by a group of Papuan led by Fery Awom against the boarding battalion of Cenderawasih at Arfai, Manokwari. Later on, this groups became known as the Free Papua Movement (OPM).

Muridan S. Widjojo stated that OPM was grown and nurtured by a series of power struggle that involved Government of Indonesia, United States of America, UNTEA and Government of Netherlands, and several educated Papuan elites since 1962 to 1969. Inside, there were a lot of injustice experiences caused by excessive engineering from Indonesian military. In line with this, it was said that the

educated Papuan group which initiated the establishment of Papuan Council since the early beginning and National Committee of Papua moved to Netherlands along with the departure of Netherlands from Papua on 1962. They were, among others, Marcus Kaisepo, Nicolas Jouwe, Herman Womsiwor and also Ben Tanggahma. They were the ones who declared the establishment of OPM in the Netherlands.

Within Papua itself, groups that opposed the Government of Indonesia started to move underground with the leadership of Aser Demotekay in 1963 at Jayapura. They tend to choose a more cooperative way to struggle against the Government of Indonesia and linked their struggling with a spiritual movement, which made it not mentioned so much in the history of OPM. Besides Demotekay group, there was an OPM group in 1964, led by Terianus Aronggear at Manokwari. This second group was well-organized and had a well-structured management. On July 1, 1971, there was another group under the leadership of Seth Roemkorem and Jacob Prai who declared the independence of Papua around the area of Keerom district. From that moment, there was an improvement of relations between OPM elites and people of Papua in the village. Until 1976, there was discordance between Roemkorem and Prai. Prai Faction then named their group as PEMKA or Restoration of Justice and built military arm named National Liberation Army of OPM (TPN OPM). Roemkorem became the faction of Victoria.

A series of guerrilla movement by OPM were launched, targeting government officers and migrants. Several OPM attacks were intended directly to vital objects such as PT. Freeport at Timika. Even in several occasions, OPM did not hesitate to launch its attack to police and TNI offices in an area located quite far from the city. Other than the armed movement which was done sporadically with guerrilla tactic, the OPM group also committed kidnapping, ambushes, raising Morning Star flag as well as spreading propaganda through leaflets and mobilizing demonstrations or rallies in remote areas.

After some time, this armed movement of OPM group became widely spread in Papua, mainly in mountainous area of Papua to Merauke. Unlike the armed civilian groups in Aceh that has a complete set of weaponry with chain of command structure. In Papua, each OPM group has their own organization structure and autonomous

with limited number of personnel and weaponry. Prominent OPM figures at that time included Richard Joweni in Jayapura, Melkias Awom in Biak, Tadius Yogi in Nabire to Kelly Kwalik in Timika.

Not only active in an armed opposition in the country, a group of Papuan also launches a campaign through international diplomacy. In 1982, Moses Weror established OPM Revolution Council (OPMRC). Through international forums such as UN, Non Block Movement, South Pacific Forum and also ASEAN, this group tried to gain international recognition. Until the end of 2000, Benny Wenda appeared as a new figure in the campaign map of Free Papua in the international level. In 2008, Benny Wenda succeeded in establishing the International Parliamentarians for West Papua (IPWP), located in London, England. A group that has an intention to raise the world awareness for the independence of Papua which now comprises of 50 members from various parts of the world, such as PNG, Vanuatu, Australia, Sweden, New Zealand, to Czech Republic and Great Britain.

To dampen several sporadic attacks of OPM in various parts of Papua, the Government of Indonesia held numerous military operations in massive scale. The first military operation was held in May 1963 - April 1964 named Wisnumurti Operation I and II to bring the troops from divisions in Java, Makassar and Maluku, in order to develop the fighting force and staff of the Kodam (Military Command) Trikora. Wisnumurti Operation was continued to four phases. Furthermore, several military operations were held by the government until late 1990s.

Military presence in Papua is not mere military operation, but rather, they are also responsible for the safety of transmigrants who reside in Papua as a form of volunteering with the intention to infiltrate into Papua since the end of 1960s. The development program in the form of transmigration continues to increase until the end of 1990s. Military also serves as a good guard when they protect companies in Papua, whether HPH (forest concession) companies to multinational companies such as PT. Freeport.

In turn, in the mind of every leader and member of ABRI (military forces), all Papuans are separatists, unless that person can show that he is not. Therefore, to get rid of 'OPM ghost', the policy taken in Papua is to destroy OPM physically (kill) by holding a continuous

military operation (DOM) from year to year. The price to be paid with this type of pattern is the emergence of several violations of Human Rights, from the mildest to the cruelest one committed against civilians in Papua. Indonesian military, for most people of Papua, has become a symbol that represents Indonesia as a regime that kills its people. Therefore, when pro-democracy movement started to grow and held a campaign of Human Rights since 1994 to 1998 in Papua, Papuans gave their greatest 'moral' support. The issue of Human Rights becomes an effective instrument in providing political pressure and delegitimacy against military presence.

VIOLENCE CASES IN OLD ORDER REGIME

Transition Era to New Order

Trikora 1961

Mandala Operation, an implementation of Trikora decree from President Soekarno in Yogyakarta on December 15, 1961, is an integral part of the long journey of violence against Papuans. During those period, military troops of Indonesia was smuggled to Papua through sea and air, together with the coming of civilians who became volunteers. The prominent figure on that era was Soeharto as the Chief of Mandala Operation and Commodore Yos Sudarso who was killed in Arafura Sea. There was Sudomo who was the Chief of Command of Restoration of Security and Orderliness or Pangkopkamtib and L.B. Moerdani who became Minister of Defense and Security/Great Commander in President Soeharto's era.

Moerdani was stationed in Merauke along with 206 troops of Regiment of the Army Commando/Army Special Forces (RPKAD), then was transferred to Hollandia (Jayapura), henceforward joined the security forces of UNTEA as contingent from Indonesia. This troop along with other infiltrator troops then seconded to UN Security Force (UNSF) as governed in NYA. In this period, besides serving as a part of security unit responsible under UN through UNTEA, Indonesian military also had an active role in launching their political propaganda in order to ensure the victory of Indonesia on the implementation of PEPERA 1969.

Military Operations

The history of military operation in Papua has been held since the first time the Government of Indonesia infiltrated to Papua in 1961. This group is more known as volunteer who infiltrated to control most of the territory of Papua from Netherlands and then that territory was used to disrupt the course of Government of Netherlands on behalf of Papua. Since 1961, people of Papua knew Indonesia evidently, all because of ABRI troops that infiltrated Papua. That means that the first face of Indonesia in Papua was represented by the actions of this infiltrator.

The next military operation was conducted to break the resistance which occurred in Manokwari in 1965. The main task of this operation is to cause destruction against the group that was engaged in Manokwari and surroundings, and catch Ferry Awom and Julian Wanma. Since August 19, this operation has been launched intensively and continuously to villages that were the basis of resistance. During the manhunt operation against that group, 36 people who were said as members of OPM were killed.

Approaching the implementation of PEPERA, one of the operations, Baratayudha Operation in 1966, killed 73 persons and caught 3,539 other people. In 1969, Wibawa Operation was held to win PEPERA in several regions of Papua. It was suspected that approximately 634 residents were killed throughout the implementation of this operation. The operation was then followed by Pamungkas Operation in 1971 to secure the 1972 Election.

Approaching the implementation of 1971 General Election, which was the first election of Indonesia under the power of Soeharto's New Order and the first election of Papua under the power of Indonesia, Kodam was also facing resistance, mainly in North and West Biak, as well as in Manokwari, the bird head's area. To stop this resistance, a military operation was launched. The name of the operation was Pamungkas Operation, with an approach to territorial operation, assisted by combat and intelligence troops.

On July 1971, Kodam also launched Pamungkas Operation in Manokwari to chase Ferry Awom who has not surrendered. Battalions was assigned to chase opposition groups all day all night for months.

In this chasing, Ferry Awom was managed to be persuaded to surrender along with his 400 members.

Several military operations also continued to be held by the Government of Indonesia until 1991. Among others were Sapu Bersih (Total Sweep) Operation in 1978 – 1982, Sate (Satay) Operation in 1984, followed by Operations of Gagak (Crow) I and Gagak II in 1985 –1987, Operations of Kasuari I and Kasuari II in 1987 – 1989 and Operations of Rajawali I and Rajawali II that were launched in 1989 to 1991.

Of all the military operations launched, the most horrible operation was the one held from 1977 to 1978 in the mountain and borders area in Papua. The name of the operation was Kikis (Scraping) Operation. This operation began when an attack to government post and several military posts in several mountain area occurred. Meanwhile in Timika, a group of people destroyed numerous facilities belonged to PT. Freeport. Military then began its operation by launching an attack to civilian village in mountain area, Biak, Enarotali, to the border area with PNG. This operation was performed by launching fires from Bronco aircraft and dropped a number of napalm bombs in civilian settlements. The attack to civilians was also performed overland, including by shooting people who gathered to organize General Election in 1977. Not only that, military that conducted their actions on the land also killed people who was doing their service in church, then burnt down the churches, civilian houses, livestock and destroyed their fields. Most of people had been forced to dig their own grave first before they were shot. In this operation, Indonesian military really treated Papuans brutally and uncivilizedly.

There is no official data related to the number of people killed. But in 2013, Asian Human Right Commission (AHRC) stated that no less than 4,146 people died, including children under one year old, only in mountainous area, starting from Jayawijaya to Paniai. In the same report, AHRC also quoted Eliexer Bonay's statement, former Governor of Papua, who conveyed that not less than 3,000 people died that time. Meanwhile, thousands of people escaped to PNG. The same report also mentioned that Robi Osborne recorded approximately 1,500 people opted to move to PNG to

avoid the cruelty of Indonesian military. Other record mentioned that the number of refugee reached up to 2,000 to 3,000 people. This was the most scratching operation as well as the most horrible one to Papuans, particularly those who lived in central mountainous area. They call this incident as 'Gejolak 77' (The 77 Turbulence).

The numerous casualties at the end of 1970 also caused by the attitude of Indonesian military itself who never clearly positioned OPM as an independent movement. OPM was only seen as a criminal movement called as Wild Vandals Movement (GPL) or Security Vandals Movement (GPK). This way, any casualties in Papua side would be easily claimed by the military as member of OPM.

Humanitarian Violence towards Reformation

Military operations continued to be held in several areas of Papua and causing tens to hundreds of other people died. In 1981, in Paniai, it was mentioned that 10 people died and 58 other people were missing. In 1984, around 200 people died in Ormu and Nagasawa, Jayapura. From 1986 to 1987, 34 people were reported shot dead by the military in Paniai.

A barrage of sporadic violence continued to occur which claimed numerous victims which number varied in different cases, along with the arrest and detainment of Papuans who were considered as a part of OPM. On March 16, 1996 in Jayapura, arson of houses and a number of shops belonged to migrants took place, which was triggered by the death of Thomas Wanggai, one of free Papua leaders who was also a lecturer at University of Cendrawasih (UNCEN). Wanggai mysteriously passed away in Cikini Hospital, Jakarta.

Two months later, on May 9, 1996, a military operation to free 11 hostages in a team of Lorentz Expedition at Mapnduma (now part of Nduga district) was launched by a unit of Special Forces Command (Kopassus). The expedition team, consisted of joint researchers from Indonesia, Netherlands, England and Germany, was reported to be held hostage by an OPM group led by Kelly Kwalik since January 8, 1996. The hostage liberation operation was directly led by Prabowo Subianto and caused 60 people died. Moreover, 2 members of the expedition team were reported to be killed by the group of hostager.

In 1998, the violence act spread again in many cities in Papua Province, such as Sorong, Manokwari, Merauke, Nabire and Biak. Out of those incidents, the one that gained most attention was the one in Biak, during which a group of people raised the Morning Star flag from July 2 to 6, 1998. In this incident, it was reported that tens of people died and tens of other people underwent torture and detainment by military and police apparatus. National Commission of Human Rights initially held a preliminary investigation on this case, yet no subsequent progress up to date.

STRUCTURAL LEGAL AID OF OLD ORDER TO NEW ORDER

Until the beginning of 1980s, churches in Papua established the so-called Oikoumene Work Group (KKO). Its initial objectives was to stop several practices of violation against human rights committed by the Government of Indonesia in Papua. This was the forerunner of the emergence of several other social community groups in Papua, such as Village Community Development Foundation (YPMD) as well as Female Work Group (KKW) Irian Jaya.

Furthermore, considering the high number of legal issues and the negligence of rights of Papua at that time, and the absence of legal advisors/lawyers in Papua, then churches leaders in Papua, through Diocese of Jayapura and GKI in Papua Land, requested Indonesian Legal Aid Foundation (YLBHI) to open an LBH (Legal Aid) office in Jayapura. And in July 1986, a Jayapura office was officially established in Jayapura. Maria Rita Ruwastuti was appointed to establish and head LBH Jayapura, and a year later, she was replaced by Bambang Widjojanto until around 1993.

Minimum number of advocates and a situation where state's role was still very dominant in Papua caused some difficulties for LBH in carrying out their duties at the beginning of its presence in Papua. It is recorded that only 2 staffs of LBH were advocates, while the rest were volunteers recruited by LBH Jayapura from students in their final semester in Law Faculty of Cendrawasih University.

From 1986 to 1987, LBH Jayapura handled no less than 34 criminal cases and several other civil cases only in Jayapura jurisdiction. The handling of criminal cases increased sharply in 1988 to 53 cases.

Not only this proved the need of people in Papua for legal aid was extremely high, but it also showed that LBH in Jayapura was very well accepted by the people.

In performing their task of providing legal aid to people in Papua, staffs of LBH Jayapura often experienced numerous terrors and intimidation from security apparatus at that time. This intimidation got stronger particularly when they were assisting structural case. A former activist of LBH, Bernard Akasian, admitted that he was once threatened by someone who claimed to be from Laksusda Jaya when he was handling a case of a treasurer in Sinode GKI at Papua, in which case the treasurer was accused of supplying several equipment and ammunition to OPM group in Vanimmo camp, PNG. After he was out from the court room, this person who claimed to be from Laksusda Jaya put his gun to his waist. In a case involving Thomas Wanggai, Papuan intellectual, who was accused as a part of other OPM, for instance, staff of LBH Jayapura also experienced numerous intimidations. After reading the plea of Thomas Wanggai, the Director of LBH Jayapura had to go through several interrogations by the highest officer of Kodam (Military Command) in a meeting called as an 'invitation' from Kodam Trikora to LBH Jayapura. Staff of LBH Jayapura also experienced several unfair treatments from the district court. Some of their claims were rejected by the court just because the latter had known that the defenders came from LBH Jayapura.

On the other side, activists of LBH Jayapura were aware that they could not win all cases they assisted, especially the structural ones. Their target at that time was only to give a legal lesson to the people of Papua. And at the same time, they also sent a message to the Government of Indonesia, pleading for no more arbitrary action to the people.

What interesting was, activists of LBH Jayapura were not afraid in providing advocacy and legal educations in several community villages of Papua, although some of the regions were considered as the basis of OPM by the Government of Indonesia. The presences of activists of LBH Jayapura in these villages, according to Bernard Akasian, were well accepted by the people. Along with local people, LBH Jayapura developed the so-called Development of Legal Resources of Community (PSDHM). Other than probing the existing

customary law among the community, this program also developed the community to be able to resolve their own case. Activists of LBH also conducted positive legal education. The purpose was to enable local people to advocate for themselves when they were dealing with police, who often neglected the procedures contained in Criminal Procedural Code (KUHAP) when they conducted an arrest.

The cooperation with numerous NGOs which had existed before in Papua as well as churches was done intensively. Report on alleged human violence often obtained by LBH Jayapura from NGOs and churches because during this time, LBH Jayapura was the only NGO that provide legal aid for the people in Papua. The cooperation between LBH and numerous NGOs and churches in Papua then encouraged them to establish an institution named Cooperation Forum of LSM (Foker LSM) Papua.

At the end of New Order era, LBH Jayapura formed a fact-finding team for Bloody Biak case on July 1998. The report submitted by LBH Jayapura, added with a similar report made by other institutions, was widely used as a reference by national and international institutions in advocating the case.

PAPUA AT THE END OF NEW ORDER TO REFORMATION ERA

Beginning of Reformation: 1998

The reformation in Jakarta on May 1998 not only gave an impact to the entire political structure of Indonesia at national level. In Papua, the fall of New Order that put Soeharto as a center of the power was the main ammunition of Papuan to launch their resistance against the Government of Indonesia. Demonstrations resisting Government of Indonesia started to appear in several areas in Papua. Some demonstrations were addressed the numerous violations against human rights that had occurred during the integration of Papua to the Unitary State of Indonesia (NKRI). Numerous demonstrations of civilians driven by a group of university student and civil society led to a shooting and torture by military and police apparatus. In several areas in Papua, the demonstration from Papuans also witnessed the raising of Morning Star flag.

FORERI and PDP: 1999 – 2000

In the middle of Papuan struggle, a Reconciliation Forum of Irian People (FORERI) that consisted of various level of society: church, women, university student, NGO, indigenous people groups were established. The mission is to make it as the meeting point to accommodate and distribute all existing aspiration in Papuan society. As FORERI was established by various levels of society, this forum was considered appropriate to serve as a negotiator and mediator of National Dialog with the authority.

On February 26, 1999, located in the State Palace (Istana Negara), Jakarta, FORERI facilitated 100 people as representatives of Papua to meet President Baharudin Jusuf Habibie to discuss about the intention to separate from the Unitary State of Republic of Indonesia. At that time, President Habibie who had just given referendum for East Timor people asked the representative of Papua, known as "Team 100", to contemplate once again on their political aspiration.

In anticipate the political upheaval in Papua, Indonesia government through President BJ. Habibie then adopt the Law No. 45/1999 on the Establishment of Central Irian Jaya Province and West Irian Jaya Province. Furthermore, Habibie also assigned Herman Monim and Abraham Atururi as the caretakers of those two new provinces.

This political decision from the central government was rejected by the Papuans. In October 1999, in Jayapura, the capital city of Papua province, university students and civil society who were in a demonstration against the unilateral decision in fact managed to paralyze activities at the office of Governor and local parliament (DPRD) of Irian Jaya for approximately a week. And on October 16, 1999, they managed to force the executive and legislative party to make a decision that rejected the enactment of Law No. 45/1999.

During 1999, the political situation in Papua continued to run very dynamic. The social tension in several areas of the country was highly seen, following the crystallization of the spirit of Papuan independence. On December 1, 1999, driven by Theys H. Eluay, Papuans raised the Morning Star flag, side by side with Indonesian and UN flag. This flag raising was held as in the national level after the change of leadership from B.J. Habibie to Abdurahman Wahid, a

figure who is widely known as humanist and pluralist. He was one of the main figures behind the raising of Morning Star flag at Imbi Park, Jayapura, the heart of Irian Jaya Province. That time, President Gus Dur allowed the raising of Morning Star flag provided that the flag was not be bigger nor higher than Indonesian one.

Political euphoria of Papuans continued. On February 23 - 26, 2000, people of Papua held a people's meeting called as General Assembly (Mubes) of People of Papua. This assembly discussed, inter alia, efforts in aligning the history of Papuans, the formulation of political agenda and a consolidation of people's movement. This General Assembly which was held a year after the meeting of Team 100 with Habibie then was continued by the organizing of Second Papuan Congress from May 29 to June 6, 2000. President Gus Dur also supported the implementation of this congress by giving a contribution worth of 1 billion rupiah.

One of the major things resulted from this Congress was the establishment of Papua Council Presidium (PDP) as a political representation of the people of Papua which was given the mandate to fight for Papua independence through diplomacy line. People of Papua through this congress entrusted Theys Hiyo Eluay as the Chairman and Thom Beanal as Deputy Chairman. In the New Order era, Theys Eluay was once a member of DPRD of Irian Jaya Province from Golkar party and once he was also the Head of Organization of Indigenous People (LMA). Meanwhile, Thom Beanal was the Head of Organization of Indigenous People of Amungme (LEMASA) in Timika who for long had been fighting against the presence of PT. Freeport.

This was the beginning of a new chapter for Papuans to secede from Indonesia. The era of military confrontation which emphasized on the power of weaponry and used forest as its battlefield has now been left out. People of Papua through PDP have chosen to fight to gain their independence peacefully through political diplomacy line and became city-based.

Special Autonomy and Papuan's People Assembly: 2001

In the midst of rising socio-political upheaval since 1998 to 2000, in Jakarta itself there was initiative to offer Special Autonomy to the people of Papua. This was seen from results of Plenary Meeting of MPR

(Consultative Assembly) in 1999, one of which contained a mandate to make Law on Special Autonomy in Papua. This stipulation was then authorized again one year after through Consultative Assembly's Decree/Tap MPR No. IV/2000. From the government side, the attempt to give Special Autonomy status was considered as a national platform to resolve the dispute in Papua. Following MPR stipulation, the Local Government of Irian Jaya then established a Steering Committee which would be assigned to formulate a draft of Special Autonomy, led by Frans Wospakrik, a Rector of Cendrawasih University at that moment. The members included several representatives of social groups in Papua.

Afterwards, they held numerous seminars in order to gather inputs from the people of Papua. Unfortunately, all of those efforts were rejected everywhere from the entire levels of Papuan society. The turning point was on March 29, 2001: a clash took place between people of Papua who rejected the discussion of Draft Special Autonomy Law that was held in Sport Center of Cenderawasih Jayapura, with security apparatus. One person died and dozens of other people were seriously injured.

Although rejected by Papuans, on July 19, 2001, the National Parliament (DPR RI) still established a Special Committee (Pansus) to discuss the Special Autonomy Law that had been formulated. At that time, the Pansus worked in the midst of political uproar at national level, when President Gus Dur had to be replaced by Megawati Soekarnoputri. On October 2001, DPR finally authorized Law on Special Autonomy for Papua Province with number 21/2001, and on November 2001, Megawati as the new President of Republic of Indonesia who just replaced Gus Dur then signed the political decision which was regarded as a 'comprehensive solution for Papua'. Since that moment on, Papua became a region granted Special Autonomy status in the Unitary State of the Republic of Indonesia.

The essence of Law No. 21/2001 is the empowerment, protection and favoritism towards Papuan and emphasis on the development in education, health and economic as well as infrastructure sectors. Furthermore, Special Autonomy also governs the establishment of local political party and the effort to resolve violation against human rights through the establishment of Ad Hoc Legal Commission and

Court of Human Rights, and the effort to establish the Truth and Reconciliation Commission, as well as Customary Court. In economy sector, this law gives fund of profit sharing with the composition reaches up to 70% for Papua and the remaining for central government in Oil & Gas and Mining. To accelerate development process in Papua, this law also instructs central government to allocate fund of Special Autonomy of 2% from national General Allocation Budget (DAU) for 25 years. The policy of Special Autonomy has given the authority to people of Papua in several sectors, except five main authorities, namely foreign politics, defense and security, fiscal and monetary, religion, and justice.

In practice, the policy of Special Autonomy never runs well. In the first second year of its enactment, suddenly the central government issued Presidential Instruction (Inpres) No. 1/2003. The mandate of this presidential instruction was to accelerate the implementation of Law No. 45/1999 on the proliferation of West Irian Jaya Province and Central Irian Jaya Province. Law No. 45/1999 is a policy that has been rejected by the people of Papua in 1999. As for the proliferation of regions, it has been set out clearly in Law of Special Autonomy that one of them should get recommendation from Papuan People's Assembly (MRP).

This Inpres was then responded by Abraham Atururi who was the acting governor for West Irian Jaya Province, by declaring the establishment of West Irian jaya in Manokwari. Similar action was held in Timika as the capital city of Central Irian Jaya, but it received resistance from the people, causing tribal war and claimed several people's lives.

In following up Inpres and the declaration of West Irian Jaya Province, the central government issued a Government Regulation in lieu of Law (Perppu). With this stipulation, West Irian Jaya becomes the only province in Indonesia that is not based on law, but Perppu. President also issued a Presidential Decree (Keppres) No. 213/M/2003 on the appointment of Abraham Atururi as the Governor of West Irian Jaya.

The enactment of Perppu of the establishment of West Irian Jaya Province and Keppres on the appointment of governor clearly ignored the mechanism as governed by Special Autonomy Law,

which sparked anger of several groups in Papua. DPRP then filed a complaint against the Keppres through Jakarta State Administration Court (PTUN). On June 14, 2004, Panel of Judges of PTUN Jakarta granted DPRD's complaint and annulled the Keppres in question. But this judicial decision was ignored by Megawati Soekarnoputri's administration.

Meanwhile, the political process in Manokwari as the capital city of province continued to run very dynamic. The policy of central government furthermore was followed by the establishment of legislative institution as well as change of name from West Irian Jaya to West Papua. Although this process was opposed by many parties, and even the Keppres on the appointment of governor has been annulled legally by PTUN, but the political process in the regional and central government continued to move forward. This was the starting point of inconsistency of central government in implementing Special Autonomy Law.

One of the institutions resulting from the policy of Special Autonomy is MRP, which is the cultural representation of people of Papua. The spirit of establishing MRP is to protect basic rights of native Papuan. According to Special Autonomy Law, this institution is a reflection from a long experience of native Papuan who has been the victims or at least a mere audience during the integration to Indonesia.

As it is a cultural representation of native Papuan, then the membership of this institution can only be filled by native Papuan, unlike DPRP which is a legislative institution which members are elected from a general election and representing political parties. MRP consisted of 42 people, comprising of 14 people representing customs, religion and women elements.

According to Law No. 21/2002, MRP has the authority mainly to protect the rights of native Papuan. Some of its authorities included giving advice in the candidacy of Governor and Vice Governor of Papua Province, the creation of Special Regional Regulation (Perdasus), providing advice to DPRP, Governor, DPRD of City/District and Mayor/District Chief (Bupati) on issues related to basic rights of native Papuan.

The establishment of MRP itself went through a very long and tiring political process for about three years as the central government did not issue any Government Regulation (PP) on the

Establishment of MRP. Only in November 2004, when there was a change on national leadership to Susilo Bambang Yudhoyono, then the government passed Government Regulation (PP) No. 54/2004 on Papuan People's Assembly (MRP).

In 2005, for the first time, the established MRP was chaired by Agus Alue Alua. He was one of Papua figures who came from Jayawijaya, while at the same time served as Deputy of General Secretary of PDP. On his first period, many decisions on MRP were made, which actually were based on Special Autonomy Law, but created political controversy, both at local and national level. For instance, in 2006, MRP decided to make 'Hai Tanahku Papua' and 'Morning Star' as an official anthem and flag, respectively. MRP underlied its decision on Article 2 paragraph (2) Law No. 21/2001. In 2009, MRP also issued a Stipulation Letter (SK) No. 14/2009. This SK required all candidates of regional leader, whether at provincial or district/city level in Papua land to be from native Papuan. Those two decisions were rejected by the central government under reason that it opposed Indonesian values. Meanwhile, related to SK No. 14/2009, the Minister of Home Affairs evaluated that the SK was in contrast with the life principles of the nation and state for its highly discriminatory nature.

Still in 2009, on July 2, MRP issued a threat to boycott the implementation of 1999 General Election if the government would not immediately accommodate the allocation of 11 seats for native Papuan in DPRP. The controversy related the existence of MRP was growing even more since the central government had the desire to establish MRP in West Papua Province. The reason of its establishment was to accommodate the aspiration of people in that province. Many rejected this establishment, but the central government insisted with the decision and facilitated the entire process of election until the inauguration of MRP members in West Papua Province.

The attitude of central government that rejected various kinds of decision made by MRP was responded by MRP by organizing a General Assembly of the People of Papua to conduct an evaluation against the implementation of Special Autonomy. The result was, Special Autonomy has failed, and the people of Papua, together with MRP on June 18 and July 8, 2010 held a peaceful demonstration at DPRP to restore the Special Autonomy Law.

Over time, the regional government and central government did no longer encourage the establishment of institutions as mentioned in Special Autonomy Law, except MRP, which was established four years after the enactment of Special Autonomy Law. Other institution such as KKR, Legal Commission of Ad Hoc and Court of Human Rights and Customary Court were not established.

Many parties think that Special Autonomy has failed in carrying out their mission to give protection and favoritism towards Papuan. This assumption makes sense in a way should we look deeper into the real condition in the society. In many villages in Papua, we can see the minimum facilities and infrastructures that support Papua's society so that they can go to school. Even if a school building exists in a village, in most cases there is no teacher available, nor other supporting facilities, such as books, stationeries or experiment tools for students. The same case happens in health sector. When there is Public Health Center (*Puskesmas*), most likely there is no orderly administration or midwife on the site. If there is a medical worker, there is no medicines. Or the opposite, when teacher and order are available in that village, then there is no school nor Puskesmas.

The Development Acceleration Unit of Papua and West Papua (UP4B)

In the midst of hustle and bustle of discourse on failure and reformation of the Law of Special Autonomy, in 2010, the central government issued a discourse to establish a unit that will accelerate development in Papua. This unit was later on named the Acceleration Unit of Papua and West Papua Development (UP4B). It was established based on the Presidential Regulation (Perpres) No. 65/2011 on the Acceleration of Papua and West Papua Development, and Perpres No. 66/2011 on UP4B.

The birth of this unit was admitted due to the failure of Special Autonomy Law in improving the standard of living of the Papuans. The central government thought that this unit would be a solution to the evaluation of Law of Special Autonomy which was conducted cross-ministry due to the slow development in Papua, despite the huge amount of money given by the central government. UP4B would be assigned to coordinate program implementation and policies in Papua and West Papua so it would achieve maximum result.

UP4B would work by applying two approaches: socio-economic approach that emphasizes on public service, and socio-political approach that is focused on developing and building a constructive communication between the government and people of Papua. The government appointed Bambang Dharmono, a retired General, chairman of the unit. In the organization structure, UP4B Chairman would have a direct responsibility to the President of the Republic of Indonesia. Meanwhile, Vice President would act as the Leader of Steering Committee of UP4B that is assisted by the Coordinating Minister as Deputy Leader of Steering Committee. The Steering Committee itself consists of 22 ministers/Head of LPNK and Governor of Papua and West Papua.

Many regrets and suspicions were addressed to this political step by the government, as it was conducted without any socialization to the people of Papua in advance. A number of institutions, including church and MRP rejected the enactment of this unit, as it was regarded as Jakarta's attempt to take over the policy of decentralization by giving big authority through Special Autonomy Law.

VIOLENCES IN POST-REFORMATION ERA

The Case of Bloody Wamena, October 2000

Demonstration and demands from people of Papua to secede from NKRI were getting stronger and occurred many times in several areas of Papua from 1999 to 2001. Most of the actions were accompanied by Morning Star flag raising, and ended with violence that caused fatalities, both in the side of native Papuan and also military and police apparatus. At the same time, at grass-root level, there has been a polarization of society into two opposing groups: the group of native Papuan who wanted to be free and secede from NKRI in one hand, and on the other hand, the migrant group that was in the state of confusion.

Following the implementation of General Assembly of Papua 1999 and the Second Papuan Congress in 2000, the consolidation at Papuan society grew stronger. This was visible from the establishment of task force of independent Papua in the entire regency of Papua. Other than establishing a post and raising the Morning Star flag, they

often intimidated migrants by committing maltreatment, bullying and other forms of violence. Then on October 6, 2000, a very massive humanitarian violence took place across Wamena, the capital city of Jayawijaya. No less than 37 people died and 89 people injured from a minor injury to serious one. Tens of other people arrested and experienced torture. It was also reported that 13,565 people were displaced from their villages.

The Case of Bloody Abepura, December 2000

Two months later, precisely on December 7, 2000 there was an attack to the Sectoral Police (Polsek) Office in Jayapura by around 15 unidentified people. Two police members were killed in this tragedy and three other polices had serious injury. This group also burnt down shophouses (*ruko*) nearby the precinct (Polsek), then killed a security guard at Papua Autonomy office. The sweepings to hunt down and chase the perpetrator were held by the police apparatus. In a series of reaction after that incident, police held a sweeping brutally to several boarding houses of university students and villages of certain tribes in Abepura. 1 person died on the scene, while 2 others died in detainment due to the torture they were put under. Approximately 9 women and 96 men were tortured repeatedly in the detainment of District Police (Polres) of Jayapura.

Upon the insistence from several parties, the National Commission of Human Rights (Komnas HAM) eventually formed an Investigation Commission on Violations (KPP) against Human Rights to investigate cases that were considered as a severe violation of human rights. In the report, Komnas HAM concluded that there was a violation against

The Case of Bloody Wamena: Friday, October 6, 2000

This case started when there was an attempt to take down the Morning Star flag at several posts of Papua task force by the police apparatus, assisted by TNI (armed forces). On October 6, 2000, the police and TNI apparatus were alerted to standby since the morning. The sweeping of posts then started in Sinakma Atas, Sinakma bawah, Jl. Bhayangkara of Wamena City, Sinapuk, Jl. Pasar Baru, Doksar and post at Jl. Pikhe. The sweeping continued to the post at Jl. Trikora and second post at Jl. Bhayangkara. Tens of task force member in the post were arrested and brought down to the Polres of Jayawijaya. Several posts were burnt down and flag pole was demolished. The security apparatus also confiscated several Morning Star flag from those posts.

This action caused rage in Papuan society, which then launched an attack to security apparatus and settlements of migrants. Several roads in the city were also barricaded with wood piles by the people. This action was also followed by the burning down several houses belong to civilian and killing of the owners. About 20 migrants became victims of task force of Papua. Among them were a pregnant midwife, 2 small children aged 3 and 7 years old with their mother, and a priest.

Security apparatus from joint TNI and INP personnel who came to secure the situation were helpless in facing the violent mass, and had to pull back. Some of them became victims and were injured after being attacked with traditional weapons launched by the task force. After getting personnel backup, the security apparatus then managed to neutralize the situation.

Report of Humanity Team of Wamena, 2001.

human rights in form of torture based on gender, race and religion, a summary killing and deprivation of liberty or other physical freedom in arbitrary manner. Komnas HAM recommended the Attorney General Office to conduct an investigation and prosecution in Human Rights court against the perpetrators who were allegedly involved in that human rights violation.

Based on KPP HAM's findings, the Attorney General Office then conducted a pro justitia investigation and prosecution on two defendants who were allegedly perform severe violation of human rights in Abepura in District Court of Makassar. This was the first permanent Human Rights Courts held in Indonesia since the creation of Law No. 26/2000. At the end, the two defendants, Police Senior Commissioner (Kombes) Wainal Johny Usman and Kombes David who respectively served as Commander of Mobile Brigade Unit of Papua and Chief of District Command Police of Jayapura, declared not guilty of all charges filed by the ad hoc general prosecutor. Both were acquitted by the panel of judges of Human Rights Court.

The Murder of Theys Hiyo Eluay, November 2001

Other case which took the attention of the world was the killing of Chairman of PDP, Theys Hiyo Eluay on November 10, 2001 by troops of Special Forces (Kopassus). At that time, Theys Eluay with his driver just returned after attending a commemoration of National Heroes Day which was held at the headquarter of Task Force Tribuana X of Kopassus, in Hamadi, Jayapura. Theys Eluay was then found in Muara Tami, near the borderline with PNG. His body was found in his private car that was stuck in a tree at the cliff. Meanwhile, his personal driver, Aris Toteles Masoka remained missing until now.

It takes quite some time to figuer out the perpetrator who caused his death. Since the outbreak of this case, Police apparatus from Regional Police (Polda) of Papua, assisted by INP Headquarter has conducted several investigations and suspected the involvement of Kopassus troops.

Considering the position of Theys as Chairman of PDP who had a different political view with the Government of Indonesia, numerous NGOs of Human Rights pushed Komnas HAM to conduct an investigation. This is in line with the mandate in Law No. 39/1999

on Human Rights and Law No. 26/2000 on Human Rights Court. But Komnas HAM itself in fact asked the government to create an independent team to resolve this case.

In the beginning of 2002, President Megawati Soekarnoputri issued Keppres No. 10/2002 that governed the establishment of this independent team to investigate the killing of Theys. The issuance of this Keppres increasingly made Human Rights activists even more enraged in Papua and national level. NGOs thought that this Keppres was against the national jurisdiction system as it did not have formal legal basis in Criminal Code and Criminal Procedural Code. Human Rights activists who from the beginning suspected that the commission would only present the case as a normal crime also conveyed their opinion that KPN did not have the authority to investigate the alleged involvement of Kopassus as addressed by the Police.

Many people were already pessimistic toward the attempt of the government to make this case clearer, especially after it was decided that all involving Kopassus soldiers would be investigated at the Military Court of Surabaya, not in Papua as the crime scene. All pressures from various circles to hear the murder case of Theys in Papua were ignored by the government.

In the trial, Military Court then sentenced them in the form of imprisonment to dismissal of the 7 Kopassus soldiers. They were Lt. Col. Inf. Hartomo, Major Inf. Doni Hutabarat, Capt. Inf. Rinardo, Lettu Inf. Agus Supriyanto (1st Lt) , Sertu. Asrial (1st Sgt), Sertu Lourensius (1st Sgt) and Praka Achmad Zulfahmi (Master Private).

Trial of PDP Chairman, 2002

Theys Eluay was murdered when he was undergoing a trial process with 4 other PDP members on charges of treason. The charge of treason was based for their Morning Star flag raising, organizing General Assembly (Mubes) and the Second Papuan Congress in 1999 and 2000. The defendants were; Theys Hiyo Eluay as Chairman of PDP, John Mambor and Don AL. Flasy as member of PDP, Fr. Herman Awom as the moderator of PDP and Thaha Muhammad Alhamid as the General Secretary of PDP. On its development, the case of Theys Eluay was no longer continued as he passed away, while the case of John Mambor also stopped since he then suffered from severe illness.

Three other presidium leaders were convicted guilty by the Panel of Judges of District Court (PN) of Jayapura. Nonetheless, Panel of Judges thought that these defendants could not be sentenced as the whole treason process that was plot to all defendants has been granted a direct approval from President Abdurrahman Wahid. As widely known, Gus Dur at that moment even helped the process to hold the Second Papuan Congress by giving them a contribution worth of 1 billion rupiah. This verdict raised many compliments from legal and human rights activists as it was regarded as one of legal breakthroughs at the beginning of Reformation era.

Wasior Case, March – June 2001 and Wamena, April 2003

This case started when people demanded a compensation for the utilization of their customary land by PT. Dharma Mukti Persada (DMP) and CV. Vatika Papuana Perkasa (VPP). Both companies operate in Wombu and Wondiwoy village, Wasior. On March 31, 2001, the society, with the help of armed civilian group attacked the office of PT. DMP which caused the death of 3 company staffs. On June 13, 2001, the society, with the help of armed civilian group, did the same attack to CV. VPP. Five members of Mobile Brigade (Brimob) and one company staff died.

Tuntas Matoa Operation was then launched by the security apparatus from Polda Papua, assisted by Kodam XVII/Cenderawasih. In their sweeping, 11 civilians died and 74 other people had torture from security apparatus. Moreover, 63 houses were destroyed and some of them were burnt down during the operation.

On April 4, 2003, there was an attack and burglary of an armory's warehouse belonging to Kodim 1702/Wamena. One officer and one petty officer of Kodim Wamena died and 19 guns and 4,000 rounds of ammunition were managed to be taken away in this incident. This triggered security apparatus's rage from TNI and police in Wamena. A number of units of Army Strategic Command (Kostrad), Kopassus and Brimob (Police Special Force) were specially brought down to chase the perpetrator. The sweeping done by military and police units was held in a number of villages in Wamena. Various violence acts and torture by the security apparatus to the people happened in this process. Moreover, the security apparatus were also destroying and

burning several *honai* (traditional Papuan house) of the people in a number of villages included in the sweeping area. It was even reported that several individuals of security apparatus who performed that operation also stole some people's money from their *honai*.

Upon strong pressures from various parties, Komnas HAM then formed a Fact Finding Team and formed an Ad Hoc Team to investigate pro justitia that covered the incident of Wasior and Wamena. The report from Komnas HAM mentioned that in those two incidents, it was reasonably suspected that there was an indication of a crime against humanity, including murder, torture, rape, forced disappearance and deprivation of liberty of citizens. The file of investigation report of Ad Hoc Team of Komnas HAM has been repeatedly submitted to the Attorney General Office. However, the Attorney General Office refused to examine and conduct an investigation on those two cases under the pretext of incomplete report by Komnas HAM.

This case is no longer followed up until now, even there on April 2004, Theo van Boven, UN Special Rapporteur on Torture sent an urgent appeal to the Government of Indonesia to take immediate steps in handling torture cases in those two cases.

The Bloody UNCEN Case, March 16, 2006

The incident of Bloody Abepura on March 16, 2006 at the gate of Cenderawasih University (Uncen) Abepura started from a peaceful action a day before (March 15) by university students and civil society, driven by Street Parliamentary and Front Pepera of West Papua. They protested the presence of PT. Freeport and the military existence, as all that time, they only brought harm to the people of Papua. This action was one of the protests addressed to PT. Freeport held by many groups of university students in other regions, such as Jakarta, Makassar and Yogyakarta, since the end of January 2006.

The clash between protesters and security apparatuses was inevitable, after the negotiation they had with DPRD member did not lead to any results and they dismissed themselves. Three members of Brimob and one member of Air Forces who happened to be around the location died. Tens of other people had serious injury from both sides. People from community element and university students who held the demonstration were finally arrested and experienced

various heavy tortures. Fourteen people among them were named suspects and underwent trial process.

The Case of Opinus Tabuni, August 9, 2008

On August 9, 2008, the indigenous people of Papua, under the direction of Papuan Customary Council (DAP) commemorate the World's Indigenous People Day that was held in the field of Sinapuk Wamena. In the middle of the procession, three flags were raised: Indonesian flag, Morning Star and UN flag. In addition, there was a white flag with SOS writing in red. It was not clear what the intention of that SOS flag was, as it was only used in emergency situation which required immediate help. Nevertheless, the Secretary of DAP, Leonard Imbiri denied that his side initiated the raising of those four flags. According to him, it was done by parties who wanted to disrupt and did not want the celebration.

The celebration of World's Indigenous People Day ended in chaos after Opinus Tabuni, one of the participants was found dead in a state of severe injuries. The victim was suspected have been killed by a shot by unknown individual. Opinus Tabuni's has never been followed up by the security apparatus until now. The investigation conducted by Polda Papua only provided conclusion that the ballistic test on bullets which killed Opinus Tabuni was not from the police unit. The police did not develop the investigation of that case.

The Case of Puncak Jaya and Kelly Kwalik

From 2007 to 2011, there were several shooting incidents occurred in Puncak Jaya district. The victims were not only from security apparatus (police or TNI), but also migrants, whether they work as a civil servant officer or employee in private sector who reside there. Even a journalist of daily local newspaper in Jayapura also became the victim. The report of an attack by a group who was suspected to be a part of National Liberation Army-Free Papua Movement (TPN-OPM), led by Goliath Tabuni even targeted the civilian commercial flights which transported passenger or cargo to Mulia, the capital city of Puncak Jaya Regency. Access to this area is not that easy, because it can only be reached by a flight from Jayapura or Wamena. This geographic condition makes this area tend to be closed from the outside world.

In 2010, the international world was shocked by the appearance of two video clips on Youtube, the sharing media. Footage images uploaded by AHRC showed military brutality in Puncak Jaya. This video raised a lot of anger from the world to the Government of Indonesia, mainly to the military institution. President Susilo Bambang Yudhoyono himself directly instructed Commander of TNI to take legal actions to those involved.

On December 16, 2009, the highest leader of OPM in Timika, Kelly Kwalik found dead after being ambushed by 88 Special Detachment Unit. At that time, Kwalik, who was shot on his thigh, was rushed in to a hospital, but he died on the way. Kelly Kwalik, who once had studied to become a teacher at the Pedagogic School in Fakfak, was one of well-known OPM frontmen in the history of the OPM. Kelly Kwalik was considered to be in a group that committed several sabotages against PT. Freeport. The most phenomenal action was when his group held hostages Lorentz Expedition Team in Mapnduma in 1996.

Many people regretted the incident, particularly churches and Human Rights activists in Papua, as this would create a negative impact in encouraging the dialog process of Jakarta - Papua. Kelly Kwalik's body, covered by Morning Star flag, was placed in DPRD Mimika before finally buried.

The Third Papuan Congress, 2011

On October 17 - 19, 2011, a group of Papuans under the command of Forkorus Yaboisembut, the Chairman of Papuan Customary Council, held what they called as the Third Papuan Congress. According to them, it is a continuation of Second Papuan Congress which was held in 2000. Hundreds of Papuan attended the Zakheus field, Abepura. Although Polda Papua admitted that they did not issue any permit related to the implementation of the congress, but police did not make any effort to prevent it. Even the security apparatus, police and TNI did not dismiss the mass when the Morning Star flag was raised on the second day of the congress.

This congress itself resulted in the birth of Federal Republic of West Papua, and elected Forkorus Yaboisembut and Edison Waromi President and Prime Minister, respectively. Approaching the end, security apparatus immediately conducted a forced dismissal to the

mass who attended the Congress and arrested approximately 300 people who attended the Congress. Three people were reported dead and tens of other people had serious injuries.

Political Detainees and Prisoners

Various violence acts in Papua as mentioned above led to detainment and imprisonment of Papuans. Most of them were sentenced guilty with various period of imprisonment, starting from 1 year to life sentence. Tapol, a civil society organization on peace and democracy based in London, stated in their report that until March 2014, there were 73 political detainees and prisoners across Papua. Some of them were still undergoing a trial process.

Most of them were accused under the Article 106 of Criminal Code: an attempt of treason against the nation. Other accusations included raising Morning Star flag, held a peaceful demonstration, and commit attack to police office. Others were charged under Law No. 12/1951 on the Possession of Weapons.

They were imprisoned in a number of prisons across Papua, namely Manokwari, Sarmi, Jayapura, Wamena, Biak, Nabire, Timika and Serui. Some others were detained in police detention as they were still under investigation. In general, they were in a very bad condition at least from their health.

The government, through the Coordinating Minister for Political, Legal Affairs and Security on December 2011 has denied the allegations concerning the existence of political detainees and/or political prisoners in Papua. That denial was strengthened by the statement of Minister of Legal and Human Rights on March 2012. But the facts on the ground showed that detainees and prisoners who were charged by treason were getting more attention and were supervised more strictly by the prison guards than detainees or prisoners of other cases. The restriction was done by giving a shorter visiting time compared to prisoner with different case, or more complicated case procedure, as well as other forms of intimidation. In May 2012, the access for prisoners in LP Class II A Abepura to the outside world was closed. The closing of access was not only for their own family, but also for any visit by clergy and their legal advisors. This happened from May 1 - 7, 2012.

LEGAL STRUCTURAL AID IN REFORMATION ERA

The role of LBH Jayapura as an institution that provides many legal assistance to people in Papua is increasingly perceived to be important during the period of reformation in Indonesia. Various cases of misappropriation of law that was experienced by Papuan during the New Order and could not be voiced out as they were being silenced by the government were told at this time. At that time, LBH Jayapura found it difficult to handle cases reported by the community to them. Two most prominent cases are related to the process of reclaiming a land that was done by society and cases related to the freedom of expression and voicing opinions that led to a violence act towards the society. These two cases gained serious attention from LBH Jayapura activists at that moment.

The non-litigation process also gain more portion along with many financial aids contributed to LBH Jayapura in providing legal educations to vulnerable community in Papua. LBH Jayapura gives a lot of trainings to local community as paralegal who will help other people in solving legal cases in a society which are out of LBH Jayapura's reach.

In the meantime, along with the increasing number of NGOs that have sprung up in Papua, LBH Jayapura does a lot of coalition works in handling legal cases. This coalition work is not only in the form of handling a litigation case from police to the court level, but also cooperating in revealing various violence acts by the state to the society across Papua. The cooperation with numerous NGOs of Human Rights in this litigation process is the one that distinguishes it with that during the New Order. In that era, LBH Jayapura was the only social institution which prepared their staff in providing legal aid.

Present Situation

Limitation to International Organization, Diplomat and Foreign Journalists

Various violences and reports from various international organization in relation to the situation of human rights in Papua seem to make Indonesian Government more 'sensitive' to international

organizations and foreign journalists. On May 2006, representative from UNHCR, Neil Wrights expressed his concern after the request from his office to get an access to Papua was refused, despite having submitted it repeatedly to the Government of Indonesia. Meanwhile, UN Special Rapporteur for Torture, Manfred Nowak, expressed his regret that the request from his office to visit Indonesia which had been submitted since 1993 remained ignored.

The pressure from international world to the Government of Indonesia particularly to accept the request of UN reporter on Human Rights and UN agencies of special procedures, also from international journalist, was addressed on last May 2012. This was raised by several countries, such as France, Great Britain, Maldives, Austria, Chile to South Korea and Mexico. This pressure was conducted after previously, UN Special Rapporteur on arbitrarily execution, Philip Alston addressed that he had submitted a request to visit in 2004 and 2008, but never responded by the Government of Indonesia.

In April 2009, International Committee of Red Cross (ICRC) was instructed by the Ministry of Foreign Affairs to close down their office in Papua and Aceh. On January 2011, Peace Brigade International (PBI) decided to withdraw from Papua. PBI is an international NGO which helps to make protect humanitarian worker organization in Papua. They had to close their office in Wamena and Jayapura after they were put into complicated circumstance by the government which refused to issue travel document to observe several areas outside Jayapura. By the security apparatus, they were also accused of supporting separatist group in Papua. Previously, Cordaid, a donor institution from Netherlands was requested by the Ministry of Social Affairs to close down their representative office in Indonesia as they were considered giving support for the independence of Papua. Meanwhile, visa applications from activists of Human Rights Watch to visit to Indonesia are regularly refused by Indonesian Government.

The restriction and stricter treatment by Indonesian Government was not only meant for diplomats and international organizations. A French journalist, Baudouin Koenig, was arrested by the police and deported to his home country after covering a demonstration in Jayapura in July 2010. The security apparatus accused him of misusing his visa to Papua. Whereas in fact, he had a journalist visa

that enabled him to visit anywhere and cover anything without being arrested. Previously, Al Jazeera was also requested to withdraw the documentary entitled 'Pride of Warriors' that showed military presence and human rights violations in Papua.

Economic, Social and Cultural Situation

In 2012, Human Development Index (IPM) in Papua province was the lowest among 33 provinces in Indonesia: 65.86. Meanwhile, IPM of West Papua Province was a bit higher, which was 70.22. The life expectancy rate in Papua province was 69.12 years, while in West Papua, it reached 69.14 years. The average length of school attendance in Papua province only reached 6.87 years. It means, the average population of Papua province is only able to complete elementary school. In West Papua, the average length of school attendance was 8.45 years.

