

# **The Politics of Human Rights in Indonesia: The Failure to Adopt the Rome Statute of the International Criminal Court (ICC)**

by

**Yessi Olivia**

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## ABSTRACT

This thesis examines the politics of human rights in post-Suharto Indonesia. It specifically analyses the impact of the political environment created during *Reformasi* on the implementation of a human rights policy. In doing so, this thesis uses the plan to ratify the Rome Statute of the ICC as an instrument to investigate how actors (State and non-state) perceive Indonesia's human rights policy. It also examines how their actions contributed to the failure to adopt the Rome Statute.

This thesis argues that the mode of transition during *Reformasi*, where the elements of *Orde Baru* played some influence in directing the trajectory of democracy, contributed to the discrepancies in human rights policy in Indonesia. In post-Suharto Indonesia, human rights are acknowledged and accepted, which is in contrast to the situation during *Orde Baru* where the government was quite indifferent to human rights issues. However, since the democratic transition was a compromise between the old and the new elites, human rights were only accepted as a component part of the pathway to democracy rather than as a fundamental responsibility of the State requiring the full protection of people's rights. This circumstance has marred the implementation of human rights policy because the elites perceive a lack of urgency in addressing human rights problems. Meanwhile, progressive civil society groups that work in democracy and human rights spaces have been unable to push the government to further the reform because of their limited capacity to influence the elites.

What this thesis has demonstrated is the firm solution to past human rights crimes and the continuation of legal reform are crucial elements needed to execute the plan to adopt the Rome Statute. Therefore, the uncertainty surrounding these issues and the government's failure to address them will do nothing but turning the human rights policy into a paper tiger.

# DECLARATION

I certify that this thesis:

does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and

to the best of my knowledge and belief, does not contain any material previously published or written by another person except where due reference is made in the text.

Signed.....

Date 2 October 2019

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## NOTES ON INDONESIAN SPELLING AND TRANSCRIPTION

For the purposes of simplification and consistency, this thesis will use modern Indonesian spelling. This means that I am not using digraphs such as *oe*, *dj*, and *tj* that were in common use before the implementation of the Enhanced Indonesian Spelling (*Ejaan Yang Disempurnakan*—EYD) in 1972. Therefore, the names of ‘Soekarno,’ ‘Boedi Oetomo,’ ‘Masjumi,’ and ‘Djakarta,’ will be written as Sukarno, Budi Utomo, Masyumi, and Jakarta, respectively. I have, however, made some exceptions for publications published before EYD and preserved the old spellings. I should also note here that the language structure of the interviews with my respondents have been modified, without changing the respondents’ arguments or explanation, in the interests of coherence and clarity for English speaking readers.

## GLOSSARY OF TERMS AND ABBREVIATIONS

ABRI	<i>Angkatan Bersenjata Republik Indonesia</i> Armed Forces of the Republic of Indonesia
ASEAN	Association of Southeast Asian Nations
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CSOs	Civil Society Organisations
DPR	<i>Dewan Perwakilan Rakyat</i> House of Representatives
FPI	<i>Front Pembela Islam</i> Islamic Defenders Front
ICC	International Criminal Court
ICIET	International Commission of Inquiry on East Timor
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGGI	Intergovernmental Group on Indonesia
InterFET	International Force East Timor
Kemenkumham	<i>Kementerian Hukum dan Hak Asasi Manusia</i> Ministry of Law and Human Rights
Kemenlu	<i>Kementerian Luar Negeri</i> Ministry of Foreign Affairs
Keppres	<i>Keputusan Presiden</i> Presidential Regulation
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia</i> Indonesia's National Human Rights Commission
KOPASSUS	<i>Komando Pasukan Khusus</i> Special Forces Command
KPP-HAM di Timor Timur	<i>Komisi Penyelidik Pelanggaran Hak Asasi Manusia</i> National Commission of Inquiry on Human Rights Violations in East Timor
KRHN	<i>Konsorsium Reformasi Hukum Nasional</i> National Legal Reform Consortium
LSM	<i>Lembaga Swadaya Masyarakat</i> Non-Governmental Organisation
MPR	<i>Majelis Perwakilan Rakyat</i> People's Consultative Assembly
NGO	Non-Governmental Organisation

NU	<i>Nahdlatul Ulama</i> (a large Islamic movement)
OHCHR	Office of the High Commissioner for Human Rights
Ormas	<i>Organisasi Masyarakat</i> Community Organisation
PAN	<i>Partai Amanat Nasional</i> National Mandate Party
Partai Golkar	<i>Partai Golongan Karya</i> Party of Functional Groups
PBHI	<i>Persatuan Bantuan Hukum Indonesia</i> Indonesian Legal Aid and Human Rights Association
PDI	<i>Partai Demokrasi Indonesia</i> Indonesian Democratic Party
PDI-P	<i>Partai Demokrasi Indonesia-Perjuangan</i> Indonesian Democratic Party of Struggle
Perpu	<i>Peraturan Pemerintah Pengganti Undang-Undang</i> Government Regulation in Lieu of Law
PKB	<i>Partai Kebangkitan Bangsa</i> National Awakening Party
PNI	<i>Partai Nasional Indonesia</i> Indonesian National Party
PP	<i>Peraturan Pemerintah</i> Government Regulation
PROLEGNAS	<i>Program Legislasi Nasional</i> National Legislation Program
Reformasi	Reformation (the post-1998 political era in Indonesia)
SESKOAD	<i>Sekolah Komando Angkatan Darat</i> Army Command and General Staff College
TNI	<i>Tentara Nasional Indonesia</i> Indonesian National Armed Forces
UN	United Nations
UNSC	United Nations Security Council
UNTAET	United Nations Transitional Administration in East Timor
UU	<i>Undang-Undang</i> Act of Legislation
UUD 1945	<i>Undang-Undang Dasar 1945</i> The 1945 Constitution
YLBHI	<i>Yayasan Lembaga Bantuan Hukum Indonesia</i> Indonesian Institute of Legal Aid

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## CHAPTER 1 INTRODUCTION

This thesis analyses the politics of human rights in Indonesia where a wide range of actors, from government agencies, lawmakers, to NGOs, have their share in influencing, supporting, or impeding human rights policy in Indonesia. It highlights the impact of the entanglement of external and internal factors to the development of human rights policy in post-Suharto Indonesia. The thesis argues that while international factors play a significant role in shaping Indonesia's human rights policy, the circumstances that took place during the democratic transformation period have resulted in the slowing down of the progress of human rights promotion in Indonesia.

Through discussion chapters, this thesis shows how the complication of Indonesia's democratization—where the consensus between the old and the moderate elites has preserved some of the norms from *Orde Baru*, the unsupervised military reform that has enabled the military to shield itself from democratic progression, and the insignificant number of progressive groups to push democratic reforms—has created a paradoxical development to the policy of human rights in Indonesia. It has then become an irony that, despite the democratic environment created with *Reformasi*, the government in post-Suharto Indonesia has been struggling to effectively implement its policy on human rights.

To measure the discrepancy in the implementation of human rights policy in Indonesia, this thesis used the case study of the plan to adopt the Rome Statute of the International Criminal Court (ICC) under Indonesia's National Plan on Human Rights (*Rencana Aksi Nasional Hak Asasi Manusia*—RANHAM). Operated since 2002, the ICC is the first permanent treaty-based court that serves “to investigate and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression”.<sup>1</sup> Its status as the first indefinite international court to deal with serious human rights crimes underlines how advanced the ICC is over the previous *ad-hoc* international tribunals (the courts that were established after the Second World War in Nuremberg or Tokyo or those created to prosecute war crimes perpetrators in Rwanda and the former Yugoslavia). It is important to note here that the creation of the ICC as a permanent court was the result of intensive collaboration from States and non-state actors (*e.g.* scholars and NGOs) that started after the end of the Second World War to refine the

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<sup>1</sup> "About International Criminal Court," International Criminal Court, accessed 12 November 2018, <https://www.icc-cpi.int/about>

international criminal law especially in responding to serious crimes on human rights. This joint effort was later finalized in the 1998 Diplomatic Conference in Rome, Italy, with the adoption of the Rome Statute of the ICC as the legal foundation to establish the court.<sup>2</sup>

As one of the States that attended the 1998 Diplomatic Conference, Indonesia intended to ratify the treaty under President Megawati Sukarnoputri's RANHAM of 2004-2009.<sup>3</sup> When Megawati lost the 2004 presidential election, the human rights plan was reassigned to her successor, Susilo Bambang Yudhoyono.<sup>4</sup> During Yudhoyono's ten-year tenure, the plan to adopt the Rome Statute was eventually dropped despite promises made by government officials to implement its RANHAM. How the Rome Statute was initially introduced, discussed, and later abandoned is the central focus of this thesis.

Several things need to point out here. First, this thesis demonstrates how the perception of human rights in Indonesia has shifted. During the period of *Orde Baru*, the Indonesian Government emphasised the relativity of human rights. Human rights were seen as incompatible with Indonesian culture that prioritised the rights of the collective over the rights of the individual. This position was reiterated in the early 1990s, echoing other Asian countries that argued with a focus on Asian values to challenge the West on the issue of human rights.<sup>5</sup> This standpoint then changed as *Reformasi* swept the nation and the universalism of human rights was built into national laws and regulations.

Second, human rights issues are very complex, especially for a country that lived under a dictatorship with poor human rights record like Indonesia. Some scholars have pointed out that some of Indonesia's human rights problems are related to the unthorough legal reform that took place during Reformasi.<sup>6</sup> For example, despite the efforts to dismantle Orde Baru's

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<sup>2</sup> For the complete historical background of the ICC, see: William Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2004); M. Cherif Bassiouni, "The Making of International Criminal Court," in *International Criminal Law*, ed. M. Cherif Bassiouni (Leiden: Martinus Nijhoff Publishers, 2008).

<sup>3</sup> Presiden Republik Indonesia. "Keputusan Presiden Republik Indonesia Nomor 40 Tahun 2004 tentang Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2004-2009." (2004).

<sup>4</sup> See: Presiden Republik Indonesia. "Peraturan Presiden Republik Indonesia Nomor 23 Tahun 2011 tentang Rencana Aksi Nasional Hak Asasi Manusia Tahun 2011-2014." (2011).

<sup>5</sup> See: Anthony J. Langlois, *The Politics of Justice and Human Rights* (New York: Cambridge University Press, 2001); Michael D. Barr, "Lee Kuan Yew and the 'Asian Values' Debate," *Asian Studies Review* 24, no. 3 (2000); Daniel Bell, "The East Asian Challenge to Human Rights: Reflections on an East West dialogue," *Human Rights Quarterly* 18, no. 3 (1996); Diane K. Mauzy, "The Human Rights and 'Asian Values' Debate in Southeast Asia: Trying to Clarify the Key Issues," *The Pacific Review* 10, no. 2 (1997).

<sup>6</sup> See for example: Dave McRae, "Indonesian Capital Punishment in Comparative Perspectives," *Bijdragen tot de Taal-, Land- en Volkenkunde* 173, no. 1 (2017); Andrew Rosser, *Litigating the Right to Health Courts, Politics, and Justice in Indonesia*, Policy Studies 76 (Honolulu: East-West Center, 2017).

authoritarianism and draconian laws, Indonesia has preserved the capital punishment under the Criminal Code and imposed the death penalty under new criminal offences like the anti-corruption and anti-terrorism regulations.<sup>7</sup> Meanwhile, other scholars have associated human rights problems in Indonesia to the corruption culture whereby the elements in the government have muddled with the basic rights of the people.<sup>8</sup> While those studies are important in highlighting the problems with human rights protection in Indonesia, this research limits its study on the significance of the politics of human rights in post-Suharto Indonesia. Unlike other studies that attribute the problem of the actualisation of human rights policies in Indonesia to the lack of political will or the absence of presidential leadership,<sup>9</sup> the case of the failure to adopt the Rome Statute of the ICC points out how the dynamics of various political actors, from the bureaucrats, politicians, civil society groups, and the military, whose actions have been influenced by *Reformasi*, have played a role in determining (or impeding) the continuation of human rights policy in Indonesia. By taking into account the political landscape created after Suharto resigned from power, this research illuminates how political actors with their conflicting interests have affected human rights policy in post-authoritarian Indonesia. The subject of politics of human rights has been under-explored, an omission that this thesis aims to rectify in its contribution to the growing literature on the topic of human rights in post-Suharto Indonesia and to the study of the politics of human rights in general.

Third, it should be noted that the Rome Statute is not the only international human rights treaties that was included in RANHAM. However, the scheme to implement the Rome Statute into Indonesia's legal justice system tells a unique story that is different from other human rights treaties outlined in Indonesia's plan of action on human rights. This is related to how the adoption and the enforcement of the Rome Statute with the establishment of the ICC intersected with the political discourse following Suharto's downfall in 1998. The Rome

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<sup>7</sup> McRae, "Indonesian Capital Punishment in Perspectives"

<sup>8</sup> See: Andrew Rosser, "Realising Free Health Care for the Poor in Indonesia: The Politics of Illegal Fees," *Journal of Contemporary Asia* 42, no. 2 (2012); Daniel Suryadarma, "How Corruption Diminishes the Effectiveness of Public Spending on Education in Indonesia," *Bulletin of Indonesian Economic Studies* 48, iss. 1; Irene Istiningih Hadiprayitno, "Defensive Enforcement: Human Rights in Indonesia," *Human Rights Review* 11, iss. 3.

<sup>9</sup> These assumptions are prevalent in the many analyses on human rights in Indonesia. For example see: Dominic Berger, "Human Rights and Yudhoyono's Test of History," in *The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation*, ed. Edward Aspinall, Marcus Mietzner, and Dirk Tomsa (Singapore: ISEAS Publishing, 2015); Robin Bush, "Religious Politics and Minority Rights During the Yudhoyono Presidency," in *The Yudhoyono Presidency Indonesia's Decade of Stability and Stagnation*, ed. Edward Aspinall, Marcus Mietzner, and Dirk Tomsa (Singapore: ISEAS, 2015); Human Rights Watch, "Indonesia Accountability for Human Rights Violations in Aceh," (2001).

Statute of the ICC was brought during the discussion of transitional justice—a systemic effort to respond to “pervasive human rights abuses”<sup>10</sup> that had occurred in the past—by Indonesia’s National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia—Komnas HAM*) and several progressive civil society groups in 2000.<sup>11</sup> The treaty then slipped into Indonesian politics when the country struggled to respond to the scrutiny over human rights violations that took place after the East Timor referendum in 1999. Modelled after the Rome Statute, Indonesia eventually passed the Law on Human Rights Court in 2000.<sup>12</sup>

The remainder of this chapter will be divided into several parts. I next offer an examination of previous studies on Indonesian politics and human rights, which demonstrates how the military-backed regime undermined human rights discourse and protection. Following this, I will outline the arguments and the research questions, which drove the development of my argument in this thesis that: (1) the political changes which occurred during *Reformasi* created an impediment to the implementation of Indonesia’s human rights policy, and (2) the politicisation of human rights by converting them into government policy has weakened the meaning of human rights and undermined the promotion of human rights in Indonesia. How this research was undertaken and structured will be explained in the research design and thesis structure sections.

## 1.1 Explaining Human Rights in Post-Suharto Indonesia

Modern human rights institutions—a collection of norms, treaties, and organisations on human rights—are the products of international collaboration among States that started after World War II ended.<sup>13</sup> This characteristic has made international institutions on human rights

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<sup>10</sup> "What is Transitional Justice?," 2009, ICTJ, accessed 28 July 2018,

<https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

<sup>11</sup> Tim Komnas HAM, "Transitional Justice Menentukan Kualitas Demokrasi Indonesia di Masa Depan," *Jurnal Dinamika HAM* 2, no. 1 (2001).

<sup>12</sup> The Law on Human Rights Court (*Undang-Undang Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia*) has jurisdictions on two grave human rights violations: genocide and crimes against humanity. The definitions of these human rights were taken from the Rome Statute of the ICC.

<sup>13</sup> Jack Donnelly, *Human Rights in Theory and Practice*, 3<sup>rd</sup> ed. (Ithaca: Cornell University Press, 2013). The development of the international human rights regime began with the establishment of the United Nations on 24 October 1945. Since then, the work of codifying human rights norms in international conventions and covenants and creating human rights institutions started to develop. The first and the basic document that compiles the international standard of human rights norms is the Universal Declaration of Human Rights (UDHR) created in 1948. In addition to the UDHR, the UN created several other important human rights treaties and established monitoring bodies. These treaties include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Early on, the primary institution assisting states in addressing human rights problems was the United Nations Commission on Human Rights, which was established in 1946. This commission was replaced by the UN Human Rights Council in 2006 and new mechanisms to monitor human rights conditions were set, for example, the Universal Periodic Review

as unique as they are “negotiated internationally but create stakeholders almost exclusively domestically.”<sup>14</sup> Scholars have long produced analysis on the behaviour of States in regards to the creation of international agreements that regulate the domestic practice of human rights. They, for example, look for explanations for why States comply with the international human rights institution<sup>15</sup>; whether the commitment to an international human rights treaty resulted in the improvement of human rights practice domestically<sup>16</sup>; or how international human rights norms are internalized and accepted in a country.<sup>17</sup>

Another important discussion on the subject is related to the influence of international human rights institutions on domestic politics. Beth A. Simmons argues that the positive reception to an international human rights treaty can be related to the legislative agenda that the government tried to pursue. In this case the treaty could serve as “a fairly clear proposal” to challenge the status quo.<sup>18</sup> The domestic political agenda behind the support to international human rights institution can also be found in the analysis of human rights regime in Europe.

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(UPR) which is a system where a state agrees to submit its human rights report to the Council and to be reviewed by other states. In addition to the international human rights institutions, there are regional human rights systems with their own mechanizations (e.g., instruments, bodies, courts) to promote human rights. The mutual relationship between the UN human rights system and the regional systems was addressed during the 1993 World Conference on Human Rights: “Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection... The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist” (from Vienna Declaration and Programme of Action). The most established regional human rights systems currently exist in three regions: Africa (under the African Union), America (under the Organization of American States) and Europe (arranged by the European Union, the Council of Europe, and the Organization for Security and Cooperation in Europe). The ASEAN launched its own commission on human rights (ASEAN Intergovernmental Commission on Human Rights—AICHR) in 2009, but the AICHR mandate is limited only to a consultative body unlike other regional human rights systems that have their own human rights courts to settle human rights cases. See: United Nations, “Vienna Declaration and Programme of Action,” (1993); “OHCHR - Cooperation between the United Nations and regional mechanisms for the promotion and protection of human rights,” 1996, OHCHR, accessed 16 October 2018, <https://www.ohchr.org/en/countries/nhri/pages/cooperation.aspx> ; Office of the United Nations High Commissioner for Human Rights, *The Core International Human Rights Treaties* (New York: United Nations, 2006); “Regional human rights systems in other parts of the world: Europe, the Americas and Africa,” 2009, OHCHR, accessed 16 October 2018, <https://bangkok.ohchr.org/programme/other-regional-systems.aspx> ; ASEAN, *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights* (Jakarta: ASEAN, 2009); United Nations, *Universal Declaration of Human Rights* (2015).

<sup>14</sup> Beth A. Simmons, *Mobilizing for Human Rights International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), 126.

<sup>15</sup> Oona Hathaway, “Why Do Countries to Human Rights Treaties,” *Journal of Conflict Resolution* 51 no. 4 (2007).

<sup>16</sup> Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?” *Journal of Conflict Resolution* 49 no. 6 (2005); Ryan Goodman and Derek Jinks, “Measuring the Effects of Human Rights Treaties,” *European Journal of International Law* 14 no. 1 (2003).

<sup>17</sup> Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practice: Introduction.” In Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

<sup>18</sup> Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*, 128.

Andrew Moravcsik argues the explanation of why elites supported the creation of the European Convention for the Protection of Human Rights is because the pro-democracy elites sought for democratic consolidation and wanted to confine their undemocratic rivals.<sup>19</sup> In addition to affecting the political elites, international human rights institution can also influence the mobilization of the people that demand political and social changes from the government as they embrace the promoted human rights norms and become the defenders of such norms.<sup>20</sup>

While the above theoretical perspectives are more straightforward in explaining why actors decided to do x, y, and z in responding to international human rights institutions, the case of explaining the development of human rights in the post-Suharto Indonesia is intricate. One of the reasons is because there is the element of democratisation that plays an important role in shaping the trajectory of Indonesian politics including the country's approach in embracing human rights.

Democratisation here is understood as “a complex, long-term, dynamic, and open-ended process... towards a more rule-based, more consensual and more participatory politics.”<sup>21</sup> In reflecting the relative power of actors that are involved in democratisation, Samuel Huntington classifies the process into three categories: transformation, transplacement and replacement.<sup>22</sup> Transformation describes a process whereby the elites are in charge of democratisation, while replacement highlights the importance of the opposition groups in driving the change. The third classification, transplacement, is used to explain a situation where both government and opposition groups work together to initiate the democratic change. In practice, as pointed out by Huntington, no regime changes have perfectly fit the three categories as compromises have been made by the elites and the opposition groups, and there is a chance that the transformation has shifted from one type to another.

One of the immediate issues commonly raised during democratisation is the convolution of democracy and human rights. Manuel Antonio Garreton argued that the central discourse of human rights after the end of a dictatorship revolves around how to deal with the “legacy from

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<sup>19</sup> Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 no.2 (2000).

<sup>20</sup> Simmons, *Mobilizing for Human Rights International Law in Domestic Politics*.

<sup>21</sup> Laurence Whitehead, *Democratization: Theory and Experience* (New York: Oxford University Press, 2002), 27.

<sup>22</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, vol. 4 (Norman: University of Oklahoma press, 1993).

the previous regime” or, as he put it, “the authoritarian enclaves.”<sup>23</sup> These past relics include the institutions, the actors (such as the military) and values, all of which may obstruct or oppose the democratic norms and practice. Human rights are then used as a tactic to overthrow the remnants of the authoritarian regime in hope that the legitimacy of the new democratic government will be assured. The quest for human rights during the democratisation process, however, tends to be convoluted because of the clash of the two logics that overlap one another. The first rationale, which represents the “ethical-symbolic logic,”<sup>24</sup> centres on the demand for a thorough solution to past human rights abuses. This includes “the maximum truth and diffusion of information about the crimes that were crimes, the trial and punishment of those who were responsible, and the greatest possible institutional and symbolic reparation to the victims.”<sup>25</sup> According to Garreton, under this rationality, democracy is mistaken for human rights and is ‘subordinate’<sup>26</sup> to human rights. The second reason is the ‘political-state logic’<sup>27</sup> which, in contrast to the first logic, places democracy above human rights. Within this reasoning, human rights are treated as a part of the democratic issues because the desired goal is to achieve the transformation of the country from authoritarian to democratic.

These two rationales, which represent the interests of the society and the democratic state respectively, may appear to be on the same side in opposing authoritarianism, but they are also competing out of fear of setbacks if the goal is not achieved.

If the spectre haunting the ethical logic consists of forgetting and impunity, the spectre haunting the political-state logic is authoritarian regression. Taking the metaphor to its extreme, one can say that there is a hidden reciprocal blackmail between the two competing logics. Some will claim that the radical solution to the human rights problem will invite authoritarian regression. Others will say that if the human rights issue is not resolved, democracy will lack legitimacy.<sup>28</sup>

Garreton stated that the level of disagreement between the two sides is not the same everywhere and there is no simple solution to the problems faced during democratic transition. However, he asserted that how the democratisation process manages the issues of

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<sup>23</sup> Manuel Antonio Garreton M., "Human Rights in Processes of Democratisation," *Journal of Latin American Studies* (1994): 223.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., 224.

<sup>28</sup> Ibid.

dealing with past wrongdoings and “how best to combine the two logics” would be helpful in analysing “the question of human rights in post-authoritarian situations.”<sup>29</sup>

The dilemmas of dealing with the past or focusing on moving forward, as described by Garreton, have been explained in studies on democratisation in regions such as Latin America and Eastern Europe<sup>30</sup> and the strategies employed by agents of change determine the outcome of the dilemmas. Raúl Alfonsín, who was elected in 1983 following the fall of the military regime in Argentina, for example, was faced with a petition for the new government to prosecute those who committed human rights abuses in the past. At first, the Alfonsín administration responded to the demand by indicting the leader of the military junta and establishing a fact-finding team to investigate the cases of disappeared civilians. However, after pressure from the military, the government put an end to the effort to bring human rights offenders to trial.<sup>31</sup> Meanwhile, in other situations where compromise has been made between the old regime and the opposition groups, where the elites from the past regime were dominant, the option to prosecute human rights abusers was ruled out. This was the case for democratic transition in Hungary, Poland and Czechoslovakia where the “initial overall tendency was to forgive and forget.”<sup>32</sup>

As Garreton’s model provide us the path in understanding human rights in the context of democratisation then the main question for the case of explaining human rights in post-authoritarian Indonesia is: How did the country deal with its past history; did the democratic government able to clear out the authoritarian enclaves? In relations to this question, which logic was then applied in the relations of democracy and human rights in Indonesia: a. the ethical-symbolic logic or b. the political-state logic?

Firstly, an understanding of how authoritarianism worked in the Suharto era is a crucial point (more on this in Chapter 2). The rise of Suharto as a powerful figure in Indonesian politics could not be separated from the political and economic uncertainties created by the elites. In the wake of economic and political crises that paralyzed the country in the early 1960s, the

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<sup>29</sup> Ibid., 225.

<sup>30</sup> See: Guillermo O'Donnell, Philippe C. Schmitter, and Laurence Whitehead, *Transitions from Authoritarian Rule: Latin America* (Baltimore: Johns Hopkins University Press, 1986); Guillermo O'Donnell et al., *Transitions from Authoritarian Rule: Southern Europe* (Baltimore: JHU Press, 1986); Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, 4.

<sup>31</sup> Paige Arthur, "How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009); Jose Zalaquett, "From Dictatorship to Democracy," *New Republic* 193, no. 25 (1985).

<sup>32</sup> Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, 4, 228.

military as one of the important elite group then took over the government and change the course of Indonesia. Under the leadership of Suharto, the military backed regime took authoritative measures in aiming for stability, actions which included demoting Sukarno from office and launching a national purge against Indonesian Communist Party (*Partai Komunis Indonesia*), one of the biggest political parties and a Sukarno ally. In a span of just one year from 1965 to 1966, the military systematically eradicated and expelled thousands of the communist party members and those labelled as communists on charges of treason. While the official record of the number of victims is non-existent, some research has claimed the number reached almost 900,000, which marks the mass killings as the darkest moment in Indonesian history.<sup>33</sup> In the name of regaining stability, Suharto's regime, also known as *Orde Baru*, restructured Indonesia's political system and abandoned democracy as the regime claimed it to be the source of the volatility in the past. The government also came up with policies that stripped people from their basic rights from curtailing press freedom, streamlining political parties and suppressing voters, to allowing the use of torture and other type of violences towards dissenters.

For or more than three decades *Orde Baru* survived because it created a layered system where the executive (the president) exerted enormous power while the rest of the government branches were too weak to perform their role in overseeing the president. As the most important political actor that sat at the top of the pyramid, Suharto ran the country with the assistance of his inner circle comprised of people from the military and the State Secretariat—a government body that managed “the civilian bureaucracy.”<sup>34</sup> In his attempts to control politics and economy, Suharto was responsible for creating a group of oligarchs—that include his family members—who controlled enormous power and wealth through their business activities.<sup>35</sup> The second tier of the pyramid was occupied by the military, which was mandated by the government to be involved in socio-political affairs as well as its traditional militaristic role. The rest of the pyramid levels were allocated to the bureaucrats, the parliament—which was dominated by the State party, Golkar (*Golongan Karya*)—and the people. Through this structure, the military, which, according to Liddle was “*primus inter*

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<sup>33</sup> See: Benedict Anderson, *Violence and the State in Suharto's Indonesia* (Ithaca: Southeast Asia Program Publications, 2001); Carmel Budiardjo, "Militarism and Repression in Indonesia," *Third World Quarterly* 8, no. 4 (1986).

<sup>34</sup> William R. Liddle, "Soeharto's Indonesia: Personal Rule and Political Institutions," *Pacific Affairs* 58, no. 1 (1985): 73. For analysis on Suharto's inner circle that came from military elites, see: David Jenkins, *Suharto and His Generals: Indonesian Military Politics, 1975-1983*, Monograph series (Cornell University. Modern Indonesia Project) (Ithaca: Cornell Modern Indonesia Project, 1984).

<sup>35</sup> See: Jeffrey A. Winters, "Oligarchy and Democracy in Indonesia." *Indonesia* 96 (2013).

*pares* within the bureaucracy,”<sup>36</sup> was instrumental in the *Orde Baru* regime’s attempts to assert control over civil society. The involvement of the military in turning the people into a powerless entity was noticeable through its dominant role in the Department of Defence and the Operational Command for the Restoration of Security and Order (*Kopkamptib*). Another way that the *Orde Baru* regime used its power to control the people was through the legislative body where opposition parties were maintained in the parliament only to provide “sufficient feelings of participation.”<sup>37</sup> The government also oversaw the people through the creation of “corporatist and quasi-corporatist organizations and procedures that link government or one of its departments to particular segments of the population.”<sup>38</sup> Examples of these organisations are the Chamber of Commerce and Industry (*Kamar Dagang dan Industri—Kadin*) and the Indonesian Council of Islamic Religious Teachers (*Majelis Ulama Indonesia*).

In addition to the heavily centralized government, another important legacy left by the *Orde Baru* regime was a politically active military. The military was an important ally to Suharto in curbing civil rights during *Orde Baru*, starting with the systematic annihilation of the Communist Party of Indonesia (*Partai Komunis Indonesia—PKI*) after its attempt to take over the government failed in 1965.<sup>39</sup> Suharto, who became the central figure of *Orde Baru*, was then able to control the military because he bought the loyalty of the military by providing their officers with lucrative government positions or business access. As a result, Suharto transformed Indonesia into a quasi-military state where the military was a significant actor that was involved in the decision-making process as well as in the business sectors. With vast power, including impunity, given to the security forces (the military and the police), human rights abuses were inevitable during *Orde Baru*. The civil society that was destabilised by the government was not able to effectively pressure the government to stop the violations of human rights. It was only through pressure from the international community (in particular Indonesia’s donor countries) that *Orde Baru* made several adjustments to its policy, as shown in the cases of the release of the political prisoners and the establishment of a national human rights commission.<sup>40</sup>

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<sup>36</sup> Liddle, "Soeharto's Indonesia: Personal Rule and Political Institutions," 71.

<sup>37</sup> *Ibid.*, 72.

<sup>38</sup> *Ibid.*, 73.

<sup>39</sup> See: Harold Crouch, *The Army and Politics in Indonesia* (Singapore: Equinox Publishing, 2007); "Patrimonialism and Military Rule in Indonesia," *World Politics* 31, no. 4 (1979).

<sup>40</sup> Greg Fealy, "Release of Indonesia’s Political Prisoners: Domestic Versus Foreign Policy, 1975-1979." Centre of Southeast Asian Studies Working Paper 94 (Clayton: Monash Asia Institute, 1995).

When Suharto stepped down in 1998, initiating the period commonly referred to as *Reformasi*, Indonesia did not automatically transform into a democratic country. One of the main problems is the pro-democratic forces were unable to challenge the remaining political actors from *Orde Baru* that were deemed too powerful and influential. As told by Vedi R. Hadiz:

The legacy of authoritarianism is one aspect of the problem that certainly requires a significant degree of emphasis in the case of Indonesia. Immediately following the fall of Soeharto, the social forces that were not directly nurtured by the New Order and, therefore, would possibly have an interest in challenging the system of predatory capitalism that it forged (for example, sections of the liberal intelligentsia and professional groups in society, or the politically marginalised working class or peasantry) were not able to organise and develop into a coherent social force. This is in turn allowed for the continued ascendance of the many elements of the ancient regime—who were always more organised, coherent and endowed with material resources in the first place—in the context of an illiberal form of democracy that was mainly to be run by the logic of money politics. In a nutshell, these elements were better positioned than others in taking advantage of the opening up of Indonesian politics after 1998.<sup>41</sup>

With B. J. Habibie—who previously served as Suharto’s Vice President—at the helm of the government and the bureaucracy from Suharto era remained in tact, the struggle to demand justice for the violation of human rights became difficult to achieve. In this regards, Chapter 4 elaborates further how the post-authoritarian governments started from Habibie have the tendency to abandon the demand of settling past human rights abuses perpetrated by the *Orde Baru* regime. To complicate the matter, civil society groups were divided in approaching the issue of dealing with human rights abuses in the past. Some of them focused on bringing justice for the victims of abuses, while others emphasised on the need for reconciliation. While the government acknowledged this political discourse, it failed to take firm action to follow up the demands of the people. Even the government (under the Susilo Bambang Yudhoyono administration) disregarded the revocation of *Undang Undang No. 27 Tahun 2004 tentang Komisi Kebenaran dan Rekonsiliasi* (The Law on Truth and Reconciliation Commission) in 2006 by Mahkamah Konstitusi (the Constitutional Court).<sup>42</sup> The law itself was suggested by the civil society groups in the effort to find solution to the issue of past human rights abuses.<sup>43</sup>

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<sup>41</sup> Vedi R. Hadiz, *Localising Power in Post-Authoritarian Indonesia A Southeast Asia Perspective* (Stanford: Stanford California Press, 2010): 46. Studies on the survival of the powerful groups or the oligarchs from Orde Baru can be found in: Vedi R. Hadiz and Richard Robinson, "The Political Economy of Oligarchy and the Reorganization of Power in Indonesia," *Indonesia* 96 (2004); Andrew Rosser, Kurnya Roesad, and Donni Edwin, "Indonesia: The Politics of Inclusion," *Journal of Contemporary Asia* 35, no.1 (2002); Winters, "Oligarchy and Democracy in Indonesia."

<sup>42</sup> Mahkamah Konstitusi, "Putusan dalam Perkara Permohonan Pengujian Undang-undang Republik Indonesia Nomor 27 Tahun 2004 tentang Komisi Kebenaran dan Rekonsiliasi," (Jakarta 2006).

<sup>43</sup> ELSAM, *Kertas Posisi atas RUU Komisi Kebenaran dan Rekonsiliasi* (Jakarta: ELSAM, 2003).

Secondly, it should be noted that the circumstances following the survival of the elements of the past regime has affected significantly not only the outcome of Indonesia's democracy but also the relationship between democracy and human rights. Many scholars have expressed similar concerns on the direction of Indonesia's democracy in the post-Suharto period. Larry Diamond, for example, claimed that Indonesia had moved into a grey area where the situation was "neither clearly democratic nor clearly undemocratic".<sup>44</sup> While the transitional government adopted several policies that supported the democratization process, such as the liberalisation of the press, the decentralisation of power, and the instigation of a free election in 1999, the political norms that were originated from Orde Baru period (e.g. the indirect procedure to elect the president and the existence of the military in the legislative body) survived.<sup>45</sup>

What should also be highlighted in the transitional period in Indonesia is that there was a compromise made between political actors from the previous regime and the moderate figures, leaving out those who demanded a radical transformation to Indonesia's political structure, due to their significant influence in Indonesian politics and economics. For example, the triumph of Abdurrahman Wahid as president in 1999 could not be separated from the support Wahid received from Golkar, which was an influential state party during *Orde Baru*. Wahid, along with several political figures such as Megawati Sukarnoputri, Amien Rais and Sultan Hamengkubuwono, was also responsible for designing the democratisation pathway in Indonesia where the military was to make a gradual retreat from Indonesia's politics.<sup>46</sup>

Dwight Y. King argued that the "installation of democracy in Indonesia" relied on factors that epitomised the domestic crisis and international pressures in 1998. These determinant dynamics include: (1) the mode of transition, (2) the society that "drove the transition", and (3) the military that supported the democratic transition.<sup>47</sup> Firstly, according to Crouch, Indonesia's mode of transition had a distinctive trait where it had all of the features of

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<sup>44</sup> Larry Diamond, "The Global State of Democracy," *Current History* 99 (2000): 414; "Thinking About Hybrid Regimes," *Journal of Democracy* 13, no. 2 (2002).

<sup>45</sup> Abubakar E. Hara, "The Difficult Journey of Democratization in Indonesia," *Contemporary Southeast Asia* 23, no. 2 (2001). See also: Ikrar Nusa Bhakti, "The Transition to Democracy in Indonesia: Some Outstanding Problems," in *The Asia-Pacific: A Region in Transition*, ed. Jim Rolfe (Honolulu: Asia-Pacific Center for Security Studies, 2004).

<sup>46</sup> Leo Suryadinata, *Elections and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2002).

<sup>47</sup> Dwight Y. King, *Half-hearted Reform: Electoral Institutions and the Struggle for Democracy in Indonesia* (London: Praeger, 2003), 2.

Huntington's classifications: transformation, replacement, and transplacement.<sup>48</sup> The transformation phase occurred when Suharto imposed limited reforms in the early 1990s in response to the call for reform from military elites. The transfer of power from Suharto to Habibie in 1998 could be referred to as the replacement phase where elites from the previous regime who supported the reform took charge of the government. Following the inauguration of Habibie, Indonesia entered its transplacement transition when a compromise was reached between the government and the emerging elites. This unique mode of transition divided scholars on Indonesia's democracy trajectory. Some doubted the development of Indonesia's democracy due to the survival of *Orde Baru* actors as these actors were believed to be disruptive to Indonesia's democracy.<sup>49</sup> Other scholars were cautious in their analysis, saying that Indonesia had been making some democratic progress (e.g., the shift to electoral politics) but its structural problems (e.g., law enforcement, leadership capability) had paralysed democratic development.<sup>50</sup> Secondly, while the end of Suharto's regime could not be separated from the collective action of student activists, academics and labour unions that called for Suharto to step down, the voice of these opposition groups was not united in navigating the democratic transition.<sup>51</sup> The fragmentation of society was actually the result of the *Orde Baru* regime in controlling the movement of civil society groups, as explained by Edward Aspinall:

Although the New Order was repressive, it also tolerated many forms of independent and semi-independent societal organization, and it controlled opposition by co-optation as well as by coercion. The legacy of this semipluralist structuring of opposition in 1998 meant that organized or principled opposition remained weak in certain crucial respects. The groups which were strongest organizationally were those which had flourished by working within or around the New Order's rules... Groups that possessed clear democratic goals, and were prepared to mobilize their followers to realize them, were fragmented, suppressed, and marginalized... unable to form a credible democratic alternative at the point of the regime's collapse.<sup>52</sup>

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<sup>48</sup> Harold Crouch, *Political Reform in Indonesia after Soeharto* (Singapore: Institute of Southeast Asian Studies, 2010).

<sup>49</sup> Richard Robison and Vedi R. Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets* (London: RoutledgeCurzon, 2004); Ariel Heryanto and Vedi R. Hadiz, "Post-Authoritarian Indonesia," *Critical Asian Studies* 37, no. 2 (2005).

<sup>50</sup> Douglas Webber, "A Consolidated Patrimonial Democracy? Democratization in Post-Suharto Indonesia," *Democratization* 13, no. 3 (2006); Edward Aspinall, "Elections and the Normalization of Politics in Indonesia," *South East Asia Research* 13, no. 2 (2005); Dan Slater, "Indonesia's Accountability Trap: Party Cartels and Presidential Power after Democratic Transition," *Indonesia* 78 (2004).

<sup>51</sup> Vincent Boudreau, "Diffusing Democracy? People Power in Indonesia and the Philippines," *Bulletin of Concerned Asian Scholars* 31, no. 4 (1999); Olle Törnquist, "Assessing Democracy from Below: A Framework and Indonesian Pilot Study," *Democratization* 13, no. 02 (2006).

<sup>52</sup> Edward Aspinall, *Opposing Suharto Compromise, Resistance, and Regime Change in Indonesia* (Stanford: Stanford University Press, 2005), 240.

Thirdly, the civilian government failed to take advantage of the *Reformasi* momentum to gain full control of the military.<sup>53</sup> Part of the reason for this was that the interregnum government was weak and needed the military's support to run the country. The chances of the government effectively regulating the military were also slim because of the ongoing internal conflict within the military elites. The division among military officers was rooted back in the late 1980s when they responded differently to the pressure to reform. Some of them regarded the demand for democratic change as a threat to the military, while others saw it as an opportunity to improve the harsh image of the military. The clash continued to escalate prior to Suharto's departure from office, especially between two factions led by General Wiranto and Lt. Gen. Prabowo Subianto, who was Suharto's former son-in-law. It was reported that Wiranto's rivals tried to undermine his position as the ABRI Commander and the Minister for Defence and Security by instigating chaos and terror during anti-Suharto rallies including the shooting of student protestors in Trisakti and unrest in several cities in Indonesia. After Suharto's downfall in 1998, Wiranto prioritised on two things: to diminish the influence of Prabowo and his supporters and to reform the military.<sup>54</sup> This is where things got complicated for the future civil-military relationship in Indonesia. The initiation to restructure and reposition the military came from within the military and not from the government. While the consolidation of Indonesia's democracy only began after the 2004 direct presidential election, the military had long settled its transformation without supervision from the civilian government.<sup>55</sup> The ability of the military to consolidate before the political elites (the government) did has created a problem as the military has remained reluctant to be accountable in the case of human rights abuse (as can be seen in the discussion of the East Timor crisis in Chapter 4; or the case of the ratification of the Rome Statute in Chapter 5).

I argue that the development of the three circumstances signify the political-state logic in the dynamic of democratisation and human rights in Indonesia. The mode of transition where the political actors from the past regime were actively involved in the democratisation process meant that they had the power to influence the democratic trajectory; this can be seen in the case of the involvement of the military and Golkar in planning the electoral reforms.<sup>56</sup> The

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<sup>53</sup> Marcus Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance," *Policy Studies* 23 (2006).

<sup>54</sup> Jun Honna, *Military Politics and Democratization in Indonesia* (New York: Routledge, 2003); Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance."

<sup>55</sup> Johannes Herlijanto, "The Current State of Military Reform in Indonesia: Interview with Lieutenant General (Retired) Agus Widjojo (Part 1)," *Perspective* 91 (2017).

<sup>56</sup> King, *Half-hearted Reform: Electoral Institutions and the Struggle for Democracy in Indonesia*.

involvement of past elites in the government also meant that they had an interest to preserve some of the legacies of *Orde Baru*, such as the maintaining *Pancasila* as the state ideology.<sup>57</sup> Under the political-state logic, human rights are merely perceived as part of the prerequisite to democratise the state while the intention to push further legal reform that protect human rights or to improve human rights practices remains poor. As a result, human rights problems, such as human rights abuses, inaccessible health services, restriction to freedom of speech, and persecution of the minorities,<sup>58</sup> have continued to persist despite the fact that *Reformasi* has reinstated democratic rules and prompted the creation of a national human rights framework.

## 1.2 Approach to Thesis and Thesis Contribution to Knowledge

The approach adopted by this thesis follows on from those outlined in the preceding discussion: it applies a similar approach to scholars who have studied the impact of political dynamics during *Reformasi* on Indonesia's democracy, especially in regards to human rights. It also pays attention on various actors that are involved in or become part of the discourse of human rights in Indonesia.

This thesis aims to contribute to the growing literature on the study of human rights in Indonesia. Generally, previous studies on human rights in post-authoritarian Indonesia can be grouped into several categories. Firstly, the studies that look at the role of culture in shaping the perception of human rights. This type of study was popular during the *Orde Baru* period where the government perceived human rights as a Western product that was incompatible to Indonesian life and culture. In the context of post-Suharto Indonesia, the cultural relativism has lost its relevance as Indonesia adopted universalism in human rights.<sup>59</sup> The argument that culture plays a significant role in slanting human rights protection is also unsound. As argued by Daniel Fitzpatrick the assessment of human rights in Indonesia should focus on the

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<sup>57</sup> Pranoto Iskandar, "The Pancasila Delusion," *Journal of Contemporary Asia* 46, no. 4 (2016).

<sup>58</sup> See: "Indonesia." In Country Reports on Human Rights Practices, 815+. Vol. 1-2. Washington, DC: U.S. Department of State, 2005. Gale Academic Onefile accessed, 22 September 2019, <https://link-galecom.ezproxy.flinders.edu.au/apps/doc/A180470348/AONE?u=flinders&sid=AONE&xid=c22e012b>; "Indonesia." In Country Summary, Human Rights Watch, 2006, accessed 22 September 2019, <https://www.hrw.org/legacy/wr2k6/pdf/indonesia.pdf>

<sup>59</sup> Andrew Rosser, "Towards a Political Economy of Human Rights Violations in Post-New Order Indonesia." *Journal of Contemporary Asia* 43, no. 2 (2013).

institution and ideology rather than the Indonesian culture, a notion that is “highly uncertain” and lack of legitimacy as Indonesia itself is a multicultural society.<sup>60</sup>

The second group discusses human rights issues through analysing Indonesia’s legal infrastructure and how its shortcomings have implicated human rights protection in the country. Human rights NGOs fall into this category due to their periodic publication on Indonesia’s human rights reports.<sup>61</sup> Another source on this matter comes from the studies provided by the legal scholars. However, the findings have been varied from those scholars<sup>62</sup> who only focus on the legal discussions, which then cast aside the question regarding the continuation of human rights problems, to a more comprehensive study that incorporates the socio-political factors in discussing the deficiency in Indonesia’s legal system and institutions.<sup>63</sup>

The third type of research is actor-driven studies that analyse actors’ interests and how the behaviour of actors affects the development of human rights in Indonesia. This group emphasises the analysis on the actors’ socio-political roles in undermining or promoting human rights as can be seen from the study of the mobilisation of the marginalized groups by human rights NGOs<sup>64</sup> to the role of political actors in framing the direction of human rights in post-Suharto Indonesia.<sup>65</sup> For example, in the topic of transitional justice, Sri Lestari

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<sup>60</sup> Daniel Fitzpatrick, "Culture, Ideology and Human Rights: The Case of Indonesia’s Code of Criminal Procedure" in Tim Lindsey (ed.) *Indonesia: Law and Society*, 2nd edition (Singapore: ISEAS Publishing, 2008), 511.

<sup>61</sup> See: Agung Putri et al., *Dalam Tawanan Rezim Lama Situasi Hak Asasi Manusia Sepanjang Tahun 2000* (Jakarta: ELSAM, 2001); ELSAM, *Laporan Hak Asasi Manusia 2003 "Melemahnya Daya Penegakan Hak Asasi Manusia: Hutang, Kemiskinan dan Kekerasan"* (Jakarta: ELSAM, 2004); KontraS, *Hak Asasi Diakui tapi Tidak Dilindungi: Catatan Hak Asasi Manusia dimasa Pemerintahan Presiden Susilo Bambang Yudhoyono [2004-2014]* (Jakarta: KONTRAS, 2014).

<sup>62</sup> See for example: Eko Riyadi & Supriyanto Abdi (eds). *Mengurai Kompleksitas Hak Asasi Manusia (Kajian Multi Perspektif)* (Yogyakarta: Pusham UII, 2007).

<sup>63</sup> See: McRae, "Indonesian Capital Punishment in Perspectives"; Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Springer, 2017); Melissa A. Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7, no. 1 (2012); Ken Setiawan, *Promoting Human Rights: National Human Rights Commissions in Indonesia and Malaysia*, (Leiden: Leiden University Press); Ken Setiawan, "From Hope to Disillusion The Paradox of Komnas HAM, the Indonesian National Human Rights Commission," *Bijdragen tot de Taal-, Land- en Volkenkunde* 172, iss. 1 (2016).

<sup>64</sup> See: "Rosser, Realising Free Health Care for the Poor in Indonesia: The Politics of Illegal Fees"; "Law and the Realisation of Human Rights: Insights from Indonesia’s Education Sector" *Asian Studies Review* 39 no.2, (2015); Andrew Rosser, Kurnya Roesad, Donni Edwin, "Indonesia: The Politics of Inclusion."

<sup>65</sup> Rosser, "Towards a Political Economy of Human Rights Violations in Post-New Order Indonesia."

Wahyuningroem argues that the elites played a significant influence in the undermining of the efforts to seek justice from past human rights violations:

The problem lies in both the procedural and substantive elements of transitional justice implementation. Within the context of a political transition that had elements of both rupture and negotiation among elites, the design and implementation of transitional justice in Indonesia was above all dictated by the political dynamics of the transition and compromises within the political elite. Transitional justice above all played a role in building legitimacy for the new political order, and it helped rehabilitate some old authoritarian forces.<sup>66</sup>

Meanwhile, Suh Jiwon, highlights how the political parties' poor commitment to human rights issues.

Further, it is not even clear whether these "reformist" parties, especially PDI-P, had any coherent position on the New Order abuses, or enough reasons to make a clear stance. The 2001 Trisakti-Semanggi special committee vote, as shown above, indicates that PDI-P parliamentarians did not take the issue very seriously. In 2002, Megawati endorsed the incumbent Jakarta governor Sutiyoso – a former general who was allegedly involved in the July 27 affair – in his re-election bid in the Jakarta election, in spite of vocal opposition from many disappointed PDI-P councilors. None of the *reformasi*-born parties paid attention to organized victims' opposition to the 2004 TRC [Truth and Reconciliation Commission] law.<sup>67</sup>

While the above type of studies is dominated by analysis on domestic politics, another important subcategory is the one that applies a state-centric approach and focuses on studying State's responses to international human rights regime—in the context of foreign policy analysis. Hendro Prasetyo, for example, compares the decision of the Indonesian government to adopt human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified in 1984; the Convention on the Rights of the Child (CRC) ratified in 1990; and the Convention against Torture (CAT) ratified in 1998.<sup>68</sup> His findings demonstrated that the state's interest is vital in the adoption of an international human rights treaty and that support from interest groups may or may not be relevant in the decision to ratify an international treaty. His research, however, was only limited to three international treaties, and only one of them (CAT) reported findings from the post-Suharto period. Meanwhile, studies that focused on Indonesia's failure to adopt the Rome Statute also used the point of view of the state (and its elites). In looking at the lack of enthusiasm of Asian states in conforming to the Rome Statute of the ICC, Valeriane Toon<sup>69</sup>

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<sup>66</sup> Sri Lestari Wahyuningroem, "From State to Society: Democratisation and the Failure of Transitional Justice in Indonesia" (Thesis, Australian National University, 2018).

<sup>67</sup> Suh Jiwon, "The Politics of Transitional Justice in Post-Suharto Indonesia" (Thesis, Ohio State University, 2012).

<sup>68</sup> Hendro Prasetyo, "The Power(less) of Ratification: Holding the State Responsible for Human Rights Respect in Indonesia" (Thesis, McGill University, 2009).

<sup>69</sup> Valeriane Toon, "International Criminal Court: Reservations of Non-State Parties in Southeast Asia." *Contemporary Southeast Asia* 26, no. 2 (2004).

emphasised the interests of the state to protect their national sovereignty, whereas Salla Huikuri<sup>70</sup> pointed out the lack of political will of Indonesia's decision makers (i.e., the president) to ratify the Rome Statute.

The above approaches are of course valuable in studying human rights in post-Suharto Indonesia but what this research is trying to do through studying the case of the failure to adopt the Rome Statute of the ICC is not just looking at the institutional problem and studying the role of political actors but also considering the significant influence of other factors, such as the convergence of domestic and foreign politics, which has the potential to encourage or to disrupt the progress of human rights in Indonesia. To sum up, in general, this thesis seeks to offer the Indonesian perspective in explaining the dynamics between democratisation and human rights. Specifically for the burgeoning human rights scholarship in Indonesia, this thesis tries to provide another outlook to the politics of human rights in post-Suharto through analysing the chain of political events (domestic and international) that followed the end of *Orde Baru*.

### 1.3 Research Design and Data Collection

In this thesis, I adopt the Rome Statute of the ICC as the case study in order to analyse the impact of *Reformasi* on the development of human rights in Indonesia. The case study approach here means “an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena”.<sup>71</sup> As explained by Robert Yin, this approach has been selected because it will “cover contextual conditions” because they are relevant to the “phenomenon of study”.<sup>72</sup> The main objective of case study research is to gain a “deep understanding of the actors, interactions, sentiments, and behaviour” which include “knowledge of ‘sensemaking’ processes created by individuals” and “systems of thinking, policy mapping, and systems dynamics modelling”.<sup>73</sup>

Several concerns gave rise to my decision to choose the Rome Statute of the ICC as a case study. First, the norm represented in the Rome Statute, where an individual must be held accountable for serious human rights crimes they committed, challenges the established

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<sup>70</sup> Salla Huikuri, "Empty Promises: Indonesia's Non-ratification of the Rome Statute of the International Criminal Court," *The Pacific Review* (2016).

<sup>71</sup> John Gerring, "What Is a Case Study and What Is It Good For?," *American Political Science Review* 98, no. 02 (2004): 341.

<sup>72</sup> Robert K. Yin, *Case Study Research : Design and Methods*, 2nd ed. (Thousand Oaks: Sage, 1994), 13.

<sup>73</sup> Arch G. Woodside, *Case Study Research Theory Methods Practice*, (Bingley: Emerald Group Publishing, 2010), 6.

culture of impunity that was created during *Orde Baru*. As later discussed in Chapter 2, the rise of *Orde Baru* in 1965 began with annihilation of thousands of civilians in a military-led effort to purge communist influence in Indonesia. Throughout the *Orde Baru* years, Indonesian security forces (the military and the police) were instrumental in supporting government's effort to suppress people's rights and to control the society.<sup>74</sup> Second, it was only after Suharto's regime ended that there was a demand for justice for the victims of the government's oppression. The civil society groups of the time demanded legal reform, including the ratification of the Rome Statute.<sup>75</sup> Third, the Rome Statute entered the discussion in Indonesia regarding how to respond to serious human rights crimes perpetrated by the Suharto regime and for the crimes committed during the height of the East Timor crisis in 1999. In regards to the East Timor crisis, due to enormous pressures, Indonesia decided to hold a trial for the offenders of the East Timor atrocities and adopted the Law on Human Rights Court in 2000. As previously mentioned, the Law on Human Rights Court took two articles on grave human rights violations from the Rome Statute of the ICC. Fourth, before the Rome Statute norms were partially adopted in Indonesia's legal system, Indonesia was part of the international effort that produced the text of the Rome Statute in 1998. Fifth, in 2004, the Rome Statute was included in Indonesia's human rights plan of action under the presidencies of Megawati Sukarnoputri and Susilo Bambang Yudhoyono. However, at the end of Yudhoyono's term, the Rome Statute was still yet to be adopted in Indonesia.

In general, the research has been divided into two sections. The first section lays out the background study on how concepts around human rights were initially introduced in Indonesia and how it fizzled out as dictatorship rose in the late 1950s. This part is important as seminal works from legal scholars like Adnan Buyung Nasution<sup>76</sup> and Todung Mulya Lubis<sup>77</sup> demonstrated that human rights were indeed once part of debate in Indonesian politics. As this requires a study on Indonesia prior to *Reformasi* era, this thesis has relied on secondary sources that described the historical context where human rights were argued by political actors (elites). The analysis in Chapter 2 covers Indonesia's history from pre-independence to the post-independence period where Indonesia experimented with liberal democracy. What has become the highlight of this background study is the rise of

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<sup>74</sup> Liddle, "Soeharto's Indonesia: Personal Rule and Political Institutions."

<sup>75</sup> Enny Soeprapto, "Taking Stock of Endeavours to Apply Transitional Justice in Indonesia," (2002).

<sup>76</sup> Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian* (Jakarta: Pustaka Sinar Harapan, 1992).

<sup>77</sup> Todung Mulya Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990* (Jakarta: PT Gramedia Pustaka Utama, 1993).

authoritarianism from Sukarno's Guided Democracy in the late 1950s to Suharto's *Orde Baru*. This sub-section is vital because it describes how civil rights began to deteriorate and how the government and the military—especially during *Orde Baru*—became powerful actors. The second part of this thesis addresses the question of how *Reformasi* has affected the development of human rights in Indonesia by studying the kind of human rights policy created from the democratisation process that began in 1998. Through a case study on the plan to ratify the Rome Statute, this section analyses the problems with the socialisation and the internalisation of human rights norms in post-authoritarianism in Indonesia. Section two of this thesis examines human rights policy during the transitional period where the Rome Statute was first introduced and the efforts to execute the plan according to Indonesia's RANHAM 2004-2009 and RANHAM 2011-2014. While RANHAM 2004-2009 was instigated during the presidency of Megawati, its operationalisation was handed over to Yudhoyono's presidency following his victory in the 2004 general election. Thus, much of the analysis in this thesis revolves around the human rights policy under Yudhoyono's presidency.

