The Struggle for Justice and Reconciliation in Post-Suharto Indonesia

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What explains the failure of transitional justice and reconciliation measures in post-authoritarian Indonesia? One explanation is that domestic political elites have effectively stymied the efforts of civil society to implement global norms of transitional justice. However, as Indonesia has embraced a democratic and decentralized system of government, even the most corrupt and entrenched elites cannot merely veto or reject calls for justice. Instead, opponents have used a variety of strategies including legislative, religious, and cultural strategies to undermine justice initiatives. Examining the recent experiences in Indonesia, this paper shows the effects that a limited transition has had on the justice agenda.

Keywords: Indonesia, transitional justice, reconciliation, truth and reconciliation commission, human rights

Introduction

Over a decade now since the fall of Suharto little to no justice has been served for the many and past human rights violations of the authoritarian New Order (Aspinall 2008; Frease 2003; ICTJ and Kontras 2011). The violations include: mass killings of communists and alleged communists in 1965–1966, political repression, military violence and torture against civilians, human rights violations in East Timor, Aceh, and Papua, and the repression of basic rights to freedom of speech and freedom of the press.

What explains this failure in justice? A report by the International Center for Transitional Justice argues that progress has been blocked by "a deep, systemic unwillingness to uncover the truth surrounding serious human rights violations and hold those who are responsible accountable for their actions" (ICTJ and Kontras 2011). The implicit suggestion is that national and local political elites have effectively stymied the efforts of civil society to implement norms of justice and reconciliation that have been spreading globally now since the end of the Cold War.

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This perspective seems apt especially given the view that Indonesia's transition has achieved only limited or partial reform and characterized instead by entrenched elites or oligarchs (Robison and Hadiz 2004; Slater 2004). However, as Indonesia has embraced a democratic and decentralized system of government, even the most corrupt and entrenched elites cannot merely veto or reject calls for justice. Instead, opponents of the justice agenda have used a variety of tools to hamper justice and reconciliation measures. Put differently, the phenomenon of transitional justice is more than simply a transposing of a global norm onto a local site. In post-authoritarian polities, concepts such as justice and reconciliation are often re-defined and re-articulated at key moments in a politicized arena. Examining the recent experiences in Indonesia, this paper highlights the "how" of failure, the strategies by which justice and reconciliation in Indonesia have come to be stymied.

In so doing, this article examines several cases that highlight those strategies. The first, an institutional strategy, led to the process of cooptation. The attempt to build a Truth and Reconciliation Commission (TRC) emerged from activists and civil society organizations but came to be coopted into a law that would emphasize amnesty over accountability. At the same time, many groups, international and local alike, have turned to alternative forms of justice that employ traditional, cultural, and/or religious practices. While successful in some instances, forms of "traditional" and in particular, Islamic justice have also been used to avoid and even undermine forms of accountability. In the Tanjung Priok case, military officers responsible for the violence against Muslims in a Jakarta neighborhood proposed to settle matters through *islah*, an Islamic form of peace making. In Aceh, practices of *diyat* and *peusijuek* have led to debates about whether to use alternative or traditional forms of reconciliation or national legal mechanisms to prosecute individuals. While proponents have argued that these cultural practices offer an alternative way to resolve conflicts, critics have derided the cooptation of Islamic and traditional principles for their own self-protection.

To be sure, this essay is not an exhaustive examination of all the reasons that the transitional justice agenda has failed in Indonesia. Those reasons are many and wide ranging including a weak judiciary, corruption, lack of political will, and the like. Instead, the article highlights some of the "softer" strategies elites have used to confound justice initiatives. It suggests that in post-authoritarian polities like Indonesia, a new politics is possible but faces constraints as old and new players adjust to the new rules of the game.

The Rise of the Transitional Justice

Exact definitions of transitional justice vary, but it generally refers to the recognition for and the righting of past wrongs. The International Center for Transitional Justice defines the concept as measures to "redress the legacies of massive human rights abuses" (ICTJ n.d.). Teitel defines it more specifically as "a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel 2003, 69). Teitel emphasizes the legal aspects of transitional justice but as we shall see, it does not always fall into the confines of legalized justice. Transitional justice includes trials, reparations, truth commissions, and lustration but also apologies, rituals, and other symbolic acts. To varying degrees, all forms of transitional justice seek to offer some form of accountability, provide restitution for victims, and promote political, economic, and legal reform at the societal level.

The practice of modern day transitional justice can be traced back to World War I but it rose in international prominence after World War II and the ensuing Nuremburg Trials and Tokyo Tribunals (Teitel 2003). The Cold War, however, doused hopes of international consensus on the role of global institutions for post-conflict justice (Teitel 2002). While some countries did implement mechanisms for transitional justice in the 1970s and 1980s, the end of the Cold War led to a surge in the practice of justice and reconciliation measures globally (Kritz and Mandela 1995).