According to the Indonesian Health Ministry, the infant mortality rate was 54 death per 1,000 birth in Papua province. In West Papua, the infant mortality rate was 74 deaths per 1,000 birth. This figure is very far from the MDG target that indicates 23 deaths per 1,000 birth. Meanwhile, the mortality of child under five years old in Papua province was 109 deaths per 1,000 live births. In West Papua, the figure was higher, which was 115 deaths per 1,000 live births. This figure is the worst number in the entire province of Indonesia. The maternal mortality in national level reached 240 deaths per 100,000 live births. Meanwhile, data from Health Office of Papua Province in 2010 stated that maternal mortality in Papua Province reached 362 deaths per 100,000 live births.

On August 11, 2010, the Indonesian Agricultural Ministry has officially launched a mega project named Merauke Integrated Food and Energy Estate (MIFEE). This project covers 1.28 million hectares of land in Merauke district at the southern part of Papua. The project was intended to become national, and even world barn and energy source, with main commodity of palm fruits, corn, soybeans and cane, as well as wood.

Many people rejected this ambitious plan over the concern of repeating the same mistakes when they were deprived from their customary land of Papua. In many places in Papua, many gave a

description on how the presence of an investor in an area always creates conflict, both vertical and horizontal. In the context of economic and socio-cultural rights of the Papuan, this project was considered to threaten their life as they will lose their livelihoods and cultural identity. This is because many tribes living in the area, including Marind, Muyu, Mandobo, Auyu and Mapi, generally still rely on hunting and gathering food for their livelihood. The consequence of this project, either directly or indirectly, would be land acquisition which belongs to indigenous people in a number of targeted areas.

The concern on having a conflict in this area at least was shown by the efforts from parties who tried to persuade people to accept this project with some material payment in return. In longer term, if this project is finally implemented, people will experience a serious cultural turmoil because they will face the invasion of thousands of workers from outside Papua. While the indigenous people do not have skills to be involved in this international-scale project, they will just become audiences and by itself, they will be excluded from their own land.

Besides MIFEE, previously, the government had granted 38,000 hectares of land in Papua and West Papua for palm fruits plantations. This area is located in Jayapura, Keerom and Merauke regency, and also in Manokwari, West Papua. A conflict related to customary rights of indigenous people also took place in Jayapura district from 2008 to 2011. In Tablasupa village, PT. Sinar Indah Perkasa and PT. Tablasupa Nikel Mining have triggered horizontal conflict between indigenous people. It happened because the private sector also gained full support from security apparatus.

Proliferation of New Autonomous Region

The most prominent thing after the enactment of Law of Special Autonomy is establishment of many new autonomous regions in Papua. Until now, there are two provinces in Papua, namely Papua province with Jayapura as the capital city and West Papua province with Manokwari as its capital city. The proliferation is the result of the enactment of Inpres No. 1/2003 on the acceleration of the establishment of West Irian Jaya Province and Central Irian

Jaya Province. The number of district in those two provinces is 42 districts/cities, which consist of 29 districts/cities in Papua province and 13 districts/cities in West Papua.

Chairman of the Parliamentary Caucus for Papua, Paskalis Kosay admits that DPR (National Parliament) of the Republic of Indonesia is in the process of discussing Law on Proliferation which contains proposal of proliferation of 33 new districts in Papua and West Papua. If it is approved, Papua province will get additional 21 districts, so total number would be 50 districts/cities. Meanwhile, 12 new districts will add the number of regency/city in West Papua province into 25 districts/cities. In the mean time, the Ministry of Home Affairs in November 2012 has announced that the government was in the middle of preparing a grand design of proliferation in Papua to make it into five provinces.

The most classical reason that frequently mentioned by the group who wants this is to bring government service closer to the people. By having a proliferation of district, people's welfare can be improved. Such is the argument from several political elites in Papua who want the proliferation of this area.

Looking at the real condition of several newly proliferated regions in Papua, the central government and regional government should presumably conduct an in-depth study and perform a comprehensive evaluation related to this issue. In some areas, some potential regions are found to not have sufficient human resources. This causes selection of people to fill certain position is no longer based on their competence and capacity, or their ranks. Many class II civil servant officers are appointed to be the head of a division. This is worsened by the attitude and policy of the regional leader like to make arrangement to fill a certain position in the government based on the emotional relations, which can be defined as primordialist. Even if they deploy a personnel from outside the region to fill certain posts, this action in fact will only cause social jealousy from the locals.

Moreover, the proliferation of an area in Papua does no longer consider the potential of an area as the main factor of government's sustainability. Most of the districts and provinces in Papua only rely on fund transfer from central government in the form of General Allocation Budget (DAU) and Special Allocation Budget (DAK) as well

as Special Autonomy budget in the State Budget (APBN) which reach 80% of total Regional Budget (APBD) to finance development in each area.

In exercising their power, officers in Papua tend to show themselves not as a modern bureaucrats who serve public interest, but more as a big man or patron who uses state money to preserve the loyalty of their constituents which are normally members of their tribe or their own clan. The discourse of proliferation as an improvement of public service turned out to serve as a mask for a petty and selfish interest to dominate the political and bureaucratic resources at local level, which in turn, compromises the function of bureaucracy as a public servant.

Key Actors

1. Military and Indonesian National Police (Polri)

The first encounter between Indonesia and Papuans was marked by military presence who accidentally created an impression of frightening, violent and hostile entity to the people of Papua. This was shown for the first time when Indonesia infiltrated to Papua at the end of 1950s and throughout 1960s. The inhumane impression continued to be blatantly demonstrated by military and police throughout the New Order era. This has created an everlasting impression the mind of Papuan about Indonesia: a nation full of murderers and violator of Papuan's rights.

The presence of military and also police in Papua was not only intended to maintain the integrity and sovereignty of Indonesia. They are also involved to protect what so called national vital objects; PT. Freeport in Timika, and they are also responsible in ensuring that the whole development process in Papua is in accordance with what has been set by the national government. Therefore, it is not surprising that during New Order regime, all regional leaders, either governor or district chief in Papua were appointed from military retirees. All efforts were carried out to ensure the national policy towards Papua can run well.

In practice, military and police in Papua often work as guard to many private companies operating in Papua, starting from mining company, holder of forest concession rights (HPH) and other big

companies. For company, military and/or police is the right group to ask to guard the sustainability of their operational business, as they can protect the company (mainly) from OPM threat. Hence, it is quite reasonable when one considers that the existence of several OPM groups is actually 'maintained' by the military for their economic interests. Because when one considers OPM's lack of personnel and weaponry, it is definitely not difficult for the military who excels from the number of personnels and weaponry, not to mention their fighting capability, to destroy this separatist group.

The security approach that they adopt has eventually resulted in many human rights violations for which both institutions were accused of, as institutions which have legal rights to hold arms. Unfortunately, they are very difficult to reach by the law. Many cases of human rights violations which allegedly involved military personnels and police officers are never completely solved.

2. Central and Local Government

The policy of central government which made Papua as one of Military Operations Area (DOM) since 1978 was admitted as a deeply flawed policy. Due to the militaristic policy, hence it made Papuan never feel as Indonesian at all, although the status of DOM has been revoked since 1998. Moreover, the centralized policy that was enacted during New Order regime was regarded as playing big role in lowering the quality of human development in Papua.

To atone for these past sins, the Government of Indonesia then made a political offering in form of Special Autonomy status to Papuan through the enactment of Law No. 21/2001. Unfortunately, the central government seemed to be not serious in implementing the Special Autonomy consistently. This can be seen from the fact that many authorities given by Law of Special Autonomy to the regional government were revoked unilaterally by the central government. MRP as the institution that was deemed as protector and promotor of native Papuan's interest was made helpless after all their decisions were countered by the central government. One needs to know that MRP is the only institution that is mandated by the Law of Special Autonomy which establishment is 'allowed' by Jakarta. Other institutions that were also instructed by the Law of Special Autonomy were not established until the thirteen years after the enactment of the Law.

At the same time, the regional government, regardless province and district/city, is trapped into project-mentality bureaucracy. Corruption and collusion, as well as nepotism, are strongly spread in the body of government institutions in the region, making bureaucracy reform declared at national level doesn't work at all in this institution. The autonomy principle in fact expanded very badly in the context of Papua that has Special Autonomy Law. This condition is even worsened by the attitude of central government who is ambivalent by applying two to three conflicting policies in Papua. Central government, for instance, also implement the enactment of Law No. 45/1999 on Proliferation of Papua Province through President Instruction (Inpres) No. 1/2003. Furthermore, central government also applied the Law No. 32/2004 on Regional Government.

This situation does not only create an increasingly bad relationship between the community and the state, but also created a conflict between central and regional government. As information, both Laws have two different principles related autonomy. Law No. 32/2004 on Regional Government governs the autonomy at district level, while Law on Special Autonomy governs the autonomy at provincial level. District chief (bupati) or mayor does not have to be accountable to the governor. Therefore, governor does not have authority to give reprimand to those who does not perform development in their respective region. Governor does not even give any reprimand to the district chief who has never been in the location, and although he knows that many district chiefs spend most of their time in provincial capital or in Jakarta.

The indicator of regional government's failure can be seen from the Human Development Index (IPM) of Papua province which never moves from the lowest point compared to other provinces in Indonesia. Poverty rate among Papuans is also the highest across Indonesia. This condition continues to happen although the fund of Special Autonomy has been given at the amount of tens of trillions for the welfare of Papuan people.

3. DPR Papua and District DPRD

The contribution of this institution is not quite visible in the context of law enforcement and protection of basic rights of Papuan.

This institution, for instance, is not really performing in making numerous regional regulations or in creating Regional Regulations of Provincial Government (*Perdasi*) and Special Regional Regulation (*Perdasus*), as mandated by the Special Autonomy Law. Moreover, the work of this institution can not be seen either on the supervision towards regional government in performing the development in the area. In addition, many perceive that the budgeting process that is made every year are not in favor of the Papuans.

In the context of law enforcement, this institution is also experiencing a stepback when removing Commission F that is responsible for Human Rights and Indigenous People of Papua. The authority related to the sector which has always been strived for by the Papuans is merged into Commission A. While during 2004 to 2009, Commission F performed very well in helping the advocacy against violence by the state.

DPR Papua, definitely along with the regional government, is deemed to be incapable of fighting for 14 seats as the quota of Papuan through the creation of *Perdasus* as mandated by the Law of Special Autonomy. By many people, this incapability is regarded as their reluctance to make *Perdasus* providing 14 seats for Papuans, because all this time, those quota was used by political parties that had already had seats in DPRP.

4. Free Papua Group

Another key factor in the upheaval of Papua is the existence of Free Papua Group. This group must be distinguished between the one that chooses violent way and another which chooses peaceful political diplomatic way. The first group is represented by TPN OPM which generally operates at borderlines or forests and mountainous areas which geographically are hard to reach by the security apparatus.

In general, TPN OPM group which prioritizes the guerrilla tactic has very minimum personnel and weaponry. Moreover, the absence of structure of command makes this group hard to defeat. Each of OPM group is an institution that works by itself, and is autonomous. In many incidents, this group does not only launch attacks to security apparatus and government, but they also do not hesitate to harm civilians, both Papuans and migrants.

The other, the Free Papua Group which takes peaceful diplomacy as a mean was formed in the Presidium of Papua Council (PDP). Actually, this institution is a representative of all elements of Papuan society who want to have their independence. In the organization of PDP, there are several pillars, such as customary pillar, religion, female, youth and university students, former political detainees (*tapol*)/political prisoners (*napol*) and TPN/OPM pillars. It was meant to conduct a process of canalization against the emerging turmoil from 1998 to 2000. All pillars were requested to conduct institutional consolidation so the emerging movement would not go out-of-line, which in the end may bring harm to Papuan. The support of many Papuans made PDP's political legitimacy very strong.

Nevertheless, this groups failed to meet big expectation from Papuans. The failure in consolidating each pillar make their journey became very tough. The failure of consolidation can seen among others from numerous groups of TPM OPM which openly stated their disappointment on PDP performance and decided to return to continue armed resistance in the forest.

5. Civil Society Organization

Many local and national NGOs in Papua emerged during 1999 to 2000, when New Order was no longer ruling. During New Order regime, not many NGOs involved in democracy process in Papua. At that time, only Legal Aid Institute (LBH) Jayapura, Development of Village Community Foundation (YPMD) and several NGOs focusing in health and education. In the context of law enforcement in Papua during the new order era, LBH Jayapura was known as the NGO which not only contributed to the development of community capacity, but also became the only institution that provided legal aid service in litigation for Papuans.

NGO in Papua plays a significant role in running advocacy and legal defense mainly in civil and political rights. Their concern is shown in their response to numerous violences perpetrated by the state, for instance, by establishing a team that handles victims of human rights violation. That effort is normally conducted jointly with churches which normally are a place for victim to voice their mind. This litigation and non-litigation advocacy significantly helps the people to voice out what they feel across nations, so the history of

the victim is no longer a memory among the community, but becomes public memory.

The strength of NGO started to decline in the past 5 years. Many factors contributing to this situation, including the abundant number of NGO activists who became more interested and decided to go into government or politics as they are considered more financially promising. In addition, the minimum support from international donor against the works of NGO has also contributed in making NGO movement in Papua weakened.

6. Church and Religious Group

Church in Papua is a group which also has a great contribution in the process of human rights enforcement in the region. Church has also been very active in providing assistance against the victims of violence by the state, and it even also provides staff for counseling to mitigate trauma impact suffered by the community. In many cases, the work of NGO in advocating human rights violation case is very much helped by the presence of church, as it has strong network to the most remote hinterland of Papua. Church workers who operate in the hinterland become the only hope for Papuans when they experience a problem.

The role of church and religious group in Papua is very effective in building a communication with decision makers in Jakarta, when an upheaval occurs in Papua. At grass-root level, the calling for peace by these religious leaders is very much helpful when there is social tension among the community.

The closeness of NGO and church with the spiritual struggle of Papuan, in fact, may cause negative perception for government, especially the military. Often, NGO or NGO and church activists are accused as a group that supports Free Papua Movement, although none of these accusations have ever been proven. NGO activists and churches are often under pressure and intimidation from security apparatus: NGO activists as NGO as institutions are terrorized and threatened to be punished by using the penal code under the pretext of committing defamation to military institution.

7. Indigenous People and its Institution

The indigenous people of Papua is a group which for so long have always been the victim and are marginalized by the centralized and militaristic policy from the central government. This also leads to their loss of bargaining position and ability to negotiate their customary rights which has been robbed by the state and private sector that run their business in Papua, with government institution and military, as well as police's full support.

In the New Order Era, the government has provided forum to channel the aspiration of indigenous people in form of Indigenous People's Organization (LMA). On its development, the role of LMA was taken over by many indigenous people themselves since it was deemed as the government legal stamp (justification) for robbing their rights. Therefore, in 2002, indigenous people of Papua initiated a new institution named Papuan Customary Council (DAP). This group was responsible for the protection of basic rights of indigenous people of Papua. Unlike the LMA, the established customary institution by indigenous people is not taking over the role and authority of chieftains. The role of DAP Chairman is no more than a person who coordinates all works from the indigenous people who strive for their basic rights so it can be more organized.

During Tom Beanal's leadership era, this institution managed to consolidate themselves to the basis of seven customary areas across Papua land. However, in 2008, their role started to get weakened as half of their leaders had different views related to the direction and policy of the organization's new chairman, Forkorus Yaboisembut. The Chairman of DAP was considered as dragging DAP into many political processes in Papua. Parties which did not agree with the leadership of him, once a principal of elementary school in Jayapura District, stated that the political process is not part of DAP's task, but rather it was PDP's. While DAP, they argued, should only be responsible to run advocacy for indigenous people and ensure their basic rights are protected. The real internal discordance which resulted in the further decline of DAP occurred in 2011, when DAP Chairman initiated the Third Congress of Papuan. During that event, Forkorus was arrested and imprisoned after had been designated as President of Federal Republic of West Papua by the Congress participants.

8. International Community

The presence of international community cannot be separated from the issue of Papua, because since the beginning of integration of Papua to Indonesia, it cannot be detached from the intervention of international community, mainly the United States of America, Netherlands and UN. Currently, many countries in the world have given more attention to Papua, including Australia, England, Sweden, Canada, New Zealand and several countries in pacific islands, such as Vanuatu, Nauru and Solomon Islands. The increasing international attention is generally associated with a number of human tragedies and the practice of human rights violations which continue to occur in Papua.

Indonesian Government's effort to make Papua as region with Special Autonomy status slightly changed the world's view to be a little better. This is shown by the statement of the US and Australian Governments' statement which expressed both countries' recognition to Indonesia's sovereignty. Similar statement was also conveyed by countries in European Union and Pacific. Nevertheless, this statement cannot be deemed as final statement, as these countries have been always very 'friendly' in treating Free Papua Groups to hold campaign in both countries. Several parliamentary members in those countries are in fact very active in raising international support for the freedom of Papua. This is proven from numerous members within the International Parliamentarians for West Papua (IPWP), an institution established by Benny Wenda, who come from different background and citizenship.

The critical attitude against the Government of Indonesia related to its policy in Papua is also shown by a number of international organizations. This includes The World Council of Churches, human rights monitoring organizations such as Human Rights Watch, Amnesty International, Fransiscans International, Tapol London, Asian Human Right Commission, International Crisis Group and many others. Periodically, those institutions issue a report pertaining to the condition and situation of human rights in Papua.

The situation of human rights enforcement in Papua also draws attention of a US Congressman. On August 7, 2008, about 40 Congressmen signed a letter to President Susilo Bambang Yudhoyono. The content of the letter was a plea for immediate release

of two people convicted of treason: Filep Karma and Yusak Pakage. Responding to the attitude of US Congressmen, the US Ambassador to Indonesia, Cameron Hume, provided a statement that the government of United States of America did not support separatist movement in Indonesia, including in Papua. This statement was submitted after the Government of Indonesia reacted strongly and protested the political manoeuvre of those 40 congressmen.

Internationalization of Papua issue was also seen on June 19, 2010, when Prime Minister of Vanuatu, together with the opposition leader in the parliament, agreed to make a political motion to UN Secretary General on Papua matter. On August 1, 2010, 50 US Congressmen wrote a letter to President Barack Obama to make Papua as one of his highest priorities during his serving time. Moreover, US House Committee on Foreign Affairs held hearing on September 22-23, 2010 on human rights violations in Papua.

The Government of Indonesia itself through the Minister of Foreign Affairs, Marti Natalegawa admitted that human rights issue was still an effective issue as an entrance gate to internationalize Papua. Therefore, the degree of internationalization of Papua's issue was highly dependent on the Indonesian government's performance in resolving the human rights issue in Papua.

In another perspective, the involvement of international world can happen because of their great economic interest in Papua, as shown by several multinational companies that make Papua as their barn to gain financial profit. These, for example, are represented by PT. Freeport in Timika and BP Tangguh in Bintuni. Several countries in the world are also involved in numerous companies in exploiting forest and sea in Papua. The illegal fishing and illegal logging in Papua for the past years that involved several countries proved that. Moreover, they are also known as big investors in palm fruits plantation companies and MIFEE mega projects in Merauke.

Source of Conflict and the Offers to Papua

The long history of violence and conflict that have been taking place for dozens of years have caused many casualties particularly in Papua society, and government's side, in this case the TNI and police. Moreover, Papuan society is generally cannot be spared from the

impact of this conflict. It will always take place if we cannot see clearly the sources of conflict that cause the occurrence of such violence. We can make a number of agenda to solve it by understanding the sources of conflict.

The Secretariat of Justice and Peace (SKP) classifies the source of *conflict in Papua into 4 types*. *First*, one relating to cultural issue, referring to the quick transition that causes society losing their grip and values certainty. *Second*, plurality issue: it is a population where there is a big number of migrants who excel in many aspects as compared to the natives; the migrants are now still growing in number and constitute almost half of the total population. *Third*, welfare issue: the socio-economic situation shows significant gap in welfare and economic level between the people. *Fourth*, basic rights: socio-political situation where issues on political and human rights violence, memory of collective suffer (*memoria passionist*), political history of Papua that still leave so many problems are not properly addressed.

In similar view, the Indonesian Institute of Sciences (LIPI) exposes sources of conflict in Papua. In this case, LIPI classifies the source of conflict in Papua into four main parts. The first issue is about marginalization and discriminative effect against native Papuan on the economic development, political conflict and mass migration to Papua since 1970. The second issue is the failure of development especially in education, health and empowerment of people's economic sector. The third main issue is the contradiction of history and political identity between Papua and Jakarta. And fourth, the accountability on violence by the state in the past against citizens of Indonesia in Papua.

LIPI perceives that the first source of conflict can be solved by looking for the right policy to acknowledge and give empowerment to native Papuan. The acknowledgment of native Papuan is defined as a social process which agendas are in favor of and focused on Papuan, altogether with their identity. Within, lies a strategy of an affirmative socio-politics which is intended to help the people of Papua in protecting and developing their own resources so that they are capable to negotiate and have sufficient bargaining power in the process of rapid social changes and able to take a fair benefit for the sustainability of their lives and well-being.

As for the second source of conflict, LIPI suggests the need for a new paradigm of development that focuses on the improvement of public services for the welfare of indigenous Papuans in villages. These development programs must be able to improve the fulfillment of needs and basic rights of the people of Papua in term of quality of their education, health and economic welfare.

To solve the third source of conflict, there should be honorable and dignified dialogue between the people of Papua and the Government of Indonesia. LIPI calls it Jakarta – Papua Dialogue. The dialogue is mainly for aimed for aligning the perception on past history and political status of Papua within Indonesia. In this context, dialogue should be understood as a media to gain mutual understanding on issues and problems, then to negotiate, and finally, to reach a compromise. The difference and similarity in understanding each party's interest can be processed through a dialogue that is aimed at achieving points of compromise, seeking acceptable concessions and opening up opportunities for reconciliation between two or more conflicting parties.

To overcome the fourth source of conflict, LIPI argues that there should be a reconciliation between Human Rights Courts and the disclosure of truth is options to enforce law and justice for Papua, mainly for victims and their family, and generally for Indonesians in Papua.

STRUCTURAL LEGAL AID STRATEGY

1. Legal Aid Model

During the New Order regime until the beginning of Reformation Era, LBH Jayapura has made its mark as the only NGO providing legal aid service to common people in Papua both for individual and group. Legal aid was not only given to people having a case at court or at police office, but also to others who simply need consultancy in legal matters. LBH Jayapura still performs legal aid service admist the mushrooming of other NGOS giving similar legal aid after the end of New Order.

Legal aid in form of litigation assistance is given to poor people who are in need of LBH Jayapura's service from investigation phase at

police level until defense in district court trial. In some cases, the LBH also even assists the defendant up until appeal and cassation level.

LBH Jayapura also plays a very significant role in raising Papuans' awareness to make use of their own resources to solve problems occurring amongst themselves. This activity, controlled under Community Legal Resource Empowerment Program (PSDHM), has been proven helpful in the 1980's to 1990's. At that time, lawyers/advocates were still so few in Papua, hence the background why LBH Jayapura encourages the Papuans to stand on their own feet and gain the capacity to solve their own legal cases by using their customary law.

Legal awareness campaign is also conducted through education on positive laws to the people in villages in Papua, particularly concerning principles governed in the Criminal Procedural Law. Community, for instance, has to understand what to do during an arrest or when they are summoned by the police or any other institution authorized to conduct detainment and summon.

LBH Jayapura also plays significant role in natural resources conflict. This is visible from the case involving Arso customary community in Keerom with palm oil company occupying their customary land. At that time, LBH Jayapura acted as the customary community's lawyer, and it managed to mediate the community's interest with company's, and eventually managed to resolve the conflict.

2. Building Joint Human Rights NGO Coalition

In cases with political dimension, litigation legal aid given by LBH Jayapura is normally conducted together with other NGO. Generally, the case being handled are those relating to treason/subversive crime by being part of separatist group that certain element or group of community is accused of by Indonesian government. In the beginning of Reformation era, LBH Jayapura always acted as the prime mover in NGO coalition to give legal aid to community group in Papua that was undergoing such accusation by the government.

The coalition work doesn't only engage local NGO groups in Jayapura, but also other national NGOs sharing concern in human rights issues. One of the most phenomenal cases showing the coalition's success was the trial of Papua Council Presidium (PDP)

top figures in 2002. Dozens of advocates from various backgrounds showed their supports by being legal advisors for the PDP leaders, with LBH Jayapura Director acted as coordinator. The coalition finally succeeded in freeing all the defendants from the treason they had been accused of.

In assisting defendants of other treason cases, advocates in the coalition had to be more patient and spend more time as well as efforts when discussing about legal standing of a case they were handling. This is due to the fact that the defendants came from different educational backgrounds. Most of them were hardly educated as they came from very remote village in Papua. Although some of them were students, most of them didn't really understand or even didn't understand at all about court/trial process nor the settlement mechanism of a legal formal case.

Some interesting stories happened during the assistance process. The most often one was when the Panel of Judges asked defendant about his nationality, which was answered mostly by saying: 'West Papuan'. They never agreed to be considered as Indonesian citizen. It also happened in the trial process of Papuan People Congress III, with Forkorus Yaboisembut etc. as defendants in 2011. During the trial of PDP leaders in 2002, the same answer was also given by Theys Hiyo Eluay upon hearing such question from the Board of Judges. Forkorus Yaboisembut, former Elementary School Principal who was elected President of West Papua Federal Republic in Papuan People Congress III didn't even hesitate to remind the Board of Judges to not forcing the defendants to be Indonesian citizen.

Another interesting incident happened when the defendants caused a small uproar during a trial. This was usually done by defendant who had a tense debate with the Prosecutor or Board of Judges. In another event, defendants chased away some visitors from the trial room as they suspected the latter to be from intelligence agency. Uproar usually happened spontaneously. For instance, when the defendants were not given the turn yet by the Judges to speak, Forkorus grabbed the mic on the Prosecutor's table and immediately said what he wanted.

This sort of incidents were normally done by defendants from proper educational background or ones from upper social status (i.e.

customary leader) in their area. All other defendants who were jointly accused with Forkorus were university students. They had more courage to 'stand against' the Board of Judges and Prosecutor, whom they considered as representative of Indonesian Government. In such a situation, advocates had to be able to calm down the defendants and do some negotiations with the Judges so that trial process could be continued.

These situations which interrupted the trial drew serious concern from the advocates team, as they had had inconvenient experience in previous trials involving other defendants. In Filep Karma and Yusak Pakage trial in 2005, another uproar happened between Yusak Pakage and Board of Judges, followed by the defendant deciding to walk out from the trial room. Upon seeing his action, one of the Judges said to the defendant that he would order the police officer on guard outside the room to shoot him if he still insisted to leave the trial room. In another event, still in the series of trials of the two defendants, the trial room became extremely noisy due to the numerous visitors watching the trial process, some of whom did peaceful demonstration at the front yard of the Jayapura District Court. When situation suddenly turned into chaos, one of the Judges, the same person who threatened Yusak Pakage, threw a punch to one of the female visitors. In the end of trial, both defendants were sentenced with heavier sentence than the one requested by the Prosecutor.

Both defendants came from proper educational background. Filep Karma is a civil servant in Papua Provincial Government, while Yusak Pakage is a student in one of universities in Jayapura.

In another case, where defendants were put under serious pressures and became traumatized with security apparatus, especially the TNI, the advocate team should strengthen the defendants' morale in the first place. Morale recovery was usually done prior to trial or during visit to defendant in detainment.

The advocate team's assistance can go up to appeal level at High Court (Court of Appeal) and cassation at Supreme Court level. In many cases, relations between advocate with defendants were finished after decision was issued at cassation level. In reality, however, the team would keep supporting the defendant in the latter's legal process, although the power of attorney was not extended. The Meki Alosak

case in Wamena in 2010 was an example of this. After sentenced to 8 year of imprisonment, the team kept assisting him in doing legal efforts, which in his case, to plea for leniency to the Indonesian President.

The Human Rights Advocate Team has been helping Papuan people in dealing with the law in different political cases. In some cases, they even also had to go into tense situation with police apparatus and prosecution office who intended to process the case outside of *locus delicti*. The advocate team insisted upon the legal view that a trial shall be done at the location where a case taking place. In addition, they also argued that if the defendants were to be brought outside of their original area, they would suffer from serious mental shock, as other than being deprived away from their family and relatives, they would also face different social, political and cultural situation than the ones they had in their place of origin. The advocate team finally managed to make the trial of PDP leaders in 2002 held in Jayapura, despite the previous attempt by the prosecution office to move it to Jakarta. However, in the Bloody Abepura case in 2000, the team failed to force the government to move the Permanent Human Rights Court – the first of its kind in Indonesia – from Makassar to Papua. They also failed to move Theys Hiyo Eluay murder trial to Jayapura, in which case the team acted as the legal representative of the victim's family.

3. Creating Fact-Finding Mission

Legal assistance process in form of litigation at police, prosecution and court level is often done together with broader form of advocacy. The non-litigation advocacy includes, for instance, the creation of investigation team assigned to investigate humanitarian violence case which has political and human rights dimension.

Institutions involved in this work are usually those which are also involved in the litigation process as mentioned in the above. The fact-finding team is primarily moved by the Sekretariat Keadilan Perdamaian dan Keutuhan Ciptaan/SKPKC Fransiskan Papua (Secretariate for Justice, Peace, and Creation Well-Being), which previously named Secretary for Justice and Peace (SKP) of Jayapura Diocese, SKPKC Sinode GKI di Tanah Papua, and Foker LSM Papua (Papua NGO Cooperation Forum). The two religious-

based institutions play very significant role in the fact-finding team's success, thanks to the former's wide network that covers until most isolated places across Papua.

The investigation result from the fact-finding team, which is a coalition of HR NGO, proved to be very helpful to the advocate team when providing defense for the defendants in trial, particularly to understand the context and chronology of a case. Reports submitted by the team have helped the team to force the National HR Commission (Komnas HAM) to form KPP HAM (HR Violation Investigating Commission) in several occasions, such as for the Bloody Abepura case in 2000. The advocacy of this case led to two high police officials in Papua province being brought to the permanent human rights trial, which was the first time in Indonesia. The HR NGO Coalition report for Wasior case in 2001 and ransacking of arsenal in Wamena in 2003 also managed to convince Komnas HAM to form another KPP HAM to help conducting pro-justitia investigation to both cases. Some of the team members were even involved by Komnas HAM as part of the KPP HAM member.

Another urgency for the making of such fact-finding team is to prevent another similar incident from taking place in Papua. The result of the team's investigation was widely published in the media up to international level, making the perpetrators think many times before carrying out again their action, let alone repeating the same violence.

4. Organizing the Victims

The concern for human rights issues in Papua led to an initiative to form a platform that serves as a joint instrument for the victims and their families to strive for their rights. The organization also serves as a place to build solidarity among victims and their families as well as drawing wider support to fulfill their rights, which are still ignored by the state until now.

In a broader context, victim organization will give them better bargaining position toward the state. The most important thing is to make sure that the victims and families won't be always reliant on the local and national HR NGOs. Instead, they should be able to stand on their feet and be independent in conducting advocacy works for their own rights.

For that purpose, some HR NGOs such as Kontras Papua collaborates with IKOHI and other HR NGOs in Papua to establish the Ikatan Keluarga Orang Hilang dan Korban Kejahatan Negara (Association of Dissapeared Person and State Crime Victim/ IKOHIK2N). The group mainly organizes families of the victims of forceful disappearance by the state, such as the one happened to Aristoteles Masoka in Theys Hiyo Eluay murder case.

In addition, there is also another victim and victim's family organization named BUK, which stands for Bersatu untuk Kebenaran (Unite for the Truth). A group initiated by Kontras, PBHI and some other NGOs, the organization now serves as a gathering platform for human rights violation victims in Papua. These include HR violation in Bloody Abepura case in 2000, Wasior case in 2001, Wamena case in 2001 and 2003, and Bloody Biak case during the hoisting of Morning Star flag in 1998.

5. Achievements and Challenges

Several noteworthy achievements include the release of some detainees by the police in an event. In many humanitarian violation cases, police often detained some people that were present in the event, or anyone suspected being involved in an event without any proper legal reason.

In addition, these HR defenders also frequently managed to free defendants from the law. A phenomenal example of this was in legal assistance provided for PDP leads in 2002 trial. At that time, the advocate team succeeded in proving that all charges by the prosecutor could not be qualified as a form of crime against the state which was allegedly committed by the defendants. The Board of Judges declared the defendants guilty, but the latter could not be punished as all the charges by the prosecutor had been agreed in advance by the central and local governments, as well as security apparatus in Papua.

For cases that have been legally binding, the advocate team also managed to return some political convicted political prisoner who served their punishment outside Papua. This happened to the convicts of arsenal ransacking case in Wamena, who served their sentence in Makassar Penitentiary (LP Makassar). After pressure from various parties, added with support from Commission F of DPRP (Papua Local Parliament), the five convicts were eventually returned

to Papua, and sent to different penitentiaries, including Biak, Nabire, and Jayapura.

The HR advocates' persistence in providing legal assistance for HR victims in Papua turned out gaining wide attention from many parties. Some international institutions gave appreciation for what has been done by the team. The most recent of such appreciation was international recognition to two HR advocates, Gustaf Kawer and Olga Lidya Hamadi, who have been involved in LBH Papua since 2000 and 2005, respectively.

On May 31st 2013, both of them received special recognition from panel of juries for Lawyers for Lawyers Award, which headquarter is in Amsterdam, Netherlands. In their report on the award, the juries said the following: "Both are sparkles of lights in a region where people have lost trust to the justice system and face violence every time they protest about the rampant injustice. Both advocates have shown an extraordinary and continuous courage, which in common situation is ignored by the outside world". Currently Gustaf Kawer works as independent HR advocate, while Olga Lidya Hamadi serves as Kontras Papua Coordinator.

On the other hand, what has been done by these advocates are not without resistance. Various intimidations from security apparatus were nothing new for them when assisting their defendants at investigation level at police office until the trial. Verbal intimidation and hostile attitude and words from the security apparatus sometimes escalated into their being chased away when assisting the investigated victim. Some of them have also been sent out of the trial room by the Board of Judges for 'disrupting the trial process'. What actually happened was, they merely criticized the trial process that they deemed not neutral as they perceived the Board of Judges being unneutral after intervention from outsider. Some terrors and accusations of being separatists were also frequently addressed to them. These threats came in text message to their mobile phones, sent by elements that were suspected coming from security apparatus or TNI. They were accused of being separatist and subversive as they were considered as collaborating with elements of Papuans who wanted to separate from Indonesia.

In another occasion, when several advocates were attempting to bring the District Police Chief (Kapolres) of Jayawijaya to pre-trial process for conducting an arrest that was considered as violating the law, they were threatened by a group of locals who were suspectedly mobilized by police officials. The team was ‘welcomed’ by demonstration in front of Wamena District Court. At that time, the group threatened to kill them should they not stop the pre-trial process.

In another case, several HR NGOs in Papua was brought into civil lawsuit at district court. This was experienced by Elsham Papua in 2003. Elsham was sued by Kodam (Military Command) XVII/Cenderawasih as the former was perceived as having committed contempt and defamation to TNI as an institution. In July 2004, the Board of Judges adjudicating the case declared Elsham Papua guilty. Kodam XVII/Cenderawasih also did the same lawsuit to Aliansi Demokrasi untuk Papua (Democratic Alliance for Papua/ALDP); a lawsuit that was not followed-up after ALDP responded to Kodam’s subpoena and decided to proceed to the court instead of meeting the Kodam’s request.

Another issue faced by the advocate team and HR NGOs in Papua is the lack of advocates working in these sorts of issues. In many cases, some victims were no longer assisted during investigation at police office. Gustaf Kawer indicated that there were at least 63 people charged with various cases who were not assisted during investigation at police office.

CURRENT OPPORTUNITY

Jakarta-Papua Dialogue

One of the sources of conflict causing many issues in Papua is the understanding of Papua political history in Indonesia. Different construction between Indonesian nationalists and Papuan nationalists on this matter has never been negotiated and hence keeps strengthening stigma and mistrust from one to another. In some cases, distrust between state vs civil society element in Jakarta and in Papua, and even among the Papuans, tend to grow stronger.

Political situation in Papua has put Papuans at the position where their 'freedom is uncompromisable' on one hand and Indonesian government with 'Republic of Indonesia is uncompromisable' position on the other hand. If this is to continue, it's hard to imagine the conflict can be settled peacefully until the end of the world. This "uncompromising" trait will only bring death to both parties.

In Papua Road Map book, LIPI research team gives us some notes on the importance of developing an honorable and dignified dialogue between Indonesian government and Papuan people. The dialogue should foremostly aim to unify perception on past history and Papua's political status within Indonesia. In this context, the dialogue must be understood as a medium to achieve understanding on different issues and problems, to negotiate, and finally to achieve compromise. Differences and similarities in understanding and interest can be accommodated through dialogue by finding mutual compromistic points, finding collectively acceptable concessions, and opening up reconciliation opportunity between two or more conflicting parties.

Under this focus, dialogue can be focused on the right and underlying aspiration from all concerned parties, directing them to end the conflict, uphold all parties' dignity, and guarantee equality and development for those who are in need thereof. Working in this framework, both parties can uphold humanitarian values, instead of sticking to their respective political view which only sacrifices lives and justice. Both parties can also focus their attention on the real needs that should be fulfilled to create Papua as the Land of Peace.

To support Jakarta-Papua Dialogue, a group of civilians from different backgrounds in both Papua and Jakarta established Jaringan Damai Papua (Papua Peace Network/JDP), an independent institution designed to consist of two coordinators: Dr. Neles Tebay, who coordinates JDP works in Papua, and Dr. Muridan Satrio Widjojo, who does the same work in Jakarta.

JDP has held several closed meetings involving central and local government as well as prominent figures from military at national level. It is a long and arduous work, as it is very uneasy to convince both parties to sit together and talk about peaceful and honorable settlement. On 5 to 7 July 2011, JDP has also held Papua Peace Conference which was attended by various elements of Papuan society.

At national level, JDP's effort to promote dialogue has been responded by President Susilo Bambang Yudhoyono, who supported what he called as 'constructive communication' to settle Papua problem. The Unit for Development Acceleration of Papua and West Papua Province (UP4B) is actually also intended to develop this constructive communication idea. Unfortunately, until the end of its duty period, there has been hardly any significant attempt by the unit to foster this political dialogue, which is the very mandate of its establishment.

Difficulty happened not only when they tried to convince Jakarta and Papuans to sit together in a dialogue, but also when facing accusations addressed to them. JDP is suspected by Jakarta as part of Papuan elements who want to separate from Indonesia. At the same time, Papuans accuse the group as government's arm to degrade their dream of gaining independence. Nevertheless, JDP keeps moving on amidst all those suspicions and accusations. They keep working on ensuring the realization of Jakarta-Papua dialogue. The newly elected-President, Ir. Joko Widodo, has given more conviction to JDP in their effort. Joko Widodo is believed to be a figure who disfavors violent approach. He is considered as a peace and dialogue proponent for settling a conflict.

Reconciliation and Victim's Rights Recovery

The next recommendation from LIPI Research Team in Papua Road Map is reconciliation. Reconciliation becomes option recalling that there are so many human rights violators in Papua since 1961 who have not been put into trial until today. When this is put into state obligation context, such impunity means state's failure in meeting its obligation to solve human rights violation cases, taking care of the victims, and preventing such a violence from re-occurring.

It is in this reconciliation context that the state is obliged to take legal actions toward any parties suspected as perpetrators and liable for violence and human rights violation. One of the main indicators is the settlement of past crime that can cut-off the impunity vicious circle. Another state's obligation in this context is to do some steps to recover victims' rights and trust to Indonesian Government.

B. EXPERIENCES IN ACEH

INTRODUCTION

Aceh province located in the northwest tip of the island of Sumatra with the capital Banda Aceh, has 23 districts/cities. Has a very significant strategic position as a gateway traffic from national and international trade that connects between two oceans (the Indian Ocean and the Pacific), and two continents (Asia and Australia). The estimated population in 2011 amounted to 4,612,373 inhabitants. Aceh province is largely dominated by forests, plantations and agriculture. The rest of it is mines, industry, settlements, inland waters, open land and land other nature reserves. It has plenty of potentialities of natural resources such as oil and gas, agriculture, industry, agriculture, aquaculture and marine and general mining.



Aceh is a disaster-prone areas, during 2009-2010, the province of Aceh has been hit by floods as much as 606 times until the end of 2010 (WALHI Aceh, September 2010). Not to mention, with several times the earthquake that often occurs after the 2004 tsunami, such as the earthquake in 2008 to 8.9 on the Richter scale , Tangse devastating earthquake in 2010, the earthquake that devastated Bener Meriah and others Gayo plains in 2013 and also various other natural disasters. Therefore, the area of Aceh is very familiar with natural disasters.

ACEH BEFORE THE 1998 REFORMATION

Conflict of GAM vs. Government of Indonesia, 1976-2005

To defuse the conflict between DI/TII and the Government of Indonesia, which occurred in 1953 and 1963, the Aceh region had privileges status approved by the Indonesian government. It is not separated from the role of Ali Hasjmy and Colonel Sjamaun Gaharu in approaching Daud Beureueh to negotiate about the future of Aceh

at the time. However, since the Suharto era (1966-1998), Indonesia is increasingly centralized bureaucracy. This makes Aceh lose the right to control the development of political, economic, and even their own culture. With the Soeharto's repressive approach, turning it into conflict-prone areas. The existence of some military command areas in each level of the administrator brought big influence in the control of central towards government and natural resources in Aceh.

The design of Aceh Province as an agricultural area has changed when there is the discovery of oil and gas reserves in 1969. Following their initiation of a cooperation agreement between Pertamina (the state oil company), Mobil Oil (US-owned oil company), and the Japanese-owned oil company to manage the Arun gas farm located in North Aceh. Within a few years after that, Aceh contributes nearly 30% of income from national export namely in the amount of 3 trillion US dollars. In addition, the industry has also initiated the development of other companies such as PT. Pupuk Iskandar Muda, PT. Asean Aceh Fertilizer, PT. Kraft Aceh, and other large companies. And it's not yet included the other natural resources such as forest products which have an average income of 1 trillion rupiah per year. Ironically, abundant natural resources do not have a significant effect on development in this area. Only less than 5% of the wealth of this natural resource that is returned to the province.

In addition, the massive migration to the industry, based in the northern areas of Aceh is also a negative impact on social conditions in Aceh. The entry of "outsiders" to Aceh also makes it increasingly lack the Acehnese opportunity to work in these industries and reduced land owner for the people of Aceh. Perhaps this is the initiating local anecdote '*buya krueng teu dong-dong, buya tamong meuraseuki*' (river crocodile just stand, outside crocodile gets sustenance) meaningful, local people just stand without enjoyed existing resources in their homeland, while the outsiders who take the benefits. Moreover, according to Hamid (2006) the effects of the transmigration program also affect the growth of the industry's night and prostitution because of the demand of the industrial workers in this area.

Inequities in income distribution in the central region, the displeasure of the people of Aceh will be the implementation of Islamic Shari'a privilege area that is not yet resolved, as well as

economic and social disparities are increasingly worse, a major cause of the start of the rebellion in Aceh volume II. Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) under the command of Hasan Tiro declared the independence of Aceh on 4 December 1976, which indicates resistance to the Indonesian government. In contrast to the movement of DI/TII 1950 which aims to transform Indonesia into an Islamic state, *GAM* aims to secede and independence from the Republic of Indonesia.

After the declaration of independence of Aceh, *GAM* members were targeted by the central government. At that time, the government calls *GAM* as Security Disturbance Movement (*Gerakan Pengacau Keamanan/GPK*). This has become government propaganda to stem the influence of *GAM* to the general public. During that time, the central government held a military operation to suppress this movement, cleans and imprisoned *GAM* leaders, even including Tengku Daud Beureueh considered as scholars and charismatic leader of Aceh that can expand and worsen the security situation in Aceh. The operation continued until 1982, and the arrests related to *GAM* occurred until 1984. Thereafter, *GAM* activity stopped due to the lack of popularity of the movement is still infant is among the people of Aceh. After all that time, a new large industrial land to grow and evolve, and the gap due to the distribution of natural wealth that was uneven Aceh has not been felt by the general public, thus not providing support to *GAM*.

With the cessation of *GAM*'s activities, does not mean *GAM* had lost. Hasan Tiro and other *GAM* leaders escaped to seek asylum in another country and form a government of Aceh in a runaway. The young combatants also went to Libya, Afghanistan and other countries to receive military training in order to prepare the next *GAM* movements. Approximately 600 - 1000 combatants get military training in Libya in this period.

In general, the period of the late 1970s and 1980s was a period in which the occurrence of significant economic growth in Aceh in various sectors. Gross Domestic Product (GDP) of Aceh from the agricultural sector experienced an average growth of 7.6% per year in 1975-1984, and fell in the range below 5% in 1984-1989. The manufacturing sector grew at an average range of 13.7% in 1975-

1984, and fell in the range of 8% in 1984-1989. Its greatest economic boom of the oil and gas sector which was originally less than 17% in 1976, and in mid-1989 increased to 69.5% of provincial GDP. Because of this positive trend, Aceh's earnings per capita (without income from oil and gas sector) continue to increase and stable.

Ironically, significant economic growth has also become one of the causes of economic inequality that ultimately led to the revival of the GAM in 1989. In the period 1974-1987, of the district (which includes natural gas fields located PT. Arun NGL, and Mobil Oil) experienced significant population growth of 490,000 inhabitants became 755,000 inhabitants. Comparison of social and infrastructure facilities for the workers, and for job seekers and local residents are very different, luxurious and bad, rich and poor, and it is certainly cause social inequalities so bad when in a same region have organized an elite residential complex neat and behind fences housing complex was strewn rickety shacks are just waiting for the collapse. In addition, the influx of more-less 50.000 migrants from various regions in Indonesia adds to the tight economic competition in this area. As a result, a large urbanization, invasion of migrants to the ground in Aceh, control of land by the settlers, the pollution caused by large industries, and the tight competition in the industrial sector are often discredit the people of Aceh, ultimately contribute to improving the objective conditions that facilitated the rise of GAM in 1989.

In addition, the return of the first generation of GAM combatants from Libya and other Islamic countries clarify the intensity of GAM against the Indonesian government. When the GAM also gets support from the police/military and civil servants whose desertion of duty as a result of oppressive government actions in the Golkar party to win the 1987 elections.

The initial attack occurred in late May 1989, when the combatants attacked and shot dead two members of the TNI (Indonesian Armed Forces) in the Tiro and seizing their weapons. Other attacks also occurred on September 26, 1989, until the early 1990s, especially in the 3 districts such as North Aceh, Pidie and East Aceh. These attacks are still sporadic, and the main strategy of GAM attack this time was limited to the deprivation of a weapon from a soldier. In this period

GAM still face a shortage of weapons to face Indonesian military that is more superior.

The revival of GAM since 1989 raises the awareness of the government as the widespread popularity of GAM in the eyes of the people of Aceh. To crush GAM and protect the economic interests of the state, the central government increases the political power of its military by designing Aceh in military operations, especially the northern and eastern regions of Aceh, which is famous for Military Operations Area (DOM) in 1989 to 1998.

However, the government's response could be calculated as success in overcoming the rise of GAM although only in the short term. At the end of 1991, many of the GAM's military commanders was captured and killed. However, the brutality of Indonesia military produces deep public antipathy towards the central government. Ross (2003) estimates that during 1990-1992 the number of deaths due to the conflict in Aceh reached 2,000 up to 10,000 people. The problem is, not only GAM members who are victims, but also civil society are protected by the Geneva Conventions of 1945 and 1949. The killings, enforced disappearances, rape and other violence committed by the TNI and GAM in spreading fear and insecurity, has become a daily consumption of the Acehnese at the time. In addition, the 43 asylum seekers who have fled military brutality to the office of the UN High Commissioner for Refugees (UNHCR) in Malaysia attracted the attention of national and international community, especially the Human Rights defenders. The other interesting point, Hasan Tiro ever did lobby for the independence of Aceh at the international level, by sending a report to the 48th session of Human Rights Commission (HRC), and the 44th session of UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Although the power of GAM has been reduced drastically in 1993, but the military operation (DOM) is still applied. Obviously, this makes the people of Aceh will remain vulnerable to human rights violations committed by GAM and the TNI. Since 1996, after 3 years with little activity GAM leaders in Aceh in the realm of local and national, including military factions and academia, start talking to halt military operations. Since that year, Indonesia also felt a wave of instability due to the various crises that started from the banking

crisis, financial crisis, economic crisis that led to the decline in public confidence in the Suharto government and governance reform demands voiced by students and activists of various pro - democracy as a reaction to chronic economic and political problems since the era of the New Order era.

ACEH DURING 1998 REFORMATION

The fall of Suharto in 1998, the military put on the defensive. Within a few weeks after President Suharto was replaced by Vice President BJ Habibie, cases of human rights violations committed by the military began to rise to the surface. The military has become the target of public criticism that former president Suharto as an instrument in the implementation of authoritarian policy. The loss of public confidence on the Armed Forces (Army of the Republic of Indonesia) as the defender of the nations impacted also on the outbreak of this institution.

At the time of the circumstances at the center hung up on the issue of reformation of the bureaucracy, in the context of Aceh, people's movements instead preoccupied with a request to revoke the policy that has been 8 years DOM applied. DOM revocation is in addition supported by the community and students, also supported by the scholars who are members of the Indonesian Ulema Council (*Majelis Ulama Indonesia/MUI*) and the Governor of Aceh Shamsudin Mahmud, in a letter sent to President B.J. Habibie on July 29, 1998. The request is then taken positively by the central government to revoke the status of DOM in Aceh through the Commander of the Armed Forces of the Republic of Indonesia at the time, General Wiranto, who visited Aceh on August 8, 1998. Wiranto also apologize to the people of Aceh on-action military action that has violated the human rights.

With the fall of Suharto and the revocation of Regional Military Operation in Aceh generate consolidated Acehnese civil society more cohesive and well-established. Until the period of December 1998, Acehnese civil society focused on their demands; investigation of human rights violations, withdrawal of non-organic troops from Aceh, the release of political prisoners and prisoners and an amnesty for GAM members, sharing of natural resources more fairly (80% for

the Aceh and 20% for the central government), and application of the “local privilege” in legislation in Aceh. To accelerate this process, the movement of the students in the KARMA - *Komite Aksi Mahasiswa Aceh* (Aceh Students Action Committee), raised the issue of a referendum (a vote for independence or not), for Aceh. To pressure the government to meet the demands of the civil society on February 4th, 1999, 106 students and student organizations formed the Aceh Referendum Information Center (*Sentral Informasi Referendum Aceh/SIRA*) coordinated masses to demand a referendum in Aceh. The students who are members of SIRA also boycotted the 1999 elections as the pressure on the government to respond to their requests.