Section two, which requires an understanding of how the Rome Statute of the ICC was socialised and debated in Indonesia, has been carried out not only through analysing secondary sources but also compiling information from people who were involved in the campaign to adopt the Rome Statute in Indonesia or who were responsible for executing the plan to adopt the treaty. Through this method, this research has generated a “thick description”<sup>78</sup> of how problematic human rights has been in post-Suharto Indonesia. During the fieldwork that I conducted in Jakarta from June until November 2016, I met with several civil society groups that were involved in the campaign to adopt the Rome Statute. These CSOs combined under the banner of the Indonesian Civil Society Coalition for the International Criminal Court (*Koalisi Masyarakat Sipil Indonesia untuk Mahkamah Pidana Internasional*). Representatives from the Coalition that I interviewed include Mugiyanto, who served as the convener of the Coalition; Puri Kencana Putri from KontraS; Ruben Sumigar from ELSAM; and Agus Fadillah, a lawyer whose expertise on humanitarian law meant he was often in contact with the military to disseminate international humanitarian law. Outside the Coalition, I talked to Supriyadi Eddiyono from ICJR, an NGO that focuses on legal reform in Indonesia; Hikmahanto Juwana, an academic from Universitas Indonesia; Todung

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<sup>78</sup> Woodside, *Case Study Research Theory Methods Practice*, 6.

Mulya Lubis, a notable human rights lawyer; and Sri Yanuarti from the Indonesian Institute of Sciences (LIPI).

I also interviewed people who had worked during the transitional period, such as Dewi Fortuna Anwar who served as the senior advisor to the former president Habibie; Marzuki Darusman who was the former Komnas HAM commissioner during *Orde Baru* and Attorney General during the East Timor crisis; and Harkristuti Harkrisnowo who served as the Director General for Human Rights at the Ministry of Law and Human Rights from 2006-2014. Both Darusman and Harkrisnowo are known to be supporters of the adoption of the Rome Statute in Indonesia and often work with the Coalition.

I gathered information from the government by visiting three ministries that were responsible for actualising the plan to adopt the Rome Statute: the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, and the Ministry of Defence. There were many challenges in approaching officials to discuss the Rome Statute differed in each ministry; some officials were open to talk about it and the others were hesitant to talk openly and requested anonymity. However, my experience of communicating with the government officials from these ministries provided a picture of the precarious nature of the plan to adopt the Rome Statute of the ICC in Indonesia.<sup>79</sup> Despite the challenges, I would like to extend my appreciation for their willingness to share information and thoughts about my research topic.

## 1.4 Thesis Structure

This thesis is comprised of six chapters. After providing the historical and theoretical context for the research, and laying out the research questions, scope, and methodology in Chapter 1, Chapter 2 provides a historical study on how human rights were discussed in Indonesia before *Reformasi*. This discussion is significant to this thesis because it demonstrates that human rights discourses existed before Indonesia fell to authoritarianism in the late 1950s. Taking this fact into account, one can then analyse the change and the continuation of human rights discourse that took place in Indonesia after the dictatorship ended in 1998. The chapter begins by describing how the colonial period narrowed the talk about rights in Indonesia to the aspiration for independence. The first formal discussion regarding human rights only began when the Indonesian elites drafted the constitution in preparation for independence in

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<sup>79</sup> The differing views of bureaucrats on the plan to adopt the Rome Statute of the ICC will be discussed further in Chapter 5. In general, strong resistance about adopting the Rome Statute came from the Ministry of Defence who were concerned the ratification would interfere with national security affairs.

1945. From then on, there was no serious talk regarding human rights until the 1950s when a Constituent Assembly was established to prepare a new constitution. Members of the Constituent Assembly were involved in a lively debate on human rights and reached an agreement on the universality of human rights. This was in contrast to the later practice during *Orde Baru* where the government believed that those rights should be tailored to Indonesia's culture. However, President Sukarno disbanded the Constituent Assembly in 1959, reinstated the 1945 Constitution, and drove Indonesia into authoritarianism. Sukarno was impeached in 1966 and was replaced by Suharto. Suharto, who was a military general, rebuilt Indonesia through the use of military power and influence. The regime Suharto created—*Orde Baru*—was responsible for diminishing civil rights and establishing the military as an important political actor in Indonesia.

Chapter 3 presents the analysis of how the Indonesian government decided to adopt the norms on serious human rights crimes to respond to the East Timor humanitarian crisis in 1999. What makes this chapter a substantial part of this thesis's main argument is that it demonstrates how the external and internal dynamics during the democratisation process played a central part in hindering the normalisation of human rights norms. The political setting described in Chapter 3 is the early period of *Reformasi*, when the old establishment (the military and the *Orde Baru* bureaucrats) struggled to stay in power. In the midst of this situation, a humanitarian crisis erupted in East Timor and Indonesian security forces were accused of perpetrating human rights abuses. The transitional government, that was pressured to take action, eventually opted for conducting an investigation and trying the offenders. Chapter 3 demonstrates how the elements of *Orde Baru*, especially the military, interfered with the East Timor investigation and the trial process. In the aftermath of the East Timor trial, there was no effort from the subsequent government—in this case the Yudhoyono presidency—to reform the Law on Human Rights Court, which contained provisions that were criticised by human rights groups because they maintained a culture of impunity. As later discussed, the decision to end impunity culture is vital in accepting the norms embodied in the Rome Statute that exemplify the idea of upholding individual responsibility in grave human rights abuses cases.

Chapter 4 looks at the problems of social activism in Indonesia and how they have affected human rights promotion in Indonesia. Through investigating the role of the Indonesian Civil Society Coalition for the ICC, this chapter points out internal challenges faced by progressive

groups, which significantly affected the sustainability of their pro-democratic and human rights agenda. This chapter also highlights that some of the problems that these groups face are rooted in the *Orde Baru* regime era where the government succeeded in curbing the activities of Indonesia's civil society groups through laws and regulations. When *Reformasi* marked the end of authoritarianism, Indonesia's civil society groups not only lacked the ability to further reform agenda but they were also divided on reform issues, including human rights.

Chapter 5 analyses the discrepancy between the government policy's rhetoric on democracy and human rights and the actualisation of its human rights policy. It points out how the exploitation of the language of democracy and human rights in the government's policy has weakened human rights promotion and protection in Indonesia. The focus of this chapter is the differences within the elements in the government in interpreting the human rights policy. In the case of the plan to adopt the Rome Statute, not all of the ministries responsible for implementing human rights policy have shown favour towards the ratification of the Rome Statute. Strong resistance has been demonstrated by the Ministry of Defence which believed the Rome Statute of the ICC would interfere with military and security affairs in Indonesia. This position could not be separated from the fact that the military had undergone internal reform without the supervision of civilian authority in 1998, which has since impacted the civil-military relationship in Indonesia.

Chapter 6, as the final chapter of this thesis, provides a conclusion of the findings of the research on the politics of human rights in Indonesia in the case of the plan to adopt the Rome Statute. It shows what Indonesia's political actors have done in regards to the campaign for the Rome Statute of the ICC. In relation to the research, Chapter 6 evaluates the results of this research and identifies gaps for future research on human rights in Indonesia.

## CHAPTER 2 THE STATE AND HUMAN RIGHTS BEFORE *REFORMASI*

### 2.1 Introduction

This chapter describes how human rights was introduced and developed before the *Reformasi* era. This requires an understanding of the history of Indonesia as it transforms from being a colony (of the Dutch and then the Japanese) into an independent state, circumstances that influenced the discourse on human rights among the past leaders. Moreover, as mentioned in the previous chapter, Indonesian history also involves a period of authoritarianism. Thus, in addition to explaining how Indonesia fell to a dictatorship, this chapter also focuses on how the autocratic system impacted human rights promotion and protection in Indonesia.

Thus, the organisation of this chapter will be based on the different phases of Indonesia's modern history. It starts with a brief description of the era when the Dutch colonised Indonesia and how the colonialization impacted society. The discussion then moves to the pre-independence period where the elites prepared for an independence that was granted by the Japanese during the World War II to several Indonesian elites. After describing the revolution period when Indonesia struggled to claim independence, this chapter provides a description of the era where Indonesia experimented with democracy (parliamentary democracy) for the first time and how the trial failed and led to authoritarianism.

It is worth noting here that the promotion of human rights norms cannot be separated from the development of an international human rights regime, which was created after the end of World War II. Therefore, some portions of this chapter will also discuss Indonesian foreign policy, especially those policies related to human rights issues. The topic of Indonesian foreign policy prior to the *Reformasi* era has long been discussed by scholars. For research that engaged in the macro-level analysis, we can refer to the work of Franklin Weinstein, Ide Anak Agung Gde Agung, Michael Leifer and Leo Suryadinata.<sup>1</sup> We can also examine a range of thematic studies on Indonesia's foreign policy, as can be seen in the works of by Bantarto Bandoro, Dewi Fortuna Anwar, Juwono Sudarsono, Rizal Sukma and Soedjati

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<sup>1</sup> Franklin B. Weinstein, *Indonesian Foreign Policy and the Dilemma of Dependence : From Sukarno to Soeharto* (Ithaca: Cornell University Press, 1976); Michael Leifer, *Indonesia's Foreign Policy* (London: George Allen & Unwin Ltd., 1983); Ide Anak Agung Gde Agung, *Twenty Years Indonesian Foreign Policy 1945-1965* (Yogyakarta: Duta Wacana University Press, 1990); Leo Suryadinata, *Indonesia's Foreign Policy under Suharto : Aspiring to International Leadership* (Singapore: Times Academic Press, 1996).

Djiwandono among others.<sup>2</sup> However, these micro studies primarily analysed Indonesia's foreign policy in the context of a bilateral relationship, regionalism or multilateralism. Therefore, this chapter aims to contribute to the study of Indonesia's foreign policy in the pre-*Reformasi* period with the focus on human rights, a topic that has been less explored by previous scholars.

## 2.2 Dutch Colonialism

This section serves as a prelude to the conversation about rights in the pre-independence period. It is also significant to begin this chapter with a description of Dutch occupation in order to show the impact of colonialization on Indonesian society that led to the upsurge of the independence movement in Indonesia.

The nation state that is presently known Indonesia was once a region comprised of separate kingdoms and sultanates scattered across the islands around the equator.<sup>3</sup> In the 16<sup>th</sup> century, the archipelago became one of the main destinations for European merchants in their search for spices and wealth. The first group of Europeans who made contact with the indigenous peoples of the region was the Portuguese, who arrived in the islands of Maluku (Moluccas) in 1512.<sup>4</sup> The Portuguese's exploration to Southeast Asia inspired the Dutch to take a

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<sup>2</sup> These are just some of the examples of the research on Indonesia's foreign policy during Sukarno and Suharto administrations: Juwono Sudarsono, "Indonesia and the United States, 1966-75: An Inquiry into a De facto Alliance Relationship" (Thesis, London School of Economics and Political Science (University of London), 1979); Dewi Fortuna Anwar, *Indonesia in ASEAN Foreign Policy and Regionalism* (Jakarta: ISEAS & P.T. Pustaka Sinar Harapan, 1994); Rizal Sukma, "Recent Developments in Sino—Indonesian Relations: An Indonesian View," *Contemporary Southeast Asia* (1994); Bantarto Bandoro, ed. *Hubungan Luar Negeri Indonesia Selama Orde Baru* (Jakarta: CSIS, 1994); J. Soedjati Djiwandono, *Konfrontasi Revisited Indonesia's Foreign Policy under Soekarno* (Jakarta: CSIS, 1996); Anak Agung Banyu Perwita, "Between Secularisation and Islamisation Indonesia's Foreign Policy toward the Muslim World in the Soeharto Era" (Thesis, Flinders University, 2002).

<sup>3</sup> Among them were the Buddhist kingdom of Srivijaya in Sumatra (7<sup>th</sup>-13<sup>th</sup> century) and the Hindu kingdom of Majapahit in Java (13<sup>th</sup>-16<sup>th</sup> century). The rise of Islamic rulers (sultanates) began in the 13<sup>th</sup> century in places such as Aceh (Sumatera), Ternate (Maluku Islands) and Demak (Java). The largest Islamic kingdom was Mataram, which reigned from the 16<sup>th</sup> Century until it fell under the control of VOC in the 18<sup>th</sup> century. In modern Indonesian history, the glorious past of Srivijaya and Majapahit kingdoms were used by nationalists like Sukarno or Muhammad Yamin in forming the narrative of a united Indonesia and in inventing national symbols such as the Pancasila. The *Orde Baru* regime also exploited the story of Majapahit as part of the regime's indoctrination. See: Jean Gelman Taylor, *Indonesia: Peoples and Histories* (New Haven: Yale University Press, 2003); Michael John Wood, "The Historical Past as a Tool for Nation-Building in New Order Indonesia" (McGill University, 2004).

<sup>4</sup> This was done after the Portuguese conquered the city of Malacca in the Malay Peninsula in 1511. See: Abdul Kohar Rony and Iêda Siqueira Wiarda, *The Portuguese in Southeast Asia : Malacca, Moluccas, East Timor* (Hamburg: Abera Verlag, 1997).

similar voyage. Under the command of Cornelis de Houtman, the Dutch began their own expedition in 1599 and set foot in Banten, on the coast of West Java, just a year later.<sup>5</sup>

De Houtman's discovery of spices led to a competition among other Dutch companies to seek profit from spice trading. In order to control the supply and price of spices, these competing traders companies merged under the name of *Vereenigde Oost-Indische Compagnie* (VOC), or the Dutch East India Company, in 1602. VOC became an integral part of Indonesia's modern history because it was able to expand its territorial control—which covered Java and the Maluku Islands—by defeating foreign interests (the English, Spanish and Portuguese), and conquering the local kingdoms.<sup>6</sup> The effective (and coercive) control of lands could not be separated from the VOC's decision to establish the administrative office under the lead of a Governor-General. At first, the Governor-General's post was created in Ambon on Maluku Island in 1610 and, in 1611, another post was established in Batavia, now known as Jakarta.<sup>7</sup> With an established administrative office, the VOC operated with a state-like power of “raising armies, concluding treaties, imposing taxes, [and] punishing lawbreakers,”<sup>8</sup> the main characteristics that made it possible for them to control the archipelago. Nevertheless, after a combination of multiple factors, from the failure of its monopoly strategy, the mismanagement of the company, the inability to

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<sup>5</sup> It is argued that De Houtman's success in travelling to Indonesia was attributed to sheer luck rather than his leadership or seamanship. His poor manners caused trouble for him when he met with the king of Banten who dismissed him and his crews not long after they reached the port. He also caused upset in other places as he sailed along the coast of the East Java. He then reached Bali where his improved temperament was responded to with a warm welcome by the Balinese king. He returned to the Netherlands in 1597 with fewer ships and crew but he brought a small number of Java's peppercorns to demonstrate that his journey was successful. The spices he brought were enough to convince investors that the Dutch could break the domination of the Portuguese in spice trading and to support more voyagers to sail to Indonesia. See: Merle Calvin Ricklefs, *A History of Modern Indonesia since c. 1200*, 3rd ed. (Houndmills: Palgrave, 2001); Simon Winchester, *Krakatoa: The Day the World Exploded* (London: Penguin Books, 2004).

<sup>6</sup> There were three competing powers in Java in the 17<sup>th</sup> century: the kingdoms of Banten (West Java) and Mataram (East Java), and the Dutch (VOC) (North coast Java). The Dutch sought to monopolise trade in the region and in the Maluku islands; Mataram wanted to conquer Banten and Batavia where VOC resided, and Banten attempted to thwart threats coming from Mataram and VOC. The three parties were involved in a series of wars, but eventually the Company saw opportunities that led to its success in overpowering the monarchs. With the king of Mataram, Amangkurat I, VOC signed a treaty where the VOC would provide protection to the king and, in return, the Company would get market access. VOC's assistance helped the kingdom to survive the rebellion that was launched by Trunajaya from Madura (an island in the eastern part of Java that was part of the Mataram realm). However, this came at a cost when the son of Amangkurat I, under the control of the VOC's governor-general, replaced his father, the king, who died during the revolt. With that succession, Mataram succumbed to the VOC's power. The Company also successfully secured its influence in Banten when it intervened with Banten's palace intrigue; it sided with the prince who challenged his father Sultan Abdulfatah. See: Donald F. Lach and Edwin J. van Kley, *Asia in the Making of Europe*, vol. III A Century of Advance (Chicago: The University of Chicago Press, 1993).

<sup>7</sup> Ricklefs, *A History of Modern Indonesia since c. 1200*.

<sup>8</sup> Benedict Anderson, "Old State, New Society: Indonesia's New Order in Comparative Historical Perspective," *The Journal of Asian Studies* 42, no. 03 (1983): 479.

compete with other international trading companies and the ongoing Anglo-Dutch wars, VOC went into bankruptcy in 1799.<sup>9</sup>

The assets that the VOC left behind, including areas of Java, most parts of Sumatera, and Maluku Islands, then became subject to the Dutch Empire's (the Batavian Republic) rule when the monarchy took over the company.<sup>10</sup> Following on, the Dutch consolidated its power in the archipelago by extending their occupation to the outer islands. The unification of the islands transformed the colony, or the Dutch East Indies, into "a centralised state"<sup>11</sup> with Batavia serving as the centre for the colonial government. Aside from uniting the region under the authority of the monarchy, the Dutch continued to exploit the region and maintained the social stratification that had started in the VOC era. At the top of the social class were the Europeans and the Indo-Europeans, followed by the foreign Orientals (Arabs, Indian, and Chinese), while the indigenous people, or the natives, were at the bottom of the racial class system. This "colour caste system"<sup>12</sup> impacted the different economic roles that each of the racial groups played. The Europeans occupied important positions in the government and operated the large-scale businesses. The foreign Orientals, like the Arabs or the Chinese, who had obtained licences to establish their business enterprises during the VOC period,<sup>13</sup> filled the middle positions in the economic structure. The indigenous people were small earners who worked as labourers or low-level employees in public offices.

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<sup>9</sup> See: Justus M. van Der Kroef, "The Decline and Fall of the Dutch East India Company," *The Historian* 10, no. 2 (1948); Ko Unoki, *Mergers, Acquisitions and Global Empires: Tolerance, Diversity and the Success of M&A* (New York: Routledge, 2012).

<sup>10</sup> The Batavian Republic was a creation of the French when it defeated the Netherlands in the Anglo-French War, and the Dutch King (William V) went into exile in England. His son restored the kingdom (House of Orange-Nassau) when the Napoleonic era came to an end in the early 1850s. See: John Middleton, *World Monarchies and Dynasties* (New York: Routledge, 2015). The transfer of authority from VOC to the Netherlands government has become a subject of debate, especially in regards to the duration of the Dutch's occupation in Indonesia. It is a common belief among Indonesian people that the Dutch colonised Indonesia for three centuries. Legal scholar, G.J. Resink, challenged that notion, claiming that the figure of three hundred years stems from the perception of the Javanese where the Dutch did have effective control for a longer period, unlike in other places in Indonesia. See: Gertrudes Johan Resink, *Indonesia's History between the Myths : Essays in Legal History and Historical Theory* (The Hague: Van Hoeve, 1968).

<sup>11</sup> Peter Church, *A Short History of South-East Asia* (Singapore: John Wiley & Sons, 2017), 50.

<sup>12</sup> Willem Frederik Wertheim and The Siauw Giap, "Social Change in Java, 1900-1930," *Pacific Affairs* 35, no. 3 (1962): 229.

<sup>13</sup> Taylor, *Indonesia: Peoples and Histories*. In the late 1800s, the Chinese were the largest minority ethnic group in Indonesia. The Arabs, which is a loose term to describe the people that came from the Middle East, North Africa, and India, were the second largest non-native group. Despite the fact that natives considered these minorities as threats because of their economic advantages, the natives were more receptive towards the Arab community because of their shared religion of Islam. Both the Chinese and Arab communities experienced their own awakening moment in the early 1900s, especially in regards to their identities in the Dutch Indies. Various factors were believed to be the cause of their self-awareness, from the discriminative policies set by the colonial government to the rise of pan-nationalism. See: Lea E. Williams, *Overseas Chinese Nationalism: The Genesis of the Pan-Chinese Movement in Indonesia, 1900-1916* (Glencoe: The Free Press,

It is worth mentioning here another social class—the *priyayi*—who represented aristocratic families or the upper class within Javanese society.<sup>14</sup> What is significant about the *priyayi*, in the context of the colonial period in Indonesia, is related to the lack of democratic culture imposed during the Dutch government's rule and the origins of the independence movement in Indonesia. When the Dutch empire took over East India from the VOC, they followed the tradition of the Company to recruit the *priyayi* to fill administrative positions.<sup>15</sup> There were two kinds of administrative systems established by the colonial government: the Dutch bureaucrats or the Interior Administration (*Binnenlands Bestuur—BB*) and the rulers of the realm (*Pangreh Praja*). In the case of the *Pangreh Praja*, who oversaw civil services for the indigenous peoples, the Dutch sustained the old territorial structure where feudal leaders controlled lands and regions. Under this mechanism, it was the descendants of the landowners or the aristocrats that filled the higher administrative positions. They also became the direct recipients of social benefits from the Dutch government, especially in regards to education.<sup>16</sup> What bureaucratisation had also created was the rise of the non-aristocrat *priyayi*, who worked in other public services such as the railways, communication (telegraph) or as teachers in the colonial schools.<sup>17</sup> As explained in the next section, the independence movement in Indonesia was supported by various groups, including the *priyayi*, who turned their back on the colonial government.<sup>18</sup>

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1960); Huub De Jonge, "Discord and Solidarity among the Arabs in the Netherlands East Indies, 1900-1942," *Indonesia*, no. 55 (1993).

<sup>14</sup> The concept of *priyayi* was made popular by Clifford Geertz in his interpretation of religious divisions among Javanese Muslims: "*Abangan*, representing a stress on the animistic aspects of the over-all Javanese syncretism and broadly related to the peasant element in the population; *santri*, representing a stress on the Islamic aspects of the syncretism and generally related to the trading element (and to certain elements in the peasantry as well); and *prijaji*, stressing the Hinduist aspects and related to the bureaucratic element." (Clifford Geertz, *The Religion of Java* (Free Press: Glencoe, 1960), 6.) Geertz's trichotomy, however, has been criticised by other scholars who stated that '*priyayi*' is ill-suited to be defined along religious lines. They pointed out that *priyayi* is more of a social class that could fall into either *abangan* or *santri*. See: Robert B Cruikshank, "Abangan, Santri, and Prijaji: A Critique," *Journal of Southeast Asian Studies* 3, no. 1 (1972); Heather Sutherland, "The Priyayi," *Indonesia*, no. 19 (1975).

<sup>15</sup> The VOC's main interest in East India was to secure commodities and trading access. It did not have the knowledge of how the local systems worked, rather using deception, intimidation or perversion. To achieve the Company's economic interest, VOC exploited the established regency system and recruited the regents (*bupati*) to supervise economic activities (labor drafting or crop cultivation). See: Heather Sutherland, "Pangreh Pradja : Java's Indigenous Administrative Corps and Its role in the Last Decades of Dutch colonial rule" (Yale University, 1973).

<sup>16</sup> "Notes on Java's Regent Families: Part I," *Indonesia*, no. 16 (1973). The colonial government also created vocational schools such as training schools for teachers (*kweekscholen*) or vaccinators (*dokter djawa*). The latter training school became the backbone of Budi Utomo, one of the pioneers of the awakening period in the early 20<sup>th</sup> century. See: Akira Nagazumi, *The Dawn of Indonesian Nationalism: The Early Years of the Budi Utomo, 1908-1918*, vol. 10 (Institute of Developing Economies, 1972).

<sup>17</sup> Ricklefs, *A History of Modern Indonesia since c. 1200*.

<sup>18</sup> In the late 19<sup>th</sup> century, the Dutch faced no significant threat that challenged their authority in Indonesia. There were some mutinies and protests launched against the bureaucratic *priyayi*, the Chinese, or the

## 2.3 The Pre-independence Movement

While the previous section outlines the historical background of Dutch colonialism in Indonesia, this section focuses on the competing interests among the supporters of the independence movement in Indonesia. As briefly introduced, the effort to liberalise the nation was the work of many people who came from various backgrounds (students, businessmen, labour union, and religious leaders) and positions on the political spectrum (for example, the leftists, the Islamists, and the nationalists). This section demonstrates that the road to the declaration of independence in 1945 was facilitated by compromise among these contending groups. As a result, Indonesia was born out of a fragile state foundation that overlooked the essence of democracy, including the constitutional rights of the people.<sup>19</sup>

First of all, it should be noted that the pursuit of human rights in the colonial period existed but was limited only to the idea of emancipating the people from a repressive environment. This ranged from efforts to challenge feudalism and patriarchy, to freedom from imperialism and colonialism. Historical figures such as Kartini, Dewi Sartika, and Rohana Kudus, in the late 19<sup>th</sup> century to the beginning of 20<sup>th</sup> century, were among examples of early emancipators who were involved in rights campaigns in Indonesia. They fought for gender equality and women's empowerment in a society where they challenged the traditions that marginalised women by opening schools for girls, campaigning against child marriage and polygamy, and voicing their thoughts in newspapers and other publications.<sup>20</sup> While that kind of activism focused on a specific group (i.e., women), other Indonesians looked to a bigger picture of building a path for independence and one of the contributing factors that made such effort possible was the implementation of the Ethical Policy by the Dutch at the turn of the 20<sup>th</sup> century.

The Ethical Policy was a series of welfare programs, which focused on providing access to education, improving sanitation and expanding public health services in order to improve the living conditions of the people in the colony. What triggered the issuance of the Ethical

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European, but they were sporadic and lacking coordination, and, therefore, were easy to suppress. It is worth noting here that 'a religious revival', particularly in the Islamic community, triggered some of the uprisings where the people saw the fight against the colonial government as part of a holy war. See: Ira M. Lapidus, *A History of Islamic Societies*, 3rd ed. (New York: Cambridge University Press, 2014).

<sup>19</sup> What constitutes democracy, according to Hans Kelsen, includes the combination of freedom and equality before the law, the majority rulings that protects the rights of the minority, and the separation of powers. See: Hans Kelsen, *The Essence and Value of Democracy*, ed. Nadia Urbinati and Carlo Invernizzi Accetti (Lanham: Rowman & Littlefield, 2013).

<sup>20</sup> Susan Blackburn, *Women and the State in Modern Indonesia* (Cambridge: Cambridge University Press, 2004).

Policy was the increasing humanitarian concerns among the people of the Netherlands after the media, scholars, and writers exposed the mistreatment occurring in the colony.<sup>21</sup> The implementation of the Ethical Policy, however, had mixed results. On the one hand, the policy slightly improved the economy of the colony through the infiltration of foreign investment and the upgrading of infrastructure and basic services such as education and health. On the other hand, the colonial government failed to improve the income gap between the rich and the poor or to introduce democracy in the colony.<sup>22</sup> As previously explained, they preferred to give leadership roles to the noble class instead of introducing a proper recruitment process or a merit-based system of employment. A significant effect that the Ethical Policy had in Indonesia was the rise of a new group of elites which consisted of educated Indonesians.<sup>23</sup> Their existence was important because this group of people, which included Indonesia's founding fathers like Sukarno and Hatta, was responsible for promoting the revolutionary era in Indonesia. Ironically, one of the motivations for their political activism came from their disappointment in the Ethical Policy, which they regarded as a failed system.<sup>24</sup>

Among the first impacts of the Ethical Policy was the rise of social organisations which turned political in the early 20<sup>th</sup> century. A notable example of this was the society, Budi Utomo (Pure Endeavour), which was established by a group of *priyayi* including Dr. Sutomo, Dr. Wahidin Sudiro Husodo and Gunawan Mangunkusumo. The main aim of Budi Utomo was to provide access to education, including a scholarship to study abroad, for the Javanese people.<sup>25</sup> While it was argued that Budi Utomo was considered to be a forerunner of the national movement because it embodied the spirit of nationalism,<sup>26</sup> Budi Utomo was an exclusive social group and the organisation was receptive to the Dutch's Ethical Policy. It was a year after Budi Utomo was established that some radical members of the group

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<sup>21</sup> See: Adrian Vickers, *A History of Modern Indonesia* (Cambridge University Indonesia, 2005); Anne-Marie Feenberg, "'Max Havelaar': An Anti-Imperialist Novel," *MLN* 112, no. 5 (1997); Ricklefs, *A History of Modern Indonesia since c. 1200*.

<sup>22</sup> John Sydenham Furnivall, *Netherlands India: A Study of Plural Economy* (Cambridge: Cambridge University Press, 1944).

<sup>23</sup> Robert Van Niel, *The Emergence of the Modern Indonesian Elite* (Dordrecht: Foris Publications, 1984); Ricklefs, *A History of Modern Indonesia since c. 1200*.

<sup>24</sup> See: George McTurnan Kahin, *Nationalism and Revolution in Indonesia* (Ithaca: Cornell University Press, 1952); Niel, *The Emergence of the Modern Indonesian Elite*.

<sup>25</sup> Budi Utomo was formalized in a ceremony in STOVIA (School for Training of Indonesian Doctors) building. The attendance comprised mainly Javanese people from various training and vocational schools. See: Leo Suryadinata, "Indonesian Nationalism and the Pre-war Youth Movement: A Reexamination," *Journal of Southeast Asian Studies* 9, no. 1 (1978).

<sup>26</sup> Mohammad Hatta as quoted in Vishal Singh, "The Rise of Indonesian Political Parties," *International Studies* 2, no. 4 (1960).

wanted to change the direction of the organisation and to turn Budi Utomo into a political society and seek “to expand its interest to include all of the Indies”.<sup>27</sup> This aspiration then led to the creation of *Indische Partij* (Indies Party) under the leadership of Douwes Dekker and Tjipto Mangoenkusumo. Because of their anti-colonialism stance, in 1913, the colonial government banned the Indies Party and placed their leaders under exile in the Netherlands.<sup>28</sup>

H.O.S. Tjokroaminoto, another member of Budi Utomo, pursued the ideology of Islam as the foundation of his movement. He created Sarekat Islam, an incarnation of the Muslim Traders’s Union (*Sarekat Dagang Islam*) that was created in 1911 out of the discontent among Muslim businessmen towards the foreign business community (especially the Chinese) and the colonial government. Raden Achmad from Sarekat Islam linked people’s enthusiasm in joining Sarekat Islam with the the pursuit of self-governance and the demand for equality for all traders against the domination of Chinese merchants:

The people have joined Sarikat Islam en masse because they seek their rights! They have sought them in vain from their legal chiefs [the Indonesian aristocracy]... It is the people that sees its rights continually threatened; that is why there is the great cry for them to unite themselves in order to defend and resist with more power those who rob them of their rights.<sup>29</sup>

In 1929, Sarekat Islam split into two camps. The first group was *Partai Sarekat Islam Indonesia* (PSII–The Islamic Union of Indonesia Party) which aimed to create a state based on Islam under the leadership of Tjokroaminoto. The second group, which was inspired by the rise of Comintern in 1919, created *Partai Komunis Indonesia* (PKI–The Communist Party of Indonesia).<sup>30</sup>

In addition to the organisations mentioned above, Budi Utomo also inspired the rise of youth groups, such as *Tri Koro Dharmo* (an offshoot of Budi Utomo), which mostly were

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<sup>27</sup> Nagazumi, *The Dawn of Indonesian Nationalism: The Early Years of the Budi Utomo, 1908-1918*, 10, 54.

<sup>28</sup> Niel, *The Emergence of the Modern Indonesian Elite*.

<sup>29</sup> Kahin, *Nationalism and Revolution in Indonesia*, 69.

<sup>30</sup> See: Justus M. van Der Kroef, "The Role of Islam in Indonesian Nationalism and Politics," *Western Political Quarterly* 11, no. 1 (1958); Fred R. Von der Mehden, "Marxism and Early Indonesian Islamic Nationalism," *Political Science Quarterly* 73, no. 3 (1958); Ruth T. McVey, *The Rise of Indonesian Communism* (Ithaca: Cornell University Press, 1965). It cannot be emphasised enough how influential Marxism was to the thinking of prominent leaders such as Sukarno, Hatta, and Syahrir. The adoption of leftist views, however, was varied from those who opted for socialism to those who chose communism as their ideology. In the case of *Sarekat Islam*, the ideological competition between Islamism and Marxism had split the organisation in two with some the members creating the Communist Party. Meanwhile, Sukarno from *Partai Nasional Indonesia* (PNI) attempted to merge nationalism, Islamism, and Marxism, which he claimed to be the manifestation of the “Spirit of Asia” in countering imperialism and colonialism. Sukarno, *Dibawah Bendera Revolusi* (Jakarta: Panitya Penerbit Dibawah Bendera Revolusi, 1963), 2.

ethnic-based. For example, *Jong Java* represented Javanese youth, whereas *Jong Sumatranen Bond* consisted of Sumatran students. These youth groups were also significant in the independence movement because their members were known to be the people who later rose to prominence as Indonesia's political elites such as Agus Salim, Mohammad Hatta and Mohammad Yamin.<sup>31</sup>

The call for a united nation state (Indonesia) was first proposed by *Perhimpunan Indonesia* (Indonesian Association), an organisation that was established in 1922 and originated from a student club for Indonesians who were studying in the Netherlands.<sup>32</sup> *Perhimpunan Indonesia* was an important organisation because their members, such as Mohammad Hatta, Sutan Syahrir, Ahmad Subardjo and Iwa K. Sumantri, became actively involved in designing the republic upon their return to the country.<sup>33</sup> In the 1923 meeting, its chairman, Sumantri, declared the organisation's political objectives: 1) to demand self-determination; 2) to be self-reliant; and, 3) to create a united Indonesia in order to confront the Dutch. The members of *Perhimpunan Indonesia* then formed similar organisations in Indonesia when they got back from the Netherlands.<sup>34</sup> One of the organisations, *Algemeene Studie Club* developed into *Partai Nasional Indonesia*–PNI (Indonesia's National Party). However, in its development, *Perhimpunan Indonesia* was fragmented because of its members' ideological differences. Hatta and Syahrir, who were social-democrats, formed *PNI Baru* (New PNI), whereas Sukarno, who was more motivated to appealing to the masses, created *Partai Indonesia* (Indonesia Party–Partindo).<sup>35</sup>

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<sup>31</sup> Niel, *The Emergence of the Modern Indonesian Elite*.

<sup>32</sup> The origins of *Perhimpunan Indonesia* began with the creation of an Indonesian student club called *Indische Vereeniging* (Indies Club). Some members of *Indische Vereeniging* had the experience of joining youth groups back in Indonesia and were aware of the political developments in their homeland. They established *Perhimpunan Indonesia* to demonstrate their political activism. The organisation's relationship with Comintern, however, created a strong reaction coming from the government. The response from the government ranged from threatening to cut the student grants and placing the organisation under surveillance, to arresting the members of *Perhimpunan Indonesia*. See: John Ingleson, *Perhimpunan Indonesia and the Indonesian Nationalist Movement, 1923-1928*, Monash papers on Southeast Asia — No.4 (Clayton: Monash University, 1975).

<sup>33</sup> For the role of educated elites who were educated overseas in the independence movement see: Safwan Idris, "Tokoh-tokoh Nasional: Overseas Education and the Evolution of the Indonesian Educated Elite" (Thesis, University of Wisconsin-Madison, 1982).

<sup>34</sup> For example *Indonesische Studie Club* (1924) in Surabaya or *Algemeene Studie Club* in Bandung (1926).

<sup>35</sup> Justus M. van der Kroef, "Indonesian Nationalism Reconsidered," *Pacific Affairs* 45, no. 1 (1972). The division among PNI was also influenced by the dislike, among some of the members, of Sukarno's grandiosity, syncretist ideology and Javanism. See: "Sukarno, the Ideologue," *ibid.* 41, no. 2 (1968); Bob Hering, "Soekarno: The Man and the Myth: Looking Through a Glass Darkly," *Modern Asian Studies* 26, no. 3 (1992). The influence of Javanese mythology on Sukarno's political perspectives can be seen in: Bernhard Dahm, *Sukarno and the Struggle for Indonesian Independence* (Ithaca: Cornell University Press, 1969).

Another implication of the Ethical Policy for the growing political activism in Indonesia was the establishment of *Volksraad*—or the People’s Council—in 1916. *Volksraad* was a representative body that was intended to provide “opportunity for Dutch subjects (inhabitants of the Netherlands of East Indies) to cooperate in promoting the interest of this territory”.<sup>36</sup> The Council members composed of elected and appointed officials who came from all parts of society, including natives and Europeans.<sup>37</sup> Despite its lack of authority in passing laws, in its development, *Volksraad* became an important space for the nationalists to express their ideas and aspirations to the Dutch government.<sup>38</sup>

It is worth noting here that Indonesians who served in *Volksraad* were not necessarily united due to their different approaches in achieving political goals. One group was known to have moderate views and consisted of civil servants (the new *priyayi*) and minorities groups who were Chinese and Arab descendants.<sup>39</sup> Another group, the so-called Radical Concentration, represented progressive leaders (leftists) from Budi Utomo, Insulinde (a splinter group originated from Budi Utomo), Sarekat Islam and *Indische Sociaal-Democratische Vereeniging* (Indies Social Democratic Association). This group openly criticised the government’s policies, and demanded the restructuring of the colonial government and the transformation of *Volksraad* into a fully representative body.<sup>40</sup>

One example of the disagreements amongst Indonesians in the Council was when Sutarjo Kartohadikusumo, a civil servant from the moderate group, launched a petition in 1936 that demanded the colonial government grant Indonesia partial freedom (an autonomy without separating from the Netherlands). His idea was inspired by the relationship between the Philippines and the United States that granted its colony autonomy through the creation of the Philippine Commonwealth government in 1933. Other civil servants and minority groups from the moderate group supported the petition, but it was opposed by the nationalists who believed that Kartohadikusumo’s idea still gave power to the colonial

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<sup>36</sup> Eduard J.M. Schmutzer, *Dutch Colonial Policy and the Search for Identity in Indonesia: 1920-1931* (Leiden: E.J. Brill, 1977), 57.

<sup>37</sup> Audrey Kahin, *Historical Dictionary of Indonesia* (Lanham: Rowman & Littlefield, 2015). In 1918 *Volksraad* consisted of 38 members (half were elected and the other half appointed by the Governor General). Most of the members in the early years of *Volksraad* were conservative officials. The rise of radical Indonesians came in 1921 with the expansion of *Volksraad*.

<sup>38</sup> Kahin, *Nationalism and Revolution in Indonesia*.

<sup>39</sup> Susan Abeyasekera, "The Soetardjo Petition," *Indonesia*, no. 15 (1973).

<sup>40</sup> Some members of the radical groups, such as Agus Salim and Oemar Said Tjokroaminoto, even opted to leave the council when they saw *Volksraad* as a toothless institution that could not deliver their demands. See: Erni Haryanti Kahfi, "Haji Agus Salim: His Role in Nationalist Movements in Indonesia During the Early Twentieth Century" (Thesis, McGill University, 1996).

government. In the final vote, the petition passed the Council only because of the support of the European political parties that sought freedom from the Netherlands.<sup>41</sup>

## **2.4 The (Limited) Quest for Rights in the Investigating Committee for Preparatory Work for Independence**

This section serves as another example where Indonesia's elites who pursued independence had their differences on how to achieve independence and what kind of foundation they wanted Indonesia to have. An interesting example is the work of the members of *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia—BPUPKI*, or the Investigating Committee for Preparatory Work for Independence, who touched the issue of human rights when they drafted the constitution. The discussions among the BPUPKI members reflected the differences among the participants, whose beliefs were shaped on their culture and religion, in their understanding of the State and its relations to the people—as can be seen the constitutional debates between Supomo and Muhammad Yamin.

In 1942, Indonesia was under the occupation of Japan which launched an aggressive military assault throughout most of the Southeast Asian nations. Japan's reign did not last long as the Netherlands and the allied forces fought back. When the Japanese saw the tide was turning against them and that they were going to lose the war, they set up a special body for each of Japan's colonies to prepare for their liberation. This was a strategic move for the Japanese empire in order to maintain control over its puppet states after the war ended. What the Japanese did not expect was how calamitous their defeat was. When the atomic bombs were dropped in Hiroshima and Nagasaki, the Japanese were left with no choice but to surrender and abandon their puppet states project.

In Indonesia, the preparation body set up by the Japanese was called *Dokuritsu Junbi Chōsa-kai*, translated to Indonesian as *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan—BPUPKI* (Investigating Committee for Preparatory Work for Independence). BPUPKI, which was founded in March 1945, was responsible to produce a constitution. There were two plenary meetings held: the first was on 29 May–1 June; the second was on 10–17 July 1945. BPUPKI meetings were attended by sixty-two people (most of them were part of the nationalist movement in the early 20<sup>th</sup> century and later held

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<sup>41</sup> Ricklefs, *A History of Modern Indonesia since c. 1200*; Abeyasekere, "The Soetardjo Petition."

government positions when Indonesia got its independence).<sup>42</sup> Among the well-known BPUPKI members were: Sukarno, Mohammad Hatta, Muhammad Yamin, Supomo and Agus Salim. It should be noted that not all of the Indonesian people agreed to work with the Japanese. There was, for example, Sjahrir and Amir Syarifuddin who were concerned about Japan's fascist agenda. Both men later played a significant role after the declaration of independence in 1945.<sup>43</sup>

An important point of interest of the BPUPKI plenary meetings was the disagreement over the type of state and government that should be incorporated into an independent Indonesia. Some members of BPUPKI preferred a strong state and an authoritative government (*Machtstaat*) and Supomo and Sukarno led this group.<sup>44</sup> Other members opposed the creation of a state with unchecked power and wanted to establish a law-based-state (*Rechtsstaat*), as advocated by Hatta and Yamin. Both Sukarno and Supomo shared a unique vision of how Indonesia as an independent state should be.<sup>45</sup> Their main assumption was

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<sup>42</sup> These people came from different backgrounds. Some of them were civil servants who worked under the Dutch government and then the Japanese, while others were the nationalists, Muslim representatives and ethnic-based groups from Arab, Chinese and Indo-European communities. See: MBP. Manus et al., *Tokoh-Tokoh Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia Volume I* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1993); MPB. Manus et al., *Tokoh-Tokoh Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia Volume II* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1993).

<sup>43</sup> As pointed out by Benedict Anderson in the introduction to Sjahrir's pamphlet "Our Struggle": It was a relatively small minority which did not cooperate with the Japanese, and this "opposition" came almost exclusively from those Indonesians who saw themselves as "men of the left" in the Western tradition. The most significant group consisted mainly of remnants of the Indonesian Communist Party under the leadership of the young Christian Batak leader, Amir Sjarifuddin, who attempted to organise a resistance movement with extremely limited success. While not taking a very active role himself, Sjahrir was also among the small minority who refused to work with the Japanese, retiring into semi-obscurity during the war years. Both men were deeply influenced by Western philosophies. For them, the Japanese, while certainly overthrowing Dutch colonial rule, represented reactionary imperialism and militarism, which would certainly exploit the population more ruthlessly than the Dutch. Nothing good was to be expected from the 'feudal' Japanese military and the 'fascist' ideas that they spread.

See: Sutan Sjahrir, *Our Struggle*, trans. Benedict R. O'G. Anderson (New York: Southeast Asia Program Cornell University, 1968), 3-4.

<sup>44</sup> Supomo was a *priyayi* who first worked with the Dutch colonial government at the Department of Justice and then provided legal services to the Japanese. When the Japanese occupied Indonesia, he worked with the Japanese's administration office. He was instrumental in the drafting of the 1945 Constitution with his view that was shaped by Javanese patrimonial culture. That is why he insisted on creating a state that took the form of a family where the head of the state and the government served like the head of a family. See: Daniel S. Lev, "Between State and Society: Professional Lawyers and Reform in Indonesia," in *Making Indonesia*, ed. Daniel S. Lev and Ruth McVey (Ithaca: Cornell University Press, 1996).

<sup>45</sup> Sukarno had his own explanation on what rights should be in the Indonesian context. According to Sukarno, rights should not only include the political rights (political democracy) but also economic rights (economic democracy). He adhered to and promoted the notion of socio-democracy, which he believed would serve the interests of all people both politically and economically. However, his thoughts on rights appear to be one-sided and ambiguous. This was visible in his plea during a trial in 1930 where he was accused of conspiring against the colonial government. On one side, he criticised the colonial government's disregard for the rights of the people to have freedom of the press or to join a strike but, on the other side, he loathed the concept of individual freedom, which for him only profited a small group of elites. Sukarno viewed political rights—individual rights in general—as something that is provocative in nature, which in the end could endanger the

that the philosophical foundation of a state should be based on long-held Indonesian values: *gotong-royong* (mutual cooperation), *musyawarah* (mutual consultation) and *kekeluargaan* (family). For Sukarno and Supomo, the state and the people were inseparable; people are obliged to serve the state because the state is the people. Using this postulation, individual rights were deemed pointless because they will contradict the notion of the state as a part of the people.

Supomo opposed the concept of states that promote individualism, as practiced in Western Europe and America. He also rejected the type of states that were based on the struggle of the classes, where the more dominant class oppresses the underprivileged. He proposed the idea of an 'integralistic' state, which exemplified his vision of the inseparable bond between the state and the people. In an integralistic state, there is no bias to certain groups or individuals, citing Nazi Germany and the Imperial Japan where the state-people relationship was applied. According to Supomo, an integralistic state was suitable for Indonesia because Indonesians were accustomed to living in a communal system where the leaders are honoured and respected, and the needs of the many is prioritised.<sup>46</sup>

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agenda for independence. Therefore, he disregarded the universality of human rights and pushed the concepts of deliberation, harmony, and consensus that were traditionally embedded in the social life of Indonesians. See: Frederick Bunnell, "Guided Democracy Foreign Policy: 1960-1965 President Sukarno Moves from Non-Alignment to Confrontation," *Indonesia*, no. 2 (1966); Sukarno, *Indonesia Accuses! Soekarno's Defence Oration in the Political Trial of 1930*, ed. Roger K. Paget (London: Oxford University Press, 1975); Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*.

<sup>46</sup> This was part of Supomo's speech regarding the idea of integralistic state:

The state is an integral order of society, all groups, all parts, all members are closely related with each other and form an organic societal unity... According to the character of Indonesian politics which until the present time can still be observed in the structure of the *desa* in Java as well as in Sumatera and other Indonesian islands, the state functionaries should always maintain strongly the unity and harmony in society. The leader of the *desa* and the leader of the people should always give form (*Gesaltung*) to the feelings of justice and the aspirations of the people. Therefore, the leaders of the people are loyal to *adat* and always take notice of developments in society, and because of that they are always engaging in mutual consultation (*musyawarah*) with the people, or with the heads of the families in the village, in order that the spiritual unity between leader and people be always maintain. In the spirit of unity between the people and its leaders, between the various groups of the people, all groupings are united by the spirit of mutual co-operation (*gotong royong*) by the family spirit... There will be no need for any guarantee of *Grund-und Freiheitsrechte* of individuals against the state, for the individuals are nothing else than organic parts of the state, having specific positions and duties to realize the grandeur of the state and, on the other side, because the state is not a powerful body or political giant standing outside the sphere of individual freedom.

Quoted from: Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian*, 90-92. It is worth mentioning here that Supomo played an important part in the development of Indonesia's constitutions, as he was the drafter for the 1945 Constitution, the 1949 RUSI Constitution, and the 1950 Provisional Constitution. It was argued that Supomo's ability to create various systems of laws demonstrated his characteristic as a scholar without "strong convictions, whose opinion could change on request." See: Blair Andrew King, "Empowering the Presidency: Interests and Perceptions in Indonesia's Constitutional Reforms 1999-2002" (Thesis, Ohio State University, 2004), 57.

Sukarno, who held a biased perspective on the issue of rights, backed up Supomo's proposition. When confronted by committee members that complained about the lack of individual rights in the draft constitution, Sukarno claimed that allowing someone to exercise their own rights will weaken the existence of the state.<sup>47</sup> Sukarno clearly rejected the idea of men being free and equal, and that the government must be held accountable to its people. He followed up his remarks with his disagreement with economic liberalism—also based on individual freedoms—and correlated economic liberalism and capitalism to the misery of colonialization.<sup>48</sup>

While Sukarno and Supomo were planning to create a strong state and overlooking human rights, Yamin and Hatta were suggesting the opposite. Both Yamin and Hatta rejected the idea of a *Machtsstaat* and advocated for a *Rechtsstaat* state. In the discussion regarding the structure of the constitution, Yamin, in particular, pushed the argument that Indonesia's constitution should contain articles on human rights.

The Constitution of the free countries consist of three parts: on the bottom there are provisions of the Constitution; in the centre there is the declaration of independence and the foundation of the state; and at the top there is the statement that independence is the inalienable right of all nations, do not get confuse about it... We must conform to the *elegantia juris* requirement, a coherent structure, and we can achieve this goal, we already have the Introduction, but not the

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<sup>47</sup> As argued by Sukarno:

... we were asked by many of the committee members on why the draft of the constitution does not mention about human rights, the rights of the citizen, does not explain that we demand a constitution that contains "*droits de l'homme et du citoyen*" or "*rights of the citizen*". Why the Constitution does not contain clear statements such as human has the freedom right, assurance for security, confidentiality, freedom of expression, freedom to assembly and so on?... Ladies and gentlemen must be aware that the Constitution of [French, the Netherlands, and Germany] was based on the philosophical thinking originated from the French Revolution, which are individualism and liberalism. The teaching of Rousseau, Montesquieu, Hobbes, Locke, Immanuel Kant, the creed of individualism and liberalism, those were the foundation of their constitutions.... Why are there no individual rights written for Indonesians? Because [Individual rights] are the source of the world's catastrophe. Countries in Europe and America were founded on state sovereignty or *staatssoevereiniteit*. As mentioned by Professor Supomo yesterday, [the concept of state sovereignty] itself is conflicted. Individual freedom and state freedom in separate forms. That is conflictual, and as I mentioned to you before, conflicts from within states, that is why Europe and America are full of conflicts, fights, *klassenstrijd* (class struggle), and wars.

Quoted from Muhammad Yamin, *Naskah Persiapan Undang-Undang Dasar 1945*, vol. II (1960), 287, 91-92.

<sup>48</sup> *Ibid.*, 293-97.

With economic liberalism, with its jargon: "*laissez faire, laissez passer*" and free competition, capitalism grows exponentially in those countries. Economic liberalism profited a small group of people who suck, squash, and oppress other people. Capitalism [based on individualism] led to imperialism.... With imperialism, ladies and gentlemen, for 350 years we are not free, India is not free, Egypt is not free, and other countries are not free.... Ladies and gentlemen, in our first meeting we have agreed on social justice and preamble. Social justice is our protest to individualism.... We want social justice. What the meaning of having a *grondwet* (constitution) that stated individual not only has the right to speech, to vote, to convene, if there is no *sosiale rechtvaardigheid* (social justice)? What is the use of writing a constitution if it cannot feed the poor? Constitution that contains "*droit de l'homme et ducitoyen*" will not erase the hunger that poor people suffered from. That is why if we really want to base our country on family values, reciprocal altruism, *gotong royong* and social justice, get rid of the notions of individualism and liberalism.... Ladies and gentlemen! We are writing a constitution that is based on the sovereign of the people not on individual.

Declaration of Independence and Declaration of Rights... Here in front of me the Constitution of the United States, which is usually used as a model for other constitutions in the world, because it is the oldest institution in the world, it contains three parts: 1) Declaration of Rights in Philadelphia in 1774, 2) Declaration of Independence in 1776, 3) The Constitution 1787.<sup>49</sup>

Despite his error when describing the chronological sequence of the United States' history, Yamin made his point that he wanted to have a liberal-leaning constitution.<sup>50</sup>

Meanwhile, Hatta made his case against the *Machtstaat* by questioning the enormous power that the state would have under Sukarno and Supomo's idea.

We build a new country based on *gotong-royong* and team work. But there is one thing that concerns me, if there is no accountability to the people in this Constitution in regards to freedom of expression, it is likely that the state will turn out different from our expectation.... We wanted a controller state, we build a new community based on *gotong royong*; our goal is to renew the community. But we should not give the state an unlimited power and turns the state into powerful state. There should be an article, for example in an article regarding citizenship, mentions that each citizen has the rights to freedom of speech. Also important are the rights to assembly, to convene, to correspondence and so on. This type of responsibility is important in order to stop the state from being too powerful, because we based our state on the sovereignty of the people.<sup>51</sup>

Supomo continued to insist that the demand for the inclusion of rights in the constitution would contradict the intention to create a state that was based on a familial system. The obligation of an individual was more important than their rights, according to Supomo.<sup>52</sup>

The meetings on citizens' rights eventually ended with the decision that Indonesia will adapt to a constitutional state (*rechtstaat*) in the form of a republic. Supomo's plan of an integralistic state was opposed and abandoned until the *Orde Baru* regime revived the idea. Nevertheless, the constitution that they created had several weaknesses where there was no clear separation of power between the executive, legislative and judicial body, and the power of the president was not clearly defined. In regards to human rights, the 1945 Constitution contained only a few acknowledgements of rights, which included: freedom of speech, freedom of assembly, freedom of religious expression and the right to have an education.<sup>53</sup> It is clear that human rights were not the priority of the BPUPKI committees at

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<sup>49</sup> *Naskah-persiapan Undang-Undang Dasar 1945 : Disiarkan dengan Dibubuhi Tjatatatan* (Jakarta: Siguntang, 1971), 228-29.

<sup>50</sup> A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2004).

<sup>51</sup> Yamin, *Naskah Persiapan Undang-Undang Dasar 1945*, II, 299-300.

<sup>52</sup> Marsillam Simanjuntak, *Pandangan Negara Integralistik Sumber, Unsul, dan Riwayatnya dalam Persiapan UUD 1945* (Jakarta: PT Pustaka Utama Grafiti, 1997).

<sup>53</sup> The 1945 Constitution contains thirty-seven Articles, four provisions of the transitional rules (*Aturan Peralihan*), and an annex. The regulations that touch on human rights can be found in Articles 26-31, which include: citizenship (Article 26), the equality before the law (Article 27), freedom of assembly (Article 28), the right to submit to a religion (Article 29), the right to defend the country (Article 30), and the right to an

that time because the real goal was to expedite independence and to fix any flaws in the 1945 Constitution at a later date. However, as history has shown, the addendum to the 1945 Constitution, where the elected legislative body would redraft the constitution in 1946,<sup>54</sup> was obstructed due to the turmoil that Indonesia experienced following its independence.

Another important debate during the BPUPKI meetings was related to the state's foundation. The disagreement came from two opposite camps: those who sought to establish a unitary state that separates religious affairs from the state and those who pursued the creation of an Islamic State. The group supporting the former notion was the secular nationalists (led by Hatta), whereas the opposing group consisted of Muslim nationalists. Supomo supported Hatta's idea and appealed to BPUPKI members to heed the advice of the Japanese government in creating a state that reflected Indonesia's identity. He also argued that creating an Islamic State would alienate the minorities.<sup>55</sup> Ki Bagus Hadikusomo, one BPUPKI member that represented the Muslim group, responded that an Islamic state would provide tolerance as well as the quest for moral foundation that was supported by the secular nationalists. He also reminded his colleagues that Indonesia is a Muslim majority nation and that the Dutch government had long oppressed the Islamic community from practicing *shari'a*.<sup>56</sup>

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education (Article 31). During *Orde Baru*, the government issued a number of rules that limited these constitutional rights. In regards to freedom of speech, the government ordered the banning of books (in particular those written by the leftist writers like Pramoedya Ananta Toer), the prohibition of several people who were known to express criticism of the government in public meetings, the implementation of censorship, and the curtailment of academic freedom. See: Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*.

<sup>54</sup> Saafroedin Bahar, Ananda B. Kusuma, and Nannie Hudawati, eds., *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI)* (Jakarta: Sekretariat Negara Republik Indonesia, 1995).