Alongside this reality, transitional justice has grown dramatically as a field of study in the past two decades. It encompasses a vast and interdisciplinary area that includes traditional academic disciplines such as political science, law, anthropology, and sociology (Bell 2009). Scholars have asked a variety of questions related to the phenomenon of transitional justice. Much of the work has explored the practical aspects of justice including institutional design, costs, and political implications of justice mechanisms (Vinjamuri and Sieff 1999). A related emphasis has consisted of debates in the field about the moral and political dilemmas and trade-offs of justice (Mani 2008; Posner and Vermeule 2004; Stensrud 2009; Van Zyl 1999). A third area explores the way in which justice mechanisms have spread as a global phenomenon (Ben-Josef Hirsch 2009; Fletcher *et al.* 2009; Kim 2008; Lutz and Sikkink 2000). While addressing the first two questions at the margins, the experiences of Indonesia help highlight and challenge some of the arguments made about the diffusion of international norms such as transitional justice.

Perhaps the most influential and well-known theories about the spread of transitional justice institutions have emerged from the constructivist school in international relations. Constructivists have argued that the interests of states and individuals should not be taken for granted but rather understood in the context of how they are formed or con-

structed (Adler 2002; Fearon and Wendt 2002; Wendt 1999). In this view, ideas play a key role in understanding state behavior, which stands in stark contrast to the realist and liberal schools of international relations theory.

Along these lines, a significant research agenda among constructivists has been to explore how ideas spread in international relations, including ideas such as the respect for human rights and prosecution of human rights violations. Finnemore and Skikkink, for example, argued that norm entrepreneurs push for the implementation of ideas until they begin to "cascade" and then ultimately become "internalized" (Finnemore and Sikkink 1999). A second and related theory argues that transnational activist networks in particular spurred the diffusion of norms such as environment and human rights by offering broad new resources for actors (Keck and Sikkink 1998).

The idea of norms cascading transnationally has been applied to the growing global practice of transitional justice mechanisms. Scholars argue that norm entrepreneurs such as activists, NGOs, and other social groups learn from past experiences of transitional justice and diffuse them to other places. Sikkink describes this process as the rise of a "justice cascade" (Lutz and Sikkink 2001; Sikkink 2011). While this supply side theory of norm diffusion is able to recognize a growing trend in the acceptance of transitional justice, it pays less attention to the different ways in which states actually adopt and implement the practice at the domestic level (Cortell and Davis Jr. 2000).

To undertake this task requires examining the different ways in which norms are implemented and articulated against the internal machinations of a particular place and time (Acharya 2004). These include the national political institutions but also the subnational and regional or local contexts as well. In another context, Leheny has explored the way in which the Japanese state adopted international norms against child pornography and new measures of counter-terrorism, both of which could only be understood in the context of Japan's domestic political goals in the late 1990s and early 2000s (Leheny 2006). Subotic, looking specifically at transitional justice, argues that such institutions can be "hijacked" as in the Balkans precisely because domestic political actors have ulterior motives such as eliminating political opponents, receiving international aid, or gaining admission into international organizations (Subotic 2009).

In Indonesia too, domestic political actors have sought to subvert or coopt efforts to address past human rights abuses. They have used a variety of strategies in a variety of settings from "official" national institutional politics to local and cultural practices. The debate over the truth and reconciliation is one area where this can be seen and is where we now turn.

The Rise and Fall of National Truth and Reconciliation

After the fall of Suharto, activists and victims organizations seized the moment and renewed their calls to revisit past violations of human rights during the New Order. Along with a variety of other proposed reform measures including new legislation, fact-finding missions, and human rights courts, NGOs and activists also supported the creation of a TRC during the *reformasi* period. The TRC provides a lens through which to examine the politics around transitional justice more generally, in the way that the commission became mired in the domestic political debate. Rather than simply being vetoed, the TRC was coopted and ultimately hijacked thereby leading to its failure.

In many ways the narrative of the efforts to create a TRC suggests, at least initially, the effects of a "justice cascade" theorized by scholars. International and Indonesian NGOs, some funded by western donors pushed hard for the creation of a TRC. They formed study groups, and invited renowned international scholars and practitioners of transitional justice including those who had been intimately involved with the South African TRC.[1)]

The experience of South Africa played a particularly important role in the development of the idea of an Indonesian TRC. Part of this has to do simply with issues of timing. The TRC in South Africa was established in 1995 and conducted the bulk of their work from 1995 to 1998. In Indonesia, the financial crisis struck in 1997, the *reformasi* movement took off in early 1998, and Suharto stepped down later that year. It was soon after that activists in Indonesia began to explore mechanisms to redress the past, drawing on experiences in other parts of the world including South Africa.