Although the administration of President Habibie did not last long, however, he has initiated the establishment of the Independent Commission for the Investigation of Violence (*Komisi Independen Pengusutan Tindak Kekerasan/KPTK-Aceh*) against Humanity Violations in Aceh, on July 30, 1999, in response to the recommendations proposed by the Commission in connection with cases of human rights violations often occurs during the DOM.

In the reign of Abdurrahman Wahid, Acehnese civil societies become more dominant in expressing their opinions than GAM in demanding justice for the people of Aceh. Pressures on referendum increasingly heard in parts of Aceh. Finally in the peak, SIRA and pro-referendum mobilized nearly 1 million mass of Aceh to gather and present in the MPR (General Assembly – Fighter Referendum Assembly) in front of Baiturrahman Grand Mosque in Banda Aceh, on November 8, 1999.

In response to this matter, the military and the police did not stay silent on ‘people power’ which demanded a referendum. In February 2000, an operation named Sadar Rencong III emanated by the provincial police chief at the time, Bachrumsyah Kasman, with the aim to arrest members of GAM and ‘its supporters’. Not surprisingly, since 2000 there is an drastic increase against the murder of civil society, the target is the activists and politicians.

However, at the same time the President of the Republic of Indonesia Abdurrahman Wahid initiated diplomatic approach with GAM in the form of Humanitarian Pause (*Jeda Kemanusiaan*) at May 12, 2000, it was facilitated by the Henry Dunant Center (HDC), but

violence still continues to occur until the end of the year. On January 19, 2001, the Humanitarian Pause extended, along with talks between the two sides in Switzerland. In July 2001, Megawati Sukarnoputri was appointed to be the fifth President of Indonesia to replace Gus Dur. In August, Aceh was given the status of 'Special Autonomy' which gives a broader way to implement sharia law, and divide revenue to larger areas over its own natural resources.

But in January 2002, GAM commander Abdullah Syafie was killed by the Indonesian military. So again increase the intensity of the violence in Aceh at the time and failed peace efforts are encased in the Humanitarian Pause that had previously initiated. Although at the end this diplomatic approach failed, HDC then try to facilitate the two conflicting sides and managed to produce the Cessation of Hostilities Framework Agreement (CoHA) in December 2002, and monitored by the Joint Security Commission (JSC), including members of the ASEAN and US military that was agreed by both sides in the conflict.

CoHA indeed make a positive contribution the decline in the level of human rights violations, ever reached 100 people per month before December 9, 2002. However, although the impact of this CoHA affect humanitarian conditions in Aceh at the time, contacts weapons in rural areas are still happening. Indonesian parties even rate, with CoHA provide access to GAM to build its armed forces. And GAM also alleges that there was no policy to reduce military forces in Indonesia in accordance with the framework CoHA. The ceasefire agreement suffered a severe blow after JSC was attacked by unknown persons in the area of Central Aceh and East Aceh in March 2003. In April 2003, the new Indonesian government, under Megawati Soekarno Putri begins preparations to hold back military operations in Aceh.

Mistrust Indonesian government was increasingly becoming and then capture GAM delegation should be heading to Tokyo to discuss the continuation of the peace agreement in May 2003. Since May 18, 2003, the Indonesian government launched an operation of martial law in Aceh that recalls the days of DOM in Aceh. The operation lasted for 6 months and 6 months later extended to May 18, 2004. Then downgraded to the status of civil emergency was extended for 6 months and 6 months later. During the 2-year period of this emergency, many casualties of the civil parties, and tragedy in the DOM period

1990-1998 reoccur. Although the state of emergency has been derived from martial law to civil emergency, but not to scale down military operations applied, and no troops were withdrawn from Aceh.

After the end of the Megawati Soekarno Putri's government was defeated by Susilo Bambang Yudhoyono in the presidential election of 2004, efforts to solve the problems in Aceh continued. SBY is not a foreign personal in the Aceh peace process that had begun earlier. Previously, he served as Coordinating Minister for Political, Legal and Security (*Menteri Koordinator Politik, Hukum Dan Keamanan/ Menkopolhukam*) who led peace negotiations with GAM. In addition, he is one of the military generals who had a major influence in the military who were able to put the military under civilian rule. With Jusuf Kalla as Vice President who is no less prominent with experience peace negotiations ever initiated by him in the case in Poso and Maluku which have been successful.

Situation and political maps in Aceh changed after the tsunami on December 26, 2004. The disaster that devastated 800 kilometers of Aceh's coast killed 132,000 inhabitants and 37,000 inhabitants were missing. The most severely affected areas were Banda Aceh, Aceh Besar, Aceh Jaya, Aceh Barat, Simeulue and Singkil. In these areas the strength of *GAM* and *TNI* were also significantly diminished. Many of the *GAM* combatants and *TNI* also became victims of this nature's fury (Hamid, 2006).

This disaster drew global sympathy to help Aceh facing this sad situation. With profound damages to the existing infrastructure, the central government 'opened' this province to the influx of foreign workers, including military personnel of foreign countries. This humanitarian mission is the largest non-war mission ever held after World War 2 with an estimated 16,000 military personnel from various countries, 9 aircraft carriers, 14 battleships, 31 aircraft and 75 helicopters. The Indonesian government also had allocated 50 billion dollars in this emergency response period. Thousands of Indonesian also came to Aceh to work as humanitarian workers.

In expediting this humanitarian mission, both warring parties directly stopped the hostility to provide greater access for humanitarian workers. In addition, *TNI* also shifted its task

on security for humanitarian tasks. Within a few weeks after the tsunami, some fire fights between the two warring parties were still occurring, but the frequency had reduced. This was undoubtedly due to the massive amount of humanitarian workers coming to Aceh in which it narrowed the space for GAM to perform military operations.

Nevertheless, many people protested on the state of civil emergency that was continually imposed after the tsunami, for this state restricted their acts to help the distraught people of Aceh. Although gunfire had decreased, compare to the previous year. At the end the state of civil emergency was revoked on May 18, 2005.

23 December 2004, the process of negotiation between GAM and the Indonesian government began. The dialog was conducted in Helsinki. On this occasion, GAM announced they would receive the “self-government” option proposed by Martti Ahtisaari (Crisis Management Initiative), as the mediator, and the Government of Indonesia. But they rejected the nomenclature of ‘special autonomy’ that might cause a recall on negative perspectives associated with the violent rule of military as previously occurred in Aceh. So that GAM released its demand on Acehnese independence after 32 years and resumed peace negotiation phase in June 2005. The profound damage caused by the tsunami had destroyed most of the legal, political, economic and social aspects of Acehnese life at that time. This optimism raised from President Susilo Bambang Yudhoyono’s policy that who kept military approach away in handling Aceh.

On July 12, 2005, the fifth round of negotiation, facilitated and mediated by the Crisis Management Initiative, led by former Finnish President Maarti Ahhtisari, implemented and resulted in manuscript of a Memorandum of Understanding (MoU) in which contained the extent of the power of autonomy ‘self-government’ for the government of Aceh in the future. In the end, the signing of this MoU by both parties GAM and the Indonesian government) brought a new milestone for the creation of peaceful and prosperous Aceh.

ACTORS DURING CONFLICT

GAM (Gerakan Aceh Merdeka –Free Aceh Movement)

Free Aceh Movement or Gerakan Aceh Merdeka (GAM) under the command of Hasan Tiro declared Aceh independency on December 4, 1976. This indicated a resistance to Indonesia government. Unlike DI/TII on 1950-ish which aimed to transform Indonesia into an Islamic state, GAM aimed to separate and independent from the Republic of Indonesia

Mainstream ideology used by GAM was the historical point of view that Aceh was never colonized by the Netherlands and the leaders of Aceh never surrendered their sovereignty to the Netherlands and then transferred to Indonesia. In contrast to the royal government in the island of Java, the sultanate of Aceh was not automatically transferred to the invaders once the Sultan had been arrested. This was because Islam and Acehnese tradition asked people to defend their land respectively (land is private property/ and belongs to God and not to the Sultan, Sultan only manages it for people's welfare). This is the underlying strength of the Acehnese resistance in defending their land from foreign imperialism. Then, after the Japanese left Aceh in 1945, a power struggle emerged between the scholars (*ulama*) and *uleebalang* that want to restore the Dutch to Aceh. Uleebalang's feudal power had been trimmed by the Japanese authorities in the period of 1942-1945. Then, during the first and second Dutch aggression, the Dutch could not conquer Aceh although all parts of Indonesia was successfully under their power. In 1948 Linggarjati Agreement, right after the military aggression that made Indonesia as part of the Commonwealth of the Netherlands, Sumatra (including Aceh) was incorporated into the Dutch power that transferred to Indonesia. The question was why the Dutch transferred Aceh to Indonesia, while the Dutch did not have the right over Aceh? This had been the foundation of GAM to separate and demand their independence from Indonesia. In some documents issued by GAM or Aceh-Sumatra National Liberation Front (ASNLF), they reason was 'successor state', i.e. a state that had been established previously by the '*endatu*' (ancestors) as the foundation for their independence.

With this *successor state* reason, GAM believed they had international law basis that could be used to separate themselves

from Indonesia, in accordance with; UN Resolution, 1514-XV, 14 December 1960; UN Resolution, 2625-XXV, 14 December 1960; UN Resolution, 2621-XXV; UN Resolution, 3314-XXIV; UN Charter v. 1, paragraph 2 and 55; Decision of the General Assembly, 12 October 1970, no. 221-XXV.

Indonesia Government

Since the founding of GAM in 1977, Aceh had been defined as an area of security operations several times. Including 4 security operation during the New Order and 2 times after the new order.

In the new order, the form of the operation launched by the Government of Indonesia/ Indonesian military was through military and intelligence approach. This was appeared from two major operations, *Nanggala* intelligence operation (1977-1979) and *Jaring Merah* or Jaring Merah operation (1989-1998) or widely known as Military Operations Area or *Daerah Operasi Militer* (DOM). The Indonesian government was often said that this was a “security approach” which was intended to eradicate separatism in Aceh. The security operation might be successful in minimizing GAM’s power, but on the other hand it failed to accommodate the completion of the sources of conflict that arise. More diplomatic approaches as public dialogue, political negotiation or negotiate with the separatist GAM directly, never became an option of the Jakarta elite thinking. Efforts to resolve political and economy grievances in Aceh failed, due to centralized economic policies, corruption, incompetence community, and the belief that decentralization would lead to the federation nation and eventually led to disintegration of the nation.

After the fall of Suharto in 1998 and the disintegration of East Timor in 1999, international pressure on violation of human rights in Indonesia was deepened. This forced the Indonesian government to change its security approach to the three main steps:

- 1) There’s change in Jakarta’s approach to Aceh to resolve the conflict. In addition, an appeal by the military command to not promote the use of violence that violating human rights against civilians. Central government began to establish the National Commission on Human Rights (Komnas HAM), and a special commission to investigate human rights violations which had

occurred in Aceh (Fact-Finding Team House of Representatives, the TPF-DPR). In addition, efforts to bring members of the military to justice also began although it was considered very unfair to the people as victims, one of which was the connectivity court on the case of Tengku Bantaqiah massacre.

- 2) The change of the political dimension in the Indonesian government's strategy to offer a solution to the Aceh peace in the form of regional autonomy and began negotiations with GAM.
- 3) The Indonesian military tried to change to be more professional. Apart from the decreasing of people's perception on the image of military, people's pressure to separate the power of executive and legislative from the military finally applied after the collapse of the New Order era. Human Right understanding began to be induced to military trainings. Rapid Reaction Strike Force (PPRC), Raider battalions, and effective technology were used maximized in security operations in Aceh after 1998. These were strongly felt in Security Restoration and Law Enforcement Operation (Martial Law) 2001-2002 and Integrated Operations (Civil Emergency) 2003-2004. In contrast to the approach of the Soeharto era military, security operation was originally launched using the classic counter-insurgency strategy that used military and non-military approaches. This strategy aimed to reduce the capacity of the rebels by keeping them away from their support base, destroying their physical infrastructures, weakening their political communication, taking mitigation acts to citizen complaints, trying to work according to the corridor of law, especially winning the hearts of the people. At the grassroots level, this strategy usually included technical assistance, economic assistance, propaganda and the using of small military force that was more efficient to fight the guerrillas. At the national level, the strategy typically provided technical assistance to the military forces and the deployment of conventional forces on a large scale to the area of operation. But many who thought no changes in approach taken by the military than in the previous DOM period.

Indeed, this strategy was mostly applied in military operations in Aceh. However, the rhetoric that it was difficult to separate the common people from members of GAM, was a major challenge to

the government in winning the hearts of Acehnese. Moreover, the brutal and violent approach by the military in conducting operations eventually also thwarted non-military approaches such as: economic revitalization, rebuilding education and public health, reducing unemployment and restoring essential positive law to the land of Aceh. But on the other hand, one of the Indonesian military's success in this strategy was building a people resistance (Wanra) base just like the total people's defense and security system (siskanhamrata). In Red Net operations, military formed civil society organizations such as the People's Army (Laskar Rakyat), Pancasila Enforcement Unit Knight (Ksatria Unit Penegak Pancasila), etc. They were given military training, weapons, and ordered to hunt down GAM. This strategy was considered effective in; collecting information about GAM; increasing resistance to GAM by induction to education part, propaganda, lowering the level of fear among the people by forming groups of anti-GAM, and; helping military security operations with activities such as night guards, barricades building, and patrols.

SOURCE OF CONFLICT

GAM was emerged in 1976 as the result of the accumulation of complexity of the source of conflicts. When the sources of conflict were not answered and ignored, they became the key to prolonged conflict until 2005. In general the source of conflict comprised of 4 main aspects;

Economic Exploitation

The issue that became the major source of conflict in Aceh was economic issue. This was due to the unjust policy in natural resources management, especially in the New Order period.

With its rich natural resources, including oil and gas, forest products and other mineral resources, Aceh contributed to nearly 11% of national GDP. Net of natural gas in Aceh alone reached US \$ 2.6 billion per year. Taxes and royalties from oil and gas contributed to the billions of dollars received by the central government. Behind this abundance of wealth, these natural resources exploitations spawned many problems. The expansion of industrial projects,

such as natural gas fields, fertilizer plants, paper mills and other industries caused undesirable effects such as land-grabbing without adequate compensation and caused serious environmental damages.

For example, in the mid-1980s less than 10% of the villages located around the rich mineral resources areas were still not electrified. It was then compounded by the financial crisis in 1997. In its development in 2002, nearly half of the population did not have access to clean water, one third of children were malnourished and 29.8% of the population lived below the poverty line.

Despite the abundant natural resources, Aceh was one of the poorest provinces in Indonesia. Instead of getting a fair share of the outcome of its natural resources, Aceh even suffered more from increased poverty and increased repressive military control to the people of Aceh. Not surprisingly, a lot of Acehnese perceived their homeland was occupied, deprived, exploited and treated unfairly by the Central Government.

Centralized and uniformity

The second issue of the source of conflict in Aceh was the dissatisfaction of the Acehnese to New Order politics with its centralized policy and excessive uniformity. The consequence of this was any area that had strong local identity eventually eroded by the policies of the uniformity. The central government was too obsessed with the idea of 'national unity' for its entire areas regardless diversity and indigenous people. For the New Order government, the creation of a single identity was a sacred mission. One of these policies was the transmigration program which aimed to gather and unite all ethnic groups, culture and people and became one entity. Its vision; "Ethnic differences will gradually disappear and eventually there will be only one kind of society, namely the Indonesian people." Though in reality, the New Order government ignored complaints from outside Java, including Aceh, that the transmigration program was none other than the 'Javanization'. In addition, the 'homogenistic' policy to the State and society promised political stability, thus forcing the entire political organizations of society and people themselves collided in a collusion system, a neo-patrimonial system built by Suharto, so that it would not have any space for the opposition in the national and local levels.

Politically obvious, the implication of too centralized policy and uniformity destroyed the political institutions and customary in the sphere of local and certainly damaged the identity/local wisdom of the society, including Aceh. With the introduction of Javanese-style bureaucratic structures and political co-optation based on reward and punishment, Acehnese scholars lost their influences on society. Many of them were co-opted or forced to play their role as a supporter of the government. The new executive system (the Governor and Regent), the technocrats in Aceh, and the upper middle, at this time were willing to work as an arm of the central government, and became opponents of the interests of their own area. With the tight New Order regime controls, the central government promises that it would let Aceh to implement the status of “Special Area” lingered as an empty promise.

Military Repression

The third source of conflict in Aceh was the application of a repressive military politics, particularly in 1990-1998 periods. The unfair natural resources exploitation practiced by the central government and too centralized power were strengthened public resentment against the central government, the brutal repressive acts that violate human rights caused severe trauma to the Acehnese. Many people did not understand why the central government, although they had managed to stop the rise of GAM in early 1992, continued to extend the status of military operations in Aceh and excessive use of political repression against the Acehnese. And when the human rights violations was emerged to public knowledge and DOM status revoked, Acehnese had turned to “disgust” and no longer trusted the military credibility in particular, and the central government in general.

Politics on Impunity

The fourth source of conflict was political impunity. The Acehnese were disappointed and in rage by the central government’s inability and unwillingness to provide justice for Aceh by taking military and other parties responsible of violating the human right to the court and giving them appropriate punishment. Horrifying traumas caused by the military during the conflict created tremendous disappointment toward the central government.

These said factors were not simultaneously appeared, Acehnese's hatred toward the central government was initiated by the first and the second factors. Thus, the third and the fourth factors deepened the hatred.

Nevertheless, the policy of excessive natural resources exploitation and centralization were seen as the root caused for conflict in Aceh. And repressive politic and impunity perpetuated the Acehnese's hatred toward central government. When this hatred put the form of armed rebellion, central government responded with military operation without following it with serious efforts to address the source of Acehnese disappointment toward central government. In fact, every time Aceh conveyed its remorse central government responded with threatening and serious military approach

LEGAL AID STRUCTURE MODEL

As one of the legal aid movement in Aceh, LBH Banda Aceh, had gone through several phases of violent conflict in the land of *rencong* for nearly two decades. Since its founding in 1995, LBH Banda Aceh managed to maintain its existence in the rigors of the advocacy world, defending human rights and democracy in times of conflict and as well as in post-conflict. Since the post-conflict period, LBH Banda Aceh maintained its works by providing 'assistance' to the community in keeping their civil and political rights, and economic, social and cultural development in accordance with Pancasila, the 1945 Constitution and the Universal Declaration of Human rights of 1948, as detailed in two different covenants (the International Covenant on Civil and Political Rights and the International Covenant -ICCPR on Economic, Social and Culture -ICESCR).

Before the founding of LBH Banda Aceh in this province known as The Veranda of Mecca, Aceh region was formerly handled by Legal Aid Foundation/LBH Medan for Civil-Political Rights and Economic as well as Socio-Cultural cases. LBH Medan had opened a legal aid post in Aceh since the 1980s, in Banda Aceh, Lhokseumawe and Langsa. LBH Banda Aceh was established at the initiative to provide assistance to the victims who wanted a fair trial for the perpetrators of violence in the DOM, and also to raise public awareness of access to justice as people living in a state of law.

Condition at the time of the DOM was very much different from current situation. It was very tensed and repressed. As if walls had ears People chose to silent themselves for their safety.

(Saifuddin 'Acun' Gani, Advocate, 25/06/2014)

As YLBHI/LBH role in Aceh conflict divides in several phases as follow:

Period of 1980 – 1995;

The Condition of Law and Civil Right

In the beginning of conflict between GAM and Indonesia government in early 1980s, the condition of law and civil right was not as bad as in DOM period. Military and security officers still focused in intelligence operation. Yet, as GAM military members had returned from their training in Libya and done several attacks on military personnel, situation in Aceh was changing. Indonesia government answered to these attacks with declaring Aceh as Military Operation Area or Daerah Operasi Militer (DOM). Up to 1991 military operation successfully put a rest to GAM movement. Unfortunately, the operation mechanism violated human right and raised Acehnese antipathy toward the central government. In this operation, they not only captured GAM members but many innocent public figures were captured and unfairly judged as GAM members.

However, the positive law was still valid at the time. Some people, who escaped death, were being presented to the court. But the results of the trial process appeared to be not serious as well as unfair. Generally these convicted were charged with the crime of treason by over 10 years of sentences. Generally, presumption of guilty was applied on them. Thus, the ruling Military Operations Area pressed the court to only give permission for a lawyer who really allied with them to serve as these convicted' lawyers. Not many local lawyers who dared to defend this criminal act of subversion cases. Moreover, the absence of transparency and accountability of the judiciary and judicial court perpetuated practices of law that violated human rights. Naturally, the processes of trial were fully controlled by the military and government.

As Saifuddin A. Gani and Hendaradi recalled, condition of Aceh at that particular time was repressive. Indonesia government totally secluded Aceh from the world. Anyone with ID card except Aceh was prohibited to enter Aceh. Nobody dared enough to do something against the government, walls had ears. For those who dared, they were labeled "*Security Vandals Movement or Communist/*

PKI,” torturing or *extra-judicial killing* awaited them in the following morning. This condition clearly defined Indonesia had designed Aceh in the political containment

As bad as it might be, it did not mean there was no reaction to this condition. Some NGOs and media network on behalf of individuals tried to crack open this repressive politics. Yet, litigation legal assistance was very limited. On the non-litigation side, reports of human rights and law violation managed to deliver to the outside world. National and international human right institutions such as such as Human Rights Watch, Political Prisoners (*Tahanan Politik*, Tapol) and Amnesty International Political prisoners managed to release a report on law and human rights conditions in early days of the enactment of the Military Operations Area in Aceh.

Opportunities Taken, Advocacy Strategy, Strategic Achievement, and Changes

In handling the cases of human rights violations in Aceh, YLBHI/LBH Medan, already had its initial steps in the 1980s. Precisely at the time Mahyudanil, SH. became the director of LBH Medan. With Aceh condition that started to unrest, LBH Medan formed some posts to monitor human rights violations in Aceh, namely, LBH Aceh Timur (Langsa) Post and LBH Aceh Utara (Lhokseumawe) Post.

In the initial period, these posts appeared as regular lawyer’s offices. The cases that were handled by LBH at that time were not the usual ones held by LBH. Alam admitted that the cases of divorce dispute or heritance disputes were taken to cover their work on human rights advocacy from military intervention (camouflage strategy), especially in non-litigation in monitoring and data collection of human rights violations. Human rights cases in Aceh were still handled by YLBHI lawyers, as stated by Luhut MP Pangaribuan and Hendaridi. Alam Hamdani, Jafar Siddiq Hamzah and Abdul Aziz of the LBH Medan also participated in handling several Aceh human rights cases.

The camouflage strategy slowly turned into a more intensive and open strategy in the 1990s. Local activists were also increasingly open to oppose the military operations. These activists believed military repression had exceeded the limits of humanity values, not only toward GAM members but also toward innocent common people.

According to Alamsyah, the network in human rights advocacy at the local level was WALHI (Environmental Forum) – Indonesia. In addition, there was no institution that braves enough to openly declare human rights advocacy as their main program in Aceh. Aceh condition in 1989 to 1996 period was perceived as repressive. No one dared to advocate human rights cases in Aceh, except YLBHI, LBH Medan and WALHI. And the majority of these cases related to the crime of treason.

In 1989-1991, YLBHI/LBH Medan only “allowed” to defend one case before the court, it was a subversive case on behalf of Usman Irsyadi, a resident of East Aceh who was accused as GAM member in District of Langsa court. In that period there were actually many subversive cases that LBH tried to defend. The victims’ families sent letters to the court asking a legal help from YLBHI/LBH Medan. Sadly, authoritarian and militaristic government at that time intervened and put an end to YLBHI/LBH Medan’s aspiration to defend the victims of human rights violations committed by the military.

Indeed the litigation efforts were not successfully achieved. Political stigmatization and labeling often aimed at those who oppose the military, or those who support the victims. Those who oppose were frequently accused of being members of the GAM. Even in the most bizarre circumstances, a person might be accused of GAM when having dispute with another person as in debts, land cases and so on. Moreover, for some who were lucky enough, they got protection from the outsider, such as the US embassy, as well as international NGOs such as Amnesty International, Human Rights Watch and Tapol.

In addition to the local area, an international campaign began promoted by international NGOs such as those mentioned above. For example, Human Rights Watch released a report “Indonesia: Continuing Human Rights Violations in Aceh” on June 19, 1991, Tapol also released its report “Mass Killings in Aceh” on June 27, 1991, Amnesty International helped protecting people who were arrested by taking “the urgent action” in the first 24-hours after the arrest by issuing a memo that was sent to the Ministry of Foreign Affairs and copied to the Regional Military Government in Aceh

It was hard to let go the stigma of “GAM supporter” on anyone who supported the advocacy of human rights in Aceh, especially from

the government and military. It was even very common for the staffs of YLBHI/LBH Medan to receive some intimidation acts. Alamsyah stated that he had repeatedly taken to Gaperta prison in Medan, due to his acts against human rights violations in Aceh. Fortunately, LBH Medan had strong connection to the US embassy in Jakarta, so that the security officers might not do anything to him. Yet Jafar Siddiq Hamzah had a different story. He was an LBH Medan lawyer and also the chairman of IFA (International Forum for Aceh). When he returned from the United States in 2001, he was killed by an unknown person (OTK, *Orang Tak diKenal*) in Medan. His body was found in a plantation somewhere in Tanah Karo District, North Sumatra.

Shortly, in the period of 1992-1997, YLBHI/LBH Medan plus LBH Banda Aceh which was formally of the cases were cases of Mukim Ali Usman, Ishak Daud, and so on. At that time, YLBHI and LBH Medan had been successfully applied litigation and non-litigation methods in human rights advocacy. Since its foundation in 1995, LBH Banda Aceh was still a test project and did not run on the actual LBH working platform. During 1995-1997, LBH Banda Aceh was still formatting itself so that it might work appropriately in Aceh condition.

Period of 1995-1998;

Law and Human Rights Condition

In general, civil rights violations occurred more intensive at this time. Though the opportunity of Human rights advocacy against human rights violations was very small, but it got more open along with the process of political transition in Jakarta. Political turmoil in Jakarta impacted the military forces in Aceh. While Jakarta was preoccupied with demands for reformation, civil society in Aceh were trying to unite their voices in the call for a referendum. The weakening of the military and government in Aceh was also used by GAM to “get support” in almost 70% area of Aceh. As a result of this, military operation to banish GAM was intensified again, regardless of the existing legal procedures. A sad example of this was the massacre of Tengku Bantaqiah and his students, and also the massacre at the KKA (PT. Kertas Kraft Aceh) intersection in northern Aceh.

In this period, civil law did not work. Government system of Aceh was carried out in closed manner with the domination of military.

Number of violence against civilian cases increased, but difficult to resolve. Some criminal courts were still exist and held for subversive cases. And to be able to defend the said cases, one had to obtain a recommendation from DOM government, especially from the Army. The defendant had a protection order to be not executed after obtaining the protection of urgent action carried out by international NGOs such as Amnesty International, Human Rights Watch and Tapol that sent a memo to the Ministry of Foreign Affairs and communicated the memo to the relevant ministries and the military.

Repressive conditions had taken its root at the time, not just in the grassroots level but way up to civilian governance structures in Aceh. In response to this, Jakarta became relatively more open as arena of human rights advocacy. The military often took hard responses on a number of advocacies undertaken by NGOs in Jakarta. Similarly, in international forums, campaigns conducted by various NGOs and IFA (International Forum for Aceh) had been loudly revealing Indonesian military barbarism.

Selected Opportunities, Advocacy Strategy, Strategic Achievement and Changes

Separated from LBH Medan advocacy works, originally LBH Banda Aceh office was around Keudah, Banda Aceh with its director Darwis, SH. At that time, LBH Banda Aceh was still a project test and was taking *Darwis, SH. & Associated* office as its office. In LBH Banda Aceh director's inauguration in 2010, Afridal Darmi said that there was once a debate about the mandate from YLBHI to establish LBH Banda Aceh. It turned out that Darwis was not the only one who got the mandate. There was one lecturer of Law Faculty UnSyiah who claimed got the mandate to establish LBH Banda Aceh from Adnan Buyung Nasution as the Chairman of YLBHI Board of Trustees. Later on this mandate was reaffirmed and given to Darwis, SH. as the first director of LBH Banda Aceh. Then in 1997, Darwis, SH was replaced by Abdurrahman Yacob, SH. Since then LBH Banda Aceh legally and formally established and its office was located on Jl. Perdagangan, right next to the Baiturrahman Mosque –the landmark of Verandah of Mecca.

In this period, programs and activities of LBH Banda Aceh were heavily influenced by its 'safe' policies. These policies were taken

from the actual conditions as the increasing number of violence against human rights activists and those who dare, not only to oppose, but also to criticize the DOM government. Therefore, in this phase, it might be said LBH Banda Aceh tended to focus on assisting the cases relating to the fulfillment of Economic, Social and Cultural Rights. Especially in the western and southern parts of Aceh that were relatively not as turbulence as northern and eastern Aceh. However that did not mean LBH Banda Aceh not taking any action in handling civil-political cases. In addition, litigation mechanism also often faced the limited number of lawyers who were available and willing to assist victims, due to the objective conditions of the time.

In this period also, LBH Banda Aceh actually was “not qualified” as a legal aid institution under YLBHI, one legal aid institution with a structural legal aid approach. Because LBH works are still focused on litigation work with a very minimal application on non-litigation model and method. Despite the fact that there were more alternative methods on non litigation of human right advocacy, but because Acehnese media had not sufficient political space to maneuver, it was quite difficult to do non litigation works in Aceh. However, certain non-litigation works such as monitoring and data collection remained in LBH Banda Aceh’s bucket list to do.

Human rights advocacy in Aceh was clearly not LBH Banda Aceh tasks alone. Aside from litigation mechanism aid, YLBHI organized several workshops on human rights violation monitoring for human rights and legal aid activist in Aceh. YLBHI also helped the activist in processing and analyzing those data so that it could be used in campaign of human rights advocacy. In addition, YLBHI facilitated communication between activists and national and international networks. It also supported advocacy at national and international level. Moreover, YLBHI was in charge of ensuring LBH Banda Aceh had the resources (quality and numbers of staffs, adequate funding and organization structure) it needed, as well as ensuring KontraS –an institution initially funded by the YLBHI, capable of supporting human rights advocacy in Aceh.

Achievement and changes made by the YLBHI/LBH and its networks were not necessarily tangible. Some of the achievements had multiple effects such as delegitimizing military role (ABRI / TNI)

in Aceh and strengthening victims of conflict and other civilians to confidently expressing the truth about Aceh.

In 1997, Abdurrahman Yacob resigned. And in 1998 Syarifah Murlina was acting director while the election of new director was being prepared. At the same time, YLBHI sent Munarman as LBH Banda Aceh caretaker to fix LBH Banda Aceh works in accordance with the real condition at hand where rampant civil and political rights violation seeded dilemmas. Munarman was also sent to be KontraS Aceh coordinator replacing Iqbal Farabi.

Period 1998-2005;

Law and Human Rights Condition

At this time, the intensity of the armed conflict between the two warring parties had increased. Violence mechanism perpetrated by both sides was taken more systematic and regularly even without restriction. This condition was further aggravated the socio-political conditions in Aceh, along with political change in Jakarta. This was also meant GAM influence in Aceh increased.

After the reformation, the Government firmly justified military to exterminate GAM and its 'supporters'. This fact solidified military confident in carrying anti-humanitarian operation in Aceh. It was not targeted only to members of GAM, but also the activists who opposed repressive military action, as well as innocent civilians.

On the other hand, the change of command of GAM military from Abdullah Syafei who got killed in Cubo, Pidie, to Muzakkir Manaf in 2002, slowly erased public sympathy for GAM. GAM members took 'nangroe tax' to the community, even with force. This was only worsened Acehnese situation.

*I was not a member of LBH Banda Aceh, but I frequently came to its office next to Baiturrahman Grand Mosque. Its office was full of activists and human right defender advocates, since LBH Banda Aceh was once the Referendum Coordinating Post
(Abdullah saleh)*

According to Abdullah Saleh, from 1998 to 2004 the state of law in Aceh had been worsening. When compared to the DOM period, the law was still used to sentence the subversive convicts. After Suharto era, extrajudicial killings and tortures had increased regardless of Aceh's legal principle. Military savagery took tolls on GAM members, civilians and human rights activists. The conflict pushed law force officials such as judges and prosecutors to evacuate since there was

no security guarantee for them and their families in Aceh. Naturally, with the scarce number of officials, courts were held unprofessionally and far from justice. Afridal Darmi admitted that at this time Aceh had a shortage of judges. We frequently saw one judge led a marathon of trials. Darmi recalled it was very common to have a gun fight occurred around the court, just a day before a particular trial being held. This obviously became a major obstacle for LBH Banda Aceh to provide legal defends for its clients.

According to Ari Maulana, LBH Banda Aceh non-litigation works had been halted due to the increasing threat to the human rights activists, especially members of NGOs in Aceh. Pessimism had grown in Acehnese as prolonged conflicts and a call for separatism went on. Activists were also being pursued by the military so that many of them to flee and seek refuge from the savagery of the military then. This was similar to Darmi Afridal statement, but he adds though advocating in the grassroots level faced a great obstacle in its operations, the work did not stop entirely. Discussion, monitoring act and data collection were successfully done. International campaign was also carried out up to the level of the United Nations and European Union.

Before 199, right after Munarman became LBH Banda Aceh, LBH works were more extended, including litigation and non litigation works. I was recruited from SMUR (Solidaritas Mahasiswa untuk Rakyat, Students Solidarity For People) to handle non litigation works. We successfully developed non litigation advocacy model that still being used up till now.

(Ari Maulana, 26/6/2014)

Opportunities Taken, Advocacy Strategy, Strategic Achievement and Changes

Although there was a changing perception in Acehnese as a result of lack of Indonesian government's good intention to resolve the conflict, but neutrality of LBH Banda Aceh as loyal opposant was well preserved. Military operations continued to place in Aceh, the role and function of LBH Banda Aceh also remained on track in accordance with the vision and mission of YLBHI/LBH in respond to the objective conditions of that time, which was rightly focused in assisting the people in fulfillment of civil, political and economic, and social and culture rights. In practice, LBH Aceh assisted approximately 80 percent of cases relating to the issue of civil and political rights, and 20% of cases relating to economic, social and cultural rights. At that time, LBH Banda Aceh under caretaker Munarman had been working in litigation and non-litigation. Ari Maulana admitted, LBH Banda Aceh has managed to expand its network among Acehnese and other civil society networks. Additionally, LBH Banda Aceh also managed to encourage the formation of

SPKP-HAM, Human right NGO Coalition and KontraS in Aceh. According Afridal Darmi, Munarman worked in LBH Banda Aceh until March 2000. After that Rufriadi elected as a director of LBH Banda Aceh until 2002 and followed by Syarifah Murlina until 2004. In 2004, Afridal Darmi elected as the new director of LBH Banda Aceh. Since he continued his studies to the United States he was replaced by Syarifah Murlina as Acting Director.

With regard to the massive movement of referendum for Aceh in 1998-1999, LBH Banda Aceh was once used as coordination post. In 1999, LBH Banda Aceh office located in Pasar Aceh Market, right next to the Baiturrahman Grand Mosque, served as the center of Acehnese youth and students national congress that demanded referendum. Abdullah Saleh, a current member of Aceh House of Representative that once handled Tengku Bantaqiah Massacre case, confirmed that LBH Banda Aceh was a coordination post of human rights counselors and advocates who opposed violence in Aceh at that time.

As forementioned, the disbanding of martial law in Aceh does not end the violence in Aceh. At this time the strength of GAM is stronger, with their personnel back from training in Libya, and the stronger demand of civil society for referendum in Aceh, the government loses their authority in most of Aceh territory.

In response to this, security forces launched a military operation against GAM and its supporters. It was noted for 7 months after revoking DOM status in August 1998, 447 civilians and 87 members of the security forces died and 144 people were missing. Among civilian victims, there were certain numbers of activists and LBH staffs who either lost their life or disappear. Some of them are Jafar Siddiq Hamzah, chairman of the International Forum for Aceh (IFA), whose body was found in Medan; Musliadi, coordinator of West Aceh Coalition of Youth and Student Movement (Koalisi Gerakan Pemuda dan Mahasiswa Aceh Barat, KAGEMPAR), his body was found in Senapet, Aceh Besar; Mukhlis and Zulfikar, staffs of Link for Community Development (LCD), their body was not found until now. An astonishing number of activists who became victims came from stigma and labeling given to them that often lead to the criminalization of individual and organization working in human rights defense and humanitarian assistance. The interesting thing was that even as

one of the civil society organizations that advocating human rights issue in Aceh, LBH Banda Aceh had a certain place in the eyes of the government at that time. As one of the legal apparatus – and as the loyal opposant – with prominent names like Adnan Buyung, Todung Mulya Lubis, Abdul Hakim Garuda Nusantara and Hendaridi in the national level (YLBHI), LBH Banda Aceh had a more chance to move in their advocacy activities compared with other institutions. In the course of JRP-HAM (Jaringan Relawan Pembela HAM, Human Right Defender Volunteer Network), LBH Banda Aceh educated volunteers or other civil society members -especially from areas outside Banda Aceh, to handle the protection of human rights for Acehnese. One of the activities training of early warning system to search, find and assist victims of enforced disappearance. Although volunteers were not lawyers, they were known in the community as “*ureung LBH*” means; the LBH men. They even had identification card to be carried out in every activity. This was done to cover the vast entire area of conflict and efficiency usage of available resources.

Everything changed after the tsunami hit Aceh on December 26, 2004. It destroyed most of Aceh coastal areas and killed more than 200,000 people. This disaster has eroded wounds in Acehnese hearts after a prolonged conflict. LBH Banda Aceh which was then based in Merduati lost its pivotal figure, Syarifah Murlina, SH. She is a tough LBH lawyer and a seasoned activist in violation cases advocacy. After the death of Syarifah Murlina, SH. LBH Banda Aceh has a vacant post in leadership for a few months. The tsunami that devastated Merduati and surrounded area also destroyed LBH office as well as all data about Aceh conflict. Rufriadi, SH then was appointed as acting director.

In the context of peace in Aceh, this biggest disaster of the 20th century was undeniably ‘smoothing’ the efforts to resolve the case of Aceh with dignity. With the whole world’s attention focused on Aceh, as well as the coming of volunteers and foreign military personnel to Aceh, the community - locally, nationally and internationally - urged that the state of civil emergency which has been in place since May 2004 repealed, and resolved Aceh conflict quickly and with dignity so as not to restrict the works of volunteers and aid workers to help and distribute aid to the tsunami victims. That in the end both warring parties, GAM and Indonesia government, signed a peace agreement

*LBH Banda Aceh office once have been raided by police force. At that time our office located in Seutui area with Rufriadi as our director. It was happening when Megawati Soekarno Putri sat as president in 2001. We were rallying Anti Military Campaign in our LBH Banda Aceh office.
(Ari Maulana)*

*I came late to the office. When I arrived, I saw my colleagues were hand cuffed and military officers ran through all LBH Banda Aceh data. An officer harshly asked, “And who are you?”, spontaneously I replied, “ I am those hand cuffed people’s lawyer”
(Afridal Darmi)*

in the form of a Memorandum of Understanding (MoU) which was signed in Helsinki, Finland, August 15, 2005. This agreement was mediated by the Crisis Management Initiative under the leadership of Martti Ahtisaari. The unfortunate thing was, Helsinki MoU did not include a direct role to be taken by civil society, whereas the role of civil society, especially NGOs, was instrumental in pressuring the government to conduct peace negotiations and campaigning abroad Aceh case.

Period 2005-2009;

Objective conditions in Aceh and the role of NGOs changed drastically. As the conflict between GAM and Indonesia government approached its end by the signing of the Memorandum of Understanding on 15 August 2005 in Helsinki. This was also 'smoothed' by the tsunami that devastated Aceh. A new role in maintaining peace and rebuilding Aceh was pinned into all parties, also LBH Banda Aceh. In this period, LBH Banda Aceh was frequently involved in post conflict transitional justice programs and post tsunami rehabilitation/reconstruction program. During this period, number of assistance in civil and political rights cases was about 40%, and mostly dwell on human rights enforcement case in previous era. While the economic, socio-cultural right cases were approximately 60%, and most of these cases relating to the rights on tsunami aid, land rights and others

LBH Banda Aceh is growing established in its basic concept as Structural Legal Aid (Bantuan Hukum Struktural, BHS). In this period also, the objective conditions such as transitional democracy, elections and its offenses, as well as environmental issues become the central issues in Irwandi (2007-2012) and 'Doto' Zaini Abdullah (2013-17) leaderships. The number of civil and political rights case assistances ware about 80%, while the economic, social and cultural cases approximately 20%.

In these periods, the functions and strategies of LBH Banda Aceh with its Structural Legal Aid (Bantuan Hukum Struktural, BHS) experience changes and adjustment in line with the objective conditions in the field. According to Tandiono BP (2013), there are four legal aid positions that move in accordance with the initiative

of the actors, i.e.; *pro bono publico*, civil society (legal aid NGOs), the state (through the central and local governments) as well as international development agencies. In above point of view, the role of LBH Banda Aceh during the conflict was more focused as civil society organization (a legal aid NGO) than as conventional *pro bono publico*. In the post-conflict period, LBH Banda Aceh grew more independent and established in collaboration with the government and international community. LBH Banda Aceh had involved in post-conflict transitional justice programs, post-tsunami rehabilitation or reconstruction, democratic transition, and environmental issues.

One fact that must be underlined is the role of LBH Banda Aceh as a Non Governmental Organization (NGO) and underlying force of Aceh civil society. It has a major part in providing legal aid to the poor and marginalized communities. And this can not be achieved without the role of its network and other civil societies. NGO networks such as YLBHI/LBH, WALHI, KontraS, Human Right NGO Coalition, KARMA, ACSTF, SIRA, etc., as well as the media, civitas academia, each and every one of them contribute significantly to the existence of LBH Banda Aceh during the dark period of Aceh conflict.

Interestingly, as an NGO, LBH Banda Aceh never supports any military group in a violent conflict. LBH Banda Aceh moves in accordance to its vision and mission to provide legal assistance protection to public, and this indirectly encourages the settlement of Aceh conflict. In post-conflict and post-tsunami era, LBH still focuses on building a better Aceh certainly in the perspective of law and human rights.

C. EXPERIENCES IN TIMOR LESTE

INTRODUCTION



Timor-Timor is the 27th province of the Unitary State of the Republic of Indonesia from 1976 to 1999. When it has become a member of the United Nations, they decided to put the Portuguese name “Timor Leste” as the official name of their country. And East Timor officially became independent on May 20, 2002 by changing the name into Timor-Leste.

In 2005, population of Timor Leste was estimated to have been 1,040,880 people. The population of Timor Leste is a mix of Malay and Africa ethnic groups, a small portion of them are Portuguese descendants. The majority of the population of Timor Leste are Roman Catholics (93%), and followed by Christians (3%), Muslims (1%), and the rest are Buddha and Hindu (1% in total, 0,5% respectively), plus faith adherents (2%). Because the majority of population are Catholics, now there are three Dioceses (diosis) namely: Diosis Dili, Diosis Baucau and Diosis Maliana that has been newly established on January 30, 2010 by Pope Benedict XVI. The topography of Timor Leste’s territory is mainly dominated by mountainous terrain and similar to the area of West Timor, Indonesia.

Based on the Constitution, Timor-Leste has 2 official languages namely Tetun and Portuguese. In addition the Constitution mentions that English and Indonesian are exercised as working language. In daily practice, many people use Tetun Portuguese as conversational language; while Indonesian is used for writing. For example, high school students still use Indonesian Language for the final exam. Many students and professors prefer using the Indonesian as language of instruction and for writing scientific papers. In addition, there are also dozens of local languages, including: Bekais, Bunak, Dawan, Fataluku, Galoli, Habun, Idalaka, Kawaimina, Kemak, Lovaia, Makalero, Makasai, Mambai, Tokodede, and Wetarese.

Under Soeharto Administration, the use of Portuguese language was banned. Recently Portuguese is taught and widely promoted with the help of Brazil and Portugal, despite reluctance of some of the educated youth to use it.

According to the 2006 UN Development Report, only less than 5% of the population speaks Portuguese fluently. Nevertheless, the validity of these reports is called into question by the members of the National Institute of Linguistics of Timor, which insists that Portuguese is spoken by up to 25% of the population. Along with other local languages, Tetun is the most common language used to communicate; meanwhile Indonesian language is still widely used in the media and schools from high school to College. Most of the words in Tetun language are derived from the Portuguese, but there are also loanwords from Indonesian language, for example, number notation.

PERIODIZATION: PRE-REFORMATION ERA AND THE AGE OF REFORMATION

Below are the map of East Timor's political situation with a before and after reformation demarcation lines, with a close observation on the important things that happened in those eras up until East Timor gained its independence; as well as legal aid model conducted in the periodization.

Pre- Reformation Era

The years of 1975-1999 were the period of Indonesia's presence in East Timor, which backed by pro-integration group and at the same time opposed by groups who choose independence. The existence of opposing political factions in East Timor can be traced back to the beginning of differences in political aspirations since early policy of Portuguese decolonization in 1974.

In self-determination framework, on the July 27, 1975, Portugal Act No. 7/1975 stipulated a general election in Portuguese Timor and formed a People's Assembly in 1976. The People's Assembly would then form a new Government and initially Portugal would hand over their authority to the new (East) Timor State in October 1978.

Grafik 2 Scheme of Timor Timur Condition on Before, During and After Reformation

1975

Political changes situation in Portuguese which was highly influential on the political situation in Timor- Portuguese as an administrative area of Portuguese

Pre-Reformation

The onset of civil war among people of East Timor, owing to different opinion among political parties in 1975

In October 1975, the Fretilin proclaimed East Timor's independence and the East Timorese refused the integration

The political situation heated up due to indication of communism infiltration. Upon approval of the United States, Indonesia invaded East Timor on December 7, 1975

Era of Indonesia 1976-1996

Indonesia conducting all forms of development in East Timor in various sectors by unilaterally integrated East Timor into Indonesia's territory. Military operation in order to cease Fretilin, the party who wanted East Timor's freedom and was marked as GPK or Security's Disruptor Movement, became a military project as the target area of operation.

There was a resistance from youth group "Clandestine" who were not happy with military presence and action that is considered as committing a number of violence and murder against East Timorese who defied Indonesian Military. The turning point of the resistance of pro-independence group in the incident on November 12, 1991 appalled the world and shook Indonesia's position in international domain.

1997-1999 Reformation

Transition from New Order authoritarian power in Indonesia sparked the demand on referendum for East Timor to become stronger.

A group of resistance against Indonesian military, both inside and outside East Timor, joined forces by forming a forum/NGO ensuing to reveal human rights violations that had been occurred throughout 24 years of integration with Indonesia. LBH and other NGOS in Indonesia encouraged and supported this process in order to reveal the truth.

Support from Western world turned into an extra strength for East Timor' independence.

President Habibie gave two options, i.e.: special autonomy option, which means East Timor was still willing to join Indonesia; and independence option. There's an incredible supports both from domestic and foreign elements as the independence option was in the offer. For Indonesia's military resistance group, it was a gift that they look forward to.

The referendum for people of East Timor was held on August 30, 1999. Majority of East Timor people voted for independence. The occurrence of massive horizontal conflicts between both groups; integration group and pro-integration militia became increasingly brutal in responding to the defeat of pro-autonomy faction. Settlement of human rights violations cases that occurred in 1999 in its progress has not been satisfactory for the victims. The role of NGOs and human rights advocacy foundations that had been fighting since the age of reformation against the injustice have their fair share of providing legal to the people of East Timor who had been violence acts victims. One of them is Dili HAK foundation, formed by YLBHI.

On the other hand, since mid-1974 Indonesia began to establish contacts with supporters of integration in East Timor. After an armed conflict between UDT and FRETILIN had been instigated, the contacts grew into combined operations in East Timor, in collaboration with APODETI and UDT members.

A journalist, Aboeprijadi Santoso from Amsterdam, had another interesting idea. He suggested the date October 16, 1975 as "Dark Day of Indonesia's Press"

The reason is, at that point in time there was a slaughter of five journalists in Balibo. They had intended to record the aggression of Indonesia into East Timor. It does not matter that the victims were the five citizens of Australia, New Zealand and the United Kingdom.

"They are of the same nation like us: the journalists' nation, who stroked the news for the interest of public. They are of the same Republic like ours: Republic of journalism, who uncovered a variety of events, sorrows and tragedies for the sake of public interest."

"Thanks to them, we know, since that time, our soldiers have been illegally infiltrating into neighboring country to then occupying and annexing it. But, owing to their slaughter, we have been darkly laden for two decades."

"October 16, 1975 was the assassination of Indonesia's press freedom and public's right to be aware of our troops' aggression, atrocity and occupation of another country. They shoot the messengers, and they killed their messages, too. Because, since 1975 East Timor had been closed for anyone, let alone for the press, domestic and foreign journalists—except for a handful of 'apologists' press that accompanying the soldiers without revealing tragedy behind the operation. It means, muzzling and restraining press freedom, as of that moment, the New Order's adventure in East Timor has been denying Indonesian people's right to know their own government's behavior that violating the its own Constitution and public's right to be aware of tragedy of humanity that took place in that place.

You possibly know on that date, Chief of Intelligence Staff Division on Special Operation (Asintel Opsus) Major General Benny Moerdani learned from Australia's Ambassador Richard Woolcott that five journalists (Gary Cunningham, Gregory Shackleton, Tony Stewart, Brian Peters and Malcolm Renie) was in Balibo, East Timor, while the National Armed Force launched Operation Komodo.

Major General Benny instructed Colonel Dading Kalbuadi so that "there be no witnesses" regarding the operation, and Dading ordered the Commander of Team Susi "Major Andreas" (Captain Yunus Yosfiah) to hunt down those five journalists. (Jill Jolliffe, *Cover Up, The Inside Story of the Balibo Five*, 2001, p. 312) Upon arrival in Balibo, Captain Yunus issued firing orders to members of Team Susi, inter alia, Lieutenant Bibit Waluyo and, possibly, as well as Lieutenant Soetiyoso. The four journalists were shot, one was stabbed to death.