<sup>55</sup> As stated by Supomo:

Although an Islamic State will safeguard the interests of other groups as well as possible, these smaller religious groups will certainly not be able to feel involved in the state. Therefore the ideals of an Islamic State do not agree with the ideals of a unitary state which we all have so passionately looked forward to...Honourable members! A national unitary state does not mean a state with an a-religious [sic] character. No. This national unitary state...will have a lofty moral basis, such as is advocated by Islam. For example, in the state of Indonesia citizens must be stimulated to love their fatherland, to devote themselves to and sacrifice themselves for the sake of the country, to gladly serve the fatherland, to love and serve their leaders and the state, to bow down to God, to think God of every moment. All this must constantly be promoted and used as a moral basis for this national unitary state. And I am convinced that Islam will strengthen these principles.

Supomo quoted from: B. J. Bolland, *The Struggle of Islam in Modern Indonesia* (Leiden: Springer Science-Business Dordrecht, 1982), 20-21.

<sup>56</sup> As stated by Hadikusumo:

Very often we heard voices stating that the *shari'a* is an old fashioned injunction, incompatible with the present. This is proved by the fact that the *shari'a* cannot function, despite the majority of Indonesian people being Muslims. It is true, but you must also remember the barriers which blocked the *shari'a* from

On 1 June 1945, Sukarno gave a speech with the intention of appeasing the opposing groups. He introduced Pancasila, or the five principles, that consolidated the ideas argued by the secular and Muslim groups. Sukarno began with the principle of nationalism (*kebangsaan*) and mentioned the concept of a united nation by evoking the ancient kingdoms of Srivijaya and Majapahit:

Gentlemen, let no one think that every independent country is a national state... Similarly, neither were all the states of our homeland which were independent in the past, national state. Only twice have we experienced a national state, that was in the time of Sriwijaya and in the time of Mojopahit [sic]... The National state is only Indonesia in its entirety, which was set up in the time of Sriwijaya and Mojopahit, and which now was also ought to establish together.<sup>57</sup>

The second principle was internationalism (or humanity): “We should aim for the unity and brotherhood of the whole world”.<sup>58</sup> This then followed by representative government (democracy): “...the necessary condition for the strength of the Indonesian state is conferring, is representative government”.<sup>59</sup> In his speech, Sukarno assured the Muslim nationalists that democracy which applies the representative system would be beneficial for Muslims:

For Islam, this is the best condition for the promotion of religion... And this Islamic heart of Bung Karno, hopes to defend Islam by agreement, through discussion! By means of agreement, we shall improve all matters, we shall promote the interest of religion, that is, by means of talks or discussions in the House of Representatives.<sup>60</sup>

The fourth principle was social prosperity: “...if we are seeking democracy, the need is not for the democracy of the west, but for conferring, which brings life, which is a politico-economic democracy, able to bring about social prosperity!”<sup>61</sup> The final principle was the belief in god (*ketuhanan*).

Not only should the people of Indonesia have belief in God, but every Indonesian should believe in *his own* [sic] particular God... The whole people should worship his God in the cultural way

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functioning fully in Indonesia. The major constraint of this was nothing but a deceitful trick imposed by the Dutch East Indies government which had colonized our country, and always attempted to uproot the Islamic religion from its colony since it knew that as long as the Indonesian nation firmly subscribed to the religion of Islam, it would not gain any advantage over its colony. Therefore, the *shari'a*, which had been in operation in Indonesia, was gradually abolished and substituted with other regulations that the Dutch government liked.

Cited from: Faisal Ismail, "Islam, Politics and Ideology in Indonesia: A Study of the Process of Muslim Acceptance of the Pancasila" (Thesis, McGill University, 1995), 46-47. Hadikusumo provided examples where the Dutch government tried to implement the inheritance law and the marriage law, which are the types of laws that Islamic law regulates.

<sup>57</sup> Sukarno, *Lahirnya Pancasila* (Jakarta: The Ministry of Public Information Republic Indonesia, 2000), 22.

<sup>58</sup> *Ibid.*, 24.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*, 24-25.

<sup>61</sup> *Ibid.*, 27.

that is, without “religious egoism”. And the State of Indonesia should be a State incorporating the belief in God!<sup>62</sup>

The debate about the state’s philosophical foundation among the secular nationalists versus the Islamists continued to dominate the BPUPKI meetings and was only resolved after Sukarno and Hatta proclaimed independence on 17 August 1945.<sup>63</sup> The issue was contentious in that it left a lot of other constitutional matters undecided or unclear. Maria Ulfah Santoso, who was one the member of BPUPKI, for example, suggested that the Constitution should clearly define what constituted human rights, but Supomo asserted that her recommendation was unnecessary because “the Indonesian state was founded by on the people’s sovereignty.”<sup>64</sup> As later explained in the next section, Pancasila became an important instrument during *Orde Baru*, where it was not only regarded in a philosophical manner, but it was adopted by the regime as the state’s ideology.<sup>65</sup>

## 2.5 The Revolutionary Period (1945-1949)

The years 1945 to 1949 were a period where the newly proclaimed Indonesian government was involved in a dispute with the Dutch government that that was attempting to reclaim its former colony after World War II ended. It was during that time that the conflict between Indonesia and the Dutch drew the attention of the United Nations, the biggest international organisation that was established after the end of World War II. This section demonstrates

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<sup>62</sup> Ibid., 28. In the development of Indonesia’s foreign policy, the role of religion (in particular Islam) has experienced its ups and downs. Islam as an identity was used during Sukarno years, but in the administration of Suharto, the Islamic factor disappeared as the government focused on economic development policies. It was during the 1990s that Islamic sentiment gradually entered Indonesia’s foreign policy. When Suharto’s era ended in 1998, the characteristic of Indonesia as the largest Muslim country that had adopted democracy became part of the vernacular of Indonesia’s foreign policy—some of the issues will be addressed in Chapter 5. For a comprehensive study on the role of Islam in Indonesia’s foreign policy see: Rizal Sukma, *Islam in Indonesian Foreign Policy: Domestic Weakness and the Dilemma of Dual Identity* (London: Routledge, 2003).

<sup>63</sup> Sukarno’s proposal of Pancasila was further discussed among a small group that was known as *Panitia Sembilan* (Committee Nine). The members of Committee Nine consisted of representatives of nationalist (Sukarno, Hatta, A.A. Maramis, Muhammad Yamin) and Muslim groups (Abikusno Tjokrosuroso, Abdulkahar Muzakkir, Agus Salim, Wahid Hasyim, and Achmad Subarjo). The Committee made several alterations to Pancasila including placing the submission to God as the first principle in a document called *Piagam Jakarta* (Jakarta Charter). There was an important phrasing in the Charter that later fueled the debate among BPUPKI members: the principle of the belief in God followed by ‘with the obligation for adherents of Islam to practice Islamic law.’ Such wording was questioned during the meeting of the Committee for the Constitution by people like Johannes Latuharhary, Husin Jayaningrat, and Wongsonegoro, which were concerned that the phrasing would lead to fanaticism and discrimination. The BPUPKI meetings resulted in a draft constitution that maintained the language of Islam and this matter only came to a solution when, on 18 August 1945, Hatta convinced the Muslim group that the unison of Indonesia could only be reached if the Constitution was not biased towards a particular religion. See: Bolland, *The Struggle of Islam in Modern Indonesia*; Yamin, *Naskah-persiapan Undang-Undang Dasar 1945 : Disiarkan dengan Dibubuhi Tjataan*; Taufik Abdullah, *Indonesia: Towards Democracy* (Singapore: Institute of Southeast Asian Studies, 2009).

<sup>64</sup> Bolland, *The Struggle of Islam in Modern Indonesia*, 30.

<sup>65</sup> Geoffrey C. Gunn, "Ideology and the Concept of Government in the Indonesian New Order," *Asian Survey* 19, no. 8 (1979).

that among the arrangements made between the Dutch and the Indonesian government (under the banner of the Republic of the United States of Indonesia—RUSI) was the adoption of a constitution that contained the full version of the Universal Declaration of Human Rights (UDHR). However, since RUSI suffered from a lack of popular support, the federal system was short lived and Indonesia reinstated the republic system.

Indonesia declared its independence on 17 August 1945 in a power vacuum as Japan suffered a devastating loss in World War II.<sup>66</sup> As a new republic, Indonesia possessed some of the prerequisites of a state, as mentioned in the 1933 Montevideo Convention. Its sovereignty covered the areas of Sumatra, Java, and Madura; it created a functional government and armed forces that were formed by the Japanese, and it received considerable support from the people.<sup>67</sup> However, the new state was not fully consolidated and this was exacerbated by the immediate challenge coming from the Netherlands that arrived soon after the Allied forces in October 1945.<sup>68</sup> The Dutch refused to acknowledge the Republic, which they saw merely as a Japanese fabrication.<sup>69</sup> As a result, Indonesia was

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<sup>66</sup> As soon as BPUPKI ended its meetings in drafting the constitution in July 1945, the Japanese formed *Panitia Persiapan Kemerdekaan Indonesia*—PPKI (Indonesian Independence Preparatory Committee) on 7 August 1945, and appointed twenty-one prominent nationalists to represent all of the Indonesian people. Sukarno and Hatta, who were appointed as Chairman and Vice Chairman, flew to Da Lat, Vietnam, on 8 August to meet with General Hisaichi Terauchi, the Commander of Japanese Army who promised to grant freedom to Indonesia on 24 August. Upon returning to Indonesia, Sukarno and Hatta saw the anxiousness of the people (some of them led by Syahrir who refused to be involved in BPUPKI) that rejected the notion that Indonesia's independence was a gift from Japan through the creation of PPKI. They persuaded Sukarno and Hatta to hasten the independence process. It was said that the conflict between the old (as represented by Sukarno and Hatta) and the young people (*pemuda*) who ran an underground resistance led to the abduction of Sukarno and Hatta to Rengasdengklok (West Java) on 16 August to hasten the independence—Hatta rejected that they were abducted in a book he wrote in 1970. Sukarno and Hatta were hesitant to proclaim independence sooner because they were worried the retaliation from the Japanese would cost many lives, whereas the pro-independence group argued that Sukarno and Hatta should not delay further because they believed that the Japanese had lost its power to the Allied forces. Sukarno and Hatta travelled back to Jakarta from Rengasdengklok when they received no update from youth groups—they planned to announce the independence in Ikada Square, Jakarta themselves. Indonesia's independence was proclaimed the following day on 17 August 1945. The government of the new Republic of Indonesia consisted of people who were involved in the pre-independence movement as well as those who worked in BPUPKI, such as Achmad Subardjo, Iwa K. Soemantri, Amir Syarifuddin, Supomo. See: Kahin, *Nationalism and Revolution in Indonesia*; Mohammad Hatta, *Sekitar Proklamasi* (Jakarta: Tintamas, 1970); Bolland, *The Struggle of Islam in Modern Indonesia*.

<sup>67</sup> Java was the centre of the nationalist movement, followed by some regions of Sumatra (West and East coast). The nationalist movement was less prominent in Borneo (Kalimantan), created division among the people in North Sulawesi, and was unheard of in Eastern parts of Indonesia including Papua (New Guinea). See: Amry Vandenbosch, "The Netherlands-Indonesian Union," *Far Eastern Survey* 19, no. 1 (1950); van der Kroef, "Indonesian Nationalism Reconsidered."

<sup>68</sup> Based on the diplomatic notes, on 24 August 1945, between British Foreign Secretary and the Netherlands Ambassador in London, the Allied forces under the command of the British intended to help the Dutch to dismantle the Japanese power in Indonesia including dissolving the Republic of Indonesia. See: Charles Cheney Hyde, "The Status of the Republic of Indonesia in International Law," *Columbia Law Review* 49, no. 7 (1949).

<sup>69</sup> J. Foster Collins, "The United Nations and Indonesia," *Int'l Conciliation* 28 (1950).

involved in physical and diplomatic fights against the Netherlands.<sup>70</sup> After going through a series of negotiations—some of them were negotiated by Syahrir and Amir Syarifuddin in their capacity as prime ministers—a final agreement was made at The Hague Round Table Conference in 1949 between the Dutch and representatives from Indonesia. There were three main settlements reached between the two parties: (1) the transfer of sovereignty of sixteen states including the Republic of Indonesia to the Republic of United States of Indonesia (RUSI) on 30 December 1949.<sup>71</sup> Hatta was appointed as the Prime Minister and Sukarno as President. (2) The creation of the Statute of the Netherlands Indonesian Union, where both parties agreed to cooperate on issues such as “foreign relations, financial and economic relations, and cultural relations.”<sup>72</sup> Under this arrangement, both parties also

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<sup>70</sup> The condition was eruptive where Allied troops, the remainder of the Japanese government and *Tentara Keamanan Rakyat* (the People’s Security Army, founded during the Japanese occupation and later evolving to become Indonesia’s Armed Forces) fought each other. The deadliest battle occurred in Surabaya, East Java, from October–November 1945 and became the game changer for the parties involved. From the Indonesian side, even though it suffered a great loss of human resources and arms, it succeeded in rallying the people’s support for the Revolution. Meanwhile, the Allied forces decided that it was better for them to remain neutral in the conflict, whereas the Dutch were faced with the reality that the fight for independence was not simply a demand from a small group of elites. The first ceasefire treaty made between the Dutch and the Republic of Indonesia was the Linggajati agreement (12 November 1946). In the Linggajati document, it was stated that the Dutch government recognised the authority of the Republic’s government in Sumatra, Java and Madura. Both parties also agreed to establish the United States of Indonesia by 1949, a federal state with the Queen as the head of state and the Republic as one of the states. The treaty only lasted for a short period, as both parties were suspicious with each other’s motives. The pro-republic supporters then launched a guerrilla war against the Dutch as it created regional states to support the plan to create a federal state. In the so-called ‘police action,’ the Dutch attacked the Republic in 1947 and took over some parts of Sumatra and Java. The Dutch’s military offence drew the attention of the United Nations that called an armistice. This then led to the second truce treaty, the Renville agreement in 1948. The treaty basically redrew the territories of the competing parties through the imaginary Van Mook’s line. Under the new boundary, the Republic lost some parts of its regions because of the 1947 military aggression. The positive development that the Republic got from the Renville agreement were diplomatic credentials as it was recognised at the United Nations as the official representative of Indonesia. The Netherlands’ international reputation, on the other hand, gradually decreased, as it was not seen as genuinely wanting to find a solution, only to secure its power. The breaking point for the Dutch to lose its credibility was when it launched the second military aggression against the Republic from December to May 1949. The United Nations then forced the Netherlands to negotiate with Indonesia. See: Ali Sastroamidjojo and Robert Delson, "The Status of the Republic of Indonesia in International Law," *Columbia Law Review* 49, no. 3 (1949); Charles Cheney Hyde, "The Status of the Republic of Indonesia in International Law," *ibid.*, no. 7; Kahin, *Nationalism and Revolution in Indonesia*; Petra M.H. Groen, "Dutch Armed Forces and the Decolonization of Indonesia: The Second Police Action (1948-1949), A Pandora's Box," *War & Society* 4, no. 1 (1986); Lucian Ashworth, "The 1945-1949 Dutch-Indonesian Conflict: Lessons and Perspectives in the Study of Insurgency," *Journal of Conflict Studies* 10, no. 1 (1990).

<sup>71</sup> RUSI was a federal state consisted of sixteen states that included: (1) Republic Indonesia; (2) State of East Sumatra; (3) State of South Sumatra; (4) Autonomous Area of Riau; (5) Autonomous Area of Bangka; (6) Autonomous Area of Kota Biliton; (7) State of Pasundan (West Java); (8) Autonomous Area of Central Java; (9) State of Madura; (10) State of East Java; (11) State of East Indonesia; (12) Autonomous Area of West Borneo; (13) Autonomous Area of Greater Dayak; (14) Autonomous Area of Banjar; (15) Autonomous Area of Southeast Borneo; (16) Autonomous Area of East Borneo. The fate of New Guinea (West Papua) was to be determined one year after the agreement. RUSI adopted America’s model of federalism and combined the political system of America and Western Europe: federal, bicameral, and democratic parliamentary. See: Collins, "The United Nations and Indonesia."

<sup>72</sup> Homer G Angelo, "Transfer of Sovereignty over Indonesia," *The American Journal of International Law* 44, no. 3 (1950): 571.

agreed to the inclusion of human rights principles similar to the UDHR.<sup>73</sup> (3) The Agreement on Transitional Measures where both parties committed to resolve matters related to the “right and obligations under private and public law of the previous Netherlands Government in Indonesia to the Republic of the United States of Indonesia”.<sup>74</sup>

Back at home, RUSI proved to be problematic. On the one hand, the nationalists achieved their goal of an acknowledgement of an independent Indonesia.<sup>75</sup> However, RUSI created a lot of problems, from administrative challenges (from redistributing the power from the federal authority to the states to reorganising the military which had come from the Dutch’s and the Republic’s regiments), economic problems and separatism. Most importantly, RUSI suffered a lack of credibility because it was seen as a puppet to the Netherlands. As a result, there was an increasing demand to dissolve RUSI and return to the republic system. After nine months of operation, on 16 August 1950, RUSI was disbanded and the Republic was reinstalled.<sup>76</sup>

The new unitary republic adopted *Undang Undang Dasar Sementara 1950* (the Provisional Constitution of the Republic of Indonesia 1950). As its name demonstrated, the 1950 Constitution was intended to be a temporary constitution. The drafting body mandated the Constituent Assembly (*Konstituante*) to create a new constitution. Similar to the 1949 Constitution, the 1950 Constitution contained complete articles on human rights that were parallel to the Universal Declaration on Human Rights. There were several adjustments made in the 1950 Constitution. For example, the government added an article regarding the right to demonstrate and to go on strike. This was considered a breakthrough in human rights promotion, bearing in mind that modern international human rights regime at that time were in a nascent stage.<sup>77</sup> Nevertheless, despite the inclusiveness of the 1950

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<sup>73</sup> The end of the World War II was highlighted by the gradual efforts to push human rights initiatives as they were believed to be a way to deter the kind of atrocities seen in the World War. One of the early works on human rights was the creation of UDHR, which is the first international document that lists the basic human rights that states should guarantee, in 1948. See: Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

<sup>74</sup> Angelo, "Transfer of sovereignty over Indonesia."

<sup>75</sup> *Komite Nasional Indonesia Pusat—KNIP* (the Central Indonesian National Committee), the advisory committee to the president, approved the result of the 1949 The Hague Round Table Conference on 15 December 1949. On 16 December Sukarno was elected as the president of RUSI and three days later a cabinet under the leadership of Hatta as the Prime Minister was formed. See: Abdullah, *Indonesia: Towards Democracy*.

<sup>76</sup> Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962); Abdullah, *Indonesia: Towards Democracy*.

<sup>77</sup> The process of making and accepting the 1950 Provisional Constitution can be found in Supomo, *The Provisional Constitution of the Republic of Indonesia with Annotations and Explanations on Each Article*, trans. Garth N. Jones, Modern Indonesia Project Southeast Asia Program (Ithaca: Department of Asian Studies

Constitution and its prototype, the 1949 Federal Constitution, they did not have political support because they were not seen as products of national consensus.

The revolution period created several implications for the development of politics in Indonesia. First, the traumatic experiences that the nation had endured in fighting against the Netherlands became the basis of Indonesia's foreign policy doctrine of 'free and active'.<sup>78</sup> Second, the revolution period mandated a unique relationship between the state and the military in Indonesia. *Tentara Keamanan Rakyat* (People's Security Army), the prototype of Indonesia's armed forces (ABRI) that joined in the struggle for independence, became a precedent of the role of the Indonesian military in politics because the revolution period was where "politics and military action were inseparably intertwined".<sup>79</sup> Third, the revolution period gave birth to the multi-party system in Indonesia. This could not be separated from Syahrir's effort in persuading Sukarno and Hatta to allow new political parties to emerge and join the National Committee (KNIP) in November 1945.<sup>80</sup> As a result, the three largest political parties that emerged by the end of year were: (1) *Partai Nasional Indonesia* (PNI or National Party of Indonesia), a nationalist party that was a rejuvenated version of the pre-independence PNI, (2) *Masyumi* (Council of Indonesian Muslim Associations), a religious nationalist party that incorporated Muslim groups including those who came from *Sarekat Islam*, (3) *Partai Sosialis Indonesia* (PSI or Socialist Party of Indonesia), a left-wing party that was created by Syahrir and Amir Syarifuddin. During the revolution period, both Syahrir and Syarifuddin served as prime ministers.<sup>81</sup> PSI was later split into two camps

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Cornell University, 1964); Feith, *The Decline of Constitutional Democracy in Indonesia*. Supomo, in particular, laid out the differences of human rights provisions in the 1950 Provisional Constitution with the RUSI Constitution and the 1945 Constitution.

<sup>78</sup> Mohammad Hatta, "Indonesia's Foreign Policy," *Foreign Affairs* 31, no. 3 (1953).

<sup>79</sup> Crouch, *The Army and Politics in Indonesia*, 24.

<sup>80</sup> Benedict Anderson, *Java in a Time of Revolution: Occupation and Resistance, 1944-1946* (Ithaca: Cornell University Press, 1972).

<sup>81</sup> Richard D. Baum, "Apples, Oranges, and the Comparative Study of Political Parties," *Western Political Quarterly* 20, no. 1 (1967). Both Syahrir and Amir Syarifuddin were among the people who chose not to cooperate with the Japanese (e.g. involve in BPUPKI). Syahrir became a popular figure in the revolution period because he laid out the prognosis of the uncertainty surrounding the post-independence Indonesia in a pamphlet called *Our Struggle (Perjuangan Kita)*. He argued that the democratic revolution should be steered by 'revolutionary democrats', not by the people who were sycophants for the Dutch and Japanese. In the pamphlet, he did not name the nationalists, but he was obviously targeting Sukarno and his group, which Syahrir called 'the running-dogs and the henchmen of the Japanese fascists'. One of Syahrir's arguments was related to the improvement of the 1945 Constitution and the need to clarify rights in the Constitution:

The Indonesian Republican State, which we have made the instrument of our people's revolution, must also be made the instrument of our democratic struggle, purged of all traces of Japanese fascism. The present constitution, which is still far from fully democratic, must be replaced by a wholly democratic constitution which will imprint on every organ of state administration the fundamental rights of the people: freedom of thought, speech and religion, freedom to write, to earn a living, to have an education, and to

where the radicals joined the communists who revolted against the government.<sup>82</sup> As later shown, PKI played a significant role in influencing Sukarno's politics.<sup>83</sup> It is also important to note here that the adoption of the human rights provision in UDHR in the RUSI Constitution was regarded as the UN's first accomplishment in promoting UDHR as a significant international mechanism for human rights.<sup>84</sup> Nevertheless, the adoption of the UDHR alone is not enough to measure the impact of the international human rights regime, especially when the Cold War had such a significant impact on human rights discourse.<sup>85</sup>

## 2.6 The Short Democratic Period (1950-1958)

This section describes Indonesia's first experience with a parliamentary democracy system. Under the 1950 Constitution, the President served as the head of the state, mostly for ceremonial purposes, and the government was headed by the Prime Minister. As later described, this experiment with democracy failed due to several factors such as the inability of the elites to overcome domestic problems including economic issues and insurgencies.<sup>86</sup>

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share in determining the organization and the business of the state through the right to elect and be elected to all bodies which participate in governing the country. (Sjahrir, *Our Struggle*, 20.)

Because of the publication of *Our Struggle*, Sjahrir received popularity and trust from the people. Sjahrir rose to Indonesia's political stage because he and his supporters outmaneuvered Sukarno and Hatta by taking over KNIP, securing his seat as the prime minister. His appointment as the prime minister in 1945 was able to tone down the reaction of the Dutch that saw the Republic as Japan's puppet state because Sjahrir himself was an anti-Japanese activist. He filled his cabinet with ministers who mostly came from the Socialist Party including Amir Syarifuddin. He parted ways with Amir Syarifuddin when Syarifuddin pursued communism in 1948. For more on Sjahrir's political role see: Anderson, *Java in a Time of Revolution: Occupation and Resistance, 1944-1946*; John David Legge, *Intellectuals and Nationalism in Indonesia: A Study of the Following Recruited by Sutan Sjahrir in Occupied Jakarta* (Ithaca: Cornell Modern Indonesia Project Publications, 1988); Lindsay Rae, "Sutan Sjahrir and the Failure of Indonesian Socialism," in *Indonesian Political Biography: In Search of Cross-Cultural Understanding*, ed. Angus McIntyre (Clayton: Centre of Southeast Asian Studies, Monash University, 1993); Rudolf Mrázek, *Sjahrir: Politics and exile in Indonesia* (Ithaca: SEAP Publications, 1994); David Bourchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State* (New York: Routledge, 2015).

<sup>82</sup> For the evolution of Indonesia's communist party see: Mochtar Lubis, "The Indonesian Communist Movement Today" *Far Eastern Survey* 23, no. 11 (1954); Rex Mortimer, *Indonesian Communism under Sukarno: Ideology and Politics, 1959-1965* (Ithaca: Cornell University Press, 1974); Donald Hindley, *The Communist Party of Indonesia: 1951-1963* (Berkeley: University of California Press, 1964); "Communist Party strategy in Indonesia 1948-1959," *Australian Journal of International Affairs* 13, no. 4 (1959).

<sup>83</sup> See: *The Communist Party of Indonesia: 1951-1963*.

<sup>84</sup> See: Charles Malik, "Human Rights in the United Nations," *International Journal* 6, no. 4 (1951); F. Blaine Sloan, "Human Rights, the United Nations and International Law," *Nordisk Tidsskrift Int'l Ret* 20 (1950).

<sup>85</sup> See: Rosemary Foot, "The Cold War and Human Rights," in *The Cambridge History of the Cold War*, ed. Melvyn P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010).

<sup>86</sup> Some examples of rebel movements that challenged the government since the late 1940s: West Java (*Darul Islam*/NII from 1949-1962), Central Java (PKI in 1948), West Sumatera (PRRI from 1956-1958), and Sulawesi (*Permesta* from 1959-1961). The revolutions that came from outside of Java often originated from dissatisfaction about how the central government treated the regions outside Java. In some cases, like the PRRI and *Permesta*, the rebel movement that merged the forces of the military and disgruntled political leaders from Masyumi and PSI was also influenced by the anti-communist sentiment as Sukarno grew closer to PKI. This movement was eventually defeated because of several factors from the revelation of the CIA's support to the

As the condition continued to deteriorate, Sukarno took over the leadership with support from the military and led the country into authoritarianism.

There were several important features of Indonesia's democratic period that should be noted. Firstly, it was during this democracy period that Indonesia formulated its foreign policy doctrine *bebas-aktif* (independent-active). The *bebas-aktif* principle was created as a response to the growing rivalry between world powers, the United States and the Soviet Union. Indonesia also used *bebas-aktif* to voice the interests of newly emerging countries from Asia and Africa in international forums like the United Nations.<sup>87</sup> *Bebas-aktif* foreign policy was first formulated by Hatta in 1948 in his famous speech called *Mendayung di Antara Dua Karang* (Rowing Between Two Reefs). In his argument, Hatta stated that Indonesia must not sacrifice its freedom by falling to one of the conflicting superpowers:

Have the Indonesian people fighting for their freedom no other course of action open to them than to choose between being pro-Russian or pro-American?...Indonesia should not be a passive party in the area of international politics but that it should be an active agent entitled to decide its own standpoint...The policy of the Republic of Indonesia must be resolved in the light of its own interests and should be executed in consonance with the situations and facts it has to face... The lines of Indonesia's policy cannot be determined by the bent of the policy of some other country which has its own interests to service.<sup>88</sup>

Hatta elaborated further Indonesia's foreign policy position in the Foreign Affairs journal in April 1953:

As a member of the United Nations, the Republic of Indonesia cannot adopt an attitude of neutrality. It is committed to international solidarity...But in practice, of course, international solidarity has not been achieved; world solidarity has cracked into two pieces. Under present conditions it would not be possible for Indonesia to be other than neutral if a war broke out...the policy of the Republic of Indonesia is not one of the neutrality, because it is not constructed in reference to belligerent states but the purpose of strengthening and upholding peace. Indonesia plays no favorites between the two opposed blocs and follows its own path through the various international problems. It terms this policy 'independent,' and further characterizes it by describing it as independent and 'active.' By active is meant the effort to work energetically for the preservations of peace and the relaxation of tension generated by two blocs, through endeavors supported if possible by the majority of the members of the United Nations.<sup>89</sup>

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rebels—which impacted to PRRI-Permesta's credibility—to the partnership between Sukarno and General Nasution that led to the implementation of Guided Democracy. See: Daniel F. Doepfers, "An Incident in the PRRI/Permesta Rebellion of 1958," *Indonesia*, no. 14 (1972); Abdullah, *Indonesia: Towards Democracy*; Bryan Evans, "The Influence of the United States Army on the Development of the Indonesian Army (1954-1964)," *Indonesia*, no. 47 (1989).

<sup>87</sup> Indonesia's supports to countries from Asia and Africa during the Cold War can be found, for example, in Justus M. van der Kroef, "Indonesia and the West," *Far Eastern Survey* 20, no. 4 (1951); "Indonesia: Independent in the Cold War," *International Journal* 7, no. 4 (1952).

<sup>88</sup> Mohammad Hatta, *Dasar Politik Luar Negeri Republik Indonesia* (Jakarta: Tintamas, 1953), 466.

<sup>89</sup> "Indonesia's Foreign Policy," 443-44. Hatta also laid out the objectives of Indonesia's foreign policy as follows (page 441):

1. To defend the freedom of the people and guard the safety of the state;

Hatta, who reigned for a short time during the transition period between RUSI and the Republic (1948-1950), did bring the independent and active foreign policy into realisation by not forming alliance with the United States or the Soviet Union and establishing “diplomatic relations with both Communist and non-Communist countries.”<sup>90</sup> His successors’ foreign policy conduct, however, was influenced by the parties’ predilection to weaken the independent and active norms. In the Natsir and Sukiman cabinets, for example, Indonesia’s foreign policy had leanings towards the West, because the dominating party, *Masyumi* (an Islamic party), was resistant to the intentions of the communist party, PKI.<sup>91</sup> The Sukiman cabinet was eventually dissolved amid protest of other parties because of the decision to sign up for the Mutual Security Agency (MSA) from the United States for foreign assistance which contained a provision that the recipient would provide help to the

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2. To obtain from overseas those articles of daily necessities required for increasing the standard of living of the population—food, especially rice, consumer goods of various kinds, medicines, and so on;
  3. To obtain capital equipment to rebuild what had been destroyed or damaged, and capital for industrialization, new construction and the partial mechanization of agriculture;
  4. To strengthen principles of international law and to aid in achieving social justice on an international scale, in line with the UN Charter, with special reference to Article 1, 2 and 55, in particular by endeavouring within the UN framework to help people still living within the colonial system to achieve freedom;
  5. To place special emphasis on initiating good relations with neighbouring countries, the majority of which have in the past occupied a position similar to Indonesia;
  6. To seek fraternity among nations through the realization of the ideals enshrined in Pancasila (Five Postulates) which constitute the basic Indonesia philosophy

<sup>90</sup> Suryadinata, *Indonesia's Foreign Policy under Suharto : Aspiring to International Leadership*, 27.

Indonesia, for example, turned down the Philippine’s proposal to form a Southeast Asia’s anti-communist bloc and the Pacific Defense Pact that was initiated by the United States. Under Hatta, Indonesia also opened diplomatic channels with the Soviet Union and its satellite countries in Eastern Europe and China. See: Van Der Kroef, "Indonesia: Independent in the Cold War."; Werner Levi, "Union in Asia?," *Far Eastern Survey* 19, no. 14 (1950); David W. Mabon, "Elusive Agreements: The Pacific Pact Proposals of 1949-1951," *The Pacific Historical Review* (1988).

<sup>91</sup> This was related to the turbulent period in the late 1940s when Indonesia engaged in revolutionary warfare with the Netherlands. The Renville Agreement, which was the second peace agreement made between Indonesia and the Dutch, was seen by some people as only benefiting the Netherlands while limiting the authority of the Republic. During this period, the government of Indonesia faced a difficult dilemma where on the one hand it had to deal with the Dutch and on the other hand the government must also engage with dissatisfaction from elements of society. Insurgencies broke out in several places such as in West Java where Kartosuwiryo declared the formation of *Negara Islam Indonesia* (Indonesian Islamic State) in May 1948. In Madiun, Central Java, another bloody internal conflict broke out between members of the communist party and the Republic’s army in September 1948. The rebellion, that involved peasants and workers, was led by Musso, one of the leading figures of the 1920s PKI who had just arrived from the Soviet Union. Musso’s manoeuvre to take over the communist party’s leadership and to launch a coup against the Republic caught other communist leaders off guard. Some rejected Musso’s strategy, while others, including Amir Syarifuddin who was Indonesia’s Prime Minister from July 1947-September 1948, promptly joined Musso’s movement. The battle between the pro-government supporters—the military, bureaucrats, landowners who were mostly Muslims—against the communists lasted less than three months with the communists suffering a devastating loss. The communist uprising in 1948 brought a crucial implication to Indonesia’s politics where it contributed to the growing distrust among the Muslim-based political parties (e.g., Masyumi) of PKI that was rejuvenated in the 1950s. For more in depth analysis on the Madiun revolt in 1948, see: Ann Swift, *The Road to Madiun: The Indonesian Communist Uprising of 1948* (Ithaca: Cornell University Press, 1989).

United States. As a result, involvement with MSA was deemed a violation of the *bebas-aktif* doctrine.<sup>92</sup> Meanwhile, Ali Sastroamijoyo, who came from Sukarno's party, PNI, introduced foreign policy that was more nationalistic, such as the campaign for non-interference in the Afro-Asian Conference that Indonesia hosted in 1955 or the issue of Irian Jaya (West Papua).<sup>93</sup>

It is worth mentioning here that the 1955 Asian African Conference (also known as the Bandung Conference) was "the largest ever grouping" of nations which "exceeded the number of new states represented at San Francisco Conference, which founded the United Nations".<sup>94</sup> This international forum that was attended by 24 countries from the Asian and African region was aimed to create shared norms (e.g., respect for human rights and sovereignty, and establishing principles of non-interference) and promote cooperation as countries with similar pasts.<sup>95</sup> The Bandung Conference, however, was perceived as having an anti-West sentiment, which raised the concerns among observers about the future relationship between the West and these newly independent countries at that time.<sup>96</sup> It could be argued that due to observable anti-establishment campaign, scholars have debated the contribution of the Bandung Conference to the development of human rights. In her critique, Mary Ann Glendon, for example, questioned the attacks coming from the new countries towards the UDHR because it was seen as "an instrument of neo-colonialism" and that the universality principle might be disregarded "in the name of cultural integrity, self-

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<sup>92</sup> Van Der Kroef, "Indonesia: Independent in the Cold War."; Suryadinata, *Indonesia's Foreign Policy under Suharto : Aspiring to International Leadership*.

<sup>93</sup> As mentioned previously, the issue of West Papua (or West Guinea) was not resolved by The Hague Round Table Conference. It was during Ali's Cabinet that the issue of West Papua was brought up at the United Nations along with the proposal to end the Netherlands-Indonesian Union. Several times, Indonesia raised the West Papua issue to the General Assembly from 1954-1957 and in 1955 rejected the Hague agreement. The tense relationship between Indonesia and the Netherlands resulted in the anti-Dutch campaign in Indonesia. J.A.C. Mackie, "The West New Guinea Argument," in *South East Asia Colonial History* ed. Paul H. Kratoska (London: Routledge, 2001).

<sup>94</sup> Amitav Acharya and See Seng Tan, "Introduction: The Normative Relevance of the Bandung Conference for Contemporary Asian and International Order," in *Bandung Revisited The Legacy of the 1955 Asian-African Conference for International Order*, ed. Amitav Acharya and See Seng Tan (Singapore: NUS Press, 2008), 3-4.

<sup>95</sup> For the result of the Asian African Conference, see "Final Communiqué of the Asian-African conference of Bandung (24 April 1955)," (1955).

<sup>96</sup> Mary Knatchbull Keynes, "The Bandung Conference," *David Davies Memorial Institute of International Studies. Annual memorial lecture* 1, no. 8 (1957). Anti-colonialism was expressed by Indonesia's Foreign Minister, Sunario, before the UN General Assembly Session a year before. He began his speech by stating one of Indonesia's foreign policy principles where 'freedom is the right of every nation' and that colonialism must be discontinued. He asserted that: "Whenever there is colonialism, basic human rights must be violated in which those rights are needed to support economic and social obligations, without them social despair will continue to happen." See: Sunario, *Indonesia dan Politik Luar Negerinya; Kumpulan Pidato Mr Sunario, Menteri Luar Negeri Republik Indonesia* (Jakarta: Kementerian Luar Negeri, 1955), 34-35.

determination of peoples, or national sovereignty”.<sup>97</sup> Nevertheless, as pointed out by Roland Burke, critics like Glendon “underestimate[d] the level of support human rights attracted at the conference”.<sup>98</sup> Burke pointed out that human rights were an “integral part” of the forum and that it facilitated the continuation of “the debates over UDHR at the UN”.<sup>99</sup> He asserted that:

Rather than inaugurating the age of radical Third Worldist hostility towards rights, the conference came at a point when many Afro-Asian states were some of the most outspoken advocates of universal human rights, even if their domestic practices often fell short of their international rhetoric.<sup>100</sup>

Secondly, Indonesia’s experiment with parliamentary democracy manifested in a mixture of progress and regress. On the one hand, Indonesia enjoyed a free press, independent courts, and a lively parliament.<sup>101</sup> The democratic period was also a time when Indonesia witnessed the thriving of mass organisations (either social- or political-oriented groups).<sup>102</sup> Some of them were groups that were already established during the pre-independence period, such as Nahdlatul Ulama and Muhammadiyah, while others were affiliated with certain political parties.<sup>103</sup> The communist party (PKI), in this case, had various mass organisations that appealed to a wide demographic from youths (*Pemuda Rakjat*, or Youth Society), laborers (*Sentral Organisasi Buruh Seluruh Indonesia*—SOBSI, or Central Organisation for Workers Across Indonesia), villagers (*Barisan Tani Indonesia*—BTI, or Indonesian Farmers’ Front), women (*Gerakan Wanita Indonesia*—Gerwani, or Indonesian Women’s Movement), writers and artists (*Lembaga Kebudayaan*—Lekra, or Cultural Foundation), to scholars (*Himpunan Sarjana Indonesia*—HIS, or Indonesian Society of Scholars).<sup>104</sup> Inspired by how political parties attracted the masses, especially the youth, the army replicated a similar strategy; as pointed out by Roosa, the army was “contesting strategic sites in civil society before

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<sup>97</sup> Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 224.

<sup>98</sup> Roland Burke, ““ The Compelling Dialogue of Freedom”: Human Rights at the Bandung Conference,” *Human Rights Quarterly* (2006): 950.

<sup>99</sup> *Ibid.*, 28.

<sup>100</sup> *Ibid.*

<sup>101</sup> Herbert Feith, “Constitutional Democracy: How Well Did It Function?,” in *Democracy in Indonesia 1950s and 1990s*, ed. David Bourchier and John Legge (Clayton: Centre of Southeast Asian Studies Monash University, 1994).

<sup>102</sup> More on this topic will be discussed in Chapter 4.

<sup>103</sup> Both Muhammadiyah and Nahdlatul Ulama as organisations were actually related to political parties Masyumi and Nahdlatul Ulama Party respectively. Even in the post-Suharto Indonesia, both Muhammadiyah and Nahdlatul Ulama are still considered the most influential Muslims organisations. See: Saiful Mujani and R William Liddle, “Politics, Islam, and public opinion,” *Journal of Democracy* 15, no. 1 (2004).

<sup>104</sup> Mortimer, *Indonesian Communism under Sukarno: Ideology and Politics, 1959-1965*.

launching a bid for state power”.<sup>105</sup> The army created organisations such as *Ikatan Pendukung Kemerdekaan Indonesia* (IPKI, or the Indonesian Union for Proponents of Independence) in 1954 which later turned into a political party; Golongan Karya—Golkar, which later dominated Indonesia’s politics during *Orde Baru*; the trade union, the Central Organization of Socialist Employees of Indonesia (*Sentra Organisasi Karyawan Sosialis Indonesia*—SOKSI); and newspapers such as *Angkatan Bersenjata* (Armed Forces) and *Berita Yudha* (War News). The army also initiated the formation of *Badan Kerjasama Pemuda Militer* (BKPM, or the Collaborative Body of Military Youth), an umbrella body for youth groups from political parties (including PNI, Masyumi, Nahdlatul Ulama, and PKI) as part of its effort to assert control over the mushrooming of civil society groups.<sup>106</sup>

The young democracy was fragile and divided, caused by both ideological differences and race-based disputes.<sup>107</sup> Sukarno and Hatta, who were the uniting symbols of the nation, were not able to produce a definitive solution to their disagreement amid the economic crisis and regional conflicts, and Hatta resigned as a Vice President in 1956. The conflict between Sukarno and Hatta also impacted the cabinets’ performance. It was said that Sukarno “never tried to conceal his disposition towards the cabinet” even though the cabinet was newly installed.<sup>108</sup>

In addition to those problems, the political parties struggled with internal factions and clashed with other parties. The political parties, for example, were divided in determining strategies to improve the economy in the face of enormous problems they encountered, such as the lack of human resources and capital, the ancient tax system and ingrained foreign economic interests (e.g., the Dutch enterprises) that required immediate action.<sup>109</sup> As a

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<sup>105</sup> John Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia* (Madison: University of Wisconsin Press, 2006), 184. It should be noted that the military’s effort to counter the communist movement in Indonesia in the late 1950s could not be separated from the involvement of the United States. It was reported that the United States provided military assistance of almost US\$20 million from 1958-1965. In addition to providing military training, the United States also supported Indonesia’s military to perform civic action program, an initiative where the military spread its influence through civil services in education, health, and public works.

<sup>106</sup> Guy J. Pauker, "The Role of Political Organizations in Indonesia," *Far Eastern Survey* 27, no. 9 (1958); Daniel S. Lev, *The Transition to Guided Democracy: Indonesian Politics, 1957-1959* (Ithaca: Cornell University Press, 1966); Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*.

<sup>107</sup> The explanation regarding the divisions among Indonesians in the 1950s can be seen in Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian*; Feith, *The Decline of Constitutional Democracy in Indonesia*.

<sup>108</sup> Abdullah, *Indonesia: Towards Democracy*, 244.

<sup>109</sup> Bruce Glassburner, "Economic Policy-Making in Indonesia," in *The Economy of Indonesia Selected Readings*, ed. Bruce Glassburner (Singapore: Equinox, 2007).

result, the 1950s period was characterised by the rise and fall of cabinets. From 1950 to 1959, there were seven cabinets that served relatively short terms (the longest serving cabinet was that of Ali Sastroamijoyo which ruled for more than two years, while the shortest cabinet was Natsir's which lasted only six months).<sup>110</sup>

Thirdly, the parliamentary period was the time when Indonesia's military was blazing a path to become a major political actor in Indonesia. Among the contributing factors were the incapability of civilian authority to uphold law and order in the country. This became a subject that was often mentioned by the military to demonstrate the significant role that the military played in Indonesia's history. As explained by Abdul Haris Nasution, who, in the 1950s, was the Army Chief of Staff, the military was the "saviour" of the Republic since the "civilian government was powerless". As mentioned earlier, in the 1950s, Indonesia's elites were divided, including between Sukarno and Hatta. Hatta espoused "a democratic constitutional state and for institutional politics" in contrast to Sukarno who supported "revolutionary mass politics and for government unrestrained by legal procedures".<sup>111</sup> Sukarno, who was impatient with how democracy progressed in Indonesia, often mentioned the incompatibility of Western democracy with Indonesia and the need to create an Indonesian version of democracy in his speeches.<sup>112</sup> Sukarno's impatience with the parliamentary system led to the idea of Guided Democracy through the reimplementation of

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<sup>110</sup> Muhammad Natsir (September 1950 – March 1951); Sukiman Wiryoanjojo (April 1951 – February 1952); Wilopo (April 1952 – June 1953); Ali Sastroamijoyo (July 1953 – July 1955); Burhanuddin Harahap (August 1955 – March 1956); Ali Sastromijoyo (March 1956 – March 1957); Juanda Kartawijaya (April 1957 – July 1959). Source: Feith, *The Decline of Constitutional Democracy in Indonesia*; Glassburner, "Economic Policy-Making in Indonesia."

<sup>111</sup> Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian*, 27.

<sup>112</sup> Sukarno's democracy ideals were often crafted in vague language. For example, on the need for democracy à la Indonesia he said: "I have said several times that democracy I crave for Indonesian is not a liberal democracy such as exists for Western Europe. No! What I want for Indonesia is a guided democracy, a democracy with leadership. A guided democracy, a guided democracy, something which is guided but still democracy... Our situation with respect to the party system is one of complete disruption. It is not healthy; it must be transformed entirely. Especially, if we want to build as people have in other countries I have seen, for example, in the Chinese People's Republic, we must transform the party system completely." In another occasion he uttered his proposal to merge the ideological differences through the creation of a National Council: "My concept consists of two points. The first concerns the Cabinet, the second concerns a Council I call the National Council...let us form a Gotong Royong [Mutual Assistance] Cabinet... The cabinet should include all political parties and groups represented in parliament... This is a manifestation of Indonesian gotong rojong, a manifestation of the Indonesian identity... I call it a National Council, because I want this Council to be so composed that it includes the entire Indonesian nation, irrespective of grouping... The function of the National Council will be to assist the Cabinet with advice, whether such advice is requested or not, because the National Council is composed of representatives of or persons from functional groups in our society." See: Herbert Feith and Lance Castles, eds., *Indonesian Political Thinking 1945-1965* (Ithaca: Cornell University Press, 1970), 82,85-87.

the 1945 Constitution. This came into realisation when Sukarno issued a Presidential Decree in 1959 to dissolve the parliament and the Constituent Assembly.

## 2.7 The 1950s Constitution Debates

In the short period of democracy, there was an important moment where human rights were once again discussed among political elites. However, as shown below, the discussion about rights—in the context of preparing a new constitution—was came abruptly to a halt when Sukarno imposed Guided Democracy.

In short, the 1950s was supposed to be the era where Indonesia strengthened its political system through creating a strong constitution. Indonesia attempted to achieve that goal by establishing a Constituent Assembly on 10 November 1956 that was charged with redesigning a new constitution.<sup>113</sup> Based on the 1950 Provisional Constitution, the Constituent Assembly together with the government were to enact a new constitution to replace the Provisional Constitution. The 1950 Constitution also stated that the new constitution would be adopted if it received approval from two-thirds of the members of the Constituent Assembly.<sup>114</sup>

There were 514 people appointed to the Constituent Assembly, with the composition intended to reflect the ideological polarization of the legislative election results. There was no one political party holding a majority, but the Indonesian National Party (*Partai Nasional Indonesia*), *Masyumi*, Nahdlatul Ulama and the Indonesian Communist Party (*Partai Komunis Indonesia*) formed a large portion of the Constituent Assembly. These political parties then shaped the three different ideologies contested in the Constituent Assembly: 1) the Pancasila bloc; 2) the Islamic bloc; and 3) the social-economic bloc.

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<sup>113</sup> The members of the Constituent Assembly were elected in the 1955 general election. The election itself marked an important step in Indonesia's political history. It was the first general election where Indonesian people had to vote not only for members of the legislative body (on 29 September 1955), but also the Constituent Assembly (on 15 December 1955). Looking at the number of turnout voters, the election was considered a success. About 91.54% out of the total voters registered to cast their vote in the legislative election. The constitutional assembly election attracted 90% of eligible voters. The number was slightly below the legislative election, but it was still considered a high turnout. See: Herbert Feith, *The Indonesian Elections of 1955* (Ithaca: Modern Indonesia Project, Southeast Asia Program, Dept. of Far Eastern Studies, Cornell University, 1957).

<sup>114</sup> Republik Indonesia Serikat, "Undang Undang Republik Indonesia Serikat Nomor 7 Tahun 1950 tentang Perubahan Konstitusi Sementara Republik Indonesia Serikat Menjadi Undang-Undang Dasar Sementara Republik Indonesia," ed. Republik Indonesia Serikat (1950).

From its inception until its dissolution in 1959, the Constituent Assembly convened for seven plenary sessions and the topic of human rights was debated in the 1958 sessions. This was the first time that there was a substantive debate on the issue of human rights in Indonesia. Disagreements over certain topics, such as the right to private property and the right to change one's religion, remained, but the Constituent Assembly reached the same conclusion that human rights are universal. As stated by Adnan Buyung Nasution, one of Indonesia's notable legal practitioners, the 1950s era was perhaps the only time when Indonesia had a lively discussion on rights issues.

The whole enterprise of the *Konstituante*...manifested a truly democratic spirit, a complete freedom of expression and a fundamental commitment to a constitutional form of government on the part of the majority of its members...the *Konstituante* can rightly be appreciated as the peak of Indonesia's efforts to achieve constitutional government.<sup>115</sup>

The different ideologies held by the members of the Constituent Assembly were reflected in their arguments about rights. Those from the nationalist and the communist parties spoke about rights in the context of capitalist and colonial oppression, whereas those coming from the social-economic bloc based their advocacy on democracy and the importance of acknowledging human rights.<sup>116</sup> Members coming from the religion-based parties talked about rights as part of God's gifts to humanity. However, disagreement among religious groups were reminiscent of the 1945 meetings. Muslim groups still persisted to include the phrasing "with the obligation to follow Islamic law for the adherents of that religion" in the Preamble to the 1945 Constitution."<sup>117</sup> In response, the Indo-Chinese group demanded the adoption of provisions on religious tolerance and minority rights in the new constitution and the Islamic group campaigned for Islam to be designated as the foundation of the state.<sup>118</sup>

It is worth comparing what happened in 1945 with the 1950s debates. First of all, the participant group in the 1950s debates expanded to not only include politicians which, during the BPUPKI meetings, were mostly men. In the 1950s, rights for vulnerable groups (e.g., women and children) and minority groups were discussed. In the 1950s discussion, several women expressed their concern about discrimination towards women and demanded

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<sup>115</sup> Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian*, 405.

<sup>116</sup> Ibid.

<sup>117</sup> "Human Rights and the Konstituante Debates of 1956-59," in *Democracy in Indonesia 1950s and 1990s*, ed. David Bouchier and John Legge, Monash Papers on Southeast Asia No. 31 (Clayton: Centre of Southeast Asian Studies — Monash University, 1994), 48.

<sup>118</sup> Brad Simpson, "'Human Rights Are Like Coca Cola': Contested Human Rights Discourses in Suharto's Indonesia, 1968-1980," in *The Breakthrough: Human Rights in the 1970s*, ed. Jan Eckel and Samuel Moyn (Philadelphia: University Pennsylvania Press, 2014).

equality for all genders. Secondly, unlike in 1945 where most of the members of BPUPKI agreed with the interpretation of rights as proposed by Sukarno and Supomo that were culturally relative, members of the Constituent Assembly reached an agreement on the universality of human rights. This was thought-provoking considering that there was strong anti-Western (i.e., the Dutch) and anti-capitalist sentiment expressed throughout Indonesia at the time. Thirdly, as explained by Nasution, there was an increasing awareness among some members of the Constituent Assembly on the issue of the state's authority and accountability. This was related to their awareness of Sukarno's idea to impose Guided Democracy and to return to the 1945 Constitution, a move which carried the potential to lead Indonesia into authoritarianism. It was said that the opposition to Sukarno's proposal came from the nationalist, communist and Islamic parties. At that time, Prime Minister Juanda promised that the discussion on human rights that had taken place in the Plenary Session of the Constituent Assembly meetings would form part of the constitutional amendment. However, in a dramatic shift, Sukarno issued a presidential decree to dissolve the Constituent Assembly unilaterally, taking control and ensuring that Indonesia returned to the original version of the 1945 Constitution.

Scholars that have debated the reasons that Indonesia's experiment with democracy in 1950s failed have pointed out the deficit in capability of political parties and bureaucrats in handling domestic crises (e.g., insurgencies and inflation).<sup>119</sup> Daniel S. Lev highlighted the powerful role of the military in persuading Sukarno to change direction of the country to adopt Guided Democracy.<sup>120</sup> Sukarno, who at first was in doubt about the reinstatement of the 1945 Constitution, saw the military as an unlikely ally in confronting the political parties.<sup>121</sup> With Nasution sitting on the National Council in 1957, Sukarno initiated his plan for Guided Democracy by issuing a Presidential Decree in 1959 that ended the liberal

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<sup>119</sup> For analysis on the collapse of Indonesia's parliamentary system see: Jamie Mackie, "Inevitable or Avoidable? Interpretations of the Collapse of Parliamentary Democracy," in *Democracy in Indonesia 1950s and 1990s*, ed. David Bourchier and John Legge (Clayton: Centre of Southeast Asian Studies Monash University, 1994); Feith, *The Decline of Constitutional Democracy in Indonesia*; Daniel S. Lev, "On the Fall of the Parliamentary System," in *Democracy in Indonesia 1950s and 1990s*, ed. David Bourchier and John Legge (Clayton: Centre of Southeast Asian Studies Monash University, 1994).

<sup>120</sup> "On the Fall of the Parliamentary System."

<sup>121</sup> Daniel S. Lev, "The Political Role of the Army in Indonesia," *Pacific Affairs* (1963). According to Lev, Sukarno was in doubt about the idea of reinstating the 1945 Constitution that would reset his power as the head of the state and the government, but the opposition coming from political parties had assured him to proceed with Guided Democracy especially with the back up from the military. On the other hand, General Nasution thought that dethroning Sukarno was a risky move because Sukarno was a popular and uniting figure for Indonesia. Thus, in order to mend the country and empower the government, Sukarno needed to be retained. See also Lev's other book that provide analysis on Indonesia's path to Guided Democracy: Lev, *The Transition to Guided Democracy: Indonesian Politics, 1957-1959*.

democracy era in Indonesia with the return of the 1945 Constitution.<sup>122</sup> What is disappointing from this whole debacle was the energy expended by the Constituent Assembly to discuss a new constitution, which contained central issues such as how state protects people's rights or how to limit the power of the government, was in vain as there was not enough power from political parties to stop Sukarno and the military's plan to steer the country into authoritarianism.

## 2.8 Guided Democracy, *Konfrontasi* and the Failed Coup

Guided Democracy (*Demokrasi Terpimpin*) was an outcome of the constitutional crisis that occurred in the late 1950s.<sup>123</sup> It started with the issuance of a Presidential Decree on 5 July 1959 that restored the 1945 Constitution, replacing the 1950 Provisional Constitution. The main implication of this action was the transfer of power from the parliament to the executive (with Sukarno as the President). Under Guided Democracy, Sukarno and the military exploited the 1945 Constitution, which, as pointed out earlier, was a weak act of law because it provided only vague description of the roles of the three branches of government. Sukarno disbanded the parliament after it rejected the government budget and then appointed new members of the legislative body which was called DPR Gotong Royong.<sup>124</sup> He also created *Majelis Permusyawaratan Rakyat Sementara*—MPRS (Temporary People's Consultative Assembly), which consisted of the new members of parliament and functional groups including the military. According to the 1945 Constitution, the MPR was supposed to be the primary body in the Indonesian political system, but since it was a creation of Sukarno, MPRS did not have the power to hold the President accountable. This was exacerbated by the fact that the 1945 Constitution did not clearly

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<sup>122</sup> The content of the President Decree 5 July 1959 is as follows: (i) the dissolution of *Konstituante*; (ii) the re-enactment of the 1945 Constitution; (iii) the abrogation of the 1950 Provisional Constitution; and (iv) the establishment within the shortest possible time of a Provisional MPR and a Provisional DPA. From: Denny Indrayana, *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-making in Transition* (Jakarta: KOMPAS Book Publishing, 2008), 107-08.

<sup>123</sup> A detailed analysis on the early period of Guided Democracy can be found in the works of Herbert Feith, "Dynamics of Guided Democracy," in *Indonesia*, ed. Ruth T. McVey (New Haven: United Printing Services, 1963); J.A.C. Mackie, "Indonesian Politics under Guided Democracy," *Australian Outlook* 15, no. 3 (1961). Also worth reading Rosihan Anwar's journals that described the environment surrounding Guided Democracy years: Rosihan Anwar, *Sukarno, Tentara, PKI Segitiga Kekuasaan sebelum Prahara Politik 1961-1965* (Jakarta: Yayasan Obor, 2006).