But the relationship was more than simply about timing. For example, Agung Puteri, a key promoter of the TRC and a staff member at ELSAM, the Institute of Policy Research and Advocacy, was also a fellow at the Transitional Justice Program at the University of Capetown in South Africa in 2002 along with several other Indonesians (Agung Putri 2003). In addition, several prominent individuals from South Africa and also from the International Center for Transitional Justice based in New York City also worked closely with ELSAM and others. For example, they co-hosted workshops, authored pamphlets and reports, and also funded the operations of many of the NGOs (Mashabane 2003).

Once the idea of a TRC came to be introduced, however, it articulated into the Indonesian national and local political sphere in particular ways. For example, debates erupted about terminology and the name of the institution. The military and police faction in the legislature objected to notions of "truth" or "*kebenaran*" citing the difficulty

1) Interview with Zaini Abidin, ELSAM, Jakarta Indonesia, May 30, 2013.

of finding out the ultimate truth and the need to emphasize reconciliation over truth. In contrast, reform factions with the legislature favored terms such as "accountability" or "*pertangung jawaban*" instead of "truth" (Sulistiyanto 2007, 89). In other words, the translation of the international terms and ideas bumped up against the power dynamics embedded in Indonesia's legislature where the bill was argued.

Debates occurred also among the NGOs at the societal level. Some NGOs such as Kontras (The Commission for the Disappeared and Victims of Violence) argued that human rights courts and prosecutions should take priority over a TRC. Kontras and other organizations tended to take a harder line on these issues because they dealt with cases involving victims and victims' families (*ibid.*). In contrast, other NGOs such as ELSAM expressed reservations about achieving justice through a dysfunctional legal system and argued that in any case, a TRC could complement courts and promote healing as victims could come forward with their stories.[2)]

Finally there were particular debates about the power of the TRC itself. How far back would its mandate extend? Muslim groups, for example were wary of reopening the wounds of 1965 which might have implicated many in anti-communist massacres that occurred during that time. Also, would it have the power to give amnesty? Clearly, the military and other potential perpetrators were deeply interested in this question. What would its relation be to other institutions such as the human rights courts that were also being established at the same? In these kinds of questions, the interests of NGOs and victims organizations were trumped by state institutions.

In 2000, the MPR called for the creation of a national TRC and in 2004, the legislature passed Law 27 which required the government to formally establish a TRC. The commission was empowered to receive complaints or statements from perpetrators, victims, or victims' families who are the victim's heirs, investigate and clarify gross violations of human rights; provide recommendations to the President concerning appeals for amnesty; provide recommendations to the President concerning the awarding of compensation and/or rehabilitation; and provide annual reports and final reports to the President.

At the same time, the law that finally emerged from the legislative process had also been altered significantly to the disappointment of NGOs and victim's families. First, the TRC in the bill was empowered to recommend amnesties for perpetrators of serious crimes. Second, language in the legislation indicated that crimes overseen by the TRC could not be prosecuted in courts. Third, the legislation stipulated that victims could only receive compensation in exchange for their concurrence of amnesty (ICTJ and

2) Interview with Ifdhal Kasim, Chairperson of KOMNAS-HAM, August 26, 2012.

Kontras 2011, 29–30). Taken together, activists supporting the idea of a TRC argued that the legislation had effectively become an institution that supported impunity rather than something genuinely seeking reconciliation.

Some might argue that the result of the legislative process is always that of compromise and so this result was simply the outcome of institutional politics. However, as Ifdahl Kasim noted, the NGOs and activists were not active participants in the debates around the legislation. They were consulted at the early stages and even then there were several aspects of the legislation that left many NGOs dissatisfied causing them to withdraw their initial support. With many members of the former regime participating in the debate including the since-dismantled military party, the legislation proceeded and became reshaped according to their own ends.[3)]

Discontent with the legislation, several NGOs brought a suit against key provisions of Law 27 to the Constitutional Court. The Court agreed that the provision stipulating the exchange of amnesty for reparations was in fundamental contradiction to rights enshrined in the Constitution and in the principles and practices of international law. However, instead of eliminating the particular provisions that were mentioned in the suit, the Court struck down the entire law, thereby annulling the entire basis of the TRC. For civil society organizations, this proved an enormous setback and an unexpected outcome to an otherwise legally sound strategy. In retrospect many might have preferred a flawed TRC to none at all but at the time activists brought the case to the Constitutional Court they did not see their options in those terms. In this sense, the resulting ruling produced the ironic result of a legal victory for proponents that forced them back to square one.

The failure of the TRC illustrates the way in which norms of diffusion come to be articulated and interpreted in vastly different kinds of ways depending on context. In one sense, we might argue that the TRC became hijacked once it entered the national policy making stage. While international and domestic NGOs promoted what they argued was a just and fair institution, it was re-shaped by the bureaucracy and the legislature to reflect the interests of actors including the military, many of the Muslim parties, and former regimist groups so as to emphasize amnesty and impunity above truth and reconciliation.

3) Interview with Ifdhal Kasim, Chairperson of KOMNAS-HAM, August 26, 2012.