(Source: <http://djurnalisiyy.wordpress.com/2010/03/27/16-October-1975-dan-balibo/>)

Between August and September of 1975 was the occurrence of horizontal conflict period in East Timor. Since October 1975, characteristics of a vertical conflict began with the increasingly strengthened Indonesian military's partaking along with groups of pro-integration in East Timor, and reinforced its presence in East Timor. One of the indications of Indonesian military involvement was the Balibo case; by collaborating with the partisans (pro-Indonesia militia) from East Timor that attacked Balibo city from the west through Batugede. The attack in the town of Balibo was dubbed as Balibo Tragedy on October 16, 1975, in which 5 journalists from Australia had been victims. Balibo is a small town near Atambua

area located on the mountains. The calamity had happened before a massive Indonesia invasion to East Timor on December 7, 1975. One of incidents was the killing of five Australian journalists commissioned in East Timor at that point in time. As a form of solidarity, journalists in East Timor and peace and human rights activists as well as citizens of Australia always empathized in memory of this tragedy since then. It also illustrated that, how Indonesia had unilaterally invaded with indication of “seeking” to occupy East Timor as part of Indonesia’s territory.

The progress of conflict in East Timor was also characterized by its horizontal and vertical dimensions. Fretilin declared its unilateral proclamation of independence on November 28, 1975. Two days later, four political parties, UDT, APODETI, KOTA and TRABALISTA declared their desire to integrate East Timor into Indonesia, known as the Declaration of Balibo. Portugal did not recognize both declarations because they still considered themselves as “administrative authority” and still believed that Portuguese Timor issue must be resolved through a “referendum” which involves all political parties in East Timor, but they assumed that Declaration of Balibo was a statement of legitimate people’s political aspiration.

The United Nations through the General Assembly Resolution No. 31/53 on December 1, 1976 refused the integration and called for procedure of implementing the right of self-determination through internationally recognized measures. Every year up until 1981, the United Nations passed a Resolution affirming East Timor people’s right of self-determination. In 1982, the General Assembly requested the Secretary-General to initiate consultations with all relevant parties to reach a comprehensive solution. In total, there were 10 resolutions: two UN Security Council resolutions and eight UN General Assembly resolutions. The status of East Timor in the United Nations was as a “Non-Self Governing Territory”; consequently it was listed in the agenda of the United Nations Special Committee on Decolonization. Therefore East Timor was always discussed in the General Assembly’s agenda under “The Question of East Timor”. United Nations Secretary-General’s initiative continued to be the beginning of a tripartite dialogue between Indonesia and Portugal under the auspice of the Secretary General of the United Nations to discuss the question of East Timor.²¹

Aware of the fact that resistance movement was not accepting Indonesia's rule in East Timor, Indonesia began to implement several approaches in governing East Timor.

The first was security approach where Indonesia's military was actively conducting military operations against the resistance. Some members of East Timorese pro-integration factions who joined in people's defense groups (WANRA) and trained populace (RATIH) were involved in military operations against the resistance militant. Several WANRA and RATIH groups assembled at that time were also active in 1999 conflict in 1999, such as HALILINTAR, ALFA, and SAKA team²².

Since 1982 the security approach was established as part of Total People's Defense and Security System (SISHANKAMRATA) doctrine which has been applied nationwide during the era, in accordance with the perception of existing threat intensity and was based on Act No. 20 of 1982 regarding Basic Provisions of State Defense of the Republic of Indonesia.

The second method was welfare-based approach intended to appeal to the hearts of East Timor population by boosting development projects in various sectors such as education, health and infrastructure.

However, security approach was constantly being the cause excesses that led to the death of civilians and to other human rights violations. The survival and determination of pro-independence supporters continued their movement through various forms (armed or unarmed maneuvers) until the referendum in 1999.

The Age of Reformation

Reformation and democratization began to roll in Indonesia. The end of New Order government centralized system marked by the resignation of President Soeharto in 1998 and weakening of military authority in Indonesia, including in East Timor. This political space was utilized by groups of pro-independence to carry out their activities in a more deviant manner.

This phenomenon was increasingly strengthened after BJ Habibie's Administration offered special autonomy option to East

Timor in June 1998. The Government and military forces' nervousness concerning their authority and role in East Timor at the moment was not a unique situation, because in the context of reformation era in Indonesia, similar situations also occurred in Ambon, Poso, Papua and Aceh.

In May 1998 there were a series of historical-political events in Indonesia. Demonstrations demanded reformation in 1998 and forcing President Soeharto to resign after 32 years in power. According to Constitution, subsequently Vice President B.J. Habibie became successor of President Soeharto. This event marked the beginning of political transition from authoritarian to democratic political system. In line with the process of democratization, Indonesia entered a new era in society and national lives. 1945 Constitution, which in the past had been believed as sacred, was amended by the People's Consultative Assembly (MPR). Centralized government system began to transform towards decentralization with the passage of Act No. 22 of 1999 on Local Governance and Act No. 25 of 1999 regarding Financial Equalization between the Central Government and the Regions and afterward followed by various other legislations.

People were uninhibited to voice their opinions in various ways, including by rallies. Tight control that previously applied to the media was removed. NGOs that had been curbed under Soeharto presidency were granted with consent to carry out their activities publicly. At that time, the National Armed Forces (ABRI) started to be subject of sharp criticism regarding allegations of human rights violations in the past. Numerous accusations were instigated regarding the excesses of military operations in areas of conflict, particularly in Aceh, Papua and East Timor. These drew out uncertainty among the military about their role in a rapidly changing context.

The Habibie administration took several important steps to limit military's role by reducing the military representatives at civil governing bodies as well as in parliament; in addition, the separation of the Police from the Army on April 1, 1999 in reference to Presidential Instruction No. 2 of 1999.

All these changes comprised two objectives of fundamental transformation in the body of Armed Forces. First, to focus on National Armed Forces' role in national defense and second to delete

socio-political role of Army; both essential changes were intended for realigning National Armed Forces into its previous function, wherein the Army regard themselves as the protector of nation and State. In practice, it made the Army as the first option in the face of all perception of threats, including domestic threats.

This reformation was intended to establish a professional military force with a single national defense role (i.e. against external threat), and worked under civilian supremacy. In East Timor, the Government of Indonesia's transition allowed forthright expression on the demands for referendum and independence. The groups that previously marched underground or "*Clandestina*"²³ in opposing the presence of Indonesian hegemony was now conducting its activities publicly. CNRT, umbrella organization of freedom movement, set up their offices in regency's counties and conducted their work explicitly. This had taken place prior to the announcement of "two options" bid in January 1999 and "Expansive Autonomy" in June 1999.

Regarding the internal political transition and discharge of two options that became an international conformity, with the signing of 5 May 1999 Agreement, the National Armed Forces must change their attitude towards the independence faction who had been seen as a separatist movement.

Political changes and reformation which took place in Indonesia would also pave the way for the efforts to seek a settlement of East Timor problem. Compliant with the spirit of democratization, in June 1998 the Government of Indonesia offered a policy of decentralization in the form of special status with wide-ranging autonomy to East Timor. This then paved the way for the commencement of negotiations for the Agreement of 5 May 1999.

In conclusion, Indonesia's political transition had led to far-reaching changes in all sectors of governance, including military policies. The 1999 event took place in this kind of situation, an incomplete reformation at that juncture.

These evolutions developed into East Timorese people's point of struggle with increasing escalation at national, regional, and international levels.

The great efforts were not only committed by top circles, but it also occurred among the middle and bottom communities, counting as well youths and students.

THE CONFLICTS THAT APPEARED DURING THE REFERENDUM (POLITICAL CHANGE)

Along with two options put forward by B.J. Habibie government in January 1999 and delivered by Indonesia's Foreign Minister Ali Alatas at that period – the first option was still the Pro Autonomy, which voting to unite with Indonesia and the second option was the Independence or separating from The Unitary State of the Republic of Indonesia – have brought good news for independence fighters of Timor Leste in East Timor both inside and outside the country.

The two options increasingly fostered clandestine movements of pro-independence who had been living under Indonesian military pressure, because they had been judged as an impediment to the struggle of pro integration faction in supporting their choice to be a component of Indonesia. It could not be denied that clandestine movement during Indonesia's "occupation" for 24 years has been running with the support from Fertilin military wing fighters that had been in the forests for a long time and their leaders abroad, inter alia, Jose Ramos-Horta and Mari Alkatiri.

The struggle was carried out through international diplomacy by independence frontier figures such as; Jose Ramos-Horta, Mari Alkatiri, and Abilio Aroujo as overseas Fretilin community both in the United Nations and in other countries to make sure that Indonesia's occupation of East Timor on December 7, 1975 by Indonesia's military and acts of violence against civil society were indeed illegal acts. Therefore, a "Referendum" (the right of self-determination) ought to be organized.

Not to mention the pro-autonomy faction, which claimed to be pro-Indonesia, in spite of everything they wanted join the Unitary State of the Republic of Indonesia. Majority of the circle came from ranks of government official, police and military and their families. It was the initial grouping alliance and friction of Pro Independence versus Pro Autonomy East Timorese.

Pro-independence grouping was under the auspice of CNRT (*Consleho Nacional da Resisitancia Timorese/ National Council of Timorese Resistance*) with its President Xanana Gusmao, who was an inmate in Jakarta Cipinang prison in 1999. His deputy was Dr. Jose Ramos Horta in foreign countries. CNRT had its military wing called Falintil (*Forcas Armadas de Libertacao Nacional de Timor-Leste/Armed Forces for the National Liberation of Timor-Leste*). In East Timor, Taur Matan Ruak controlled consolidation and resistance from inside the forest. He was Vice Commander /Falintil's Chief of Staff. In CNRT, Falintil is similar to Indonesia's military i.e. National Armed Forces and the National Police, because they also retained organic weapons. In the pro-independence grouping, majority role holders were of students, the Church and a union of other activists whether in East Timor, outside East Timor such as Jakarta, Bali and Java, as well as outside the country.

The pro-autonomy grouping, which was a stronghold of pro-Indonesia, consisted of circle corridors of people in Indonesia's military and civilian Government. In addition, the Indonesian military 'intentionally' created a rivaling militia of pro-autonomy group.

The militia was troop comprising civilians and backed by Indonesian military. Its goal was to commit confrontation against pro-independence youth group and Falintil. This group was formed to indicate that pro-autonomy group totally supported the suggested extensive autonomy option and equipped with weapons as a tool to provoke skirmish in order to elicit an impression of horizontal conflict or civil war.

These militia groups were shaped to resemble existing level of command in military. There were Platoon Commander/Squad Leader, Commander of the Company and Highest Militia Commandant at an equal level with a battalion dubbed as Integration Fighters Force (PPI) commanded by Jose Tavares and his deputy Eurico Guterres. The presence of these militias were scattered in 13 districts of East Timor, with each respective trademark.

Horizontal conflicts that took place were between the East Timorese who supported pro-autonomy versus pro-independence. The emergence of a horizontal conflict made political situation in East Timor in 1999 became unstable. The formation of these two camps

that had transpired before the referendum caused the people of East Timor to be sharply torn with the entire ego, prestige and interests to seek out the most righteous and the greatest. These horizontal conflicts in various regions in East Timor emitted an opportunity that was utilized by various groups for revenging actions involving private issues, disputes between families and problems that occurred among the teenagers of certain blocks. Horizontal conflict was extremely vulnerable to be provoked into a bigger tension outburst, which resulted in the occurrence of more casualties. For example, a group of pro-autonomy supported by Indonesian troops was equipped with organic firearms, as a result people were distressed and situation became increasingly tense. On one hand, majority of pro-independence group was power-driven by youths in the city with support from Falintil and overseas activists.

Since the announcement of two options in January 1999 by Indonesian Foreign Minister Ali Alatas, a number of crises occurring in East Timor before the referendum. There were power rallies in several regencies, some earlier and lifelong militia groups since 1975 were revived, for examples: *Halilintar* in Bobonaro, *Team Saka* and *Team Sera* in Baucau, *Team Alfa* in Lautem district in Alfa's team. Some newly formed militias such as *Besi Merah Putih* that based in Liquisa, *Aitarak* in Dili, *Dadurus Merah Putih* in Bobonaro, *Mahidi* in Ainaro and *Laksaur* in Covalima, *AHI* in Aileu, and *Ablai* in Manufahi, emerged. They were the militia groups formed and supported by Indonesian Army as the Integration Fighters Force who wanted to keep joining in the Unitary State of the Republic of Indonesia.

Tabel 2 Name of Militias Revived Before Referendum

| No | Militia name | Operation Area | Magnitude Of Force | Number Of Weapons | Name Of Leader |
|----|---|----------------|--------------------|-------------------|---|
| 1 | Alfa Team | Lautem | 300 People | Armed | Joni Marques |
| 2 | Saka Sera | Baucau | 970 People | 250 Unit | Sergeant 1st Class Special Forces Command Joanico Lopes |
| 3 | Fighters of 59-75 Junior/Makikits Makikit | Viqueque | 200 people | 200 unit | Martinho Fernandes and Lafaek Saburai |

| | | | | | |
|----|------------------|----------|-------------|-----------|-----------------------|
| 4 | Ablai | Manufahi | 400 people | 70 unit | Nazario Cortereal |
| 5 | AHI | Aileu | | | |
| 6 | Mahidi | Ainaro | 2000 people | 500 unit | Cancio de Carvalho |
| 7 | Laksaur | Covalima | 500 people | 200 unit | Olivio Mendonca Moruk |
| 8 | Aitarak | Dili | 1521 people | 120 armed | Eurico Guterres |
| 9 | Sakunar | Ambeno | 2000 people | | |
| 10 | BMP | Liquisa | 4000 people | Armed | Manuel de Sousa |
| 11 | Halilintar | Bobonaro | | Armed | Joao Tavares |
| 12 | Jati Merah Putih | Lospalos | | Armed | |
| 13 | Darah Integrasi | Ermera | | Armed | |

Source: Report of the Investigative Commission into Human Rights Violations in East Timor. p.150

Before the referendum, which would be held in August 1999 in East Timor, the conflict was awfully disturbing line of process; while the Government of Indonesia spent more attention on how to win the autonomy option as the best solution for the citizens of East Timor. The implication was that Local Government Budget Funds for development projects were partially channeled to perform extensive socialization on extensive autonomy within a very short time. This process was carried out by all government levels started from the central, provincial, city, regency, district, sub-district and village governments to win the autonomy option.

In addition the Government also began to appear distracted; the violence was also directed against the populace. The attack of Church of Liquisa on April 6, 1999 was one of the earliest violent incidents of that year. 60 displaced people in Liquisa Catholic Church were attacked and massacred by Besi Merah Putih militia supported by the apparatus at that juncture. This attack indicated that Indonesian soldiers had close linkage with militia.²⁴ The assaulted villagers fled from home to the Church as a safe place for shelter. By this incident, legal apparatuses of Indonesia, in this case the police were in the pro-autonomy/attacker militia's side. Subtly, it can be said that they were 'supporting' the existence of conflict, since both of them were at

Indonesia's trait and those who sought refuge in a church were seen as opponents. It suggested that Indonesian legal apparatus showed partiality at one of the camps. At that moment the Police Force of the Republic of Indonesia (POLRI) was the only legal apparatus which had the authority to process and arrest the perpetrators of violence acts both from pro-autonomy and pro-independence sides. But in fact, the Police did not act to its full potential, because of their inclination to pro-autonomy faction.

In a discussion with Nugroho Katjasungkana in Dili; with the purpose of warding off any violence that occurred in these groups, the Government of Indonesia formed two peacekeeping institutions that aimed to conduct negotiation process between opposing camps if conflict occurred and to prevent the occurrence of further dispute and to maintain stability of security. One of the founded institutions was Commission on Peace and Solidarity (KPS). The membership of the commission consisted of two representatives of the warring parties, pro-autonomy and pro-independence as well as Government of Indonesia entered therein as a neutral party. The Commission carried out its tasks and functions by keeping its impartiality. Process was by organizing meeting between two warring sides to keep the serenity and peace for people in East Timor until the referendum by the United Nations on August 30, 1999 completed.

The Government of Indonesia also formed a P3TT task force (Task Force for the Implementation of the Popular Consultation on East Timor), which served to control the process of referendum process that would be conducted in August 1999.

Actually in the pro-autonomy party several organizations were also founded such as the BRTT (East Timor People's Front), FPDK (Forum of Democratic Unity and Justice). Those organizations also aimed to maintain unity and unanimity as well as the existing security in East Timor especially for civilians. Because those organizations were owned by a group of pro-autonomy, so that their job was more prominent to the group.

In activity process of these organizations, there was still a number of violence that harming stability of security in East Timor. The violence that resulted in casualties, indicating Indonesian Government's incapacity to undertake safeguarding measures in East

Timor, it seemed like there were some omission of and premeditated violence acts. Some cases of violence that mobilized other mass could be dubbed as human rights incident, before the Referendum took place; among other things: the attack against Manuel Carascalao's residence by militia convoy in April 1999; murder in Cailaco on April 12, 1999; imposed attack on Liquisa Church in April 1999; the killing of two students in Hera East-Timor on May 20, 1999; arrest and rape in Lolotoe in May-June 1999 and assault against UNAMET office in Maliana June 19, 1999, and some cases which were already underway massively after the referendum was accomplished, i.e.: murder of UNAMET staff in Boboe Leten on August 30, 1999, forced displacement and killings of refugees in Dili on 5 and 6 September 1999, Suai church massacre on September 6, 1999, massacre at the Maliana police station on 8 September 1999, massacre in Passabe and Maquelab in September and October 1999, the rape and murder of Ana Lemos on September 13, 1999, raging of battalion 745 on 20 and 21 September 1999 and the killing of Lospalos' Chaplain on 25 September 1999.²⁵

Several similar incidents occurred in almost all of 13th district in East Timor. It showed incapacity of Indonesian law enforcement agencies and military in maintaining defense stability of East Timor; wherein this case the United Nations entrusted the care of security in East Timor to the Government of Indonesia.

That day, Saturday September 4, 1999, after the result of People's Consultative was announced, tension was rising in the town of Suai. Upon hearing that the pro-autonomy was defeated, the Laksaur and Mahidi militias and members of Military Sub-District Command of Suai immediately held a consolidation under the command of Head of Military Sub-District Command (Danramil) First Lieutenant Sugito.



After the announcement, many of the male population, old and young went to the forest. Those who left behind were mostly women and children. They fled into the forest because the militia has threatened to kill all men of independence supporters. Long before that day, independence leader Francisco Lopes da Cruz even had threatened; "If the autonomy wins, blood will trickle, if autonomy lose, then blood will flow." On September 5, 1999, at the Base of Military District Command (Kodim) 1635/Covalima, there was a changeover of Kodim Commander (Dandim) from Lieutenant Colonel Lilik Koeshardiyanto to Lieutenant Colonel Ahmad Mas Agus. Commanders of Laksaur and Mahidi welcomed new Dandim while descending from the plane. Upon arriving at the Kodim, Lieutenant Colonel Mas Agus immediately ordered his men

to pull out weapons from the depot and distribute G3 (Get Me) and M16 guns to militia commanders such as Olivio Mendonca Moruk, Agapito Mau, Pedro Teres, and Amnecoli. The weapons were then distributed to the members of the militia in each post.

Suai atmosphere was getting fervent. The militia burned the houses of pro independence villagers. They also ordered all residents to haul out their belongings straight away and put it in preparation at the highways to be transported to Atambua, in East Nusa Tenggara. If the command were not obeyed, the population would be killed and their house burned. Inside the Church complex of Ave Maria, two police officers came to see Pastor Francisco Soares and demanded that refugees to be evacuated without more ado because the situation was not safe anymore and the militia had been armed.

At 4 PM, the Laksaur militia captured the youths in Matai and a militia named Alipio shot two teenagers. Eight villagers were arrested by a group of Laksaur militia from Salele village. They were then handed over to Hanoin Lorosae Contingent in Police District Headquarter of Suai. While in the village of Aidila Laran, Debos village, two men dressed in 'ninja' suits invaded the house of Domingas dos Santos Mouzinho with automatic weapons. Domingas dos Santos Mouzinho and his family fled for shelter.

Smoke was soaring around the city of Suai. The streets were filled with militias, particularly around the Church of Ave Maria. The militias were pacing back and forth carrying automatic weapons and assembled guns, as well as machetes and samurai. Occasionally, sounds of firearms erupted near the Church. Many militias also hovered around the house of Alberto de Neri, leader of FPDK of Suai, approximately 50 yards from the Church complex. More and more people took refuge in the Church complex where they considered safer and would not be attacked by militias.

In the evening, the Church complex was getting full of refugees. Apart from the town of Suai, they have come from the districts of Tilomar, Fohorem, Fatululik and Fatumean. A number of refugees solemnly conducted prayer, while others continued to stay awake among a pile of stuffs they carried.

In the morning of September 6, 1999, buildings in the church complex, such as the Christian High School, Canossiana Nuns dormitory, Pastor's house and office and under construction church buildings have been filled with thousands of people. Many of them were living in makeshift tents. At about 7 AM, Pastor Hilario approached some refugees who dwelled in the Pastors' residence and told them to cook gruel for children, especially toddlers.

At about 11 AM, a member of Laksaur militia met Pastor Hilario and ordered the pastor to immediately mobilize the refugees to the curb before the Church complex since it will soon be transported to Betun. Pastor Hilario did what he had been told. Before leaving the Church, he advised the refugees to pick up the rice in the church's shed for surviving provision in Betun. Each refugee received instant noodles. After waiting for a long time at the curb, the awaited vehicles did not come. The refugees went back into the Church complex.

At about 2 PM, sound of an erupted gun was soon followed by a series of gunfire outbreak discharged blindly from highway direction to the north Virgin Mary statue and Alberto de Neri's house. Policemen from Hanoin Lorosae Contingent and National Armed Forces were also firing toward the Church complex.

Half an hour later, the attacks from various directions were undertaken by the militia forces and National Armed Forces headed for the Ave Maria Church complex. Most of Laksaur and Mahidi surged in and stroked, others were surrounding the Church. The chaotic situation was breaking loose. People were running around sought for shelter. Hundreds of militia invaded with a variety of weapons, ranging from machetes, samurai swords, homemade guns, to automatic rifles. Almost all of them were in black outfits that



read "Laksaur" or "Mahidi" and wore camouflaged pants of National Armed Forces. A number of the militias stormed the entrance to the old church and rectory house where Pastor Francisco and Pastor Hilario were located. Others attacked people in the courtyard and in the new Church. On the front yard of pastors' house, a number of militia wearing face coverings like 'ninjas' opened fire on the people inside the Pastors' house. The painful cries due to piercing bullets were not perceived by the militias. In the dining room, where Pastor Francisco took shelter, a child and three women, died of gunshots. The militia threw three grenades into the dining room, but it did not explode.

Igidio Manek shot Pastor Hilario whom died the front of his office. Then his body was dragged by Manek for 2-3 meters to the West approaching the dining room. A teenage militia then trod underfoot the stomach of Pastor Hilario's

body. Pastor Francisco was furious and snapped at him. Hearing the pastor's shout, Olivio Tato (member of Laksaur, from Fatukoan village) unswervingly hit and dragged the pastor to chicken coops, through the hallway splitting the office and pastors' residence.

While in the old church, the militias were massacring everyone who took refuge there, including children and women. Their corpses were collected in a corner between the old church and Nuns' dormitory. Among them there were bodies of a mother and her child, whom was about five years old and the body of Pastor Francisco. Several people were died owing to slashed throats and many were nearly decapitated.

In rectory's kitchen, a father and both of his children were killed. Their bodies were burned along with the rest of the kitchen. Amassed corpses in front of the Church and behind the garage of Pastor's residence amounted to 26 bodies. In the new church building, the militia shot roughly 10 people who took refuge in a room, three of whom were women. The militia also burned the Pastors' house, which subsequently caused the old church building was also burned.

Olivio Moruk, Commander of Laksaur Battalion and Alipio Mau beat up and gashed a girl, but the victim escaped and rejoined groups of refugees heading for the highway. While another girl named Alola were pulled out of the group by Igidio Manek. Some militias dragged Albertina Rica, then slashed her with a samurai in the neck

The atmosphere was somewhat subsided at nearly 5 PM. The militia stood guard near a statue of the Virgin Mary. Some were looting refugees' belongings left in the Church. They also took cars and motorbikes belonging to the refugees.

The refugees saved from massacre were brought together on the highway. The militias and National Armed Forces watched closely. They were then transported to Military District Command Base of Suai and into Junior High School 2 Building. In both places, the militia committed intimidation, beating, rape, and murder against the refugees until they were forcibly transported to Atambua. On September 7, 1999, at dawn, a group of militia relocated 27 corpses that had been slaughtered from the old church into a Colt pick-up. Among them, there were bodies of Pastor Hilario, Pastor Francisco, and Pastor Dewanto. The corpses were wrapped with mats and brought to Meta Mau, East Nusa Tenggara and then buried in Mota Masin near the seafont. At around 12 PM, the 27 corpses were buried en masse in three holes. The burial was led by First Lieutenant Sugito.

The assault and massacre at the Ave Maria Church, was one of big cases that caused victims of more than 50 people. Since the arrival of INTERFET troops by the end of September 1999, the case continued to be investigated in order to find the perpetrators and victims whose burial locations were unknown. National Commission of Inquiry on Human Rights Violations in East Timor (KPP HAM) that visited on 19 November and 13 December drive the focus of investigation into the massacre of Ave Maria Church in Suai to West Timor. They managed to find key witnesses who knew and saw locations in which the victims were buried. On November 25, the National Commission of Inquiry on Human Rights Violations in East Timor (KPP Human Rights) exhumed the mass graves and found 27 corpses in three holes, which consisted of 16 men, eight women and one person of unidentified gender.***

Source: http://www.yayasanhak.minihub.org/direito/txt/2001/18/02_direito.html

An example of case that extremely shocked the world was the attack on a church in Suai that resulted in the death of three pastors of the Church and a number of congregations in the church. The arbitrarily Laksaur militia's attack was a gross human rights violation that happening at that moment, as quoted from Dili HAK Foundation.

In general, the pro-independence party comprised a lot of casualties. People who chose to become independent were always terrorized, threatened and assassinated by armed militia of pro-autonomy. Because of the anxiety, some of them fled to the jungle to join Falintil there, and some also have seek refuge in church or at the homes of pro-independence group leaders as safeguarding zones.

The presence of United Nations UNAMET as a body which began the mission of conducting the referendum brought a fresh breeze for pro-independence party, because the presence of UNAMET in East Timor in addition to running a poll on the scheduled date of August 30, 1999, also carried out peace mission by embracing both conflicting parties. UNAMET in running its activity was inseparable from cooperation with the Government of Indonesia, Indonesian military, the Police, CNRT, Falintil and all institutions founded by either Indonesia or the independence party itself.

INTERVENTION OF STRUCTURAL LEGAL AID

On its course of actions afterward, the settlement offer through the two options of rejecting or accepting the autonomy was poured into an agreement between the Government of Indonesia and the Government of Portugal under the supervision of the Secretary General of the United Nations, on May 5, 1999 in New York. In the agreement, it was agreed that the East Timor Ballot would be fair and transparent as well as conducted safely and free of intimidation, violence or interference from any parties.

As the implementation of 5th May agreement, on 30 August 1999, the people of East Timor carried out the ballot. The results indicated that 78.5 percent of the poll participants (334.580 voters) rejected special autonomy option offered by the Government of Indonesia which means East Timor chose to separate from the Republic of Indonesia. Meanwhile, approximately 21 percent (94.388 voters) chose the option of special autonomy, while 1.8 percent of the votes (7985 voters) were declared as invalid.²⁷

Based on a range of observations, prior to and after the opinion poll in East Timor, the circumstances in the region were as if 'stealthily' controlled by military. Various organizations in human rights field who worked there could not acquire maximum results, because obviously they would be intimidated because they were deemed as a group of supporters for the pro-independence organizations. Military in this case held dominant role rather than the civil government. Either consciously or not, a horizontal conflict among the Timorese occurred in East Timor was not apart from the Indonesian military's scenario

who anticipated the onset of conflict. One of factual evidences was the foundation and activation of militias as “mischief-makers” of uproar and massive arson that happened in, more or less, thirteen regencies in East Timor. However, the military also received strong pressure from human rights organizations and Catholic Church organization in Dili over their actions that deliberately overlooked arbitrarily and brutally actions of armed militias. The pressures became a blow against the Government of Indonesia from the West that caused stronger support for the independence of East Timor.²⁸

Immediately after the announcement of opinion poll results on 4 September 1999, extensive violence, arson, looting and massive displacement cropped up.

Addressing the fact, on the September 8, 1999, the National Commission on Human Rights (Komnas HAM) issued a statement regarding the human rights situation in East Timor subsequent to the opinion poll. The first item of statement says, “*that the development of people’s life in East Timor at that time had reached a condition of anarchy and acts of terrorism have been perpetrated extensively both by individuals and groups amid direct testimony and omissions by elements of security apparatus.*” The entire community of both national and international was very concerned about the human rights situation in East Timor, especially regarding the reports indicating that there have been human rights infringements. They were also deeply concerned about the situation of refugees both in East Timor and East Nusa Tenggara.²⁹

Horizontal conflicts in East Timor that were derived from powerful political interests, brought a huge impact for the citizens of East Timor. Fatalities and arsons committed by mobs, militias, as well as the forced displacement or expulsion to West Timor areas. Indeed, it was unique when result of the ballot which was won by pro-independence groups was not responded in a good way by groups of pro-autonomy. One of reasons was because of the fraud. It triggered the armed militias to commit acts of violence against groups of pro-independence over again.

As the losing party, the pro-autonomy group chose to evacuate or move out of East Timor and stayed in camps in West Timor. While pro-independence groups who mostly were still terrified, chose to evacuate into the jungle and joined other independence groups there. A small portion of them followed their families in West Timor and Australia. It caused the cities to be dominantly ruled by the military, because martial law was also still valid after the poll.

It was the largest catastrophe in history of displaced people of East Timor to West Timor. Roughly 250 thousand East-Timorese people fled to West Timor.

The conflict has given wound and segregation among East Timorese, which was formerly known for their unity and unanimity because of strong custom and culture inherited from their ancestors. But because of politics, then it was all crushed and humanitarian relationships were torn.

A number of achievements of conflict resolution between the two camps were conducted by way of two aspects. The first aspect was through the law, with the presence of ad hoc court implemented in Indonesia. This Court seemed like 'theatrical' act by the Government of Indonesia due to its acquitting verdicts for Indonesian military upper-officials, whom in point of fact contributing to back up the pro-autonomy militias in East Timor in 1999. The injustice of ad hoc tribunal generated a number of disappointments from numerous world activists and also the victims in East Timor, showing that Indonesia's Government was not serious in addressing the conflict that occurred massively in 13 districts in East Timor. One of the comments that came from Jhonson Panjaitan on the subject of ad hoc tribunals was that it was unfair;

THE AD HOC HUMAN RIGHTS COURT TO DENY JUSTICE

Although the trials of gross violations of human rights in East Timor had been held, however the ongoing process so far was still doubted by many circles. Will the judiciary be proficient to respond to the demands of Justice that have been fought by the victims? The following the review of Johnson Panjaitan, Secretary General of PBHI, a former lawyer of Kayrala Xanana Gusmão. In accordance with Presidential Decree No. 96/2001 which later was enhanced by Presidential Decree No. 76/2002, on March 14, 2002 the Ad Hoc Human Rights Court was held in Jakarta to prosecute two men that were accused in a separate case, namely Abílio Osório Soares (former Governor of East Timor) and Timbul Silaen (former Chief of Provincial Police). Initially, 118 people would be taken before the court that according to National Commission of Inquiry on Human Rights Violations in East Timor (KPP Human Rights) they were responsible for human rights violations in East Timor between January-September of 1999. Nevertheless, only 18 people were sued by Attorney General Office to the Ad Hoc Human Rights Court. It proves that there has been a 'dwarfing' process of East Timor cases by the Attorney General's Office.

The basic question that ought to be promulgated is: will the judiciary be able to deliver justice? This is indeed a difficult question to answer, but we can answer it based on the following facts:

1. The concept of gross human rights violations submitted to the Human Rights Court according to law No. 26 of 2000 is narrow because it only regulates two kind of action, namely, crimes against humanity and genocide.
2. The Judges appointed to the Ad Hoc Human Rights Court did not have an observable track record in the field of human rights. There's even a judge who previously had been a judge in East Timor and prosecuted Human Rights activists during Indonesia's occupation of the region. There was also a formerly member of the National Human Rights Advocacy Team of the Armed Forces
3. The appointed ad hoc prosecutors are mostly military prosecutors, which were part of the network of alleged Human Rights violators. A district attorney who had been a Prosecutor as in trial of East Timor human rights defenders in Indonesia. It was contrary to the concept of ad hoc which should appoint attorneys that have not been derived from the former state prosecutors. Such prosecutors won't be impartial.
4. The ongoing process in the Court was such a farce, for it was not in accordance with the applicable law. The indictments proposed by the prosecutors illustrate that what has happened in East Timor merely a conflict between groups of pro-autonomy and pro-independence. The witnesses presented by prosecutors thus were also the perpetrators of the case in trial, like Wiranto and Adam Damiri. As a result, the Court turned into some sort of stage act to protect military officers involved in the gross human rights violations in East Timor. These facts indicated that the process of Ad Hoc Human Rights Court thus denied the justice

Source: [Http://www.yayasanhak.minihub.org/direito/txt/2002/19/03_direito.html](http://www.yayasanhak.minihub.org/direito/txt/2002/19/03_direito.html)

The second aspect was by conducting settlement through various institutions which facilitated the process of reconciliation, as well as through lines of applied custom and tradition. In the Endeavour, Indonesia and East Timor as well as the United Nations need to do something, as part of reconciliation between both groups, the pro-autonomy and pro-independence communities.

A “*NAHE BITI BOT*” (unfurling large mat) ritual was arranged in which it became reconciliation between pro-autonomy and pro-independence leaders; discussing the directions and the scheme of East Timorese would like to mutually accept each other, forgetting the past and aiming a better future. This Nahe Biti Bot was an idea or concept from fellow East Timor people to sit together, solve together problem without any interference from third parties. Reconciliation of both groups did not involve legal process, but they emphasized on culture and customs processes with heart to heart discussion, as part of a resolution to the ongoing conflict.

In 2002, the CAVR (*Comissão de Acolhimento, Verdade e Reconciliação* – Commission on Acceptance, Truth and Reconciliation) for East Timor was formed. CAVR was a Commission that under the administration of UNTAET (United Nations Transition East Timor), a United Nations body who served in East Timor after the UNAMET mission was completed. The mandate of this Commission was to investigate and establish the truth with regard to human rights violations that occurred in connection with political conflict in Timor-Leste from 25 April 1974 to 25 October 1999. This investigation meant to seek a justification instead of seeking fault of certain groups, and the results would be written as the history of the Timorese. The Commission explained their duties and functions by embracing all stake holding parties. The Commission also conducted their job in West Timor, specifically in refugee concentration camps and also with the Government of Indonesia.

The purpose of the truth finding program was to document human rights violations committed by all parties to the conflict in the span of April 1974 and October 1999. The devised concept was the acquirement of statements systematically in the entire sub-districts, focused researches and implementation of public audiences, prearranged submissions, including a variety of documents and other relevant materials. It also made effort to obtain them from various sources in Timor-Leste and abroad. On August 11, 2005, the Commission of Truth and Friendship – CTF was formed by both States; Indonesia and Timor Leste. The Commission’s mandate began in 2005 and was extended until the year of 2008, to complete its three major components of duty, namely: (1) its investigations that consisted of re-examination of

documents, fact-finding and research; (2) made findings concerning acts of gross Human Rights violations and their institutional responsibilities; and (3) formulated recommendations and lessons that can be taken. The keystone of the Commission's work was the process in 1999. The historical investigation was run in accordance with the framework outlined in the Commission's mandate, which requires the implementation of document re-examination process and fact finding procedure, which will form the foundation for the Commission to analyze and define the 'truth'.

The Commission conducted their works in West Timor-Indonesia and Timor Leste, the composition of Commissions of both countries and results of report and recommendations then would be submitted to the leader of each country - Indonesia and Timor-Leste - to be followed up. The Commission did not recommend on the violations to be put on pre-tribunal, nevertheless Commission's recommendation was the assessment for the truth of events that occurred in 1999.

In 2002, Border Meeting was organized between separated family members of both States; Indonesia and Timor-Leste. These activities on was on facilitation by both States and also a number of international and local NGOs, the Church also engaged in the activities of peace. The activity was intended to bring together separated families due to long conflict to meet and tell each of them positive experiences and mutual information on situation and condition of their current residing area. The activity took place up until 2008 and was conducted at the main border crossing point of two countries. Through this activity, reconciliation was indirectly formed. It demonstrates the fact that the Timorese love their family, homeland, culture and custom. They were separated, they were in conflict because of some elite political interest, the military who wanted something in there. They want the Timorese to be as before; and the acceptance process through this manner would still take place in a small scale; and it would be carried out from family to family.

Voluntary Repatriation or homeward journey that was made consciously and without coercion was the fruit of constructed reconciliation process. Even though it was small in number, it showed that their love toward family and their wish to live side by side and the love for their homeland were eminent. Those families had chosen pro-

autonomy but wanted to return to East Timor willfully. The motivating factors were strenuous financial necessities in refugee camps where they lived in and the access to limited arable land had not been comparable with the economic needs of families that increasing every year. Data from Timor CIS stated that since 2009 following closure of official repatriation program by the Government of Indonesia there have been 114 people of 49 families who intentionally went back home to their birthplace of Timor-Leste. They returned because they have decided it on their own after conducting a family reconciliation; non-governmental organizations facilitated their return.

Some organizations from Indonesia who contribute in East Timor-focus also conducted their activities in East Timor. There were SOLIDAMOR (Solidarity for East Timorese), LBH Jakarta, Dili HAK Foundation, ELSAM, National Commission of Human Rights, the Christian Church with GAMKI and PMKRI Youths. These organizations worked to advocate justice and truth and to carry out legal efforts for victims of violence acts that have been committed by armed militias and Indonesia's military against the East Timorese. They worked with legalization effort for existing cases by recommending the obtained findings as violations against Human Rights at that point in time.

One of foundations participated in the realization of Timor Leste's independence is Solidamor. Solidamor's reason to partake in defending Timor Leste comprised several factors, the foremost aspects are: the integration of East Timor into Indonesia's territory was illegal, because it was committed through a military invasion by Indonesian army, which had emerged prior to the invasion of Dili, on December 7, 1975. It was contrary to the content of the 1945 Constitution of the Republic of Indonesia, which in its Preamble firmly states that "*whereas, independence is the virtual right of every nation, and therefore, colonialism must be eliminated from the face of the earth, because it is contradictory to humanity and justice.*" East Timor before the integration with Indonesia had been a colony of Portugal who had the right to independence and with the onset of political conflicts due to the *coup d'état* by political party UDT and the escape of then provincial government of Timor-Portuguese to Atauro, the Fretilin had been successfully seize the situation and proclaimed their independence on November 28, 1975. Based on the spirit of the Preamble of 1945 Constitution, the State of the Republic

of Indonesia should declare its support to the new Republic, in the same way as Indonesia had expressed support to the countries of Asia and Africa that had been struggling to liberate themselves (for example, the Government of Indonesia during President Sukarno's administration has sent a ship full of weapons to the FLN-*Frente de Liberacion Nacional*, who was struggling to assert independence of Algeria from French colonialism).

Both attacks against East Timor indeed were an act of war by Indonesia against foreign territory. According to the Constitution in order to declare a war, the President of the Republic of Indonesia should ask for House of Representatives' approval. Nevertheless, the military assault since October 1975 and subsequently military operations were carried out in secret. The President of the Republic of Indonesia General Soeharto had never asked authorization from or even advised the House of Representatives. Therefore the integration of East Timor into the Republic of Indonesia was multi-layered contraventions of the 1945 Constitution.

Military operations effected by Indonesia failed to destroy the independence movement of Timor-Leste, whether the armed movements (GPK –Security Disruptor's Movement) or clandestine society of East Timor continued to be a problem for Indonesia as well as for the world.

So therefore Solidamor held activities to enhance people of Indonesia's comprehension in general and also the authorized parties in Indonesia (Governments officials, members of Parliament, et. cetera) regarding what actually have happened in East Timor prior to December 7, 1975 invasion. These activities involved seminars, workshops, publication of newsletters and books, as well as organized exhibitions and cultural performances of East Timor. Solidamor also organized dialogue that brought together pro-integration and pro-independence people in Jakarta.

The activities were carried out by them selves or with other organizations who also seek for peaceful solution to the problems of East Timor. Solidamor became a member of the Joint Committee for the Defense of East Timor, which was a union of human rights and humanitarian aid organizations of Indonesia that had been established to bring to people's attention concerning violations of

human rights in East Timor and to provide assistance to victims of human rights violations in East Timor. Overseas, Solidamor was also active in APCET (Asia-Pacific Coalition on East Timor) forum, who were actively seeking a peaceful solution at international level by conducting lobby to convince world leading countries (such as the USA, United Kingdom, and Japan) as well as ASEAN member states that have had been supporting Indonesia thus far, in order to revolutionize their political predisposition toward East Timor by supporting the implementation of referendum, which was the way of a peaceful solution to the problem of East Timor.

Solidamor on its own or in company with other organizations brought the issue of human rights breaches in East Timor to the National Commission on Human Rights of the Republic of Indonesia, encouraging the National Commission on Human Rights to seek out a settlement and provide recommendations to Indonesian Government to make policies in order to prevent human rights violations by Indonesian army in the future.

The most important achievements were that many people of Indonesia, either activist or not, be aware that East Timor had not voluntarily carried out the integration with Indonesia. The Integration had been committed through war and Indonesian army was responsible for a lot of human rights abuses against the civilian populace, since the onset of war until the end of the reign of Indonesia in East Timor. This achievement was solely accomplished by Solidamor but also in cooperation with other organizations such as the SPRIM (Solidarity Struggle of People of Indonesia- People of Maubere), FORTILOS (People's Solidarity Forum of East Timor), ELSAM, LBH Jakarta, members of the Joint Committee for the Defense of East Timor, and others including Forsolidareste or Forum of Solidarity for East Timor, an organization which existed in West Timor

Solidamor was established to seek peaceful solution to the East Timor problem instead of settlement through war, as what had been performed by Indonesia. The available ways of peace were through referendum to inquire the people of East Timor, would they be willing to integrate into Indonesia or willing to stand on its own as an independent State.

However, various challenges were also confronted by these activists in conducting advocacy or legal aid for victims of violence. Some personal noted recollections were on the intimidation and a sense of continuously being 'chased' by soldiers element and always been indirectly stymied to uncover the truth over the incidents of violence that occurred in East Timor. There was also an organization dissolved by intelligence, i.e. Forsolidareste in West Timor.

IMPORTANT NOTES

The question of violence acts in East Timor was very significant in 1999 and awfully profused with political issues. If this issue was resolved with legal manner and taking into consideration political issue, it certainly would be difficult to solve. Cultural approach was then applied. East Timorese culture that fearing the rules of their ancestry from ancient times taught mutual acceptance, which became a strength and opportunity to minimize this concern.

National laws, tradition and culture altogether possess opportunity, however in the process of settlement trough reconciliation should involve lower circles and not only among the elite, because the people would be the ones that directly subjected to the effect of conflict. In the question of East Timor, a very interesting matter was world's intervention that contributed to the East Timor issue, so that legal process occurred in East Timor in 1999 was influenced as well by other countries. Peaceful opportunities for both camps of warring parties would be open, although still constrained by political expediency factor. It caused the discourse regarding violation of Human Rights that occurred in Timor-Leste has been deposited temporarily by the United Nations in its dedicated forums.

D. EXPERIENCE OF POSO

PROFILE OF POSO



Poso Regency covers the area from southeast to northwest and widens from west to east. Before the regency expansion, most of the area lays in 29,923.88 square kilometers land or 43.98% of the area of the central Sulawesi province. Other area covers ocean with 81 named islands, 41 of which are uninhabited. Not surprisingly Poso is the largest between other regencies in the central Sulawesi province. The distance from Central Sulawesi province capital to Poso is 300 Km. In 1999, based on Act no 51 1999, the Indonesian government separated Morowali from the Poso regency, to become a regency of itself. In 2003, based on the Act number 32 2003, Government separates Tojo Una-Una from Poso regency to become a regency of its own.

The area of Poso is approximately 8,712.25 square kilometers or 12.81 percent of the total area of central Sulawesi.³⁰ Based on 2012 demographic update from statistic office of Poso regency, the population of Poso is 226,389 people, consisting of 117,667 males and 108,722 females. The Poso regency had diverse population. The indigenous inhabitants of these areas are amongst the Pamona, Lorre, Mori, Bungku and Tojo/Una-Una tribes. The settler tribes in large numbers came from South Sulawesi (Bugis, Makassar, and Toraja) and North Sulawesi (Gorontalo and Minahasa), besides also tens of thousands settlers deliberately delivered from Java, Bali and Nusa Tenggara by government through transmigration program.

THE SITUATION OF POSO PRIOR THE 1998 CONFLICTS

There are some structural factors worth noting before viewing the Poso regency in the violent conflict phase. So it will come up with comprehensive and critical on the political social rule as a background of the development of violent conflict triggered by an event at the end of 1998. The structural factors which prominent, influential and create serious implications on the demographic and political social and economic change in the Poso regency, is the following policies of new order:

1. Transmigration program

The transmigration program designed by new order as part of development program turned to be contributing to the various social conflicts in Indonesia, including conflict in Poso. Ironically this is the opposite of the goal of the transmigration program itself, i.e. to consolidate the unity of the nation.

Government admitted the contribution of transmigration to the social conflict, The minister of transmigration and labor, Fahmi Idris, at the celebration of 54th Transmigration dedication day in Ambon, December, 14th 2004, through the keynote address read by deputy governor of Maluku, Memet Latuconsina, stated "The transmigration program is regarded as the cause of inter ethnic conflict as it gives more attention to the settlers without regards of local inhabitant and transferring the poverty all together with the critics".³¹

Social-economic transformation that initially started with the construction of trans-Sulawesi road had triggered massive migration from South Sulawesi to Central Sulawesi. The flow of migration of the Bugis, Makasar, Luwu and Toraja ethnic triggered the shift of land ownership from local inhabitant to the settlers. The raise of land sale is due to the need of local inhabitant to pay for the education of their children, and other needs.

The coming of many settlers in Poso also demanded more positions in the government. To achieve this, to smoothen the path to power, the settlers started to elaborate through various political parties, mass organization such as ICMI, Golkar. The sharpening of this competition was missed from the attention of the younger generation in Poso at that time.

2. Development of Farm Business Cooperation (KUT) in full of Corruption, Collusion and Nepotism

The farm Business Cooperative (Koperasi Usaha Tani/KUT) is a national program with budget up to IDR 8.3 trillions, introduced by Adi Sasono, at that time being the minister of Cooperative and Small and medium enterprises, under the regime of President BJ. Habibie.

In the implementation, the KUT is distributed through community self reliance developers and Village Unit cooperative (Koperasi Unit Desa/KUD), with each gains 5% of the funds distributed to their assisted farmers. For the sake of this commission the developers flourished in Pos. KUD and Developers submitted definitive group need plan of their assisted farmer groups to the local cooperative office for recommendation. Each plan must be signed by field agriculture mentor, village head and leader of the farmer group under the assistance of the developer.

The four developer triggered by KUT scheme are the LPSEK (Lembaga Pengembangan Sosial Ekonomi Kerakyatan), Persada, Balai Pengembangan Pelatihan dan Promosi Ekspor Daerah (BP3ED), and Yayasan Bina Bangsa Mandiri (YB2M). The four developers are mostly close to political party of ministry of cooperatives, namely the PDR (Partai Daulat Rakyat) party. LPSEK is led by Ir. Effendi and H. Syamsudin Said, at that time the chair of Central Sulawesi PDR party. Persada is led by Ir. Abdul Kadir "Aco" Latjare. BPED is led by Tjabani

Daeng Mangepe as the chair person and Daeng Raja as the secretary of Poso PDR party at that time. The propaganda machine of the KUT managers is the Tinombala daily, published in Palu from 1998 to 2000, led by Tjabani Daeng Mangepe and Syamsudin Said.³²

A prominent fact is the flourishing of the bogus farmer organization in the Poso municipal. Similar many strange peculiarities of the list of farmers organizations in the various regency, the Poso cooperative office, had no other choice than just sign recommendation to the KUD and the developer or else the cooperative officer would be reported directly to the minister of cooperatives and small and medium enterprises, Adi Sasono, who would take the side of the Developers who also happens to be local officials of PDR party led by Adi Sasono at that time. The extortion style symbiosis is one of the modes to polish the development projects of Poso regency local government, especially under the reign of Arief Patanga in the second terms.

3. The Shift of Local Political Control

In the context of religion, the Poso population consists of two major religion groups, Moslem and Christian. Besides the Christian and Moslem, there are also ethnic religion groups, especially in the remote areas. Before expansion into Morowali and Tojo Una Una, Poso is dominated by Moslem people, but after the expansion, the Christians are more dominant. The difference of faith between the two dominant religions, were assumed to be one of determinant factor of the Poso conflicts.

The composition of Poso residents changed drastically in terms of religion and ethnic. The main cause is continual migration from Java, Bali, South Sulawesi as well as north Sulawesi. The settlers coming to Poso are mostly Protestant and Moslem. The Christian settlers came from mostly Toraja, coming to Poso from south, and from Minahasa and Sangir Talaud from the north. The Moslem settlers came from south, i.e. the Bugis ethnic that had migrated since the colonial era, as well as the Gorontalo ethnic from the North. The social, economic, politic and cultural constellations are much affected by this change of population composition. The gap between the local inhabitant and settlers inevitably rose. The impoverishment of local Poso inhabitant happened continually without any attempts to address it. If it looked deeper, the social-economic gap is inseparable from the local social-

political shift; intensified settlers control on the government politics and control of economic resources. The gap of government political control is very apparent when the leader of local government is held by settlers. This automatically will dispose the local ethnic leadership, especially of the Pamona tribe. Eventually the shift will also affect the recruitment of local government employee.³³

4. The Conflicts of 1992 and 1995

Before the conflict of December 1998 and its subsequent violence, Poso had gone through tensions between religious communities (Christians and Moslems) in 1992 and 1995. In 1992 there is a conflict between masses, due to one person who converted from Moslem to Christian and alleged to had insulted the Moslem as he believe that Mohammed was not a prophet. The tension was well handled by security forces.

The next incident is stone throwing at one of the mosque and Moslem boarding school in Tegal Rejo Village at February 15th 1995. The perpetrator is allegedly a group of Christian youth from Madale. Turmoil then happened as the Moslem Youth of Tegal Rejo and Lawanga retaliated by destroying the house of Christians in Mandale village. The mass conflicts that time can be repressed by the security forces so it did not spread to other Poso areas. After the violent incidences of 1992 and 1995, the society is back to peaceful living.