<sup>124</sup> All of the parties that filled the seats in DPR Gotong Royong were those parties that accepted Sukarno's Guided Democracy; the largest parties were PNI, PKI, and Nahdlatul Ulama. Masyumi and PSI, that opposed Guided Democracy, were alienated from the Parliament and later the government banned the parties and their leaders including Syahrir, Indonesia's first Prime Minister, who were apprehended with no clear explanation. See: Feith, "Dynamics of Guided Democracy."; Donald Hindley, "Alirans and the Fall of the Old Order," *ibid.*, no. 9 (1970).

define the roles and duties of the judiciary and advisory bodies.<sup>125</sup> Thus, from being merely a symbol during the 1950s, the reinstatement of the 1945 Constitution made Sukarno the most powerful figure in Indonesia.

Understanding the power play that took place during Guided Democracy is vital to the study of Indonesian politics prior to the rise of Suharto's *Orde Baru* in 1966. According to Lev, in the late 1950s, three main actors dominated Indonesian politics: Sukarno, PKI and the military (ABRI), with Sukarno standing in the middle trying to balance the power play between PKI and the military.<sup>126</sup> The alliance between Sukarno and the military was possible because both of them shared a similar dissatisfaction with the parliament and, most notably, the liberal democracy system. In seeking "consensus, unity, obedience, and discipline", the military endorsed Sukarno's authoritarian notions encapsulated under Guided Democracy.<sup>127</sup> As previously mentioned, the military saw Sukarno as an important figure in stabilising the nation, thus the option to topple Sukarno was seen as damaging. Meanwhile, the relationship between Sukarno and PKI was also mutually advantageous. Sukarno needed the support of PKI, as one of the biggest political parties, in his campaign against the liberal system, and PKI, which wanted to outmanoeuvre its political opponents, became the staunchest supporter of Sukarno. PKI and the military, however, were never on the good terms; the military did not trust PKI because of its rebel past and its perceived negative attributes of being "internationalist, atheist, and under foreign control".<sup>128</sup> The relationship between the military and Sukarno became tense when Sukarno was seen to show favour towards PKI. As described later, the dynamics between these parties turned deadly and created a devastating impact on the Indonesian people.

It is important to underline the characteristics of Guided Democracy that were in contrast to the liberal democracy period in Indonesia during the early 1950s. The first feature was the deterioration of civil rights which began when the government imposed martial law in 1957, giving the military the latitude to maximise its authority, especially in regions plagued with

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<sup>125</sup> William A. Redfern, "Sukarno's Guided Democracy and the Takeovers of Foreign Companies in Indonesia in the 1960s" (Thesis, The University of Michigan, 2010).

<sup>126</sup> Lev, "The Political Role of the Army in Indonesia." Sukarno replaced Indonesia's armed forces from *Tentara Nasional Indonesia* (TNI) to *Angkatan Bersenjata Republik Indonesia* (ABRI) in 1962. Under this new system, Indonesia's national police was integrated under the command of the military. Leonard C. Sebastian, *Realpolitik Ideology: Indonesia's Use of Military Force* (Singapore: Institute of Southeast Asian Studies, 2006).

<sup>127</sup> Lev, "The Political Role of the Army in Indonesia," 352.

<sup>128</sup> *Ibid.*, 353.

rebels.<sup>129</sup> As stated by Lev, martial law was then used to stifle the press, to arrest people without proper legal procedure, and even to place a temporary ban political institutions like the Constituent Assembly when it refused to resuscitate the 1945 Constitution.<sup>130</sup> It is also worth mentioning here that the military played an important role in streamlining processes for political parties in Indonesia and formulating ideological doctrine for political parties to follow.<sup>131</sup> Their significant role in influencing the President was also made evident by the appointment of several military officers in Sukarno's cabinet and in the parliament.<sup>132</sup> It was said that the military desired the abolition of political parties, but Sukarno vetoed the proposal because he needed the political parties to balance the military's influence.<sup>133</sup>

Another substantial feature of Guided Democracy was the disconnect of Indonesia's foreign policy from its principle of not falling to one of the world's competing influences. The cause of the divergence was the domestic politics in the 1960s. As part of his policy to redirect the country towards '*jalan revolusi*' (the road of the revolution), Sukarno established liberalism, imperialism and capitalism as the foes of the nation. He claimed that, only by overpowering these foreign enemies, could Indonesia achieve prosperity. Thus, Indonesia's foreign policy during Guided Democracy was fuelled with anti-colonialist and anti-imperialist rhetoric, a move that made Indonesia the "voice of the extreme left within the non-aligned Afro-Asian

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<sup>129</sup> See: Lev, *The Transition to Guided Democracy: Indonesian Politics, 1957-1959*.

<sup>130</sup> The implementation of martial law was also exploited by the military to secure business interests to enrich its organisation. The military's business activities was one of the issues brought up in the military reform in *Reformasi*, but the post-*Reformasi* government has not been able to bring an end to the military's business activities. See: Jacqui Baker, "Professionalism without Reform: The Security Sector under Yudhoyono," in *The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation*, ed. Edward Aspinall, Marcus Mietzner, and Dirk Tomsa (Singapore: ISEAS, 2015); Damien Kingsbury, *Power Politics and the Indonesian Military* (New York: Routledge, 2003).

<sup>131</sup> The framework for Guided Democracy was laid out in Political Manifesto (*Manipol*), a speech that Sukarno made on 17 August 1959 that urged the nation to return to the spirit of the 1945 revolution, which was characterised by anti-imperialist and anti-colonialist sentiments and the intention to establish an economic policy that opposed capitalism. The indoctrination of Guided Democracy was based on Manipol, Pancasila, and USDEK—an acronym of that stood for: UUD 1945 [the 1945 Constitution]; *Sosialisme a la Indonesia* [Indonesian Socialism]; *Demokrasi Terpimpin* [Guided Democracy]; *Ekonomi Terpimpin* [Guided Economy]; *Kepribadian Indonesia* [Indonesian identity]. Kahin, *Historical Dictionary of Indonesia*, 285. Under Guided Democracy period, political parties were made to abide to the above principles as stated in the President Order on Terms and the Simplification of Political Parties. See: Presiden Republik Indonesia, "Penetapan Presiden Republik Indonesia Nomor 7 Tahun 1959 tentang Syarat-syarat dan Penyederhanaan Kepartaian," (1959); Sukarno, *Political Manifesto Republic of Indonesia of 17th August 1959* (Jakarta: Department of Information, 1959).

<sup>132</sup> Lev, "The Political Role of the Army in Indonesia." Prior to the implementation of Guided Democracy, General Nasution came up with the middle road (*jalan tengah*) concept in November 1958. This notion later developed into the *Dwifungsi* doctrine that enabled the military to be involved in non-military activities including politics: "ABRI was not just a civilian tool like those military units in Western countries, and was not a military regime that dominated the state's power, but one of the many power elements within the society, a power unit work together with other virtues to fight for people's struggle." Dewi Fortuna Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi* (Jakarta: Gramedia, 2002), 25.

<sup>133</sup> Hindley, "Alirans and the Fall of the Old Order."

movement".<sup>134</sup> After settling sovereignty over West Papua in the United Nations, Sukarno led Indonesia with his adventurism. His opposition to the creation of the Malay Federation instigated an armed conflict between Indonesia and neighbouring Malaysia. He also provoked the world with his idea to create a competitor body to the United Nations that consisted of emerging forces from newly independent countries. The immediate impact of Sukarno's decision to drive the country to the left was the deterioration of the economy—the loss of capital and the high inflation—to the brink of collapse. The economic crisis that worsened with an abortive coup in September 1965 turned into a political crisis that ended with the demise of Sukarno's government in 1966.

The incident began with a national radio announcement, at 7.00am on 1 October 1965, that a group of generals (Council of Generals or *Dewan Jenderal*) had attempted to overthrow Sukarno and to take control of the government on the night of 30 September 1965.<sup>135</sup> It was reported that Colonel Untung from the president's bodyguard unit, Cakrabirawa, had thwarted the Council of General's plans, with the United States' intelligence agency (CIA) reported as being behind the attempted coup. The message also proclaimed the formation of the Revolutionary Council (*Dewan Revolusi*) to counter the Council of Generals' agenda. Later, at 8.45pm, another broadcast announced that Major General Suharto from the army strategic reserve had thwarted Colonel Untung's plot of scapegoating ABRI. It was also stated that both the President and General Nasution, the commander of the armed forces, were safe. Given that the 7.00am broadcast was highlighted with leftist rhetoric (e.g., anti-neo-colonialism and CONEFO), all fingers pointed to PKI as the masterminds behind Colonel Untung's group. Not long after the abortive coup, a violent wave of anti-communism spread across Indonesia (especially in Java and Bali, where there were strong concentrations of PKI supporters). The death toll of the retaliation against PKI were told to reach 800,000 people; the official record is around 100-200 thousand. Sukarno, who became more pressured in 1966, finally agreed to hand over the government to the military, with Suharto as the acting president, in March 1966. In July 1966, through a special session of MPRS, Sukarno was removed from office.<sup>136</sup> Thus, began the era of *Orde Baru*.

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<sup>134</sup> Sukma, *Islam in Indonesian Foreign Policy: Domestic Weakness and the Dilemma of Dual Identity*, 34.

<sup>135</sup> Lucien Rey, "Dossier of the Indonesian drama," *New Left Review*, no. 36 (1966).

<sup>136</sup> Frederick Bunnell, "Indonesia's Quasi-Military Regime," *Current History (pre-1986)* 52, no. 000305 (1967).

## 2.9 The Emasculation of Rights under *Orde Baru*

This section focuses on how *Orde Baru*, a term to describe Suharto's reign as President, effectively restricted the rights of the people.<sup>137</sup> A description of the human rights situation during the *Orde Baru* period is very important to the argument of this thesis. Firstly, *Orde Baru* created a weak civil society that was not able to generate discourse on democracy and human rights as a mechanism to hold the government accountable. The result of an ineffective civil society was visible during *Reformasi*, where there was division among civil society groups between those who pursued progressive reforms and those who opposed democratic reforms (see Chapter 4). Secondly, the active role that the military played in Indonesia's socio-political affairs during the *Orde Baru* period cemented the military as one of the central political actors in Indonesia's politics. Its highly structured organisation also meant that the military was able to consolidate swiftly after *Reformasi*. This significantly affected the effort to transform the military into a professional and passive military organisation. The case study in Chapter 5 later demonstrates how the lag in military reform impacted human rights policy in Indonesia. An important thing to note, in regards to the *Orde Baru* period, is how the role of non-state actors in voicing issues about rights gradually increased from the 1970s. It was because of the activism of human rights groups that abuses in countries like Indonesia were exposed to the world. For the *Orde Baru* regime, this became a serious concern, especially with the inclusion of human rights stipulations as part of the conditions to obtain foreign aid and development assistance.

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<sup>137</sup> During a speech Suharto made before the parliament on 17 August 1967, Suharto described that *Orde Baru* was a result of the chaotic period during Sukarno's Guided Democracy (*Orde Lama*). He stated that *Orde Baru* intended to do a 'total correction' for the exploitation of Pancasila and the 1945 Constitution conducted by the previous government and:

The abuse of Pancasila and the 1945 that happened in *Orde Lama* has caused a significant damage to the nation's core values. Pancasila has been exploited and stripped from its pureness with the conception of *Nasakom*, which include communism. Communism that is based on materialism dialectic is clearly denouncing God; meanwhile Pancasila is based on the principle of one God. Religion has been abused for political purposes. (Soeharto, *Pidato Kenegaraan President Republik Indonesia Djenderal Soeharto Didepan Sidang DPR-GR 16 Agustus 1967* Seri Dokumen Sedjarah (Jakarta: Penerbit Doa Restu, 1967), 14.)

*Orde Baru* transformed Pancasila from a philosophical idea into the state ideology, which the people were obliged to memorise and study. It was part of the core curriculum from elementary school to university. For the higher degree education and the workplace (both civil and private offices), the government ordered compulsory seminars to discuss the Pancasila. While Pancasila itself was created during the independence movement period where Sukarno played a vital role, *Orde Baru* attempted to revise the history by denouncing the role of Sukarno (de-Sukarnoisation) in designing Pancasila to redefining the meaning of social justice (Pancasila's fifth principle) that originated from socialism. See: Michael Morfit, "Pancasila: The Indonesian State Ideology According to the New Order Government," *Asian Survey* 21, no. 8 (1981); A.B. Kusuma and R.E. Elson, "A Note on the Sources for the 1945 Constitutional Debates in Indonesia," *Journal of the Humanities and Social Science of Southeast Asia and Oceania* 167, no. 2-3 (2011); Bouchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State*.

Chapter 1 laid out the argument that the *Orde Baru* regime functioned through a political structure where Suharto and the military were dominant. Jamie Mackie and Andrew MacIntyre explained how this domination took place.<sup>138</sup> The first phase, 1965-1974, was the consolidation period where ABRI was the leading actor and was more powerful than Suharto. Groups within civil society, including students, political parties, religious groups and the press, were active and vigilant until *Orde Baru* found ways to constrain their activity. Political parties, for example, were reduced into two main coalitions of parties in 1972 while Golkar became increasingly powerful as the political party of the government. The second phase, 1974-1984, was the time when Suharto's power was challenged by a domestic crisis (corruption in the state's oil company Pertamina). Nevertheless, his power continued to grow after the crisis was settled and the military was fully under his command. The final stage, 1983-1990, was when Suharto was at the peak of his power while the military's influence in politics gradually decreased as Indonesia witnessed the rise of technocrats. During this period, the government imposed a very tight reign over civil society groups and capitalised on the Pancasila as the main ideology to control them.

One of the early goals of the new government was to improve the economy rather than investing too much time on politics, as in the previous era.<sup>139</sup> For *Orde Baru*, this could be achieved by forming a strong state, as inspired from Supomo's idea of an integralistic state. The implication of the establishment of an integralistic state was the dismissal of civil rights and the emphasis on the individual's responsibility to the state.<sup>140</sup> The intention to control the state was done immediately right after Guided Democracy ended. Following the fall of

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<sup>138</sup> Jamie Mackie and Andrew MacIntyre, "Politics," in *Indonesia's New Order The Dynamics of Socio-economic Transformation*, ed. Hal Hill (St. Leonards: Allenn & Unwin, 1994).

<sup>139</sup> Suharto claimed that the political divisions in *Orde Lama* were "no use" and only created "confusion" among the people. He emphasised the need to leave ideological differences behind in order to pursue stability and economic improvement. Suharto quoted from Robert Edward Elson, *Suharto: A Political Biography* (Cambridge: Cambridge University Press, 2001), 175. The earliest economic policy that *Orde Baru* took was to end the protectionist policies and liberalise capital investment in Indonesia. The government also passed the Law on Foreign Capital Investment in 1967, which allowed foreign companies the latitude to invest in Indonesia without interference from the government. With no proper regulation to protect the natural resources, Indonesia became the object of exploitation by foreign companies. See: John Taylor, "The Economic Strategy of the 'New Order'," in *Repression and Exploitation in Indonesia*, ed. British Indonesia Committee (Nottingham: Bertrand Russell Peace Foundation for Spokesman Books, 1974).

<sup>140</sup> As pointed out by Marsillam Simanjuntak, what Supomo wanted to gain was the creation of "a state that consisted of an integral society" where the rights of family (i.e., state) were prioritised and individual rights were sacrificed. An integralistic state derived from the philosophical thinking of "Spinoza, Adam Muller and Hegel, not from Hobbes, Locke, Rousseau that were based on individualism or Marx, Engels and Lenin that were based on class struggle. The Hegelian approach used to conceptualize an integralistic state placed the state as the rationale, which dismissed the idea that the state needs to protect the rights of its citizens because the people are part of the state. Simanjuntak, *Pandangan Negara Integralistik Sumber, Unsur, dan Riwayatnya dalam Persiapan UUD 1945*, 218.

Sukarno, there was a short period where Indonesians saw a glimpse of hope in *Orde Baru* before Suharto took firm control of the country. As pointed out by Lubis, people were once again excited to talk about rule of law, human rights and freedom of association.<sup>141</sup> At a glance, the new government that replaced the Old Order made the impression that they would act upon the demands of the people. In his speech before the *Dewan Perwakilan Rakyat* (DPR or the House of Representatives), Suharto, who was appointed as the acting President, spoke about how the previous administration had abused the 1945 Constitution. Suharto then continued by vowing to return to the 1945 Constitution, to uphold democracy and rule of law, and to protect human rights.<sup>142</sup> In reality, however, Suharto was moving to consolidate his power as soon as ABRI ousted Sukarno. As the mandate of *Majelis Permusyawaratan Rakyat Sementara* (MPRS or the Provisional Consultative Assembly), Suharto had the power to nominate people to fill seats in parliament. He appointed members of the military and Golkar (the government party)<sup>143</sup> to the MPRS and DPR. Thus, within a short period of time after the fall of Sukarno, Suharto had secured his power by having his loyalists dominating the national and regional parliaments.<sup>144</sup>

The significant impact of the *Orde Baru*'s power consolidation was the hijacking of the legislative agenda prepared by MPRS. Right after the end of Sukarno's regime, MPRS established an ad hoc committee that was responsible for assessing the government's structural bodies established by the previous government, re-examining the separation of power based on the 1945 Constitution, drafting the addendum to the 1945 Constitution and writing a human rights charter.<sup>145</sup> The work of the ad hoc committee in regards to preparing human rights charter is quite interesting. The committee combined the UDHR articles and the 1945 bill of rights and produced a law that contained provisions for citizens' rights. At the beginning of the charter, they included sections on the importance of familial values and the relationship between humans and God. These sections implied that the ad hoc committee based their human rights charter on the idea that human rights were shaped by culture and history. This move was in contrast to the agreement among the participants in the 1950s debates on human rights that human rights are universal. In his explanation, General Abdul

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<sup>141</sup> Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*.

<sup>142</sup> Abdul Haris Nasution, *Memenuhi Panggilan Tugas Jilid 7: Masa Konsolidasi Orde Baru* (Jakarta: CV Haji Masagung, 1989).

<sup>143</sup> The creation of Golongan Karya (Golkar) was backed up by the military in 1964 in order to counter communist party (PKI). See: David Reeve, *Golkar of Indonesia: An alternative to the party system* (New York: Oxford University Press, 1985).

<sup>144</sup> Jenkins, *Suharto and His Generals: Indonesian Military Politics, 1975-1983*.

<sup>145</sup> Nasution, *Memenuhi Panggilan Tugas Jilid 7: Masa Konsolidasi Orde Baru*.

Haris Nasution, who was in charge of the ad hoc committee, presented an argument reminiscent of Sukarno's desire for collectivism and disfavour of liberalism/individualism:

The destiny of man according to liberalism, as described in the US Declaration of Independence, is a materialistic happiness. That is why they set no boundary in achieving it... History has shown that such unlimited freedom has led to capitalism and its monopolies has caused the suffering of many people.<sup>146</sup>

Nevertheless, even with a human rights charter that leaned towards the idea that human rights are relative, Golkar and the military faction refused to ratify the Human Rights Charter draft in the 1968 MPRS session. They argued that human rights, which, according to them, are concerned only with individualism, were not aligned with the spirit of Pancasila and the 1945 Constitution that emphasised the values of family and *gotong-royong* (mutual cooperation). They also commented that the draft should be submitted to the elected legislative body, not the MPRS, which was serving only temporarily.<sup>147</sup> In regards to the rejection of the draft charter, Jenkins<sup>148</sup> asserted that Golkar and the military were not the only groups that vetoed the draft Human Rights Charter. He noted that resistance also came from Muslim groups who opposed the clause which outlined the freedom to change religion. In the end, the Human Rights Charter was never again tabled in the parliament, because Golkar won every general election held by the *Orde Baru* regime.

The limitation of political rights began with the eradication of the PKI in 1965 which involved the killing of many of civilians who were suspected to be members of PKI and organisations affiliated with the communist party, such as Pemuda Rakyat, Gerwani, BTI, Unified Movement of Indonesian University Students (*Consentrasi Gerakan Mahasiswa Indonesia*—CGMI), LEKRA, and the Indonesian University Graduates' Association (Himpunan Sarjana Indonesia—HSI).<sup>149</sup> The target of the purge also included Chinese Indonesians who were killed not only because of their ethnicity but also because their participation with the left-wing political parties such as Baperki and the Indonesia Party (*Partai Indonesia*).<sup>150</sup> It should be noted that there is no official record on the number of the victims of the mass murders. Researchers have given various estimations that range from

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<sup>146</sup> Ibid., 126.

<sup>147</sup> *Memenuhi Panggilan Tugas Jilid 8: Masa Pemancangan Orde Pembangunan* (Jakarta: CV Haji Masagung, 1988).

<sup>148</sup> Jenkins, *Suharto and His Generals: Indonesian Military Politics, 1975-1983*.

<sup>149</sup> Geoffrey Robinson, *The Killing Season: A History of the Indonesian Massacres, 1965-66* (Princeton: Princeton University Press, 2018).

<sup>150</sup> Ibid.

500,000 to three millions.<sup>151</sup> Following the bloodbath that took place in several cities in Indonesia like Jakarta, Medan, Semarang, Madiun and Surabaya, the government initiated a systematic effort to eliminate PKI's influence.<sup>152</sup> One of the methods was through the creation of the Operations Command to Restore Security and Order (*Komando Operasi Pemulihan Keamanan dan Ketertiban—Kopkamtib*) to hunt down PKI followers. *Kopkamtib* was responsible for coordinating mass arrests. It was estimated that there were 600,000 to 750,000 people suspected of having an association with PKI were charged with treason and arrested without proper legal procedure; people could be imprisoned because of "administrative errors or because of complaints of neighbours and 'friends.'"<sup>153</sup>

In addition to the purge of PKI, the depoliticisation of the masses was carried out through intimidation and interference with other political parties that had been influential in the past.<sup>154</sup> The military, for example, meddled with the internal affairs of Sukarno's party, PNI, and *Masyumi* and forced them to appoint a party leader who would be compliant with the new government. In the end, *Orde Baru* was able to restructure the many political parties into two parties. PNI and several Christian political parties were merged under the Indonesian Democratic Party (*Partai Demokrasi Indonesia*), while the Islamic parties were combined under the United Development Party (*Partai Persatuan Pembangunan*).<sup>155</sup> Following the streamlining of the political parties, *Orde Baru* also placed a restricted policy on political activities whereby political activities were banned at the local level, except for those of Golkar.<sup>156</sup> It was because of support provided by the government and the military

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<sup>151</sup> See: Anderson, *Violence and the State in Suharto's Indonesia* (Ithaca: Southeast Asia Program Publications, 2001); Budiardjo, "Militarism and Repression in Indonesia," *Third World Quarterly* 8. Robinson, *The Killing Season: A History of the Indonesian Massacres, 1965-66*

<sup>152</sup> Part of the annihilation of the PKI was through the banning of communism and Marxism under a decree passed by the provisional People's Consultative Assembly No. XXV/1966. (Majelis Permusyawaratan Rakyat Sementara Republik Indonesia, "Ketetapan Majelis Permusyawaratan Rakyat Sementara Republik Indonesia Nomor XXV/MPRS/1966 tahun 1966 tentang Pembubaran Partai Komunis Indonesia, Pernyataan Sebagai Organisasi Terlarang Diseluruh Wilayah Negara Republik Indonesia Bagi Partai Komunis Indonesia dan Larangan Setiap Kegiatan untuk Menyebarkan atau Mengembangkan Fahaman atau Ajaran Komunis/Marxisme-Leninisme," (1966).) During *Reformasi* there was a debate regarding whether this decree should be withdrawn as part of the reconciliation process, but there was opposition, especially from the Islamic community, on repealing the decree. See: Ahmad Suhelmi, "Communism Debated Again: The Muslim Response to the Idea of Revoking the 1966 anti-Communism in Post-Soeharto Indonesia," *Studia Islamika* 13, no. 1 (2006).

<sup>153</sup> Justus M. van der Kroef, "Indonesia's Political Prisoners," *Pacific Affairs* 49, no. 4 (1976): 638.

<sup>154</sup> Crouch, "Patrimonialism and Military Rule in Indonesia."

<sup>155</sup> Marvin L. Rogers, "Depoliticization of Indonesia's Political Parties: Attaining Military Stability," *Armed Forces & Society* 14, no. 2 (1988).

<sup>156</sup> This effort was conceptualised by Ali Moertopo—a military general that was responsible in designing the political structure of *Orde Baru*—under the notion of 'floating mass.' As stated by Moertopo:

...it is worth remembering that in the past the people in general, particularly those in the villages with their own, often national, ways of thinking, were played upon and involved in the political and ideological conflicts of the parties. The political parties were always trying marshal mass support by forming various

that Golkar was able to maintain a strong voter preference in the 1971 election, the first election held after the Suharto took government and created *Orde Baru*.<sup>157</sup>

*Orde Baru*'s obsession with creating order and political stability was also demonstrated through the issuance of regulations that limited people's basic rights. A limitation to freedom of information and expressing opinion, for example, was imposed through the Law No. 11 of 1966 on The Basic Principles of the Press (*Undang-Undang tentang Ketentuan-Ketentuan Pokok Pers*). Under this law, *Orde Baru* redefined the meaning of 'freedom of the press' where the press, as an instrument of the revolution, must uphold the principles of Pancasila Democracy and the 1945 Constitution.<sup>158</sup> The press must also join the fight against ideologies that contradicted the spirit of Pancasila, such as imperialism, colonialism, neo-colonialism, feudalism, liberalism, communism and fascism/dictatorship (Chapter II Article 2 (2) d).<sup>159</sup> The control over the media began with the banning of newspapers that supported the communist party during the early period of *Orde Baru*. The newspapers that survived were those that supported the government and the news organisations that were backed by the military. *Kopkamtib*, in this case, also played a role in suppressing the media, such as the case of *Sinar Harapan* that was shut down after it preempted the government in reporting the government budget (RAPBN) of 1973-1974. Domestic media was not the only target of the government's press regulations; foreign news organisations were forced to report their news through state-owned news agencies like *Antara* and submit to censorship. In its development, the *Orde Baru* regime exerted tight control over the media through the

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affiliated organisations based on the ideologies of their respective parties. The mass of the people, especially those in the villages, always fell prey to the political and ideological interests of those parties... Such a situation should not repeat itself. Nevertheless, even now the parties continue to be narrowly ideology-oriented as before. Therefore it is only right to attract the attention of the mainly village people away from political problems and ideological exclusiveness to efforts of national development through the development of their own rural societies. For these reasons, it is justifiable that political activities are limited to the district level only (Level II autonomy)... In this way people in the villages will not spend their valuable time and energy in the political struggle of parties and groups, but will be occupied wholly with development efforts. Through this process there emerges the so-called 'floating mass', i.e. people who are not permanently tied to membership of any political party. This concept of 'floating mass' should lead to increased development efforts.

Moertopo quoted from David Bouchier and Vedi Hadiz, eds., *Indonesian Politics and Society: A Reader* (London: RoutledgeCurzon, 2003), 47-48.

<sup>157</sup> See: Donald Hindley, "Indonesia 1971: Pantjasila Democracy and the Second Parliamentary Elections," *Asian Survey* 12, no. 1 (1972).

<sup>158</sup> The redefinition of freedom of press can be found in the Decree of the Provisional People's Consultative Assembly on Press Guidelines (*TAP MPRS XXXII 1966 tentang Pembinaan Pers*) where it is clearly stated that freedom of the press is not similar to the definition based on liberalism. The press was also banned from publishing materials that contained Communism/Marxism-Leninism. See: Majelis Permusyawaratan Rakyat Sementara Republik Indonesia, "Ketetapan Majelis Permusyawaratan Rakyat Sementara Republik Indonesia No. XXXII/MPRS/1966 tentang Pembinaan Pers," (1966).

<sup>159</sup> See: Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 1966 tentang Ketentuan-ketentuan Pokok Pers," (1966).

issuance of the media licence (*Surat Izin Usaha Penerbitan Press-SIUPP*) by the Ministry of Information, and the infiltration of the Journalists' Association of Indonesia (*Persatuan Wartawan Indonesia*).<sup>160</sup>

## 2.10 The Relationship between the State and the Military

*Orde Baru*, to paraphrase Benedict Anderson, came to power with no intention to uphold civilian rule or improve democracy in Indonesia. For the regime, Indonesia's democracy was already fixed in the conception of Pancasila Democracy.<sup>161</sup> The notion itself is ambiguous; its practice carries elements of democracy where there were scheduled general elections and opposition political parties, but these elements were closely monitored by the President who held unchecked power.<sup>162</sup> In implementing Pancasila Democracy, Suharto was able to rule for more than three decades because of the support he received from the military.<sup>163</sup> It cannot be emphasised enough how vital the transition period from Sukarno to Suharto in 1966-67 was in enabling the dominant role of the military in socio-political affairs. The earlier effort to activate the political role of the military was through perfecting the 'middle way', a concept created by the former General Nasution in 1958, as the so-called *Dwifungsi* doctrine in 1966. Under this doctrine, the military carried two roles: as a military power and as a socio-political power. The latter function enabled the military to be involved in "ideological, politics, social, economy, culture and religious activities."<sup>164</sup> The effort to justify these non-military roles was through the indoctrination that reinforced the inseparable relationship between the people and the military during the revolution, and the

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<sup>160</sup> See: Sukri Abdurrachman, "Pers di Masa Orde Baru," in *Krisis Masa Kini dan Orde Baru*, ed. Muhamad Hisyam (Jakarta: Yayasan Obor, 2003); Andreas Harsono, "On the Line," *Index on Censorship* 26, no. 2 (1997); Peter Schumacher, "Press Censorship in Indonesia," *ibid.* 2, no. 1 (1973).

<sup>161</sup> As pointed out by Todung Mulya Lubis, the definition of Pancasila democracy always emphasised the virtue of Pancasila but *Orde Baru* provided a broad definition that raised more questions and the need for clarification. See: Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*. An example of the definition of Pancasila democracy can be found in Suharto's speech in 1967:

The democracy that we adhere to is Pancasila democracy, which the core norms and the basic laws has been arranged in the 1945 Constitution. Pancasila democracy means democracy, people's sovereignty that is imbued in spirit and integrated to other principles [Pancasila's principles]. This means that in carrying out the values of democracy one should bear the responsibility to the one God according to one's religion, uphold the humanity values, must strengthen the unity of the nation, and must be used for social justice. Pancasila democracy should be based on family moral principles and mutual assistance [gotong royong]. Because it is based family values and mutual assistance, Pancasila democracy does not recognize majority's absoluteness, whether it is physical entireness, the totality of economic power, absoluteness because of power, and the wholeness because of the majority of votes. (Soeharto, *Pidato Kenegaraan President Republik Indonesia Djenderal Soeharto Didepan Sidang DPR-GR 16 Agustus 1967* 17.)

<sup>162</sup> Donald Hindley, "Indonesia 1970: The Workings of Pantjasila Democracy," *Asian Survey* 11, no. 2 (1971).

<sup>163</sup> Anderson, "Old State, New Society: Indonesia's New Order in Comparative Historical Perspective."

<sup>164</sup> Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi*, 26.

loyalty of the military to the Pancasila and the 1945 Constitution.<sup>165</sup> *Dwifungsi* doctrine also embodied the perception that the military had towards civilian authorities that they were too divisive, untrustworthy, and lacked the skills to lead the country.<sup>166</sup>

It is important to note here how Suharto was able to control the military and use it as the state's instrument to undermine civil rights. As pointed out by Harold Crouch in his seminal work that described the patrimonial relationship between the state and military Indonesia, Suharto bought the loyalty of the military through appointing military officers to positions in the government and providing them with business incentives:

In full control of the government administration, he was able to reward loyal supports and win over dissident and potentially dissident officers with appointments to civilian posts that offered prospects of material gain. Other officers were encouraged to go into business, with a promise of help from the administration whenever they needed licenses, credit, or contracts. Control over the machinery of patronage was thus the key factor that enabled Suharto to win and maintain the support of the armed forces for his leadership.<sup>167</sup>

The military's business ventures actually originated when martial law was imposed in the late 1950s. However, it was only under *Orde Baru* that the business activities increased dramatically and operated without accountability. This can be seen in the case of the corruption in Pertamina, the state oil company, where Ibnu Sutowo, a former army officer,

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<sup>165</sup> Suharto actually addressed the concern that the military dominated the government during a State Speech before the parliament on 16 August 1967:

Do not be quick to judge that there has been a growing militarism nowadays because of the many of ABRI officers [in the government]... Militarism or not should be measured by the regulations, by whether or not freedom was guaranteed and democracy was upheld; do not measured by the many ABRI's uniforms [in the government offices]. The involvement of ABRI officers in the government offices is basically because its functionality and because technicality issues in order to support the government's policy. If the participation of the military was seen as disadvantageous, then ABRI will withdraw and be replaced by competent and skills officers. From: Soeharto, *Pidato Kenegaraan President Republik Indonesia Djenderal Soeharto Didepan Sidang DPR-GR 16 Agustus 1967*

However, as later shown, the military became an important element that overshadowed the government and only agreed to disentangle from its political role after Suharto stepped down in 1998. For more on the role of the military influencing Indonesian politics see: Leo Suryadinata, "Politics in Indonesian Parliament, 1966-85," *Southeast Asian Journal of Social Science* (1987); Gunn, "Ideology and the Concept of Government in the Indonesian New Order."; John A. MacDougall, "Patterns of Military Control in the Indonesian Higher Central Bureaucracy," *Indonesia*, no. 33 (1982).

<sup>166</sup> In a book published in 1971, the former general Nasution emphasised the significant role of the military in Indonesia's political upheavals through phases such as: "ABRI as the saviour of the Republic after the civilian government was unable and powerless" and "[since] the Constitution was the basis and policy of the military, it was the military that initiated the enforcement of the Constitution after it was abused." Abdul Haris Nasution, *Kekarjaan ABRI* (Jakarta: Seruling Masa, 1971), 18. On the analysis of how the military responded to the political transformation during *Reformasi* see: Ikrar Nusa Bhakti et al., *Tentara yang Gelisah Hasil Penelitian Yipika tentang Posisi ABRI dalam Gerakan Reformasi* (Jakarta: Penerbit Mizan, 1999).

<sup>167</sup> Crouch, "Patrimonialism and Military Rule in Indonesia," 577. It should be pointed out that Suharto treated the army more favourably than the rest of the military branches (air force and marine). His success in consolidating his influence in the military was through alienating those he considered could challenge his authority. These people were either given a position in the government or sent abroad to fill a diplomatic post. See: Bhakti et al., *Tentara yang Gelisah Hasil Penelitian Yipika tentang Posisi ABRI dalam Gerakan Reformasi*.

drove Pertamina into bankruptcy.<sup>168</sup> Meanwhile, with the military occupying many civilian posts, the decision-making that was supposed to be the domain of civilian government became undermined. The infiltration of the military in the government was confirmed in John A. MacDougall's research that demonstrated how the top echelon positions in the ministries—especially in vital sectors such as the Ministry of Defence and Security and the Ministry of Home Affairs—were occupied by military officers.<sup>169</sup> The influence of the military was also notable in the Ministry of Foreign Affairs. As described by Leo Suryadinata, the penetration of the military in the Ministry of Foreign Affairs began during the purging of PKI members and sympathisers in 1965 when the military was ordered to be involved in countering PKI's movement abroad. While, during *Orde Baru*, most appointees to Minister for Foreign Affairs came from a civilian background, it was inevitable that the military—from the Ministry of Defence, the Institute of National Defence, and the State Intelligence Body—also played a significant part in influencing Indonesia's foreign policymaking.<sup>170</sup> The implication of the involvement of the military in strategic ministries, such as the Ministry of Defence and the Ministry of Foreign Affairs, was the weakening of the civil position in the civil-military relationship during *Orde Baru*. The military's presence in the Ministry of Foreign Affairs, in particular, damaged Indonesia's diplomatic relationships abroad. As noted by Suryadinata, Adam Malik, the former Minister for Foreign Affairs, often clashed with the military elite over international relations issues and,

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<sup>168</sup> Ibnu Sutowo was the son of a regent in Central Java. He worked as the army's physician after graduating medical school in 1945. In 1957, General Nasution appointed him the chief executive of *Pertamina* following the takeover of what was used to be a Dutch oil company. It was during that period that he also became an active army officer. For a short period in 1966, Sutowo served as the mining and energy minister before Suharto chose him to lead *Pertamina*. Sutowo, who demanded full autonomy in leading *Pertamina*, treated the oil company as his own money-spinner. Sutowo's abuse of power brought *Pertamina* to near bankruptcy as the company was left in debt of US\$15 billion. Suharto, who maintained a close relationship with Sutowo, protected Sutowo and let him go without holding him accountable for mismanaging *Pertamina*. Even though he was no longer in *Pertamina*, Sutowo and his family became one of Indonesia's conglomerates that benefitted from the connection with the president. See: Harold Crouch, "Generals and Business in Indonesia," *Pacific Affairs* 48, no. 4 (1975); Vickers, *A History of Modern Indonesia*; Retnowati Abdulgani-Knapp, *Soeharto: The Life and Legacy of Indonesia's Second President* (Singapore: Marshall Cavendish, 2007).

<sup>169</sup> MacDougall, "Patterns of Military Control in the Indonesian Higher Central Bureaucracy."

<sup>170</sup> Suryadinata, *Indonesia's Foreign Policy under Suharto: Aspiring to International Leadership*. The influence of military elites in shaping Indonesia's foreign policy during the early *Orde Baru* period was also discussed in Dewi Fortuna Anwar's research. In her work, Anwar described how Indonesia's Army Staff and Command College or SESKOAD (*Sekolah Komando Angkatan Darat*) proposed many foreign policy initiatives following the end of Sukarno's era. Most of the proposals were in contrast to Sukarno's pro-communist and anti-Western foreign policy. One of the ideas proposed by the army was the creation of a regional association that included defence cooperation. The regional cooperation was actualised in ASEAN where the military, according to Anwar, were involved in the Bangkok meeting in 1967. The proposal to create a military pact among ASEAN members, however, was abandoned as it contradicted Indonesia's *bebas-aktif* doctrine. See also: Anwar, *Indonesia in ASEAN Foreign Policy and Regionalism*

because of their privilege of being close to Suharto, the President chose to listen to the military in preference to his own minister.

Another important point that needs to be emphasised is how instrumental the military was in oppressing civilians. This was done through the creation of special units, such as *Kopkamtib* and the State Intelligence Coordinating Body (*Badan Koordinasi Intelijen Negara—Bakin*). *Kopkamtib* was originally founded as part of the government's effort to eliminate supporters of PKI. *Kopkamtib* then evolved to become the government's henchmen, monitoring civilian activities (especially dissidents), issuing licences for publications and even detaining and interrogating civilians. *Bakin* also undertook monitoring roles, similar to *Kopkamtib*, but their targets were more specific, such as political parties and the Chinese community.<sup>171</sup> All of this was made possible because the military's territorial structure had made their presence felt throughout Indonesia, from the provincial to the village level.<sup>172</sup> It was through a special unit like *Kopkamtib* that the Indonesian military was involved in a range of human rights abuses during *Orde Baru*, especially when the government passed the anti-subversion law (UU No. 11/PNPS/1963). While Indonesia had its own criminal justice system (i.e., *Kitab Undang-Undang Hukum Acara Pidana—KUHP*), *Kopkamtib* could bypass judicial protocol if they thought an individual was involved in subversive activities.<sup>173</sup> Under this practice, *Kopkamtib* had the right to detain such individuals in military compounds or to send them to a civilian court, though the latter rarely happened.<sup>174</sup>

## **2.11 *Orde Baru* and the Development of the International Human Rights Regime**

This section discusses how the development of the international human rights regime affected the *Orde Baru* regime. It is important to note here that *Orde Baru* confined notions of human rights to the concept of Pancasila Democracy. As Suharto stated in his speech

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<sup>171</sup> Crouch, *The Army and Politics in Indonesia*, 222.

<sup>172</sup> The territorial command structure was actually a military doctrine originated in the 1950s in order to counter rebel movements (and communist insurgency) in several parts of Indonesia. In a later development, the territorial command structure was refined to mirror civilian administration system where the military command reached from the provincial level to the regency level. See: Kingsbury, *Power Politics and the Indonesian Military*; Crouch, *The Army and Politics in Indonesia*.

<sup>173</sup> Some of the phrasing of subversive activities contained in the anti-subversion law was vague and not clearly defined, for example 'twisting and misrepresenting Pancasila' and 'overthrow and undermine state power or authority the government or state apparatus.' See: Presiden Republik Indonesia, "Penetapan Presiden Republik Indonesia Nomor 11 Tahun 1963 tentang Pemberantasan Kegiatan Subversi," (1963).

<sup>174</sup> See: Dwight Y. King, "Human Rights, Social Structure and Indonesia's New Order," *Journal of Contemporary Asia* 16, no. 3 (1986); Carmel Budiardjo, "Political Imprisonment in Indonesia," in *Repression and Exploitation in Indonesia*, ed. British Indonesia Committee (Nottingham: Bertram Russell Peace Foundation for Spokesman Books, 1974).

before parliament in 1967, “In Pancasila democracy human rights are guaranteed as long as they are within the limit of Pancasila and the 1945 Constitution.”<sup>175</sup> Also worth mentioning is that when *Orde Baru* rose to power in 1965, attention paid to human rights by the states during the Cold War was not as high as when the Cold War ended in the late 1980s. The Cold War, in this regard, affected the promotion and protection of human rights across the world because both of the superpowers of the time were responsible for the violation of human rights in their respective spheres of influence.<sup>176</sup> The reality, at that time, was that human rights violations were widespread across the globe despite the adoption of the international bill of human rights—the UDHR, the international covenant on political rights, and the international covenant on economic and social rights—yet no serious action was taken to address the human rights abuses.<sup>177</sup> It is because of the impact of these ideological rivalries, that when *Orde Baru* regime launched its anti-communist campaign, which cost the lives of hundreds of thousands of Indonesian people, the international community seemed unperturbed even though it was aware of the atrocities. In a series of declassified documents released in 2017, for example, it was shown that the United States knew about the genocide that took place in Indonesia in 1965 and did nothing to stop it.<sup>178</sup> At that time, the United States was at the height of the Cold War with the Soviet Union and it feared that Indonesia, which was the home to the largest communist party in Southeast Asia, would collapse into the hand of the communists. John Roosa argued that the United States was complicit in the communist purge, and stated, “The US was following what was happening very closely, and if it weren’t for its support, you could argue that the army would never have felt the confidence to take power.”<sup>179</sup>

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<sup>175</sup> Soeharto, *Pidato Kenegaraan President Republik Indonesia Djenderal Soeharto Didepan Sidang DPR-GR 16 Agustus 1967* 19.

<sup>176</sup> Foot, "The Cold War and Human Rights."

<sup>177</sup> In 1968, the United Nations organised the first international conference on human rights in Teheran, Iran. Civil and political rights were barely discussed at the forum and the conference as a whole was regarded as a disappointment to global human rights development. The Third World countries, which mostly turned into dictatorship countries, criticised the UDHR for being irrelevant in order to cover up rights abuses in their own countries. In the meantime, the United States and the Soviet Union, which were annoyed by the Southern countries that antagonised them, maintained a low-key attitude because both of them had interests in the Third World states. See: Roland Burke, "From Individual Rights to National Development: The First UN International Conference on Human Rights, Tehran, 1968," *Journal of World History* 19, no. 3 (2008).

<sup>178</sup> "U.S. Embassy Tracked Indonesia Mass Murder 1965," 2017, National Security Archive The George Washington University, accessed 6 November 2018, <https://nsarchive.gwu.edu/briefing-book/indonesia/2017-10-17/indonesia-mass-murder-1965-us-embassy-files> See also: Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*.

<sup>179</sup> Hannah Beech, "U.S. Stood By as Indonesia Killed a Half-Million People, Papers Show," *The New York Times*, 18 October 2017.

In the late 1960s, due to the activism of non-governmental organisations (especially human rights NGOs) in voicing human rights issues, monitoring human rights practices, and even shaming countries that committed human rights violations, there was a gradual shift in the 1970s on how the world (especially Western states) responded to human rights issues and began to support the cause for human rights.<sup>180</sup> Within the United Nations, for example, NGOs had pushed the idea of creating procedures to respond to human rights abuses: Resolution 1503 and Resolution 1235.<sup>181</sup> This fostering of advocacy for human rights also caused some developed countries to incorporate human rights as part of their foreign aid requirements.<sup>182</sup>

This is where the political restructuring during *Orde Baru* is important in analysing the regime's response to the development of the international human rights regime. With its success in consolidating power and weakening civil society, *Orde Baru* was only reacting to human rights causes when its interests were at stake. The following examples demonstrated how *Orde Baru* complied in making adjustments to its domestic policy while, at the same time, retaining its power. The situation was different approaching 1998 when the *Orde Baru*'s structure collapsed and the transitional government was left with no choice but to undertake sweeping changes.<sup>183</sup>

Firstly, the case of *tahanan politik*—*tapol*, or political prisoners, in Indonesia the 1970s is one of the earliest examples of how the exposure of human rights abuses impacted international relations. Initially, the international community largely ignored cases of *tapol*. However, things started to change when human rights organisations, churches, journalists, and scholars began to call for the release of the political prisoners in the late 1960s. Criticism from outside of Indonesia became more frequent, especially with reports of

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<sup>180</sup> For the role of non-state actors in international human rights advocacy and the mixed results they have brought to the development of human rights, see for example: David Weissbrodt, "The Role of International Nongovernmental Organizations in the Implementation of Human Rights," *Tex. Int'l LJ* 12 (1977); Jackie Smith, Ron Pagnucco, and George A Lopez, "Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s," *Human Rights Quarterly* (1998); James Ron, Howard Ramos, and Kathleen Rodgers, "Transnational Information Politics: NGO Human Rights Reporting, 1986–2000," *International Studies Quarterly* 49, no. 3 (2005); Emilie M. Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem," *International Organization* 62, no. 04 (2008).

<sup>181</sup> Felice D. Gaer, "Reality Check: Human Rights Nongovernmental Organisations Confront Governments at the United Nations," *Third World Quarterly* 16, no. 3 (1995).

<sup>182</sup> On the subject of the insertion of human rights in states' foreign policy, see: Cyrus Vance, "Human Rights and Foreign Policy," *Ga. J. Int'l & Comp. L.* 7 (1977); Marlies Glasius, *Foreign Policy on Human Rights: Its Influence on Indonesia Under Soeharto* (Antwerpen: Intersentia, 1999); David D. Newsom, *The Diplomacy of Human Rights* (Lanham: University Press of America, 1986).

<sup>183</sup> Chapter 3, Chapter 4, and Chapter 5 will discuss more about the implication of the downfall of Suharto to development of human rights in Indonesia.

mistreatment being released by Amnesty International and Carmel Budiardjo, an *ex-tapol* from the United Kingdom, in the early 1970s.<sup>184</sup>

There were several internal and external factors that forced the Indonesian government to make drastic changes on the issue of *tapol*. As pointed out by Greg Fealy, the factors that determined the release of *tapol* were: 1) the domestic crisis, and 2) efforts to improve the international reputation of Indonesia.<sup>185</sup> The first determinant factor was when several domestic problems became convoluted with international exposure of the case of *tapol*. In 1975, Pertamina, the state-owned oil company, collapsed and urgently needed a bailout. The government's rescue of Pertamina then caused Indonesia's debt to significantly increase, which eventually forced the government to apply for new loans from its donors. Another problem that occurred at the same time as the financial crisis was a regional development: the fall of Indochina to communist forces and then the rise of left-wing groups out of the political turmoil in East Timor. These chains of events led the Suharto regime to respond with urgency to modernise military equipment. The paranoia that communist power could re-emerge led to a perceived imperative to enhance military capacity.<sup>186</sup>

The rescheduling of Indonesia's national debt had proven to be problematic for the donors. They were aware of the corrupt system that Suharto had built and the collapse of Pertamina was one result of corrupt internal structures. The revelation of *tapol* cases by the human rights groups had caused the citizens of donor countries to scrutinise their governments' decision to assist Indonesia. However, the choice to support Indonesia was deemed necessary, especially with the alarming trends in the Southeast Asia region. The United States, for example, needed Indonesia's support to secure critical shipping routes in the region.<sup>187</sup> In addition, there was also the factor of economic interest that could not be disregarded. Since Suharto's administration had opened Indonesia for foreign investors, a lot of private companies from the IGGI countries had invested in Indonesia. A conditional agreement was then reached between the IGGI members and the Indonesian government but the loan request would not be finalised until some considerable changes were made regarding the political prisoners. Jan Pronk, the Dutch Minister for Overseas Development

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<sup>184</sup> See: Amnesty International, *Indonesia An Amnesty International Report* (London: Amnesty International Publications, 1977).

<sup>185</sup> Fealy, "Release of Indonesia's Political Prisoners: Domestic Versus Foreign Policy, 1975-1979"

<sup>186</sup> Ibid.

<sup>187</sup> Michael T. Klare and Cynthia Arnson, *Supplying Repression : U.S. Support for Authoritarian Regimes Abroad* (Washington, D.C.: Institute for Policy Studies, 1981).

Assistance, stated “if there is no improvement in the situation of the political prisoners in Indonesia, it is not unlikely that there will be a reappraisal of Dutch aid to Indonesia”.<sup>188</sup>

The second factor that influenced the decision to release the political prisoners was related to the intention to restore the country’s image after the unabating bad publicity that Indonesia received internationally. This started with Jimmy Carter winning the US election in 1976. The rise of Carter administration marked the first time that human rights had been incorporated into US foreign policy. Not long after the US election result was announced, the US embassy in Jakarta was instructed by the US State Department to prepare a report on Indonesia’s human rights condition. The report, which was intended to be submitted to the US Congress, jeopardised the aid package that Indonesia desperately needed for food relief and military expenditure. In addition to the pressure coming from the Carter administration for the Indonesian government to change its *tapol* policy, Indonesia also faced scrutiny from the United Nations Commission on Human Rights, the International Labour Organization, and the World Bank that pointed out Indonesia’s poor human rights records, especially in the case of *tapol*. The invasion of East Timor also complicated the matter, as allegations of human rights violations by the Indonesian military forces were raised by human rights groups.<sup>189</sup>

Indonesian officials rejected the accusations and claimed that *tapol* was an internal affair.<sup>190</sup> CSIS, a think tank that was apologetic to the regime, supported the government and criticised the Carter administration and human rights groups like Amnesty International.

It is unfortunate that a body which claims to uphold human rights and has been a recipient of the Nobel Peace Prize is unable to differentiate between principles of human rights and political issues which are the internal concern of the countries concerned and which even question the legitimacy of governments. It is also a source of concern that Amnesty is unable to judge matters within the framework of the stage of development and local values.<sup>191</sup>

However, despite the strong rhetoric coming from the Suharto regime, they finally succumbed to international pressure. In the period of December 1976 to 1979, the Indonesian government undertook a mass release of political prisoners. The government even closed Buru Island, one of the detention camps for the prisoners.<sup>192</sup> Meanwhile, the US

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<sup>188</sup> TAPOL Bulletin, "Dutch Warn: Free Tapols or Face Aid Cut," no. 10 (1975).

<sup>189</sup> Fealy, "Release of Indonesia’s Political Prisoners: Domestic Versus Foreign Policy, 1975-1979"

<sup>190</sup> David Jenkins, "Inside Suharto’s Prisons," *Far Eastern Economic Review*, 28 October 1977; TAPOL, *TAPOL Bulletin* 1977.

<sup>191</sup> Jusuf Wanandi, "Human Rights: An Indonesian View," *Far Eastern Economic Review* 2 (1977): 23.

<sup>192</sup> Fealy, "Release of Indonesia’s Political Prisoners: Domestic Versus Foreign Policy, 1975-1979"

Senate, despite the reports of Indonesia's poor human rights record, approved the aid package for Indonesia.<sup>193</sup>

The second case where *Orde Baru* superficially conformed to the international human rights regime was when Indonesia established its national commission on human rights (*Komisi Hak Asasi Manusia—Komnas HAM*) in 1993. Several factors contributed to the creation of the commission; firstly, the end of the Cold War. This was a period where the rising liberal values and order was attributed to the triumph of the Western countries over the Soviet Union. The call for these values, which included democracy and respect for human rights, was supported by the United Nations as it underlined its post-Cold War role in fostering a culture of democracy.<sup>194</sup> It was the increasing attention to human rights issues by the United Nations that forced Suharto to moderate his policy in regards to civil rights. As explained by Jetschke, after the shooting of civilians in East Timor in November 1991, Suharto's regime took immediate action by establishing a National Investigative Commission as Indonesia's financial assistance from donor countries, such as Japan, the United States, and Canada, was at risk of being curtailed. The human rights violations in East Timor was then used by domestic NGOs to put pressure on the government. As a result, *Orde Baru* confined the use of the Anti-Subversion Law that was often used against those who criticised the government, and allowed for "formation of new political parties, an independent election monitoring body, a labor union and of an independent alliance of journalists, as well as many new NGOs".<sup>195</sup>

The second factor was the shift in Indonesia's foreign policy in the late 1980s. In the early *Orde Baru* period, the approach that the government took in conducting foreign policy was subtle in comparison to Sukarno's confrontational tactics. *Order Baru's* focus on the improvement of Indonesia's economy had caused the neglect of regionalism and multilateralism causes. It was only when Indonesia's economy improved in the 1980s that Indonesia's foreign policy became assertive, at least in the regional scope of ASEAN.<sup>196</sup> It should be pointed out that as ASEAN countries experienced a relative economic success in

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<sup>193</sup> Newsom, *The Diplomacy of Human Rights*.

<sup>194</sup> Boutros Boutros-Ghali, *An Agenda for Democratization* (New York: Department of Public Information of United Nations, 1996).

<sup>195</sup> Jetschke, "Linking the Unlinkable? International Norms and Nationalism in Indonesian and the Philippines," 156. It is worth noting here that the pressure for Indonesia to open East Timor for international came from the UN Commission on Human Rights *Commission on Human Rights Resolution 1993/97*, 1993.

<sup>196</sup> For the evolution of Indonesia's foreign policy see: Suryadinata, *Indonesia's Foreign Policy under Suharto: Aspiring to International Leadership*; Rizal Sukma, "The Evolution of Indonesia's Foreign Policy: An Indonesian view," *Asian Survey* (1995); Anwar, *Indonesia in ASEAN Foreign Policy and Regionalism*

the 1990s, the countries gained confidence to challenge the universality of human rights through their own interpretation of human rights.<sup>197</sup>

It was the combination of these factors—the pressure from the United Nations that carried the democracy agenda, the activism of human rights groups from outside and inside Indonesia, and the new direction that Indonesia took in its foreign policy (i.e., becoming more active in international relations)—which led Suharto to approve the formation of a human rights commission.<sup>198</sup> *Komnas HAM*, however, was not built as an independent body; its commissioners were chosen and appointed by the president to ensure that the institution would not challenge the government's actions.<sup>199</sup> The establishment of *Komnas HAM* can be seen as the government's attempt at window dressing since it was intended to restore the image of Indonesia in international forums like the World Conference on Human Rights that was held in Vienna in 1993.

## 2.12 Conclusion

This chapter has laid out the limited development of human rights in Indonesia before the *Reformasi* era. As shown in the discussion in this chapter, the earlier talk about rights was focused on the issue of liberation from the oppressors. The non-existence of international effort to push human rights promotion and protection (*i.e.* the international human rights regime) and the lack of democratic environment created by the Dutch were also contributing factors to the narrow dialogue about rights to freedom from repression. Indonesia's liberation process began with this right with the struggle to achieve freedom from the Dutch

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<sup>197</sup> Prior to the 1993 World Conference on Human Rights in Vienna, Austria, ASEAN countries along with other Asian countries met in Bangkok for the Asia Pacific regional meeting. The forum resulted in a declaration (Bangkok Declaration) on human rights that emphasised the need to consider the particularity of each region including factors such as different histories, cultures and religions. The relativeness approach to human rights underlined the larger debate of 'Asian values' vs. West, where ASEAN leaders such as Lee Kuan Yew and Mahathir Mohamad criticised the developed countries for their double standards in regards to human rights practices. In response, the critics of Asian values claimed Asian countries were using the excuse of their peculiarity for the human rights abuses. For more on this subject see: Barr, "Lee Kuan Yew and the 'Asian Values' Debate."; Langlois, *The Politics of Justice and Human Rights*; Bell, "The East Asian Challenge to Human Rights: Reflections on an East West Dialogue."; Mauzy, "The Human Rights and 'Asian Values' Debate in Southeast Asia: Trying to Clarify the Key Issues."