Islamic Justice and the Case of Tanjung Priok

While the articulation between global and national forms of justice and reconciliation are critical, there is also increasing attention being paid to alternative forms of justice often drawing on local cultural, religious, or traditional practices (Shaw *et al.* 2010). Alternative forms of justice are defined here as those that employ traditional, cultural, and/or religious practices and institutions in order to resolve conflict and repair rifts in the society. They are increasingly seen as a critical response to the global or national mechanisms which are seen as formalistic and ultimately ineffective at dealing with issues related to reconciliation (Gready 2005).

The new emphasis on alternative forms of justice and reconciliation is important but needs to be treated cautiously. Practices in Indonesia have been "successful" in some instances but the way in which this is defined and the process by which alternative justice is carried out is just as important as the actual cultural practice itself. In the Tanjung Priok case, military officers responsible for the violence against Muslims in a Jakarta neighborhood proposed to settle matters through *islah* an Islamic form of peace-making. On the one hand, proponents have argued that these cultural practices offer an alternative way to resolve conflicts (Hamdi Muluk 2009). However, critics have argued that the military used these approaches for their own self-protection.

Tanjung Priok is a northern sub-district of Jakarta that includes the city's main harbor. In 1984, tensions between the government and the Muslim communities were quite high, particularly in the context of a proposed law that would have required all organizations including religious ones to adopt the national *pancasila* ideology and declare their allegiance to it above all other ideologies. For conservative Muslims this was the latest in a series of moves that marginalized religious practices and beliefs in the country (Hefner 2000, 121).

In September, a security officer of the neighborhood military command went to a local mosque and ordered certain posters be removed from the mosque walls. Returning with several others the next day, the officer found that his orders had been ignored and with his men proceeded to forcibly remove the posters. One officer allegedly entered the mosque without removing his shoes and another used gutter water to scrub the walls. These represented desecrations of the mosque and led to protests and riots against the security officers (Burns 1989).

The police arrested several people whom they accused of disturbing the peace. However, a larger demonstration protesting both the arrests as well as the larger issue of the *pancasila* legislation was held on September 12. On that night a mass meeting being held transformed into a mass demonstration with several thousand demonstrators march-

ing down the main thoroughfares of the sub-district and the police and military opened fire on the protestors (Weatherbee 1985). At the time, most news of the incident was suppressed. The government detailed only that there was a violent incident in the area in which eight people had been killed. There continues to be uncertainty about the number of victims but estimates suggest the death toll was in the hundreds (Haryanto 2010).

Only after the fall of Suharto did the truth about the incident begin to emerge into the mainstream consciousness of the populace. Heavy pressure from NGOs and also Islamic organizations pushed Suharto's successor Habibie to re-open the case (Junge 2008, 11). As a result, the government opened several investigations into the events surrounding the Tanjung Priok incident (*ibid.*, 20). While some of the investigations provided credible evidence and recommended prosecuting key officers, little has come of these recommendations.

To be sure, the government did establish an ad hoc human rights court that began in September 2003 (Muningaar Sri Sawaswati 2003). This represented one of two ad hoc tribunals that tried officers involved in the incident for crimes against humanity. However, the trial itself came under heavy criticism for a number of reasons. First, only relatively low and mid-ranking officers were brought to trial. The people who would have been actual decision-makers in the incident including General Try Sutrisno were curiously left out of the indictment. Second, blatant intimidation occurred at the trial as members of the military in attendance threatened victims and others at the trial, and allegedly threatened some judges. Third, many of the defendants actually changed their testimony from the initial statements made before the trial to investigators and lawyers and despite this the court did nothing to deal with these obvious changes. Finally, of the 14 accused, initially 2 were acquitted and 12 were convicted in the court, but all convictions were overturned on appeal, resulting in zero convictions (Usman Hamid 2009).

The context of this failure is important. Two years before in March of 2001, General Try Sutrisno who was the commanding officer of the military regional command in Jakarta and generally considered one of the key figures responsible for the Tanjung Priok incident, invited victims and victims' families for a dialogue. Sutrisno called this meeting an *islah* or an Islamic form of peacemaking (*Jakarta Post*, September 22, 2001). *Islah* is derived from the Arabic word that means "to repair" or to "reform" and is practiced as an effort to achieve reconciliation between two people in a fight or dispute (Waterson 2009). In other words, Sutrisno was asking families to think about resolving the issue using a traditional cultural instrument rather than a modern institutional one.

The event began as a kind of open forum where participants, mostly on the military side, emphasized the importance of forgetting the past and building a "peaceful future"

(Fadjar Thufail 2011). Sutrisno and the other military members offered financial assistance to those who had been affected by the incident. The money was carefully referred to as *bantuan keuangan* or financial assistance rather than *kompensasi* or compensation. Fadjar Thufail notes that this included about $200 of *tali kasih* or affection money to the families of each victim or political prisoner. The military also appears to have delivered motorcycles to those who might benefit from their use in business. However, these motorcycles never reached their intended recipient and were apparently sold off and the money was kept by the people entrusted to deliver them (*ibid.*).