THE 1998 REFORMATION AND IMPLICATION TO POSO

At the Indonesian 1998 reformation, when ever stronger demand for the trial of Soeharto and his cronies and the dissolution of the armed forces dual function, surprisingly suddenly the Poso riots erupted, even in massive sequences.

The Poso conflict in late 1998 had been estimated to take 542 casualties and 250 injured. Besides there are also 31 worship places destroyed, 6,211 civilian houses burned and 161 government and private facilities damaged beyond use.³⁴ The local Poso government noted that there are more than 88 thousands internally displaces people spreading to Palu, Poso regency, Donggala regency and Morowali regency. Other information indicated that people even

evacuated as far as to Java, some even chooses to be a migrant worker in Hong Kong and some other neighboring countries.

There are strong political elite interest in the Poso conflict as indicated by the reluctance and doubt of the security forces in addressing the criminal acts in communities, specially cases that involves people with difference ethnic and religions. This reluctance is strongly believed to be the result of influence from local political elite in purpose of mass mobilization competing for the local political position in mutual relation with other interests from outside of Poso.

The weak law enforcement by the security forces had became a factor that amplified and expanded the conflict areas to 5 districts in Poso regency, Morowali regency and Palu municipal. The sudden violent conflict became horizontal conflict between Moslem and Christian communities. The situation is followed by the formation of combat teams in each of the two communities, as if this conflict had been well prepared and designed, therefore imaginable there are questions whether the formation of these war bases are genuine community initiatives. On the other side, conflict had “forced” all parties to drift into conflict, even religious leaders are trapped into religion dichotomy constellation and issued statements that elevates tensions and suspicions and hatred in the society.

IMPORTANT INCIDENTS NOTED

A. 1998 – 2002

Tabel 3 Important Incidents Noted during 1998 -2002

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| 1998 | <p>In December 24th, 1998 a criminal incident perceived as religious based conflict escalates into inter-group conflict. At that time a Moslem youth sleeping in the Darussalam Mosque in Sayo village, Poso Municipal is slashed by a Christian youth, both reported to their own communities, resulting in mass mobilization and inevitable mass clash. The incident resulted in many injured population, many vehicle and houses burned down and destroyed. The incident happened in the Ramadan fasting season for Moslem and Christmas for Christians.</p> <p>In December 27th 1998, the Poso situations gradually ceased after the government facilitated meetings between religious leaders and communities. But in December 28th, the masses were once again mobilized by one of the Pamona community figure, Herman Parimo³⁵ from Tentena to the Poso Municipal. The Police and Military failed to disperse the masses led by Herman Parimo that entered the Poso city. This had resulted some civilian houses burned down and refugees fled to Parigi, Tentena and Ampana.</p> |
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1999

Some pamphlets appeared containing demands of the citizens to distribute power based on religion. At that time the local election was proceeding in Poso.

At that time the candidate for Poso regent was Abdul Malik Syahadat (Moslem) but he was not supported by the local parliament. At the second week of May 1999, another candidate appeared, Abdul Muin Pusadan (Moslem), Supported by the governor of Central Sulawesi and candidate Eddy Bungkundapu, supported by Golkar politician A.A. Baramuli as the prominent candidate. Other political leadership issue is the position of Area Secretary of the Poso Regency. This is revealed from the statement of one of the Central Sulawesi Parliament Chaelani Umar (from PPP party) stating that if the aspiration for Damsyik Ladjalini to be the secretary is ignored, then the Poso Area that once had been in religious conflict would be back in conflict.³⁶

In June 1999, The governor of Central Sulawesi, H.B. Paliudju, from the military background dismissed Arief Patanga from his position as the Poso Regent and appointed Haryono, also from the military as the care-taker. Before taking the position of the regent, Arief had been allegedly involved in the inter ethnic provocation in Poso Regency. During of which Arief Patanga received information on the map of the capacities of the ethnic group and leaders to become the Poso Regent from the late Holy Abdul Karim, a government official from Una-Una (at that time still under Poso).³⁷

In October 30th 1999, Abdul Muin Pusadan was elected as the new Poso Regent in the local election.

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| 2000 | <p>April 16th 2000, is the second violent conflict in Poso, happened around the Poso Terminal. The incident was triggered by some youth group that suddenly hit other youth group. Even though this is just usual criminal incident, yet this incident, then spread to three districts in Poso. Unfortunately the security forces failed to handle the situation well, thus the violent conflict continues.</p> <p>In May 23rd 2000, The violent conflict spread to other areas in Poso. At that time a letter appeared in circulation, signed by Ir. Lateka, one of Pamona ethnic figure. The letter titled "Struggle Demands" basically laid out two points; first the concerns of Christian communities on the safety of their life situation. A matter caused by the inability of government/ security forces in carrying their tasks. Second, showed initiatives to commit resistance and exterminate "provocateurs" of violence/clash in Poso. During the whole year, there are 8 violence cases; done by the TNI (5 cases) and civil society (3 cases). Mass clashes had caused many casualties both women and men.</p> <p>May 28th 2000 is the biggest incident, where the Walisongo Moslem Boarding school in Sintuwu Lemba village is attacked by Christian masses from Tentena and Lage, killing 50 Moslems. The location is only 300 meters from the Lage Police headquarters and only 2 km from the headquarters of Army company B of 711 Raksatama Battalions. After the incidence, the joint forces of Police and military deployed security operations code name "Love Peace" operation. Through this operation, Fabianus Tibo, Dominggus Da Silva and Marinus Riwu are arrested on the conviction of being the intellectual actors of the Walisongo Moslem Boarding School attacks³⁸.</p> <p>To address the conflicts, In 2000, the regent of Poso established a team for handling of violent conflicts. The team worked on the mandate of the decree number 183.4/082/SOSPOL/2000 on the establishment of Poso Regency reconciliation team on July 12th 2000. The team had 105 members representing regency government, religious figures, community figures, indigenous figures, and security forces. The team works under the Poso regency local government budget and other sources of funding. This year also marked with the presence of outsiders whose involved in the conflicts in the Poso. These include the Crisis Countermeasures Committee (Komite Penanggulangan Krisis/KOMPAK) from Java that entered Poso. On the humanitarian behalf, KOMPAK entered the Poso with humanitarian approach of health services for the Moslem people in the refuge sites. But not long after, the activist from the KOMPAK then found joined the Moslem groups to attack the Christian villages. Activists from KOMPAK provided military style training to the Moslem communities.</p> <p>The condition in Poso got worse, as the violence continues. In mid 2000, President Abdurrahman Wahid (GusDur) tried to mediate and reconcile the conflicting people. The reconciliation uses the model of indigenous ceremony of "Motambuntana". The primary agenda is to build peace through indigenous approach. This activity involved the indigenous figures, Central Sulawesi government, and Poso Government.</p> <p>Also in this year the government deployed security operations involving the military and police. Some of the personnel are supplied from the North Sulawesi and South Sulawesi police, and the Military command VII Wirabuana. The total security forces deployed is 1,321 personnel (832 Police and 489 Military). The operation is deployed in Tentena, Poso city, North Pamona, Morowali, and coastal Poso. In this security operation, a number of assembled weapons and traditional weapons are confiscated by the security force.</p> |
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| 2001 | <p>May 3rd 2001, another attack and massacre happened to the Moslem village in the Buyung Katedo hamlet, of Sepe Village, in Lage District. The perpetrators attacked at dawn using ninja-like head covers. The incident leaves 14 casualties of children, women and mosque imam.</p> <p>In June 2001, around 700 members of laskar Jihad Ahlul Sunnah Wal Jamaah (AWJ) led by Ustadz Jafar Umar Thalib entered Poso. Before, the governor of Central Sulawesi had accepted the AWJ representative and permitted the AWJ to do medical response to the Poso victims, but later on the AWJ involve them self on the retaliation attacks to the Christian villages.</p> <p>End of November to early December 2001, seven Christian villages were attacked by Moslem Mass from the coastal Poso, Malei Lage-Tojo, Ampana, and Poso city, resulting many destroyed and burned houses, refugees fled to North Lore, Manado, Makassar, Tentena, Palu and Morowali.</p> <p>In December 1st 2001 dawn, 8 Moslem civilian was kidnapped in the Toyado village, 6 were found dead and 2 escaped. The perpetrators, i.e. 10 members of the B company, of the 711 Raksatama battalion, then processed in the military court III-17 Manado of North Sulawesi³⁹.</p> <p>In December 14th to 20th 2001, Government through the minister of social welfare H.M. Yusuf Kalla facilitated a meeting in Malino, South Sulawesi. The meeting was attended by representatives of the conflicting parties. All representatives agreed to end the conflict by signing 10 consensus points popularly known as the Malino Declaration for Poso. The team consists of 25 representative of Moslem community and 23 representative of Christian community. There are only two women in the team, i.e. Nelly Tan Alamako (Christian) and Ruwaidah Untingo (Moslem).</p> <p>To restore order, Government deployed a security operation code name "Sintuwu Maroso". The operation involved Military and Police from outside Poso, including Police Mobile Brigade from Kelapa II Jakarta. The operation is under the command of the Central Sulawesi Police.</p> <p>Throughout 2001 there were 36 attack cases, of which 27 were done by unidentified groups, 1 case by Military personnel, 1 case by police personnel, 5 case by armed civilians, and 2 cases by civilian groups. During 2001, there were 35 casualties, 28 injured, and 2 missing. Nine of the victims were women and children.⁴⁰</p> <p>Also there are some other violence such as kidnapping, murder, house burning, torture, shooting, bombing, destruction and armed clash between conflicting sides.</p> |
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| 2002 | <p>August 2002, after the evaluation of the implementation of Malino Declaration in Palu, two villages the Sepe and Silanca villages with Christian inhabitant majority were attacked from the direction of Poso City and Ampana. The incident was triggered by a rumor that a Moslem police man was kidnapped while passing the Silanca village.</p> <p>The form of violence in Poso gradually changes post the Malino Declaration. Attacks, mass amok, house burning and destruction started to decrease. The violence shifted into the forms of bombing, shooting or mysterious killings. During 2002, 14 bombings and 19 shootings happened.⁴¹</p> <p>Many of the killings and shootings took the victims of both sides, the Christian and Moslem communities. The victims were; first, civilian such as children and plantation workers. Second, public figures such as teachers or religious leaders. The location is considerably varied; in the inhabitants' lands, open places such as roads, or in worship places such as in the church or back from prayer in the mosque.</p> <p>The victims of bombing were mostly random civilians. The bombings were done in open public spaces such as markets or public transport passing by the Trans-Sulawesi road, connecting Palu city, Poso to Tentena. Although post the Malino Declaration, the violence involving civilians decreased, but the violence by the security, i.e. army as well as police increases. In the Malino Declaration, the security aspect only contains one item, disarmament. Through various security operations, the army and police confiscated thousands of weapons from both sides of civilians. The condition shows that the conflict in Poso is not a merely civilian conflict. Unfortunately the fact of involvement of some of the army members is not explicitly admitted. The inadequate response of the state of the violent incidents post-Malino Declaration resulted the lack of security approach rules, which in Malino Declarations that emphasize the security of Poso civilians.</p> |
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The Sudden Appearance of Terrorism Issue

An interesting thing to note is that in the midst of decreasing violence through attacks, mass amok, burning and destruction, and increasing violence through bombing, shooting and mysterious killing, suddenly appeared an issue of terrorism produced by BIN (State Intelligence Body). The terrorism issue eventually overrides other issues previously prevailing, resulting drastic change in the address of Poso conflict. Tracing back the origin of the terrorism issue, got us to the time when the head of BIN, AM Hendropriyono joined the visit of three ministers to Poso in 2001. Suddenly AM Hendropriyono launched a statement that in the village of Kapompa, at the vicinity of Poso city, there is a combat training ground of Al Qaeda led by Osama Bin Laden.⁴² The issue immediately rises although the chief of Central Sulawesi Police, Police Brigadier General Zainal Abidin Ishak, denied the existence of Osama Bin Laden's combat training ground.⁴³ The statement of AM Hendropriyono got spotlight from inside as

well as outside Indonesia. The coordinating minister for Politics and Security, at that time held by Susilo Bambang Yudhoyono could not verify the truth of BIN director's statement. Yudhoyono stated that the government of Indonesia could not yet confirm the involvement of Al Qaida network in the conflicts in Poso, central Sulawesi.⁴⁴ Although denied by many, the statement of BIN director AM Hendropriyono had put Poso in the world's spotlight in the terrorism issue.

Moreover, at the same time the Government of the United States is aggressively campaigning to suppress the Al-Qaeda network worldwide.

In the midst of security circumstance that has not been recovered yet, the commander of the Indonesian national TNI hold joint exercises of the Quick Reacts Strike Force (*Pasukan Pemukul Reaksi Cepat/PPRC*) by involving all elements of the TNI force and the Indonesian police forces (Polri) in the Poso Regency.⁴⁵ War exercise that was held for the first time has triggered a psychological impact for the citizens of Poso. The citizens of Poso witnessed how the quick reaction force did their military acts. It included the jumpers of the elite forces of the Indonesian National Army/TNI AD (Kopassus), the elite forces of the Indonesian National Air Force/TNI AU (Special Force -Paskhas), and also the elite forces of the Indonesian National Navy/TNI AL (Marine) that performed a landing action on around the coast not far from the city of Poso. The issue of terrorism has led to Poso as terrorism network region. Then it was justified by the emergence of violence acts and the unfolding of explosives supplier network to Poso from Sukoharjo and Surabaya area.

Time Magazine September 23, 2002 edition published shocking news about Umar Al-Farouq who confessed in the presence of the interrogator of the Central Intelligence Agency (CIA) of America that he is the official of Southeast Asia Al-Qaidah that operates in Indonesia⁴⁶. AM Hendropriyono statement about the presence of Al Qaeda in Poso seemed being justified.

For additional information and have relevance is, after the case of the Bali bomb blasts that killed at least 202 people on October 12, 2002 in Legian, the government of Megawati issued anti-terrorism laws. The laws gives more power to the Chief of BIN at the time of that government was equivalent to a cabinet minister. The position

of BIN was increasingly strong in view of intelligence reports can now be accepted as reasonable grounds to arrest people who were suspected to involve in the terrorism acts. After the bombing case in Bali, Indonesia is actively involved in the “war on terror” led by the President of the US; George W. Bush.

After the bombing terror acts occurred in some areas, accusations from the chief of BIN AM Hendropriyono then were taken seriously. Australian Security and Intelligence Agency stated that terrorist camp of Al-Qaidah in Poso has been established. In response to that accusation, Chief of Central Sulawesi police, Police Brigadier General Zainal Abidin Izhak, again denied the information by saying that the accusation had no proof.

Since the strengthening of international accusation on the indication of the chief of BIN AM Hendropriyono, Poso incessantly became the butt of security operations to ensure the issue of the existence of terrorist network training camps of Al-Qaidah in Poso. Even on December 13, 2002, President Megawati held meeting with *Gotong Royong* Cabinet to clarify the truth of BIN and international intelligence information. One of the cabinet meeting recommendations at that time was the Government will hold a recovery operation and ensure that the information that has been published by BIN was true⁴⁷. When the government held a security restores operation in Poso, some shocking event occurred, for example, on October 9 to 11, 2003 a group of armed men sporadically attacked Lembo Village, Beteleme and extended up to four other villages in the Coastal of Poso. As a result, 10 civilians were killed and dozens more injured. This incident happened only a day before the one year anniversary of the Bali bombing.

Responding To the Attack of Four Villages in the Coastal of Poso

Coordinating Minister for Political, Law and Security (*Menteri Koordinator Politik Hukum dan Keamanan/Menkopolhukam*), Susilo Bambang Yudhoyono, immediately ordered the BIN to conduct intelligence operations in order to uncover the perpetrators of the attack. Menkopolhukam accused the perpetrators of the attack were people who were in Poso, but did not rule out the involvement of people from outside who came and have a network.

On instructions of Menkopolkam, joint officers of Polri and TNI acted quickly to catch the perpetrators of the attack. Police arrested 13 people who were alleged as the perpetrators of armed attack on Lembo Village, Beteleme (10/09/2003).⁴⁸ They were arrested and examined on the basis of charges of violating the Law Number 15/2003 on Criminal Act of Terrorism. In Palu District Court, the defendants stated that the police had committed torture: stripped, shot to the leg, and handcuffed during interrogation conducted. This case is an example of the steps taken by the Government in implementing the Anti-Terrorism Law in Poso.

Tabel 4 Arrest with Accusation of Involved on Terrorism in Poso during 2003 - 2007

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| 2003 | 13 people were arrested with accusation of terrorism during an attack on the Lembo village, Morowali. |
| 2004 | 6 citizens of Poso were arrested |
| 2005 | The number increased to 22 people who arrested in connection with the bombing in Tentena market |
| 2006 | 23 people were arrested, and this is the highest number in the arrest operation of terrorist accused wanted list. |
| 2007 | Arrested up to 28 people |

Security Operations in Poso

One of the security restore operations held had code “*Sintuwu Maroso*.” Operation implementation authority of *Sintuwu Maroso* was under extra-territorial police agency named Task Force (*Satuan Tugas/Satgas*). *Sintuwu Maroso* operation was managed by the Task Force which was joint operation between of the Polri and the TNI.

Pattern of the conducted Operation was by making posts for Polri or TNI forces along the Trans-Sulawesi, along the entrance of the villages in Poso and in the midst of the village. The expansion of the security system was also carried out by the TNI by establishing regional headquarter of Battalion 714 in the territory of Large Sub-District and Poso Regency. In addition, police also put one Organic Mobile Brigade Company in the city of Poso. When the conflict occurred and post-Malino I Declaration, other non-organic troops in Poso were Kopassus, BIN, 88 Special Detachment Anti-Terror of Indonesian Police Headquarter (Densus 88).

After the mutilation of three schoolgirls in Poso in October 2005, the former Menkopolkam who later became President of the Republic of Indonesia, Susilo Bambang Yudhoyono, issued Presidential Instruction No. 14 of 2005 concerning the Handling of Poso. Through the Presidential Instruction, Menkopolkam then formed Special Task Force to uncover various cases of violence and humanity funds corruption in Poso. To support the work of the Poso Task Force, Indonesian Police Headquarter then formed a special team to handle violence cases led by an officer from the Indonesian Police Headquarter to perform investigation work.

Not enough with Poso Task Force, after the bombing of the meat market in Palu at the end of 2005, Menkopolkam then formed another task force (*Satgas*) in Palu as a region of widespread violence. As for the coordination on the task force (Palu and Poso) and other task force in Central Sulawesi on January 3, 2006, Menkopolkam formed Security Situation Recovery Command (*Komando Pemulihan Situasi Keamanan/Koopskam*) of South East Sulawesi.

Tabel 5 Number of Polri and TNI's Non-Organic Troops in Poso on 2000 - 2004

| Year | Polri | TNI | Number |
|------|-------|-------|--------|
| 2000 | 832 | 489 | 1,321 |
| 2001 | 1,172 | 852 | 2,024 |
| 2002 | 2,270 | 968 | 3,238 |
| 2003 | 3,096 | 1,668 | 4,764 |
| 2004 | 3,000 | 900 | 3,900 |
| 2005 | 2,500 | 1,300 | 3,800 |

Source: Local Government of Poso

Increasing violence in Poso until November 2004, made the police and military strengthen their troop numbers. Billions of rupiah were allocated for security operation in Poso. The budget of this operation was not only charged to the institutions of TNI and Polri, but also charged on the APBD of the local government of Poso.

Tabel 6 Budget of the Local Government of Poso for the cost of Security Restore Operation

| Year | Funds Disbursed (IDR) |
|--------------|-----------------------|
| 2001 | 6,995,062,840 |
| 2002 | 624,800,000 |
| 2003 | 1,377,062,000 |
| Total | 8,996,924,840 |

Source: Local Government of Poso, 2004

In 2006 and 2007, there were three important events related to the handling of terrorism acts in Poso. The first event was on October 22, 2006 located in Tanah Runtuh of Gebang Rejo Village, Poso Kota Sub-District. This incident was known as the incident of Eid Al-Fitr eve because the incident occurred before of Eid Al-Fitr. Hundreds of residents in Poso Kota clashed with dozens of police (Mobile Brigade/Brimob) around 21.15 Central Indonesia Time when people were preparing for Eid prayers on Eid Al-Fitr. One person named Udin was killed. Three other victims suffered gunshot wounds. Several police vehicles and Community Police (*Polisi Masyarakat/Polmas*) Office were burnt by mob. On the next day, on the day of Eid Al-Fitr, October 23, 2006, clashes between hundreds of mourners of Udin corpse confronted with members of Brimob on Pulau Seram Street, Poso Kota. Forces opened fire injuring three civilians, who one of them was a 3 year old boy who was playing in front of his house. On the same day, residences of some police officers on Pulau Alor Street and Eklesia church at Pulau Seram Street, Gebang Rejo, burned by unknown people. Post clashed, Polri named two suspects on charges of carrying weapons to the location. The second event was called January 11, 2007 incident.

In this incident, the police launched an operation in Tanah Runtuh, Gebang Rejo Village. Operation that was aimed to arrest 24 people listed on wanted list was resulting the death of Dedi Parsan. While the other victim was Riansyah and a civilian named Ibnu, who were not included in the police wanted list. The violence act continued until 14:00 Central Indonesia Time when the people who took part in the convoy of mourners of Riansyah's corpse gang up on Bripda Dedi

Hendra to death. Then the police arrested four other people from the wanted list.

The third event was the incident of Tanah Runtuh.⁴⁹ On January 22, 2007, Police operation was hold to chase 24 people whose name is listed in the wanted list as alleged perpetrators of violence in Poso. This operation causes protests reaction widespread from various civil societies because Polri had used excessive use of force. Facts showed that 15 people were killed; 1 policeman, 3 children under eighteen years, and 11 people who according to the police were the members of armed group.⁵⁰

After the three events above, popped up a question why did Polri perform its excessive use of force and repeatedly cause loss of life? The absence of information which could explain that matter brings impact on the low of public support to law enforcement during a prosecution of terrorism perpetrators in Poso. The attitude of the police apparatus is different from the reaction they had shown in the prosecution of terrorism perpetrators of the previous cases such as the Bali bombing case (I and II), the bombings at the JW Marriot, and the bombing in front of the Australian Embassy in Jakarta.

Dominant characters from a number of violence acts in Poso and Palu after Malino I Declaration are:

1. Some of the violence act that occurred during 2004-2005 in Poso were conducted closely, means that the violence events that were conducted did not involve large numbers of people. The violence that led to the murder carried out by shooting, bombing or using sharp weapons, allegedly carried out by people who have high enough ability to execute. For example, there has never been a shooting incident in Poso that was addressed to a person who becomes a target but misdirected. In percentage it can be said that all shooting done in a mysterious way (because the perpetrators were unknown) 100% successfully hit the target, although it did not always lethal.

MALINO I DECLARATION FOR POSO

1. Stop all forms of conflict and strife.
2. Obey all forms and efforts of law enforcement and support the imposing of legal sanctions, for anyone who conducts violence.
3. Requests the State apparatus, to act decisively and fair to maintain security.
4. To maintain the creation of an atmosphere of peace, refused to impose civil emergency, as well as interference from foreign parties.
5. Eliminate the entire defamation and dishonesty against all parties and uphold mutual respect and forgive each other, in order to create harmonious of living together.
6. Land of Poso is an integral part of the Republic of Indonesia. Therefore, every citizen has the right to life, to come and to stay in peace and respect local customs.
7. All ownership rights shall be returned to its rightful owners as it is before the conflict and dispute in progress.
8. Return all refugees to their place of origin respectively.
9. Together with the government conduct rehabilitation on overall economic facilities and infrastructures.
10. Practice religious laws of respective religions in mutual respect way and principle and obey all rules that have been approved, either in the form of legislation, or in the form of regulations and other provisions.

2. Perpetrators of violence that occurred during 2004-2005, were unidentified. Violence committed by shooting or by using a sharp weapon, usually done in a somewhat desolate and deserted from peoples. There is an impression that the perpetrators in conducting their act mastered their working area. Perpetrators seemed to know where it should be done so the public did not know it even if they should be seen, their disguises were much closed. Examples in this case are such as in the shooting case of priest Susianti Tinulele, a civilian called Imbo, Tentena Bombing, shooting of Budyanto and Sugito, and shooting of two SMEA schoolgirls in Poso on November 8, 2005. It is certain that the shootings were done with careful preparation; there was someone who holding the gun and someone who using of motorcycle to escape and using identity covers.
3. Victims who became target can be divided into two categories. First, the victims were targeted usually occurs in a mysterious shooting or murder by any other means. Second, the victims were random, as in the bombing case. In this case the victims, it seems, were not target of the violence occurred. The victims only became the impact of violence which terror nuanced and provoked other violent.
4. An intelligence operation (policy of Menkopolkam; Susilo Bambang Yudhoyono) in November 2003 was judged to have failed to provide protection to the citizens. The explosion in the central market of Poso in December 2004 and Tentena market bombing on May 28, 2005 were evidences that can not be denied. The location of the central market was only a hundred meter from the Police Headquarters (Polres Poso and Polsek Pamona Utara). In addition, it can also be said that the intelligence and security apparatus were failed to detect the flow and circulation paths of firearms used in any violence. These facts encourage the development of various public opinions that violence in the form of shootings and so on are as part of an intelligence operation. Opinion became stronger when police officers failed to clarify the allegations.
5. Circulation of firearms, ammunition and explosives were also part of the evidence that the Government optimism, especially Jusuf Kalla, as the initiator of the Malino Declaration, has been

refuted.⁵¹ This means that there was no concrete disarmament actions of the weapons circulated in the community completely and thoroughly. Poso has not been properly guarded so that the firearms or bomb can not enter to Poso. So it must be questioned on the existence of the police or military (TNI)'s posts in front of or in the every village, but they did not contribute the maximum. Even there is a suspicion that there are parties who have access to carry weapons and to distribute ammunitions to Poso.

Some of the issues raised considered annoying and slowing down the security and social economic recovery process in Poso Regency after the Malino Declaration were as follows;

1. Humanitarian Fund Corruption

As a follow up of the Malino Declaration I in 2001, the central government has issued a policy in a form of assistance programs for refugees/victims of the conflict in a form of the provision of Life Assurance (Jaminan Hidup/Jadup), Life Provision (Bekal Hidup/Bedup), Simple House for Living (Rumah Tinggal Sederhana/RTS) and Building Materials (Bahan Bangunan Rumah/BBR) for residents who were directly affected by the conflict. There is also a program to strengthen inter-community reconciliation in Poso.

After the implementation evaluation of the point of Malino Declaration, the President of the Republic of Indonesia issued Presidential Instruction No. 14 year 2005 concerning the comprehensive steps in handling of the issue of Poso. The instruction was addressed to the minister coordinators, ministerial-level officials (Attorney General, Chief of Police, the military Commander (Panglima TNI) and Chief of Intelligence Agency) up to the government at the provincial and district level. In terms of implementation, there were some of the above programs implemented by the Social Ministry in coordination with relevant agencies (Regional Office and the Office of Social Service), unless the Reconciliation fund which was managed by Kesbang of the local government of Poso and Malino Working Group I. The amount budgeted by the central government for the recovery of Poso was in the amount of 54 billion rupiah.

However, the recovery program initiated by the Central Government did not go as the target planned. In the implementation

was found various deviations, Non Governmental Organizations in Poso and Palu reported various forms of deviations of the project to law enforcement (police and prosecutors). The modus was to manipulate the distribution of humanitarian aid funds. In its investigation, Institute for Human Rights Studies Center or LPSHAM (Lembaga Pusat Studi Hak Asasi Manusia) of Central Sulawesi found a number of grants that were not distributed, namely, funds for Life Assurance (Jaminan Hidup/Jadup) and Life Provision (Bekal Hidup/Bedup) for 18,070 householders (head of the household) or 90,330 inhabitants. If each householder has the rights to get IDR 2,500,000, then there have been deviations in the amount of Rp. 45,175,000,000 which were not distributed.⁵²

Law enforcement response in the corruption case of the aid funds seemed slow and not thorough. Regional Police of Central Sulawesi only developed investigation on alleged corruption cases of life assurance funds (jadup) and life provision (Bedup) of the period of August 2003 with total state losses of IDR 1.7 billion, less than alleged by the complainant (NGOs and Community of Poso) in the amount of IDR 2.2 billion. This case was allegedly involving the Head of Social Welfare Agency of Central Sulawesi Province and Poso Regency as well as its network (the prosecutor, the police, the head of the village and the project contractor).⁵³

Corruption of victims' recovery funds of the conflict in Poso was proved after the court imposes criminal sanctions to the parties directly related to the management of this program. Andi Azikin Suyuti, Head of the Regional Social Service of Central Sulawesi, which was also the caretaker of Poso Regent was imposed with 2 year prison sentence by the District Court of Palu for committing corruption of Poso's refugee relocation funds in 2001 with the state losses of Rp. 1.2 billion.⁵⁴ Beside Azikin, a number of parties involved including the treasurer of the project, the project contractors were also sentenced by a court with various punishments.

In addition, the absence of the concept of post-conflict recovery by the central government and the district of Poso causes serious impact on society. Political policies of the local government of Poso became trigger for various criminal acts. Divide the post-conflict development projects by the Regent of Poso to the ex-combatants

groups have created segregation in the group.⁵⁵ There is an error in the management, which is actually aimed at de-radicalization through empowerment program of ex-combatants instead led to the re-radicalization and also creating inequities among conflict-affected communities.

2. Neglected Civil Rights of the Victim of Conflict

Serious problems were neglected by the government in Poso was the return and restoration of civil rights to citizens who were victims of conflict. Until now there has not been seen the seriousness of the government to seek recovery of civil rights of the communities, the concept of recovery was formulated into a major program in the government's agenda. These conditions have created social inequalities in the community of Poso. This further proves the bad policies and the implementation of the fulfillment of the rights of the conflict victims by the state.

3. Role of the National Commission on Human Rights is Not Optimal

Performance and commitment of the National Commission on Human Rights (Komnas HAM) was not much different from the law enforcement and the creation of security by the police and TNI. Every time the Komnas HAM is always followed by the establishment of National Human Rights Commission Team for Poso. In every period of the turn of the National Commission on Human Rights (Komnas HAM) Commissioner visits to Poso. Even to prove its seriousness in dealing with the conflict in Poso, the Commission established a representative office in the city of Palu.⁵⁶

In 2004, the Komnas HAM has made two visits to Palu and Poso. The first visit was in April 2004 and the second visit was in August 2004, after the attack and the shooting of priest Susianti Tinulele in Effatha Church Palu. Of visits were conducted by the Komnas HAM concluded that the Poso conflict had no human rights violations. Surprisingly, after a series of violent events in November 2004, Ahmad Ali⁵⁷ said that there were a gross of violation of human rights in the Poso conflict that was done by omission by the State. It is obviously

confusing the public, especially those who were victims in Poso.

After the shooting and violence that occurred in July 2004, some elements of society, including people of Poso and Central Sulawesi in Jakarta come to the Komnas HAM office. The arrival in order to urge the Komnas HAM to immediately undertake investigative efforts related to violence happened. But on this occasion the Komnas HAM, through the commissioner, Major General (ret) Sjamsoedin and Lies Sugondo, just said that violence act happened in Poso and Palu will be reported in advance to the plenary session of the Komnas HAM. After the operation of law enforcement in Gebang Rejo area in Poso in 2006 and 2007, the Komnas HAM re-formed team led by Commissioner Zumrotin K Susilo. After visiting Poso and met with some of the victims, the team were continued to meet with government officials in Poso and the Police Chief. Although the team was repeatedly visited Poso but there is no visible results.

Lack of accountability of the Komnas HAM teamwork for Poso was also indicated by the absence of the visit report of the Komnas HAM. So that it was difficult for the public to assess the role and contribution of the Komnas HAM in resolving the human rights problems in Poso.

4. Government Response to the Community Initiatives is Weak

One week after the bombing in Tentena market which resulted in 20 people died and 50 others were injured,⁵⁸ two religious leaders in Poso, Ustadz Adnan Arsal and Rev. Rinaldy Damanik initiated the formation of the Fact Finding Team for Poso (TPF Poso). Forms of human rights violations that occurred during and after the conflict were very important matters to be disclosed in order to support the efforts of reconciliation between citizens, as well as to sit root causes of conflict so as to minimize suspicion among citizens. At meetings conducted, the parties formulated the main purpose of the establishment of TPF Poso was to uncover the motives and chronological reporting of the conflicts independently.

Although this initiative born after bombings in Tentena market but the fact-finding team was expected to work to uncover root causes of conflict in Poso as a whole. In principle, through the work of

the Fact Finding Team of Poso, the state was required to immediately fulfill the rights of victims in the form of disclosure of the truth, justice and recovery become the most important part. Initiative that has the support of non-governmental organizations in Poso and Palu became a new discourse for the people of Poso in seeing conflict resolution efforts happened.

NGOs, religious leaders, community leaders and youth in Poso finalize the work concept of Fact Finding Team (TPF) that will be formed. Formulation work until discusses the representation of the parties proposed to the structure of the team was considered important through the process of consultation of the parties to the conflict, including those who were victims. Proposal of the establishment of the Fact Finding Team on the conflict in Poso originally appeared in the meeting of the parties involved in the signing of the Malino Declaration on December 20, 2001. Unfortunately, ideas and initiatives of the formation of Fact Finding Team of Poso never got the support from the government so that the Fact Finding Team has never been formed.

In the conflict of Poso, there is some terminology that appears in the event of that violent conflict occurred. This terminology is important because it became a symbol to identify the groups that are in conflict in Poso.

Tabel 7 Designation of Perpetrators (Field Actor) of Violence in Poso, Based on the Violence Incidence⁵⁹

| Year | Designation | By | Description | Sources |
|-----------|--|---|--------------------------------------|---------|
| 1998 | Attacker Group | NGO | Identify one of the warring factions | |
| 1999-2001 | Red Group = Christian White Group = Islam | Press Citizen Security Forces (<i>Police/Army</i>) Local Government and Community Leaders | Identify one of the warring factions | |
| 2000-2001 | <i>Kongkoli</i> = Christian Citizen | Moslem Citizen | Identify one of the warring factions | |

| | | | | |
|------|---------------------------------|---|--|---|
| 2001 | Al Qaidah Network | Chief of <i>BIN</i> , AM Hendropriyono | Train and built training camps on the outskirts of Poso, led by Umar Al Farouq, Umar Bandon, Abu Dardah, and Parlindungan Siregar | Satunet.com, December 13, 2001 |
| 2002 | Perpetrators of Violence | <i>Welfare Minister</i> , Jusuf Kalla | Perpetrators of bombing and terror after the Malino Declaration that was never revealed | Kompas, August 13, 2002 |
| 2003 | Old Group | <i>Menkopolkam</i> , Susilo Bambang Yudhoyono | This group had a particular interest to screw back Poso. The group was a mix between the outside and one-two people of Poso who are affected | Perpetrators of attack had been staying for long time in Poso, Kompas, October 16, 2003 |
| | Old Group | Commander of <i>TNI</i> , General Endriartono Sutarto | Group that had made the situation become unstable. The strength of this group was not large but well-trained, and was prepared to mischief. Therefore it was not big, at a certain moment they blend in with society, but at other times forming their own group | <i>Idem</i> |
| | International Terrorism Network | Chairman of <i>MPR</i> , Amien Rais | Have strengths and special abilities. Seen from attacks that can be performed simultaneously and planned. | <i>Idem</i> |
| | Armed Group | <i>Menkopolkam</i> , SBY | Rifles, pistols, and a number of other equipment can be found on the actors. | Kompas, October 20, 2003 |
| | Jihad Group | International Crisis Group | Group that has a direct connection or not, even compete with the network of Jamaah Islamiyah (JI) | International Crisis Group (ICG): <i>Indonesia Background: Jihad in Central Sulawesi</i> , February 3, 2004 |

| | | | | |
|------------------|---|--|--|--------------------------------------|
| 2005 | Some People of Sulawesi | Chief of <i>BIN</i> , Syamsir Siregar | Statement was directed at the idea of an Islamic state, regional expansion conflict, ethnicity, religion, and corruption | Suara Pembaruan, June 15, 2005 |
| | Network of <i>Jamaah Islamiyah</i> , accomplices of DR. Azhari and Noordin M. Top | Vice president, Jusuf Kalla | Continuation of terror from previous terror, heat up the atmosphere of conflict | Jakarta Post, May 31, 2005 |
| | Related to the conflict of Ambon, Solo Group | Deputy head of the Public Relations Police Headquarters, Police Inspector General Aryanto Budihardjo | Provocation | Republika, June 1, 2005 |
| 2006-2007 | Wanted List (<i>DPO</i>) of Poso | Police Headquarters, Press, Government | People who allegedly involved several acts of violence and terror in Poso | |
| 2006 | Perpetrators of Terror | Vice President, Jusuf Kalla | What happened in Poso was terror and not the conflict, the government will impose anti-terrorism law to overcome it | Kompas Cyber Media, October 27, 2007 |
| 2007 | Foreign Party | Chief of <i>BIN</i> , Syamsir Siregar | Agent of Al-Qaidah originating from European countries that disturb the atmosphere in Poso | Rakyat Merdeka, February 27, 2007 |
| | Old Group | Chief of Central Sulawesi police, Police Brigadier General Badrodin Haiti | Group on the wanted list (<i>DPO</i>) Police in Poso and still wanted by the police | Suara Pembaruan, April 16, 2007 |

Source: KontraS, compiled from various sources, 2007

ROLE OF STRUCTURAL LEGAL AID

Poso conflict has drawn the attention of Legal Aid Agency to look at the role of the existing legal aid agencies at the local level. In an attempt to identify the various models which were categorized as part of the structural legal aid process in the context of addressing the conflict in Poso.

1. Strengthening the Capacity and the Role of Civil Society

Terror, issues, and provocative statements continued during the conflict and post-Malino Declaration, serious things that were feared to return sparked a major conflict did not occur. This is because people were starting to aware so that people do not easily provoked and engaged to commit violence. Strengthen awareness of citizens who have begun should be remain guarded, maintained and consolidated continuously. Develop and build alliances within the wider common perception at the level of the most legitimate, namely the victim communities. It is recognized that this effort is not easy to be realized. Because various vulnerabilities in society still exists and should still be considered as a factor that can affect the appearance of new violence. In the context of Poso now, choice to minimize vulnerability in society and choice seats the Poso conflict as a responsibility of the state are no longer two things that could be viewed as dichotomous. However, it must be pursued on an ongoing basis, namely ask the state's responsibility based on the strength of critical citizens of their rights and be aware of practices that undermine their capacity to manage conflict and differences as they have ever had before.

2. Empowering custom values 'Motambu Tanah'
In Poso cultural perspective, the event of 'Rujuk Sintuwu Maroso' actually has implemented a form of symbolic peace, which is known as Motambu Tanah. This activity was done by cutting a buffalo, after that the buffalo head was buried. The customary procession of peace, was interpreted to bury the past, with a note after buffalo head buried in the ground, all parties to the conflict before, could no longer be dug up.

"The term of motambu tanah was done when there is an embarrassing incident or disaster that struck a region, then motambu tanah would be held. So it is an oath to the people" (Interview with Youth Leaders of Lage, Djemi Tombarani, February 27, 2006)

The above statement shows the persistence of the sensitivity of the indigenous communities in Poso. As far as the effectiveness of the traditional procession made for peace in Poso, still seems to need in-depth knowledge. Therefore, it is important to be knew, more about the traditional procession which must be done for a case. As a comparison, Former Chairman of the Synod of GKST, Rev. Arnold

Tobondo assessed traditional procession of *motambu tanah* in earlier times, was intended to treat a man that was a shame, for example, male rape of a woman, marry outside of marriage, and others. In principle, the procession *montambu tanah* was for immoral cases occurring in the community.

“In the past our parents, did motambu tanah, if there was treatment that violates social values use values, for example, someone impregnate the girl outside the marriage. To save them motambu tanah was done. This activity was intended to be, everyone was no longer dug up that the issue of it. So motambu tanah was not peace process due to the war” (Interview with the former Chairman of GKST Synod, Rev. Tobondo Arnold, 2004).

Another view comes from Poso Cultural observers, Yustinus Hokey. Yustinus assess the initiative of Gus Dur was not *tambuntana* but for different reasons, because before *tambuntana* there must be a court that determine who is at fault what sanctions. Trial can be based on public law or autonomous law. Then over the legitimacy of the court, the suing parties were satisfied over the verdict and the sued parties also received it. After that, by mutual consent, which they held *tambuntana* which means they should no longer dig up the issue. If there are those who bring up again means that he/she would be considered guilty. What conducted by Gusdur was *Porapa* or pledge of peace and it was not *tambuntana*, because there is no previous court proceedings.

“To the people of Pamona, tambuntana was done in very good and effective way even for the public issue Pamona/natives and immigrants with different tribes with Pamona tribe can still be done. But, in this case the issue should be clear who is on trial, who is the plaintiff and whom the defendant after there is a decision then tambuntana can be done.” (Interview with Yustinus Hokey, March 2006).

Observing the meaning *motambu tanah* as described on the above opinion, the failure *Rujuk Sintuwu Maroso*, actually can be seen from various aspects. Charismatic figure of the Muslim group of Poso, Habib Shaleh Al Idrus in an opportunity deplored the exclusion of religious figures in that event. Because according to the leader of Dhikr Assembly Nurkhairat, religious leaders is important

to be heard, because the victims are generally derived from the two religious communities (*Tabloid Formasi*, 2001).

“If you use a custom approach, should we migrants who also had a long stay in Poso presented. Because no matter how we have become citizens of the district of Poso “(Interview with Mr. Marthen Tompa’a, one of the residents of Saatu village, Poso Pesisir Sub-District, 2001).

3. Developing Working Group: Working Group of Poso Conflict Resolution (Resolusi Konflik Poso/ RKP)

The phenomenon of violence in the past and post conflict clearly illustrates the face of law enforcement is still weak. Poor law enforcement in Poso even lead to other excesses such as providing opportunities for actors or groups of actors to keep doing violence in new ways or give a chance to new actors also made the situation worse in Poso. It seems like Poso become free arena for anyone with an interest, both at local and national levels, continued maintaining conflict and violence.

Conditions illustrated above shows that there is the maintenance effort of the suffering of people. As for certain parties such conditions serve as an opportunity to gain profit.

In the time of conditions in Poso which is very vulnerable and helpless of law (lawless), it makes the community losing more confidence in the existence of the state, especially on its security forces. But on the other hand, the political space is still weak community to build a settlement offer of Poso. Society will also feel uneasy regarding the political game with the elections (Regional Head Direct Election) which will soon take place.

To respond to public concerns and violent conflict problems which are still ongoing, in 2000 an initiation born from the meeting of several parties (NGO activists, students, academics, journalists, religious leaders and community) in Palu. The initiative was called Poso Conflict Resolution Working Group (*Kelompok Kerja Resolusi Konflik Poso/Pokja RKP*). The working group is to encourage the process of conflict resolution and other forms of violence that continues in Poso. At its formation meeting the parties agree to push the peace process without violence and disclosure of violence and human rights violations that occurred in Poso in favor of the interests

of victims and the people of Poso. Later on, the working group is expanding its network by inviting involvement of other communities in Poso, Tentena and Jakarta.

4. Empowering the Conflict Victims

Post-attack in Poso Pesisir and spread to several villages in the Lage district at the end of 2001, the legal and human rights agency, especially LPSHAM (Institute for the Development of of Legal Studies and Human Rights Advocacy) and began responding conditions in Poso with humanitarian relief approach that is designed with a participatory approach, involving community conflict victims in planning and engagement in the management of the programs. Then identify the model of conflict resolution at the level of the victims. Discussion of discussions village then intensified since mid-2002 and continues to expand to 17 villages in the district of Poso and Morowali.

Through intensive discussions were facilitated by 28 facilitators from each village. That is the youth who come from villages that felt the direct impact of the conflict. Many stories and information obtained regarding the intentions, opinions, and suffering throughout the conflict which is not also an end. The information field is then amplified by a number of other information that shows the conflict of interest and design, a reflection of the positive effects that sporadic villages on the basis of the discussion of law and human rights awareness. Up to show the need to share their stories and experiences of the Poso peace facilitators works.

LPSHAM of Central Sulawesi, are actively involved in the process of recovery of the situation in Poso, ranging from investigative activities at the field level to find motifs and patterns of violence and spreading it to the public so that citizens are not provoked by the mass media opinion. From the discussions that do bring the community level initiatives to address the importance of all stakeholders to establish a peaceful dialogue in finding solutions to conflict resolution. Its main purpose is to encourage the settlement of the conflict through dialogue with community participation involved directly d nature of conflict or those affected directly from the conflict.

Community discussions were held to be working to build community understanding related to the events that occurred.

From this understanding then build a community response system to minimize the risk that is feared would happen, including ways to respond spoiler conflicts that arise in the community effort to build trust in each other and me doing the monitoring activity on violent incidents. Assessment and analysis of the events disseminated through media that can reach up to the level of vulnerable populations. With the hope of the people who began life in situation without violence is no longer disturbed.

5. Encouraging Law Enforcement

One of the factors that cause the protracted conflict in Poso is the failure of the government to enforce the law. Law enforcement efforts undertaken measure is the large number of armed forces stationed at security checkpoints scattered in every neighborhood residents. Law enforcement unaccountable and has aroused suspicion discriminatory citizens their alignments police and the military against one of the parties to the conflict. Enforcement process is accompanied by acts of the offense of torture, home arrest and criminalization of citizens has led to a loss of public confidence in the security forces. The condition is trying to respond through a lawsuit (legal action) to cases involving security forces in Poso. Legal action carried out jointly with the assistance to those who are criminalized, tortured and treated with any other arbitrary action in the process of investigation in the police.

Prominent cases are accompanied by LPSHAM of Central Sulawesi is the arrest and torture by five Muslims young men from the village of Pandajaya for alleged involvement in the bombing terrorism Tentena market. In the ongoing legal process, five people were released because not guilty of the alleged offenses. The court ruled that the police had made a mistake in the process of arrest and torture during the process of interrogation took place. Another case is the criminalization experienced by Christian religious leaders, Rev. Rinaldi Damanik were detained by the police on charges of possession of firearms in September 2002. At that time Rev. Damanik was leading the evacuation of residents in the village of Mayumba, Morowali on August 17, 2002. The District Court of Palu judged Rev. Rinaldi Damanik sentenced to 3 years imprisonment.

In other cases the Government imposes the death penalty on

those who allegedly involved in the conflict. 3 migrants from Flores, NTT who stayed in Morowali; Fabianus Tibo, Dominggus Da Silva and Marinus Riwu sentenced to death through the judicial process is loaded with engineering and mass pressure. The execution of the three had done several times. This raised the level of political reaction of the public, both Muslims and Christians, although it was only in the level of protest. On September 22, 2006, finally, the three convicts faced execution in Palu, Central Sulawesi. It is noteworthy, the delays of the three convicts' execution were not because the government provided the opportunity for convicts to prove their innocence or ask for forgiveness.

6. Encouraging 2004 Election in Peace: People in three territories (Poso, Morowali and Tentena) Established Peace Agreement

Communities in the 3 regions; Poso, Morowali and Tentena build peace agreement. Efforts to build peace agreement also show through initiatives from residents' representatives those areas that have a direct impact of conflict namely; Poso, Morowali and Tentena. Towards the implementation of the 2004 general election of representatives of the citizens declare peace agreement based on the awareness and understanding that the reason for the conflict because of the seizure of power that uses differences in the community as a potential conflict. Politics paternalistic k resulted in the political exploitation of the public officials against using certain sentiments as well as violence scenario of those who wish Poso and Morowali to be unsafe.

In the document of citizens in three areas agreement are also aware that the conflict has resulted in the prolonged suffering of the victims, paralyzed economic activity, socio-cultural and political education, missed sense of community on their own land, the persistence of terror and intimidation in the form of bombing and mysterious killings and a loss of public confidence in the government and the apparatus.

Residents in the three regions are aware that there are fundamental problem and more important than just elections, due to the conflict that occurred some time ago. Some of the important things they look at are:

1. Poliferation of the territorial, particularly in Morowali,
Regional Expansion occurred in Morowali potential conflicts of horizontal (inter-community violence) and could potentially be used as an issue in the general election. Thereby potentially it would be lowering people's participation in elections.
2. Welfare,
Still there is a public welfare issues, especially; Life Assurance (*Jaminan Hidup/Jadup*) and Life Provision (*Bekal Hidup/Bedup*). The distribution is patchy even corrupted. This resulted in the poverty of Poso community who has become victims, re-sacrificed for the umpteenth time. Another result of inequity in the distribution of Life Assurance (*Jaminan Hidup/Jadup*), and Life Provision (*Bekal Hidup/Bedup*) would cause social jealousy exclamation among the people who get the different amount of Life Assurance (*Jaminan Hidup/Jadup*), and Life Provision (*Bekal Hidup/Bedup*). In the end it will become a seed of division among the people of Poso and Morowali.
3. Separation of Ethnic and Religion.
For some regions such as Poso and Tentena, still there is a segregation/separation based on Ethnic and Religion. Poso represent Islam and Tentena represent Christian. This could potentially lead to horizontal conflict by region (Poso and Tentena). In addition, it was also built the stigma against people and certain areas based on religion and ethnicity. Separation (segregation) and the conflict will only prolong poverty and misery. Because of the conflict will lead to forced displacement, did not dare to go back where it came from, leaving his property, loss of recognition, welfare and public health declined and employment issues.

LESSONS LEARNED

Various attempts have been made to stop the conflict, the central government has upgraded the title two warring factions meeting in Poso. The meeting which was held on December 20, 2001 in Malino bore 10 of the agreement called Malino Declaration. Although Community in Poso expect 10 points of agreement that can resolve

the chronic conflicts that afflict. However, such a symbolic meeting of the Malino Declaration should be supported strong political will and implementation of carefully planned to be run in accordance with the expectations of all parties. So the suspicion that the Malino Declaration elitist, establishment of the measure of success is based solely on quantitative outcomes and loaded with the interests of project opportunities, can be avoided.

A comprehensive approach should be an option in response to the conflict in Poso. Because implementation of the approach is partial over the recovery of social, physical and security rehabilitation resulting those three things becomes unrelated problem. As a result of physical rehabilitation does not consider safety and security conditions, social rehabilitation which is not supported by a policy that is affirmative towards various shocks and incidents.

Law Enforcement and Human Rights should also be a tool to rebuild public trust in state institutions, especially the police and army and become the media of the integration for the victims of the conflict. So the impression that the rule of law and human rights are still at the level of rhetoric or normative can be avoided.