<sup>198</sup> *Komisi Komnas HAM* (the Indonesian National Human Rights Commission) was established in 1993 under Presidential Decree No. 50 of 1993. The United Nations representatives were first to approach Suharto's administration to form a human rights commission in a joint workshop with Indonesia's Ministry of Foreign Affairs in 1991. The idea was then supported by Hassan Wirayuda from the Ministry of Foreign Affairs—he was later appointed as Indonesia's foreign minister in 2001. See: Sonia Cardenas, "Emerging Global Actors: The United Nations and National Human Rights Institutions," *Global Governance* 9, no. 1 (2003); Takeshi Kohno, "Emergence of Human Rights Activities in Authoritarian Indonesia: The Rise of Civil Society" (Thesis, Ohio State University, 2003).

<sup>199</sup> See: Jessica M. Ramsden Smith, "Komnas HAM and the Politics Human Rights in Indonesian" (Thesis, Australian National University, 1998).

in the 1900s, the Japanese invasion, and later from foreign interventions in the late 1940s. In the process of achieving independence, which was part of the Japanese plan as it was approaching its downfall in World War II, Indonesia had its first formal discussion about rights in the context of drafting a constitution. The highlight of the constitution debates pointed out the differences of opinion among Indonesia's elites about what kind of state they desired to create. On the one side, there was a group who aspired to form an authoritative state which, according to their argument, aligned with Indonesia's communal culture that relies on strong leadership. On the other hand, there were those who argued for a democratic state that guaranteed the protection of individual rights. The discussions ended with a compromise among the elites that Indonesia would be built on democratic principles, even though the constitution they produced was brief and lacking explanation of government's accountability and the rights of the people.

The talks about rights were brought up for a second time during the preparation of another constitution in the democratic period in the 1950s. However, domestic politics once again overrode the implementation of the new constitution. After years of political parties quarrelling on how to best lead the nation, Sukarno, along with the military, seized control and executed Guided Democracy, a dictatorial policy that gave the President ultimate power in the government. The people's rights began to deteriorate as the military was given greater flexibility to exercise authority. Sukarno, whose reckless foreign policy only dragged Indonesian into deep crisis, was toppled by the military in 1965. For a brief moment, there was the intention to re-implement democracy and human rights in Indonesia. However, the military, and Suharto, who rose to power to replace Sukarno as President, created a political structure where the rights of the people were curbed in order to create order and stability. The military, in this case, played an important role as the state's instrument to emasculate civil rights.

In the meantime, it was during *Orde Baru* that the international human rights regime began to take shape. Because of the growing attention to human rights causes, Indonesia became one of the countries that was scrutinised for its human rights violations. This chapter has presented two cases of violations of human rights—the political prisoners in the 1990s and the Dili shooting in 1991—that forced *Orde Baru* to adjust its policies in order to appease the international community.

# CHAPTER 3 THE ROME STATUTE, THE LAW ON HUMAN RIGHTS COURT AND THE HUMAN RIGHTS COURT ON EAST TIMOR

## 3.1 Introduction

On 30 August 1999, the East Timorese cast their votes to decide whether they accepted the special autonomy offered by the government of Indonesia. The dramatic result of the referendum showed that most voters rejected Indonesia's offer for East Timor to be a self-determined entity (the final results were 78.50% voting no and 21.50% voted yes).<sup>1</sup> Not long after the results were announced, violence erupted in East Timor when the pro-integration groups attacked the pro-independence East Timorese. As reported by the inquiry teams<sup>2</sup> formed by the United Nations and the Indonesian government, the aftermath of the conflicts was staggering. The UN investigation team reported that there had been "a pattern of serious violations in East Timor of fundamental human rights and humanitarian law" that included killings and massacres, gender violence, and destruction of property.<sup>3</sup> Meanwhile, Indonesia's inquiry commission reported that the pro-integration militias were in collusion with Indonesia's security forces in launching the attack. Indonesia once again became headline news for the humanitarian crisis and the human rights abuses in East Timor.<sup>4</sup> Under the pressure coming from inside and outside of the country, Indonesia adopted the Law on Human Rights Court (*Undang-Undang No. 26/2000*), which took several provisions from the Rome Statute to establish the court's jurisdiction. The trial process began in March 2002 under an Ad-hoc Court for East Timor. Indonesia's armed forces (*Tentara Nasional Indonesia*—TNI), the police, civilian officials and a militia leader were among the defendants indicted for crimes against humanity. From the eighteen defendants, six were found guilty for crimes against humanity but only two of them were sentenced and most of Indonesia's security forces were acquitted.<sup>5</sup>

This chapter considers the political setting of *Reformasi* in analysing how Indonesia responded to human rights norms in the post-Suharto era. As shown by studies on countries that transform from

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<sup>1</sup> UNSC, "Secretary-General Informs Security Council People of East Timor Rejected Special Autonomy Proposed by Indonesia," news release, 3 September, 1999, <http://www.un.org/press/en/1999/19990903.sc6721.html>.

<sup>2</sup> The UN Commission on Human Rights formed the International Commission of Inquiry on East Timor on 27 September 1999 after a special session was held to discuss the situation in East Timor. Meanwhile, on 22 September 1999, Indonesia, through its human rights commission, established *Komisi Penyelidik Pelanggaran HAM di Timor Timur* (the Commission of Inquiry for Human Rights in East Timor) or popularly referred to as KPP HAM Tim-Tim.

<sup>3</sup> OHCHR, "Report of the International Commission of Inquiry on East Timor," (2000).

<sup>4</sup> KPP-HAM, *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia di Timor Timur* (Jakarta: Komnas HAM, 2000).

<sup>5</sup> Moch. N. Kurniawan, "East Timor Human Rights Trials - All Just a Game," *The Jakarta Post*, 26 December 2002.

authoritarian regimes to democracies,<sup>6</sup> democratic transitions are critical where new developments, however small, can bring significant impact in the long run. Indonesia's democratic transition was highlighted by the survival of elements from *Orde Baru* from the President, senior officials and bureaucrats to the military, which had influence on how Indonesia's democracy progressed. The East Timor crisis, in this case, is an example of how the introduction of human rights norms, exemplified in the Rome Statute of the ICC, were being opposed by the actors from the *Orde Baru* regime because it challenged practice that were created by the previous regime (i.e., a culture of impunity). As later discussed in this chapter, the chain of events from *Reformasi* to the East Timor trials played a role in the failure to adopt the Rome Statute of the ICC.

Previous studies that analysed the low compliance with the Rome Statute in Asia have often overlooked the historical context that might influence more recent decisions of governments regarding the Rome Statute of the ICC. Valeriane Toon,<sup>7</sup> for example, pointed out the unwillingness of the Indonesian government to run an effective trial for the East Timor offenders with the accompanying exoneration of Indonesia's military and police officers. However, she failed to describe the circumstances behind the East Timor trial that caused the reluctance of the court to provide a fair trial. Her research also neglected the impact of the transitional period, when the trial took place, to the indecision of Yudhoyono's administration on the issue of the Rome Statute adoption.

This chapter aims to demonstrate several points: firstly, how the external factor (i.e. the pressure from the international community) influenced the decision to accept international human rights norms; and secondly, to investigate how Indonesia executed the norms through the adoption of the Law on Human Rights Court. In addition, this chapter analyses the dynamic of domestic actors on perceiving the case of human rights abuses in East Timor. It is also important to emphasise the context of Indonesia's transitional period where the East Timor case took place. Since the law was adopted when Indonesia was at the stage of transforming from being an authoritarian country into a democratic one, the adoption of the law could not be separated from the compromises made by the transitional governments (from President Habibie to presidents Wahid and Megawati) and the stakeholders involved in East Timor, especially the military, that received backlash because of the East Timor troubles.

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<sup>6</sup> There has been an abundant literature on democratic transitions, such as Daron Acemoglu and James A. Robinson, *Why Nations Fail* (New York: Crown Publishers, 2012); Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (JHU Press, 1996); Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: JHU Press, 2013).

<sup>7</sup> Toon, "International Criminal Court: Reservations of Non-State Parties in Southeast Asia."

Chapter 3 will be divided into several sections. It begins with the description of how the East Timor relationship with Indonesia disintegrated. This will be followed by the implications of the East Timor crisis to Indonesia's foreign and domestic policies. The next discussion will focus on the adoption of the Law on Human Rights Court and the politics of the East Timor trial. The final part of Chapter 3 will analyse the impact of the East Timor trial on the discourse on human rights in Indonesia, especially in regards to the plan to adopt the Rome Statute.

## **The International and Domestic Settings**

### **3.1.1 International Setting**

It is important to begin the discussion on how post-Suharto Indonesia responded to human rights norms by redetermining the political settings (international and domestic) when *Orde Baru* ended. The 1990s, which marked the end of Cold War era, was a time where there was increasing attention towards democracy and human rights issues. This was in contrast to what happened during the Cold War period when the United Nations' efforts to promote such issues were undermined. In their attempts to secure their interests, both superpowers, the United States and the Soviet Union, were complicit to human rights violations practice. This can be seen in the case of how the Soviet Union was supporting Eastern European governments in suppressing civil rights movements in their countries, or how the United States was helping Latin American dictators to quell communism.<sup>8</sup> After the dissolution of the Soviet Union in the 1990s, there was a great sense of optimism for the betterment of the world with the triumph of liberal democracy and capitalism over communism. Enthusiasm was also demonstrated by the intention to revitalise the United Nations to support the spread of democracy.<sup>9</sup> However, the euphoria of the new international order in the post-Cold War era was short-lived, as the world began to witness the rise of civil conflicts where the impacts reached the level of humanitarian crisis in World War II, from the Balkan crisis that disintegrated Yugoslavia to the civil war in Rwanda in the early 1990s.

It was during this period that there was a palpable desire to find a solution to grave human rights violations. The initial works to codify international human rights norms to punish the perpetrators of mass atrocities actually began after the end of the World War II, but, again, the Cold War tension cast a shadow on the effort to discuss such topics, including the intention to create an international

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<sup>8</sup> Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (Maryborough: Penguin Books, 2000); Sarah B. Snyder, "Human Rights and the Cold War," in *The Routledge Handbook of the Cold War*, ed. Artemy M. Kalinovsky and Craig Daigle (London: Routledge, 2014).

<sup>9</sup> See: Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995); Boutros-Ghali, *An Agenda for Democratization*; Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).

criminal court.<sup>10</sup> The attempt to establish an independent criminal court was again brought to the fore after the end of the Cold War which, coincidentally, occurred with regional crisis in the Balkans and Africa. The crisis in Yugoslavia and Rwanda were eventually solved through the establishment of international tribunals: the International Criminal Tribunal for Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. Compared to the Nuremberg and the Tokyo trials where the alleged perpetrators of World War II were tried, the tribunals of Yugoslavia and Rwanda were regarded as an improvement. Firstly, the ICTY and ICTR were established without the interference of the so-called victor states, which was the main criticism of the World War II tribunals. Secondly, war tribunals of Yugoslavia and Rwanda were supported with well-founded legal standings to indict war criminals, which included “the UN Charter, the codified Nuremberg Principles, the Genocide Convention of 1948, the four Geneva Conventions of 1949 and Additional Protocols I and II of 1977, the Torture Convention of 1984, and other international law codifications adopted since 1945”.<sup>11</sup> Nevertheless, both Tribunals suffered from several shortcomings due to their nature as contingent agencies to the United Nations, for example, the Tribunals’ dependency on the United Nations on logistical and budgetary issues, or the internal politics among the members of the UN Security Council.<sup>12</sup>

At the same time the world witnessed the ongoing ICTY and ICTY trials, the international cooperation to establish a criminal court to prosecute individuals for their involvement in mass atrocities intensified.<sup>13</sup> The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court began on 15 June 1998 and ended on 18 July 1998. The final product of the Rome Diplomatic Conference was the Rome Statute of the International Criminal Court, an international agreement that founded the first permanent treaty-based international court. Since its acceptance in the Rome diplomatic conference in July 1998, the treaty has undertaken several adjustments in November 1998, July 1999, November 1999 and May 2000.<sup>14</sup> When the ICC started to function in 2002, the Rome Statute has been considered as one of the “conspicuous symbols” in the evolution of the international criminal law along with the

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<sup>10</sup> Schabas, *An Introduction to the International Criminal Court*.

<sup>11</sup> Mark A. Bland, "An Analysis of the United Nations International Tribunal to Adjudicate War Crimes Committed in the Former Yugoslavia: Parallels, Problems, Prospects," *Indiana Journal of Global Legal Studies* 2, no. 1 (1994): 242.

<sup>12</sup> See: M. Cherif Bassiouni, "From Versailles to Rwanda in Seventy-five Years: The Need to Establish a Permanent International Criminal Court," *Harv. Hum. Rts. J.* 10 (1997); Michael P. Scharf, "Indicted For War Crimes, Then What?," *The Washington Post*, 3 October 1999.

<sup>13</sup> For more on the negotiation and the drafting process of the Rome Statute see: Mahnoush H Arsanjani, "The Rome Statute of the International Criminal Court," *American Journal of International Law* (1999); Bassiouni, "Negotiating the Treaty of Rome on the Establishment of an International Criminal Court," *Cornell Int'l LJ* 32 (1999); Fanny Benedetti and John L. Washburn, "Drafting the International Criminal Court: Two Years to Rome and an Afterword on the Rome Diplomatic Conference," *Global Governance* 5, no. 1 (1999).

<sup>14</sup> "Rome Statute of the International Criminal Court Corrections," 2001, United Nations, accessed 13 July 2017, [http://legal.un.org/icc/statute/99\\_corr/corr.html](http://legal.un.org/icc/statute/99_corr/corr.html)

establishment of the ICTY in 1993, the ICTR in 1994, and the UK House of Lords' decision in 1999 to extradite the former Chilean dictator Augusto Pinochet for violations of human rights in 1973.<sup>15</sup> At that time, this progress brought optimism among the international community that future atrocities could be "effectively addressed".<sup>16</sup>

### 3.1.2 Domestic Setting

When Suharto resigned from office in May 1998, Indonesia was in a state of chaos. The state's institutions (both political and economic) that were shaped by Suharto's patrimonialism, were too weak to handle the economic crisis that snowballed into a political catastrophe. Suharto's legacy of a fragile and corrupt state was handed to Habibie.<sup>17</sup> Habibie's status as Suharto's protégé only put him in a difficult position because people viewed him as perpetuating "a continuation of the New Order status quo".<sup>18</sup> Students expressed their disappointment in Habibie's ascent to replace Suharto<sup>19</sup> and demanded that power be instead handed over to pro-reform leaders like Amien Rais, Megawati Sukarnoputri and Abdurrahman Wahid.<sup>20</sup> Meanwhile, international financial donors, like the IMF and the World Bank, put the economic recovery package on hold to see whether Habibie would move to instigate economic reform.<sup>21</sup> Realising that his administration was lacking the legitimacy to govern, and wanting to show that he was unlike his predecessor, he took the initiative to democratise the country by liberating the press, amending the law on political parties and meeting with the members of the People's Consultative Assembly to discuss a new general election.<sup>22</sup>

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<sup>15</sup> "The Evolution of International Criminal Law," *Strategic Survey* 100, no. 1 (1999): 29.

<sup>16</sup> Ibid. Indonesia was among the states that participated in the drafting of the Rome Statute and attended the Rome Diplomatic Conference in 1998. When votes were cast to formalise the Rome Statute, Indonesia opted to abstain. In interviews with several respondents from the Ministry of Foreign Affairs, it was told that the withholding stance was made because of technical issues such as the adoption of the international treaty required the approval of all the elements implicated by the treaty. However, since the Rome Diplomatic Conference occurred during the time Indonesia was undergoing a transition from Suharto to Bacharuddin Jusuf Habibie, the complicated situation in Jakarta also affected the abstain vote Indonesia made in the diplomatic meeting. More about this topic will be discussed in Chapter 5.

<sup>17</sup> One of Suharto's efforts to control the state was through appointing people (including military officers) that showed loyalty to him positions in the government and isolated those who opposed him. This patrimonialism only created an inefficient state that was vulnerable to crisis. See: Crouch, "Patrimonialism and Military Rule in Indonesia."; David Bourchier, "Habibie's Interregnum: Reformasi, Elections, Regionalism and the Struggle For Power," in *Indonesia in Transition Social Aspects of Reformasi and Crisis*, ed. Chris Manning and Peter van Diermen (Singapore: ISEAS, 2000).

<sup>18</sup> Dewi Fortuna Anwar, "The Habibie Presidency: Catapulting Towards Reform," in *Soeharto's New Order and its Legacy*, ed. Edward; Aspinall and Greg Fealy (2010).

<sup>19</sup> The Jakarta Post, "Students Jubilant, but Not Satisfied," 22 May 1998.

<sup>20</sup> Bourchier, "Habibie's Interregnum: Reformasi, Elections, Regionalism and the Struggle For Power."

<sup>21</sup> Bob Davis and Jacob M. Schlesinger, "IMF, World Bank to Continue Insisting on Indonesia Reform," *The Wall Street Journal*, 22 May 1998.

<sup>22</sup> See: Lalu Misbah Hidayat, *Reformasi Administrasi: Kajian Komparatif Pemerintahan Tiga Presiden : Bacharuddin Jusuf Habibie, Abdurrahman Wahid, Soekarnoputri* (Jakarta: Gramedia Pustaka Utama, 2007); Ginandjar Kartasasmita, *Managing Indonesia's Transformation : An Oral History* (Singapore: World Scientific, 2013); R. William Liddle, "Indonesia in 1999: Democracy Restored," *Asian Survey* 40, no. 1 (2000).

A number of studies that analysed the interregnum period following the resignation of Suharto have pointed out the problematic nature of Indonesia's transition to democracy. Michael Malley, for example, argued that many of the vital decisions made following Suharto's departure in 1998 were steered by elements of *Orde Baru* rather than the "regime defenders or challengers".<sup>23</sup> The opposition to Suharto's regime in 1998, in this case, was weak and not sufficiently united to confront the old power (discussed in Chapter 4). As a consequence, many of the *Orde Baru*'s characteristics survived, and those who were part of the old regime were able to "avoid explicit commitments to democratization".<sup>24</sup> This circumstance was reflected in the discussion regarding the election law in the preparation for the 1999 election. In his research, Dwight Y. King pointed out how the parliament, which was filled by political parties from the previous regime (Golkar, PPP, PDI and the military), ended up making several compromises, including retaining the military/police seats in the parliament.<sup>25</sup> Another important development in 1998 was related to Indonesia's civil-military relationship. Marcus Mietzner argued how Habibie's presidency squandered the chance to reform the military.<sup>26</sup> The main reason lies in the connection between Habibie and the military, who relied on each other in order to survive *Reformasi*. This 'mutual dependence' that Habibie had with the military created several implications. The military could only support Habibie's decision to reform Indonesia to deregulate Suharto's authoritative policies because any blatant move to interfere with *Reformasi* would only produce backlash for the military.<sup>27</sup> As a concession, Habibie let the military undertake its own internal reform without any civilian involvement in the process. The finalized reform program, which was known as *Paradigma Baru* (New Paradigm), stated that the military would step back from political affairs with the intention to work alongside civilians.<sup>28</sup> However, the reform initiative was criticised for being "too abstract and too difficult to evaluate and monitor".<sup>29</sup> In his assessment of the military reform in 1998, Ikrar Nusa Bhakti argued that the military's intention was merely to reposition its status (to no longer be involved in politics) while, at the same time, maintain its political interests. Bhakti

<sup>23</sup> Michael Malley, "Beyond Democratic Elections: Indonesia Embarks on a Protracted Transition," *Democratization* 7, no. 3 (2000).

<sup>24</sup> Ibid.

<sup>25</sup> King, *Half-hearted Reform: Electoral Institutions and the Struggle for Democracy in Indonesia*.

<sup>26</sup> Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance."

<sup>27</sup> Crouch, *Political Reform in Indonesia after Soeharto*. It is important to note the internal dynamic within the military in the late 1980s where some military elites challenged Suharto who was inclined to name a successor. The rift between Suharto and the military impacted the declining influence of the military in Indonesia's politics. Suharto, who began to lose his grasp on the military, looked for another place to gain support. He approached the Muslim community, especially the middle classes, and was involved in several initiatives such as establishing the Indonesian Association of Muslim Intellectuals (*Ikatan Cendekiawan Muslim Indonesia*—ICMI)—and appointing Habibie as the chairman of the organization, allowing the use of *jilbab* (Muslim headdress) for school-age girls, and creating Muslim Bank (*Bank Muamalat*).

<sup>28</sup> Markas Besar ABRI, *ABRI Abad XXI Redefinisi, Reposisi, dan Reaktualisasi Peran ABRI dalam Kehidupan Bangsa* (Jakarta: Markas Besar ABRI, 1998).

<sup>29</sup> Honna, *Military Politics and Democratization in Indonesia*, 166.

demonstrated how statements such as the final and unnegotiable form of Indonesia as a republic, or the military as the uniter of the country, implied that the military reform agenda was based on political motivations rather than the objective to form a more professional military.<sup>30</sup>

### 3.2 Habibie's East Timor Gambit

The previous section has laid out the landscape that played a role in influencing how the East Timor crisis developed. This section focuses on how the crisis started. As the discussion will later show, the East Timor disaster began with the intensifying demand from the East Timorese to be liberated from Indonesia after *Orde Baru* ended. The accumulation of domestic politics and Habibie's mercurial characteristics, in this case, then led to the decision to grant a referendum of independence to the East Timorese.

To begin with, it was clear that the momentum of *Reformasi* had triggered some of the pro-independence movement groups in East Timor to restart and intensify their resurgence against the Indonesian government.<sup>31</sup> This movement gained traction from countries such as the United Kingdom, Austria and the Netherlands, which then pushed Indonesia to address the fate of the East Timor. The US Senate even openly called for "an internationally supervised-referendum", while the Congress pushed for an embargo on US weaponry around East Timor.<sup>32</sup>

The original policy of Habibie's administration on East Timor was to discourage the demand for independence by offering a self-governance option to the East Timorese. Habibie expressed this offer along with a deal to withdraw military troops from the region to Carlos Ximenes Belo, the Roman Catholic Bishop of East Timor, in June 1998.<sup>33</sup> As explained by Ali Alatas, a former Minister in Habibie's cabinet, the 'wide range autonomy' offer was designed to allow the East Timorese authority over their own internal matters while leaving foreign policy, defence, fiscal and monetary policies to Jakarta.<sup>34</sup> He also emphasised that the East Timor issue would not be settled unitarily, as the details of autonomy package would be discussed with the United Nations and Portugal in August 1998.

Towards that end we are prepared to sit down and negotiate under the auspices of the secretary-general of the United Nations with Portugal the substantive aspects or elements for that wide-ranging autonomy. So

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<sup>30</sup> Ikrar Nusa Bhakti, "Kendala dan Peluang Reformasi Internal TNI," in *Evaluasi Reformasi TNI (1998-2003)*, ed. Sri Yanuarti (Jakarta: P2P LIPI, 2003).

<sup>31</sup> Rebecca Strating, *Social Democracy in East Timor* (New York: Routledge, 2015).

<sup>32</sup> James J. Lloyd, "The Diplomacy on East Timor: Indonesia, the United Nations and the International Community," in *Out of the Ashes Destruction and Reconstruction of East Timor*, ed. James J. Fox and Dionisio Babo Soares (Canberra: ANU E Press, 2003), 81.

<sup>33</sup> Michael Richardson, "Jakarta Details Partial Autonomy for East Timor," *International Herald Tribune*, 29 July 1998.

<sup>34</sup> Johannes Nugroho, "Special Autonomy for E. Timor.," *The Jakarta Post*, 3 September 1998.

from that, it should be clear that this is not a unilaterally granted autonomy but one that will be negotiated as part and parcel of an overall settlement.<sup>35</sup>

The Habibie administration was eager to dismiss the idea of providing the East Timorese with a referendum. This position was out of fear that other problematic regions, such as Aceh and Papua, might take similar steps. Alatas, who was a strong advocate for autonomy for East Timor, even expressed his doubt that a referendum would bring peace to the East Timorese.

There is no way that there can be an independent East Timor, or no way in which East Timor can live independently by itself, surrounded by 17,000 islands of Indonesia, right smack in the middle of our archipelago... It's impossible, impossible. They would be highly dependent and always have great difficulty in scraping a living. There would always be tensions and difficulties... If there was independence, do you think the loser would accept it? We don't believe so. They would go back to the mountains. We run the risk of going back to square one civil war, like in August 1975 if we follow the referendum route.<sup>36</sup>

It is worth noting that Indonesia, after Suharto stepped down, was in a critical stage because of the imminent threat of disintegration,<sup>37</sup> and since the parting of East Timor from Indonesia in 1999, governments have been very cautious in responding to threats of secession. For example, after the loss of East Timor, the Speaker of the House, Akbar Tandjung, expressed his view that Aceh would not be granted similar treatment to East Timor: "Even if we pursue a referendum, firstly, [we] have to specify the referendum procedures. Secondly, the ultimate option that should be given is the choice between a federal state and a regional autonomy with wider jurisdiction as long as it stays under the Unitary Republic of Indonesia."<sup>38</sup>

In the early part of 1999, things started to change dramatically as Habibie broke away from his administration's original policy and began to countenance the referendum option for the East Timorese. What triggered Habibie to change his position on East Timor was a letter sent by Australia's Prime Minister, John Howard, dated 19 December 1998. John McCarthy, Australia's Ambassador to Indonesia at that time, handed a copy of the letter to Dewi Fortuna Anwar, Habibie's senior adviser. In the letter, Howard suggested the solution to East Timor was to adopt measures similar to New Caledonia's agreement with France.

On the substance, he suggested that Indonesia consider addressing the East Timorese desire for an act of self-determination in a way that would avoid an early and final decision on the future status of East Timor by "building into the autonomy package a review mechanism along the lines of the Matignon Accords in New Caledonia." (The Matignon Accords between France and the independence movement of New

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<sup>35</sup> The Jakarta Post, "Military Pullout from E. Timor to Continue," 30 July 1998.

<sup>36</sup> Richardson, "Jakarta Details Partial Autonomy for East Timor."

<sup>37</sup> Chicago Tribune, "Indonesian Disintegration Feared Opposition Leader Sees 'Another Yugoslavia'," *Chicago Tribune*, 6 June 1998. See also: Seth Mydans, "Indonesia's Leader Warns of 'Disintegration' From Strife," *The New York Times*, 18 December 1998.

<sup>38</sup> Kompas, "Soal Referendum di Aceh Ketua DPR Tolak Opsi Merdeka," 4 Desember 1999.

Caledonia provided a compromise solution in which a referendum on the final status of New Caledonia was postponed for at least ten years).<sup>39</sup>

Alatas recalled that Habibie was visibly upset by Howard's letter. After explaining to Habibie what the Matignon Accords was, Habibie showed his dismay: "But New Caledonia is a French colony and that was a colonial arrangement. Why does he compare us with France and East Timor with New Caledonia?"<sup>40</sup> He then stated that he dismissed the idea of transitional autonomy for East Timor because the delay of the status of East Timor would only put Indonesia's future government into a more difficult situation.<sup>41</sup> After his meeting with Habibie, Alatas claimed that Habibie asked for more time to think about Howard's letter. However, Habibie's then changed his mind when the letter was officially sent to the office of the President from the Australian embassy in Jakarta on 7 January 1999. In a disposition letter to his cabinet, Habibie asked his ministers to consider the letter from Prime Minister Howard and the future of East Timor. The tone of the letter, according to Alatas, reflected the character of Habibie as someone who is impulsive.

...if the question of East Timor has become a burden to the struggle and image of the Indonesian Nation and if after 22 years of common history with the Indonesian people, who proclaimed their independence 53 years ago...the people of East Timor cannot become united with us, then it would be appropriate and wise if the People's Consultative Assembly were to decide that his 27<sup>th</sup> Province of East Timor be allowed to separate honourably from the Unitary Republic of Indonesia...<sup>42</sup>

In the cabinet meeting on 27 January 1999, Habibie argued that the referendum deal could bring an end to the issue of East Timor that had been tarnishing Indonesia's image for a long time.<sup>43</sup> In the following month, Habibie openly expressed his intention to grant secession to East Timor, much to the surprise of his counterpart in Australia. In an interview with ABC, Howard stated that, "The direction in which he travelled was the same direction that was requested in the letter. It's just that he went much further. He was 20 miles instead of five."<sup>44</sup>

Habibie's dramatic turns were perplexing because his foreign minister was still pushing for the autonomy offer. For Alatas, wide-ranging autonomy was a better option than a referendum, which he referred to as "a recipe for civil conflict".<sup>45</sup> At that time, Indonesia was also preparing its first general election since Suharto's resignation. Habibie's gambit with East Timor's future then

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<sup>39</sup> Ali Alatas, *The Pebble in the Shoe The Diplomatic Struggle for East Timor* (Jakarta: Aksara Karunia, 2006), 149.

<sup>40</sup> Ibid.

<sup>41</sup> Bacharuddin Jusuf Habibie, *Detik-Detik yang Menentukan: Jalan Panjang Indonesia Menuju Demokrasi* (Jakarta: THC Mandiri, 2006). In his autobiography, Habibie explains that he was aiming for an opinion (*jajak pendapat*), not referendum, since referendum will require the support from MPR (People's Consultative Assembly). Thus, to his understanding opinion poll could be held without the government seeking approval from the parliament.

<sup>42</sup> Alatas, *The Pebble in the Shoe The Diplomatic Struggle for East Timor*, 151.

<sup>43</sup> John McBeth and Dan Murphy, "East Timor: Sudden Impact: Hard on the Heels of Indonesia's Surprise Decision to Offer East Timor Independence," *Far Eastern Economic Review*, 11 February 1999.

<sup>44</sup> ABC, "Howard Pushed Me on E Timor Referendum: Habibie," 16 November 2008.

<sup>45</sup> Robert Kroon, "Jakarta Goal for East Timor: Autonomy Q & A /Ali Alatas, Foreign Minister," *International Herald Tribune*, 3 February 1999.

complicated the matter: should the East Timorese cast their votes in the election or not? When asked about what to do about the East Timorese, Habibie said that the East Timorese should participate in the election because they are still part of Indonesia. The members of the House of Representatives, on the other hand, had different opinions. Some of them suggested that the government should rethink the option to involve the East Timorese in the election as the intention to separate from Indonesia had intensified.<sup>46</sup> Meanwhile, Megawati Sukarnoputri, the opposition leader from PDI-P party, threatened to annul East Timor's independence if her party won the election.<sup>47</sup> The military, which was known to hold a conservative view on the integration of the republic, did not demonstrate their opposition to the referendum option. As stated by Crouch, this stance could mean that the military also wanted to ease the issue of East Timor while, at the same time, attempted to ensure the result of the referendum would maintain East Timor as a province of Indonesia.<sup>48</sup>

It is worth noting here that Habibie's sudden backflip on policy had another dimension that was related to Indonesia's political contestation in the post-Suharto era. It was not only the international pressure that influenced Habibie to agree to East Timor's demands for independence, his ambition to secure his position as the President also played a part in his policy on East Timor in his attempt to harness political capital from the Indonesian people.<sup>49</sup> However, what Habibie failed to take into account was how he misconstrued the pro-independence movement in East Timor, as well as the effect of losing East Timor on other troubled regions in Indonesia.<sup>50</sup> He also did not anticipate the military's own activity in the region. While Wiranto, who served as the military Commander and Minister for Defence and Security, did not oppose Habibie's breaking the logjam on East Timor, the military authority in East Timor was reported to have provided arms to militias and provoked the East Timorese. Even after the Indonesian government settled a deal with Portugal before the United Nations in May 1999, violence continued to erupt in East Timor.<sup>51</sup>

The East Timor referendum was held on 30 August 1999, and around 450,000 East Timorese cast their votes to decide whether they accepted the autonomy proposal offered by the Indonesian government, or rejected the self-governance deal and separated from Indonesia to become an

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<sup>46</sup> Kompas, "RUU Pengadilan HAM Progresif namun Bermuatan Politis," 14 November 2000.

<sup>47</sup> McBeth and Murphy, "East Timor: Sudden Impact: Hard on the Heels of Indonesia's Surprise Decision to Offer East Timor Independence."

<sup>48</sup> Crouch, *Political Reform in Indonesia after Soeharto*.

<sup>49</sup> Muthiah Alagappa, *Coercion and Governance: The Declining Role of the Military in Asia* (Stanford: Stanford University Press, 2001).

<sup>50</sup> See: David Lamb, "Habibie's Goal of Reform May Hasten His Demise," *Los Angeles Times*, 10 September 1999; Angel Rabasa and Peter Chalk, *Indonesia's Transformation and the Stability of Southeast Asia* (Santa Monica: RAND Corporation, 2001).

<sup>51</sup> See: Joe Lauria, "UN Delays Vote in East Timor," *The Boston Globe*, 23 June 1999; Michael Richardson, "Timor Vote Threatened By Violence Of Militias," *International Herald Tribune*, 25 May 1999.

independent nation. The result of the referendum showed that 78.5% of registered voters opted for independence from Indonesia.<sup>52</sup> The outcome of the East Timor referendum surprised the Indonesian people, especially members of Habibie's cabinet and the military. This is because, prior to the referendum, Wiranto as the military commander reported that more than 60% of the East Timorese would opt for integration with Indonesia.<sup>53</sup> The situation in East Timor became worse after what was considered to be a relatively peaceful referendum quickly turned into chaos when the pro-integration militias went on a rampage and caused the displacement of thousands of civilians.<sup>54</sup> The pro-integration militias, which, according to news outlets, were supported by the Indonesian military, also killed, looted and terrorised civilians.<sup>55</sup>

The post-referendum crisis in East Timor resulted in the killings of thousands of civilians, the displacement of approximately 250,000 people, and the destruction of the most part of East Timor's infrastructure.<sup>56</sup> Habibie received backlash for his brinkmanship on East Timor and the humanitarian crisis that followed the referendum. Sarwono Kusumaatmaja, Habibie's Minister for Environment, blamed his impulsiveness,<sup>57</sup> and Golkar—Habibie's party—reconsidered his presidential nomination.<sup>58</sup> Ginandjar Kartasasmita, another of Habibie's cabinet ministers, shared an anecdote where the US did not support Habibie's re-election after his mishandling of East Timor.<sup>59</sup> Moreover, Habibie's political opponents used his failure on East Timor to further weaken legitimacy.<sup>60</sup> His accountability speech before the People's Consultative Assembly on 14 October was heavily criticized, especially in regard to the issue of East Timor.<sup>61</sup> The final blow that brought

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<sup>52</sup> "Secretary-General Informs Security Council People of East Timor Rejected Special Autonomy Proposed By Indonesia," 1999, UNSC, accessed 3 December 2017, <http://www.un.org/press/en/1999/19990903.sc6721.html>

<sup>53</sup> Kartasasmita, *Managing Indonesia's Transformation : An Oral History*. The news regarding the East Timor referendum in Indonesia ranged from those that portrayed the referendum from a negative point of view (e.g., it was part of an international conspiracy or that the East Timorese were not being grateful to Indonesia) and those that gave a sober take on the situation. For analysis on the media framing on the result of the East Timor referendum see for example: Hotman Siahaan et al., *Pers yang Gamang: Studi Pemberitaan Jajak Pendapat Timor Timur* (Surabaya: Lembaga Studi Perubahan Sosial, 2001); Adrian Vickers, "Being modern in Bali after Suharto," in *Inequality, Crisis and Social Change in Indonesia : The Muted Worlds of Bali*, ed. Thomas Reuter (London: RoutledgeCurzon, 2003); Eriyanto, *Analisis Wacana: Pengantar Analisis Teks Media* (Yogyakarta: LKiS, 2001).

<sup>54</sup> Mark Landler, "East Timorese Flee Homes, and Encounter More Danger," *The New York Times*, 13 September 1999.

<sup>55</sup> See: John Aglionby, "Crisis in East Timor: 'If the UN Doesn't Leave, We Will Just Destroy Everything' Militias: Mayor Warns that International Troops Will Come under Fire," *The Guardian*, 9 September 1999; Keith B. Richburg, "East Timor Refugees Terrorized in Camps; Militias Hold Many as Virtual Hostages," *The Washington Post*, 25 September 1999; Doug Struck, "Jakarta's Army Tied to Deaths; Report Says Sympathetic Troops Joined Militia Rampage," *ibid.*, 12 September.

<sup>56</sup> Mark Cammack, "Crimes Against Humanity in East Timor The Indonesian ad hoc Human Rights Court hearings," in *Trials for International Crimes in Asia*, ed. Kirsten Sellars (Cambridge: Cambridge University Press, 2016).

<sup>57</sup> Lamb, "Habibie's Goal of Reform May Hasten His Demise."

<sup>58</sup> The Jakarta Post, "Golkar May Review Habibie's Nomination," 17 October 1999.

<sup>59</sup> Kartasasmita, *Managing Indonesia's Transformation : An Oral History*.

<sup>60</sup> Yosef Oemarhadi, "Megawati dan Gus Dur Prihatin " *Kompas*, 5 September 1999.

<sup>61</sup> Kompas, "Terhadap Pidato Pertanggungjawaban Presiden Tiga Fraksi Menolak, Empat Lainnya Menggugat," 16 October 1999.

Habibie's career to and end was when he lost the confidence vote in the People's Consultative Assembly. He withdrew his presidential election bid on 20 October 1999.<sup>62</sup>

### 3.3 Mitigating International Pressure

This section will elaborate how Indonesia responded to the call for holding the perpetrators of the East Timor crisis accountable. What is important to note here is that, in facing pressure from the international community, Indonesia was undergoing a transfer of power from Habibie to Abdurrahman Wahid, a Muslim cleric from Nahdlatul Ulama, one of the most popular Islamic mass organisations in Indonesia. Wahid was counted among the influential civilian leaders who rose to prominence in the transition to *Reformasi*.<sup>63</sup> His political capital, however, was lacking. He claimed the presidential seat through the support of other political parties and since he was considered as an outlier in Indonesian politics during *Orde Baru*, Wahid was unable to produce significant reform, including taking control of the military that was opposing the idea of civilian supremacy over the military.<sup>64</sup> This further affected the investigation process of human rights cases in Indonesia, including the East Timor crisis.

The demand for Indonesia's accountability for the East Timor crisis began when Mary Robinson from the United Nations High Commissioner for Human Rights received preliminary reports on the East Timor situation that connected the Indonesian military with the militias in propagating East Timor's humanitarian crisis. Robinson said that the military "orchestrated the tension, and is very much involved in terrorizing the population". She then argued that an international commission should be created to investigate the East Timor violence "as a step toward assuring accountability for the grave violations committed in the territory",<sup>65</sup> and called for the prosecution of the military officials who allegedly committed human rights crimes in East Timor. Following the visit of the UN Human Rights Commission to Darwin and Jakarta in the second week of September 1999, the UNSC adopted Resolution 1264 on 15 September 1999, where the UNSC "authorized the

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<sup>62</sup> Mohammad Bakir and Lily Yulianti, "Berawal dari Penolakan Pidato Habibie...," *Kompas*, 1 November 1999.

<sup>63</sup> Abdurrahman Wahid, Amien Rais, Megawati Sukarnoputri and Sultan Hamengkubuwono, were listed as the influential group that took a moderate position during *Reformasi* period. Unlike the students that demanded radical reforms, Wahid's group, through the Ciganjur Agreement declared on 10 November 1998, gave their support to Habibie and his government to start reforming the country. See: Donald L Horowitz, *Constitutional Change and Democracy in Indonesia* (Cambridge: Cambridge University Press, 2013); Mikaela Nyman, *Democratising Indonesia: The Challenges of Civil Society in the Era of Reformasi*, vol. 49 (Copenhagen: Nias Press, 2006); Olle Tornquist, "Dynamics of Indonesian Democratisation," *Third World Quarterly* 21, no. 3 (2000); Crouch, *Political Reform in Indonesia after Soeharto*.

<sup>64</sup> See: Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi*.

<sup>65</sup> The Jakarta Post, "Robinson Zeros in on Alleged Rights Abuses," 14 September 1999.

establishment of a multinational force,” highlighted “Indonesia’s continuing responsibility under the Agreements of 5 May 1999” and demanded that Indonesia bring the perpetrators to justice.<sup>66</sup>

President Habibie was compliant in his response to the international demands. In a telephone call between him and the UN Secretary-General, Kofi Annan, he expressed “[Indonesians’] readiness to accept international peacekeeping forces from friendly nations to restore peace and security in East Timor”.<sup>67</sup> He also conveyed his approval of Robinson’s suggestion to create a fact-finding body in a meeting on 12 September 1999. According to Marzuki Darusman, Komnas HAM’s commissioner who accompanied Habibie at the meeting, the President stated that an investigative body “should be considered”.<sup>68</sup> Habibie did not specify what kind of fact-finding organisation he meant, but he referred the issue to Komnas HAM and the Ministry for Justice.

The government followed up the meetings with the UN higher officials by taking preventive actions in the hope that the East Timor would not escalate to the level of the international response to the Yugoslavia or the Rwanda crises. Its first step was the establishment of *Komisi Penyelidik Pelanggaran HAM di Timor Timur*-KPP HAM (Human Rights Violations Investigatory Commission in East Timor) on 23 September 1999, just before the UN Commission on Human Rights held a special session to discuss the East Timor crisis in Geneva. The immediate step that Indonesia took to avoid the trial of the East Timor crisis in an international forum was described by Roichatul Aswidah, a former Komnas HAM commissioner:

At that time, there was a strong indication that the East Timor case will be discussed in a special session or meeting in the United Nations, which could lead to the formation of a special tribunal like what happened in Yugoslavia or Rwanda. *Pak* Hassan, who was our UN representative in Geneva tried his best to stop that from happening. He and the Ministry of Foreign Affairs then contacted Komnas HAM on how to deal with this matter inside the country. I remember *pak* Muladi from the Ministry of Law was also present in the discussion. That was when the idea to establish a judicial mechanism to handle serious human rights crimes (*i.e.* genocide and crimes against humanity) was proposed, including giving Komnas HAM the authority to conduct the investigation.<sup>69</sup>

In the beginning of the Commission on Human Rights’ meeting, Hassan Wirajuda, the Permanent Representative of Indonesia to the United Nations in Geneva, stated Indonesia’s objection regarding the nature of the special session:

(Indonesia) said the special session was not in compliance with the Economic and Social Council charter, as the decision to hold the meeting did not take due consideration of the deadline required to obtain a majority by member States. The fact that the meeting was being held raised in question the impartiality of the special session. The notion of impartiality, objectivity and adherence to the rules of procedure should

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<sup>66</sup> United Nations, "Resolution 1264 (1999)," ed. UN Security Council (1999).

<sup>67</sup> The Jakarta Post, "Indonesia 'Invites' UN Forces," 13 September 1999.

<sup>68</sup> "Robinson Zeros in on Alleged Rights Abuses."

<sup>69</sup> Roichatul Aswidah, interview by Yessi Olivia, 22 June, 2016.

be respected by the Commission. In spite of these concerns, the Government of Indonesia was prepared to cooperate.<sup>70</sup>

Nevertheless, the Commission on Human Rights, along with human rights groups like Amnesty International,<sup>71</sup> continued to push the idea of establishing an independent fact-finding commission. At the end of the special session on East Timor, Resolution 1999/S-4/1 was adopted. An international commission of inquiry was set up with the responsibility as follows:

...to gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions, and to make the report of the international commission of inquiry available to the Security Council, the General Assembly and the Commission at its fifty-sixth session.

The Resolution 1999/S-4/1 also demanded that Indonesia, through its Human Rights Commission, Komnas HAM, assure that “the persons responsible for acts of violence and flagrant and systematic violations of human rights are brought to justice”.<sup>72</sup>

Indonesia was not alone in its opposition as countries like Bangladesh, Bhutan, China, India and Japan also voted against the establishment of the International Commission of Inquiry on East Timor (ICIET).<sup>73</sup> Wirajuda, who was interviewed after the Commission on Human Rights meetings, said that Indonesia’s national commission of inquiry was sufficient to undertake the same tasks that the ICIET had been charged with. He also claimed that Indonesia’s legal human rights instruments were appropriate to handle the East Timor case: “Such legal action could be implemented in East Timor. That is why Indonesia has the ability to carry out the international commission’s duty. In addition, we are also ready to cooperate with the international community.”<sup>74</sup> In a similar tone, Muladi, the Minister for Justice/State Secretary stated that the “UN Human Rights Commission plan was not binding for the government.” Muladi also added that Habibie expressed Indonesia’s disagreement with the formation of ICIET to Annan and assured him that Indonesia’s national commission of inquiry would finish its work “within two or three months”.<sup>75</sup>

Indonesia’s investigative team on East Timor, KPP-HAM, was inaugurated on 7 October 1999. The team consisted of members of Komnas HAM, such as Asmara Nababan, and those with international reputations as human rights defenders, such as Todung Mulya Lubis and Munir.

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<sup>70</sup> " Commission on Human Rights Opens Special Session on East Timor," 1999, United Nations, accessed 3 December 2017, <http://www.un.org/press/en/1999/19990924.hrcn975.doc.html>

<sup>71</sup> Amnesty International, "Open Letter to all members of the Commission on Human Rights from Amnesty International's Secretary General, Pierre Sané," news release, 21 September, 1999.

<sup>72</sup> OHCHR, "Commission on Human Rights Resolution 1999/S-4/1," (1999).

<sup>73</sup> United Nations, "Commission on Human Rights Report on the Fourth Special Session (23 - 27 September 1999)," ed. Economic and Social Council (Geneva: United Nations, 1999).

<sup>74</sup> BBC, "Indonesia Not Bound by UN Rights Commission Resolution, Official Says," *BBC*, 28 September 1999.

<sup>75</sup> The Jakarta Post, "Government Shifts Stance on UN Probe," 30 September 1999.

According to Dillon, as quoted in Mizuno, the inclusion of people like Lubis and Munir was intended to mitigate the perception that Komnas HAM was not neutral in the case of the East Timor referendum (Nababan objected to this assumption).<sup>76</sup> On the following day, the Habibie administration adopted *Peraturan Pemerintah Pengganti Undang-Undang (Perpu) No. 1 tahun 1999 tentang Pengadilan Hak Asasi Manusia* (Government Regulation in Lieu of Law No. 1/1999 regarding Human Rights Court). Among the provisions regulated in *Perpu* 1/1999 was the appointment of Komnas HAM as the sole institution to investigate cases of human rights abuses (Article 10). *Perpu* 1/1999 also granted Komnas HAM the authority to establish an ad hoc team if it was deemed necessary. The *Perpu*, however, applied a non-retroactive principle, where past human rights abuses that occurred before the law was signed would be tried by using Indonesia's penal code (Article 25).<sup>77</sup> This law later turned out to be problematic as it could not be used to prosecute the defendants in the East Timor case.<sup>78</sup> Nevertheless, as suggested by Darusman, *Perpu* 1/1999 was part of the effort to anticipate the findings from the UN's commission of inquiry, which, according to him, had the potential to instigate an international tribunal.<sup>79</sup>

Despite initial doubts about its capability to undertake an independent investigation,<sup>80</sup> KPP-HAM released what was considered to be a "powerful" report on 31 January 2000.<sup>81</sup> The praise that KPP-HAM received was related to the report's findings that there was involvement of high-ranking officials in the violation of human rights in East Timor—a claim that would have been impossible to publish during the *Orde Baru* period. The announcement of KPP-HAM's report was attended by Komnas HAM commissioners and Indonesia's Attorney General, Marzuki Darusman, to whom the report was handed.<sup>82</sup> Below are some of the findings made by KPP-HAM on the case of East Timor.<sup>83</sup>

19. From the facts gathered, it is very clear there was a relationship between the pro-integration militias and the military. Most of the leadership and core cadre were former members of the community security forces such as *Kamra* [People's Security, *Wanra* People's Defense, *Garda Paksi*, *Hansip* [civil guard that

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<sup>76</sup> Kumiko Mizuno, "Indonesian Politics and the Issue of Justice in East Timor," in *Governance in Indonesia: Challenges Facing the Megawati Presidency*, ed. Anthony L. Smith and Han Mui Ling (Singapore: ISEAS, 2003).

<sup>77</sup> Presiden Republik Indonesia, "Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 1999 tentang Pengadilan Hak Asasi Manusia," (1999).

<sup>78</sup> International Crisis Group, "Indonesia: Impunity Versus Accountability for Gross Human Rights Violations," (International Crisis Group, 2001). KPP-HAM investigated crimes that took place in East Timor between January-September 1999, meanwhile *Perpu* 1/1999 was issued by President Habibie on 8 October 1999. *Perpu* 1/1999 was then rejected by members of the parliament on March 2000

<sup>79</sup> The Jakarta Post, "Government Shifts Stance on UN Probe."

<sup>80</sup> Mizuno, "Indonesian Politics and the Issue of Justice in East Timor."

<sup>81</sup> Suzannah Linton, "Indonesia and Accountability for Serious Crimes in East Timor," in *International Criminal Law* ed. M. Cherif Bassiouni (Leiden: Koninklijke Brill NV, 2008), 399.

<sup>82</sup> ANTARA, "E Timor's Inquiry Team Names Wiranto in Recommendations to Attorney General's," 31 January 2000.

<sup>83</sup> KPP-HAM, *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia di Timor Timur*. with the English translation taken from KPP-HAM (translator: UNSW School of Humanities and Social Sciences), "KPP-HAM Executive Summary Report on the investigation of human rights violations in East Timor," (2000).

worked with the army] and members of the army itself. They were trained and armed with weapons that included SKS, M16, Mauser, G-3, grenades and pistols and left over Portuguese rifles. From witness testimony received by KPP-HAM, arms were supplied to the militias by the Commander of *Tribuana* Unit and Commander of *Suai* military district. The relationship was seen also in the joint operations and patrols.

22. Based on facts, documentation, information and witness testimony, KPP-HAM not only found actions that could be classified as gross human rights violations for which the state is responsible, but also found evidence of crimes that could be classified as crimes of universal jurisdiction. These crimes included systematic and mass murder; extensive destruction, enslavement, forced deportations and displacement and other inhumane acts committed against the civilian population.

32. KPP-HAM forced its attention on a number of primary cases during the period from January 1999 to October 1999. These cases include: the massacre at the Liquica Church on April 6; the kidnapping of 6 Kailako, Bobonaro villagers on April 12; the murder of a civilian in Bobonaro; the attack on Manuel Carrascalao's home on April 17; the attack on the Dili Diocese on September 5; the attack on the house of Bishop Belo on September 6; the burning of people's homes in Maliana on September 4; the attack on the Suai Church complex on September 6; the murder at the Maliana Police Headquarters on September 8; the murder of the Dutch journalist, Sander Thoenes, on September 21; the murder of a group of priests and journalists in Los Palos on September 25; and acts of violence against women.

60. KPP HAM was able to gather facts and evidence that strongly indicates a planned, systematic, wide-scale and gross violation of human rights, mass murders, torture and ill-treatment, disappearances, violence against women and children (including rape and sexual slavery), forced evacuation, property destruction and implementation of a scorched-earth campaign, all of which constitute crimes against humanity.

The names of the potential suspects disclosed in KPP-HAM's report included high profile figures, including Wiranto, who was the commander of Indonesia's armed forces at the time the crisis erupted; the former governor of East Timor, Abilio Soares; the former Security Advisor to the Indonesian Task Force for the Implementation of the Popular Consultation in East Timor, Major General Zacky Makarim; the former commander of Bali-based military area (*Pangdam IX Udayana*), Major General Adam Damiri; to the former pro-integration militias like Erico Gueteres. KPP-HAM's argument to implicate Wiranto, who served as President Wahid's Coordinating Minister for Political, Legal and Security Affairs, was based on the assumption of "guilty by omission".<sup>84</sup>

74. All crimes against humanity in East Timor, directly or indirectly occurred because of the failure of the Armed Forces Commander to guarantee security during the implementation of the announcement of the two options by the government. The police structure which, at the time, was still under the command of the Defence Ministry had already weakened the ability of the police force to carry out its security duties based on the New York agreements. In view of this, Armed Forces General Wiranto as Armed Forces Commander is the party that must be asked to bear responsibility.<sup>85</sup>

As explained by Albert Hasibuan, who was the head of KPP-HAM: "Gen. Wiranto was aware of the situation in East Timor, but he didn't take any effective action to stop the (human rights)

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<sup>84</sup> Victor Tjahjadi, "Indonesian Military Chief Named in Timor Violence Report," *Agence France-Presse*, 31 January 2000.

<sup>85</sup> KPP-HAM, *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia di Timor Timur*.

violations.”<sup>86</sup> Wahid, who was on an international trip at that time, advised Wiranto to resign and promised to formalise Wiranto’s resignation when he returned to Indonesia on 13 February 2000.<sup>87</sup>

In its recommendation, KPP-HAM suggested that the Indonesian government delegate the investigation to the Attorney General, to set up a special court to try the perpetrators, and to improve Indonesia’s legal system through the adoption of international human rights instruments.<sup>88</sup>

76. Requests the Attorney General to conduct investigations into the perpetrators suspected of involvement in serious human rights violations, especially but not limited to those named in the conclusions above.

78. Requests the parliament and the government to form a Human Rights Court with the authority to try the perpetrators of human rights violations and crimes against humanity relating to national and international law (Human Rights and Humanitarian Law). The Human Rights Court in question must have the authority to try human rights violations occurring in the past as well as those that have occurred in East Timor to the present.

79. Requests the Government to immediately ratify international human rights instruments that are important to the upholding of human rights in Indonesia including, but not limited to, the Covenant on Civil and Political Rights and the First Optional Protocol.

The UN investigation team, ICIET also released its report at the same time as the publication of KPP-HAM’s report. ICIET’s work began in November 1999, not long after Abdurrahman Wahid was elected as the third president of Indonesia. ICIET’s findings also bore similarities to KPP-HAM’s investigation in which violations of human rights took place in East Timor since January 1999:<sup>89</sup>

116. The International Commission of Inquiry appreciates having been able to establish close cooperation with the Indonesian National Commission of Inquiry on East Timor. The International Commission of Inquiry benefited from the information and insight shared with it by the Indonesian National Commission. The preliminary findings made by the Indonesian National Commission regarding the involvement of some elements of the TNI in the violations of human rights committed in East Timor are similar to the findings made by the International Commission of Inquiry.

142. There is no doubt that the evidence gathered clearly demonstrates a pattern of serious violations of fundamental human rights and humanitarian law in East Timor. The violations include, but are not limited to, violations of the rights to life and to freedom from torture, cruel, inhuman or degrading treatment or punishment, violence against women, and violations of rights relating to freedom of assembly, association, opinion and expression, freedom from arbitrary arrest and exile, and freedom of movement and residence, and the right to own property. In addition, and particularly after the proclamation of the results of the consultation, further human rights were violated through the large-scale destruction, including the right to work, the right to an adequate standard of living, including food, clothing, housing and medical care, and the right to education.

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<sup>86</sup> Raphael Pura, "Wiranto Blamed For the Violence In East Timor --- President Wahid Urges Army Chief to Resign From His Cabinet Post," *The Asian Wall Street Journal*, 1 February 2000.

<sup>87</sup> ANTARA, "Human Rights Watch Hails President's Stance Over Wiranto," 3 February 2000.

<sup>88</sup> KPP-HAM, *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran Hak Asasi Manusia di Timor Timur*.

<sup>89</sup> ICIET, "Report of the International Commission of Inquiry on East Timor," (United Nations Office of the High Commissioner for Human Rights, 2000).