The event concluded with the signing of an "*Islah* Charter" which was a document that cited verses from the Koran and called on the government to offer compensation and restitution to the victims (*Jakarta Post*, September 22, 2001). As Fadjar Thufail notes, it was in no way a legal document, but as family members and military officers signed the document it came to resemble a contract or official document. Sutrisno also infused the ceremony with legitimacy by inviting and involving Nurcholish Madjid, a prominent Islamic scholar to the event and having him oversee the event including the signing of the document (Fadjar Thufail 2011).

The *Islah* Charter did not forbid those who signed it from testifying in the ad hoc tribunal. In fact, many people who took the *tali kasih* from Sutrisno said explicitly at the time that they still wanted a proper investigation and justice pursued despite taking money. Nonetheless, the distribution of money to the victims created a major rift between the "pro-*islah*" faction and the "anti-*islah*" faction (Sri Suparyati 2004). This is what led to the inconsistencies at the ad hoc tribunal. Some victims and families who testified to investigators before the *islah* event withdrew or changed their testimony at the actual tribunal itself (Urip Hudiono 2003).

The Tanjung Priok incident and the events of the *islah* in particular provide a glimpse into the way traditional practices can undermine certain aspects of justice and reconciliation. To be sure there are benefits of a religious resolution to the conflict. A number of factors make the *islah* process palatable. First, it was done in a way that was sensitive to the cultural background of the victims. Notwithstanding the fact that the army during this time period was often perceived as being a more Catholic or Christian institution, the pursuit of a resolution that went outside the formal legal system and relied on traditional Islamic principles appealed to some victims' families. Along those lines, the fact that some families rejected the financial assistance and refused to sign the charter indicates the lack of heavy coercion.

However, the army clearly succeeded in weakening the legal case against them. By dividing the victims' groups into different camps, they prevented a potentially concerted effort of the victims to rally around the trial. Although ultimately, a trial did go forward,

it was weakened so fundamentally that none of the convictions could withstand the process of appeal. Furthermore, many participants noted afterward that there was little new information about the Tanjung Priok incident. The military members who attended offered no apology, no further explanation about the incident, and no more information about missing persons. It was also noted later that the military had dominated the floor and little time was given to the victims and families in the event.

In this sense, the main problem with the *islah* approach was not the use of the cultural practices to resolve a dispute and make efforts at reconciliation. If the charter and the payments had emerged after a process of consultation between the military and the victims and resulted in a final outcome after a number of different options were considered, the event might have had some degree of legitimacy. As it was, the military announced the meeting, initiated it, and came with their own agenda. Little room was left for voices of the victims themselves.

Justice and Reconciliation in Aceh

Alternative forms of justice and reconciliation have also been prevalent in Aceh. After decades of separatist conflict and a devastating tsunami in 2004, international negotiators brokered a ceasefire between the Acehnese rebels (GAM) and government forces in 2005 (Aspinall 2005). However, after the ceasefire, tensions still remained high as the region had to deal with a long legacy of trauma and violence. Casualties of the conflict are estimated about 15,000 dead and another 100,000 displaced. Furthermore, a Harvard Medical School survey estimates large percentages of people who had lived through combat experiences, fled from danger, had family members or friends killed, or experienced extortion and robbery (International Organization for Migration 2006). Social devastation was also high with high levels of poverty especially in rural areas and damage to major infrastructure such as schools, clinics, roads, and utilities.

The peace agreement established four mechanisms to implement peace between the two sides. First it called for an amnesty for the rebel fighters of GAM. Second, it outlined a timetable and benchmarks for demobilization, disarmament, and decommissioning of GAM and Indonesian forces. Third, it established a reintegration agenda for combatants, political prisoners, and civilians of the conflict. And finally, it recommended the establishment of a human rights court and a TRC for Aceh. The Aceh Monitoring Mission (AMM), composed of international observers, was given the task of monitoring and supporting the peace process in Aceh (Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement 2005).

While the logistics of putting the plan in place proved difficult, many aspects were successfully implemented. However, the justice and reconciliation agenda proved to be an utter failure. The proposed human rights court for Aceh has still not been set up despite a law calling for its establishment. Furthermore, that law itself states that the court will only have the power to review human rights violations after 2006, meaning past violations will not be under the purview of the court. A TRC for Aceh was outlined in the Helsinki Peace Accords, but has not been officially established because it is supposed to operate under the framework of a national TRC which was ruled unconstitutional in 2006 (Aspinall 2008).[4)]

In this context, local traditional practices have also been employed as a way to address victims in the region. *Diyat* and *peusijuek* are two such examples. Both practices adhere to local traditional beliefs and practices. For example, *diyat* has roots in Islam while *peusijuek* seems to be an indigenous Acehnese practice. At the same time, both of these practices have also come under criticism for undermining aspects of justice and reconciliation.