In addition, the coordination between all parties trying to recover Poso, so the programs on behalf of humanity became more effective and achieve goals. This is done by means of establishing Community of Poso, who became victims of the conflict, by promoting community-centered approach or people center approach. So they become the subject to rebuild relations and community integration of Poso.

E. EXPERIENCE IN MALUKU

INTRODUCTION



Source: en.wikipedia.org

Ambon is the name of an island in Maluku province, in eastern part of Indonesia and also the name of the people who live on the islands of Ambon, Saparua, Haruku, Nusa laut and the southern part of Seram Island. Ambon Island is an important island in Maluku province because being the province's capital, it also becomes the centre of commerce as well as air and sea passage routes towards other provinces in Indonesia.

Based on Act No. 46 of 1999, the Central Government administratively divided the formerly province of Maluku into two new provinces: North Maluku Province with Ternate as its capital and Maluku Province with Ambon city as the capital.

The splitting made Maluku province has a total area of 712,480 km², with 92.4% of sea and 7.6% of land with 1,421 islands. Ambon Island has the highest number population and Ambon city is the most populated area compared to other cities in the Province.

Maluku was popular in the 16th century when Portugal, Netherlands, and United Kingdom came to the area to look for spices, including nutmeg and cloves. These two spices derived from Maluku Island. It makes the Maluku islands are often referred to as the “Spice Islands”. In colonial era, spice was a very important commodity in international trade because of their high economic value. When Maluku became the center of spice trade, Portugal built a fortress on the island of Ambon and started monopolizing the spice business. When the Netherlands defeated Portugal, Netherlands colonized Maluku and controlled the spice. Netherlands also used Ambon Island as the center of spice commerce. They built Fort Amsterdam by the coast of Ambon, which later became the forerunner of City of Ambon. Simultaneously, the United Kingdom took control of spice commodities in several islands of Maluku, for example Rhun Island. Through the Treaty of Breda in 1667, Netherlands and United Kingdom committed to barter. The United Kingdom got Manhattan Island in the United States and Netherlands acquired Rhun Island.

Portuguese and Netherlands when they came to Maluku were not only pursuing spices but they also introduced Christianity to the people of Maluku. At that time in Ambon Island, many people had converted to Islam and some others were still being adherents of animism. Then the Portuguese came and introduced Catholicism. When they were defeated by the Netherlands, the Catholics were converted into Protestantism Christian. In Maluku, “Christian” means both Protestant and Roman Catholic. The Catholics in Maluku are minority in comparison with Protestant Christians and Muslims, though in some place like in southeastern part of Maluku, the number of Catholics exceeding Protestant Christians and Muslims.

Traditionally, people in Ambon lived in separate villages – whether in Christian village or Muslim village. Although they live separately, they have ‘Pela’ or cultural alliances between one or several Muslim villages with one or several Christian villages. The alliance is based on kinship or historical alliance between villages. Because of this alliance, they treat each other like brothers and sisters. Some pela bans inter-village marriage. They also have an obligation to assist each other when one of the pela members experience problem.

In 1999, Maluku, particularly Ambon, was internationally known owing to huge conflict in that area. Although the violent conflict emerged in some places and islands in Maluku, Ambon City was the main battlefield and center of violent conflict. Some experts prefer using “war” to describe the conflict because of its astonishing quantity and impact of violence. From 1999 to 2002, approximately 5,000 people were killed and a third of the inhabitants left their homes and became Internally Displaced Persons (IDPs – internally displaced within the country). There are no exact numbers concerning the social and economic loss of this conflict.

The exact number of people killed in this conflict was not entirely definite and recognized by the parties in conflict; because the number of victims and fatalities in this conflict encompass significance for the warring parties. The number of victims could be interpreted as evidence that one group is more superior than the other or vice versa. Therefore, the peace movement Bakubae used another way to determine the number of victims, in which the sum was based on an agreement by representatives of both warring parties. Through that process, the number of fatalities amounted to 9700 in the 1999-2001 conflict.

MALUKU SITUATION BEFORE 1998 REFORMATION

Ambon has a strong history of Pela (alliance), and its presence that is believed to be able to keep the peace often becomes a successful example of peaceful and tolerant relationship between Muslims and Christians in Indonesia. Therefore, when the conflicts occurred, a lot of people think that the Ambon conflict was heavily influenced by external factors or generated by people outside of this region to dig up benefits from the riots in Ambon. They called such people/parties as unknown persons or power that procreating conflict in Maluku: “provocateur”. Actually this term does not clearly show who the real provocateur of Maluku conflict is. Although a lot of people believe that there was a provocateur that causes conflict in Ambon, it is difficult to verify. Local and national media have always suspected that the conflict in Ambon was created by the existence of a provocateur outside of Ambon.

The Ambon conflict also went concurrently with the process of democratic transition that was taking place in the Central

Government of Indonesia, in Jakarta. The conflict took place after President Soeharto stepped down in 1998, which had been in power for 32 years in a centralized and authoritarian way. The happening transition to democracy and leadership in Indonesia led to significant changes. One of the significant changes was the introduction of Law No. 22/1999, which gave greater autonomy to local governments. Almost all authorities were conferred or delegated to local governments, except for issues related to foreign policy, security and defense, law, monetary and fiscal, and religion. The rapid process of democracy in Indonesia, on the one hand, brought good revolution for the people of Indonesia, such as freedom of speech, more open media, and the existence of multi-party general elections. On the other hand, rapid democratization also brought negative effects, in which people were not quite ready to address the changes. Therefore, a lot of conflicts took place in Indonesia between 1998 and 2003, including social conflict in Ambon.

There's a strong assumption that the elites who lost power after the fall of President Soeharto on May 21, 1998, was responsible for creating the Ambon conflict. Soeharto's Administration was supported by three pillars: the Golkar Party, the military and government bureaucracy. When President Soeharto stepped down from Office, many of his cronies, political leaders and military elites who depended on him also lost their influence, authority, and privilege. In order to gain political power, it is believed that they were trying to show that they still have the power and influence to interfere with the process of democratization in Indonesia.

There are several factors that affected the occurrence of conflict in Ambon. Conflict has not suddenly happen, but linked with the complex history of Maluku. When Netherlands. Invaded Ambon, they regarded the Christians and Muslims differently. Netherlands gave preference for Christians to become Government administrators and military personnel, while Muslims were not allowed to work in the Government. This caused the Muslim community to be more focused on informal sectors like commerce, agriculture, and fisheries. Christians were also given privileges in the field of education, and were encouraged to go to school, while Muslims did not have much access to education. Because Christians were able to access higher education, when the Netherlands required educated workers to

become Government administrators, they would prefer hiring the Christians. After Indonesia gained independence from the Netherlands, the social structure in Maluku has not changed, and Christian continued to dominate political structure and governance, while Muslims are dominant in business and, as a result, considered to be in control of the market in Ambon.

In the 1990s, Soeharto created Indonesian Association of Muslim Intellectuals (ICMI) to support his position, because he felt that he did not get a hold of enough support from the military. This organization later became the dominant political constellation in Indonesia and ICMI Members filled numerous political and governmental Offices in both the Central and local Governments. ICMI gradually became a vehicle for many elites to attain power, and the institution's existence also influenced political structure in the province of Maluku.

After quite a long time the Christians have been dominant in the structure of Government, suddenly they came across dramatic changes in 1993. That year, Office of the Governor of Maluku was held by a Muslims and the first non-military Moluccan, M. Akib Latuconsina. He was a member of ICMI in Ambon. During his administration as Governor, from 1993-1998, M. Akib Latuconsina dramatically revolutionized government structure. The official position which usually had been dominated by Christians began to be filled by Muslims. This change was threatening the dominance of the Christians, and the threat became clearer when the successor to the Governor was also a Muslim. Dr. M. Saleh Latuconsina was Maluku Governor in 1998-2003, and incidentally, he was also a member of ICMI. During the period of two Governors, non-Moluccan migrants from Bugis, Buton and Macassar also occupied strategic government positions.

Tension between Christians and Muslims in Ambon was increasing along with the change of demographics. Despite that Bugis, Makassar and Buton newcomers have been coming to Ambon since the sixteenth century, the migrant population in Ambon was improved dramatically in the 1970s and 1980s. During those periods, the Central Government also had a policy, the so-called transmigration, to sponsor people from densely populated areas like Java, to migrate to a less populated area. Maluku was one of resettlement

destinations and this augmented the number of migrants in Ambon, which largely Muslims. These conditions were changing the balance of Muslims and Christians in Ambon. Migrants from Bugis, Makassar, Buton and focused more on commerce and traditional markets and all in all dominated the economy and traditional markets in Ambon. Demographic changes dramatically altered political constellations in Ambon and begot the Muslims happen to be dominant. These circumstances made Ambon to be conflict prone. Some people implied the abovementioned factors have made Ambon to be like a dried up pasture. The slightest flame would encourage incident of a great fire, the slightest conflict trigger could lead to violent conflict in Ambon. Seeing that violent conflict triggered by a fight between Muslim and Christian youths had prompted conflict involving almost all walks of life in Ambon, either directly or indirectly.

CHRONOLOGY OF CONFLICT

A relatively major violence in Ambon occurred primarily in 1999-2002, followed by sporadic violence in 2003 and 2004. Because the conflicts were happening for several years, many researchers divided the conflict into different stages. Human Rights Watch also split the Moluccan conflict into two phases. The first stage was from January 19, 1999 to February 5, 1999 and the second phase took place from February 13, 1999 to March 31, 1999.

Van Klinken (2007) set off the Moluccan conflict into five stages. The first stage was from January 19, 1999 to May 1999. In May 1999, there was a national election campaign, during this period the violence was decreasing. Second phase was by the end of July 1999 to July 2000. This phase emerged after the election is over and people knew the election results. One of violent incidents in this phase was a massacre in North Maluku, wherein 500 Muslims were estimated to have killed. The third stage was in April 2000, when a Muslim militia, Laskar Jihad from Java, came to help Muslims in Ambon. The fourth stage was the emergence of various battles involving Laskar Jihad, until the Central Government facilitated peacekeeping agreement between representatives of Moluccan Muslim and Christian communities in Malino, South Sulawesi; the treaty called the Malino II Peace Agreement or "Malino II", which was signed in February 2002.

Final stage was marked by some of the violence after the Malino II delegations of Muslim and Christian communities returned to Ambon.

Many researchers divided the conflict into different phases, mostly agreed that the conflict began on 19 January 1999; although some violent incidents have happened before. On 12 December 1998, there was a fight in Ambon between Muslims from the village of Wailete and Christian from the village of Hatiwe. On 14 January 1999, there was a riot in Dobo, Aru Island, between Muslims from Bugis and Macassar and Ambon ethnic group, which led to 8 deaths. These events were believed to be the initial incident or precondition that caused major conflicts to occur.

Just about 3 PM on January 19, 1999, there was a fight between a Christian taxi driver and a Muslim boy from the village of Batu Merah in Ambon city. Soon after, simultaneous reciprocated attacks erupted between Batu Merah, a Muslim village, and Mardika, Christian village. Prior to the events of January 19, 1999, a fight between youths of Batu Merah and Mardika has been common. However, the fight that took place on January 19, 1999 triggered the surfacing of sporadic turmoil in most areas of Ambon city that remained until late night. A lot of houses, markets and shops around the city were burned. That day happened to be a special and sacred day for Muslims, Eid ul-Fitr

The first sprouting issue in the riot was ethnic-based matter. The targets of riot aimed at the majority of entrants from Bugis, Buton and Macassar (BBM) entrants. However, when words got out that mosques and churches have been burned, the conflict shifted to religious issues. Since the conflict taken place, in order to differentiate between Christians and Muslims there were some symbols. The Christians began to wear red headband, while Muslims started wearing white cloth or veil. Then, they used the term “red” group to identify Christians and “white” group to identify Muslims.

In May 1999, there was a national legislative election campaign which led to declining intensity of violence in Ambon. Political parties, and the candidates themselves, wanted to obtain maximum votes from both communities; therefore, the members of the legislative body in Muslim and Christian communities worked together to attract support of voters. However, after the general election had taken place and the result was announced in July 1999, the conflict

then erupted again. Some scholars identified the erupting conflict after the general election stood as the beginning of the second phase of conflict in Ambon.

The Indonesian Democratic Party of Struggle (PDI-P) won the 1999 elections and House of Representatives of Maluku province was controlled by the PDI-P. In Ambon, Indonesian Democratic Party (PDI) which later became PDI-P has long been identified as the 'Christian' Party since the party had been established from the merger of several parties, inter alia the Christian Party of Indonesia (Partindo), which had been dominant in the Maluku in 1955. The election results and the perception of Christian domination, accelerate new episodes of conflict.

In October 1999, North Maluku was forced to become a new province, separated from the province of Maluku. The influence of conflict yet proliferated to the new province. Although reason of conflict was different, the nuances and sentiments of conflict were similar to the Maluku conflict. The conflict was triggered by a fight between the Muslim youth of Malifud and Christian youth from Kao. However, the main reason of conflict was related to boundaries of the region. Muslim migrants, especially from the island of Makian who lived in Malifud village, wanted to become a new district that separated from the District of Christian-dominated Kao. The idea of district expansion was supported by local government by preparing the new Malifud District detached from Kao District. However, idea of district expansion was rejected by people of Kao. The biggest conflict that took place in North Maluku was the killing of approximately 800 Muslims in a single massacre in one of mosques in Tobelo, North Halmahera District.

The massacre resulted in sympathy and reaction among Muslims in Java. In January 2000, there was a great demonstration of nearly 100,000 Muslims in the Jakarta city, Indonesia's capital. This demonstration demanded that the Central Government in any way deemed necessary must end the conflict in Maluku and warned that if the Government cannot stop the conflict in Maluku, in that case the Muslims in Java would be forced to go to Maluku to help fellow Muslims.

In May 2000, Laskar Jihad, a Muslim militia group from the island of Java, came to Ambon. This group was relatively well-organized

and its members have received training before coming to Ambon.

In June 2000, this group, along with some Muslims in Ambon, attacked a police station and stole roughly 800 weapons. After Laskar Jihad came to Ambon, it transfigured the constellation of conflicts in Ambon. Prior to their arrival, the Christians have dominated the conflict. After the Laskar Jihad's arrival, the Muslims gained more power and dominance.

The presence of Laskar Jihad created a different response from Christians' side. Nearly 100 Christians initiated Maluku Sovereignty Front (FKM), which many people believed it as the awakening of a group of rebel Republic of South Moluccas (RMS), established in the 1950s to fight for independence from Indonesia. At the time, the conflict was focused on separatist issues. This separatism issues provided legitimacy for the military of Indonesia to send more soldiers to Ambon, where they perform a special operation to reduce conflict in Maluku; although soldiers have been sent to Ambon, but conflict continued.

In February 2002, the Central Government facilitated peace dialogue in Malino, South Sulawesi. Muslim delegation came with 35 members, while the Christian delegations were represented by 34 people. This meeting was conducted for three days and ended with the signing of a peace treaty. The peace agreement was then known as the Malino II Peace Agreement. When the delegations returned to Ambon, some violent actions seemingly committed by Muslims against members of the Muslim delegation because they were unhappy with the peace agreement. A house belong to member of Muslims delegation was attacked and arsoned, because they were considered as had not have a strong legitimacy to represent group of Moluccan Muslims.

Malino II Peace Agreement succeeded in lowering the incidence of conflict, but it did not automatically brought peace to Maluku. Several incidents of violence still occurred sporadically in Ambon after the Malino II Peace Agreement. One of the biggest clashes was in April 2002 and led to arson of the Governor's Office. Geographical segregation distance among society was larger, even prior to the assignment of agreement. Straight attack aiming society groups were getting more strenuous. Hence, acts of terrorism method began to

appear; shootings and bombings were often utilized. In 2003, the situation in Maluku was much better than before, and there is no significant incident of violence during that period of time, although people still live in separate areas

On April 25, 2004, a major riot took place in Ambon city after members and leader of FKM met to commemorate the founding of RMS. After the ceremony was complete, the Police arrested FKM leader and 25 other follower, and took them to the police station. The incident raised new tension between Muslim and Christian communities and riots began within a week. Forty people were killed, and many houses, schools, and other public facilities were burned.

Diagonal Conflict

Basically it is very difficult to perform classification of conflicts accurately. For the benefit of facilitating to comprehend the conflict, a classification becomes important. At least by conducting the classification will help in the obtainable process of peace intervention.

In general, the conflict in Indonesia is divided into vertical and horizontal conflicts. Vertical conflicts are identified as a conflict between society and the Government in power. Horizontal conflict means a conflict between groups of society wherein the State is not involved.

If looking at the aforementioned driving factors of Ambon conflict, categorizing it as a horizontal conflict becomes somewhat less precise; correspondingly, when it is categorized as a vertical conflict. In the violent conflict in Ambon, the parties of conflict were Christian and Muslim communities. However, there was State's role that directly or indirectly encouraged the occurrence of conflicts. One of real examples of State's role is transmigration program policy that directly impacting on the changes on demographic composition of Ambon. Another example is the application of the Law of Village Government that is more Java-perspectived for Ambon. The application of the policy indirectly eradicated the existing traditional governance system in Ambon. Ultimately it has an impact on desolated and demise of indigenous institutions and traditional mechanisms in responding to ensuing problems and conflicts.

Omission or the absence of State to address policies and interventions for quite a long time in terms of politics, education, economy and culture gave contribution to the formation of certain groups of people's domination in Government structure, economic control, and education. For a long time dominance of community group over certain aspects of life is considered to be something inherent and inseparable and "should not be contested". When the domination then reduced, it is considered as a threat to the survival of the group. With those facts, Ambon conflicts are more appropriate to be classified into "a diagonal conflict" because there are some elements of a horizontal conflict but also elements of State's involvement either directly or indirectly to the conflict.

Response of Government and Society

Since the beginning of conflict in Ambon, on January 19, 1999, in fact various parties have widely carried out efforts to stop and resolve the existing conflicts. The settlement of conflict is divided into two large groups based on the subject that undertaking the efforts .

First, is the efforts made by the Government (Central and local) because of their duty, responsibility and authority in relation to the conflict. An example of local government's form of action of is undertaking efforts to decrease the intensity of violence through meetings that involving community leaders and religious figures. The creation of the peace agreement between groups that represented by congregation leader before the Minister of Defense and Security/ Commander in Chief of the Republic of Indonesia on 23 January 1999. The foundation of a team to prevent the widespread arson of houses of worship and prevent the increase and distribution of conflict to other areas of Ambon; the team was founded by Maluku Governor with members comprising of religious figures and leaders.

Other Government's response is allocation and addition of military and police personnel from outside Ambon. The day after the conflict, precisely on 20 January 1999, the military apparatus were brought in from Makassar. From January to March 1999 the addition of military and police apparatuses in Ambon amounted to nearly 5,300 personnel. The Government also improved the status of Korem (Military Resort Command) into Kodam (Military Area Command)

on May 15, 1999. In November 1999 the deployment of military and police apparatus in Ambon has reached the amount of 6,000 personnel. This number steadily increased, until in January 2000 there has been approximately five battalions of security apparatus in Ambon with the estimation of the number of personnel was as much as 11,250 people.

The Government also made efforts to help the victims and refugees of conflict through Social Affairs Ministry, the Ministry of Health and other relevant Ministries. Aid was provided in the form of humanitarian aid, food ingredients and other living necessities as well as emergency needs in the form of evacuation places. In the process of reconstruction and rehabilitation, the Government also provided assistance in the form of building materials. The Government through its authority also conducted the implementation of Civil Emergency Status in Ambon based on Presidential Decree No. 88 of 2000 regarding Civil Emergency in Maluku and North Maluku.

Although numerous attempts have been made by the Government since the beginning of conflict, it continued until 2002. Until finally the Central Government facilitated the process of peace agreement in Malino (South Sulawesi province) on February 12, 2002; Jusuf Kalla, who at that time was the Coordinating Minister for People's Welfare – Menkokesra, and Susilo Bambang Yudhoyono at the time as the Coordinating Minister for Political, Law and Security – Menkopolkukham acted as facilitators of peace agreement. A peace treaty was not immediately made in Ambon, because there are still some incidents of violence that took place after the signing of peace treaty, but the Treaty of Malino II became momentum in changing model of approach committed by the Government and community, as well as NGOs. Since then violence in Ambon was no longer framed as part of conflict, but as a purely criminal act. NGOs, both international and national, have conducted various program peace-building in Ambon. Before Malino II a lot of peace building activities were in the forms of meetings or workshop and conflict resolution conducted outside of Ambon.

In fact, before the Malino II Peace Agreement was made, some peace initiatives undertaken by the community and Non-Governmental Organizations have been developing since 1999.

Peace opportunities began to open conducive space for the Malino Agreement to take its role to maximum.

Second, initiatives that came from communities and NGOs. It cannot be denied that in the process of peace in Ambon there was a magnitude of communities and NGOs' participation. A variety of efforts were undertaken independently by the public to not engage in the conflict and at the same time maintaining peace. As an example was the effort made by the people of Wayame village whose inhabitants are Muslims and Christians. They formed "Team 20" which consisted of community leaders and religious figures. The tasks of this team were conducting a variety of efforts to keep the village safe, to facilitate community meetings each week and also to release information, clarifications and explanations to the public about various issues concerning the conflict. They made rules such as banning the villagers to be involved in the conflict, banning to talk in the media like newspaper from Ambon city.

The society also conducted various initiatives such as an exchange of foodstuffs, fishes, and vegetables between mothers of different religions in the village, such as the mothers in Batu Merah Village during the conflict. Many religious figures and community leaders were also involved in various initiatives of conflict termination and seeking for peace. Those efforts were carried out in the middle of conflict situation and the occurrence of segregation that is geographically and socially set apart Muslim and Christian areas. The low level of security and a reduced sense of security that felt by the people to go to other regions increasingly reinforced the ongoing segregation. The implication was the difficulty of obtaining daily necessities and finally the prices were awfully increasing.

The role of NGOs in peace building process in Ambon also cannot be eliminated. NGOs from local, national and international level indirectly helped in easing the enduring conflict, doing peace and empowering peace building, as well as employing economic and cultural empowerment. Sometime after the onset of conflict some local NGOs in Ambon teamed up to form a consortium by the name of the TIRUS (the Voluntary Team for Social Humanity of Maluku) who worked to help distribution of humanitarian aid for victims of conflict and refugees in Ambon. The number of NGOs in Ambon

before the conflict has been relatively low, about 10 NGOs. However, since the onset of conflict the number of NGOs in Ambon improved drastically. Although there was no specific data stating the number of NGOs during the conflict, but NGOs was estimated to have been nearly 600s NGOs working in Ambon, both national and international NGOs. Based on the forms of interventions undertaken by NGOs in Ambon at the time of conflict, NGOs can be categorized in two, i.e.:

1. NGOs that focus their efforts on providing and distributing humanitarian aid. Most international NGOs like Save the Children, Mercy Corp, and World Vision supplied a lot humanitarian aid, especially while the conflict was still continuing. Although after the Malino II Peace Agreement many of international NGOs did not only focus on providing humanitarian assistance but also started to go on peace building issues.
2. NGOs that focus on peace building issues. Relatively few in number if compared with the NGOs that focus on the provision of humanitarian assistance. As an example: The British Council, the Common Ground and Bakubae Movement. Of all NGOs that focus on the development of peace building, Bakubae Movement was sustainable and involved a lot of parties.

In this case, LBH Jakarta and YLBHI were actively involved in encouraging the formation of Bakubae movement. As with Bakubae movement, LBH Jakarta could play a more comprehensively with structural legal aid approach through the Bakubae.

As for the socio-political map at the time has caused the structural legal aid being increasingly urgent to be developed in areas of conflict such as Ambon, as follows:

The Absence of Law in Ambon

After the occurrence of violent conflicts in Ambon, the community began to split based on religions. Some areas which were formerly quite heterogeneous in religions now become more homogeneous. Geographical segregation based on religion was indirectly making public access became more restricted, i.e., only in areas of their communities only. Security was a defining factor for people to take the risk of staying at or going to other communities of different areas of religion.

Geographical segregation that occurs in the community also contributed to the splitting of the police. One of the factors with regard to the position of police station; since the Polres (Resort Police) of Ambon was in Parigi Lima that belonged to Muslims area, while Polda Office (Provincial Police) of Maluku islands were in Batu Meja which was a Christian area. It made Christian police to be more comfortable to base on the Maluku Provincial Police Headquarter. The most important reason was the ease of access and also security reasons so they preferred to base on the territory of their community. Only a small percentage of the police who were still based in their originally assigned location and not affected by the segregation of Muslims-Christians; a small fraction of Police officials, high rank and middle rank officers in Polda Maluku and Ambon Polres remained to base as usual especially those who were not of Ambon origin.

With segregation of police personnel in exercising their duties due to the position of their Office, indirectly had an impact on the Police's performance as law enforcement that should be neutral and serve the law enforcement, subsequently were fenced off in Christian-Muslim dichotomies. Police task that should be professional in giving public service in the forms of security became partial because of safety factors and constraint of access to areas that were not in the same faith with them. By conducting their works in office and area of the same religion with them, then it would be difficult to avoid partisanship of security apparatus on toward specific community. This segregation indirectly decreased the level of public trust with respect to the process of law enforcement. The problem of law enforcement became one of the central issues that always aroused in any meeting involving both communities, such as in Bakubae meeting in 2000 in Bali, the issue of law enforcement had become an issue that later was discussed and became one of the meeting result recommendations.

On a broader level, the segregation of all aspects in Ambon during conflict has an impact as well on the appearance of common assumptions in the community. In Ambon conflict, in general the society assumed that police tended to favor the Christians while the soldiers were considered to be partial to Muslim groups. However these assumptions could not be evidently proved. The assumptions were more aggravated by incidence of police and army desertions which allegedly directly involved in conflict by siding with one

of the parties. It transpired due to the position of Maluku Police Headquarters that was in Christians' area, while a large amount of soldiers that came from outside of Maluku province, such as from Java or Sulawesi were mostly Muslim, therefore considered as more inclined to Muslim communities. Although these assumptions were difficult to confirm, at least their presence came to pass as indication that segregation has hit entire aspects and the law enforcement in Ambon turned out to be serious matter.

During Ambon conflict legal apparatuses, such as judges and prosecutors, could not work properly because of safety factor. Judges and prosecutors are vertical institutions, where the institutional placement of judges and prosecutors is under the Supreme Court and Attorney General's Office's authority, therefore it was rarely found that judges and prosecutors were derived from local residents, most of them were stationed newcomers. The absence of collateral security in Ambon made prosecutors and judges left their posts and evacuated from Ambon. As a result, the law enforcements could not function normally in Ambon.

Not significantly differed from the police, judges and prosecutors; the lawyers in Ambon were also split into Christian and Muslim lawyers. This segregation made them only defending or being lawyer to clients of the same faith, because they couldn't get into a different community or because of other reasons. Christian lawyers formed "Team of Church Lawyers" that based generally at Maranatha Church in Ambon. In addition to providing legal aid in the form of advocating of client, the lawyers also often made statements, which published through the media such as newspaper, radio and other electronic media.

The founding of this Church Lawyers Team was soon responded by the lawyers from Muslim communities with "Teams of MUI lawyers" in mid 1999 and later more commonly known as "Team of Al-Fatah Lawyers". The team of lawyers was also just as much as the Christian lawyer team gave more focused legal aid or advocacy to their Muslim clients. Muslim Lawyers Team also addressed responses and statements through the mass media.

On June 27, 2000 the Central Government implemented a Civil Emergency, wherein President Abdurahman Wahid established it through Presidential Decree (Keppres) No. 88 of 2000. Civil

Emergency rendered the Maluku province enacted Act No. 23/Prp 1959 regarding the State of Emergency. The State of Civil Emergency made the Governor as the Civil Emergency Authority might take any action to restore security and order in Ambon (Articles 10-21 of ACT No. 23/Prp 1959); thus all normal rule of law that has existed before effecting of Civil Emergency situation and depended on the Civil Emergency Authority. The Civil Emergency in Ambon apparently did not make the conflict to end instantaneously then the public discourse on elevating the status of Civil Emergency into Military Emergency (Martial Law) was growing at that time in Ambon. Several communities supported the idea, but other elements rejected the discourse of implementing martial law. However it was not realized, and ultimately the Civil Emergency in Ambon were revoked based on Presidential Decree (Keppres.) No. 71/2003 on 14 September 2003 and took effect on September 15, 2003 at 00: 00 Indonesian Eastern Time.

Map of Residential Segregation of Ambon City



Picture : Jamal Riy

Provision of Legal aid in the area of conflict should be related closely to the peace building process; but in reality the assigned practice of legal aid had no contribution in the construction of peace, or one might say that the practice of conducting legal aid was encouraging further the sustainability of conflict. In this case we call it “segregative” legal aid, in which the practice of legal aid did not contribute to the unification of communities in conflict but rather perpetuated the segregation that happened in Ambon.

Various forms of legal aid practice that fall into segregative legal aid in Ambon are:

CONVENTIONAL LEGAL AID

Such legal aid is thus backed by frame of thought that law must be enforced through formal legal channels by means of formal institutions such as the police, prosecutors, judges, and lawyers. The intended aid is still defined in narrow form of providing legal consultation or advocating at police, prosecutor and court levels. Although many law enforcement institutions did not function normally in Ambon for the duration of conflict. This kind of legal aid was the earliest type that customarily applied by lawyers. The tendency to use the formal legal aid two main reasons, i.e.:

1. Before conflict occurred, lawyers in Ambon have been used to work as lawyers in formal manner through channels of law enforcement institutions: the Police, state prosecutors and courts. For them, legal aid was defined as lawyers’ advocating actions for free at the level of police force, state prosecutor office and court, as well as advocating assistance in civil lawsuits. Works of legal aid provision conducted by lawyers is based on voluntary basis or *pro-bono* which strongly depends on the “kindness” of lawyers. Lawyers became the central subject of legal aid granting, because those who determine whether they care for allocating legal aid or not. The focus of legal aid also is in very narrow forms of providing legal advice, advocating at the police force, prosecution and judicial institutions level. The habit of granting legal aid in its narrow meaning causes the absence of revolution in lawyers’ point of view in providing legal aid in

conflict situation in Ambon. When Ambon conflict transpired then lawyers' action in terms of legal aid have not change much, which was providing legal aid to criminal or civil cases either via law enforcement institutions.

2. Before 1999 or rather before the Ambon conflict occurred, there has never been a legal aid agency in Ambon. The absence of legal aid institution in Ambon increasingly confirmed the perception of lawyers and legal aid community on formal legal aid. The works as regards organizing the society, critical education for society, community empowerment and public policy advocacy were not considered as part of legal aid definition. Such a large number of works to be done by the NGOs in Ambon, at that time amounted to approximately 10-15 NGOs. It could be said that a lot of legal scholars in Ambon after completing their education on campus preferred to be employees of the law-enforcement institutions, civil servants and lawyers. Very few of the legal scholars to become NGO activists; moreover, the position of a lawyer in society's social structure of Ambon is belong in middle-up circles.

It is interesting to observe further the method of lawyers conducting legal aid practices in Ambon at that juncture when conflicts occurred. The Ambon conflict was indeed on the whole started from 1999 until the Malino II Peace Agreement in 2002, and some sporadic violence that has been going on after the agreement. But in actuality, it did not happen on a daily basis during the period. There were short intervals of non-violence situation in Ambon throughout the era. Sometimes the conflict paused for a day or two before another riot resumed. In fact, sometimes the riots stopped for a week or so. During intermissions, the Court offices were still functioning, although there were limitations in the number of judges and other judicial apparatuses. Within those windows of opportunity lawyers from both communities of Muslim and Christian saw to proceedings in Courts. Most of them or largely conducted proceedings at the Court with their equivalent faith clients; only a few cases related to perpetrators of violence in Ambon conflict were advocated by lawyers of different religions, such as in Munir Khairoti and Halim Umamid of MUI Lawyers Team and some lawyers from Church Lawyers Team. Lawyer's advocacies to client in Ambon Courts

were carried out for reasons of advocate's professionalism or due to request from the judge to provide advocacy for the client because of criminal procedure law of requirement. The granting of legal aid was also handled on the basis of *pro-bono* or at no charge from the client as a part of professionalism of lawyers.

When a conflict did not occur, the occasion was often also utilized by police apparatus, which often formed a "joint team", to be precise combined forces of police and military, to perform sweepings to specific areas, searching houses and residences, as well as raiding for sharp weapons in the streets. From the accomplished operations there were many arrests and detentions conducted either by the police or the army.

As aforesaid earlier that Ambon's Police station also bore segregation especially after 2001. Segregation in these police stations also made arrests and detentions were carried out largely among their own circles. It means that many arrests and detentions carried out by Muslim Police officers stationed at Resort Police of Ambon, which were also located in Muslims territory. Likewise with the arrests and detentions carried out by Provincial Police officers that identical with Christian's area. These circumstances led Muslim Lawyers to conduct more advocacies to clients in Resort Police level whereas many Christian Lawyers performed it at Provincial Police station. Only a small portion of the arrests and detentions of Muslims were performed by Provincial Police and vice versa. A lawyer that actively conducting advocacy for clients at police offices at the time of conflict described that there were also several Muslim prisoners being in detention of at Provincial Police stations and alternatively some Christian prisoners were detained at Resort Police station, even though the number was insignificant.

Forms of advocacy conducted by lawyers at police levels, the Resort Police station and Provincial Police station were in the form of counseling during examination of investigation. Another form of counseling made by lawyers was to provide the required bail out money bond. Conflict circumstances did not allow families, siblings or parents of clients to go down and visit their detained relatives at the police station. Therefore, to facilitate the bailout process, a lot of lawyers assumed responsibility as indemnitor of their client. These

forms of advocacy for the greater part were conducted for free or *pro-bono* by Christian and Muslim lawyers.

CONVENTIONAL LEGAL AID AND PEACE PROCESS

Provision of formal legal aid model in such situation of conflict in Ambon was ameliorating the clients. However this formal legal aid seemed less contributing to the formation of peace process. Some of very pertinent reasons are:

1. Conventional legal aid granted by lawyers in conflict of Ambon justified that available laws, policies and regulations at that time were correct; whereas analysis results from a variety of experts on conflicts of Ambon showed that existing laws and policies in Ambon contributed to injustice and became one of causing factors the occurrence of conflict in Ambon.

The granting of formal legal aid lawyers provided by Muslim as well as Christian lawyers seemed to indicate that there was no problem with the applicable law at the time of conflict in Ambon. Violation of the existing laws was punishable and to guarantee the rights of the defendant then they needed to be given a legal aid.

The lawyers indirectly consider that conflict situation did not differ to a large extent with the normal situation where there has been no conflict. The granted legal aid in situation prior to 1999 before the conflict occurred was in the same form with aid at the time of conflict. The difference was probably the increasing level of the provision legal aid's intensity owing to a lot of arrests, detentions and trials against violence perpetrators in Ambon, which increased due to the conflict. The legal aid activities also seemed to assume that there was nothing wrong with the applicable law at the time of conflict, the problem was only on the aspects of implementation and law enforcement. The transformation of enacted regulation from the normal law into Civil Emergency law was addressed more on its implementation instead of whether the law was righteous or appropriate for conflict situation in Ambon.

2. The granting of legal aid by either Muslim or Christian lawyers was more individual in nature instead of given to vast community or structural legal aid. Advocacy efforts both at the police and court given by lawyers were based additionally on the consideration that there were people who need legal aid, therefore, they should be given advocacy. Although the amount of assigned legal aids intensity and covered a large number of clients, but utilized legal aid framework was individual legal aid, in which lawyers provided legal aid to case of individual client.

The perspective of individual legal aid granting was the reason that made lawyers to be overwhelmed in conducting advocacy due to the escalating number of clients along with the increasing intensity of occurring violent conflict, as stated by lawyers of Munir Khairoti in Ambon. In practice, the granting of formal legal aid throughout conflict of Ambon was largely conducted by lawyers as a result of their local community's demand to provide advocacy from one or more citizens of the community that had been caught or arrested by the police and security apparatus. Munir Khairoti, one of lawyers in Ambon said: *".....a lot of adolescents were detained. Therefore society insisted that lawyers should take action"*.

Community's demand did not mean that lawyers conducted legal aid granting to the community in Ambon extensively, but remained in the form of individual legal aid for a person who came from the same community as the lawyer. In situation of communities' segregation, it grew to be difficult for every individual to act neutrally impartial. Pressure from the community and safety factor became particular reasons for the lawyers to commit legal aid for people of his community. Framework of formal individual legal aid that supposedly be given to any individual in need of legal aid then could not perfectly function, because the scope of legal aid that was given by lawyer happen to be narrower, to be exact formal individual legal aid for citizen of the same community as the lawyer.

Along with escalating conflict in Ambon and its influence to the segregation of society, that effect could not be evaded by the lawyers. Lawyers also underwent segregation phase. Christian community established Team of Church Lawyers that commonly

based at Maranata Church. While the Islamic community, in responding the presence of team of lawyers from Christian community, formed a Team of MUI Lawyers sometimes also known as the Al-Fatah Lawyers Team. The formation of lawyers' team that rooted in either Muslim or Christian communities obliquely perpetuated the conflict in Ambon. Team of lawyers from each community focused on the provision of legal aid to citizens of their respective community. The granting of legal aid was defined as a form of lawyers' support toward their own community. In other words, it was in opposition to the other community. Individual formal legal aid's framework caused lawyers to be busy and to focus on providing legal aid to individuals from their communities whom have problems with the law. Consequently they were not so concerned with the opposing community. This also made them less proficient to perceive the weakness of legal substantiality in Ambon and deviation on its implementation. Therefore, the formal and individual legal aid that has been literally narrow was getting narrower, because it based on their own's community.

3. Formal individual legal aid in Ambon was short termed. Various legal advocacies provided by lawyers to the clients of their communities were carried out within the framework of support, because they were in legal trouble and misfortune. Lawyers focused more on how the client can get legal aid as soon as possible during examination process and detention at the Police station, Prosecutor's Office, as well as advocacy during trial in court. Success indicator of the conducted advocacy was the release of client from custody either at police station, security apparatus' or prosecutor's office. After the lawyer were able to meet client's expectation, their relationship automatically stopped, because the lawyer was preoccupied with the granting of legal aid to another client. By ending the relation between lawyer and client made the provided legal aid was short termed. There is no systematic and orderly effort of lawyer to provide legal education and critical awareness to the clients regarding the law. The community remained dependent entirely on lawyers in dealing with legal problems. There was no legal empowerment for community that took place in granting individual formal legal aid in situation of conflict.

4. Legal aid segregated rather than unified the communities in conflict. In the framework of granting formal and individual legal aid, the lawyers in a roundabout way have become actors who at any rate maintained and legitimized the existing community segregation. Formal, individual and narrow legal aid allocated for particular community made the legal aid seemed to isolate and strengthen the separation of different communities, rather than uniting the Muslim and Christian communities in Ambon. The legal aid instead of being a liaison for the segregating communities, was in fact preserving the segregation. In the end, implicitly the legal aid granting encouraged the continuation of conflict in Ambon.

Apart from some shortcomings of individual formal legal aid in Ambon conflict, it cannot be denied that the legal aid more or less already relieved clients who need it and couldn't afford it in aspects of economic, access to and knowledge on the laws. Advocacies at police and security apparatus level when the Ambon conflict occurred have relieved and freed more than 1000 clients, which mostly were cases of wrongful arrest or allegation with unavailable evidence or insufficient evidence, such as accusation of carrying sharp weapon or firearm that actually was not proven. Legal aid also freed a lot of underage children that had been arrested in weapon raids committed by police officials and joint forces of police and military apparatuses in Ambon.

PARTIAL DEFENSE EFFORTS

In addition to individual formal legal aid, the lawyers in Ambon also conducted other efforts such as shaping of opinions and statements. Other forms of legal aid conducted at time of conflict in Ambon were in fact already developed; not only in the form of formal legal aid through the courts. Lawyers, due to their position, are regarded as an elite class of intellectuals who can make analysis and documents as well as group or institution's statement letters that addressed to the general public and intended specifically to government agencies.

At first the vocational efforts using the media was largely conducted by Christian lawyers, members of Team of Church Lawyers. They made a lot of statements aimed at State institution as well as the general public through media about the chronology of events, position paper and demand to State institutions. In addition to the official statements created by Team of Christian Lawyers through the media, sometimes they were asked by the media for their response on legal analysis of the law concerning event or policies made by the Government and applied in Ambon. They largely utilized newspaper such as Siwa Lima and Suara Maluku, radio RRI Ambon, and electronic media in TVRI Ambon. Church Lawyer Team seemed to get easier access to the media because the media offices were located within Christian's territory.

Utilization of mass media was also carried out by Muslim Lawyers. Even one of reasons for the establishment of Teams of MUI Lawyers was the lack of Muslim lawyers' response in media concerning various incidents of violence, or response to the statements made by Christian lawyers in the media. Various statements, clarifications and position papers of Church Lawyers Team on media have stirred Muslim Lawyers to respond. In the end the Team of Muslim Lawyers also released numerous responses on statement, clarification of violence chronology, position paper as well as statements, requests and also demands that were addressed to State institutions and the general public through media. But they did not have enough media access, until in a while a newspaper called Ambon Express emerged, which during conflict in Ambon was often associated as the Muslim newspaper. While other media such as Siwa Lima and Suara Maluku were identified as Christian media.

Media segregation was aggravated by social position of lawyers in the Moluccan social structure. In Ambon, the people who accustomed to the law were considered to be middle-class or the elite. Lawyers, for their expertise in law were often distinguished as credible resources to provide responses and legal analysis comments. With the segregation between the Muslim and Christian lawyer in conflict situations, comment war frequently occurred among lawyers on the media that often heated up the conflict. Lawyers for their social position were also commonly regarded as people who had the capability of addressing argument and persuasion. In context of

conflict, it habitually made them the provocateurs in their community. Segregation of lawyers also affected their legal defense, it made them highly partisan and tended to be narrow minded by blaming the other group. For any violent incident, comment war between lawyers in the media frequently cropped up and it made the situation to be heated-up.

Under such condition, then the granting of legal aid did not contribute to peace and even had a tendency to cause problems. Therefore it takes another approach that is more precise, comprehensive and based on universal values, i.e. the structural legal aid for area in conflict.

STRUCTURAL LEGAL AID

Structural legal aid in the area of conflict was the one that in practice encouraging and contributing to peace building efforts in Ambon; a legal aid that emphasized more on Ambon society as a single entity that did not separate people of Ambon into segregated communities of Muslim and Christian. The legal aid that was not based on defending one community and blaming the other community, but preferably a legal aid which encouraged unification process and diminished community's segregation as a result of conflict to facilitate the peace building progress. Therefore, the legal aid framework in question should not be stuck merely in client advocacy at the police station, district attorney office and the courtroom, nevertheless it should embrace wider aspects comprising society coordination that anchored in justice values that based on the values of Human Rights and democratic principles.

Model of structural legal aid that had been developed by LBH Jakarta in collaboration with communities and networks in Maluku to act in response against violent conflict in Ambon as a concrete form of society organization was Bakubae Movement.

BAKUBAE MOVEMENT

Bakubae Movement is the “concrete manifestation” of structural legal aid model which was developed in the area of Ambon. It was a

legal aid movement that founded on society in Maluku or Ambon to build the peace.

The founding of Bakubae Movement was inseparable from the legal aid framework developed by Jakarta Legal Aid Institution (LBH Jakarta) that has been involved since the beginning. In addition to LBH Jakarta people, some people from LBH Jakarta and YLBHI's networks were directly and actively involved in formation process and the early establishment of Bakubae Movement in the company of activists from the Hualopu Foundation and Inovasi Group. In course of time, LBH Jakarta and YLBHI support was growing by including several more staffs to be involved in this movement. The movement was also based at LBH Jakarta office. Since the Bakubae is movement instead of a formal institution, therefore for the interest of cooperation process with agencies that required formal institution, therefore the Bakubae Movement administratively is under responsibility of LBH Jakarta.

As for the strategies that were developed in conducting intervention toward Ambon conflict, are as follows:

1. Series of Critical Workshop

The beginning of Bakubae Movement after went through informal discussion process with the NGO activists from Ambon, direct assessment in Ambon and some other parts in Maluku; as well as several meetings and discussions, such as in Yogyakarta with some Laskar Jihad activists and in Jakarta with YLBHI activists in April 2000. The results of assessment process and informal meetings were afterward became the basis for the commencement of Workshop I in August 2000 in Jakarta for 21 days. Participants of Workshop I were 12 people, consisting of six people from Muslim community and the other six from the Christian community. Participants were from a variety of backgrounds, such as NGOs activists, religious figures, and lawyers, group leaders of parties, Kings and refugees.

Workshop I meeting was restricted in which the activity was intentionally not published through print, radio and electronic media. The workshop produced a variety of things and one of the results of workshop activities was position paper titled "The Voices from the Heart of Maluku Conflict Victims" which contained point of views and expectations of Ambon people as victims of the conflict. With a

great effort and made use of existing networks in Jakarta, the position paper “The Voices from the Heart of Maluku Conflict Victims” was succeed to be presented to the President of Indonesia at that time, late Abdurahman Wahid or Gus Dur on August 27, 2000. The position paper of “The Voices from the Heart of Maluku Conflict Victims” might be said to be an initial key document that has been generated collectively with people from two fighting communities in Ambon.

The second workshop was organized in October 2000 in Bali attended by more participants than in the first workshop that amounted to 40 people. 20 participants came from the Muslim community and the other 20 people came from the Christian community. According to Rum Sunet’s words in the book titled *Breaking the Violence with the Spirit of Bakubae*, the second workshop in Bali involved more people from diverse backgrounds, such as community dignitaries (the Kings), religious leaders, youth, refugees, and women. In the workshop in Bali issues on law enforcement began to emerge in discussion and noted down in the recommendations of workshop. Just as in the first workshop, the second workshop in Bali was also still restricted from media publication.

The third Workshop was conducted in December 2000 in Yogyakarta. In this workshop the number of participants was greater than the previous workshops i.e. 80 participants, consisting of 40 participants of the Christian community and 40 other participants from the Muslim community. Their backgrounds were also increasingly varied from participants of previous workshops, i.e.: refugees, women, people with disability, religious leaders, the Kings, leaders of command posts, youth, students, lawyers, journalists, humanists, and Chinese and Buton ethnic groups. The meeting was agreed upon by the participants to be open to the public, after more than 9 months since April 2000 when the initiation of movement was created. From the meeting in Yogyakarta then the public and media knew the foundation of peace movement called “Bakubae Movement” which was taken from Maluku language that stands for mutual amity. From a series of three workshops, there were few things that befall as reference:

1. Participants of the workshop were recommended by the previous workshop participants. Such way has made

participants of the preceding workshop to have a responsibility to find and approach the key figures that would be significant in the process of peace building in Ambon. In order to recommend a new participant, then in some way there was a real effort of the previous workshop participants to spread the thoughts, ideas and values of peace to potential participants for the next workshop. On each completed workshops always it was always concluded with the creation of follow-up activities that would be put in the work plan of participants after their return to their communities. The process of granting recommendations of former participants can be indicator of a workshop participant in committing to the formulated work plan.

2. In any implementation of workshop the number of participants was always balanced between Islamic and Christian communities. This equalization of amount was understandable as spiritual circumstances at that point of time have sense of righteousness that still based on quantity. The balanced number of participants also made a high level of participants' trust in workshop facilitator, because they were considered as not inclined to particular community. Likewise, with the balanced number of participants then the credibility of workshop facilitator would be secured and ultimately help in facilitating the process and results of the workshop as the result of mutual work because none of the parties were dominating in the number of participants
3. The strategy of restricted and open workshops. The first and the second workshops were conducted in a restricted situation from publications of whether print, radio or electronic media. It seems that the first and second workshops were hidden from the public. The restriction on first and second workshops were not unplanned, but as a part of the meeting strategy. It was conducted for security reasons that related to the safety of the participants and the workshops. 2000 was the year when the tension of violent conflict was dreadfully high in Ambon, and both communities were in an atmosphere of war; hence the thought or the idea of peace or reconciliation was not a popular idea. Supporting or participating in the scheme of peace could be interpreted as a form of betrayal to the communities themselves.

Threats were very real, in the Muslim community it could make their blood to be halal (can be killed) and in the Christian community it could be considered as “Judas” or traitor, and both can be hazardous to the safety of workshop participant’s life.

The restriction applied on workshop was also to avoid provocations and attacks on the ideas of peace building movement from those who were humming and supporting the war in Ambon. After the implementation of the first and second workshop went smoothly and demonstrated increasingly larger support for the peace movement then the Third Workshop in Yogyakarta was opened to the public. Escalating support on peace building movement can be observed from the growing number of participants in the first, second and third workshops.

The strategy to convert workshops from restricted occasion into an open event undoubtedly was already cautiously factored by facilitator and participants of the meeting. By opening themselves to public would be the same as open more space to all parties that support the peace process to join the Bakubae Movement. It was also like a declaration that the Bakubae Movement is a movement of people of Ambon, Maluku and also the entire people of Indonesia. Anyone who supported the peace effort in Ambon could have declared himself as part of the Bakubae Movement and eventually Bakubae Movement was a movement of those that in support of peace building in Ambon.

4. Critical workshop as method of workshop implementation. In fact, before a workshop that later developed into a Bakubae Movement, there has been a workshop conducted by other organizations such as The British Council, which was held in Bali. However, the workshop did not develop and followed by other workshops or became peace movement.

One of the highlights in the workshop of Bakubae Movement was the use of critical workshops method. In every implementation of workshops, was begin with building common understanding on questions like what is conflict, why conflicts occur and what causes conflict in Ambon. From the process, it was expected that there would be participants’ comprehension regarding the

conflict and the causes of conflict in Ambon. In order to ensure a correct understanding, Human Rights values were given to the participants as guidance in understanding the conflict. The values of Human Rights have also become the same standard of participants' point of view in understanding the conflict of Ambon. After having the same perception, then they were encouraged on what kind of role that could be done to build the peace. The course then ended with the creation of a plan of activities after the workshops. Therefore, in the process the participants did not become implementator object, but more to be the subject and speaker of the workshop. The facilitator position was only to help dynamizing the process and assisting to create the new comprehension to be more structured for the participants.

5. The implementation of a new understanding was conducted outside Ambon. The new comprehensions since the first up to a third were entirely committed out of Ambon. First, the reason was the security and safety of the participants. Another important consideration that the events took place outside Ambon was to help participants to avoid the psychological mood of the Ambon conflict, therefore the participants were expected to be able to observe more objectively and serenely the conflict of Ambon. They were temporarily separated from their respective community to see Ambon comprehensively, instead of partially and narrowly on the subject of their community's interests.