In one of its recommendations, the international commission suggested that the United Nations form a special body to carry out further investigation and to form an international human rights tribunal.<sup>90</sup>

153. The United Nations should establish an international human rights tribunal consisting of judges appointed by the United Nations, preferably with the participation of members from East Timor and Indonesia. The tribunal would sit in Indonesia, East Timor and any other relevant territory to receive the complaints and to try and sentence those accused by the independent investigation body of serious violations of fundamental human rights and international humanitarian law which took place in East Timor since January 1999 regardless of the nationality of the individual or where that person was when the violations were committed

The investigations of ICIET and KPP-HAM took place when the only regulation that Indonesia had to try serious human rights crimes was the Government Regulation in Lieu of Law regarding Human Rights Court (*Perpu No. 1/1999*), a product of the Habibie administration. This regulation was deemed problematic because it could only be used to prosecute crimes that took place after 8 October 1999 (both fact-finding teams focused their investigations starting from January 1999). This matter was discussed in a meeting between ICIET, KPP-HAM, and Indonesia's Attorney General in December 1999. Marzuki Darusman as the Attorney General assured the UN fact-finding commission that a new law "was under preparation" and "hoped that the new statute would address them to ensure justice to the East Timorese people."<sup>91</sup>

### **3.4 Responses to the Investigation Reports Made by KPP-HAM and ICIET**

Responses to the investigations on human rights abuses allegations in East Timor were mixed. On one side, there was a lot of praise directed to KPP-HAM and Komnas HAM. Mary Robinson from the UN human rights commission, for example, called the work of KPP-HAM "an important step in establishing accountability for the serious and widespread violations of human rights committed in that territory".<sup>92</sup> When president Wahid called for Wiranto's resignation after the publication of KPP-HAM's investigation, the UN Secretary-General, Kofi Annan, applauded Wahid's decision: "I think what is important is that we have engaged in a judicial process and I am personally pleased with [what steps] the Indonesian government has taken on the responsibility of ensuring that those responsible for the atrocities in East Timor will be made accountable and be brought to trial."<sup>93</sup> Fortunately for Indonesia, these developments were enough to sway the UN Secretary-General from

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Agence France-Presse, "Mary Robinson Hails Report into Timor Rights Abuses," *Agence France-Presse*, 31 January 2000.

<sup>93</sup> Victor Tjahjadi, "UN Secretary General Praises Wahid for Dropping Wiranto," *ibid.*, 15 February.

enacting the UN fact-finding recommendations. It was reported that Annan would not seek to establish another UN inquiry body to further investigate the East Timor case.<sup>94</sup>

From within Indonesia, responses to the crisis and the inquiry on human rights abuses in East Timor were entangled with the power politics of the transitional period that involved actors from competing ends of the political spectrum: the status quo, the moderates and the reformists. Following the result of the East Timor referendum, Abdurrahman Wahid replaced Habibie as the President in October 1999. Habibie passed on enormous tasks to President Wahid that he had not yet resolved, from the economic crisis to the deteriorating security problems in several places such as Aceh, Maluku Islands, Papua and East Timor.<sup>95</sup> For Wahid himself, the task of taking over the East Timor investigation had placed him in a difficult position with the military. Before he became the president, Wahid had been known as a “proponent of democratic values and religious tolerance”. His leadership, with Megawati Sukarnoputri as Vice President, was expected to bridge the gap between the “Muslim and secular constituencies”.<sup>96</sup> However, President Wahid ruled at a time where the military doubted civilian leadership.<sup>97</sup> This behaviour was a result of the involvement of the military in government and public offices for more than three decades as part of Suharto’s effort to gain favour from the military.<sup>98</sup> In addition, Wahid did not have the political capital to overpower the military as he was in debt with military elites for their support in the presidential election in 1999 (it was suggested that the TNI/Polri faction in the parliament was told to give their votes to Wahid, not to Megawati).<sup>99</sup>

Among Wahid’s first foreign policy tasks was to respond to the investigation report on the humanitarian crisis in East Timor released by the UN fact-finding teams. True to his promise to

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<sup>94</sup> Stephen Romei, "Indonesia Unable to Prosecute - UN," *The Australian*, 2 February 2000.

<sup>95</sup> The Norwegian Research Council reported that Indonesia’s economic and political crisis that took place in 1998 triggered the rise of ethnic tensions and separatism in the country, which then resulted in the displacement of several thousands of people. For East Timor, the NRC counted that the post-referendum conflict had created 740,000 people displaced and approximately 240,000 IDP were located in West Timor and other places in Indonesia. See: "NRC Update: Internal Displacement in Indonesia & East Timor: New Profile Summary," 2001, Norwegian Refugee Council, accessed 16 July 2018, <https://reliefweb.int/report/indonesia/nrc-update-internal-displacement-indonesia-east-timor-new-profile-summary>

<sup>96</sup> Ann Marie Murphy, "Indonesia and the World," in *Indonesia: The Great Transition*, ed. John Bresnan. (Lanham: Rowman & Littlefield Publishers, 2005), 266.

<sup>97</sup> Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi*.

<sup>98</sup> See: Crouch, "Patrimonialism and Military Rule in Indonesia."

<sup>99</sup> Honna, *Military Politics and Democratization in Indonesia*. Unlike the direct presidential election in 2004, the 1999 presidential election was done through a vote in parliament (DPR). Wahid was the leader of PKB (*Partai Kebangkitan Bangsa*, National Awakening Party) that received 12% of the total votes in the parliamentary election. With such a result, PKB gained third place after PDI-P (*Partai Demokrasi Indonesia Perjuangan*, Indonesian Democracy Party-Struggle) with 34%, Golkar (*Golongan Karya*, Functional Groups) with 12% of the total votes. Wahid entered the presidential race with the supports coming from Muslim political parties organized by PAN (*Partai Amanat Nasional*, National Mandate Party) and PPP (*Partai Persatuan Pembangunan*, Development Unity Party). His contenders were Megawati Sukarnoputri from PDI-P, who later served as Wahid’s Vice President. See: Liddle, "Indonesia in 1999: Democracy Restored."

object to the establishment of an international tribunal,<sup>100</sup> Wahid assured the United Nations that Indonesia did not suffer from inadequate law enforcement to handle the East Timor case.<sup>101</sup>

(a) The alleged violations of human rights referred to in the report of the International Commission were committed in East Timor when it was still an integral part of the territory of the Republic of Indonesia. For this reason alone, Indonesian laws are the only laws applicable to those violations and the Indonesian judicial mechanism is the exclusive mechanism for bringing the perpetrators of the violations of human rights to justice;

(b) The national judicial mechanism of the Republic of Indonesia is functioning and capable of dispensing justice – in contrast with the case of the International Criminal Tribunals established for the former Yugoslavia and Rwanda;

(c) It is necessary that the international community should respect the principle of exhaustion of national remedies, a principle of international law that is consistently upheld;

(d) The degree and extent of the alleged violations of human rights as cited in the report of the International Commission do not justify the establishment of an international human rights tribunal;

(e) The establishment of an international human rights tribunal will only create obstacles to the realization of the commitment of the leaders of Indonesia and Timor Lorosae to promote friendly relations between the two countries and reconciliation between their peoples, and thereby contribute to the peace and stability of the region.

What had then caused a rift between Wahid and the military elites, especially Wiranto, was the accusations towards military officers, including Wiranto, in the KPP-HAM report. Wiranto was the former Commander of Armed Forces during Habibie's presidency who Wahid had appointed as the Coordinating Minister for Political, Legal and Security Affairs.<sup>102</sup> This is a vital job in the President's cabinet because the coordinating minister's main duty is to oversee several ministries such as the Ministry for Home Affairs, Ministry for Foreign Affairs, Ministry for Law, and the Ministry of Defence. In the case of Wiranto's appointment as the Coordinating Minister, his job was significant in Wahid's administration because he was also instructed to select potential ministers for President Wahid's cabinet.<sup>103</sup> In an interview with *Far Eastern Economic Review* before the fact-finding commissions from the UN and Indonesia published their reports in January 1999, President Wahid said that he would ask Wiranto to resign from his position as the Coordinating Minister for Political, Legal and Security Affairs if the report implicated him: "I will

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<sup>100</sup> Edith M. Lederer, "UN May Open E.Timor Crimes Tribunal," *Associated Press*, 22 December 1999.

<sup>101</sup> United Nations, "Letter Dated 26 January 2000 from the Minister for Foreign Affairs of Indonesia to the Secretary-General," ed. General Assembly (2000).

<sup>102</sup> Salim Said, "President Abdurrahman Wahid and the Indonesian Military: The Short Honeymoon," in *Soeharto's Armed Forces Problems of Civil Military Relations in Indonesia*, ed. Salim Said (Jakarta: Pustaka Sinar Harapan, 2006).

<sup>103</sup> Taufik Abdullah, Aidul Fitriadi Azhari, and Wiranto, *Bersaksi Di Tengah Badai: Dari Catatan Wiranto, Jenderal Purnawirawan* (Jakarta: Institute for Democracy of Indonesia, 2003). Wiranto was also responsible for contacting Susilo Bambang Yudhoyono who was asked by president Wahid to become the Minister of Mining and Energy. According to Yudhoyono's biography, Wahid's offer was difficult for him to decide because accepting the bid would mean that he had to resign from his job as the Chief of the Army's Social and Political Affairs. See: Usamah Hisyam et al., *SBY Sang Demokrat* (Jakarta: Dharmapena Publishing, 2004).

call him and say I heard about this report and the conclusions that you are implicated. Because of this, it is better to save the institution, the Indonesian Armed Forces, so you have to resign.”<sup>104</sup>

Wiranto at first rejected the KPP-HAM findings and criticised KPP-HAM for naming him as the one who was responsible for the East Timor crisis:

The National Human Rights Commission blamed me for everything that happened in East Timor. I never ordered my soldiers to kill our countrymen in East Timor. Remember that during that transition period, East Timor was still under Indonesian authority. It means that the East Timor people were also Indonesians. Of course, I am very disappointed when the KPP-HAM accused me of doing such things. I did not commit any kind of crime. I never gave orders to the soldiers to kill people. In fact, I asked them to fully support the conduct of the referendum. I never gave orders to my soldiers to burn houses and public facilities in East Timor. There is not a single shred of evidence against me. In fact, if the independent commission had a clear mind, they would not have come to that kind of conclusion. The problem is that they have a predisposition against the TNI. This is not only against me but also against the TNI as an institution.<sup>105</sup>

In one of his books that detailed his experience in East Timor, Wiranto also objected the claim that the military was behind the pro-integration militia:

It is unfortunate that after what we have done to support the peace process in East Timor, the military was still blamed [for the fallout]. One of the accusations that keep coming back is that the military was arming the militias or that TNI was the one that masterminding every armed violence. I say that the allegation is not true and based on a factless assumption.<sup>106</sup>

In addition to the conflict at the military elite's level, the East Timor case had also created tension between supporters of the military and those who wanted to hold the military accountable.<sup>107</sup> Lubis, one of the KPP-HAM members, recalled his hesitance in joining KPP-HAM due to the tense atmosphere at that time:

The problem is whether the destiny of KPP-HAM would be similar to other inquiry and investigative commissions, the independent commission for Aceh, where there was no follow up. [Joining KPP-HAM] was like a suicide mission. That is why we went to see Gus Dur [president Wahid] and asked for his assurance of our works. If he did not support us, KPP-HAM will suffer from the lack of legitimacy and no one will believe any future commission set up by the government. And do not blame us if CIET made a recommendation for the establishment of an international court.<sup>108</sup>

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<sup>104</sup> Nayan Chanda and John McBeth, "Wahid Promises to Shake Up the Brass," *Far Eastern Economic Review*, 3 February 2000, 11.

<sup>105</sup> The Straits Times, "Words of Wiranto," 11 February 2000. In several publications, Wiranto defended himself (and TNI/Polri) from the accusation that he was responsible for causing humanitarian crisis in the post-referendum East Timor. He criticized KPP-HAM for going too far in denouncing TNI and forgetting its main role as the inquirer not as prosecutor. Wiranto also claimed that KPP-HAM was only concerned with the pro-independence groups and disregarded the pro-integration supporters. He assumed that KPP-HAM was not a neutral body since it was formed hastily to deter the international pressure, thus its members were not carefully selected. See: Aidul Fitriadi Azhari, *Selamat Jalan Timor Timur Pergulatan Menguak Kebenaran* (Jakarta: Ide Indonesia, 2002); Abdullah, Azhari, and Wiranto, *Bersaksi Di Tengah Badai: Dari Catatan Wiranto, Jenderal Purnawirawan*.

<sup>106</sup> Azhari, *Selamat Jalan Timor Timur Pergulatan Menguak Kebenaran*, 148-49.

<sup>107</sup> Marzuki Darusman, interview by Yessi Olivia, 7 September, 2016.

<sup>108</sup> Todung Mulya Lubis, *Dari Kediktatoran sampai Miss Saigon : Sebuah Kumpulan Wawancara dengan Todung Mulya Lubis* (Jakarta: Gramedia Pustaka Utama, 2009).

Meanwhile, the pro-military groups questioned the credibility of KPP-HAM. Yuddy Chrisnandi, for example, distrusted KPP-HAM's findings, which he believed to be misleading and unfair to TNI:

[We] should question the KPP-HAM report. Considering that its findings contradicted the report of ICRC that there were no indication that murders or human rights abuses occurred as claimed by foreign press, especially from Australia. In addition, many of information that KPP-HAM collected came from unreliable sources. This one-sided and a very subjective investigation has become more conspicuous with the ban of the TNI advocate team led by Adnan Buyung Nasution by the Commander of INTERFET Peter Cosgrove. Meanwhile, KPP-HAM, whose role and function have resembled a judicial institution, was allowed to enter the region.<sup>109</sup>

Chrisnandi, and other people who defended the military on the case of East Timor violence, suspected that KPP-HAM was part of ploy by the West to discredit Indonesia. As argued by Yudi Latif:

Western countries often used human rights issues as a political tool [to target developing countries]. The investigation of human rights violations in East Timor could not be separated from the interest of the West. At the same time, through the East Timor investigation, Indonesia is looking to draw the support of [Western government]. More than that, the government wanted to weaken the influence of the military.<sup>110</sup>

Some hardliner groups, like *Front Pembela Islam* (FPI), even accused KPP-HAM of being biased against Muslim officers, since the accused officers were mostly Muslims: "The limitation of the investigation of KPP-HAM to 'after referendum' demonstrates that this was a political stunt to entrap several Muslim generals that lately has been involved with *ulema* and *da'wah* activities."<sup>111</sup>

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<sup>109</sup> Yuddy Chrisnandi, *KPP HAM Bukan Pengadilan HAM: Catatan Kritis atas Kinerja KPP HAM* (Jakarta: Yayasan Kebangsaan Bersatu, 2000), 29. Chrisnandi's writing indicates that he is in favour of the military/Wiranto. However, many of his claims in the book are not supported with references, which affects the credibility of his assertions. For example, the comment that he made on the ICRC denying allegations of human rights abuses is contentious since in the UN investigation report, it was described that militia and TNI attacked the ICRC compound where thousands of IDF took refuge. ICRC as the only international humanitarian group working in East Timor had also suffered disruption from the abduction of its employees to the expulsion of the organization after the result of the referendum came in. See: ICRC, "East Timor: ICRC returns to Dili," news release, 16 September, 1999, <https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/57jpzj.htm>; Reuters, "ICRC Says Lack of Security Hampers East Timor Aid," 23 September 1999; ICIET, "Report of the International Commission of Inquiry on East Timor." Regarding to the ban of the military advocate team entering East Timor, it is worth mentioning that for the pro-military groups had been used this argument to point out the partiality of KPP-HAM. What they have probably missed is the roles given to KPP-HAM under the law (as explained later in the discussion). Moreover, given the highest point of anti-Indonesian sentiment was after the referendum, it was less likely that the TNI advocate team would be able to gather the information that they were seeking. InterFET, the UN peacekeeping taskforce, was using this security reason for not allowing Adnan Buyung and his team to enter East Timor. See: The Jakarta Post, "Generals' Lawyers Denied Entry to E. Timor," 18 December 1999.

<sup>110</sup> Forum Peduli Persatuan dan Kesatuan Bangsa, ed. *Mereka Bicara Soal KPP-HAM Tim-Tim: Konspirasi Jatuhkan TNI & Disintegrasi?* (Jakarta: Forum Peduli Persatuan dan Kesatuan Bangsa, 2000), 90-91.

<sup>111</sup> *Ibid.*, 69. This statement was made on 5 January 2000, long before KPP-HAM announced its findings at the end of January 2000. In contrast to the claim made by FPI, KPP-HAM detailed that the scope of its investigation would be limited to January 1999 until October 1999. The relationship between Muslim hardliner groups with some military elites in post-Suharto Indonesia was rooted back in the late 1980s when the military was divided between those who pursued reform and those who remained loyal to Suharto—the split between the military was initially influenced by religious differences. Prabowo, a former military officer and Suharto's former son-in-law, led the group that supported Suharto. He was one of the military officers who pioneered the alliance with some of the radical Muslim groups. This type of coalition became stronger after Suharto's resignation when these hardliner group were used by the military elites to rally against their political adversaries. FPI, in this case, has been known to be supported by Wiranto and several of Habibie's inner circle. During the height of the East Timor investigation, FPI was involved in several provocative

What was interesting in the follow up to the KPP-HAM report was the split between Indonesia's human rights activists regarding the appointment of Adnan Buyung Nasution as the head of the advocacy team for the military. Nasution was known as one of the pioneers of human rights advocacy in Indonesia who was vocal against the government and the military. His decision to defend the military had caused a rift between him and his colleagues at the Indonesian Legal Aid Foundation (YLBHI). Some members demanded he step down from the advisory board, while other members argued that, as a lawyer, Nasution had the right to choose his own clients.<sup>112</sup> In his insistence to defend the military, Nasution was stand in the opposite corner to his colleagues like Albert Hasibuan, Todung Mulya Lubis and Munir, who served as the members of KPP-HAM. In his autobiography, Nasution criticised his counterparts at KPP-HAM for being unable to produce a qualified investigation because of their inadequate skills as investigators.<sup>113</sup> Regarding KPP-HAM's findings, Nasution stated that:

The list of generals mentioned in the KPP-HAM report is a violation of the presumption of innocence. According to that principle, someone cannot be called guilty of wrongdoing until the court gives its final decision. The listing made by KPP-HAM is clearly an arbitrary act that is not supported by law, from the Law of Human Rights 1999, the Government Regulation in Lieu of Law regarding Human Rights Court, even Indonesia's Penal Code. KPP-HAM has intentionally declared the officers guilty. They have abused their power, violated the supremacy of law, and violated the rights of the military officers. I also emphasize here that the release of the KPP-HAM report is a trial by the press by announcing it to the public.<sup>114</sup>

Not only that, KPP-HAM also received criticism from the DPR. In a meeting with DPR's Commission I, KPP-HAM was bombarded with questions regarding its investigations in East Timor, from its decision to disclose the names of those who were allegedly involved in the East Timor violence, its easy access to East Timor, and its decisions to only investigate human rights abuses which occurred after the referendum. In his response, the Chairman of Komnas HAM defended its inquiry commission by stating that the decision to name the alleged perpetrators was a decision from the plenary session of Komnas HAM as the highest authority in the human rights

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demonstrations against KOMNAS HAM. For more explanation on the relationship between military elites and radical Islam groups in the post-Suharto Indonesia, see for example: Adam Schwarz, *A Nation in Waiting: Indonesia's Search for Stability* (Boulder: Westview Press, 2000); Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000); Verena Beittinger-Lee, *(Un) Civil Society and Political Change in Indonesia: A Contested Arena*, vol. 2 (London: Routledge, 2009); Robert W. Hefner, "Muslim Democrats and Islamist Violence in Post-Soharto Indonesia," in *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. Robert W. Hefner (Princeton: Princeton University Press, 2005).

<sup>112</sup> The Jakarta Post, "Buyung Faces Dismissal from YLBHI's Board of Trustees," 21 December 1999.

<sup>113</sup> Not all of the KPP-HAM investigators had a qualified background of law; only few of them obtained criminal law or international law degrees. In addition, many of the investigators from KOMNAS HAM lacked the qualification as a *pro justitia* inquirer. See: Enny Soeprapto, "Towards a More Effective Pro Justitia Inquiry of Gross Violations of Human Rights," ed. Komnas HAM (Jakarta 2004).

<sup>114</sup> Adnan Buyung Nasution, Ramadan K.H., and Nina Pane, *Adnan Buyung Nasution Pergulatan Tanpa Henti Pahit Getir Merintis Demokrasi* (Jakarta: Aksara Karunia, 2004).

commission. He also argued that the inquiry commission was working under a specific time limit and cannot investigate cases outside the given dates.<sup>115</sup>

Aside from the political motives, the backlash against the result of the East Timor referendum in general, and the human rights abuses investigation in particular, demonstrated the lack of understanding of the Indonesian people about East Timor. Part of the reason was that the area was dominated by the military and the seclusion had caused misinformation to spread across Indonesia about what actually happened in East Timor.<sup>116</sup> As a result, the rest of the Indonesian people, especially its elites and the media, did not respond well to the anti-Indonesian sentiment. As observed by Harold Crouch, the Indonesian elites seemed to underestimate the opposition movement, which they saw as stemming from only “a noisy urban minority” in East Timor.<sup>117</sup> Meanwhile, Herbert Feith argued that the Indonesian media was actually aware of the growing resentment among the East Timorese, but they assumed that the East Timorese “are sensible enough to realize that Indonesian authority is irreversible—all except a tiny minority of foreign-influenced troublemakers”.<sup>118</sup> This is why, when the result of the referendum in 1999 showed that most of the East Timorese opted for independence, most Indonesians reacted negatively towards the East Timorese.<sup>119</sup> President Wahid, for example, was among the Indonesian leaders who reacted strongly against the international community’s condemnation of the violence that broke out after the East Timor referendum. He later changed his view after his daughter, Yenny Wahid, who worked as a journalist for an Australian newspaper, experienced firsthand the deterioration of human rights in East Timor. It was said that his daughter’s firsthand account of the ferocity of the TNI and militia

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<sup>115</sup> ANTARA, "House Commission I Grills E Timor Special Inquiry Team," 9 February 2000.

<sup>116</sup> Most Indonesian people perceived even the history of East Timor quite differently. East Timor was understood not in the context of military occupation, but in the circumstance of Indonesia’s assistance to the region that had undergone a process of separating from Portugal. In the lack of uncertainty coming from the United Nations, East Timor was incorporated to Indonesia in 1976 after the Indonesian military and several political parties in East Timor took power from FRETILIN. Since the occupation, the Indonesian military had focused on fighting the anti-integration groups like FALINTIL, FRETILIN’s military group. The region was opened to people outside of East Timor in the late 1980s after the military claimed to have reduced the number of guerrilla groups. Even then, the lift of travel restrictions to and from East Timor was unable to improve the economy of the region because the locals failed to compete with outsiders. See: Don Greenlees and Robert Garran, *Deliverance: The Inside Story of East Timor's Fight for Freedom* (Sydney: Allen & Unwin, 2003); James Cotton, *East Timor, Australia and Regional Order Intervention and Its Aftermath in Southeast Asia* (London: RoutledgeCurzon, 2004).

<sup>117</sup> Harold Crouch, "The TNI and East Timor Policy," in *Out of the Ashes Destruction and Reconstruction of East Timor*, ed. James J. Fox and Dionisio Babo Soares (Canberra: Anu E Press, 2003), 142. As described in Crouch’s piece, even when East Timor became accessible in the period of *keterbukaan* (openness) in the early 1990s, Indonesian people had not fully grasped the problem of East Timor; the dissatisfaction was regarded as a common thing shared by other Indonesia’s regions.

<sup>118</sup> Herbert Feith, *The East Timor Issue Since the Capture of Xanana Gusmao* (Melbourne: East Timor Talks Campaign, 1993), 11.

<sup>119</sup> See: Syamsul Hadi, *Disintegrasi Pasca Orde Baru: Negara, Konflik Lokal, dan Dinamika Internasional* (Jakarta: Yayasan Obor Indonesia, 2007); Vickers, "Being modern in Bali after Suharto." A more detailed study on the publication of the East Timor crisis by the Indonesian media can be found in Siahaan et al., *Pers yang Gamang: Studi Pemberitaan Jajak Pendapat Timor Timur*.

groups in the post-ballot East Timor in 1999 had influenced President Wahid to pursue military reform.<sup>120</sup>

The criticisms towards Komnas HAM/KPP-HAM could have also been related to the misconception of human rights and the notion that the State, as the entity that holds more power and authority, is responsible to protect and ensure the fulfilment of its citizens' rights. The misunderstanding of human rights is something that had long developed during the *Orde Baru* period where the government regarded human rights as something that was "subversive"<sup>121</sup> and ignored the abuses of human rights committed by its security forces (the military and police).<sup>122</sup> The East Timor case then challenged this old notion and the transitional governments were not equipped to handle the situation. The issuing of *Perpu* No. 1/1999 was one of the examples where the government made a decision, not because of the necessity of human rights protection, but to mitigate the call for the establishment of an international tribunal. This action was not without consequences, as the appointment of Komnas HAM as the investigator of human rights violations (Article 10, *Perpu* No. 1/1999, then in Article 18, Law No. 26/2000) caused a new problem for the human rights commission. As argued by Enny Soeprapto, a former Komnas HAM commissioner:

The reason of why Komnas HAM was chosen [to investigate human rights abuses] because, in the year 2000, people did not trust the law enforcement, they did not believe the police and the attorney general office. In the end, they opted for an independent investigator and handed it to Komnas HAM. They did not think about the implication [of appointing Komnas HAM] that Komnas HAM is actually an institution that is responsible to supervise the law enforcement. Therefore, Komnas HAM has become entangled with overlapping responsibilities<sup>123</sup>

What then became another problem was that not all Indonesian people understood what Komnas HAM/KPP-HAM's mandates were as the investigators. One of the duties of KPP-HAM, as written in Law No. 26/2000, was: "Should the National Commission on Human Rights consider there is sufficient preliminary evidence that a gross violation of human rights has occurred, a summary of the findings of the inquiry shall be submitted to the investigator" (Article 20, para. 1). This provision, according to Soeprapto, was mistaken for KPP-HAM's power to name the suspects in the allegation of human rights abuses. Soeprapto also pointed out that the problem that surrounded KPP-HAM was also rooted in the lack of awareness of the critics that Komnas HAM/KPP HAM is the sole body authorised by law to inquire into gross violations of human rights.<sup>124</sup>

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<sup>120</sup> Greg Barton, *Gus Dur The Authorized Biography of Abdurrahman Wahid* (Jakarta: Equinox Publishing, 2002).

<sup>121</sup> Ifdhal Kasim, interview by Yessi Olivia, 7 June, 2016.

<sup>122</sup> As reported in human rights reports published by human rights groups like YLBHI. See: T. Mulya Lubis and Fauzi Abdullah, *Langit Masih Mendung: Laporan Keadaan Hak-hak Asasi Manusia di Indonesia 1980* (Jakarta: Sinar Harapan, 1981); YLBHI, *Laporan Keadaan Hak-hak Asasi Manusia di Indonesia 1990* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1990).

<sup>123</sup> Enny Soeprapto, interview by Yessi Olivia, 23 June, 2016, Jakarta.

<sup>124</sup> "Towards a More Effective Pro Justitia Inquiry of Gross Violations of Human Rights."

But the most concerning problem in the case of the East Timor investigation was the resistance coming from the military that saw the probe as a retaliation directed at the military as an institution. The conceding of East Timor to the United Nations in 1999 was embarrassing enough for the military, since they had dominated the region for more than two decades.<sup>125</sup> Yet, there was the investigation of Komnas HAM/KPP-HAM on the allegation that they were involved in perpetrating human rights violence that increased the humiliation felt by the military. When, in November 1999, Komnas HAM first announced that the preliminary investigation demonstrated that there was a plausible connection between the military and the militia in perpetrating violence in East Timor, the military reacted very strongly against Komnas HAM and called their claims unfounded. Some of the top military officials even visited Komnas HAM's office to seek clarification of Komnas HAM's statement, which they saw as an effort to denigrate them.<sup>126</sup> The sentiment that the military was being cornered was also reflected in Wiranto's op-ed in 2001:

...human rights enforcement tend to be inconsistent and only focus on a selection of cases that would advantage politically and economically to some political units. Several factors contribute to that matter. Firstly, the conflicts inherited by Orde Baru had driven some political actors, who were repressed in the past regime, to retaliate through human rights instruments... This ambition for retaliation is what makes human rights enforcement has been focused on several cases only.<sup>127</sup>

Wiranto was not specific about who he saw as the political units/actors, but it can be assumed that he was talking about some of Indonesia's civil society groups that were involved in human rights activism during the Suharto years. The euphoria of *Reformasi*, in this case, had become their opportunity for openly promoting the cause of human rights. In his rebuttal to Wiranto's op-ed, Lubis argued that Wiranto had exaggerated his claim that human rights had been used as a tool for retaliation since the government had not been able to solve past human rights abuses in Aceh, East Timor, Papua, or those that took place during the transition to *Reformasi*.<sup>128</sup>

It is argued that the military defiance to the East Timor probe could not be separated from the anxiety of some of the military elites in facing the newly democratised Indonesia. According to Mugiyanto, a human rights activist, "[the military] saw *Reformasi* 1998 as a defeat to their domination; it has overturned their role in modern Indonesia. They then perceived human rights and justice as something that will be used to justify their downfall."<sup>129</sup> This attitude, once again,

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<sup>125</sup> Sebastian, *Realpolitik Ideology: Indonesia's Use of Military Force*.

<sup>126</sup> When, in November 1999, Komnas HAM first announced that the preliminary investigation demonstrated that there was a plausible connection between the military and the militia in perpetrating violence in East Timor, the military reacted very strongly against Komnas HAM and called Komnas HAM's claims unfounded. Some of the top military officials even visited Komnas HAM's office to seek for clarification of Komnas HAM's statement, which they saw as an effort to denigrate them. See: The Jakarta Post, "Generals Protest 'Baseless' Accusations," 16 December 1999; BBC, "Generals Question Human Rights Commission Statements on East Timor," 22 December 1999.

<sup>127</sup> Wiranto, "Konsistensi Penegakan HAM di Indonesia," *Kompas*, 10 Desember 2001.

<sup>128</sup> Todung Mulya Lubis, "Politik Balas Dendam Hak Asasi Manusia?," *ibid.*, 22 December.

<sup>129</sup> Mugiyanto, interview by Yessi Olivia, 12 October, 2016.

reflected the lack of understanding of the notion of human rights and their responsibility as part of the government to protect human rights.

### 3.5 A Progressive Human Rights Court?

The discussion in this section will focus on the formation of Indonesia's human rights court (Law No. 26/2000), which adopted several provisions from the Rome Statute. For Indonesia's legal system, the adoption of Law No. 26/2000 was significant because "it opens the possibility to try past human rights abuses and prompts the legal reforms; it serves as a parameter to measure the seriousness of the government to promote and protect human rights."<sup>130</sup> As mentioned in the introduction, the law on human rights court is important to the discussion because it will pave the way for Indonesia to ratify the Rome Statute of the ICC. This is because the ICC operates on the principle of complementarity where a national court will be prioritised. What will be underlined in this section is that the issuance of this law was inseparable with the domestic politics of the time, from the East Timor probe to the existence of the TNI/Polri faction in the parliament.

Before Law No. 26/2000 was adopted, the Habibie administration had prepared a government regulation, *Perpu* No. 1/1999 in October 1999, to be the foundation to Indonesia's human rights court. However, as critics pointed out, *Perpu* No. 1/1999 contained many legal loopholes. *Perpu* No. 1/1999, for example, failed to stipulate the emergency provisions that were required for certain types of law. Marzuki Darusman from Komnas HAM criticised the court for not having the original jurisdiction, which, thus, allowed other higher courts to review its decisions.<sup>131</sup> *Perpu* No. 1/1999 also contained a non-retroactive provision (Article 24), which means that the human rights court cannot try past human rights abuses that took place before the court was established. As suggested by Benjamin Mangkoedilaga, another Komnas HAM commissioner, the non-retroactive principle in *Perpu* No. 1/1999 will preclude the possibility to try violators of past human rights abuses.<sup>132</sup> Members of the DPR also raised similar concerns and revoked *Perpu* No. 1/1999 in March 2000. Law No. 26/2000 was adopted in November 2000, more than a year after Habibie passed the ill-fated *Perpu* No. 1 in October 1999. Indonesia's law on human rights court consists of ten chapters and forty-five articles that regulate the trial of gross violations of human rights; applies retroactive principle to try past human rights abuses; exercises extraterritorial jurisdiction for crimes that were committed outside of Indonesia; provides Komnas HAM with the authority to investigate; and offers protection mechanisms for victims and witnesses.

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<sup>130</sup> Yustina Trihoni Nalesti Dewi, "Hak Konstitusional Korban atas Pengadilan HAM yang Kompeten, Independen, dan Imparsial," *Jurnal Konstitusi* 11, no. 2 (2013): 258.

<sup>131</sup> Kompas, "Menjelang Pertanggungjawaban Presiden Perpu Peradilan HAM Diterbitkan," 12 October 1999.

<sup>132</sup> "Pemerintah Ajukan Perpu No 1/1999 Yusril Berharap DPR Menolak," 18 December 1999.

The passing of Law No. 26/2000 received mixed response. Some DPR members praised the law because of its progressive nature, where it adopted some of the universal norms and principles that are found in the Rome Statute of the ICC. They also applauded the implementation of the retroactive provisions, which was regarded as a response to the people's demand for past human rights offenders to be held accountable. However, the law was not well received by human rights activists. They pointed out the name of the court which, according to them, was unsuitable. The court was called *Pengadilan Hak Asasi Manusia* (Human Rights Court), but the jurisdictions covered by the Human Rights Court include extraordinary crimes that fall into the category of international crimes. Thus, the more appropriate name for the court should be '*pengadilan pidana*' (criminal court) just as the ICC or the ICTY and ICTR have been named.<sup>133</sup> Soeprapto, for example, argued that there had been an error in categorising genocide and crimes against humanity as '*pelanggaran HAM berat*' (gross human rights violations):

Gross human rights violations are related to the rights to live, they are vehement and affecting human's freedom. But this law limits the scope of gross human rights violations to genocide and crimes against humanity. The law [on human rights court] has muddled things up. It is called Human Rights Court, it is said that its jurisdiction covers gross human rights violations, but the violations mentioned in the law belongs to international crimes. So where the violations of rights that are neither serious nor gross be tried? The Law 39/1999 [Law on Human Rights] fails to mention about this. It has been twenty-seven years [sic] since it was first adopted and not one case of human rights violation has been brought to court because the Law does not specify it.<sup>134</sup>

Meanwhile, *Yayasan Lembaga Bantuan Hukum Indonesia*-YLBHI (Indonesian Legal Aid Foundation) and *Konsorsium Reformasi Hukum Nasional*- KRHN (National Legal Reform Consortium) questioned the limited scope that the court has: crimes against humanity and genocide. YLBHI and KRHN assumed the exclusion of war crimes as a way to protect the military if they were deployed on military operations in Indonesia. Meanwhile, in the Rome Statute, war crimes, which is one of the ICC's jurisdictions, also includes domestic armed conflicts.<sup>135</sup> Munir, who served as the deputy head of YLBHI, also criticised the lack of details that make gross human rights violations distinct from a typical criminal act. He believed that this would lead to a clashes between investigators from Komnas HAM and the police:

Polri [the Indonesian police] might claim a case and call it a general criminal case and Komnas HAM might also have a reason to call a case a serious violation to human rights. The law does not say who has the authority to call which case belongs to which institutions, similar things happened with corruption case; the Office of Attorney General and the Police scrambled over a case.<sup>136</sup>

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<sup>133</sup> Zainal Abidin, "Pengadilan Hak Asasi Manusia di Indonesia: Regulasi, Penerapan dan Perkembangannya," ed. ELSAM (Jakarta2010).

<sup>134</sup> Enny Soeprapto, interview by Yessi Olivia, 23 June 2016.. The respondent made an error it should have been seventeen years instead of twenty seven years.

<sup>135</sup> Kompas, "RUU Pengadilan HAM Progresif namun Bermuatan Politis."

<sup>136</sup> Ibid.

What was also concerning about Law No. 26/2000 for human rights activists is that there have been several mistranslations that have shifted the meaning of the original text (the Rome Statute). Some of the terms are also not included in the General Provisions of Law 26/2000, which might create confusion in the trial. This can be seen, for example, in the provision on ‘crimes against humanity’, which copies the Article 7 of the Rome Statute:

For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (Article 7 of the Rome Statute).

Kejahatan terhadap kemanusiaan sebagaimana dimaksud dalam Pasal 7 huruf b adalah salah satu perbuatan yang dilakukan sebagai bagian dari serangan yang meluas atau sistematis yang diketahuinya bahwa serangan tersebut ditujukan secara langsung terhadap penduduk sipil (Article 9 of Law No. 26/2000).

Abidin points out the phrase ‘directed against any civilian population’ that was translated to Indonesian as ‘*ditujukan secara langsung terhadap penduduk sipil*’ (directly against any civilian population). The word ‘directly’ here means that only people who were at the crime scene can be implicated, while others who are not present but responsible for the crime would be acquitted. Abidin also criticised the word choice of ‘*penduduk*’ not ‘*populasi*’ as the translation for ‘population’. He argued that the word *penduduk* could be used to reduce the legal subjects based on certain circumstances. There are several problems in translating the original text to Indonesian that can be found in Article 9 of Law No. 26/2000. Soeprapto, meanwhile, noticed that ‘persecution’ from Article 7(h) of the Rome Statute was translated to ‘*penganiayaan*’ (abuse), which changes the legal definition of ‘persecution’. There is also ‘murder’ from Article 7(a) of the Rome Statute, which was translated to ‘*pembunuhan*’. Under this translation, it eliminates the concept of unlawfully taking someone’s life in the word ‘murder’.<sup>137</sup>

Soeprapto and Abidin’s studies also found changes in the provisions regarding the responsibility of commanders and other superiors (Article 42 of Law No. 26/2000); the original text can be found in Article 28 of the Rome Statute. Article 28 of the Rome Statute is a vital provision that characterises what defines a serious human rights violation: State committed in a systematic crime. Therefore, as Abidin explained, the offenders also include those who are in higher positions (i.e. commander and other superiors). A similar penalty will be imposed high-ranking officer who fail to stop their subordinates from committing wrongdoing. The changes made in Law No. 26/2000 in its adaptation from the Rome Statute opened the possibility for high-ranking officials to be acquitted or not charged with an offense.

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<sup>137</sup> Abidin, "Pengadilan Hak Asasi Manusia di Indonesia: Regulasi, Penerapan dan Perkembangannya."

A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces (Article 28 of the Rome Statute).

Komandan militer atau seseorang yang secara efektif bertindak sebagai komandan militer *dapat* dipertanggungjawabkan terhadap tindak pidana yang berada di dalam yurisdiksi Pengadilan HAM, yang dilakukan oleh pasukan yang berada di bawah komando dan pengendaliannya yang efektif, atau di bawah kekuasaan dan pengendaliannya yang efektif dan tindak pidana tersebut merupakan akibat dari tidak dilakukan pengendalian pasukan secara patut” (Article 42 of Law No. 26/2000).

The first sentence in Article 42 was translated to: “A military commander or person effectively acting as a military commander could be criminally responsible for crimes within the jurisdiction of the Court...” The change from ‘shall’ to ‘could’, which is the equivalent word for ‘*dapat*’ in Indonesian, has shifted the meaning of the whole article. Unlike Article 28 of the Rome Statute where the possibility for higher officials to be prosecuted is higher, Article 42 of Law No. 26/2000 reduces the chances of trials for higher officials. Another error in translation was made in Article 28 (a) (i) of the Rome Statute where the phrase ‘or about to commit such crimes’ was translated to ‘*baru saja melakukan pelanggaran hak asasi manusia yang berat*’ (just [meaning recently] committed gross human rights violations) in Article 42 (1) (a) of Law No. 26/2000.

The Law on Human Rights Court was also criticised for failing to adopt the latest developments in international law. This observation comes from Amnesty International<sup>138</sup> in their analysis of Article 9 of Law No. 26/2000. For example, in the General Provisions, ‘enslavement’ from Article 7(c) of the Rome Statute was translated to “*termasuk perdagangan manusia, khususnya perdagangan wanita dan anak-anak*” (including trade in humans, particularly the trading of women and children). The Indonesian translation, according to Amnesty International “does not fully reflect the definition of enslavement under international law concerning contemporary forms of slavery which is broader, containing provisions for the exercise of any or all powers attaching to the right of ownership over a person, including trafficking in persons.” The General Provisions of Law 26/2000 on the term ‘torture’ also fails to accurately reflect the Rome Statute’s definition of torture. The Rome Statute defines torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused...” Meanwhile, in Law No. 26/2000, torture is explained as “*dengan sengaja dan melawan hukum menimbulkan kesakitan atau penderitaan yang berat, baik fisik dan mental, terhadap seorang tahanan atau seseorang yang berada di bawah pengawasan*” (deliberately and illegally causing gross pain or suffering, physical or mental, of a detainee or a person under surveillance). When asked about the many errors contained in Law No. 26/2000, Soeprapto replied:

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<sup>138</sup> Amnesty International, "Amnesty International's Comments on the Law on Human Rights Courts (Law No. 26/2000)," (2001).

[It was made] in a hurry and the public involvement was very limited. And there was the lack of depth in understanding international human rights law. The Rome Statute was released in 1998 and this law was adopted in 2000. There were two years gap, but it seems still not enough to understand the treaty. So they claimed that the law was adopted from the Rome Statute but the reality tells a different story. The second reason was related to the drafters in the parliament. Back then they worked with a different system [of passing a law]. Now we have what we called *rapat pendapat umum* [general opinion meeting] where the public and experts were invited to DPR. It is likely because they were facing a tight deadline to pass the bill for the East Timor trial to proceed, they didn't have the time to read the provisions thoroughly. As a result there mixed up some concepts and made incorrect translation. There were also some deliberate mistakes, like the article regarding the responsibility of the higher commander. I assume they did it intentionally. Do not forget that at that time DPR still had members coming from the military and the police.<sup>139</sup>

### 3.6 The Politics behind the Adoption of Law No. 26/2000 and the Establishment of an Ad-hoc Human Rights Court

The first phase of the East Timor case ended with KPP-HAM submitting a report to the Attorney General's Office, a move that was applauded by the international community. In contrast to the much-praised initial step, the follow up to the East Timor case was filled with complications that impacted the legal process. It took more than a year for Indonesia to finally adopt Law No. 26 in November 2000 after the issuance of the doomed *Perpu* No. 1/1999. President Wahid, through *Keppres* No. 53/2001, then finally ordered the inauguration of an Ad-hoc Human Rights Court for East Timor in April 2001. When Megawati replaced Wahid as President, she released *Keppres* 96/2001, which reduced the jurisdiction scope to three areas: Liquica, Dili and Suai, with a time frame of April to September 1999. Megawati's *Keppres* significantly affected the trial of the East Timor case as it obstructed the attempt to prove that systematic violence had been committed long before the referendum in September 1999.<sup>140</sup> While the instruction to establish an ad-hoc human rights court was released in 2001, the East Timor trial only began on 14 March 2002 because of the delay in appointing the ad-hoc judges and a public prosecutor.<sup>141</sup> From eighteen defendants, only six were found guilty by the court: three from TNI, including Maj. Gen. Adam Damiri, who served as the former chief of Udayana Military Command that supervised Bali, Nusa Tenggara, and East Timor; one from the Indonesian police; and two civilians including the former Governor of East Timor. However, only Eurico Gutterres, the deputy head of the militia, Aitarak, served ten years in prison while the other defendants were acquitted after they lodged an appeal in the higher courts. Human rights groups criticised the East Timor trial for its ineffectiveness and bias in favour of the military.<sup>142</sup> The court was also condemned as simply lip service. As pointed out by Agung Yudhawiranata from the Institute for Policy Research and Advocacy, "Sometimes it seems like this

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<sup>139</sup> Soeprapto, interview.

<sup>140</sup> Andrey Sujatmoko, *Tanggung Jawab Negara Atas Pelanggaran Berat HAM: Indonesia, Timor Leste, dan lainnya* (Jakarta: Grasindo, 2005).

<sup>141</sup> David Cohen, Fadillah Agus, and Widati Wulandari, *Pengadilan Setengah Hati: Eksaminasi Publik atas Putusan Pengadilan HAM Kasus Timor Timur* (Jakarta: ELSAM, 2008).

<sup>142</sup> David Cohen, "Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta," ed. Paul Seils (2003).

is a formality... It is not that they cannot run a good trial. It is that they are unwilling.”<sup>143</sup>

Meanwhile, Hendardi from *Persatuan Bantuan Hukum Indonesia*-PBHI (Indonesian Legal Aid and Human Rights Association) argued that the problem with the East Timor case rested on the disinclination of the government to hold Wiranto, as the former military commander, accountable: "The Attorney General's Office limited those being held responsible for the East Timor chaos to the local officers.”<sup>144</sup>

What caused the East Timor case to be so problematic? There are several possible answers to this question. First, it is likely that political circumstances during the process of adopting a new law and a new human rights court influenced the East Timor case. When Habibie was ousted from the presidency, the fate of the East Timor case lay in the hands of Wahid and Megawati. Wahid governed from October 1999 to July 2001 when he was ousted by the parliament on the grounds of corruption. Megawati, who previously served as his Vice President, then replaced him as President and served for one term from July 2001 until October 2004.

Both Wahid and Megawati were not new actors in Indonesian politics. Wahid came from Nahdlatul Ulama (NU), which is one of the largest Islamic organisations in Indonesia. Meanwhile, Megawati arose from *Partai Demokrasi Indonesia*-PDI (Indonesian Democratic Party, a nationalist party that had its roots in Sukarno's party: *Partai Nasional Indonesia*-PNI, or Indonesian National Party). NU and PDI are among the institutions that were allowed to operate by Suharto's regime. As pointed out by Aspinall,<sup>145</sup> one of the ways that Suharto prolonged his regime was through combining violence with co-optation and toleration. The *Orde Baru* regime tolerated some elements in the society (political parties, the societal organisations or *ormas*, and NGOs) as long as they did not put pressure on the government. These institutions then learned to adapt to exist under the authoritarian regime by “carefully read the signs emanating from the regime's leaders in order [sic] not overstep the ever-changing line separating tolerated political behaviour from that which was suppressed.”<sup>146</sup> Juan Linz<sup>147</sup> categorised these kinds of groups as semi-opponents: minority groups that are “willing to participate in power without fundamentally challenging the regime”.

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<sup>143</sup> Michael Casey, "Verdicts in East Timor Trial Expected, But Will Justice be Done?," *Associated Press*, 12 August 2002.

<sup>144</sup> Kurniawan, "East Timor Human Rights Trials - All Just a Game."

<sup>145</sup> Edward Aspinall, "Semi-Opponents in Power: The Abdurrahman Wahid and Megawati Soekarnoputri Presidencies," in *Soeharto's New Order and its Legacy Essays in honour of Harold Crouch*, ed. Edward Aspinall and Greg Fealy (The Australian National University: ANU E Press, 2010).

<sup>146</sup> *Ibid.*, 121.

<sup>147</sup> Juan J. Linz, "Opposition in and under An Authoritarian Regime: The Case of Spain," in *Regimes and Oppositions*, ed. Robert A. Dahl (New Haven: Yale University Press, 1973), 191.

When Suharto resigned, Wahid and Megawati were among the people that rose to prominence in Indonesia's politics. Their status as semi-opponents of *Orde Baru* served as their leverage where they were able to promote their images as viable leaders that were not part of the *Orde Baru* regime. Fortunately, in the case of Wahid and Megawati, they had nurtured their images as the resistance to *Orde Baru* since the 1990s, when Suharto's power began to wane.<sup>148</sup> For example, in response to Wahid's interview with FEER magazine where he criticised Suharto's undemocratic rule, Suharto interfered in the Nadlatul Ulama election. Meanwhile, Megawati was a leader of PDI, which, under her leadership, had turned into a political party that openly criticised *Orde Baru*. The *Orde Baru* regime banned Megawati from running for election in 1996 after an internal PDI riot which was allegedly orchestrated by the regime.<sup>149</sup>

However, while these two figures were in the opposition camp during the *Orde Baru* era, they did not manage to further the reform agenda that started in 1996. Wahid did institute some important policies, such as releasing political prisoners in 1999<sup>150</sup>, abolishing *Orde Baru* policies that discriminate against Chinese minorities<sup>151</sup>, and paving the way to reinstall civilian supremacy over the military.<sup>152</sup> However, his erratic behaviour and inability to build political capital, for example, paralysed his administration and cost him the presidency.<sup>153</sup>

His ineffectiveness in running the government was visible in the East Timor case. He appointed a team of drafters to write a new bill on the human rights court. The drafters then finished their job on 3 February 2000. In a news conference, the drafters explained that they expected that the bill would be sent to the DPR by 20 February 2000.<sup>154</sup> The Attorney General also made a statement that the trial could take place in May 2000.<sup>155</sup> In reality, those deadlines were never met. It took four months for the government to finally send the draft to the DPR in June 2000<sup>156</sup> and the parliament adopted the law on 7 December 2000.<sup>157</sup> Indonesia, through its Minister for Human Rights Law, once again

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<sup>148</sup> Aspinall, "Semi-Opponents in Power: The Abdurrahman Wahid and Megawati Soekarnoputri Presidencies."

<sup>149</sup> Stefan Eklof, *Power and Political Culture in Suharto's Indonesia: The Indonesian Democratic Party (PDI) and the Decline of the New Order (1986-98)* (Copenhagen: NIAS Press, 2004).

<sup>150</sup> Tri Agung Kristanto, "Gus Dur Bebaskan 91 Tapol/Napol " *Kompas*, 11 November 1999.

<sup>151</sup> Eddie Lembong, "Indonesian Government Policies and the Ethnic Chinese: Some Recent Developments," in *Ethnic Chinese in Contemporary Indonesia*, ed. Leo Suryadinata (Singapore: ISEAS, 2008).

<sup>152</sup> Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance."

<sup>153</sup> See: Barton, *Gus Dur The Authorized Biography of Abdurrahman Wahid.*; Aspinall, "Semi-Opponents in Power: The Abdurrahman Wahid and Megawati Soekarnoputri Presidencies."

<sup>154</sup> *Kompas*, "Tim Penyusun Sepakat RUU Pengadilan HAM Berlaku Surut Tanpa Batas Waktu," 3 February 2000.

<sup>155</sup> *The Jakarta Post*, "East Timor Trial in Three Months," 17 February 2000.

<sup>156</sup> *Kompas*, "Pemerintah Ajukan RUU Pengadilan HAM ke DPR," *Kompas*, 7 June 2000.

<sup>157</sup> Machmud, "UU Peradilan HAM Disahkan," *Liputan6*, 7 November 2000; Suara Pembaruan, "Pembahasan RUU Pengadilan HAM Berakhir 6 November," *Suara Pembaruan*, 16 October 2000.

tried to assure the world that Indonesia was still committed to bringing justice to the East Timor case.<sup>158</sup>

The Ministry of State Secretariat claimed that that slow progress was caused by a procedural issue where the State Secretariat needed to review the bill before it goes to DPR. Munir, a former member of KPP-HAM, slammed the State Secretariat's explanation. He pointed out that the State Secretariat's responsibility was limited only to an administrative role, and not to scrutinise the content of the bill like the *Order Baru's* State Secretariat had done. Munir suspected the delays were deliberate because of the nature of the East Timor case and its implications for some high profile figures. He based his suspicion on how the Ministry of Law and Human Rights made changes to the original draft bill and how slow the Office of the Attorney General had been to announce the alleged perpetrators of violence in East Timor:

The explanation made by the State Secretariat is part of a larger scenario to slow down the East Timor settlement process. It cannot be separated from the investigation taken by Attorney General Office, which until now has not come with a suspect list. It was clear from the beginning that there was political interests behind the East Timor case because it involved high political and military figures in this country.<sup>159</sup>

The second reason why the handling of the East Timor case was difficult lies in the state of the Indonesian military during the democratic transition. *Reformasi* was a period where the military's *dwifungsi* (dual function) was challenged by the democratic forces. *Dwifungsi* is a principle that described the roles of the Indonesian military: the traditional role where the military serves as the security provider, and the non-traditional role where the military carries the responsibility to uphold the stability of the country. The second role in *dwifungsi* was often understood as "a wide range of socio-political roles through which the military should actively contribute to the stability of the country".<sup>160</sup> These roles include their involvement in political parties, parliament, or their positions in government offices. Not all of the elites in the military agreed to the *Reformasi* agenda and they even questioned the notion of civilian supremacy over the military.<sup>161</sup>

The East Timor case then became an exemplar of the state of the military as the old elite competed with democratic forces. Its involvement in drafting the law on human rights court can be seen as the first indicator. In addition to representatives from Komnas HAM/KPP-HAM (Djoko Soegianto and Munir), the government (Romli Atmasasmita), and a legal expert (Loebby Loqman), the delegates of the military advocate (Adnan Buyung Nasution and Muladi) were also involved in the drafting of

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<sup>158</sup> ANTARA, "Yusril Addresses UNHCR Meeting on E Timor Rights Court Trials," 29 March 2002.

<sup>159</sup> Kompas, "RUU Pengadilan HAM Belum Siap Tanda Ada Kepentingan Bermain Jakarta," 19 May 2000.

<sup>160</sup> Felix Heiduk, "State Disintegration and Power Politics in Post-Suharto Indonesia," *Third World Quarterly* 35, no. 2 (2014): 303-04.

<sup>161</sup> Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi*.

the law.<sup>162</sup> The answer as to why the military advisors were involved in preparing the law that would be used to prosecute the military was obvious. Since the stake was high, it was likely that the military elites wanted to make sure that the legal process would not further disadvantage them. The next indicator was when the Office of the Attorney General finally announced the names of the alleged East Timor offenders on 1 September 2000. There were nineteen people from the military, the militias, and government officials suspected of committing serious human rights abuses. The suspect list did not include higher officials, such as Wiranto, who served as the commander of armed forces; Faisal Tanjung, former security minister; or Zacky Anwar, who served as East Timor's intelligence chief.<sup>163</sup> In his discontent with the Attorney General's list of suspects, Albert Hasibuan from KPP-HAM assumed that Wiranto was acquitted because of "outside interference" to protect him. He added, "It seems that once again in Indonesia politics is winning out over justice".<sup>164</sup>

It is worth arguing that the uneasy relationship between Wahid and the military had influenced the slow progress of the East Timor case. When Wahid urged Wiranto to resign, Wiranto responded by dismissing KPP-HAM's report and rejecting the demand for him to step down from office.<sup>165</sup> Wiranto garnered the support of some of the military elites who questioned Wahid's decision to fire a four-star general.<sup>166</sup> Wahid himself failed to handle the situation effectively as he went back and forth with his verdict and this caused disruption within his administration. On 13 February 2000 Wahid met with Megawati and Widodo A.S., the new military commander, to discuss Wiranto. On that morning, both Megawati and Widodo gave their support to Wahid. However, things started to change when Wahid, Megawati, Wiranto, and Marzuki Darusman (the Attorney General) met in a closed meeting in the afternoon. The meeting resulted in a deadlock, and compromises had to be reached in order to break the logjam. One of the decisions reached was that Wiranto would retain his position as the Coordinating Minister for Political, Legal and Security Affairs while the Office of Attorney General prepared a special examination team. It is rumoured that Wiranto's fate on the East Timor case was also discussed.<sup>167</sup> When the State Secretariat announced later in the afternoon that Wiranto would retain his position, Wahid received a lot of backlash from the people, including the military elites who did not support Wiranto. Academics, for example, argued that Wahid created more problems for the Office of Attorney General by retaining Wiranto because, in order to perform

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<sup>162</sup> See: Eddy Hasby, "Mencermati RUU Pengadilan HAM," *Kompas*, 22 March 2000; Kompas, "Tim Penyusun Sepakat RUU Pengadilan HAM Berlaku Surut Tanpa Batas Waktu."

<sup>163</sup> Hukum Online, "Ini Dia Tersangka Pelanggar HAM di Timor Timur," 1 September 2000.

<sup>164</sup> John Aglionby, "Senior Generals to Escape Trial for East Timor Killings," *The Guardian*, 2 September 2000.

<sup>165</sup> Keith B. Richburg, "Indonesian General Refuses to Resign; Accusations of Human Rights Abuses Based on 'Assumptions,' Wiranto Says," *The Washington Post*, 2 February 2000.

<sup>166</sup> Iskandar, *Gus Dur yang Saya kenal: Sebuah Catatan tentang Transisi Demokrasi Kita*.