Diyat is an Arabic term referring to payments made to the next of kin of those killed or disappeared in conflict. The term comes from Islamic jurisprudence and is practiced in many countries in the Middle East, Africa, and Asia where Islam is prominent (Warren and Press 2010, 27). In Pakistan for example, *diyat* was re-introduced as part of its national criminal code in 1990 and gives the victims of serious intentional battery and heirs of murder victims the opportunity to enforce punishment (*qisas*), negotiated settlement (*diyat*), or waive their rights to prosecute perpetrators altogether (Palo 2008). In the post-conflict situations of Darfur and Somalia, programs of transitional justice have also sought to integrate local traditional practices including *diyat* in "hybrid" justice mechanisms (Kritz and Wilson 2010–11; Zuin 2008).

In Aceh, *diyat* was not part of the criminal code, but payments to victims or heirs were initiated in the early 2000s by the governor at the time, Azwar Abubakar, in an effort to dampen the intensity of the conflict in the region. Local government officials believed that GAM's recruitment was being driven by those who sought to avenge the death of a slain family member. *Diyat* was seen as a culturally sensitive and appropriate way to cushion to intensity of the conflict. It was also consistent with moves to allow the Aceh region the implement some forms of Islamic law that might also undermine support for the insurgency (Aspinall 2008, 25).

According to Islamic practice, a standard payment for *diyat* is 100 camels. The government decided to make payments of 50 million rupiah, revised upwards to 60 mil-

4) There have been recent initiatives to establish a TRC in Aceh but the process has yet to be officially approved.

lion rupiah (about USD $6500), roughly the equivalent of 10 buffaloes. However, citing insufficient funds, the government paid out three million rupiah and committed to monthly payments until the entire sum had been paid (*ibid.*). By June of 2007, the government had made some 20,000 *diyat* payments to victims' families averaging the equivalent of about $200–$300 per family (Clarke *et al.* 2008, 27). Payments were generally made to the next of kin based on village level data. Some received only the initial payment while others appear to have received more before the *diyat* program was ended along with other major reintegration programs in 2007.

Despite the extensiveness of the *diyat* program, a number of problems also surfaced. Critics argued that the choice of who received payments relied almost always on local government as well as the security sector including the military, the latter often having been complicit in the very crimes being addressed. Furthermore, these decisions tended to be subjective and based around who suffered harm during the prolonged conflict in Aceh (*ibid.*, 31). Some of the victims report that they were simply asked their bank account information and received deposits in their accounts with no information on why they were receiving the money. Stories also abound of corruption where portions of the *diyat* payment were taken by *keuciks*, *camats*, and others (United Nations Development Programme and Badan Perencanaan Pembangunan Nasional 2006, 37).

These issues point to an even larger problem, that payments for *diyat* were separated from any kind of process related to accountability. Under Islamic law, the family typically decides whether or not to accept *diyat*, or choose to have the perpetrator executed (an "eye for an eye"). But under the system in Aceh, payments were made independent of any knowledge about the perpetrator (Aspinall 2008, 25). No investigations were made and no information was recorded. In this context, it left many recipients deeply unsatisfied. As one female victim notes: "My child is dead as a consequence, then it is paid with 3 million rupiahs [approximately $300] *diyat*. Is that justice? Not according to me, because my child's life has been tagged one life, 3 million rupiahs" (Clarke *et al.* 2008, 23).

The larger point here is that like in Tanjung Priok, Islamic tradition has been invoked in a way that selectively avoids notions of responsibility and accountability. *Diyat* was designed as a way to soften victim anger and prevent them from joining GAM. To be sure, it was an effective mechanism to do this and a situation in Aceh without *diyat* may very well have been a worse alternative. However, to the extent that the peace agreement promised notions of justice and accountability, the *diyat* program provided neither.

Another local ritual commonly practiced, especially after the conflict was called *peusijuek*.[5] *Peusijuek* is a ritual performed to show that harmony and peace have been

5) Avonius has written about this practice and the case described below draws primarily on her research (Avonius 2009).

restored to a community after a disruptive incident. Typically a conflict would be resolved through an apology and some compensation to a victim. The ritual itself involves pouring sacred water, yellow rice, or powder on the parties as a way to symbolize the reconciliation between disputants. *Peusijuek* was performed in villages throughout Aceh when communities welcomed back former GAM combatants (Braithwaite 2010). It was also used to resolve small conflicts such as fights and brawls that occurred after the peace accords and as the peace accords were still being implemented.

Avonius recounts an incident in 2004 that occurred after the peace agreement in Aceh where violence erupted after the army beat a former GAM soldier who had been riding a motorcycle by the military post. Local residents argued that the military no longer had the right to detain people since Aceh was no longer a conflict zone. When AMM monitors and local police arrived at the military post, shooting broke out and one former rebel fighter was shot in the chest and several others were injured (Avonius 2009).