To avoid the grouping process of participants based on Muslims or Christians into a process of new understanding, facilitator conducted intermingling engineering. The group's boundaries were disassembled by leading participants into interaction experience with participants from the other community. Facilitators conducted a strategy on little things during the process of workshop, such as arranging Muslim and Christian participants to be in every room. Facilitator also paid attention to the layout of implementation of the new understanding, the formation of discussion groups, dining room layout and other things that led to relaxing atmosphere and to dismantle group's edge among participants.

2. Peace Polls

Another significant activity in stimulating the escalation of Bakubae Movement was polls on peacekeeping activities for three times. The first poll was carried out on around August-October 2000 or exactly after implementation of the first workshop and before the second workshop. The theme of the first poll was to obtain an overview and opinion of the people in Ambon concerning the cessation of violence in Maluku. There were 1.327 respondents that covered Christian community in as much as 30 locations and in 30 other locations within the Muslim community. The main question of the poll was “Whether the community wants this conflict persists? Or should it be immediately terminated?” The results of this poll were: the respondents wanted the conflict in Ambon to be immediately terminated were 85%, while those who answered that the conflict continued were only roughly 15%. The results of this poll became the foothold for continuation of the second workshop implementation in Bali in October 2000.

The second poll was carried out in the same year in November-December, or after the second workshop in Bali and before the third workshop in Yogyakarta. In the second poll, the topic was relatively equal but also concerning security, economy, education and conflict situations or the cessation of conflict. The respondents to the poll were 2000 people from Muslim community and 2000 Christian people. Data from the two polls showed that: 97.5% of the Ambon society wanted the conflict to immediately cease, while 2.5% other wanted the conflict sustained.

In 2002, to be precise in March – April, the third poll was organized. At that time the Bakubae Movement has lasted for two years, and as a movement it has getting bigger with growing amount of supporters. Various backgrounds of people that involved in the movement: community leaders, religious leaders, women, youth, refugees, war group leaders, journalists, academics and also lawyers. In several occasions, this movement also facilitated the confluence between the police and the military at some of the hot spots of conflict. This movement was often referred to as a peace movement from beneath or victim’s society or ‘Bottom up’. It was attributed because there were other peace building efforts in Ambon which had

been carried out by local or central governments or often referred to with its approach from the top or the 'top down'. The main topic of the third poll was to find out the people's opinion about peace approach from the root base such as applied by the Bakubae thus far, when already there had been government's effort that facilitating the peace of Maluku society through Malino II Peace Agreement.



Source: Bakubae Movement

The third polling was conducted in three 30 locations in Ambon which covered both Muslim and Christian areas. The range points of area also reflected sections of villages, markets, and shelters. Therefore, it was expected that from those assorted points a comprehensive and representative data can be obtained that indicated the opinions of Maluku people. From results of obtained data in the field showed that: 41.1% of the community of Ambon was optimistic that the conflict can be resolved. The interesting factor was about the comparison of peace approach between top down and bottom up methods, which majority of Moluccan society preferred to trust more and chose the

approach coming from below as a method that can resolve conflicts in Maluku. Meanwhile, 22.5% other believed more on the approach from the top that can resolve conflict on hand.⁶⁰

The use of polling methods in the process of building peace in Ambon was not the first action in the world. In fact, this method has been conducted since World War II dubbed with the term of Public Opinion Survey for the sake of conflict analysis and subsequently also in the 1990s were widely used in North Ireland to support resolution and negotiation of conflict.⁶¹ However, as effort of resolving conflict and peace building process in Indonesia, the use of polling method could be said to be an advanced and strategically step, as well as the first point in time that was conducted particularly in horizontal conflicts.

An interesting note from the use of polling method in peace building in Ambon was: polling could become a strategy resource to be used to support the efforts of peace for several reasons, among other things:

1. Polling reinforced legitimacy of peace movement. Thoughts, ideas and efforts of peace have always been facing in a straight line with the highly touted conflict campaign by proponents of conflict and war. Moreover, when the intensity of conflict has been high and involved many parties and brought losses and casualties for the parties in conflict. Then the resentment and hatred of the parties in conflict would escalate and in the end violence would appear as solution. In these conditions, the concept and idea of peace efforts would become minorities' voice against the mainstreams.

The notion of peace at a time when conflicts were fiercely ensuing could also be interpreted as unpopular, suspected, and questionable idea. The Ambon conflict forced people to think dichotomically: Muslims or Christians. Everything was divided and grouped into two camps. The level of distrust and suspicion between groups was soaring. Everything single thing was inquired to identify its position, as well as the surfacing of peace effort, it would be questionable whether this idea was from Muslim or Christian. Deeper questions for the people who seek peace that became mandatory questions were, "Who are

you? And which side are you on? “Every peace attempt would be destroyed if one could not explain palpably the answer to these fundamental questions. Through this poll we obtain answers from the public straightforwardly about their opinions and desires on peace. Because it represented the voice of society, then the poll results could become indisputable answer. In the end the polls were qualified of giving legitimacy to the peace effort. From the polling performed by Bakubae Movement, the legitimacy was clearly visible as soon as the implementation of first workshop in August 2000 then followed by the execution of first poll whose results showed that for the most part people were in favor of peace efforts. The Polling results became the legitimacy to continue peace Endeavour process by implementing the second workshop in October 2000 in Bali

With the polling results, people’s questions and suspicions about the peace effort were answered, that Ambon people yearned for cessation of conflict and for peace building. Public suspicions of Bakubae Movement were satisfied by poll results that supported the peace efforts models implemented by the Bakubae Movement.

2. Polling was a tool to evaluate the undertaken peace efforts. Various endeavors for peace in Ambon would ultimately be returned to the people of Ambon itself. Hence public accountability of a peace effort must be made early on by engaging the society. Through this polling as a means for the public to assess whether a peace effort would correspond to their expectations or not. Bakubae Movement from the beginning has put a poll as a communication medium between the activists and the actuator of Bakubae Movement with the communities of Ambon.

With the results of polling implementation, indirectly gave input to the movement regarding further efforts that ought to be done to resume the peace process. So that the peace efforts achieved by Bakubae Movement would be in accordance with the people’s wishes and obtain extensive support. Before Bakubae Movement was publicly opened to society on the implementation of third workshop in December 2000 in Yogyakarta, both of completed polling showed that the peace efforts made by the Bakubae Movement were fully supported by the people of Ambon. It

elevated assertion for the movement to open up to the public regarding the undertaken peace endeavors.

3. Polling was a feat to boost the ownership of peace efforts. Because the circumstances could not allow for organizing meetings of peace effort process, in that case the entire workshop was always organized in other location except in Ambon. It also became a question addressed for Bakubae Movement. The implementation of peace effort that had been conducted outside Ambon seems to keep peace efforts away from the community of Ambon itself whom wanted peace on their territory. Besides, the peace efforts always involved only a small number of people, thus would give the impression that it was an elitist effort.

The actual problem was not a question of elitist issue or that the effort was far away from the people of Ambon, but more on the involvement and ownership of the peace effort itself. A poll conducted by the Bakubae Movement, at one point was able to bridge these problems. The polls that have been conducted after implementation of the first and second workshops indirectly communicated the peace efforts which have been taking place to the general people Ambon. Polling was also a media to spread the idea of peace in society. By these polling the peace efforts that have been conducted by a small fraction of society to disseminated all the way through society and in the end the ownership of peace efforts would not only through a handful of people but belonged to the population. The society eventually would become the owner of presented peace effort. Thereby, community support to the peacekeeping efforts could become larger because the idea of peace was not unexpected to them because it has already been communicated via the polling.

4. Polling could be used as a means of correction on the existing peace efforts. In general, the form of peace efforts conducted in Ambon was carried out by the Government and civil societies or the NGOs; whether local, national and international. The real form of the Government's efforts to seek the cessation of conflict was by means of security approach by sending police and military apparatuses to Ambon. The Government also undertook efforts to relieve the burden of conflict impacts by providing humanitarian aid in the form of daily necessities as

well as refugee shelters. Other forms of Government effort was by facilitating the peace dialogue, Malino II Peace Agreement. The Government's overall efforts were rather dimensionally a 'top down' manner. On the other hand, assorted peace efforts which have 'bottom up' character were carried out by NGOs. Through the third poll in 2002, subsequent to the Malino II Peace Agreement, the obtained results showed that the majority of Ambon communities supported the bottom up efforts of peace.⁶²

Therefore, the completed polling also became a tool of criticism and correction of the community toward the peace efforts performed by the Government. Top down approach was not fully proficient to resolve conflicts and problems in Ambon. The approach must also be balanced with the bottom up approach, and the combination between these two approaches would provide guarantee that the accomplished peace efforts could be sustainable.

The question of utilizing polling as a tool to support peace building effort was always exposed to the credibility of polling organizer. If the organizer of the poll did not possess credibility, then the polls could become destructive and potentially threaten the ongoing peace efforts or might grow new problems in conflict areas. Therefore, the polls implemented by the Bakubae Movement were not merely looking for opinions and voices of Ambon communities; but the implementation of polling was also carried out gradually in conjunction with credibility building of the Bakubae Movement itself. So in the end, results of the polls conducted by the Bakubae Movement could be accepted universally. In addition, the efforts that have been undertaken in the implementation of the first and second polls were carried out as single unanimity of the entire workshop process of Bakubae Movement.

3. Roadshow of Peace

In a short time after the Bakubae Movement considered as peace movement of Maluku people, was open to public, precisely in the implementation of Third workshop in Yogyakarta; the movement performed a variety of efforts to promote the peace both domestically and internationally. Peace activists in the Bakubae Movement were actively conducting a 'road show'.

The road show was performed by communicating with a number of key persons in the Government, as well as in legislative body and security apparatuses. With this effort, it was expected that those parties due to their position and function could perform more tangible efforts to terminate the violence and to create peace in Maluku. The road show also performed to several community groups associated with Maluku or Ambon. One of them was meeting with the community of South Sulawesi, in Macassar. It was important because the largest migrant communities in Maluku particularly in Ambon Island were those from Bugis and Makassar ethnic groups of South Sulawesi, along with Buton ethnic group from Southeast Sulawesi.

In the road show, Bakubae Movement components provided information related to the conflict in Maluku, situation update of Maluku, as well as peace building efforts in Maluku that have been conducted by Bakubae Movement of Maluku. On several occasions of meeting, some efforts to rectify existing issues were conducted in order to clarify the perception on Maluku conflict. The meeting also sometimes ended with an agreement of cooperation and mutual support to the peace conception in Maluku.

Tabel 8 Bakubae Movement's Roadshow

| Time | Activity |
|------------------|--|
| 12 December 2000 | YLBHI Office, Jakarta. Press Conference. |
| 14 December 2000 | Meeting with the Chairperson of House of Representative of the Republic of Indonesia (DPR-RI) in order to urge the Work Committee for the Resolution of Maluku Conflict to return to work, to recommend the formation of Fact Finding Team to uncover the problem root of conflicts in Maluku and urge so that the Fact Finding Team would provide monthly reports to the public |
| 15 December 2000 | Meeting with East Java communities in Surabaya to explain as regards the conflict of Maluku. This activity was directly facilitated by YLBHI and LBH Surabaya |
| 18 December 2000 | Meeting with South Sulawesi communities in Makassar, with the aim of explaining the conflict in Maluku. This activity was facilitated directly by YLBHI and LBH Ujung Pandang |

| | |
|-----------------|--|
| 9 March 2001 | Meeting with the Chairperson of House of Representative of the Republic of Indonesia (DPR-RI) to urge the revitalization of Work Committee for Maluku and the foundation of a Fact Finding Team to seek the root of conflict in Maluku. Next, the meeting were also conferred with the President of the Republic of Indonesia to insist on the Government and its corps to act responsively and proactively in order to resolve conflicts of Maluku |
| 12 March 2001 | Meeting with the Governor of Maluku as the State Coordinator of Regional Civil Emergency (PDSD), which was resulting to an agreement of cooperation activities between Bakubae Movement with the PSDS in the form of creating peace zone in Nania, as well as development of public awareness for termination of violence |
| 13 March 2001 | Meeting with the Chief of Staff for or Kasdam Pattimura and officers from Territorial Military Command and the Police of Maluku to discuss further the peace zone program and determination of zone of peace' location. |
| 9-13 April 2001 | <p>Peace campaign to Belgium to confer with Members of the European Parliaments from the Netherlands, the United Kingdom, Germany, and Portugal. The team consisted of Bakubae Movement: KH Hasyim Muzadi of the Nahdlatul Ulama, Ismartono of the Indonesian Bishops' Conference (KWI), Margaretha Hendriks as a representative of the Fellowship of Indonesian Churches (PGI), Thamrin Amal Tomagola from University of Indonesia, Ignas Kleden from Go East Institute, Bishop of the Maluku islands Mgr. P.C. Mandagi, accompanied by Nasruddin Sumintapura (Indonesia's Ambassador to the European Union).</p> <p>The recommendations derived from this meeting were the need to form an Independent Investigation Team to search for the root of conflict in Maluku, the need for peaceful campaigns on an ongoing basis, efforts to return refugees to areas of origin, the formulation of the Law on Witness and Victim Protection Program for law enforcement efforts and conflict resolution, the European Parliament's support for the post-conflict community empowerment activities.</p> <p>Meeting with the people of Maluku in the Netherlands, as well as with the Union of the Church and Muslim Federation of Netherlands. This meeting was to explain about the conflict in Maluku..</p> |

Source: Travelogue of Baku Bae Movement and Interview with Various Parties

From various road shows conducted by Bakubae Movement, there were a few strategic things that made road show to be effectively utilized as one of methods to encourage peace building in Maluku, namely:

1. Road show could increase extensive support to the peace efforts. Through direct confluence with key figures in the Government, legislative bodies, and Maluku community in the Netherlands, then they could refine their perception and viewpoint on the

conflict and peace efforts in Maluku. They could hear directly from Bakubae activists from Maluku regarding the condition of existing conflict. The Bakubae Movement activist came from both Muslim and Christian communities, so they could give a more objective illustration about what happened in Maluku. Thus, the meetings in the road show also could be interpreted as a form of peace campaign.

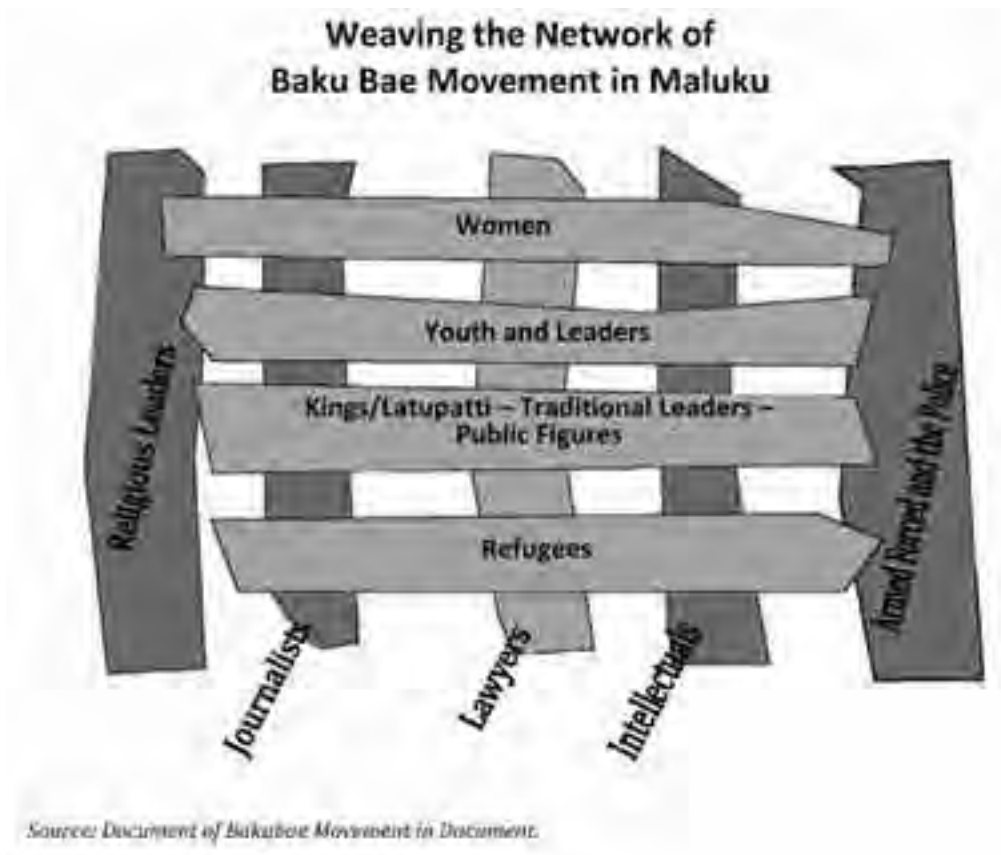
The willingness of political figures and Government officials who care to receive the visit of Bakubae Movement also politically showed support for the peace efforts committed by Bakubae. Having a favorable reception from those personages during the road show made Bakubae Movement to be increasingly acknowledged far and wide. This movement became so synonymous with the efforts for peace in Maluku, so anyone who reject or criticize the movement could be considered as not in favor of peace efforts in Maluku. Thus, little by little, conflict campaign that had been carried out by the parties whom want the conflict started to deal with a progressively more enlarged peace campaign.

2. Road show became tools to convey urge and demand to the Government to act further in terminating Maluku conflict. A chance of appointment with the President of the Republic of Indonesia was made use to ask for his support for the peace efforts undertaken by the Bakubae Movement, yet to be used also as an appropriate moment to convey the urge and demands to the Government on its role in the cessation of conflict.

As well as the meeting with the Chairperson of the House of Representatives of the Republic of Indonesia, it was utilized to encourage the parliament to be more active for peace efforts to through its function and role. Besides, the meetings with international society in the European Parliament had come to an agreement to play bigger role particularly in the development of society in the aftermath.

4. Organizing Peace

Peace effort committed by the Bakubae Movement also entered into organization domain. Some people from two communities, the Muslims and Christians were encouraged to be part of peace movement. Organization framework of peace made by this movement reflected from the movement's perspective regarding Maluku conflict. The movement analogized the conflict in Maluku just like fabric that was torn in two. A part was the Muslims and the other part was the Christians. The fabric was consisted of small weaved yarns and ultimately it formed a single unity. With the rip on the fabric of Maluku society, inevitably to put it back together the threads on hand needed to be plaited one by one. Threads were spliced to each other, and then after they were connected one to another then the process of weaving of Maluku cloth all over again could be done.



The process of connecting the yarns of Maluku society was conducted by Bakubae Movement specifically to support the organizing efforts committed by Alliance of Independent Journalists, or AJI, who strives the quality of media coverage of Maluku to be more objective about the situation in Maluku. Segregation area owing to the conflict has caused Muslim journalists unable to access the news within the Christian community's territory, or vice versa. In the end the segregation of coverage imposed on the segregation of media.

During the time of conflict some newspapers were considered as more likely to be more Christian, i.e.: Siwalima and Suara Maluku. While the media that considered as more likely to be Islam was Ambon Express. Un-objective media coverage could goad the conflict keep going and ultimately threatened the peace efforts. Supporting pro-peace media with peace journalism perspective coverage instead of war journalism was a smart and tactical strategy conducted by Bakubae Movement. In January 2001 in Bogor, Bakubae Movement and AJI organized workshop on conflict transformation for 31 journalists from Maluku and North Maluku. The workshop was followed by a second workshop held in Poso, South Sulawesi in June 2001 with participants amounted to 30 journalists. As a follow-up of the meetings then the Maluku journalists and AJI established Maluku Media Center (MMC) in Ambon as a shared medium of Maluku journalists to perform peace journalism media coverage on situation of conflict in Maluku.

In order to start organizing intellectuals and educators, a workshop on conflict transformation for intellectuals, teachers and educators was conducted on 16 May 2001 in Macassar. This Workshop brought together intellectuals with Maluku heredity, either from Maluku or residing outside Maluku, for example those who resided in Makassar. Educational situation in Maluku were destroyed due to the conflict, in addition to a variety of educational infrastructures, the schools also have become an inevitable part of segregation. Many schools that previously have had pupils from a mixture of Muslim and Christian communities, due to the conflict then only had students from only one of the communities. The workshop was conducted by more specifically discussed the role that could be performed by intellectuals and educators to stop the violence in Maluku as well as the required things that needed to be done to improve education, including in the

aftermath of conflict. Some of these things have become part of the action plan that would be committed after the event.

Society organizing effort was also implemented for the 'King' or village chief from the Muslim and Christian communities. Role and position of the Kings were very important in order to stop the conflict in Maluku. They were the leaders of their community in the village level units where the youth involved in the conflict were originated. If they could be involved in organizing the peace organization effort, then striving to end up violence and to build the peace could be started at the village unit. The initiation step is committed by organizing a meeting of Kings from Christian community on June 2, 2001, whereas the meeting of the Kings from Islamic community was organized in Hitumeseng on June 3, 2001 in Ambon. From both meetings, there was an optimism regarding the peace building in Maluku.

The youth also became an important part of peace organizing process made by the Bakubae Movement. As an initial step, the organizing was implemented through workshops for youth from the islands of Ambon and Lease, which was held on 9-11 July 2001 by the Joint Committee of Bakubae Maluku. The workshop participants amounted to 21 young men from Ambon, Haruku, Saparua and Nusa Laut. The workshop was also applied by means of critical workshop method; participants were assisted to find correct knowledge about the conflict, and then jointly seek the root causes of the conflict in Maluku and in the end the participants could see the position and role they could do for the development of peace in Maluku. The conclusions obtained from the workshop were the need for an effort to prevent the widespread segregation and to make Maluku as a safe place for all children of nation.

One of society components in Maluku who had vital position and role in the community was religious leader. Organizing effort for them was important for the development of peace in Maluku. Hence, the Bakubae Movement on 23-28 July 2001 organized a special workshop for religious leaders of Islam, Christians both Protestant and Catholic from the islands of Ambon, Lease, and Seram. The topic of the workshop was devoted to religion and violence. The conclusion of the meeting was how religious leaders could restore the function of religion to glorify human and stop the violence.

The endeavor to spread the spirit of peace-building was also addressed toward the leaders and key figures in Maluku through meetings and visits undertaken by the Bakubae Movement as a component of the further efforts of peace organizing effort. The main topic of these meetings was to organize peace through the Deliberation of the Maluku Community.

Tabel 9 Result of Baubake Movement's Activities

| Time | Activity | Result |
|-----------------------|--|---|
| 22 - 26 October 2001 | Meeting with academics of Maluku | The academics' commitment to be involved through their position and role in the termination of violence and post-conflict community empowerment efforts in Maluku |
| 30 October 2001 | Meeting with the Chairman of the Crisis Center-Christian Church of Maluku. | Understanding on the importance of Maluku Society Deliberation . |
| 6 November 2001 | Telephone communication with the Bishop of Ambon. | Support to the Maluku Society Deliberation. |
| 7 November 2001 | Meeting with Chairman of the Muslims Imarat Agency of Maluku (BIMM) | Understanding on the importance of Maluku Society Deliberation . |
| 9 November 2001 | Meeting with Civil Emergency Authorities (PDS) Maluku. Governor M..Saleh Latuconsina | Governor's support to the implementation of Maluku Society Deliberation. |
| 10 November 2001 | The meeting with the King of Passo and refugees from Waai. | Clarification and explanation about the implementation plans of military and police apparatus meeting with communities of Baguala-Passo |
| 12 November 2001 | A meeting with the 16 Military Area Command Commander in Chief of Pattimura, Maluku | Clarification and explanation about the implementation plans of military and police apparatus meeting with communities of Leihitu peninsula and Baguala-Passo. |
| 23 - 27 November 2001 | Two eorkshops of Society the Police and Armed Forces in Muslim and Christian areas. | There was an increased awareness of community on the importance of termination of violence and the effectiveness of security apparatus' role. |

Peace organizing by Bakubae Peace Movement became very strategic agenda in an attempt to stop the violence and for the peace building effort. At least there are some lessons from peace organization process carried out in Maluku, including;

1. Organizing conducted by the Bakubae Movement was an effort of network expansion and peace support. Peace initiative always started with a small effort that sometimes seemed impossible to

do during an ongoing conflict. Peace efforts could not only and were not simply done by only a handful of peace activists, but also they have to involve as many people as possible. Hopes for peace that were originally owned by only a small fraction of society should be expanded to become a large and realistic effort through dissemination of the idea of peace to as much components as possible of broader community. Hesitation toward peace should be transformed into a confidence to realize it.

Organizing Bakubae Peace Movement aforementioned using frameworks such as weaving a torn fabric. Threads of society components: religious leaders, community leaders, youth, perpetrators of conflict, women, intellectuals, and others, were connected one by one. The next step was weaving the yarn back in order to become a fabric of Maluku society. For a safeguard, it should be framed by meetings with various government leaders, religious leaders, community leaders and also security apparatuses. By expanding the network of the peace movement, indirectly would enlarge the potential support for the peace movement in Maluku.

2. Peace organizing raised a sense of belonging toward the peace. Peace organization should become an important agenda in an attempt to terminate the violence and for peace building process. Great support from various parties to the peace movement could not be obtained when there was no emerging sense of belonging for the peace effort. Through the peace organization that conducted by the Bakubae Movement, the dissemination of ideas and the peace efforts were also followed by fostering a sense of belonging on the subject of the peace movement itself. With the sense of belonging for peace movement that was gradually more wide-spreading in the community, then support for peace would become increasingly significant.

Method of critical workshop helped improve the sense of belonging for the peace movement, since workshop participants build their own awareness regarding comprehension on conflict and then made peace effort due to their capacity and role. Through meetings with key figures and leaders of Government as well as the security apparatus, the results of various peace efforts were shared in order to become element of their agenda.

3. Peace organizing conducted by Bakubae Movement was also a peace consolidation effort and a struggle to dominate the discourse as well as to shift issue of conflict mainstream into a mainstream of peace. Peace organization committed by Bakubae Movement sought to reach out to all elements of society. Through workshops and strategic meetings, various wishes of peace efforts were distributed and consolidated so that they became larger and gained support from the public. This effort then slowly began to dominate public discourse and peace issue became the main theme of public discussion. Supporting the peace efforts then would be interpreted by the public as a good and essential thing to be done.

5. Establishment of LBH Bakubae

At the workshop meeting in Bali, the voices on law enforcement issue have begun to emerge. It showed that the problem of conflicts in Maluku was inseparable from the law enforcement issue. As presented above, those law enforcers from the police, prosecutors, judges and attorneys in Ambon also suffered the impact of segregation because of the conflict. In the framework of peace organization, then lawyers should be part of the efforts to support termination of violence and the construction of peace in Maluku. Since Maluku conflict persisting, the position and role of lawyers to provide legal aid were very significant at the level of the police force up to the Court. However, the granting of legal aid was in partial dimension only for their own's community. In the implemented legal aid effort often the lawyers seemed to be a provocateur that exacerbates the issues in the media and then heated the atmosphere of conflict in Maluku.

The efforts of organizing lawyers from two communities; Church Lawyer Team and MUI Lawyers Team became simply unavoidable for the success of the peace organization in Maluku. At several meetings organized by the Bakubae Movement workshops, even on the first meeting already involved participants who had legal representative background. .However, by the end of 2001 there has been no specific effort which led directly toward the lawyers.

On January 19, 2002 in Jakarta a meeting of Maluku lawyers was held. Meeting attendees were the lawyers of two communities, the Muslims - members of the MUI Lawyers Team, and Christian - the

Church Lawyers Team members. As in the implementation of other workshop, in this occasion the facilitator engineered various stuffs to remove boundaries among participants as examples of Muslim and Christian participants placement in one room, as well as some of the games on the sideline of discussions to lighten the atmosphere.

Creating Atmosphere during Maluku Lawyers Workshop



Source: documentation of Bakubae Movement Maluku

Workshop was also enriched by inviting some spokespersons to add to participants' perspective regarding legal aid that corresponding to the development of peace. One of the speakers was Bambang Widjojanto, Director of the YLBHI, Dadang Trisasongko and Munir. Meanwhile the workshop was facilitated by the facilitator team under headships of Ichsana Malik and Boedhi Wijardjo. The values of Human Rights became one of important materials in the workshop. Workshop of lawyers was one of intensive meetings due to discussions and debates among participants. This could happen because the participants were lawyers who were familiar and had the ability to argue in trial.

After a meeting of Maluku lawyers in Jakarta, the lawyers from both Muslim and Christian communities agreed to form a shared medium to maximize their role in efforts to terminate the violence and to the construction of peace in Maluku. They formed the Committee of Truth, Justice Enforcement, and Termination of Violence (KPK2PK). Through this media Maluku lawyers no longer conducted advocacy or legal accompaniment only for their own community groups. They jointly began providing legal advocacy and accompaniment at the communities in need regardless their religious background. The provision of legal aid also has started to incorporate these aspects as well as the values of Human Rights.

Through this KPK2PK Maluku, statements of provocation from the lawyers in media that sometimes heated the atmosphere of conflict in Maluku began to be replaced by a joint clarification about the incidents of violence. They also often made statements, pressures and demands to the stakeholders to seek the cessation of violence, including to security apparatus both at national and local Government levels. Through the media, the voice of Maluku lawyers became united, and aimed at encouraging the peace building.

After some time, KPK2PK Maluku developed into a solid media for Muslim and Christian lawyers, then on 21 to 23 April 2003 a Deliberation of Maluku Lawyers was held in Ambon. This meeting agreed to the establishment of Legal Aid Foundation in Ambon. And on the May 8, 2003 Maluku Bakubae Legal Aid Foundation established that based in the city of Ambon. Next via Bakubae LBH various program activities were conducted jointly by Maluku lawyers, such as institutional strengthening, capacity building on Human Rights, and a variety of legal advocacies for society in post-conflict Maluku.

6. Empowerment of the King

The next stage of the Maluku Bakubae Movement efforts was to make the peace movement belongs to the community. Every effort of peace in Maluku must persist and sustainable. Making the peace movement into the entire of Maluku society movement, it meant that Bakubae should belong to Maluku people. Hence, the Bakubae Movement initiated by Maluku and non-Maluku people, must be returned to the Maluku community. Therefore, Maluku Bakubae

Movement committed empowerment of Kings or Chief of Villages in Maluku as leaders of the smallest Moluccan community unit.

In the early stages, the Bakubae Movement conducted meetings of 16 Kings from the Islamic and Christian communities that was held in July 2002. The meeting intended to formulate their role in peace building and reconstruction after the devastating conflict in Maluku. The meeting then continued with the Deliberation of the Maluku Latupatti on 9-11 January 2003 at the campus of Pattimura University, Ambon. This meeting was attended by 110 Kings all over Maluku. The great meeting generally gave the impression on Maluku community that the increasingly peaceful atmosphere in Maluku must be constantly maintained and peace building must carry on. Fortified with this meeting, then the Kings organized themselves in a medium called Maluku Latupati Assembly

LESSONS LEARNED

The legal aid model that was developed to respond to violent conflict in Maluku became very unique with the formation of Bakubae Movement of Maluku. Various other strategic efforts through informal and formal meetings were carried out to support the efforts of peace organization in Maluku. Valuable things that became important lessons are the following:

1. Spirit of the Bakubae Movement was based on the voice of victims. This movement put the victim's voice as a foundation to encourage the cessation of violence and the construction of peace. Violent conflicts which occurred in Maluku have taken many casualties from both Christian and Muslim communities. In other words, the voice of the victims was the voice of the entire community of Maluku. The use of this spirit was what made the movement to be impartial to any party and could be accepted by all parties since everyone was a victim of the violent conflicts that have happened. Bakubae Movement is a movement of victim's society of Maluku.
2. Eating hot porridge strategy. Strategy of Maluku Bakubae Movement was carried out by starting from building awareness on termination of violence and on peace building process amid

small groups. Then it developed and involved a lot of people. The initiation of the movement started from a handful of people who have the will, the meeting of 12 persons, and followed by the meeting of 40 people, subsequently of 80 people and expanded further and involved all the components of Maluku society. Like eating a hot porridge, we cannot directly take the middle part since it is hotter. It should be started from the edge of the bowl since its cooler. A bit-by-bit and continued to extend, and ultimately could take the whole porridge without feeling the heat.

3. The use of understandable language for communities of Maluku. The name of the movement is 'Bakubae' which is the native language of the Moluccas by the meaning of mutual amity. Since the beginning Bakubae Movement did not use the word 'peace' to identify the movement because the word was rejected by all communities. The initiative to replace the word 'peace' has finally come to fruition with the advent of the word 'bakubae', using the local language then this peace movement seemed to coalesce with Moluccan community because for all people of Maluku, 'bakubae' has a similar meaning so that it can be well received and had the support from the community and the Government.
4. The use of 'movement' rather than 'organization or institution'. Since the beginning Bakubae Movement was not directed to form an institution or organization. Milestones or the cantilever of the movement were some organizations, but the Bakubae itself is not an organization. There were several advantages in using 'movement' instead of 'organization', i.e.:
 - a. There was an expediency of choice owned by a movement. Such latitudes: convenience to be accepted by various parties and society because it did not represent one of the groups. The movement then could spread the message of peace more widely and reached out to all parties because everyone who wanted peace in Maluku could claim part of the Bakubae Movement.
 - b. Avoid the inevitable management problems and institutional structure. However the frequent arising constraints were

when facing with other institutions that would like to support this movement. The accomplished solution was to use institutional management as a pillar in dealing with those institutions, namely LBH Jakarta that in a managerial manner represented the interests of Bakubae Movement.

5. There was a process of transformation and exit strategy from the Bakubae Movement. Empowerment conducted by the Bakubae Movement was not only aimed at people but also on the activists involved in the Bakubae Movement. When the strength of Bakubae Movement in Maluku islands was already well developed, then the process of exit strategy began to be developed by performing a 'submission' of Bakubae Movement to the people of Maluku
6. Diaspora activists of Bakubae Movement. The movement of Bakubae activists to other violent conflict territories in Indonesia and abroad is one of very important things. Empirically, the sharing of experiences about bitter sweet of being involved in the process of Bakubae to fellow activists became very valuable.

CHAPTER IV: LESSONS LEARNED

A. CONFLICT AND SOCIAL INJUSTICE

Five conflict areas described in this book has been adequately describe the diversity of large-scale conflicts in Indonesia, though it has not been able to describe representatively of conflicts in Indonesia. However, the five conflicts presented sufficient to represent a picture of the vulnerability of social disintegration that have taken root in the local communities' development. These conflicts also provide two important lessons, namely; i) how an authoritarian political regime backed by military force, instead of want to resolve the problem of poverty and social segregation, they are in fact taking advantage of social vulnerability and conflict as the source of their legitimacy for emergency power, ii) how the situation of the political transition to democracy has its own vulnerabilities in managing social integration with more democratic and rule of law.

Structurally, the conflicts that developed in the five areas that are the focus in this book (Papua, Aceh, East Timor, Poso and Maluku) rooted in social injustice problem that was born as a result of the practice of authoritarianism and Indonesia centralism power for nearly half a century. Historical claims over territory, natural resources exploitation practices that marginalize local communities, ingrained corruption, public service discrimination and state of impunity against human rights violations, has become a fundamental socio-political to the territories vulnerability of the conflict, including the strengthening horizontal inequality sentiment among its citizens. In these areas, structural problems, with different scale and intensity, has given rise to horizontal conflicts based on tribal, groups, religious and territorial entity.

In addition to these domestic factors, there are other factors that come from the international politics dynamics influence, such as the Cold War influence between the two power blocs of the world; United States and the Soviet Union. These dynamics that developed in the seventies until the eighties contributed motifs to the annexation of East Timor by Indonesia. Although later the Cold War ended with

the collapse of the Soviet Union bloc, which then marked the post-Cold War era, and followed a new era, namely globalization, led to world power polarization. Ambon, Poso, Aceh and Papua can not be separated from these impacts, a change in the political landscape and the emergence of a new order that sweep the world.

Even now conflict in Papua is still like a fire in the husk. The potential of violence remain below the surface and at times will emerge when the situation allows. Local factors, national and international could jointly or individually contribute in giving birth to moments of violence in Indonesia's most eastern region.

Among the five conflicts presented in this book, two of them; conflict in Poso and Ambon, are within the context of Indonesia's political transition. In this period, Indonesia has just entered the initial stage of political liberalization. Freedom of expression just get a broad space, while the power in the country fragmented, and at the same time, the forces of the authoritarian New Order seeks to recover his powers, against the current major political reforms that are leading to a more democratic political order. The conflict in Ambon and Poso, in addition to prompt the emergence of violence-based primordial organizations, also gave birth to a new social movement for peace amidst civil society in Ambon, Poso and Jakarta.

Meanwhile Aceh, Papua and East Timor despite a long-standing conflict, yet the reformation process that occurred in 1998 had a significant influence on the spirit and the civil society movement in these areas against state repression and injustice. In this context, violent conflict that arises then placed integrated to the process of political reform and governance which is underway. As mentioned in Chapter III, the 1998 reformation has affected the organization of resources fairly strong and structured from existed socio-political group that then created violent conflict friction.

B. SEPARATISM AND INJUSTICE IN THE REGION

Separatism issue during New Order regime described above is actually not a new phenomenon in the history of Indonesia. Some common thread can be drawn from the early history of independence which is met by resistance to the central government

who are deemed no longer able to meet the region aspirations. The history of Indonesia recorded, once APRA (Legion of Ratu Adil) conducted a coup based in Bandung and surrounding areas in 1950, PRRI (Revolutionary Government of the Republic of Indonesia) in 1958 based in the region of West Sumatra and in the same time the uprising PERMESTA (The Struggle of the Universe) based in North Sulawesi. Andi Aziz outbreak in Makassar in 1950, and at almost the same time, uprising RMS (Republic of Maluku Selatan) occurred in the town of Ambon and Seram. All the rebellion faced with armed force by the central government in power at that time. Not everything was crushed completely. In RMS rebellion for example, organization leaders and supporters moved to the Netherlands and still fight for the idea of an RMS in another country.

In the New Order era (1966 - 1998),⁶³ crushing the separatist movement remains an important national political agenda along with the increasing amount of power that the Indonesian military gain in the governance structure. The conflict in Aceh, Maluku, Papua and East Timor are seems can no longer resolved through peaceful means.

The central government also seems to enforce the five areas as military operation target on behalf to crackdown on separatist movements. The military operation, which is institutionalized and sustained by a permanent military territorial structure to this village level,⁶⁴ lasted between twenty to thirty years. During that time, the practices of human rights violations occur intensively.

C. CONDITION OF LAW AND HUMAN RIGHTS AT CONFLICT AREAS

In the five areas of conflict described above, conditions of law and human rights can be a factor for the surge and enlargement of conflict and injustice. Repressive laws and impartially, enforced by corrupt officers, often become fertile ground for the rise of crime and gang violence. Practice of ignorance from the state against various forms of crimes and human rights violations indicate a serious problem with the legal system in the region. If many violent practices are not followed by enforcement action, then it will give a message to the public that the law are into the hands of every person.

Meanwhile, the application of highly repressive and excessive laws using military approach in conflict areas has resulted in various case forms of serious human rights violations. It was occurred mainly in Aceh, Papua and East Timor. In this situation, cases of kidnapping, unlawful detention, murder and staged state judiciary often occur. In fact, the law does not work anymore, no legal proceedings against a variety of violence committed during the conflict, whether committed by the state apparatus and society.

Fair trial and impartial is too fancy for those seeking justice in conflict areas. Law enforcement agencies, such as police, prosecutors and the courts, generally do not have sufficient independence to be able to administer justice fairly and impartially. In fact, of the five conflict that are the focus of this book, not all of them were able to apply the optimal law enforcement. In Ambon conflict for example, even now, when the area was already entering the post- conflict phase, the country has not been able to commence proceedings the perpetrators of violence at any stage. The existence of judicial proceedings in Ambon conflict apparently does not become a priority agenda of the state and society. This is understandable given that the conflict in Ambon is a conflict that comes to the surface as horizontal conflict involving two groups of people.

On the contrary with the conflict in Ambon, in Poso conflict the state has the initiative to carry out a judicial process against those who are considered as the actors responsible for the occurrence of cases of violence in Poso. The process and judicial decisions in this case became the public controversy, though then the court ultimately sentenced to death three actors.⁶⁵ The process and the decision of the court in this case is very controversial because some people consider that the court hearing the case does not have full independence due to political pressures from the conflict involved parties. The judicial process is also organized to prosecute military and police personnel who are considered to be involved in the violence at Poso.

Another example that can be taken from the conflict in Aceh; in the case of premeditated murder of Tengku Bantaqiyah (one of the prominent leaders in Aceh) and his students, the court considered not capable to reveal the actual perpetrators in the ranks of Indonesian military in Aceh. Those who are punished were only the field

executor.⁶⁶ The same thing happened in the case of Papuan political activist murder, Theys Eluay and Aristoteles Masoka, on November 10th, 2001 by Indonesian military members. Adjudication of this case is also considered only punish the field executor, while the ranks of command that should be most responsible for this murder case was never touched.⁶⁷

In the Indonesian legal system, the military has its own judicial system.⁶⁸ Not only to deal with crimes related to the military, but also prosecute military personnel involved in ordinary crime. It is a justice system that is exclusive and impunities. Justice will be more covert and impartiality when taking place in conflict areas.

Recognizing existing conditions of law and human rights, becomes very important for legal aid organizations working in conflict areas. Analysis of the legal conditions and human rights guarantees that subsist in the region, where legal aid organizations are, absolutely must be done so that the legal aid work remains relevant and contextual. It is because the legal conditions are always associated with aspects of human rights protection.

Another thing that should be considered in viewing the condition of law and respect for human rights in conflict areas is the type of political regime in power. Authoritarian political regimes have always put the law and all the devices to protect the interests of the group and certainly not overly concerned with aspects of human rights protection. Indonesia has long had laws on coping with dangers, which include prevention of civil emergency situations and military emergency (Government Regulation in Lieu of Law No. 23 Year 1959 on the Repeal of Act 160 of 1957 and on the Determination of State of Emergency).⁶⁹ In the hands of an authoritarian political regime, the application of these laws often forms negative impact toward human rights protection in conflict areas. During the period of political transition in Indonesia, especially in the beginning of the reformation, in which the new government under civilian politician leadership still not consolidated, also contributed to the uncontrolled implementation of the status determination civil or military emergency in conflict areas in Indonesia, as in Aceh when President Abdurrahman Wahid reigned and President Megawati.⁷⁰

The emergence of sporadic violence committed by organized groups in East Timor and Aceh during the New Order government or in Papua until today, become one of the indications that the level of legal credibility in the region is experiencing a slump. Society is in a climate of fear because there is no protection guarantee from the state. Victims of violence and their families feel no chance of getting justice and other community members feel their safety is threatened. In fact, when the state apply emergency laws in both areas over the years, a sense of security and the opportunity to get justice was actually getting worse. The state presents as part of the forces that threaten the safety and fairness they who were not involved in the conflict. Applied Emergency Act which becomes an instrument of state repression to quell the society critical attitude and become the patron for human rights violations that occurred during the conflict.

Discriminatory law enforcement and omission practices can be one of the conflict root causes. In Poso, before the massive conflict occurs, the credibility of law enforcement agencies are undermined by the omission practice of crime perpetrators and violence perpetrated by members of political community or a particular religious affiliation. Since the beginning there was no firm action against criminal cases that occur. Political omission of various criminal cases has created a public perception that the law is no longer present in their lives. Thus, when the criminal practices evolved into inter-group violence, the law enforcement system was no longer able to control citizens' behavior. Furthermore, when the massive violence occurred, practical law enforcement has suffered serious paralysis.

Because power tends to be misused, then the government, with all the apparatus, should be monitored in order to keep running the function of protection and respect for the rights of its citizens. Power in normal conditions likely to be abused especially its presence in conflict situations. The practice of its application in the Indonesia emergency law proves it. In practice, always appears an excessive action, uncontrolled and deviate from its primary function to protect the public interest.

D. NON-STATE ACTOR ROLE STRENGTHENED

Non-state actors intended in this paper are the private sectors (business people) and the community. In the context of Indonesian politics, an important difference between the authoritarian political regimes and transitional political regime is on the extent to which non-state actors took part in human rights violations practice. In the New Order authoritarian rule, businesses that have patronage by state-actors dominated human rights violations practice. Businessmen and political authorities have an inseparable interest. Political relations with a character like this are often referred to as the state corporatism. It is the state that holds control in this relation. The state has the role in providing a guarantee of stability or political order to ensure the business world growth. Cases of human rights violations, often under the guise of public interest, such as the destruction and pollution of the environment, people's land evictions, violence against factory workers are some examples of the collusive relationship between the ruler and the entrepreneur which is often the case in the New Order government.

With a character like that, the New Order government consistently limit the space for civil society, especially NGOs and civil society organizations that are critical to the government and is considered to inhibit the development of business and undermine the sanctity of power. Academic freedom is restricted, off-campus student organizations closely monitored. While the organization with other community organizations, such as religious organizations, student and youth organizations for example, New Order government has managed to control and co-opt them in various ways

In the period after the fall of the New Order, with the state weak political control to the society and the political climate of openness that began to grow, the strength of the community began to rise. Civil society organizations thrive in almost all parts of Indonesia. Political reform in Indonesia is like opening the Pandora's Box. Community organizations that were once confined suddenly come to the surface and very expressive, filling up public space, whatever the motive. All of them seemed wanted to master the fight to influence public policy-making process. They are including the organizations of ethnic background, religion and regional that uses idioms and using violence approaches in fighting for their interests. Their space is

widening due to the weakening of the state role in law enforcement and maintaining public order. Non-state actors of the society elements have an important role in the human rights violations practice during Indonesia's political transition period. Their presence not only represent the interests of their group only, in some cases their interests also coincide with the interests of the political power of groups of older political power but still want to maintain the existence and role of their past.

For the purposes of legal aid work in conflict areas, this trend needs to have special attention. Their presence in the map conflicts in various regions, such as in Ambon, Aceh, Poso, East Timor or even in Papua require a different response to other conflicts that do not include in the conflict area. Use of religion issues and regionalism by armed civilian groups in some areas of conflict is actually accelerating and sharpening inequalities and injustice issues into the conflict background. Using these issues will enable them to mobilize community support.

E. STRUCTURAL LEGAL AID MISSION AT CONFLICT AREA

In order and national political momentum like that, the structural legal aid movement plays its role as part of the civil society efforts. To build peace, promote the principles of human rights by using legal instruments locally, nationally and internationally as a means to protect the people who are victims of conflict.

As a social movement, structural legal aid in conflict areas in general has a mission that includes:

- 1. Protecting and restoring the citizens' rights in conflict area.** The role of protection and restoration of the people rights affected by the conflict is done through variety of ways, depending on the stage of the ongoing conflict. Legal or political approaches can be applied as far as the conditions required are available, whether at the local, national and global. At the stage of the crisis, in which the law is still believed to be the mechanism for conflict resolution, legal approaches through action litigation and inclusive legal advocacy will help increase public confidence in the legal system.

At the limited violence and mass violations stage have occurred, as happened in Ambon conflict, local law enforcement agencies could no longer perform its function, the public has lost faith in the legal system, violence and climate of fear has been widespread and uncontrolled, no law enforcement may again be able to work independently. Even law enforcement infrastructure was destroyed. Thus, at this stage, within the framework of human rights protection, legal aid must take part in an attempt to halt to the violence in conflict areas. This role is carried out intensively by LAI in handling the conflict in Ambon, this role was done through a number of activities such as: investigation, dialogue with decision makers in central and local government, the campaign to get public support for efforts to cease violence, facilitating critical dialogue between the warring parties, facilitating public campaign by leaders or community groups pro-peace, both in conflict areas and outside areas of conflict.

In Papua, Aceh and East Timor, where violence occurs sporadically and systemic, LBH Jakarta and other Legal Aid Institution (LBH) in which are relatively closer or are in conflict areas play an important role in assisting the process of litigation for victims and local criminalized luminaries. In the context of the conflict, the judiciary is maintained functioning, but is already controlled by the government. In the legal and judicial situation like this, it is very difficult to measure the expected litigation can fully restore the victims' rights and their families. To obtain maximum results, legal aid should be able to combine litigation action with more political actions to encourage and maintain the independence of existed judicial institutions. To that end, the public should be invited to proactively participate monitor the judicial process.

When the political system and the local-national law do not support the efforts to cease the conflict and advocate the rights of victims of conflict, the use of mechanisms of international organizations is a choice that must be made. Mechanism commonly used is the United Nations human rights mechanisms and other multilateral organizations in which the State concerned is a member

2. Empower while strengthen the bargaining position of civil society in order they can become an important actors in the whole process of building peace in conflict areas. In conflict areas where there are two communities warring each other, such as in Ambon and Poso, legal aid can also be a gateway for the effort of reconciliation of two warring groups. The values contained in any local, national and international can be extracted and used as a common ground to build reconciliation. Community empowerment is also intended to provide strength and space for community groups, who during the conflict, not having the ability and opportunity their aspirations to be heard. Communities in conflict area, which has a critical awareness and well organized, will be a solid foundation for peace building efforts.

The victims of violence due to the conflict, refugees, women, intellectuals, journalists, community leaders, community and religious leaders or youth are actors who can organize themselves into a pressure group and also become a counterweight on the political map of conflict, especially against groups pro-violence. The task of legal aid organizations are facilitating their meetings and assist them to voice their aspirations for the future of peace in the region and widening the involvement of various parties in the movement like this

In conflict condition, public discourse and the media controlled by them tangled in conflict. The media often become a tool of propaganda campaign or war. Discourse on peace drowning. The voice of the victims and those who do not want war often was swallowed by a frenzy of hate propaganda. Therefore, it is important for legal aid organizations to engage in the effort to restore the political space and provide empowerment so that they are more confident to express support for the peace process.

Strengthening the bargaining position of conflict-affected communities can also be done by developing cooperation with civil society from various countries to generate solidarity and international support. Their struggle East Timor, Aceh and Ambon in building international solidarity can be an important learning

- 3. To encourage the legal system work to protect and respect human rights in conflict area.** Since entering the crisis phase of confined violence to massive violence, the legal system in the conflicts facing increasing challenges. Failure to enforce the law in the crisis phase will trigger the effect of weakening the legal system in sequence. This condition will be the driving factor (acceleration factor) of the violence escalation in conflict areas. Based on the Indonesia's experience, on the phase of the conflict with limited and massive levels of violence, the law of civil emergency or military/war applied. In practice, it is used by authoritarian governments as a source of power to increase its political legitimacy at national and local level. The initial purpose of the state of emergency application is to restore and re-create public order, but the opposite happened. Therefore, oversee and criticize the implementation Emergency Law on State was very strategic to ensure that this legislation is not misused.