<sup>167</sup> Anwar et al., *Gus Dur Versus Militer: Studi tentang Hubungan Sipil-Militer di Era Transisi*.

their duties, the Office of Attorney General must be aligned with the Coordinating Ministry of Political, Legal and Security Affairs.<sup>168</sup> Due to criticism, Wahid back-pedaled on his decision, dismissed Wiranto and appointed his Minister for Home Affairs to temporarily replace Wiranto. On 19 May 2000, Wiranto, as advised by his lawyer Muladi, sent his formal resignation.<sup>169</sup>

Wahid's relationship with the military continued to deteriorate when he attempted to further restructure the military. He appointed a civilian to serve as the Minister for Defence and appointed pro-reform generals like Agus Wirahadikusumah and Agus Widjojo to help drive the military reform. As a result, Wahid created divisions within the military between those who were pro-reform and anti-reform. Some military members even openly showed their defiance of his leadership.<sup>170</sup> However, due to this error in political judgement, the military reform failed to be implemented. A corruption scandal had endangered Wahid's presidency, and the military, which still had seats in the parliament, did not support Wahid in a no-confidence motion. It is argued that the military was part of an orchestrated move to overthrow Wahid, and they opted to abstain from the vote because they had made a deal with his replacement, Megawati.<sup>171</sup> Wahid was removed from office through impeachment on 23 July 2001.

Unlike Wahid, who had a hostile relationship with some of the military elites, Megawati enjoyed an amiable relationship with the military, especially with the hardline generals who opposed Wahid's military reform initiatives. As pointed out by Honna:

Megawati was seen by many generals as sharing their views on 'national' interests—upholding the unitary state of Indonesia based on a strong sense of nationalism... Megawati was not their ideal president but she was however preferable to Gus Dur in all respects—she was an ardent nationalist and was inclined to defer to the judgment of military officers on military matters.<sup>172</sup>

This relationship raised concern among civil society groups that Megawati's presidency would lead to a "soft authoritarianism" since she was keen to support policies proposed by the military elites in her attempt to stabilise the nation.<sup>173</sup> Such concerns were proven to be true when Megawati, for example, authorised the implementation of "*darurat militer*" (military emergency) in Aceh, which placed Aceh back in the hands of the military.<sup>174</sup> Her bias in favour of the military was also seen in her stance on issues of human rights and East Timor. She, for example, encouraged the military to

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<sup>168</sup> Kompas, "Surjadi Soedirdja Gantikan Wiranto Sebagai Menteri Koordinator Politik dan Keamanan "Ad Interim"."

<sup>169</sup> Muladi was a former Minister for Law during Suharto's last term in 1998. He then served under the Habibie administration also as the Minister for Law. When the Diplomatic Conference on the Rome Statute/ICC was held in Rome, Muladi was among the delegates of Indonesian officials that participated in the meeting.

<sup>170</sup> Honna, *Military Politics and Democratization in Indonesia*.

<sup>171</sup> Kingsbury, *Power Politics and the Indonesian Military*.

<sup>172</sup> Honna, *Military Politics and Democratization in Indonesia*, 185.

<sup>173</sup> Kastorius Sinaga, "LSM Khawatirkan Munculnya Era "Soft Authoritarianism" " *Kompas*, 6 Agustus 2001.

<sup>174</sup> Achmad Sukarsono, "ANALYSIS-Megawati Finds Comfort with Indonesian Military," *Reuters*, 23 July 2002.

not “worry about accusations of human rights abuses” in undertaking their role.<sup>175</sup> Megawati surrounded herself with military generals who had served in East Timor and other regions during *Orde Baru*, such as Lieutenant General Ryamizard Ryacudu and Lieutenant General Hendropriyono. Some of the military officials named in the KPP-HAM report were even promoted, or rumoured to be promoted, during Megawati’s presidency, for example, Brigadier General Mahidin Simbolon who was endorsed as military commander in Papua.<sup>176</sup>

The East Timor trial was not the legacy of the Megawati administration because it was expected to take place during Wahid’s presidency. However, the disappointing process of the East Timor case cannot be separated from Megawati’s poor leadership record. As Mizuno argued, the trial could have taken place more quickly if only “Megawati had the necessary political will”.<sup>177</sup> Furthermore, her close relationship with the military also prevented past human rights abuses from being brought to justice. Megawati, for example, failed to push the military to cooperate with Komnas HAM on other human rights abuse cases, such as Trisakti and Semanggi.

### 3.7 Post East Timor Trial

There are two important things that need to be discussed in this section that are related to the plan to adopt the Rome Statute in Indonesia: first, the relationship between Indonesia and its former province, East Timor (Timor Leste), since the separation; and, second, how the Law on Human Rights Court has been used since the East Timor trial took place.

Since its adoption, only three cases of human rights abuses have been brought to court: East Timor in 2002, Tanjung Priok in 2003 and Abepura in 2004.<sup>178</sup> Since those trials, there has been no significant effort to revise the Law on Human Rights Court even though the law has been criticised for its weaknesses. For example, the law is considered to be plagued with issues that range from improper legal procedures to administrative problems. Under the current law, an ad-hoc court will be formed based on the parliament’s proposition and then finalised by the President (Article 43 (2)). Since the parliament is not a body that carries the responsibility to investigate (*pro justitia*), it is feared that human rights cases will be politicised in the DPR. The government also failed to

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<sup>175</sup> Agence France-Presse, "Indonesia's Megawati Tells Troops Not to Worry about Rights Abuses," 29 December 2001.

<sup>176</sup> Hamish McDonald and Richard Tanter, "Introduction," in *Masters of Terror: Indonesia's Military and Violence in East Timor*, ed. Richard Tanter, Desmond Ball, and Gerry Van Klinken (Lanham: Rowman & Littlefield Publishers, Inc., 2006).

<sup>177</sup> Mizuno, "Indonesian Politics and the Issue of Justice in East Timor," 146.

<sup>178</sup> See: Komnas HAM, *Laporan Tahunan 2015 Komisi Nasional Hak Asasi Manusia Pemulihan Hak-Hak Korban Pelanggaran Hak Asasi Manusia* (Jakarta: Komnas HAM); Diajeng Wulan; Kasim Christianty, Ihdhal; Dewi, Trihoni Nalesti, *Pengadilan Pura-Pura: Eksaminasi Publik atas Putusan Pengadilan HAM Kasus Abepura* (Jakarta: ELSAM, 2007); Wahyu Wagiman, "Final Progress Report Pengadilan HAM Tanjung Priok: Gagal Melakukan Penuntutan yang Efektif," (Jakarta: ELSAM, 2004).

establish a special legal clerk to deal with human rights cases which, in the case of East Timor, impacted the trial because the judicial clerk also had to work on general cases.<sup>179</sup>

Meanwhile, Komnas HAM, which claimed that it had sent a revision draft to the DPR in 2005,<sup>180</sup> argued that the Law on Human Rights Court needs to be amended in order to clear up confusion regarding KOMNAS HAM's authority as the preliminary inquirer.<sup>181</sup> In the legal process of several human rights abuses, Komnas HAM and the Attorney General Office had reached a standstill where AGO had often returned the preliminary investigations to Komnas HAM after months of being left in the care of the Office of the Attorney General.<sup>182</sup> In its recommendation for the revision of Law No. 26/2000, Komnas HAM argued that it need to be granted with stronger authority to undertake investigations (e.g., the power to subpoena). Komnas HAM also pointed out the stark contrast between the Law on Human Rights Court and the Law on Human Rights, which granted the power to summon potential witnesses, defendants or evidence. Komnas HAM also demanded the changing of the title of Law No. 26/2000 to become *Pengadilan Tindak Pidana HAM yang Paling Serius* (Law on the Court for Most Serious Human Rights Crimes) in order to clarify the ambiguity of the current law.<sup>183</sup> The parliament has twice listed the Law on Human Rights Court on its *Prolegnas Legislasi Nasional*-PROLEGNAS (National Legislation Program); first in the period of 2010-2014<sup>184</sup> and the second time in 2015-2019.<sup>185</sup> However, at the time of writing, there has no progress to the amendment of the Law No. 26/2000.

Some developments in Indonesia's legal system have also caused a problem to the functionality of Law No. 26/2000 into the future. Since 2005, the government has been working on revising Indonesia's Criminal Code (*Kitab Undang Undang Hukum Pidana-KUHP*) and Criminal Code Procedures (*Kitab Undang Undang Hukum Acara Pidana-KUHAP*).<sup>186</sup> In the new Criminal Code, the government incorporated two grave human rights crimes (*pelanggaran HAM berat*): genocide

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<sup>179</sup> Hukum Online, "Revisi UU Pengadilan HAM: Ada Tiga Bagian Penting yang Perlu Ditelaah," 28 May 2003.

<sup>180</sup> TEMPO, "Komnas HAM Minta Revisi Undang-Undang Pengadilan HAM," 13 March 2006.

<sup>181</sup> Komnas HAM, "Naskah Akademis Rancangan Perubahan Undang-Undang Pengadilan HAM," (Jakarta: Komnas HAM).

<sup>182</sup> See: Kompas, "Berkas Kasus Trisakti-Semanggi Dikembalikan ke Komnas HAM," 2 April 2008; BBC, "Rights case may go back to national commission," 7 March 2000; ANTARA, "AGO Returns Abepura Rights Abuses Dossier to Commission," 27 July 2001.

<sup>183</sup> Komnas HAM, "Naskah Akademis Rancangan Perubahan Undang-Undang Pengadilan HAM."

<sup>184</sup> "Daftar Rancangan Undang-Undang Tahun 2010-2014 Program Legislasi Nasional," 2010, DPR, accessed 25 June 2018, [http://www.dpr.go.id/dokakd/dokumen/prolegnas\\_Prolegnas\\_2010-2014.pdf](http://www.dpr.go.id/dokakd/dokumen/prolegnas_Prolegnas_2010-2014.pdf)

<sup>185</sup> "Prolegnas 2015-2019," 2018, Kementerian Hukum dan HAM, accessed 25 June 2018, <http://ditjenpp.kemendukham.go.id/prolegnas-2015-2019.html>

<sup>186</sup> The effort to amend the criminal codes began in 1981 when two teams that worked on assessing and drafting were formed. The teams were then merged and accomplished writing the first revised bill draft in 1993. There was no follow up back then until the governments in the post-Suharto era picked up the work on amending the criminal codes. After more years of delay, the final drafts was sent to DPR in 2013. See: Ifdhal Kasim, "Ke Arah Mana Pembaruan KUHP? Tinjauan Kritis atas RUU KUHP " in *Position Paper Advokasi RUU KUHP* (Jakarta: ELSAM, 2005); JPNN, "RUU KUHAP dan KUHP Sudah Sampai DPR," 15 January 2013.

and crimes against humanity. This move has been criticised by NGOs and Komnas HAM because it diminishes the significance of extraordinary crimes like genocide and crimes against humanity, as they were listed under the new criminal code that regulates ordinary offences. As argued by the Institute for Criminal Justice Reform (ICJR), an NGO that focuses on Indonesia's legal reform:

[We are] worried that the inclusion of genocide and crimes against humanity in the draft of criminal code would degrade the gravity of the crimes because these types of crimes are known to be extraordinary crimes and are called international crimes with the level of *jus cogens* and *erga omnes*, the highest norms in international law that put obligation to all states to file for charges. As a consequence, these crimes requires a different law principles in order to reach effective punishment.<sup>187</sup>

Supriyadi Eddyono, one of the legal researchers at ICJR,<sup>188</sup> also questioned the necessity to include provisions on serious human rights violations:

The government since 2005-2010 has been drafting the criminal act on grave human rights violations in KUHP. It seems they do not want to redo their work, since we already have the Law No. 26/2000, so they just borrowed the elements of crimes directly from the law on human rights court. That is why the draft of the criminal code contains provisions on genocide and crimes against humanity (Article 400-401). They also inserted criminal act on war crimes. I assume this is their strategy to circumvent the plan to ratify the ICC: since we have included them in the new criminal code, why should we bother to ratify the ICC? We from the civil society organisations rejected the new draft and insisted that these crimes should stay under the Law No. 26/2000.<sup>189</sup>

The new KUHP also potentially weakens Law No. 26/2000, which contains articles on genocide and crimes against humanity.<sup>190</sup> What has become the main concern of human rights groups is that if the DPR enacts the new criminal code, there would remain the inability to bring past human rights abuse cases to court because the new criminal code does not apply retroactively.

Since the amendment of Indonesia's Criminal Code has not been finalised,<sup>191</sup> the concerns of human rights groups are yet to be proven. In an interview with several officials from the Ministry of Foreign Affairs, they were aware of the inclusion of several grave human rights crimes in the new criminal code, but unable to comment on this development. Thus, the future of the Rome Statute in Indonesia will depend on the result of the amendment of Indonesia's Criminal Code.

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<sup>187</sup> "Pengaturan Tindak Pidana Kejahatan Kemanusiaan dan Genosida dalam RKUHP Memperlemah Penegakan Hukum," 2017, ICJR, accessed 24 July 2018, <http://icjr.or.id/pengaturan-tindak-pidana-kejahatan-kemanusiaan-dan-genosida-dalam-rkuhp-memperlemah-penegakan-hukum/>

<sup>188</sup> ICJR has done a quite number of studies on the amendment of Indonesia's Criminal Code. Analysis on the provisions on the KUHP draft can be seen in Supriyadi Widodo Eddyono, *Catatan terhadap Beberapa Ketentuan dalam Rancangan KUHP 2015* (Jakarta: ICJR, 2015). For the new provision on grave human rights violations in the new criminal code, ICJR has published their assessment in Zainal Abidin and Supriyadi Widodo Eddyono, *Degradasi Extraordinary Crimes Problematika Perumusan Kejahatan Genosida, dan Kejahatan Terhadap Kemanusiaan dalam RKUHP* (Jakarta: ICJR, 2017).

<sup>189</sup> Supriyadi Eddyono, interview by Yessi Olivia, 24 August, 2016.

<sup>190</sup> See: Kumparan, "KontraS Kritisi Pasal Pidana HAM Berat dalam Revisi KUHP," 3 June 2018; Dylan A. Rachman, "Komnas HAM Nilai RKUHP Lumpuhkan Penuntasan Kejahatan HAM Masa Lalu," *Kompas*, 7 June 2018; Rahmat Fiansyah, "Ini Catatan Kontra soal Pelanggaran HAM di RUU KUHP-KUHAP," *ibid.*, 2 March 2014; ICJR, "Pengaturan Tindak Pidana Kejahatan Kemanusiaan dan Genosida dalam RKUHP Memperlemah Penegakan Hukum".

<sup>191</sup> There had been no significant update on the revision of the criminal code, especially regarding articles on grave human rights violations, when this research was conducted.

### 3.8 Conclusion

This chapter began with an argument that mapping out the interplay of international and domestic politics during the East Timor case would help to understand the indecision of the Yudhoyono's administration to ratify the Rome Statute (Chapter 5). The case of the East Timor crisis is an important element in this chapter because it led to the adoption of human rights mechanisms to prosecute serious human rights violations. Indonesia, under pressure from the international community as well as human rights groups domestically, finally succumbed to the call for Indonesia to prosecute the perpetrators of violence in East Timor. As a result, the Law on Human Rights Court (Law No. 26/2000) was adopted in November 2000. While Law No. 26/2000 has been considered a significant development in Indonesia's legal system, there are a number of problems with the content of the law that undermine efforts to break the culture of impunity. The involvement of the DPR in deciding which cases can be brought to a human rights court has also been criticised for allowing the politicisation of human rights.

The circumstances surrounding Law 26/2000 cannot be separated from Indonesia's democratic transitions that were characterised by contestation between the old elites from the previous regime and the new actors that emerged during *Reformasi*. Habibie, who was the interregnum leader, was caught between those who wanted to reform and those who wanted to maintain the status quo. In the middle of a chaotic environment, Habibie made the dramatic decision to offer East Timor an autonomy package. His gambit turned into a disaster when a humanitarian crisis erupted after the referendum was won by pro-independence voters. It is worth noting that the 1990s was a period where the world was witnessing the rise of human rights tribunals to try perpetrators of serious human rights abuses. The East Timor violence made Indonesia the subject of international news, with outcry coming from the international community. Inquiry commissions were established, later reporting that Indonesia's security forces were responsible for aiding pro-integration militias in attacks on civilians.

This was the first test case for the civilian government in post-authoritarian Indonesia to overpower the military, an important and powerful actor under Suharto's regime. As the discussion in this chapter has shown, it was not an easy case. KPP-HAM, the inquiry commission formed by Komnas HAM, received criticism for their efforts to investigate the East Timor violence. Some critics accused KPP-HAM of being unfair towards Indonesia's TNI and police officers, while others questioned the capability of the investigators to undertake the investigation. Similar to the reaction of the previous regime to human rights issues, KPP-HAM was seen as part of the foreign efforts to meddle with Indonesia's affairs. It can be argued that this behaviour was caused by a lack of

understanding around both human rights issues and East Timor, which was isolated by the *Orde Baru* regime from the rest of the provinces. Another important point is that while Indonesia was undergoing a democratic transition, the military was not yet embracing the democratic culture, especially in accepting the supremacy of civilian leaders. Adding to the complexity, Indonesia's security forces were still active in the parliament due to the Dual Doctrine that enabled them to participate in political affairs. As a consequence, the East Timor investigation and trial were undermined by the military and the police. The civil-military relationship also played a significant part in the continuation of the East Timor case. Wahid, in this case, was unable to control the military because of his unfavourable relationship with the generals. Meanwhile, Megawati, who built a close relationship with some of the hardliner generals, became unwilling to push the East Timor trial.

Studies on democratic transition pointed out the importance of each development that took place during this crucial period. Looking at the case of East Timor, what would determine the fate of the plan to adopt the Rome Statute included the willingness of the government to improve Law No. 26/2000, military reform and the relationship between the civilian government and the military. In addition, the future of the Rome Statute will also depend on whether or not the revision to the Indonesia's criminal code incorporates articles on grave human rights violations.

# CHAPTER 4 INDONESIA'S CIVIL SOCIETY AND THE ROME STATUTE CAMPAIGN

## 4.1 Introduction

This chapter analyzes the advocacy for the adoption of the Rome Statute of the International Criminal Court promoted by *Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional* (The Indonesian Civil Society Coalition for the International Criminal Court). This particular subject is chosen because, not only is it useful to study the civil society movement in regards to Indonesia's democratic development, but also, in particular, to the study of the Rome Statute of the ICC campaign in Asia, the analysis of the involvement of civil society groups in promoting the ICC has been limited.<sup>1</sup> While it is important to study states' motivation in joining or rejecting the ICC, how society is involved in human rights discourses is equally significant, especially for a country that has not yet settled its past human rights abuses like Indonesia.<sup>2</sup>

Indonesia's plan to adopt the Rome Statute of the ICC was laid out in its human rights policy, RANHAM 2004-2009 (*Rencana Aksi Nasional Hak Asasi Manusia*). The government first set the target to adopt the treaty in 2008, but then delayed it to 2013. The ratification plan was later abandoned, even after the end of Susilo Bambang Yudhoyono's tenure as the president. This chapter argues that the lack of pressure coming from civil society groups contributed to the abandonment of the plan to adopt the Rome Statute in 2013. Academics who study the nature of civil society have argued that civil society plays an important role in fostering a democratic environment through activities such as observing the government, monitoring elections and promoting human rights issues.<sup>3</sup> This is not necessarily the case for the plan to adopt the Rome

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<sup>1</sup> There are eighteen Asia-Pacific countries (plus the State of Palestine) that are currently listed as the state parties to the Rome Statute. Southeast Asian countries are represented by Cambodia, Timor Leste, and the Philippines—the Philippines withdrew its membership in 2018 and, as described in the Article 127, the Philippines' departure from the ICC will be effective a year after (2019). Studies that focus on the lack of enthusiasm of Asia-Pacific countries on international or regional criminal justice systems mostly apply state level analysis, see, for example: Steven Freeland, "Towards Universal Justice-Why Countries in the Asia-Pacific Region Should Embrace the International Criminal Court," *NZJPI* 5 (2007); Toon, "International Criminal Court: Reservations of Non-State Parties in Southeast Asia."; Amrita Kapur, "Asian Values v. The Paper Tiger Dismantling the Threat to Asian Values Posed by the International Criminal Court," *Journal of International Criminal Justice* 11, no. 5 (2013).

<sup>2</sup> Since 2002, Indonesia's human rights commission, Komnas HAM, had submitted preliminary investigations of several human rights violations cases to the Attorney General's Office. Some of these cases occurred during the *Orde Baru* period: the purging of the followers of PKI, Indonesia's communist party, in 1965-1966; the mysterious shootings in 1982-1985; the military assaults in Talangsari in 1989; and the forced disappearances of activists in 1997-1998. The investigations to past human rights abuses were made possible with the adoption of the Law on Human Rights Court (Law No. 26/2000) that applies retroactive principle and the appointment of Komnas HAM as the investigator. However, Komnas HAM's lead-in inquiries have not yet been followed up by Indonesia's Attorney General. See: Komnas HAM, *Laporan Tahunan 2015 Komisi Nasional Hak Asasi Manusia Pemulihan Hak-Hak Korban Pelanggaran Hak Asasi Manusia*.

<sup>3</sup> This assumption comes from scholars who have drawn on the thought of Alexis de Tocqueville on liberal democracy and how civil society is crucial to strengthen democratic government. Among them are research conducted by: Larry

Statute in Indonesia where only a handful of civil society elements, especially those that merged under the Civil Society Coalition for ICC, were involved in persuading the government to adopt the treaty. This chapter confirms the findings of previous studies on the role of Indonesia's progressive civil society groups in post-Suharto Indonesia<sup>4</sup> where the influences of civil society groups to push for change have remained contingent on their own capabilities and the willingness of the government to adopt progressive policies. Their limitations cannot be separated from the damaging impact of the *Orde Baru* policy in suppressing the movement of civil society in Indonesia. When the challengers of *Orde Baru* had the momentum to topple Suharto from power in 1998, they also had the environment that supported their activism on democracy and human rights, but they were divided in achieving the democratic goals.

This chapter will be divided into several parts. First, it elaborates the relationship between the state and civil society before *Reformasi*. The second part of the analysis looks at the role of civil society during the transitional and the consolidation periods. The next part of the discussion analyses the activism of Indonesia's civil society, and the division among them, on topics related to individual criminal responsibility in the context of transitional justice and the Rome Statute of the ICC.

## 4.2 Civil Society Prior to the *Orde Baru* Era

This section explores the origins of civil society movements in Indonesia. It shows that the initiation of social movement in Indonesia cannot be separated with the rise of nationalism in the beginning of twentieth century. The political circumstances after Indonesia gained its independence also contributed to the increasing number of civil society groups as political parties used civil society groups as part of their strategy to appeal to the masses.

First of all, the modern social movement (i.e., voluntary associations) in Indonesia did not start until the late 19<sup>th</sup> century. Prior to that, voluntary actions were taken as part of the cultural practices that

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Jay Diamond, "Toward Democratic Consolidation," *Journal of Democracy* 5, no. 3 (1994); Robert D. Putnam, Robert Leonardi, and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1994); Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge: MIT press, 1994).

<sup>4</sup> The impact of *Reformasi* to the changing landscape of Indonesia's civil society and its role in post-authoritarian Indonesia has been discussed by many scholars, for example: Vedi R. Hadiz, "Reformasi Total? Labor after Suharto," *Indonesia* 66 (1998); Hans Antlöv, Rustam Ibrahim, and Peter van Tuijl, "NGO Governance and Accountability in Indonesia: Challenges in A Newly Democratizing Country," (ICNL, 2005); Bob S. Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing A Movement* (London: RoutledgeCurzon, 2003); Sylvia Yazid, *Indonesia's Civil Society in the Age of Democratization: NGO-Responses on the Issue of Labor Migration* (Baden-Baden: Nomos, 2013); Shangpo Hsieh, "Nongovernmental Organisations and Corruption Prevention in Democratizing Indonesia (1998–2008)" (Thesis, Australian National University, 2016); Nyman, *Democratizing Indonesia: The Challenges of Civil Society in the Era of Reformasi*, 49; Aspinall, *Opposing Suharto Compromise, Resistance, and Regime Change in Indonesia*.

united the people in every stage of social life, from birth and marriage, to death.<sup>5</sup> The earliest modern social organisations to be recorded were *Mardi Karya* and *Adhi Dharma* founded by Suryopranoto in 1890 and 1895 respectively. What these institutions offered were various types of community services from providing health care in polyclinics, building houses for the elderly and assisting illiterate people in dealing with administrative affairs.<sup>6</sup>

In the beginning of the 20<sup>th</sup> century, Indonesia was presented with a new trend of social activism that later evolved into political movements.<sup>7</sup> The pioneers of this type of movement were organisations such as Budi Utomo (1908), *Sarekat Islam* (1912), Muhammadiyah (1912), Taman Siswa (1922) and Nahdlatul Ulama (1926). What these mass organisations accomplished, besides providing basic assistance to the community, was the triggering of “political consciousness”<sup>8</sup> among the indigenous people against Dutch colonialism. Mass organisations like Budi Utomo gave birth to a generation of Indonesians who were passionate about the idea of a united Indonesia and emancipation from the Dutch.<sup>9</sup> Thus, in the 1920s, there were an increasing number of political groups, such as *Sarekat Islam Indonesia* (1923), *Partai Komunis Indonesia* (1924), *Partai Nasional Indonesia* (1927), *Pemufakatan Perhimpunan-Perhimpunan Politik Kebangsaan Indonesia* (1927) and *Gerakan Rakyat Indonesia* (1937). However, since Indonesia’s status was as a Dutch colony, the activism of these political bodies was limited because the Dutch surveilled their activities and arrested their leaders. As a result, some organisations had to operate in secret.<sup>10</sup>

It was not until Indonesia got its independence that the fledgling nation witnessed the rise of civil society groups. This phenomenon was in part caused by the mushrooming of political parties in the 1950s, for example, there were more than twenty political parties that participated in the first general election held in 1955.<sup>11</sup> These political groups were divided into four ideological lines, also known as *politik aliran*: the nationalist, the traditionalist, the modernist and the Islamist. *Politik aliran* was a “self-conscious social-cultural grouping” that grew during the awakening period in the

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<sup>5</sup> See: T.A. Hasan Husin, *Sistem Gotong-Royong dalam Masyarakat Gayo di Aceh Tengah* (Banda Aceh: Pusat Dokumentasi dan Informasi Aceh, 1980); Koentjaraningrat, *Some Social-anthropological Observations on "Gotong Royong" Practices in Two Villages of Central Java* (Ithaca: Cornell Univ., 1961); B.A. Simanjuntak et al., *Sistim Gotong Royong Dalam Masyarakat Pedesaan Daerah Sumatera Utara* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1979).

<sup>6</sup> Russell H. Betts et al., *A Strategic Assessment of NGO Development in Indonesia* (Jakarta: Development Alternatives Inc., 1987).

<sup>7</sup> More about the political movement in Indonesia in the pre-independence period is discussed in Chapter 2.

<sup>8</sup> Frederick Bunnell, "Community Participation, Indigenous Ideology, Activist Politics: Indonesian NGOs in the 1990s," in *Making Indonesia*, ed. Daniel S. Lev and Ruth Mc. Vey (Ithaca: Cornell Southeast Asia Program Publications, 1996), 181.

<sup>9</sup> M. Dawam Rahardjo, "Dokter Soetomo: Pelopor LPSM?," *Prisma* 7 (1988).

<sup>10</sup> Vickers, *A History of Modern Indonesia*.

<sup>11</sup> Feith, *The Decline of Constitutional Democracy in Indonesia*.

1920s.<sup>12</sup> Prior to the election, these political parties competed with each other for the support of the people. One of the strategies used was through forming umbrella organisations and alliances. In order to entice villagers, for example, the Indonesian Communist Party supported *Barisan Tani Indonesia* (BTI–Indonesian Farmers’ Front); the Indonesian Nationalist Party had the *Persatuan Tani Nasional Indonesia* (PTNI–Indonesian National Union of Farmers), and Masyumi Party supported *Sarikat Tani Islam Indonesia* (STII–United Islamic Farmers of Indonesia). As shown in Chapter 2, political parties were not the only ones to apply this strategy. The military, whose influence in politics increased in the 1950s, also initiated a number of mass organisations, including Golkar that evolved into a state party under the *Orde Baru* regime.<sup>13</sup> The trend of *politik aliran* lasted until Sukarno’s Guided Democracy collapsed and, under the Suharto’s leadership, Indonesian politics were dramatically affected by the leadership of a military-backed government. As discussed in the section below, the new regime imposed rules that constrained civil society movements.

### 4.3 Civil Society during the *Orde Baru* Period

The focus of this section is to discuss why and how *Orde Baru* restricted the activities of civil society. What is also important to point out in this part is why and how civil society groups survived Suharto’s dictatorship.

The restriction to non-governmental groups was related to the chaotic period of Sukarno’s presidency in the 1960s. When Sukarno stepped down in 1965, Indonesia suffered extreme inflation that skyrocketed to more than 500% and the country developed over \$US2 billion of foreign debt.<sup>14</sup> Improving the economy then became the main priority for the *Orde Baru* regime, and the new government did this by rescheduling the nation’s debt and inviting foreign investors to invest in the country.<sup>15</sup> The belief that the political fragmentation of the 1950s led to the abandonment of the nation’s economy triggered the *Orde Baru* regime to place constraints upon the political rights of the people.<sup>16</sup> These constraints included restrictions on political expression, restructuring the political system and adopting a highly centralised system.<sup>17</sup> PKI, which was accused by Suharto and the military as being the actor behind the attempted coup against Sukarno, suffered the most from

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<sup>12</sup> See: Clifford Geertz, "The Javanese Village" (paper presented at the Local, ethnic, and national loyalties in village Indonesia: A symposium, 1959); Hindley, "Alirans and the Fall of the Old Order."

<sup>13</sup> Pauker, "The Role of Political Organizations in Indonesia."

<sup>14</sup> See: Akhand Akhtar Hossain, *Macroeconomic and Monetary Policy Issues in Indonesia* (Routledge: New York, 2012); Michael R.J. Vatikiotis, *Indonesian Politics under Suharto: The Rise and Fall of the New Order* (London: Routledge, 1998).

<sup>15</sup> Robert B. Dickie and Thomas A. Layman, *Foreign Investment and Government Policy in the Third World* (London: Macmillan Press, 1988).

<sup>16</sup> Dadang Juliantara, "Politik Perizinan, Gerakan Massa dan Demokrasi," in *Demokrasi dalam Pasungan Politik Perizinan di Indonesia*, ed. Hairus Salim and Angger Jati Wijaya (Jakarta: Forum LSM-LPSM DIY, 1996).

<sup>17</sup> Andreas Ufen, *Political Parties in Post-Suharto Indonesia: Between Politik Aliran and 'Philippinisation'* (Hamburg: GIGA German Institute of Global and Area Studies, 2005).

the *Orde Baru*'s approaches. The party and its affiliate organisations like *Gerwani* (*Gerakan Wanita Indonesia*, Indonesian Women's Movement) and BTI were dissolved and their members were either arrested or killed in a systematic anti-communist campaign led by the military.<sup>18</sup> The effort to isolate the people from politics was executed through the cutting of ties between political parties and their constituents. No party branches or mass organisations linked to the parties could be established at the village level, and the only time political parties were allowed to interact with the people was during an election year. This approach was called the 'floating mass' concept, proposed by the military and Golkar as the party of the government. Golkar's special status obviously exempted itself from the "floating mass" regulation as its functional groups continued to operate at the local level.<sup>19</sup>

Throughout its reign, *Orde Baru* adopted regulations that intended to limit the capability of Indonesian civil society, especially NGOs. For example, in 1967, the government founded the Committee of Foreign Technical Assistance to "monitor and administer all organizations receiving foreign assistance".<sup>20</sup> In 1985, through *Inpres* No. 32/1985, the government established *Biro Kerjasama Teknik Luar Negeri* (Overseas Technical Co-operation Bureau) that was responsible for administering "all projects financed by foreign agencies" and issuing appropriate permits.<sup>21</sup> Foreign agencies also had to seek approval from Indonesia's intelligence agency in order to make sure that their activities would not contradict the government's policy. The government also forced Indonesian NGOs to merge into a larger institution. Not all of the NGOs were happy with the arrangement, especially those who viewed it as a disruption to their work.<sup>22</sup>

A more restrictive policy to control the society was the adoption of *Undang-Undang Ormas No. 8/1985* (Law on Mass Organisations) that targeted all mass organisations including political parties, interest groups, trade unions and professional associations. It was later also used to regulate NGOs. It is argued that this policy was implemented because of the growing resentment among some people in the Islamic community towards Suharto's rule in the 1980s.<sup>23</sup> Under this law, all mass organisations in Indonesia were required to adopt the Pancasila as their sole ideology (Article 2). In addition, the law granted authority to the government to dissolve any organisation that "disrupts law and order" (Article 13a), "receives foreign assistance without the consent of the government"

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<sup>18</sup> Eklof, *Power and Political Culture in Suharto's Indonesia: The Indonesian Democratic Party (PDI) and the Decline of the New Order (1986-98)*; Jun Honna, "From Dwifungsi to NKRI: Regime Change and Political Activism of the Indonesian Military," in *Democratization in Post-Suharto Indonesia*, ed. Marco Bünte and Andreas Ufen (London: Routledge, 2009).

<sup>19</sup> Allan A Samson, "Indonesia 1972: The Solidification of Military Control," *Asian Survey* (1973).

<sup>20</sup> Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*, 91.

<sup>21</sup> *Ibid.*, 94.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

(Article 13b), “risk the national interest” (Article 13c) and those “founded on Communism/Marxism/Leninism or any ideology that contradicts *Pancasila*” (Article 16). The imposition of Pancasila, as the only ideology, had a significant effect on the relationship between the state and the society. By cementing Pancasila as the one and only belief system for civil society to follow, *Orde Baru* was able to eliminate one of the primary purposes of civil society: to build an ideological basis that has the capability of generating a movement.<sup>24</sup>

A range of regulations were issued to limit the activities of civil society, and this garnered varied responses from different civil society groups, from cooperating with to opposing the government.<sup>25</sup> State-sponsored mass organisations, like KNPI (Indonesian National Youth Groups), SPSI (All Indonesian Workers’ Union), HNSI (Indonesian Fishermen’s Association), HKTI (Indonesian Farmers’ Association), LMD (Village Consultative Assembly), LKMD (Village Defense Council), *Karang Taruna* (youth groups) and PKK (Family Welfare Guidance), fell into the first category in that they cooperated with the government. Aspinall called this particular type of civil society group “corporatist sole organizations” that were dependent on the government and usually served as “instruments of state power”.<sup>26</sup> Because of their dependence to the government, these groups did not have the ability to criticise the government, which could be seen in their indifference to *UU Ormas No. 8/1985*.<sup>27</sup>

The second category of civil society groups included independent institutions that were in a cordial relationship with the government for survival reasons and were involved in “regime structures, such as parties and parliaments, supported official policies, and experienced some degree of state interference in their internal workings”.<sup>28</sup> These groups, Muhammadiyah and Nahdlatul Ulama, (NU), the two largest Islamic mass organisations, can be considered as part of the second type of civil society organisation. While the *Orde Baru* policy on streamlining Islamic political parties might impact NU, for example, NU still gave its support to the government.

The third category was civil society groups that were independent in their origins and very outspoken about government policies. Aspinall called this group “proto-oppositional civil society

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<sup>24</sup> Ibid.

<sup>25</sup> See: Edward Aspinall, "Transformation of Civil Society and Democratic Breakthrough," in *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Space*, ed. Muthiah Alagappa (Stanford: Stanford University Press, 2004); Philip Eldridge, *Non-Government Organisations and Democratic Participation in Indonesia* (Kuala Lumpur: Oxford University Press, 1995); Mansour Fakih, "NGOs in Indonesia Issues in Hegemony and Social Change," in *Occasional Paper Series on Non Governmental Organizations*, ed. University of Massachusetts (Amherst 1991).

<sup>26</sup> Aspinall, "Transformation of Civil Society and Democratic Breakthrough," 71.

<sup>27</sup> M.M. Billah and Abdul Hakim Garuda Nusantara, "State Constraints on NGOs in Indonesia: Recent Developments," *Prisma* 47 (1989).

<sup>28</sup> Edward Aspinall, "Indonesia: Transformation of Civil Society and Democratic Breakthrough," in *Civil Society and Political Change in Asia*, ed. Muthiah Alagappa (Stanford: Stanford University Press, 2004), 71-72.

organizations” because they only challenged the government on particular issues, and not the whole system.<sup>29</sup> This type of group could be found in NGOs working on human rights issues, like *Lembaga Bantuan Hukum* (LBH—Legal Aid Foundation), or NGOs that emerged in the 1970s to focus on development issues. Examples of these NGOs were *Bina Swadaya* (Badan Pengembangan Swadaya Masyarakat—Community Self-Reliance Development Agency), *Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial* (LP3ES—Institute for Economic and Social Research, Education and Information), *Lembaga Studi Pembangunan* (LSP—Institute for Development Studies), *Yayasan Lembaga Konsumen Indonesia* (YLKI—Indonesian Consumers’ Foundation), *Perhimpunan Pengembangan Pesantren dan Masyarakat* (P3M—Islamic Boarding Schools and Community Development Association), *Yayasan Insan Sembada* (YIS—Prosperous Indonesia Foundation).<sup>30</sup> The initiators of these organisations were middle-class, such as academics, religious leaders, lawyers and former student activists. The rise of NGOs in the 1970s was also prompted by the access that these middle-class people had with international donors who shared similar interests in empowering grassroots communities.<sup>31</sup> These NGOs observed that the government’s rural development policy had further alienated the poor instead of improving their living standards. Therefore, they initiated programs, such as marketing and business training, in the hope that they could boost the economic growth of rural areas.<sup>32</sup>

Working under an authoritarian regime forced NGOs in Indonesia to adopt strategies to protect themselves and their work. One of their approaches was to modify the term ‘non-governmental organisations’. Indonesian NGOs preferred phrases such as *Lembaga Swadaya Masyarakat* (LSM) or community self-reliance organization, *Lembaga Swadaya Pengembang Masyarakat* (LPSM) or organization for promoting self-reliance, rather than NGO. This is because, in Indonesian language, NGO is translated as ‘*organisasi non pemerintah*’, which has the potential of misinterpretation as an anti-government group.<sup>33</sup> According to Fakhri<sup>34</sup>, these particular terminologies served to identify them from other non-governmental organisations, such as religious groups or chambers of commerce. The local terms used to describe NGOs also intended to highlight their interest in development issues in terms of economic, social and cultural issues. The type of programs was also part of the strategy for NGOs to survive, especially in the early years of the *Orde Baru* period. Non-political organisations, like charity groups, were considered safe from interference of the

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<sup>29</sup> Ibid., 72.

<sup>30</sup> Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*.

<sup>31</sup> Betts et al., *A Strategic Assessment of NGO Development in Indonesia*.

<sup>32</sup> Bunnell, "Community Participation, Indigenous Ideology, Activist Politics: Indonesian NGOs in the 1990s."; Fakhri, "NGOs in Indonesia Issues in Hegemony and Social Change."; Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*.

<sup>33</sup> Betts et al., *A Strategic Assessment of NGO Development in Indonesia*.

<sup>34</sup> Fakhri, "NGOs in Indonesia Issues in Hegemony and Social Change."

government. Another tactic used by civil society groups was to cooperate with the government. Edridge<sup>35</sup> described this approach as ‘high-level partnership’, where NGOs would work together with government agencies in order “to influence their design and implementation in more participatory directions”. To be exempted from *UU Ormas*, NGOs were left with no choice but to register as *yayasan* (foundation). As a *yayasan*, the government could not interfere with their affairs, since *yayasan* were administered under commercial law.

What this section has demonstrated is how the regime’s capability in overseeing non-governmental groups, through co-optation and coercion, created division in civil society groups. There was no unified opposition group that was strong enough to confront Suharto’s regime because the government was able to control both moderate and radical groups.<sup>36</sup> As the next section discusses, the fragmentation of civil society groups continued to occur, even after the end of Suharto’s regime. Consequently, this affected the democratic trajectory as there was no significant pressure to drive reform.

#### 4.4 Civil Society during the Downfall of Suharto

The end of Suharto’s regime, as argued by Aspinall, “was dictated not so much by process within civil society as by processes internal to the state—combined with a massive external shock”.<sup>37</sup> This is related to the Indonesian civil society groups that lacked the social capital to challenge the *Orde Baru* regime, despite their revival in the 1990s. In the mid-1980s, civil society in Indonesia experienced a resurgence where the government, for a brief period, demonstrated its acceptance to the idea of democratisation and the “rapidly expanding NGO movement”.<sup>38</sup> There were several circumstances that triggered *Orde Baru*’s shift in position. Firstly, the dramatic fluctuation of oil prices in the 1980s affected the national budget and the government’s ability to provide for the basic needs of the people, especially the poor. Through its Five-Year National Development Plans (*Repelita V*), the government adopted a liberalised approach that was suggested by economists, in order to boost the economic growth of the country.<sup>39</sup> This was then followed by the changing tone from the government on how it now perceived the usefulness of NGOs in “promoting participatory development”.<sup>40</sup> As pointed out by Mas’oed,<sup>41</sup> *Orde Baru* began to regard NGOs as an

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<sup>35</sup> Philip Eldridge, "NGOs and the State in Indonesia," in *State and Civil Society in Indonesia*, ed. Arief Budiman (Clayton: Centre of Southeast Asian Studies Monash University, 1990), 52.

<sup>36</sup> Aspinall, *Opposing Suharto Compromise, Resistance, and Regime Change in Indonesia*.

<sup>37</sup> "Indonesia: Transformation of Civil Society and Democratic Breakthrough," 82-83.

<sup>38</sup> Bunnell, "Community Participation, Indigenous Ideology, Activist Politics: Indonesian NGOs in the 1990s," 62.

<sup>39</sup> Muljana Soekarni and Ferry Syarifuddin, "Government Economic Policies since the Beginning of the New Order Era," in *The Indonesian Economy Entering A New Era*, ed. Aris Ananta, Muljana Soekarni, and Sjamsul Arifin (Singapore: ISEAS, 2011).

<sup>40</sup> Bunnell, "Community Participation, Indigenous Ideology, Activist Politics: Indonesian NGOs in the 1990s," 183.

<sup>41</sup> Mohtar Mas’oed, "The State Reorganisation of Society under the New Order," *Prisma* 47 (1989): 23.

“indispensable actor” in the development process because of their abilities to organise “local resources for productive uses” and to initiate “international network[s]” like the International Non-Governmental Group in Indonesia (INGI). Second, the end of the Cold War, which triggered the democratisations of ex-communist states in Europe, had pushed the Indonesian government to accept some demands for democratisation coming from its benefactor countries.<sup>42</sup> Third, Suharto adopted the *keterbukaan* (openness) policy, which relaxed control over the media and allowed for the new press to rise (with some press agencies being more outspoken in criticising government policy), established a Human Rights Commission and embraced the Islamic community (a group that was marginalised during the early period of *Orde Baru*), However, Suharto was not purely reacting to the cry for reformation. As pointed out by scholars, Suharto’s moves were construed as a strategic response to the growing friction among *Orde Baru* elites, especially in the military, who questioned Suharto’s leadership and raised the issue of succession.<sup>43</sup>

When Suharto managed to resolve the resentment among his supporters, *Orde Baru* returned to the practice of limiting the role of civil society. The era of *keterbukaan* ended with the outlawing of three vocal newspapers (Tempo, Editor and DeTik) and the return of the harsh approach of silencing dissidents. In responding to such circumstances, some NGOs changed their strategies and openly challenged the government. In 1994, for example, NGOs were involved in a series of protests demanding the end of the military dual function and the ban on news organisations. In the same year, several NGOs filed a lawsuit against the government for reallocating conservation funds from logging companies to IPTN (the government-owned aircraft industry).<sup>44</sup> Nevertheless, despite those actions, Indonesian civil society groups were not able to push the democratisation agenda. As pointed out by Aspinall,<sup>45</sup> this can be explained by looking at how *Orde Baru*’s de-politicising policies reduced the capacity of civil society. Firstly, Indonesian NGOs were not capable of attracting a large supporter base because of the government’s restraining policies on mass organisations and political activism. Second, even in the period of *keterbukaan*, NGOs could not possibly instigate a revolution because they were accustomed to avoiding activities that could be seen as a threat to the State. This characteristic remained in NGOs for a long time, and was what had ensured their survival during the authoritarian era. Another problem for Indonesia’s NGOs was their reliance on international donors. Under the status of *yayasan* (foundation), NGOs were

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<sup>42</sup> Bunnell, "Community Participation, Indigenous Ideology, Activist Politics: Indonesian NGOs in the 1990s."; Muhammad Hikam, "The State, Grass-Roots Politics and Civil Society: A Study of Social Movements under Indonesia’s New Order (1989-1994)" (Thesis, University of Hawaii, 1995).

<sup>43</sup> See: Aspinall, *Opposing Suharto Compromise, Resistance, and Regime Change in Indonesia*; Jacques Bertrand, "False Starts, Succession Crises, and Regime Transition: Flirting with Openness in Indonesia," *Pacific Affairs* (1996); Vatikiotis, *Indonesian Politics under Suharto: The Rise and Fall of the New Order*.

<sup>44</sup> Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*.

<sup>45</sup> Aspinall, *Opposing Suharto Compromise, Resistance, and Regime Change in Indonesia*.

dependent on their benefactors and this donor-recipient relationship affected NGOs' activities. For some larger NGOs, for example, coordinating a drastic challenge to Indonesia's political system was considered as a risky move that could damage their relationship with donors and also the government.

It was the students, not political parties, NGOs or other interest groups, who then became "the main agents of popular resistance"<sup>46</sup> and contributed to the downfall of Suharto.<sup>47</sup> The ability of student activists to overthrow Suharto was due to the nature of their activism that was much more robust and not reliant on higher authorities, as was the case for other civil society groups. Labour groups, for example, were late in joining the protests against Suharto because of the regime's ability to constrain their political rights.<sup>48</sup> However, even as other civil society groups joined the student movement to oppose Suharto in early 1998, the state of Indonesia's civil society was too fragmented and disorganised to produce a coherent narrative on how to lead Indonesia forward. This can be seen in the case of the disagreement between the students and the group of moderate elites, including Amien Rais, Megawati, Abdurrahman Wahid and Sultan Hamengkubuwono X, who wanted a step-by-step reform rather than a radical transformation.

#### **4.5 Civil Society in the Post-Suharto Era**

This section explains how civil society in Indonesia has continued to be fragmented, a condition that has hampered efforts to further reform the country. Since the end of *Orde Baru*, the greatest test for progressive civil society groups has been confronting the legacy of the *Order Baru* regime that was dominated by tyrannical practices. For example, the old system manifested through patrimonial politics was still intact; Suharto's supporters and the military remained in vital positions in the government.<sup>49</sup> This was complicated further by the fact that civil society groups in Indonesia were divided on how to work within the democratisation of the country.<sup>50</sup> Some civil society groups chose to engage with the new government to provide advice, while others decided to avoid it. As pointed out by Priyono et al., some civil society groups that focused on issues of past human rights abuses, for example, chose not to work with government institutions and work only with the victims

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<sup>46</sup> Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*, 211.

<sup>47</sup> Seth Mydans, "The Fall Of Suharto: The Overview; Suharto, Besieged, Steps Down After 32-Year Rule In Indonesia," *The New York Times*, 21 May 1998.

<sup>48</sup> Hadiz, "Reformasi Total? Labor after Suharto."

<sup>49</sup> See: Crouch, "Patrimonialism and Military Rule in Indonesia." According to Crouch, Indonesia's patrimonial model, which has been characterised by the rivalries between political elites, started during Sukarno's Guided Democracy. Sukarno tried to balance the contestation by trying to appease the different ideological parties involved. During Suharto's period, the army was the dominant elite in the government. Suharto then distribute the power by prioritising the military in politics as well as in the economy. For analysis on patrimonialism in the post Suharto era see for example Webber, "A consolidated patrimonial democracy? Democratization in post-Suharto Indonesia."

<sup>50</sup> Aditya Perdana, "The Politics of Civil Society Organizations (CSOs) Post-Reformation 1998," *MASYARAKAT: Jurnal Sosiologi* 20, no. 1 (2015).

out of distrust of the new political system.<sup>51</sup> Another type of civil society group that flourished with *Reformasi* were those who tended to be disruptive to democratic change. Muthiah Alagappa<sup>52</sup> argued that this phenomenon is common in a country that has undergone a transformation from authoritarianism to democracy. The inability of the new government to instigate political or economic change created uncertainty in the society, and some uncivil society groups might take advantage of that situation.<sup>53</sup>

Thus, in general, *Reformasi* affected the development of Indonesia's civil society with the creation of different types of civil society groups. On one hand, *Reformasi* became the momentum for the rise of pro-democratic groups that focused on law and security reforms and accountability issues. The roles that they played ranged from being a watchdog organisation, assisting the government and parliament in drafting laws and contributing to public forums.<sup>54</sup> As pointed out by Lindsey,<sup>55</sup> the actors behind these NGOs were "a new generation" of activists that were more resourceful, highly educated and resilient. In the era of *Reformasi*, these NGOs maximised the freedom to work in a transnational networking environment, as can be seen by their involvement in monitoring the 1999 general election,<sup>56</sup> or under the United Nations mechanisms.<sup>57</sup>

The upsurge of these civil society organisations mirrored similar situations in Latin American countries, such as Argentina and Chile, during their interregnum period in their transition from authoritarianism to democracy.<sup>58</sup> Civil society organisations in this category can be classified into several groups. The first groups are the grassroots-level NGOs that reported human rights abuses and corruption within the government. They also scrutinised the inadequacy of Indonesia's legal system in upholding human rights and transparency. Examples of these types of NGOs include

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<sup>51</sup> AE Priyono, Willy Purna Samadhi, and Olle Törnquist, *Menjadikan Demokrasi Bermakna: Masalah dan Pilihan di Indonesia* (Jakarta: Demos, 2007).

<sup>52</sup> Muthiah Alagappa, "Civil Society and Political Change: An Analytical Framework," in *Civil Society and Political Change in Asia Expanding and Contracting Democratic Space*, ed. Muthiah Alagappa (Stanford: Stanford University Press, 2004).

<sup>53</sup> Uncivil society groups can be also arose from the external factors such as the influence of foreign countries or groups. See: Laurence Whitehead, "Bowling in the Bronx: The Uncivil Interstices between Civil and Political Society," *Democratization* 4, no. 1 (1997): 111.

<sup>54</sup> Hans Antlöv, Derick W. Brinkerhoff, and Elke Rapp, "Civil Society Capacity Building for Democratic Reform: Experience and Lessons from Indonesia," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 21, no. 3 (2010).

<sup>55</sup> Tim Lindsey, "Legal Infrastructure and Governance Reform in Post-Crisis Asia," in *Law Reform in Developing and Transitional States*, ed. Tim Lindsey (New York: Routledge, 2007), 24.

<sup>56</sup> Aleksius Jemadu, "Transnational Activism and the Pursuit of Democratization in Indonesia: National, Regional and Global Networks," in *Transnational Activism in Asia: Problems of power and democracy*, ed. Nicola Piper; and Anders Uhlin (London: Routledge, 2004).

<sup>57</sup> Mugiyanto, "Akuntabilitas Penyelesaian Kasus-kasus Penghilangan Orang Secara Paksa," in *Almanak Hak Asasi Manusia di Sektor Keamanan Indonesia 2009*, ed. Mufti Makaanim A., et al. (Jakarta: IDSPS, 2009).

<sup>58</sup> Leonardo Avritzer, "Civil society in Latin America: Uncivil, Liberal and Participatory Models," in *Exploring Civil Society Political and Cultural Contexts*, ed. Marlies Glasius, David Lewis, and Hakan Seckinelgin (New York: Routledge, 2004).

*Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* (KontraS, or Commission for Disappeared Persons and Victims of Violent Acts), *Ikatan Keluarga Orang Hilang Indonesia* (IKOHI, or Alliance of Families of Disappeared Persons), Indonesia Corruption Watch (ICW), *Forum Indonesia untuk Transparansi Anggaran* (FITRA, or Indonesian Forum for Budgetary Transparency) and *Masyarakat Transparansi Indonesia* (MTI, or Indonesian Society for Transparency). *Yayasan Lembaga Bantuan Hukum* (Indonesia's Legal Aid Foundation) and *Lembaga Studi & Advokasi Masyarakat*—ELSAM (Institute for Policy Research and Advocacy), that were founded long before *Reformasi* and have long been active, are included in this first category. The second category of Indonesia's civil society groups that emerged during *Reformasi* are academic-based groups that aimed to influence policy makers through their research publications. These researchers were usually in affiliation with Indonesia's universities or research institutes like *Lembaga Ilmu Pengetahuan Indonesia*—LIPI (Indonesian Institute of Sciences) and the Center for Strategic and International Studies (CSIS). Among the examples are ProPatria Institute and *Pusat Kajian Global Civil Society*—Pacivis that focus on security and defence reform. The third type of Indonesian civil society group are alliances of elements of civil society that pursue a specific cause, for example *Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional* (the Civil Society Coalition for the International Criminal Court), *Koalisi Masyarakat Sipil Antikorupsi* (the Civil Society Coalition for Anticorruption) and *Koalisi Masyarakat Sipil untuk Keadilan Ekonomi* (the Civil Society Coalition for Economic Justice).

On the other hand, there are the uncivil groups born out of the uncertainty and instability of the transitional periods. It is argued that these disruptive groups were created by elements among the *Orde Baru* elites that wanted to secure the status quo.<sup>59</sup> This type of group ranges from extremist religious groups, such as *Laskar Jihad* (Jihad Paramilitary Force), *Front Pembela Islam*—FPI (Islamic Defenders Front) and *Majelis Mujahidin Indonesia* (Indonesian Mujahedeen Council), to ethno-nationalist groups like *Lembaga Musyawarah Masyarakat Dayak dan Daerah Kalimantan Tengah*—LMMD-KT (Consultative Body for Dayak and Central Kalimantan Society) and *Forum Betawi Rempug*—FBR (Betawi Brotherhood Forum).<sup>60</sup>

<sup>59</sup> Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance."; Mizuno, "Indonesian Politics and the Issue of Justice in East Timor."; Noorhaidi, "Laskar Jihad Islam, Militancy and the Quest For Identity in Post-New Order Indonesia" (Leiden University, 2001).

<sup>60</sup> See: Beittinger-Lee, *(Un) Civil Society and Political Change in Indonesia: A Contested Arena*, 2; Bob S. Hadiwinata, "From 'Heroes' to 'Troublemakers'? Civil Society and Democratization in Indonesia," in *Democratization in Post-Suharto Indonesia*, ed. Marco Bünte and Andreas Ufen (New York: Routledge, 2009); Farish A Noor, "The Forum Betawi Rempug (FBR) of Jakarta: An Ethnic-Cultural Solidarity Movement in a Globalising Indonesia," (2012); Ian Wilson, "Continuity and Change: The Changing Contours of Organized Violence in Post-New Order Indonesia," *Critical Asian Studies* 38, no. 2 (2006).

## 4.6 Differences in Responding to Past Wrongdoing

The previous sections have described how the rise and the fall of Suharto's regime affected the increasing number of civil society groups that pursued democratic reforms in Indonesia's legal system and defence mechanisms. This section will discuss how post-Suharto Indonesia has also seen an increase in civil society activism on the issue of responding to past events of mass violence. This topic is important because the civil society's campaign for the Indonesian government to adopt the Rome Statute cannot be separated with the larger discourse on how Indonesia should handle its past human rights abuses perpetrated by Suharto's regime.