The military commander of the region suggested that the parties use alternative practices such as *peusijuek* to resolve the tensions between the military and the local population. Members of the international AMM supported this idea and suggested that it be used in the aforementioned case. Subsequently, two high-ranking officers of the Indonesian military visited the home of the young man who was killed and offered financial assistance for the family, the traditional gesture among disputants between victims and perpetrators. They also presented a letter for the family to sign. The letter gave permission for the officers to remove the bullet from the victim's body, and it stated that the family would not lay any charges against the perpetrators. The parents of the victim allowed the officers to remove the bullet, but refused to sign the letter (*ibid.*).

Most local groups also rejected the idea of using traditional reconciliatory measures and *peusijuek* for this particular case. One of the ex-combatants involved in the incident specifically stated that he did not want to reconcile with the military in this instance. "I do not want to have *peusijuek* with the military. There is no need for a settlement, first they beat up someone and then they ask for peace" (*ibid.*, 126). He argued that Indonesians should follow the rule of law and his friend should have justice carried out according to the laws of the Indonesia. In many ways, this is a remarkable statement from an individual who had fought against Indonesia for so many years, precisely because the laws of Indonesia were seen as marginalizing the peoples of Aceh.

Others also opposed the use of *peusijuek*. For example, several of the local NGOs including the local director of the Institute for Legal Aid (LBH) argued the case should be brought before a court of law. The director of the Aceh Judicial Monitoring Institute (AJMI) also opposed *peusijuek* and criticized members of the AMM who were advocating

for *peusijuek* saying that they should be simple monitors rather than dispensing advice on conflict resolution (Avonius 2009).

It should be noted that this case is not necessarily representative of attitudes towards *peusijuek* more broadly. In fact, the ritual was practiced to the satisfaction of many throughout the region, and often included military officers as well (Clarke *et al.* 2008, 14). The point here is that in some cases, and in this case in particular, justice has to be understood in context. *Peusijeuk* came to be seen not as a communal way to reconcile, but as a way for perpetrators to escape accountability. As Avonius points out, ironically local actors rejected the alternative practices while outside actors including the AMM and the military pushed for them.

The cases above highlight the dilemma of alternative forms of justice. On the one hand, practices like *islah*, *diyat* and *peusijeuk* offer forms of justice outside of the official legal realm to resolve conflict and bring about reconciliation. In the first two examples, there is an emphasis on Islamic social ethics including explicit references to the Koran and related religious practices. In *peusijeuk*, the social ethics emerges from local indigenous practices that draw legitimacy from the involvement of community leaders and members. The cases then draw on plural forms of legitimacy and show how justice and reconciliation are being done differently.

On the other hand, these cases also identify the potential dangers in embracing these alternative approaches. While embedding transitional justice in local institutions and culture may give them more legitimacy, in these cases it also became an ideal strategy to avoid accountability and legal consequences for perpetrator groups while still offering a patina of legitimacy. In some instances, the embrace of the alternative approaches actively undermined contemporaneous legal proceedings. The *islah* process, for example, weakened the criminal prosecution in the ad hoc court and the *peusijeuk* case in Aceh was considered a substitute for legal prosecution. In this sense, while some have argued that official institutional approaches and "softer" approaches can be complementary, these examples also show the ways in which one the latter interferes with the former.

In part, much of the problem appears also to be the way in which the cultural or traditional approaches have been a largely one-sided affair with little discussion or consultation and almost clinically separated from notions of accountability. Thus, even judged on their own terms, these alternative approaches caused controversy and division and in some cases were actively opposed by victims and their organizations. For many, the approaches employed in these particular cases came to be viewed cynically as a way to co-opt a traditional practice and circumvent mechanisms of accountability.

These alternative institutions also raise questions about the role of the state and whether these approaches also absolve the state from responsibility in past violence. In

Indonesia's case, the state played a central role in much of the violence during Suharto's tenure in part because the military was at the core of the New Order state itself. But justice and reconciliation initiatives between say, army officers involved in the incident, and the victims are distinct from initiatives that recognize the Indonesian state itself as a perpetrator of the past violence. To be sure, the role and responsibility of the state is invoked implicitly each of these cases. In the *islah*, the document that emerges and is signed and is affixed with official looking seals and calls on the state to provide restitution. The practice of *diyat* is Islamic in principle but is administered by provincial government of Aceh. The *peusijeuk* was encouraged by government and military officials. However, emphasizing the religious, cultural, and traditional approaches not only circumvents accountability of the actors but also of state accountability more generally even though the state ultimately wielded much of the responsibility for past abuses.

Conclusion

The experience of transitional justice in Indonesia illustrates some of the larger and continued problems of governance in post-Suharto Indonesia where the rules of the game have changed, but many of the players remain the same. Many from the New Order era have little interest either in looking backward, or downward to the larger social forces at play.