This is where the importance of human rights advocacy refers to the principles of international law in the field of human rights. The Movement structural legal aid should always see to it that the country's commitment to protect human rights is not lower than the minimum limits of protection and respect of human rights. The legal system should be able to protect the basic rights of its citizens, particularly the rights that should not be ignored for any reason, including because of war or conflict (non-derogable)⁷¹

In the post-conflict situations, within the frameworks of structural legal aid work, it is very important to do an analysis of the legal and human rights conditions in the working area and simultaneously thrusting redevelopment framework of law and human rights protection system. Early Warning System Development and Early Response of Conflict in post- conflict regions, such as Ambon (Maluku), East Nusa Tenggara (West Timor) and Poso is one form of conflict prevention models, which in turn is also intended to prevent human rights violations.⁷²

Legal aid organizations are the most interested parties to monitor the level of judiciary independence and respect for human rights conditions in conflict areas. Such monitoring would be very good if it could be done periodically to keep the

public and the government find out what really happened in the two fields. Investigation on various moments of violence and human rights violations that occurred in the area of conflict and how the state respond to the problem that should be done as part of the monitoring framework. This practice is done by human rights organizations and legal assistance at all conflict areas that has been presented in this book.

F. VALUE AND PRINCIPLES OF LEGAL AID AT CONFLICT AREA

Legal Aid organizations have an important mandate in developing structural legal aid in conflict areas. This mandate includes efforts to reduce violence and create a public space to seize peace. In carrying out this mandate, the tied of legal aid organization must take the role to be as one of the actors that drive the operation of values and principles are relevant to the peace process as follows;

- 1. Non-violence.** The conflict can not be resolved if the violence does not stop immediately. Legal aid should provide an important contribution to the efforts to stop and break the cycle of violence that has been formed in conflict area. In this case, legal aid organizations can take the initiative and facilitate the parties' efforts, the conflicting and those interests in peace to stop the violence and seek a peaceful resolution to the conflict. All the efforts could be based on the local values laws / customs, national or even international law. The use of this principle as a common concern in conflict resolution will usually readily accepted because this principle has enormous moral force. In the situation of low violence, the process to build peace has more chance to succeed. In situations where violence is low; the space of civil society becomes more widespread.
- 2. Based on human rights values.** Adhering to and grounded on the values of human rights derived from national law, local norms and international law. One of the main strengths of legal aid is located on the foundation and its movement orientation in the implementation of national laws, local and international legal norms that uphold the values of human rights. This is what makes the work of legal assistance difficult to be broken by

those who do not like structural legal aid movement. There is no valid reason that can be used to counter the efforts of legal aid, which in essence is part of the implementation of the democratic constitutional state principles.

3. **Do No Harm Principle.** It is important for legal aid workers in conflict areas to be more careful when taking action in providing legal assistance. This cautious attitude is necessary for legal aid work so it is not counter-productive to the attempt of conflict settlement, not further exacerbate the situation. Not spreading violence and deepened disputed. In practice, this principle is very contextual. Therefore, a thorough understanding of the conflict at hand is a must to be owned by anyone who works in the provision of legal aid in conflict areas. The legal aid workers should have guidelines and standards of behavior established by the local context
4. **Principled to take side with marginalized communities.** Because the concept of structural legal aid start from siding marginalized or vulnerable groups, the legal aid work should be focused also on efforts to protect and defend the rights of the marginalized in conflict areas. Who is referred to as a marginal group in a conflict? It also depends on the assessment results of the conflict map at hand. Based on experience of conflict areas in Indonesia, which included in the category of marginal groups in a region of conflict: children and women, refugees, minority groups in the region are often forced to take sides to one of the warring factions, the victims and families of human rights violations.
5. **Inclusive.** In the services provision, legal aid may not discriminate against persons or groups based on beliefs, ethnicity, race and political affiliation. Therefore, the target choice of marginalized social groups will be able to cross the choice of discriminating categories. In Ambon case, for example, LAI take the same distance to the two warring communities (Muslim and Christian) and even facilitated religious leaders, youth leaders, intellectuals, women's and refugee groups, and advocacy groups of the two communities to establish agreements cessation of violence, and even establish legal aid organizations together to address post- conflict legal issues.

6. Equality. The relation between legal aid workers and people who accompanied essentially equivalent position. The reality of legal aid work is not built on the basis of professional generosity motif placed in a patron-client relationship. Their interactions should be put in the context of mutual learning within the framework of social change. Legal aid work is also to be directed to the legal aid community recipient able to independently advocate their rights and take part of a broader social movement to encourage the creation of a more just social order and peace. The consequences of this principle, legal aid organizations must ensure there is a collective learning process between legal aid workers/legal aid organization with the accompanied community, where an exchange of knowledge and skills between the two. Ensure that any decision-making related to advocacy the process is participatory.

G. BASIC STRATEGY OF STRUCTURAL LEGAL AID IN CONFLICT AREA

In the midst of the widespread strict freedom of expression and the atmosphere of fear that dominate society in conflict areas, the implementation of legal aid becomes a challenging job.

Strategy of legal aid in conflict areas during authoritarian rule have different challenges and opportunities than the conflicts that occur in the more open government, where freedom of expression has been relatively more recognized and get a wider space.

Challenges and opportunities faced by legal aid organizations also differ among regions of conflict with the dominant vertical conflict areas of conflict, with the stronger horizontal conflict appeared on the surface.

Differences challenges and opportunities require different strategies legal aid. The conflict in five regions of Indonesia, which as a learning example in this book, each has a context and dynamics. Indeed, there is no legal aid strategy exactly the same among all five legal aid practice in the region. However, in general, there are some things that can be generalized to be a reference, i.e.:

1. The work of legal aid in conflict areas strongly influenced by the socio-political conditions countries in which the conflict areas happened.

When conflict occurs within a region in a country, the socio-political conditions of the region always had a correlation with the political and social conditions in the central government. Whether the existing government administration is centralized, decentralized or federal, all of which have different implications depending on the region's aid strategy. Likewise, whether the political system in an authoritarian state, transitional or democracy brings different implications for legal aid strategy in conflict areas

The difference implications is related to different opportunities and challenges in building peace that are available in each model of government administration as well as in the political system

2. It has to be based on accurate analysis about conflict map and advocacy risk that will be conducted.

Conflict map analysis need to be done from the start because the provision of legal aid need to meticulously assess who can be ask to be allied, who need to be approach in what way, who need to be confronted in certain way and what resource and mean that can be used to support the legal assistance there. Beside that risk analysis also need to be conducted to know, for example the possibility of feedback reaction from opposite parties not aligned with legal aid mission, including the possibility risk of worsening conflict situation and its impact toward legal aid organization existence at conflict area and the community involved in legal aid process

3. Legal aid at conflict area is part of human rights advocacy.

Utilizing the resources of which is carried out in a diverse intensity of violence and low guarantee human rights protection. Utilization of norms, procedures and legal institution become strategic choice as long as the intended can still serve its purpose. Provide legal assistance inclusively especially if it has a potential conflict or dispute concerning inter-community

groups, as in the case of Ambon. Choice of law system to use is not limited to that produced by the state law, but also the local customary law system. In the case of Indonesia, for example, the use of customary law in Ambon conflict resolution, considered as the right choice. Principles of international law on human rights can also be used as a reference in the protection of the community rights. The applications of international principles are very useful to fortify the claims of human rights protection.

4. Conflict in special socio-political conditions requires special response from inside working legal aid organization.

Legal aid organization capacity need it to work in certain conflict area is definitely different from the legal aid organization capacity in a normal area. Thus considering the social mandate of legal aid at conflict area, strategy adjustment and legal aid organization capability absolutely required. Contextualization of role and necessary capacity in order to make legal aid organization still relevant with growing challenges at conflict areas.

H. LEGAL AID BASED ON CONFLICT PHASE

Legal Aid on Crisis Phase

Crisis phase is a phase that becomes the bridge between riské conflict area categories that lean toward conflict area. In this phase, there are several indicators that can be pointed as guidelines to define a category as crisis phase namely:

1. Neglected the existence of institutional mechanism that facilitates claiming process.
2. The act of violence started to use sporadic, regular and systematic in the claiming process between warring parties.

In this phase, usually confronted legal problem and human rights included; general crime that increase in intensity, there are kidnapping, torture, murder or arbitrary detention. However, in this phase there are still some opportunities that could be used for conflict resolution, for example, there are still those who can and are willing to mediate, the structure of government and law enforcement are still functioning, officials still respect the law and human rights

and people are still able to enjoy a number of freedom, for example, freedom of movement, expression and association.

In this crisis phase, the main strategy is to do everything possible to restore public confidence in the legal system. This stage is crucial since a failure to restore public confidence in the law, will lead the situation to chaos and that is difficult to stop.

Legal aid organizations must put him/herself as a supervisor and a suppressor in order that the states take consistent legal action, fair and impartial to protect the rights of citizens. In addition, the law enforcement is necessary to maintain the credibility of law enforcement agencies and norms that guide the behavior together with the community. In the implementation of these roles, advocacy activities to do for example are:

- a) Monitoring of the happening crime trend. This monitoring is intended to develop a database which can be a source of reference for analyzing the trend of violence that occurred at a certain time. This analysis is very important to published as an early warning to the public and government
- b) Carrying out various forms of assessment, poll or surveys to see the true extent of peace building efforts are supported by the community and from what community groups that reject and support law enforcement, cessation of violence and peace building. The results of these activities are very important to recognize the support and the risk of resistance in the community. In addition, it is also used as a reference to the development of community organizing and communications strategy within the framework of human rights advocacy in the conflict area.
- c) Monitoring and investigating cases of human rights violations and encourage the state to perform the function of protecting citizens' rights and enforcing the law consistently, fairly and impartially. In some cases of human rights violation, legal aid organizations need to encourage the government to establish an independent investigation team/joint. The team usually consists of representatives from government and civil society. This independence is important to improve the credibility of the investigation results. Even if the government does not respond

to the proposal to establish an independent team, the legal aid organization must immediately establish an independent team of civil society itself by asking people or leaders who are competent and have high integrity to join the independent team.

- d) Raising public opinion about the importance of a fair law enforcement and impartial. Public opinion also need to be directed to reject any form of violence. These activities are intended to weaken the legitimacy of various acts of violence in conflict areas and at the same time broaden public support for efforts to stop the violence and law enforcement.
- e) Inclusive legal assistance to victims/families of the victims. This step is important especially when the conflict involves two community groups. To side with the victims is essential to maintain the impartiality of the legal aid organization. Legal assistance is given, both in litigation and non-litigation.
- f) To encourage and facilitate mediation process between disputed parties.
- g) Community capacity building to monitor human rights violation and to develop cooperate mechanism between community and government to prevent broadening of violence.

Legal Aid at Limited Violence Phase

In this phase, the conflicting parties believe that violence is the only way to resolve their dispute. Legal mechanisms and other peaceful settlement were abandoned. Sectarian violence occurs regularly and systematically. Not all violence committed justified. Military involvement in this phase is limited to dampen the conflicting groups. Other community members, who are not involved in the conflict and stuck in it, still protected. In this condition the normal law is no longer valid and is being replaced by the application of emergency law or the law of war.

In this situation, legal aid focuses on the protection and respect of civil rights and political society, either from the possibilities of violence by the parties in the conflict or from the excess of emergency law or the law on war implementation by the authorities of emergency rule. Under the rule of emergency rule, the mechanism and the normal legal procedures do not apply anymore. So the activities of litigation

and non-litigation also must adjust to the emergency laws in force, where the role of the military is very large. Good communication with emergency powers is one way that can be done to ensure legal aid organization advocating getting a positive response.

Legal aid organizations should continue to pursue human rights violations case monitoring and to encourage the establishment of an independent investigation team there when there are serious human rights violations. Monitoring results should be communicated to the public or emergency authorities on a regular basis. With the prevailing emergency conditions, the monitoring will have narrow space. Legal aid organizations will have limited resources and access to monitoring human rights violations. Here lies the importance of community empowerment in monitoring human rights violations. They need to have the knowledge and skills to conduct monitoring of human rights violations. Therefore, trainings for community level monitoring needs to be done, especially in areas with a high intensity of violence.

To prevent the spread of conflict and more casualties, an effort to encourage the cessation of violence and accelerate the realization of the process of mediation between the two warring groups must be improved. Based on Indonesia experience, the mediator can be derived from the national level, local and international.

Legal Aid at Massive Violence Phase

In the phase of massive violence, the protection of human rights aspects is at the lowest point. As a result of systematic violence, regular and extended by both parties, the number of victims of violence increased drastically. In fact, people who are not involved in the dispute and was trapped in the conflict areas, do not get protection.

In situations like this, there is the possibility of a dominant group did carnage or systematic extermination against a group of citizens based on ethnicity, race, religion/belief or a particular nation (genocide) or systematic extermination of socio-political groups (politicide) in the area or areas experiencing massive violent conflict.

Whether in the conflict at Ambon, Aceh, Poso and East Timor, has it been found the practice of genocide or politicide? Until now, there is

no independent report stating it openly. To answer that question, legal aid organizations need to take an important role in encouraging the establishment of a thorough and in-depth investigation by a credible and independent team. Efforts to encourage the establishment of a thorough and independent investigation could be encouraged through advocacy conducted by human rights organizations at the national and international levels.

The situation in East Timor after the referendum in 1999 can be put into this category. Legal aid organizations work and human rights organizations in this situation focus on encouraging government and international organizations to express the facts of law and politics behind the massive violence, encourages a fair trial and impartial toward the perpetrators and provide legal protection for victims and their families, both in East Timor and those displaced outside of the territory. The same thing happened in Maluku with context and a different approach.

Conflict in East Timor since the beginning has been the concern of the international community, both in multilateral organizations such as the United Nations, countries in Europe and America as well as civil society organizations in different parts of the country. Therefore, when the massive violence occurred after the referendum, the world's attention has direct focused on the situation. International civil society organizations also move to put pressure on the UN and the Indonesian government to prosecute the perpetrators of human rights violations, whether they are in the field up to the senior ranks of the Indonesian military.

Legal Aid in Post Conflict Phase

The post conflict phase is the last conflict phase that requires reconstruction process in various aspect of life. The society expects that things can go back like the way before the conflict. In the post conflict there is always vulnerability to newer conflict. The post conflict situation are sometimes indicated by poor governance, paralyzed public service functions, damaged public facilities, a widespread future pessimism in the society, chaos in civil rights matters, refugee situation, and many conditions in conflict areas that had to be repaired, and the existence of social politic segregation.

Failure to address post conflict situation will cause vulnerability that could trigger new conflict and reinstate conflict area.

What is the role of legal aid body in this situation? The conflict in Ambon provides valuable learning in developing legal aid strategy in the post conflict area with the background of horizontal conflict of massive violence. Legal aid cannot automatically disclose and bring trial to the perpetrators. The legal aid organization was formed in Ambon as a form of reconciliation of the two conflicting communities. The organization was supported by both conflicting communities. The work focus is to aid the victims in settling the legal problems, specially related to rights to properties, rights to health services, education and adequate infrastructure.

Meanwhile in Aceh, in post conflict situation, legal aid organization participated in monitoring the political transition and national-local legal development to comply the human rights protection and fulfillment standards.

After the MoU between GAM and Indonesian Government, there is an institution that performs monitoring, i.e. the Aceh Monitoring Mission (AMM) that works to ensure that the agreements signed by both parties are implemented properly. This institution consists of representatives of GAM, Indonesian Government, and team that had facilitated peace.

There are also some organizations established to accelerate reconstruction of Aceh, physically as well as social political and economy, after the Tsunami. This organization is the Rehabilitation Reconstruction Body (BRR) and The Aceh Reintegration Body (BRA). The two bodies were established during the signing of MoU between Indonesian Government and GAM. The two bodies, specially the BRR became the “reconciliation” arena of many parties, specially the representatives of Indonesian Government and ex-leaders of GAM. In this case the Aceh Legal Aid organization works to ensure that victims gain their rights, politically as well as economic and social-cultural, and through structural legal aid, prepares an organization that replaces AMM.

I. LEGAL AID IN CONFLICT AREAS IN THE TRANSITIONAL AND AUTHORITARIAN GOVERNMENT PERIOD.

The legal aid movement was born in early seventies as a response to the power abuse practices of the new order that start to distance from democracy and human rights principles. At the authoritarian period of new order government, the legal aid and human right advocacy movement mostly responded to problems of human rights violation due to the state policies that marginalizes vulnerable groups such as the farmers, labor, minorities, and urban poor. The form of human rights violation in this period is very complex, ranging from the violation of social, economic and cultural rights, to violation of civil and political rights.

The role of the state in this era was so central, setting the state as a very dominant actor. During this period, the serious human rights violation, being regarded as violence by state happened systematically such as the Talangsari case in Lampung, Haur koneng, east java, Nipah Dam in east java, Tanjung Priok case in Jakarta, Kedungombo case in central Java, Sei Lengan case in North Sumatra.⁷³ In these cases, the state does not only rob the social-economic rights of the people but also murder those who are regarded as opposing the state policy.

At this period, the violent conflicts mentioned in previous chapters, had started to develop, i.e. the conflicts in Aceh, East Timor (Now becomes Republica Democratica de Timor Leste/RDTL) and Papua. Legal aid movement pioneered by the LBH played important role in responding the human rights violation in those areas. To respond the problem in Aceh and Papua, LBH opened offices, i.e. the LBH Banda Aceh and LBH Jayapura. These two offices becomes frontline legal aid services for society through many form of activities. To respond the conflict in East Timor, LBH established special advocacy team. This Advocacy team also collaborated with other civil society organizations in Jakarta of the same concern.

The strategy developed by LBH in Jakarta and other LBH offices and NGOs in those conflict areas are: Building consensus of work division in the advocacy. LBH and some NGOs in Jakarta takes the role on doing national and International advocacy, This is a sensible division as all the state institutions related to the conflicts have central offices in Jakarta. LBH and NGOs offices in Jakarta also have

closeness to the international community in Jakarta (embassies and representatives of various states, international press, and international bodies under UN). NGOs and LBH offices in conflict areas took the role of monitoring the field situation of Human rights conditions, performing litigation tasks, organizing and assisting the victim and victim families. In cases with very high political load, the LBH office in Jakarta mobilizes, support for the litigation in conflict areas. Many senior lawyers, who works in LBH or outside LBH are assigned to assist the lawyers in conflict areas. This method are selected based on a number of considerations, such as; i) the case relates to serious human rights violation that needs a far bigger public attention and support, nationally as well as internationally; ii) to increase the morale and bargaining position of the lawyers in conflict areas should they encounter pressure from local military power or law enforcement.

In the post 1998 period, the political reformation movement, carried by people movement had succeeded to dismantle the large authoritarian walls of the new order by toppling the power of president Soeharto that had ruled for 32 years. At the same time the political transition toward democracy started to cause contraction in the elite, delivering new political hopes and new paradigms in the society on viewing the future of Indonesia.

After the reformations, three previously conflict areas, i.e. Aceh, Papua and East Timor underwent escalation. Besides there are new conflict with a more massive violence in Ambon of Mollucas and Poso of central Sulawesi. The decrease of conflict intensities in those areas happens along the rise of new balances in the local and national politics.

It should also be admitted that one of the important factors that influence the decrease of the scale and intensities of the violence in conflict areas is the rise of the strength of civil societies in the national and local level.

What are the lessons learned from the legal aid works in the conflict areas in the two different periods? The challenges and difficulties of those two periods surely are more complex as the various military operations deployed by new order political regime have authoritarian character and tends to ignore human rights.

Freedom of press, freedom of speech and freedom to associate are repressed not only in the conflict areas but also in all the Indonesian territory. Thus it is also not easy for civil society organization outside the conflict areas to support the civil organization in the conflict areas, specially for small organizations outside Jakarta. For Advocacy organizations in Jakarta, such as LBH, even though there are some difficulties, open advocacy to human rights violation in the conflict areas are still possible. The tactic employed by civil society movement to address this condition is to build civil organization coalitions to do open advocacy on the protection of human rights situation in the conflict areas. Politically, the numerous organizations participating in the coalition proves to render it more accounted and safer from various forms of political pressures.

In the East Timor conflict, international advocacy through the CSO network in the national level such as INFID (International NGO Forum on Indonesia Development), are also proven to be very effective in pushing the so-called "*all inclusive East Timor Dialogue*", an international dialog forum that eventually manages to push UN to decide the need of referendum in East Timor.⁷⁴

In collaboration with international civil society organization and utilizing formal mechanism of international organizations such as UN bodies also proven to be very helpfull to address national and local level political repression.

CHAPTER V: EPILOG

The implementation of legal aid mission in the conflict areas is basically an advocacy of human rights protection, utilizing available legal and political opportunities. The experience of Indonesia under authoritarian political regime also proved that there are always opportunities amidst all the closedness and limitations constructed by the government. These opportunities needs to be identified and then utilized creatively for advocacy works.

Legal aid in the conflict areas can also be understood as a cluster or sequence of advocacy activities, containing in it, legal and human rights education, community organization, social network development (in local,national and global level), public campaign (local, national, global), research, investigation, dialog with policy makers and litigation action with careful consideration of strategic achievements in conflict resolution and human rights protection. What activities should be undertaken, depends on the condition of each conflict areas. Therefore, a legal aid strategy in a certain conflict area should be based on conflict mapping and deep analysis on that conflict.

In a conflict area, legal aid organization is not the sole organization concerned with the conflict resolution. Legal aid organization never work alone. Therefore, in carrying out legal aid mission, the task of legal aid organization is inevitably also to mobilize the peace resource in the local, national and international level.

The space for legal aid work in the conflict area is not something given. The large or minuscule elbow room for the legal aid in the conflict areas is influenced by the ability of legal aid organization in developing effective communication to various stakeholders, in local, national as well as international level. Besides that the space of legal aid work is also influenced by the choosen position (vision, mission, strategy). Therefore, legal aid organization working in conflict areas should from the very beginning determine what is it's vision, mission and work strategy. The lack of proper vision, mission and working strategy would result on the organization losing its direction and drifting in the prevailing conflict.

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2. For example: Legal Consultation Bureau Sin Ming Hui, which was a Chinese ethnic organizations in Jakarta before independence era until Old Order era in Indonesia, Legal Aid and Consultation Foundation in College of Law in Indonesia, the Jakarta Legal Aid Foundation and the Legal Aid Foundation of Indonesia, the Legal Aid Post at the State courts, and various legal aid institution founded by community organizations in Indonesia.
3. Various regions in Indonesia also have programs or rules regarding legal aid, such as the province of South Sumatra, Central Java, and East Java, Palembang city, Tulungagung regency, and Sinjai regency.
4. Adnan Buyung, *Op.Cit*, p. 5.
5. Adnan Buyung, *Op.Cit*, p. 6.
6. In addition Schuyt describes more detailed about types of legal assistance that include: 1) preventive legal assistance that constitutes explanation effort and legal counseling to the community; 2) diagnostic legal aid which is provision of legal advice of consultation; 3) conflict control legal aid which is legal aid which aims to actively address legal issues, 4) legal aid of legal establishment that in essence is to provoke more assertive, precise, clear and correct jurisprudence; 5) legal aid of legal reform that includes efforts to organize reformation of law by judges or lawmakers.
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8. *Ibid*.
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11. Todung M Lubis, *Bantuan Hukum dan Kemiskinan Struktural*, (Jakarta: LP3ES,

- 1986), p. 145
12. *Ibid.*, p. 147-150.
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 15. Daniel S. Lev, *Legal Aid in Indonesia*, (Victoria: The Centre of Southeast Asian Studies, 1987), p.3.
 16. *Ibid.* p. 21-22.
 17. See Gill H Boehringer, *People's Lawyering: The Filipino Model-A Preliminary Report*. People's Lawyers organizations on the Phillipines inter alia NUPL, Libertas, Bonifacio, FLAG, et cetera.
 18. Adnan Buyung Nasution, *Op.cit.* p. 79.
 19. Irawan Saptono and Tedja Bayu (editor), *Verboden voor Honden En Inlanders; and Lahirlah LBH*, (Jakarta: YLBHI, 2012), p. 102-103.
 20. In Aceh, there was an exceptionality that in massive violent phase the structure of law was still available.
 21. Although currently in Papua Military Emergency is not implemented, but the military posture appointed in the area is like the Military Emergency in Aceh.
 22. Article 1 paragraph (1) of Act No. 23 Prp 1959.
 23. *Ibid.* Article 4 and 5.
 24. For example, in Ambon the Muslims and Christians were in conflict and alleged each other committing attacks in advance. After YLBHI conducting investigation apparently the assaults were carried out by other actors, not from Muslim or Christian. Eventually they realized that the conflict occurred because there were other parties who took advantage of them, and then the conception of peace was open.
 25. Munir Thalib was a human rights activist and lawyer. He had served as Chairman of YLBHI and Coordinator of KontraS. KontraS is an organization that focuses on Enforced disappearance cases, violence, and human rights crimes in the past. Munir was assassinated by the using of arsenic poison in 2004 in the course of airplane trip to Netherlands; strongly believed that the State Intelligence Agency was involved in the murder of Munir.
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153. WALHI in the era of late 1980s to early 1990s, coordinated by Saifuddin A. Gani. WALHI is basically a non-governmental organization engaged in the environmental realm. But, with the objective conditions in Aceh itself that full of human rights violations. Thus, WALHI also participated advocate on issues of human rights violations since then.
154. Yayasan Lembaga Bantuan Hukum Indonesia. (1991). *Hasil Observasi Proses Peradilan Kasus Aceh*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia.
155. *Ibid.*
156. Based on an interview with Alamsyah Hamdani.
157. Based on an interview with Saifuddin 'Acun' Gani.
158. *Ibid.*
159. Based on an interview with Alamsyah Hamdani.
160. Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) . (September 2003). *Pekerja HAM dan Kemanusiaan dalam Keadaan Darurat Militer di Aceh*. Jakarta: YLBHI; website koalisi NGO-HAM Aceh, accessed at 17/8/2014 http://ngo-ham.9f.com/kasus_yang_belum_diusut_jafar_siddiq.htm
161. Based on an interview with Alamsyah Hamdani.
162. Based on an interview with Dadang Trisasongko.
163. *Ibid.*
164. Based on an interview with Abdullah Saleh.
165. Based on an interview with Saifuddin A. Gani.
166. Based on an interview with Dadang Trisasongko.
167. Coalition of NGO-Human Right Aceh, accessed on 17 August 2014 at http://ngo-ham.9f.com/kasus_yang_belum_diusut_jafar_siddiq.htm
168. Based on an interview with Afridal Darmi and was agreed by Abdullah Saleh
169. Based on an interview with Saifuddin 'Acun' Gani.
170. Based on an interview with Mustiqal Syahputra, Zulfikar and Hospi Sabri.
171. Based on an interview with Dadang Trisasongko and was agreed by Saifuddin Gani.
172. Based on an interview with Ari Maulana.
173. Based on an interview with Dadang Trisasongko.
174. Based on an interview with Afridal Darmi.
175. Based on an interview with Dadang Trisasongko.
176. Based on an interview with Dadang Trisasongko.
177. Based on an interview with Afridal Darmi.
178. Based on an interview with Abdullah Saleh.
179. Based on an interview with Afridal Darmi.

180. *Ibid*,
181. Based on an interview with Ari Maulana.
182. Disclosed by Afridal Darmi, this term is also mentioned in the LBH's book.
183. Based on an interview with Ari Maulana, former member of Legal Aid Agency (LBH) of Banda Aceh, non-litigation division for period 2001 – 2003.
184. Based on an interview with Abdullah Saleh.
185. Edward Aspinnall, & Harold Crouch. (2003). *The Aceh Peace Process: Why it Failed?* Washington: East-West Center.
186. Kompas, December 24, 1999.
187. Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) . (September 2003). *Pekerja HAM dan Kemanusiaan dalam Keadaan Darurat Militer di Aceh*. Jakarta: YLBHI.
188. Based on an interview with Afridal Darmi.
189. Based on an interview with Afridal Darmi.
190. Prasetyo, S. A. (2009). *Background and Political Situation in Aceh*. In S. A. Olle Tornquist, & T. Birks (Ed.), *The Role of Democracy for Peace and Reconstruction*. Jakarta: PCD Press Indonesia & ISAI.
191. Based on an interview with Hospi Sabri (Director of Legal Aid Agency (LBH) of Banda Aceh, 2008 - 2010).
192. Tandiono BP. (2013). *Tiga Elemen Bantuan Hukum Struktural (BHS): Pendidikan Hukum, Bantuan Hukum Dan Pembaharuan Hukum, Dimana Dan Kemana YLBHI?*
193. UDT, APODETI, KOTA, and TRABALISTA were names of parties that supporting the integration with Indonesia.
194. Fretilin was the name of a party in East Timor in 1975 who wanted the self-determination of East Timor-citizens or independence.
195. Report of the Commission on the Truth and Friendship, p. 49 – 50.
196. HALILINTAR, ALFA, SAKA is the name of an armed civilian organization formed by Indonesia's military and operated in the territory of East Timor in 1999.
197. A name term given to a youth who was involved actively in fighting for the independence of East Timor; their struggle was commonly known as the underground movement .
198. *East Timor 1999: Crimes against Humanity*, P.183 (Geoffrey Robinson).
199. A case study of 13 Districts of East Timor.
200. *East Timor 1999: Crimes against Humanity*, P.vi (Geoffrey Robinson).
201. *International Force for East Timor*, the non-United Nations multinational peacekeeping force that was formed and led by Australia in accordance with the resolution of the United Nations.
202. The National Commission on Human Rights, Reports the Commission Investigator on Human Rights Violations in East Timor,2014, P.124.
203. The author's experience in viewing the situation in Dili during and after the

referendum.

204. The National Commission on Human Rights, Reports the Commission Investigator on Human Rights Violations in East Timor, 2014, P.125.
205. CHEGA, CAVR Report of the Commission of Truth Acceptance and Reconciliation, P.22.
206. Report of the CTF on page xii.
207. Author's personal notes of discussions with various activists and citizens militias.
208. Information materials from Nugroho Kadjasungkana in Dili.
209. Regional Government Work Plan Document (Rencana Kerja Pemerintahan Daerah/ RKPD) of Poso District, 2014
210. Transmigrasi Dianggap Penyebab Konflik Antar Etnis, Media Indonesia, December 14, 2004.
211. Harli Abdul Muin, "*Ekspansi Modal, Isu Identitas, Kekerasan : Perlawanan Rakyat Terhadap Ekspansi Kapitalis Di Sulawesi Tengah*" accessed on <http://harlimuin.wordpress.com/2009/10/07/ekspansi-modal-isu-identitas-kekerasan-perlawanan-rakyat-terhadap-ekspansi-kapitalis-di-sulawesi-tengah/>
212. Accessed in <http://posobersatu.blogspot.com/2008/09/konflik-poso-dan-resolusinya.html>
213. Kompas, September 18, and December 19, 2001.
214. Herman Parimo is the leader Youth Movement of Central Sulawesi (Gerakan Pemuda Sulawesi Tengah/GPST). Police later arrested Herman Parimo and seven others people with provocation charges. But before it has reached the court decision yet, Herman Parimo got sick and died while undergoing treatment at a hospital in Makassar.
215. Research Report of Military Response on Social Conflict in Poso, Research Team of Yayasan Bina Warga Sulawesi Tengah, Palu, November 2000.
216. George Junus Aditjondro, *Kerusuhan Poso dan Morowali; Akar Permasalahan dan Jalan Keluarnya*, 2004.
217. On May 2002, the District Court of Palu granted death penalty. After failing to get a clemency from President Susilo Bambang Yudhoyono, those three was executed on October 22, 2006 in Palu.
218. 10 defendants who were members of Company B 711 Raksatama TNI then were convicted by the Military Court of Manado in 2007. By the 10th Military Court the defendants were convicted of kidnapping and violence against villagers of Toyado village Poso. The defendants then were sentenced with administrative sanctions such as cutting time promotion and dismissal. Kidnapping of Toyado's Villagers, KontraS, December 1, 2001 <http://www.kontras.org/poso/index.php?hal=profilkasus&id=3>
219. End Year Report of 2001, LPSHAM of Central Sulawesi, 2002

220. End Year Note of 2002, LPSHAM of Central Sulawesi, 2003
221. Wednesday (12/12), Chief of BIN Hendropriyono revealed the involvement of Al-Qaidah in the riots in Poso. Police Chief Has Not Sure Yet about the Involvement of Al-Qaidah in Poso <http://www.tempo.co/read/news/2001/12/13/05520252/> Kapolri-Belum-Pastikan-Keterlibatan-Al-Qaidah-di-Poso, December 13, 2012
222. Central Sulawesi Police denies the involvement of Al-Qaeda in Poso, Liputan6.com, December 15 2001 <http://news.liputan6.com/read/25439/polda-sulteng-membantah-keterlibatan-al-qaeda-di-poso>
223. Presented by Coordinating Minister for Politics, Law and Security, Susilo Bambang Yudhoyono in a cabinet meeting chaired by President Megawati in the Main Building of Secretary of State Jakarta, Thursday (13/12/2001); *Diselidiki, Pengaruh Jaringan Al-Qaeda di Poso*, Liputan6.com <http://news.liputan6.com/read/25399/diselidiki-pengaruh-jaringan-al-qaeda-di-poso#sthash.RlLuXWy9.dpuf>, December 14, 2001.
224. PPRC Exercises in Poso (PPRC Latihan di Poso), Liputan6.com, January 17, 2002 <http://news.liputan6.com/read/27365/pprc-latihan-di-poso>
225. Time Magazine with news title Confessions of an Al Qaeda Terrorist, September 23, 2002 edition
226. Cabinet Meeting: Being Researched, Terrorism Network Presence in Poso (*Sidang Kabinet : Sedang Diteliti, Keberadaan Jaringan Terorisme di Poso*), Kompas, December 13, 2002
227. Ninja Attack Poso, Nine Killed (*Ninja Serang Poso, Sembilan Tewas*), Suara Karya, October 13, 2003
228. *Tanah Runtuh* is a small enclave in the corner of the city of Poso who suddenly became famous because of the police exchanged fire with a number of suspects of the violation cases. In the past, this was a residential area with a population with quite good economic level. It can be seen from a number of houses were still standing, and some debris of buildings that show the elite class in the social strata of society in Poso. The condition is a hilly area with teak trees planted around the settlements. This region is now called as *Tanah Runtuh* because few years ago, the land located on the road side of the Poso River slid.
229. List of Civilians and wanted were arrested on January 22, 2007 In the event of Gebang Rejo, Poso Kota, KontraS, 2007 www.kontras.org/poso
230. On the tenth day of the socialization period of the Malino Declaration, January 11, 2002, police had secured 618 pieces of homemade firearms, 142 pieces of Dumdum, 2,804 pieces of bow and arrow launcher, 14,848 pieces of arrows, 75 pieces of sharp weapons, 134 pieces of catapults and blowpipes, 372 pieces of ammunition, and 22 pieces of homemade bombs. The weapons securing was a part of efforts to build peace in Poso after Malino Declaration in 2002.
231. Investigation Report of LPSHAM of Central Sulawesi, July 2004.

232. Press Release of Peace Coalition (*Koalisi Damai*) of Poso, Palu, December 10, 2004.
233. The former Regent of Poso in Sentence Two Years in Prison (*Mantan Bupati Poso di Vonis Dua Tahun Penjara*), merdeka.com, October 3, 2007 <http://www.merdeka.com/hukum-kriminal/mantan-bupati-poso-divonis-dua-tahun-penjara-u5yrzni.html>
234. Monitoring Report of KontraS: *Field Findings from Poso-Central Sulawesi*, KontraS, November 4, 2012, http://kontras.org/index.php?hal=siaran_pers&id=1614
235. Decision of Plenary Session of the National Commission on Human Right (Komnas HAM) No. 06/SP/V/2009 on May 12-13, 2009, stipulates that all regional Representative Office of the National Commission on Human Right (Komnas HAM) is unified into Representative Office of the National Commission on Human Right (Komnas HAM) under Law No. 39 Year 1999.
236. Leader of the National Commission on Human Right team for Poso, Kompas, November 18, 2004.
237. This incident occurred on May 28, 2005 approximately at 08.15. As the results 20 people died and 50 others were injured.http://id.wikipedia.org/wiki/Bom_Tentena_2005
238. Accessed on <http://www.kontras.org/poso/data/teks/Sebutan%20Pelaku%20Kekerasan%20di%20Poso.pdf>
239. This summary was made for the preparation of the reconciliation concept in Poso in the perspective of citizens and governments; Syamsul Alam Agus, 2006.
240. This work was conducted by the Local Government of Poso Regency by inviting custom leaders from 14 sub-district that are considered as the representative of the original tribe. In this activity, which was attended by President Abdurrahman Wahid was held on August 22, 2000 in Poso.
241. Rev. Rinaldi Damanik is chairman of the Crisis Center of Central Sulawesi Christian Church (Gereja Kristen Sulawesi Tengah/GKST) which collects information and historical causes of riot in Poso. One of the main activities of the Crisis Center was evacuated (saving) Christians who are stuck in the Muslim village or Christians who are victims of the riots, also helped Muslims when the evacuation operation. He also was a key figure who signed the Malino Peace Act I.
242. BKPMMD-Maluku, accessed on: <http://bkpmd-maluku.com/index.php/id/komoditi-unggulan/gambaran-umum>, 10 February 2015.
243. Des Alwi, *Sejarah Maluku: Banda Naira, Ternate Tidore, dan Ambon*, Dian Rakyat, Maluku, 2005, p. 85.
244. Internasional Crisis Group, *Indonesia: Overcoming Murder and Chaos in Maluku*, ICG Asia Report Nr. 10, Jakarta/Brussels, 19 December 2000.
245. Dr. Dieter Bartels, *Guarding the Invisible Mountain: Intervillage Alliances, Religious Syncretism and Ethnic Identity among Ambonese Christians and Moslems in the*

- Mollucas*, Cornell University (Unpublished Ph.D. Dissertation), Ithaca, 1977.
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247. G. Brown, C. Wilson dan S. Hadi, *Overcoming Violent Conflict, Volume 4. Peace and Development Analysis in Maluku and North Maluku*, CPRU-UNDP, LIPI and Bappenas, Jakarta, 2005, p. xii.
248. Ichsan Malik, *Bakubae: Gerakan dari Akar Rumput untuk Penghentian Kekerasan di Maluku*, Yayasan Kemala and TIFA Foundation, Jakarta, 2003.
249. Van Klinken, *Op. Cit.*
250. Bertrand Jacques, *Legacies of the Authoritarian Past: Religious Violence in Indonesia's Moluccan*, Pacific Affairs 75, 2002.
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254. Bertrand, *Op. Cit.*; Internasional Crisis Group, *Op. Cit.*
255. Human Rights Watch Report, *Indonesia: The Violence in Ambon*, March 1999.
256. Internasional Crisis Group, *Op. Cit.*
257. Van Klinken, *Op. Cit.*, p. 89-99.
258. Centre for Humanitarian Dialogue, *Pengelolaan Konflik di Indonesia – Sebuah Analisis Konflik di Maluku, Papua dan Poso*, Editor: Cate Buchanan, Centre for Humanitarian Dialogue, Geneva, 2011, p. 15.
259. Van Klinken, *Op. Cit.*
260. Gerry Van Klinken, *Communal Violence and Democratization in Indonesia; Small Town Wars*. Routledge, London, 2007.
261. Centre for Humanitarian Dialogue, *Op. Cit.*, p. 18-19.
262. Noorhaidi Hasan, *Laskar Jihad; Islam, Militancy, and the Quest for Identity in Post-New Order Indonesia*, Cornell Southeast Asia Program, New York, 2002.
263. Noorhaidi Hasan, *Op. Cit.*
264. Ikrar Nusa Bhakti, Sri Yanuarti, and Mochamad Nurhasim, *Military Politics, Ethnicity and Conflict in Indonesia*, Centre for Research on Inequality, Human Security and Ethnicity (CRISE), United Kingdom, 2009; Malik & Yayasan TIFA, *Op. Cit.*
265. Centre for Humanitarian Dialogue, *Op. Cit.*, p. 18; Malik & Yayasan TIFA, *Op. Cit.*
266. Internasional Crisis Group, *Indonesia: Violence Erupts Again in Ambon*, ICG Asia Briefing, Jakarta/Brussels, 17 May 2004.
267. Ikrar Nusa Bhakti, *et al*, *Op. Cit.*
268. Interviewing IDPs of Kayu Tiga; Mama Othe.
269. Ichsan Malik, *Op. Cit.*
270. Maranata is the largest church and centered in Ambon and the head office of Maluku Protestant Church Synod or GPM.

271. Al-Fatah is the largest mosque in Ambon and it is the main or central mosque. During conflict, it usually used as the assembly point on Moslem community in Ambon.
272. Interviews with Munir Khairoti, Malik Selang and Rum Sunet
273. Van Klinken, *Op. Cit.*
274. Interview with Munir Khairoti
275. Munit Khairoti and Malik Selang's description, only very few cases went to court at the time when conflict occurred, most cases of in were resolved at the level of the police and security apparatus.
276. Interviews with Munir Khairoti, Malik Selang and Rum Sunet
277. Interviews with Munir Khairoti, Malik Selang and Rum Sunet
278. Ichsan Malik, M. Pattinaja, S. Putuhena, et. al., *Bakubae: Breaking the Violence with Compassion*, Yappika/Bakubae, Jakarta, 2003.
279. *Idem.*, p. 161.
280. *Idem.*, p. 164.
281. For more complete information about the third poll read polling report; The Majority of Moluccan Society Supports the Approach of Conflict Resolution "Bottom-up".
282. Tools used could be accessed on: <http://www.peacepolls.org/cgi-bin>
283. Document; Interpretation of Polling in Maluku 2002
284. New Order government under President General Suharto, who was emerging after the G30S PKI 1965 and at the same time as the antithesis of the previous administration under President Sukarno who had been dismissed through the Special Hearing of the Provisional People's Consultative Assembly in 1967. New Order administration was supported by three socio-political strategic power at that time, namely: Golkar (in fact the result of the fusion of political parties and mass organizations from different parties), the Armed Forces (wherein the military and police) and the civilian bureaucracy. The pillars of the New Order are very solid and have the organizational structure of the center to the village level.
285. Until now, Indonesian military organization still has a territorial structure ranging from TNI Headquarters, Military Area Command (The MAC/KODAM) which is based at the provincial level or a joint of several provinces, military command (Military Region/KOREM) whose jurisdiction includes some of the county or city, District Command Military (KODIM) whose jurisdiction covers the district / city and district Military Command (KORAMIL) whose territory includes the district. The village and sub-district level placed petty officer Village (Babinsa).
286. Those who have been sentenced to death is Fabianus Tibo, Dominggus da Silva and Marinus Riwu. Having postponed many times, the execution is done on September 22, 2006 in the city of Palu, Central Sulawesi

287. http://www.kontras.org/index.php?hal=siaran_pers&id=165, accessed on October 20th, 2014.
288. http://www.kontras.org/index.php?hal=siaran_pers&id=1, accessed on October 20th, 2014.
289. Indonesian military officers were tried and subject to the Criminal Code of Military and Military Justice Act (Act No. 31 of 1997). Military justice institutions originally placed under the Indonesian National Army. Since 2004, organizationally military courts are under the Supreme Court. Exclusive judicial system is considered to provide impunity for perpetrators of human rights violations by the military. Indonesian civil society are fighting for cases of human rights violations and other crimes unrelated to military crimes committed by members of the military, can be tried in general jurisdiction courts.
290. Through the Government Regulation in Lieu of this Act, the government is empowered to issue a statement about the status of danger of a certain area. This Act divided into two categories of danger, namely the state of civil emergency and military emergency. Consequences of the determination of the danger status to a region are given greater power to the authority of emergency to restrict a number of basic rights, particularly with regard to civil and political rights.
291. President Abdurrahman Wahid issued Presidential Decree No. 88 of 2000 on the Status Determination Civil Emergency in Maluku and North Maluku Province. While during the reign thereafter, President Megawati issued Presidential Decree No. 43 of 2004 concerning the Declaration of State of Emergency Status Changes to Tier Emergency State of Emergency Military with levels Civil Emergency in Nanggroe Aceh Darussalam Province.
292. In the International Convention on Civil and Political Rights (ICCPR) there are several types of basic rights that are non-derogable, such as the right to life (Article 6), the right not to be tortured and treated / receive inhuman punishment (Article 7), the right not to be enslaved (article 8) and some other articles in this convention.
293. Partnership for Governance Reform in cooperation with Current Asian region has developed CEWERS for post- conflict in Poso, Ambon and Kupang in 2011. This early warning system relies on the strength of community networks and institutions relevant government.
294. Annual Report of Indonesia Legal Aid Foundation (YLBHI), year 2004 and 2005.
295. Interview with Abdul Hakim Garuda Nusantara, Former Chairman of the Executive Board of the Legal Aid Agency Indonesia Foundation (YLBHI), 2014.

THE WRITERS



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Advocate and Public Interest Lawyer in Legal Aid Institution (LBH Jakarta), was born in Padang on 11 February 1986. Alumni of the Law Faculty of Indonesia University and also join the *Visiting Scholar program* in Columbia Law School-Columbia University on 2013. Start to dedicate himself since 2008 and until now he still active in handling cases, empowering society's legal understanding. Role he takes in LBH Jakarta now is as the Head Department of Legal Empowerment (PSDHM).



Dadang Trisasongko

Since 2013 he served as the General Secretary of Transparency International Indonesia (TII) up until now. Alumni of the Law Faculty of Airlangga University have also been devoted to the LBH Surabaya since 1990 and continued his dedication in the Legal Aid Foundation (YLBHI) until 2001. In addition to the Secretary General of TII, he is still active as Chairman of the Indonesia Legal Resource Center Board, member of the Managing Board of the Voice of human Rights and the Board Member of The Current Asia.



Deonato De Piedade Moreira

Active in the student movement during the independence of East Timor on '90s. On 2008-2012 he was active Deputy Coordinator on CIS Timor in Atambua. On that time, his task is to monitor and reporting the human rights violation during the conflict in East Timor. He also worked as a volunteer to facilitate the citizens of former East Timorese refugees who decided to return to Timor Leste through repatriation program which supported by Je Suit Refugee Services.



Febi Yonesta

Director of LBH Jakarta since 2012-2015. He is a public interest lawyer who actively involved in advocating human rights and legal reform domestically as well as in internationally. He is also the initiator of some human rights institutions in Indonesia, one of which is SUAKA, the civil society network for the protection of refugees. Born in Bogor on 17 February 1977, alumni of the Faculty of Law of Hasanuddin University Makassar begin to serve with LBH Jakarta since 2005.



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Born in Buton, 29 December 1976. Domicile in Papua, he start his dedication on social works in Democratic Alliance for Papua (ALDP) since 2000. On 2009 until 2010 he became a trainer for Conflict Early Warning and Early Responds System (CEWERS) and implement the South to South Exchange Program which supported by Norway. Currently he works in PATTIRO (Center for Regional Studies and Information), since 2013.



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Alumni of the Faculty of Law, University of General Soedirman, begin his legal aid works since establishing the Student Legal Consultancy Bureu (BIKOHUMA) on 1997 in his university. He also became the director of the aforementioned bureau. He took his master degree in University of Oregon School of Law, United State of America on 2013. The focus of the study is Conflict and Dispute Resolution. Currently he work at The Habibie Center as researcher for the National Violence Monitoring System, since 2014.



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Domicile in Banda Aceh, man who was born on 6 June 1981 begin to work as the legal aid provider in LBH Banda Aceh since 2006 up until now. He also was served as the chair of the Advocacy Working Group of Forming Aceh's Islamic Law (Qanun) on the Truth and Reconciliation Commission on 2013. Graduated from Faculty of Law Syah Kuala University Banda Aceh is now serving as the Director of LBH Banda Aceh.



Syamsul Alam Agus

Alumni of the Faculty of Law, Tadulako University Palu, Central Sulawesi. He much involves in the field on conflict resolution works in Sulawesi, through Legal Development Studies and Human Rights Institution (LPSHAM), since 1997. On 2010 he established Association of Forensic Science Indonesia and still act as the member of aforementioned association. Besides being active as a board on organizations based in Sulawesi, he is also currently active as the Executive Secretary of Satu Keadilan Foundation.

THE EDITORS



Boedhi Widjarjo

Completing his studies at the University of Airlangga Surabaya and started his career on 1989-1993 by joining Surabaya Legal Aid Institute (LBH Surabaya). On 1995–1997 he became the Director of East Kalimantan Human Rights Committee. On 1998–2001, advocate which also member of Indonesia Advocate Association (IKADIN) and was educated at the University of Oregon, USA and the Faculty of Psychology of Indonesia University. He also joined the Indonesian Legal Aid Foundation (YLBHI) as Head Division of Land and Environment. On 2001-2004 he was the Director of RACA (Rapid Agrarian Conflict Appraisal) Institute. He also an active writer and editor of books related to the study of law and social conflict.



Rizka Argadianti Rachmah

Was born in Jayapura, Papua, on 25 October 1988. She began her human rights works from the issue of Freedom of Religion and Belief. One of her publication was about the Human Rights Violence toward Cikeusik Chapter of Indonesia Ahmadiyya Congregation which published by ELSAM on 2014. She also contributes to the International Human Rights Mechanism book initiated by the Human Rights Working Group (HRWG), the book that will be published soon. She also done human rights advocacy works in southeast Asia as well as human rights advocacy works through international mechanism. Currently she serve as the International Program Officer in LBH Jakarta.

LEGAL AID IN THE CONFLICT AREA

Lesson Learned on Conflict and the Concept of Structural Legal Aid

Conflict, could resulted serious impact for the civil society. During conflict, there are many potential serious violation of human rights, such as; right to feel safe, right to life, right to free from torture and other fundamental rights. Conflict could also result the damage of legal system and justice. These could be seen from various experiences happened in many places in Indonesia like Papua, Aceh, Timor Leste, Poso and Maulu. As it like what happen in Southern Thailand. These experiences on handling the conflict, is hopefully can be some lesson learned by the civil society in Southern Thailand.

Through Structural Legal Aid's analysis and approach, we try to describe to readers that there are other activities, which must be pursued aside from merely providing legal assistance through judicial process. Legal aid activities can be an empowerment of community, strengthening of legal knowledge of the community in question, research, campaign, and other factors that can support the process of conflict resolution.

Furthermore, we hope this book could be the reference for civil societies in Southern Thailand especially those dedicated themselves to provide legal aid, in their efforts to upholding human rights and justice, protect victims' rights, encourage peace and enforce the rule of law.

In the end, the book is also expected to be able to be a memorial of conflict and the structural legal aid that has been achieved in Indonesia. And, further discourse on legal aid in post-conflict era will be the most necessary as the continuity from what discussed in this book.



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