This has been manifested in Indonesia's legislature which is increasingly dysfunctional and not able to pass very much meaningful reform legislation. While the early years after Suharto produced some significant gains in reforms including constitutional amendments, legislative hearings, and even some concessions on human rights courts, this has become much more difficult over the past six years or so when legislative politics has shifted from what Harold Crouch calls "crisis driven politics" to "politics as usual" (Crouch 2010).

The failure of transitional justice also reflects an incomplete reform of the military. While the military has stepped away from the official arena of politics, it still wields a great deal of autonomy because of its financial independence and its territorial structure. Their involvement in all of the cases of alternative or "traditional" justice reflects their continued ability to set the agenda and protect their own interests.

Finally, we see a weak judicial system where courts either overstep their own jurisdiction as appears to be the case of the Constitutional Court case on the TRC legislation, or a court that appears unable or unwilling to prosecute perpetrators as evidenced by the Tanjung Priok case. The weakness of the judiciary is perhaps a key reason why

so little justice has been seen in the post-Suharto era.

It is also worth noting that even at the societal level, the calls for justice have sometimes been uneven and even muted. While many NGOs and other social organizations have been involved in the push for transitional justice, there is also reluctance and antipathy among broad swaths of the population about past events that frustrates activists as well. For example, on the issue of the 1965 killings, many Indonesians still accept the official state version of events that the killing of hundreds of thousands of alleged communists was necessary to save the Indonesian state. The presidential election of 2014 also featured, former Lieutenant General Prabowo Subianto who was directly involved in several of Indonesia's most prominent human rights abuses suggesting a penchant at least among some in the general population to overlook his past record. These factors too certainly influenced the trajectory of transitional justice in Indonesia.

However, this is not simply to suggest that old elites and opponents of the justice agenda can do as they please. In fact, there have been some significant changes to human rights institutions in Indonesia including new legislation, a more empowered human rights commission, and a more vibrant civil society. This has meant that the players have had to adjust their strategies as a way to protect their interests and positions in the new system. In the area of transitional justice, this has involved a variety of strategies both institutional and extra-institutional.

The example of the TRC shows the way in which legislation in the democratic process can be coopted in ways that run contrary to the original aims of activists and victims organizations. Similarly, religious and other cultural practices have also faced cooptation in some instances. Opponents to transitional justice are not standing idle as the institutional rules have changed. Instead they are using a wide variety of tools to counter the efforts to revisit the past. Not all these strategies are successful, but this essay has tried to highlight some of the processes that have frustrated reformers because of the nebulous way in which legitimate institutions are used to hinder a political agenda around transitional justice.

While this article does not mean to suggest that all prospects for addressing past violations of human rights in Indonesia are doomed, it points to the particular challenges of states that undergo limited or gradual processes of transition in Southeast Asia and elsewhere. Said differently, elite continuity may emerge for a variety of factors, but one of them may be the nature of the transitional process itself. For example Posner and Vermeule highlight four kinds of transitions: foreign-led, opposition-led, elite-led, and bargain and argue that foreign-led transitions tend to lead to more complete transitional justice while the other types lead to more limited forms (Posner and Vermeule 2004). This is because international organizations, often the United Nations, take on the cost of

the justice initiative and offer cover for the groups who support it while able to convince or coerce resistant groups. On the other hand, opposition-led and elite-led transitions are in varying degrees, reluctant to carry out justice because they themselves may have little to gain.

In Southeast Asia, Cambodia and Timor Leste can be characterized as foreign-led transitions and these are the two states that have had some degree of justice and reconciliation mechanisms put in place. The Philippines is arguably opposition-led and Indonesia's transition can be characterized as elite-led and both of these countries have had much less success. In these latter cases, the elites had a direct or indirect role in the violations of the past and are reluctant to introduce initiatives that would implicate themselves or force them to be accountable for past deeds. By extension, the gradual transition currently underway in Myanmar is likely to be a difficult road for advocates of transitional justice initiatives to traverse.

Globally, Indonesia's experience may also be a cautionary tale for transitional justice at a time when it is being embraced in the Middle East and North Africa and other parts of the world. It suggests that attention to national and local political and institutional contexts are also critical. Justice measures are prone to cooptation or failure particularly in the presence of elite continuity and a weak civil society. In fact, the early experiences of Latin America in the 1980s may be regarded as somewhat more successful than Indonesia in part because of a clear break from the past and a revival of a popular left which was wiped out in the context of Indonesia.

The push for justice and reconciliation in post-authoritarian Indonesia thus also complicates our understanding of the way norms of transitional justice appear to be spreading around the globe. On the one hand, this is not a norm adopted and implemented in an unproblematic fashion. In Indonesia, the pressures for transitional justice have appeared both externally and internally but its implementation has largely been a failure. At the same time, transitional justice mechanisms have also filtered down to local level initiatives which use local cultural practices as a way to achieve notions of justice and reconciliation that differ significantly from international and national models. That said, there are still many instances both at the national and local level where these institutions have been coopted using new strategies for political survival and domination.

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