As can be seen in the following discussion, there have been numerous civil society groups involved in the issue of human rights abuses. The first type of group is those that provide support to victims of mistreatment. KontraS and IKOHI are primary examples of groups that offer assistance to victims and their families, regardless of their background. While KontraS and IKOHI's stakeholders are not specific, some other civil society groups focus on certain types of cause and targets. This can be seen from NGOs that demanded justice for the ill-treatment they received during *Orde Baru*'s anti-communist purge and the reinstatement of their rights as citizens. These types of NGOs were mostly formed after the end of Suharto's era, by founders who were once political prisoners (*tahanan politik—tapol*) during *Orde Baru*. Unlike the previous era when they lived under the suppression of the government, they saw the end of Suharto's regime, and the democratisation process that followed, as the momentum they needed to voice their causes. Among examples of these groups are *Yayasan Penelitian Korban Pembunuhan 1965-1966* (Research Foundation for Victims of the 1965-1966 Killings-YPKP), *Pakorba* (*Paguyuban Korban Orde Baru*, Association for Victims of the New Order) and LPKrop (*Lembaga Perjuangan Rehabilitasi Korban Rezim Orde Baru*, Institute for the Struggle to Rehabilitate Victims of the New Order Regime).<sup>61</sup> There were also NGOs that emphasised the need to reconcile with the past through reconnecting the victims and the offenders. Among such examples is *Forum Silaturahmi Anak Bangsa* (Children of the Nation Gathering Forum, FSAB) and Syarikat. FSAB's memberships consisted of children whose parents were involved in 'the ideological conflict' in Indonesia.<sup>62</sup> The members of FSAB include children of D.N. Aidit, PKI's high-ranking leader; S. M. Kartosoewirjo, the leader of DI/TII rebel group; and children of military generals that were killed in 1965. Children of both former presidents Sukarno and Suharto also took part in this group. These high profile members enabled the group to meet

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<sup>61</sup> Sri Lestari Wahyuningroem, "Seducing for Truth and Justice: Civil Society Initiatives for the 1965 Mass Violence in Indonesia," *Journal of Current Southeast Asian Affairs* 32, no. 3 (2013); Budiawan, "Living with the Spectre of the Past: Traumatic Experiences among Wives of Former Political Prisoners of the '1965 Event' in Indonesia," in *Contestations of Memory in Southeast Asia*, ed. Roxana Waterson and Kwok Kian Woon (Singapore: NUS Press, 2012).

<sup>62</sup> Jurnal Parlemen, "FSAB, Rekonsialisasi Khas Indonesia," 28 May 2013.

with parliamentary members and government officials to discuss their agenda. However, while FSAB intended to reconcile with the past, there have not been substantive outcomes from the group's activism, such as acknowledgement of human rights crimes or eliminating the stigma that many ex-PKI members and their descendants have endured since 1965.<sup>63</sup> FSAB has been criticised for being just "a gathering of children of the old political elites"<sup>64</sup> which undermined the process of genuine reconciliation.<sup>65</sup>

While FSAB attracted the national spotlight for its interaction with the national figures, Syarikat worked at the grassroots level. Founded in mid-2000, this NGO focuses on acknowledgement of what happened during 1965-1966 and to end intolerance towards ex-PKI members and their families. Syarikat's initiatives cannot be separated from president Wahid's approaches to reconcile with the past. In his state visits to the Netherlands and France in 1999, he expressed his regret to the

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<sup>63</sup> The anti-communist purge in 1965-1966 had affected not only the life of ex-PKI members and sympathisers but also their families. Those who survived the massacre had lived under the *Orde Baru's* discriminative policies. Former *tapol*, for example, were given a special ID that identified them as ex-supporters of PKI which impacted their employability. The stigma was also inherited by their children, as Suharto's regime required those who wanted to apply for schools, civil service, or the army a letter that stated their non-involvement in the 1965 coup that killed several military officers. In addition to the biased regulations, most ex-communists and their families have lived under the stigma that was generated by the government's anti-communist campaign. During *Orde Baru* there was an obligation to screen *Pengkhianatan G-30S/PKI* (The Betrayal of G-30S/PKI), a propaganda film that depicted PKI as the culprit behind the 1965 coup every September 30<sup>th</sup> from 1984-1988. The film also denounced Gerwani, a women's group affiliated with PKI, as sadists and harlots. There is much literature that discusses the stigmatisation of ex-PKI members as well as research that intended to reevaluate Indonesia's history during the eradication of PKI and analyse the failure to reconcile with the past human rights abuses. See for example: Idhamsyah Eka Putra and Any Rufaedah, "Recognition, Apology, and Restoration of Indonesian' Past Maltreatments of People Labeled as Communists," in *Handbook of Research on Examining Global Peacemaking in the Digital Age*, ed. Bruce L. Cook (Hershey: IGI Global, 2018); Annie Pohlman, "Janda PKI: Stigma and Sexual Violence against Communist Widows Following the 1965-1966 Massacres in Indonesia," *Indonesia and the Malay World* 44, no. 128 (2016); Katharine E. McGregor and Vanessa Hearman, "Challenges of Political Rehabilitation in Post-New Order Indonesia The case of Gerwani (the Indonesian Women's Movement)," *South East Asia Research* 15, no. 3 (2007); Chloé Pellegrini, "Indonesia's Unresolved Mass Murders: Undermining Democracy," (TAPOL, 2012); Katherine E. McGregor, *History in Uniform : Military Ideology and the Construction of Indonesia's Past* (Honolulu: University of Hawaii Press, 2007); Robert Cribb, "Unresolved Problems in the Indonesian Killings of 1965-1966," *Asian Survey* 42, no. 4 (2002); Katharine E. McGregor, "Memory Studies and Human Rights in Indonesia," *Asian Studies Review* 37, no. 3 (2013); Budiawan, *Mematahkan Pewarisan Ingatan Wacana Anti-Komunis dan Politik Rekonsiliasi Pasca-Soeharto* (Jakarta: ELSAM, 2004); "Living with the Spectre of the Past: Traumatic Experiences among Wives of Former Political Prisoners of the '1965 Event' in Indonesia."

<sup>64</sup> Wahyuningroem, "Seducing for Truth and Justice: Civil Society Initiatives for the 1965 Mass Violence in Indonesia," 116.

<sup>65</sup> In countries in Latin America or Eastern Europe that underwent a transformation from being an authoritarian into a democracy, reconciliation was discussed in the context of transitional justice. According to International Center for Transitional Justice (ICTJ), transitional justice is 'a response to systematic or widespread violations of human rights' where it aims for 'recognition for victims' and furthering 'peace, reconciliation, and democracy.' Several mechanisms that have been adopted in relation to transitional justice are through: 'criminal prosecutions, truth commission, reparation programs, gender justice, security system reform, and memorialization efforts.' The practices of transitional justice have then been incorporated to international law and international institutions the United Nations. The decision from the Inter-American Court of Human Rights in 1998 has been recognized for setting the norms on state responsibilities on human rights, which include: 'to take reasonable steps to prevent human rights violations; to conduct a serious investigation of violations when they occur; to impose suitable sanctions on those responsible for the violations; to ensure the reparation for the victims of the violations.' ICTJ, "What is Transitional Justice?"

victims of mass violence in 1965.<sup>66</sup> He also proposed to dissolve the 1966's MPRS decree (TAP MPRS No. 25/1966) on banning communism in front of a national television audience in March 2000.<sup>67</sup> Wahid's moves inspired several of Nahdlatul Ulama's young scholars to form Syarikat. As stated by Imam Aziz, Syarikat's program coordinator, this organisation's activities have revolved around NU and the 1965 victims "given that it was NU youth who perpetrated much of the violence".<sup>68</sup> In its campaigning, Syarikat has utilised the connections of NU's *kyai* (religious leaders) to reach out to the victims. Initially, Syarikat's work received little support from NU, as prejudice against communism is common among the NU community.<sup>69</sup> Syarikat's advocacy ranges from arranging workshops and meetings of those who were involved and affected in the 1965-66 incidents and publishing these activities in RUAS, a magazine owned by Syarikat. NU has also been involved in community development programs to assist victims.<sup>70</sup>

It is worth noting that, even though Suharto's era ended with *Reformasi* 1998, efforts to reconcile the 1965 tragedy have not been free of challenges. When president Wahid announced his idea to revoke the MPRS' decree that banned communism in Indonesia, he faced enormous backlash, especially from Muslim communities who believed that communism promotes atheism and is ill-matched with Islamic values. For his political opponents, Wahid's proposal to abolish TAP MPRS on communism was even used as ammunition to impeach him in July 2001.<sup>71</sup> Since Wahid's failed initiative, there has not been any significant effort by the Indonesian governments to address the 1965 tragedy.<sup>72</sup> This failure has impacted on the activism of the civil society groups that work on this issue, which often times has been misunderstood to be an effort to revive the Communist Party.<sup>73</sup>

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<sup>66</sup> Aboeprijadi Santoso and Gerry van Klinken, "Genocide Finally Enters Public Discourse: The International People's Tribunal 1965," *Journal of Genocide Research* 19, no. 4.

<sup>67</sup> The Jakarta Post, "Gus Dur Renews Call for Lifting Ban on Communism," 27 March 2000.

<sup>68</sup> Chloe Olliver, "Reconciling NU and the PKI," *Inside Indonesia*, 26 July 2007.

<sup>69</sup> Even president Wahid's suggestion to revoke the ban on communism met with backlash from within NU. The politicians from PKB supported Wahid's idea because it was in line with PKB's mission to uphold human rights. NU leaders such as Yusuf Hasyim and Solahuddin Wahid, president Wahid's uncle and brother respectively, rejected Wahid's suggestion. Hasyim argued that Wahid did not fully understand what atrocities PKI had committed in the past and his brother said the proposal was untimely. See: Suhelmi, "Communism Debated Again: The Muslim Response to the Idea of Revoking the 1966 anti-Communism in Post-Soeharto Indonesia."

<sup>70</sup> Olliver, "Reconciling NU and the PKI."; Priyambudi Sulistiyanto and Rumeckso Setyadi, "Civil Society and Grassroots Reconciliation in Central Java," in *Reconciling Indonesia Grassroots agency for peace*, ed. Birgit Bräuchler (London: Routledge, 2009).

<sup>71</sup> Suhelmi, "Communism Debated Again: The Muslim Response to the Idea of Revoking the 1966 anti-Communism in Post-Soeharto Indonesia."

<sup>72</sup> At the beginning of his presidency in 2004, Yudhoyono promised to resolve Indonesia's past human rights abuses, but none of the cases of human rights violations were brought to trial even though KOMNAS HAM had sent the preliminary investigations of several cases from the 1965 tragedy to the 1998 riots to the Attorney General Office.

<sup>73</sup> Numerous groups have shown resistance to PKI, such as FPI, GP Anshor (NU's Youth Movement), *Forum Anti Komunis Indonesia* (Indonesia's Anti-Communism Forum), and *Forum Komunikasi Putra Putri Purnawirawan Indonesia* (Communication Forum for Children of Veterans). These groups often obstructed activities that were related

The second type of civil society involvement in the issue of past human rights crimes is policy advocacy. This began when, not long after the resignation of Suharto, the new regime received a call to address human rights crimes perpetrated by Suharto's regime, from the purge of PKI members and supporters, to separate abuse cases in Tanjung Priok (Jakarta), Talang Sari (Lampung), Aceh, Papua, East Timor and widespread abuses during the final months of Suharto's reign.<sup>74</sup>

In the beginning, the response of the Habibie's administration was to comply with demands from elements of civil society. On 4 September 1998, for example, Habibie and his ministers met with Komnas HAM to discuss establishing a reconciliation committee. An informal reconciliation team was even established during that meeting, and it consisted of Komnas HAM commissioners, academics and government officials. Muladi, the Minister for Justice, explained that the members of the informal team might be expanded to include elements of civil society from NGOs and community leaders. He emphasised the urgency of forming a reconciliation body as part of the government's effort to minimise national tension after the end of Suharto's era.<sup>75</sup> However, neither Habibie, nor his successors, were unable to finalise the national reconciliation body. Part of the reason was lack of agreement between Habibie and the civil society on how to implement the reconciliation plan. The Habibie administration wanted the reconciliation to be conducted to safeguard against disintegration and there was a reluctance to talk about Suharto's crimes.

It is important to note that despite the active campaign on the topic of addressing wrongdoings of the past, Indonesia's civil society groups have been split on how to resolve the problem. Ahmad Dahlan Ranuwihardjo, an expert in Indonesian law, for example, pointed out that the government needed to show "the intention to resolve the wrongdoings of Suharto's regime" before asking people to join a national reconciliation body.<sup>76</sup> In the same vein, Franz Magnis-Suseno, a well-known Jesuit scholar, also demanded acknowledgement of past offenses of the former regime:

If the people were asked to accept the involvement of key figures of *Orde Baru* in the new government there should be non-negotiable prerequisites: First they must support *Reformasi* that means democratization. Second, they must openly admit their regrets to involve in the *Orde Baru's* practices.

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to the 1965 violence even though they are delivered in the forms of academic discussions or films screening. See for example: Tempo, "Polisi Bubarkan Diskusi Film Senyap di AJI Yogya", 17 December 2014; "Pertemuan Keluarga Eks Tapol Dibubarkan Massa," 27 October 2013; Dika Dania Kardi, "Kronologi Pengepungan Gedung LBH Jakarta oleh Massa Anti-PKI," *CNN Indonesia*, 18 September 2017.

<sup>74</sup> See: Kompas, "Mahasiswa Tuntut Dibentuk Badan Rekonsiliasi," 22 October 1998; "Perlu, Rekonsiliasi ABRI-Rakyat," 1 December 1998; "Diupayakan, Penerapan Skenario Afrika Selatan," 14 July 1999; "Rekonsiliasi Harus Libatkan Figur Mengakar," 7 September 1998.

<sup>75</sup> "Pemerintah-Komnas HAM Sepakat Bentuk Tim Informal Rekonsiliasi Nasional," 5 September 1998.

<sup>76</sup> "Rekonsiliasi Harus Libatkan Figur Mengakar.", 1

Their admittance that they are responsible for the catastrophic that Indonesia now suffered is required in order for their atonement and support to *Reformasi* to be believable.<sup>77</sup>

While Magnis-Suseno did not touch on the issue of law enforcement, victims of past human rights abuses, like those affected by the Tanjung Priok incident,<sup>78</sup> demanded the case be reopened and the perpetrators be held accountable before a court.<sup>79</sup>

In the midst of the government's indecisiveness, ELSAM, a leading NGO working on policy advocacy and human rights, suggested the establishment of a Truth and Reconciliation Commission (TRC) through the adoption of *Undang Undang Komisi Kebenaran dan Rekonsiliasi* (Law on Truth and Reconciliation Commission). ELSAM's advocacy for TRC was based on several considerations. First TRC was believed to be the obvious option in the transitional period because the justice system inherited from *Orde Baru* would be unlikely to work effectively. ELSAM also argued that, for a government that was occupied with economic recovery, TRC would be a sensible choice. Moreover, ELSAM's decision to back TRC was part of its position to maintain the stability of the transitional period, especially since the government and the parliament had committed to settling past wrongdoings through the release of TAP MPR No. V/1998.<sup>80</sup>

The advocacy of ELSAM on the Law on Truth and Reconciliation Commission was challenged by the composition of the parliament where the military and the police still retained seats. The drafting of the bill on TRC started in early 2004. While the TRC itself was mandated through the MPR's decree, the progress of creating the bill was obstructed by a lack of enthusiasm of the members of the parliament (DPR). DPR members also differed in opinion on substantial matters, for example, the TNI/Polri faction disagreed with the word '*kebenaran*' (truth) despite the fact that truth is important in the reconciliation process. The working group for the TRC bill also disagreed on the definitions of victims, perpetrators and reparation for victims.<sup>81</sup> ELSAM, which was involved in early drafting and lobbying the DPR members, criticised the final TRC bill for ignoring the true purpose of a truth and reconciliation committee.<sup>82</sup> KontraS, another human rights NGO, insisted that the TRC law weakened the role of the human rights court and could potentially perpetuate the

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<sup>77</sup> Franz Magnis-Suseno, "Rekonsiliasi," 19 September 1998., 4

<sup>78</sup> See: TAPOL Bulletin, "New Societies Law Threatens Future of Many NGOs," no. 64 (1984); "Indonesia rocked by unrest," no. 66 (1984); Peter Burns, "The post Priok trials: Religious principles and legal issues," *Indonesia*, no. 47 (1989); Priyambudi Sulistiyanto, "Politics of Justice and Reconciliation in Post-Suharto Indonesia," *Journal of Contemporary Asia* 37, no. 1 (2007).

<sup>79</sup> "Politics of Justice and Reconciliation in Post-Suharto Indonesia."

<sup>80</sup> ELSAM, *Kertas Posisi atas RUU Komisi Kebenaran dan Rekonsiliasi*.

<sup>81</sup> Kompas, "Delapan Fraksi Siap Bahas RUU KKR- F-PDU Menolak," 19 February 2004; Sinar Harapan, "RUU KKR Digarap Amatir," 31 May 2004.

<sup>82</sup> ELSAM, *Kertas Posisi atas RUU Komisi Kebenaran dan Rekonsiliasi*.

culture of impunity.<sup>83</sup> YPKP, that represented the victims of 1965-1966, also came out with a similar argument. The bill on TRC was said to be ignoring justice for victims while focusing on clemency for the perpetrators, especially since “the victims’ bargaining position is weak; there is no victims’ representation in state’s agencies that can intervene state’s policy regarding serious human rights violations”.<sup>84</sup> The Law on TRC (*Undang Undang No. 27/2004*) was passed in October 2004, but the fate of a national truth and reconciliation commission became uncertain with the annulment of the law by *Mahkamah Konstitusi* (the Constitutional Court) in 2006.<sup>85</sup>

The Law on TRC was not the only legal products where civil society contributed. The discourse on transitional justice after the end of Suharto’s regime coincided with the separation of East Timor from Indonesia in 1999 through a referendum. The aftermath of the vote put Indonesia at the centre of international attention because the parting of East Timor was immediately followed by civil conflicts between those who pursued an independent East Timor and those who desired to remain as an integrated part of Indonesia. As this chapter has discussed, there was disagreement among Indonesians on the issue of human rights violations in East Timor. Affan Gaffar from Universitas Gadjah Mada, for example, argued that KPP-HAM Timtim was incorrect in concluding that Habibie and General Wiranto were responsible for the unrest in East Timor. He pointed out that the military was doing their job and that it was impossible for Habibie to have issued instruction to destroy East Timor. He concluded, “From how KPP-HAM had worked and publicized their

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<sup>83</sup> Indria Fernida, "Calling for Truth about Mass Killings of 1965/6: Civil Society Initiatives in Revealing the Truth of Mass Killings of 1965/6 under the Transitional Justice Framework in Indonesia" (Thesis, University of Oslo, 2014).

<sup>84</sup> "Pandangan Umum Yayasan Penelitian Korban Pembunuhan 1965/1966 terhadap Rancangan Undang-undang Komisi Kebenaran dan Rekonsiliasi,," 2008, YPKP, accessed 30 July 2018, <http://ypkp65.blogspot.com/2008/03/pandangan-umum-yayasan-penelitian.html>

<sup>85</sup> The passing of Law 27/2004 on TRC was followed by competition between proponents and those who opposed TRC in the Constitutional Court. In March 2006 a group of NGOs and human rights filed a motion for the Court to review the law because it failed to empower the truth commission through the authority to conduct a proper and thorough investigation. The Law was also claimed to underestimate the protection to the victims of human rights abuse. Meanwhile, the anti-communist group also submitted their petition to the Court and argued that the Law on TRC was unconstitutional. On 4 December 2006, the Constitutional Court ruled in favour of the opposition group and decided the Law on TRC illegal because it contradicts the 1945 Constitution and Pancasila. See: Mahkamah Konstitusi, "Putusan dalam Perkara Permohonan Pengujian Undang-undang Republik Indonesia Nomor 27 Tahun 2004 tentang Komisi Kebenaran dan Rekonsiliasi"; Tim Advokasi Kebenaran dan Keadilan, "Permohonan Hak Uji Materiil terhadap Undang-undang Nomor 27 Tahun 2004 tentang Komisi Kebenaran dan Rekonsiliasi," (2006); Kompas, "Rekonsiliasi. Antikomunis Uji UU KKR," 14 October 2006. The revocation of the Law on TRC had put the national TRC in quandary even though the Yudhoyono’s administration had gone through a process of selecting TRC members. The repeal of the law had also created a confusion on the future of Aceh’s TRC. Aceh is a province in Indonesia that received a semi-autonomous status in 2005 as part of the peace settlement made by the government of Indonesia and Aceh’s rebel group (*Gerakan Aceh Merdeka*—Free Aceh Movement). In August 2006, the Law on Government of Aceh (UU No. 11/2006) was adopted and in one of the articles, there is a mandate to form a truth and reconciliation to settle Aceh’s past human rights violations. With the annulment of the Law 27/2004, it was debated whether the implementation of Aceh’s TRC should wait for the government to rewrite the law on the national TRC or to continue under Aceh’s special law. Eventually, Aceh’s special government formed the TRC in 2016 and has yet to come with its investigation. See: Zaki Ulya, "Politik Hukum Pembentukan Komisi Kebenaran dan Rekonsiliasi Aceh: Re-formulasi Legalitas KKR Aceh," *Petita 2*, no. 2 (2017); "Indonesia: 12 years on victims of Aceh conflict still waiting for truth, justice and full reparation," 2017, Amnesty International, accessed 31 July 2018, <https://www.amnesty.ca/news/indonesia-12-years-victims-aceh-conflict-still-waiting-truth-justice-and-full-reparation>

findings, it seems that their move was politically motivated".<sup>86</sup> In contrast to Gaffar's view, Achmad Ali, from Universitas Hasanuddin, lauded the works of KPP-HAM which, according to him, was one a way to uphold the supremacy of law.<sup>87</sup>

Meanwhile, groups like FPI that have been known to be associated with military figures, including Prabowo Subianto and Wiranto, took a different stance in responding to the East Timor case.<sup>88</sup> They occupied the office of Komnas HAM to protest KPP-HAM's decision to accuse Wiranto and other military officers of allegations of human rights abuses. In what was seen as a defence of the military, FPI questioned the existence of KPP-HAM and claimed that KPP-HAM was biased against Muslims.<sup>89</sup>

There are a lot of violations of human rights cases outside of East Timor. Indonesian history has been tarnished by numerous human rights abuses, such as Tanjung Priok, Lampung, Haur Koneng, DOM Aceh, Bloody Eid Fitr in Ambon, etc, Komnas HAM's focus merely on East Timor is an obstruction against the norms of human rights... Komnas HAM is never fighting every case that is related to Muslim in Indonesia. However, when it comes to cases that are related to Christians even how small they are, Komnas HAM is taking it very seriously and bringing the case into an international forum and almost intentionally targeting Muslim while protecting Christians.

However, what was interesting in the case of KPP-HAM Timtim was the clash among people that were actively involved in Indonesia's civil society groups since the rise of *Orde Baru* in the 1960s. The East Timor disaster had split Indonesia's well-known human rights activists into two different camps. People like Todung Mulya Lubis, Albert Hasibuan and Munir, served as the investigators in KPP-HAM Timtim, whereas Adnan Buyung Nasution acted as the head of the advocate team for the military officers indicted in the case of human rights abuses in East Timor. Nasution's decision to defend the military was seen as scandalous among Indonesia's human rights activists, especially those who worked at Indonesia's Legal Aid Foundation (YLBHI/LBH), where Nasution was a founding member. This was not the first time Nasution made a controversial decision. Following the Trisakti incident on 12 May 1998 where several students were shot by the security personnel, Nasution paid a visit to Trisakti University and spoke in front of the students, promising that he would assist them in addressing the killings.<sup>90</sup> He, however, chose to become the lawyer who

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<sup>86</sup> Republika, "Afan Gaffar: KPP HAM Jangan Berpikir Implikatif," 28 December 1999. For other criticisms towards the works of KPP-HAM see: Chrisnandi, *KPP HAM Bukan Pengadilan HAM Catatan kritis atas Kinerja KPP HAM*; Forum Peduli Persatuan dan Kesatuan Bangsa, *Mereka Bicara Soal KPP-HAM Tim-Tim: Konspirasi Jatuhkan TNI & Disintegrasi?*

<sup>87</sup> Kompas, "KPP HAM Ingin Tunjukkan Hukum Dapat Ditegakkan," 13 December 1999.

<sup>88</sup> Taufik Adnan Amal and Syamsu Rizal Panggabean, *Politik Syariat Islam Dari Indonesia Hingga Nigeria* (Jakarta: Pustaka Alfabet, 2004).

<sup>89</sup> Forum Peduli Persatuan dan Kesatuan Bangsa, *Mereka bicara soal KPP-HAM Tim-Tim: Konspirasi Jatuhkan TNI & Disintegrasi?*, 67-69

<sup>90</sup> Hermawan Sulistyio, *Lawan! Jejak Jejak Jalanan di Balik Kejatuhan Soeharto* (Jakarta: Pensil-324, 2002). The Trisakti shooting on 12 May 1998 became the momentum where Suharto's regime could no longer control the anti-government sentiments because it triggered nationwide riots. On 18 May 1998, students swarmed over the DPR building demanding the resignation of Suharto—in several other cities in Indonesia, students took similar action by

represented the paramilitary units who allegedly killed the students. In his defence, Nasution claimed that the security officers were merely scapegoats and not the real perpetrators.<sup>91</sup>

The scuffle between Nasution and his colleagues began when, in a YLBHI board meeting, Nasution was asked to step down from YLBHI's advisory board. The reason for removing Nasution was that his advocacy for the military had tarnished the institution's reputation. Dadang Trisasongko, who was the vice chairman of YLBHI, stated that, "It is not funny when in KPP-HAM we have Munir who serves as YLBHI's vice chairman and Todung Mulya Lubis who is in the advisory council of YLBHI. And across the board, we have Nasution who defends the generals."<sup>92</sup> Meanwhile, Hendardi, one of the lawyers who worked at LBH, criticised Nasution's move because his career was launched by defending those who were repressed by Suharto's regime:<sup>93</sup>

All the cases [handled by LBH] were about the people versus the military, so I don't understand now why he defended the military. Maybe he does not have moral politics. He always taught us, when we were at LBH, that we must defend the people, but now, I think he is confused about the meaning of human rights. He said the military has human rights, but he is totally wrong. Human rights are for the people, for individuals, not for institutions.

Munir also criticised Nasution for siding with the military:

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occupying the regional parliament building or city centers. After facing the amounted pressures, even from the elites who turned back against Suharto, on 21 May 1998 Suharto offered his resignation. In regards to the shooting incidents, the legal process was done through a military court where several police officers and paramilitary units (*Brimob*) received sentences that ranged from 2 months until 6 years. In 2001, the parliament established a special committee (*pansus*) on Trisakti, Semanggi I, and Semanggi II cases to decide whether these incidents were able to try in a special human rights court. The DPR members were split on the work of pansus and decided to solve it through voting on 9 July 2001. The result showed that the majority called there were no grave human rights violations in those three cases—Golkar and TNI/Polri factions were among the groups in DPR that did not agree serious crimes happened. This decision has later affected Komnas HAM's effort to reopen the cases. In the end of July 2001 Komnas HAM formed a fact finding team to investigate the human rights abuses in Trisakti and Semanggi shootings. Komnas HAM investigators announced in the following year that there were 50 TNI and Police officers allegedly involved in the incidents. DPR's decision to not treat the cases as serious human rights crimes has also created the logjam between Komnas HAM and the Attorney General Office (AGO). When the preliminary investigations were brought to the AGO, AGO refused to follow up Komnas HAM's report on the ground that the cases had been tried in the military court. Komnas HAM rebutted the argument by stating that the main perpetrators have not yet been tried. The deadlock between Komnas HAM and AGO was worsened with the failure of DPR members to review the DPR's past decision on Trisakti, Semanggi I, and Semanggi II in 2007. See: P. Mutiara Andalas, *Kesucian Politik : Agama dan Politik di Tengah Krisis Kemanusiaan* (Jakarta: Libri, 2008); The Jakarta Post, "Eggs Thrown at DPR over Probe Findings," 10 July 2001; Satya Arinanto, *Hak Asasi Manusia dalam Transisi Politik di Indonesia* (Jakarta: Pusat Studi Hukum Tata Negara, 2003); BBC, "Hari Ini, 17 Tahun Lalu di Kampus Trisakti," 12 May 2015; KPP-HAM Trisakti Semanggi I Semanggi II, "Ringkasan Eksekutif Laporan Hasil Penyelidikan KPP HAM Trisakti, Semanggi I, Semanggi II," (Jakarta: Komnas HAM, 2002); BBC, "Rights Group Reports Army, Police Involvement in Jakarta Shootings," 22 March 2002; ICTJ and KontraS, "Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto," (ICTJ and KontraS, 2011).

<sup>91</sup> James Luhulima, *Hari-hari Terpanjang Menjelang Mundurnya Presiden Soeharto* (Jakarta: Penerbit Kompas, 2001).

<sup>92</sup> Kompas, "Buyung Nasution Didesak Mundur," 14 December 1999. Among the highlights of YLBHI's advocacy during the *Orde Baru* period was when Nasution and several former generals filed a petition to Suharto's regime to demand an independent investigation for the allegation of human rights abuses in the wake of Tanjung Priok incident in 1984. Nasution also assisted those who were accused of rebelling against the government. Nasution even temporarily lost his advocate permit on the ground of contempt of the court. See: A.M. Fatwa, *Pengadilan HAM Ad Hoc Tanjung Priok: Pengungkapan Kebenaran untuk Rekonsiliasi Nasional* (Jakarta: Dharmapena, 2005); Burns, "The Post Priok Trials: Religious Principles and Legal Issues."

<sup>93</sup> Vaudine England, "Rights Lawyer Heads Defence of Generals," *South China Morning Post*, 18 December 1999.

First of all, the LBH's code of ethics states that LBH is an institution that provides support to those who are powerless. Second, LBH does not take cases that are conflicted with one and another. On the one side there is the LBH people who are advocating for the victims, but on the other side, we have another LBH officers that are representing the perpetrators. Third, the democratic vision and mission that LBH held are to build a strong civil society. What Nasution has done is empowering the other side: the authority.<sup>94</sup>

Nasution defended his decision to defend the military officers in his memoir which, according to him, was part of his service to the country. In his unapologetic style, Nasution criticised his colleagues from NGOs for being judgmental towards the military:<sup>95</sup>

And why did we give up so easily? Even friends from NGOs and LBH that works on human rights issues like Mulya Lubis, Munir, Bambang Wijoyanto, joined the chorus of condemning our military officers even though there is a chance that they might not be guilty of wrongdoings. Even the government, Gus Dur as a president in his foreign trips is doing the same thing... 'If Wiranto did not step down, he will be sacked.' What kind of president is doing such thing? Calling for the resignation of his military general while he was traveling abroad?

Nasution also criticised his colleagues' binary thinking that led to their decision to remove him from LBH:

A true democrat is someone who has the ability to think clearly when they are facing difficulties, not judging the problems in black and white. Looking at something through a black and white perspective is a manifestation of authoritarianism. As if you own what is right and what is not. There is no 'we', but 'you' and 'I'. For me, a true democrat is someone who can fight the authoritarian within you and able to show tolerance. I have my differences with you, but I will defend you while at the same time upholding my differences. So we protect our enemy, not kill or eliminate them. That is what they have done to me. Just because I do not share their arguments, they wanted to fire me from YLBHI. This is ridiculous. Munir and Bambang Widjoyanto were behind it. Even though they eventually did not fire me, but I am mad at them.<sup>96</sup>

The internal conflict among the members of YLBHI resulted in the resignation of Munir in 2001 after two years serving the legal aid institution. In his resignation letter, Munir expressed his disappointment with Nasution's relationship with the military, which, according to him, affected his productivity in YLBHI.<sup>97</sup> He also claimed that YLBHI failed to develop a mechanism that is "more democratic, transparent, and independent".<sup>98</sup> While Nasution finally withdrew from the military's advocacy team in 2003, the conflict between Nasution and his colleagues became vital in the discourse regarding the accountability of the military. Nasution continued to make controversial statements that strengthened suspicion that he was in favour of the military. In 2005, for example, he criticised Komnas HAM's authority to investigate past human rights violations and suggested the government work through a truth and reconciliation commission mechanism, which would

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<sup>94</sup> Tim Redaksi LP3ES, *Api Dilawan Air: Sosok dan Pemikiran Munir* (Jakarta: Pustaka LP3ES Indonesia, 2007), 89.

<sup>95</sup> Nasution, K.H., and Pane, *Adnan Buyung Nasution Pergulatan tanpa Henti Pahit Getir Merintis Demokrasi*, 104-05.

<sup>96</sup> Tim Redaksi LP3ES, *Api Dilawan Air: Sosok dan Pemikiran Munir*, 90.

<sup>97</sup> Hukum Online, "YLBHI, Lokomotif yang Kehilangan Roh Demokrasi," 6 December 2001. The conflict within YLBHI was more than just the involvement of its members in defending the military. The institution had been plagued with others issues such as the future of YLBHI; there was a disagreement among YLBHI on whether to continue the existence of the legal aid as a foundation or as an association.

<sup>98</sup> Tim Redaksi LP3ES, *Api Dilawan Air: Sosok dan Pemikiran Munir*, 90.

ultimately weaken the effort to bring the case to the court: “It is no longer relevant for Komnas HAM to open the cold cases. Komnas HAM should handle current and future cases of human rights abuses. For the past incidents, the only way to resolve it is through KKR (Truth and Reconciliation Commission).”<sup>99</sup>

His remarks were criticised not only by human rights groups but also by the families of victims of human rights abuses. Arif, whose son was shot in the Semanggi 1 incident in 1998, said that: “[Nasution] used to be an idol. Now his arguments are no longer consistent with what he said five years ago where he cared about impunity issues.”<sup>100</sup> Human rights groups, such as KontraS, IKOHI, and LBH, where Nasution served in the advisory board, pointed out that Nasution disregarded the mandates of Komnas HAM under Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Court. Edwin Partogi from KontraS argued that Adnan had turned into “a bumper guard for the perpetrators of past human rights abuses”.<sup>101</sup> He, however, was not surprised with Nasution’s manoeuvre because of Nasution’s involvement in defending military officers in the Trisakti shootings and East Timor. The differences among the civil society groups, as can be seen in the case of Nasution, impacted Indonesia’s plan to ratify the Rome Statute. As will be discussed in Chapter 5, part of the reason why the military has been resistant to the Rome Statute was arguably related to misinformation from people like Nasution regarding the Rome Statute and the ICC.

#### **4.7 The Campaign for the Rome Statute**

This section explains the campaign for the adoption of the Rome Statute by civil society groups in Indonesia represented by *Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional* (The Indonesian Civil Society Coalition for the International Criminal Court). This coalition was dominated by Jakarta-based civil society organisations that had been focusing on human rights, legal reform and security issues, for example, ELSAM, KontraS, PSHK, and Imparsial. As can be seen in the following analysis, the advocacy of the Rome Statute/the ICC in Indonesia cannot be separated from the discourse of transitional justice, as well as security and legal reforms that began during *Reformasi*. Before analysing the challenges that the Coalition faced in their advocacy on the Rome Statute/the ICC in Indonesia, this section begins with a description of how the movement originated and what strategies they adopted to drive the campaign.

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<sup>99</sup> Kompas, "Buyung Nasution Kritik Komnas HAM," 5 July 2005.

<sup>100</sup> Detik News, "Minta Kasus Pelanggaran HAM Distop, Adnan Buyung Dikecam," 5 July 2005.

<sup>101</sup> Analisa, "Sejumlah LSM Kecam Pernyataan Buyung," 6 July 2005.

#### 4.7.1 Origins of the Campaign for the Rome Statute

The adoption of the Rome Statute in Rome in 1998, and later the ICC, attracted the attention of Indonesia's civil society during the debates on finding ways to redress Indonesia's past human rights abuses.<sup>102</sup> The Rome Statute, for example, was brought up in the discussion regarding transitional justice in the wake of *Reformasi*. In a symposium on human rights that was held in Surabaya on 21-24 November 2000,<sup>103</sup> members of the meeting formulated *Prinsip Surabaya* (the Surabaya Principle), a set of transitional justice approaches to deal with past human rights abuses in Indonesia:<sup>104</sup>

Past violations of human rights as focus of priority;

Victims' participation in determining mechanism of transitional justice, defining the meaning of justice itself, rehabilitation of victims' life and prevention of recurrence of human rights violations;

Avoiding impunity of perpetrators of past violations of human rights, by both commission and omission, individually and institutionally;

Transparency;

Ensuring non-recurrence of violations;

Public admission by the state and the perpetrators of past violations of human rights; and

Restoration of victims' rights.

In their recommendation to the government, the endorsers of *Prinsip Surabaya* suggested the government conduct "reform/review of legislations (by revoking, suspending, enacting new legislations, as appropriate) inter alia":

Amending Articles 6(1) and 26 (1) of the 1945 Constitution;

Ratifying the 1966 ICCPR, 1966 ICESCR, ILO Convention No. 169 and the 1998 (Rome) Statute of the International Criminal Court (ICC);

Drawing up appropriate draft legislations on anti-discrimination, protection of witnesses and freedom of information.<sup>105</sup>

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<sup>102</sup> Ruben F. Sumigar, interview by Yessi Olivia, 16 November, 2016.

<sup>103</sup> Komnas HAM, *Keadilan dalam Masa Transisi* (Jakarta: Komnas HAM, 2001).

<sup>104</sup> Soeprapto, "Taking Stock of Endeavours to Apply Transitional Justice in Indonesia," 4.

<sup>105</sup> Ibid. Article 6(1) and Article 26 (1) in the pre-amendment 1945 Constitution regulated the requirement for president candidate and citizenship respectively. After alteration, only article on the president's background that got detailed modification where the phrase 'native Indonesian' (*orang Indonesia asli*) was replaced with 'a citizen of Indonesia since birth, shall never have acquired another citizenship by his/her own will' (*warga negara Indonesia sejak kelahirannya dan tidak pernah menerima kewarganegaraan lain karena kehendaknya sendiri*). Only two out of four international conventions recommended in the Surabaya Principle have been adopted into Indonesia's legal system: 1966 ICCPR (Law No. 12/2005) and 1966 ICESCR (Law No. 11/2005). On the rights of the indigenous as laid out in the ILO Convention No. 169, the parliament has yet to finalize the Law on Recognition and Protection of the Rights of Indigenous People. While the protection of witness and freedom of information have been implemented under Law No. 31/2004 and Law No. 14/2008.

The advocates of the Surabaya meeting also recommended that the government use human rights as “a paradigm for development”; “dismantle neo-fascist military system”; “protect marginal groups” and to resolve or investigate “cases of crimes against humanity perpetrated by Soeharto regime (May 1998 incident, 1965-1967 massacre, Aceh, Irian Jaya/Papua, and Marsinah case, etc.)”.<sup>106</sup>

Enny Soeprapto, a former commissioner of Komnas HAM, was one of the attendees of the Surabaya human rights symposium. He recalled that the meeting ended with an effort to disseminate the importance of transitional justice, but financial difficulties<sup>107</sup> had seen this work abandoned:

The focus of the meeting in Surabaya in 2000 was [to discuss] transitional justice. Even the UN High Commissioner on Human Rights [Mary Robinson] came to the event. At the end of the workshop, we proposed seven principles. I cannot recall all of them, but the most important thing is that transitional justice should be understood not as ‘justice in transition’ but ‘justice in a transitional period. After the Surabaya meeting, we established a transitional justice working group with a mission to elaborate the Surabaya Principles. The members of this working group are the big shot; we have *ibu* Saparinah Sadli and Komnas HAM’s commissioners. This working group then formed a drafting team to disseminate the result of the Surabaya meeting. But this drafting team did not have the budget to further their work and after a one-time meeting there was no follow up.<sup>108</sup>

Soeprapto also recalled that not all of the attendees understood the notion of transitional justice:

There was a lack of understanding of what transitional justice is [among the government and security officials who attended the symposium]. The gap was very noticeable. So that is why we could not underline enough the definition of transitional justice that it means justice applied during a transition period.<sup>109</sup>

As discussed in the previous section in this chapter, there had been disagreements among civil society groups and the government on how to settle past wrongdoings. Some civil society groups demanded legal approaches to be taken to seek justice for violence that happened in the past while the government was inclining toward reconciliation without legal trial. The effort to reconcile through a truth and reconciliation commission was dismissed with the annulment of the Law on TRC in 2006 by the Constitutional Court.

When the ICC was officially inaugurated in 2002, the campaign for the adoption of the Rome Statute was disseminated sporadically by Indonesia’s civil society.<sup>110</sup> ELSAM claimed to be the first NGO to publish the documentation of the Rome Statute/the ICC in the Indonesian language.

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<sup>106</sup> Ibid., 4-5.

<sup>107</sup> The dependency to donors and the inability to generate income have been the main problems in social activism in Indonesia. See: Suharko, "The Limits of Indonesian CSOs in Promoting Democratic Governance," in *Limits of Good Governance in Developing Countries*, ed. Hirotsumi Kimura, et al. (Yogyakarta: Gadjah Mada University Press, 2011); Edward Aspinall, "Assessing Democracy Assistance: Indonesia," ed. FRIDE (2010). These problems have often impacted the sustainability of the activities of civil society in Indonesia, including in the case of the coalition of Indonesia’s civil society on the adoption of the Rome Statute.

<sup>108</sup> Soeprapto, interview.

<sup>109</sup> Ibid.

<sup>110</sup> As mentioned in the interviews with Mugiyanto, from IKOHI, and Ruben Sumigar from ELSAM.

However, as told by Ifdhal Kasim, a former head of ELSAM, advocacy for the Rome Statute at that time was unsuccessful because of ELSAM's inability to attract sufficient support for the ratification of the ICC:

ELSAM translated and published the Rome Statute and its explanation on the Indonesian language. The first translation was bad because we did not have enough reference to support our argument—textbooks that provide a detailed explanation of the Rome Statute were rare. And I was the focal point for Indonesia on the Rome Statute ratification alongside with other ASEAN countries such as the Philippines, Thailand, and Cambodia. I failed, however, to socialize the Rome Statute because I did not have a patron who is more senior and respectable to support me. People only see me as an activist; they will choose to believe Muladi or Romli Atmasasmita over me. You have to understand that in Indonesia, there is a culture of patronage even when it comes to education where people will look on their elders who they perceive as the more trusted figure. That is why it is very hard for people to accept this idea. Among those seniors that we were finally able to ask to join the campaign was *ibu* Hakristuti Harkrisnowo. So during the earlier campaign on the Rome Statute, I focused on the explanation of the treaty to clear the confusion of the bureaucrats.<sup>111</sup>

In addition to the lack of influential patrons to support ELSAM's campaign for the ratification of the Rome Statute, it is likely that the rejection of the Rome Statute at that time was related to the commotion caused by a series of trials on human rights abuses in Indonesia. As explained in Chapter 3, the exposure of mass violence that was allegedly perpetrated by Indonesia's security forces in East Timor had forced Indonesia to establish a human rights court in order to prevent the case being tried under an international tribunal. Chapter 4 also described the resistance of the military—as most of the suspects were TNI/Polri—to the investigation process. However, since Indonesia was under enormous pressure, the military was left without a choice but to support the government's decision to investigate and to try human rights abuses in East Timor.<sup>112</sup> Since its issuance, Law No. 26/2000 has only been used twice (between 2002-2004): to prosecute those who were indicted in the case of human rights violations in East Timor in 1999 and those who were allegedly involved in the massacre of civilians in Tanjung Priok in 1984. There had been initial efforts to resolve the Tanjung Priok case at the beginning of *Reformasi* by forming a fact-finding commission, but the request was rejected Golkar and its faction from the military.<sup>113</sup> The trials of the East Timor and Tanjung Priok cases received backlash from human rights groups for producing low-quality trials and exonerating high-ranking officials. The case of East Timor, for example, exonerated the former General Wiranto and President Habibie. The Tanjung Priok trial was similar where the prosecutor ignored recommendations of the Investigation Commission on the Human

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<sup>111</sup> Kasim, interview.

<sup>112</sup> A legal mechanism to try human rights offenders was passed under the Law No. 26/2000. TNI/Polri faction, which retained their parliamentary seats at the time the law was drafted, stated their objection with the application of the retroactive principle in the law and the incomplete description of what consisted as gross violations of human rights. Soenarto, "Pemandangan Umum Fraksi TNI/Polri atas Rancangan Undang-Undang tentang Pengadilan Hak Asasi Manusia," ed. Fraksi TNI/Pori (2000).

<sup>113</sup> Sulistiyanto, "Politics of Justice and Reconciliation in Post-Suharto Indonesia."

Rights Violations in Tanjung Priok (KP3T) that named two of the most influential generals during *Orde Baru*: Benny Moerdani and Tri Sutrisno.<sup>114</sup>

The trials of East Timor and Tanjung Priok could have provided momentum for Indonesia's civil society to launch a campaign for the adoption of the Rome Statute. However, it seems that other events preoccupied Indonesia's civil society, such as the discourse regarding security reform and transitional justice. ELSAM, for example, was involved in lobbying the parliament for the issuance of the Law on Truth and Reconciliation in 2003-2004.<sup>115</sup> Other NGOs, like Imparsial, KontraS and ProPatria, were occupied with advocacy for regulations regarding defence and military, such as the Law on National Security and the Law on TNI.<sup>116</sup>

The campaign for the Rome Statute in Indonesia, especially under the Civil Society Coalition for the ICC, intensified during Yudhoyono's presidency (2004-2014). The main reason was that one of Yudhoyono's policies was to follow the national plan on human rights (RANHAM), which was written under his predecessor, Megawati. Under RANHAM 2004-2009, the adoption of the Rome Statute was set to be ratified in 2008, but the government missed the target, claiming that the Ministry of Law and Human Rights had not yet finalised the ratification preparation.<sup>117</sup> A new deadline to adopt the Rome Statute was then set under RANHAM 2011-2014. It is worth noting that the pressure coming from civil society towards Yudhoyono's administration on its commitment to human rights cannot be separated from Yudhoyono's foreign policy ambition to boost Indonesia's standing in the international forum. The stakes were especially high with the appointment of Indonesia as one of the members of the UN Human Rights Council on 9 May 2006.<sup>118</sup> Indonesia's involvement in the UN Human Rights Council, which was established to replace the UN Commission on Human Rights, meant that the Indonesian government was complying with the Universal Periodic Review (UPR) mechanism. UPR is a system where a country's progression (or

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<sup>114</sup> Cohen, Agus, and Wulandari, *Pengadilan Setengah Hati: Eksaminasi Publik atas Putusan Pengadilan HAM Kasus Timor Timur*; Wagiman, "Final Progress Report Pengadilan HAM Tanjung Priok: Gagal Melakukan Penuntutan yang Efektif."

<sup>115</sup> After the prolong debate in the parliament on the substance of the law, the law was passed in October 2004. However, when some NGOs submitted the law to the Constitutional Court for a judicial review the Court decided to revoke the law on 7 December 2006 on the claim of lack of legal foundation to the rage of human rights NGOs. See: Hukum Online, "Putusan MK tentang UU KKR Dianggap Ultra Petita," 11 December 2006; Achmad Sukarsono, "Indonesia Court Knocks Down Truth Commission Bill," *Reuters*, 8 December 2006.

<sup>116</sup> Andi Widjajanto, "Transforming Indonesia's Armed Forces," (UNISCI, 2007).

<sup>117</sup> Detik News, "Tim Penyusun RUU Ratifikasi Statuta Roma Segera Dibentuk," 17 July 2008.

<sup>118</sup> United Nations, "General Assembly Sixtieth session 80th plenary meeting," (New York: United Nations, 2006).

lack thereof) on human rights is examined by other countries, United Nations special rapporteurs as well as by human rights organisations.<sup>119</sup>

The initiative to form a coalition to drive the ratification of the Rome Statute was taken by Indonesia's civil society groups in anticipating the deadline set for the Rome Statute under RANHAM 2004-2009. The initiator of the coalition came from *Ikatan Orang Hilang* (IKOHI), an NGO that focused on providing support to the victims of state violence. Mugiyanto, IKOHI's former coordinator who also served as the convener of the Civil Society Coalition for the ICC, recalled his experience with the Rome Statute campaign, beginning with his interactions with international NGOs concerning the Rome Statute/the ICC:

[Before forming the coalition] some other institutes had taken some initiatives in regards to the promotion of the Rome Statute, especially from *Universitas Indonesia* if I am not mistaken led by *pak* Satya Arinanto and *ibu* Harkristuti. For NGOs, it was pioneered by ELSAM and then KontraS. My earliest involvement for the issue of the Rome Statute was when my organization, IKOHI, in our capacity as a member of the Asian Federation against Involuntary Disappearances (AFAD), was invited to join the CICC<sup>120</sup> Asia Pacific meeting. One of the themes discussed in the meeting was about the participation of victims of human rights abuses in the judicial process. We took the matter of victim participation highly and this issue was overlooked in Indonesia. For us, victim participation is important for the government to look after and therefore for the government to adopt the Rome Statute. We then established a coalition of civil society led by ELSAM, Imparsial, PSHK, LBH, and HRWG (Human Rights Working Group). I was then appointed as the convener of the coalition.<sup>121</sup>

On 10 June 2008, IKOHI met with other NGOs, such as Imparsial, PSHK, ELSAM, and YLBHI, to discuss establishing a coalition and, on 25 June, the partnership was officially launched.<sup>122</sup> Since then, the membership of the coalition for the ICC grew as other civil society groups, such as academics, the media, women's groups and victims' groups, joined the alliance. What unified these groups in the coalition, as recalled by Puri Kencana Putri from KontraS, were their similar interests in human rights and security reform:

[The core support of the coalition is] human rights organizations that wanted to understand individual criminal responsibility and security sector reform. When we talk about the Rome Statute we look at the responsibility of state's actors whether the presidents or the combatants. And in Indonesia's history, most of the perpetrators [of serious human rights crimes] came from security actors. So that is the composition [of the coalition]. Human rights organizations and those whose interest is security reform.<sup>123</sup>

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<sup>119</sup> Under Yudhoyono's administration, Indonesia has submitted its UPR reports for two cycles, April 2008 and May 2012 respectively. On both occasions, Indonesia was recommended to adopt international human rights treaties including the Rome Statute of the ICC. See: Human Rights Council, "Report of the Working Group on the Universal Periodic Review Indonesia," (2008); "Report of the Working Group on the Universal Periodic Review Indonesia," (2012).

<sup>120</sup> Coalition for International Criminal Court (CICC), established in 1995, is an umbrella organization for NGOs that have been involved in the advocacy on the ICC/the Rome Statute and legal mechanisms surrounding serious violations of human rights.

<sup>121</sup> Mugiyanto, interview

<sup>122</sup> Mugiyanto, ed. *Jalan Panjang Menuju Ratifikasi ICC di Indonesia* (Jakarta: Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional, 2009).

<sup>123</sup> Puri Kencana Putri, interview by Yessi Olivia, 30 August, 2016.

The advocacy of the coalition for the ICC was made possible by the support from foreign donors. Mugiyanto acknowledged during an interview that the coalition received financial assistance from Australia's aid program:

We were getting the support from IALDF, Indonesia-Australia Legal Development—it is no longer operating now. So the fund came from AusAid and IKOHI was trusted to manage the grant from them. With the financial support from Australia, we were actively producing academic notes and draft bill on why Indonesia needs to ratify the Rome Statute. We also published the book called *Jalan Panjang Menuju Ratifikasi Statuta Roma* [The Long Road to the Rome Statute Ratification]. We involved in organizing a couple seminars in several places: Medan, Makasar, Surabaya, and Jakarta to inform the people about the Rome Statute. We went to DPR to lobby the members of the parliaments on the statute and the ICC. We also participated in the meetings organized by CICC because we are part of the international coalition for the ICC.<sup>124</sup>

IALDF was one of the international donors that supported the Indonesian government and civil society groups during the *Reformasi* period. At that time, there was a dramatic increase in foreign aid that focused on the effort to strengthen democracy in Indonesia. The transitional governments were receptive to foreign support and so were many civil society groups that were working for the democratic cause. The openness of the Indonesian governments to accept foreign aid during the democratisation period had also changed how established donors, like the Ford Foundation and the Asia Foundation, distributed their aid. Supporting democratic initiatives, for example, had become the priority, and this was something that was unlikely to have happened during Suharto's presidency.<sup>125</sup> IALDF, in this case, focused on providing support for judicial legal reform, human rights improvement, and eradicating corruption and transnational crimes. In addition to helping government agencies like Komnas HAM and Indonesia's anti-corruption commission (*Komisi Pemberantasan Korupsi*—KPK), IALDF also assisted around thirty-nine Indonesian NGOs.<sup>126</sup> Among the leading NGOs that received financial supports from IALDF were IKOHI, ELSAM, KontraS, and PSHK, the founding members of the coalition for ICC in Indonesia.

#### 4.7.2 Activities of the Coalition

As previously mentioned by Mugiyanto, the coalition's activities to promote the adoption of the Rome Statute included public outreach programs through seminars, talks and FGDs in several locations across Indonesia. The coalition was also involved in a series of discussions with the parliament, the Ministry of Law and Human Rights, Komnas HAM and representatives from the ICC. In addition, the Civil Society Coalition for the ICC published campaign materials, academic notes and research papers regarding the Rome Statute and ICC.<sup>127</sup> The position of the coalition is clear from the titles of some of their publications, such as *Indonesia Menuju Ratifikasi Statuta*

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<sup>124</sup> Mugiyanto, interview.

<sup>125</sup> Aspinall, "Assessing Democracy Assistance: Indonesia."

<sup>126</sup> John W. S. Mooney and Budi Soedarsono, "Indonesia-Australia Legal Development Facility " (2010).

<sup>127</sup> Mugiyanto, *Jalan Panjang Menuju Ratifikasi ICC di Indonesia*.

*Roma tentang Mahkamah Pidana Internasional Tahun 2008* (Towards the Ratification of the Rome Statute on the International Criminal Court 2008) and the book *Jalan Panjang Menuju Ratifikasi ICC di Indonesia* (The Long Road to the Ratification of the ICC in Indonesia).<sup>128</sup> In these publications, the coalition argues the importance of Indonesia to ratify the Rome Statute. Firstly, it would help bring an end to the culture of impunity in Indonesia. While Indonesia has established several legal instruments which emulate the ICC, as well as mechanisms to settle past human rights violations, a lot of cases on human rights violations were either deserted or underwent a flawed process. The trial of the East Timor offenders was an example of the impunity culture where higher officials were exempted from the legal process and most of the defendants were acquitted.<sup>129</sup> The Coalition<sup>130</sup> also believed that the Rome Statute would provide impetus for law reform in Indonesia. The Indonesian Penal Code has not yet regulated the article regarding gross human rights violations. Thus, through the adoption of the Rome Statute, Indonesia would have good reason to amend its penal code in accordance with the regulations set in the Rome Statute. Another argument for why the Rome Statute is important for Indonesia is because the Statute not only regulates punishment for offenders of serious human rights violations, it also standardises protection and compensation for the victims. UU No. 26/2000 on Human Rights Courts may have adopted some of the articles in the Rome Statute, but it omitted some of the articles regarding safeguard mechanisms for victims and witnesses. As also pointed out by the Coalition, the ratification of the Rome Statute is essential in strengthening the role of *Lembaga Perlindungan Saksi dan Korban*—LPSK (the Witness and Victim Protection Agency).

In addition to the working papers and the book *Jalan Panjang Menuju Ratifikasi ICC di Indonesia* that documented the activities conducted by the Coalition, another important publication by the Coalition is a book entitled *Menuju Keadilan Global: Pengertian, Mandat dan Pentingnya Statuta Roma* (Towards Global Justice: The Definition, Mandate and Significance of the Rome Statute).<sup>131</sup> This book compiles articles written by notable Indonesian academics and legal practitioners, such as Soetandyo Wignjosebroto, an emeritus professor of law from *Universitas Airlangga*; Artidjo Alkostar, a Supreme Court judge; and Muladi, a law professor from *Universitas Diponegoro* and

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<sup>128</sup> Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional, "Indonesia Menuju Ratifikasi Statuta Roma Tentang Mahkamah Pidana Internasional Tahun 2008," in *Working Paper*, ed. Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional (2008).

<sup>129</sup> Zaenal Abidin, "Ratifikasi Statuta Roma dan Upaya Menghentikan Impunitas di Indonesia," in *Jalan Panjang Menuju Ratifikasi ICC di Indonesia*, ed. Mugiyanto (Jakarta: IKOHI, 2009).

<sup>130</sup> Koalisi Masyarakat Sipil untuk Mahkamah Pidana Internasional, "Indonesia Menuju Ratifikasi Statuta Roma Tentang Mahkamah Pidana Internasional Tahun 2008."

<sup>131</sup> The book was co-published by the coalition for ICC and International Center for Transitional Justice (ICTJ), an international NGO that advocates justice for mass atrocity based on the implementation of transitional justice mechanisms. See: ICTJ & Indonesian Civil Society Coalition for the International Criminal Court, ed. *Menuju Keadilan Global: Pengertian, Mandat dan Pentingnya Statuta Roma* (Jakarta: ICTJ & Indonesian Civil Society Coalition for the International Criminal Court, 2012).

Indonesia's former Ministry of Law who participated in the Rome Diplomatic Conference in 1998. In his article, Muladi argued that Indonesia should not delay the adoption of the Rome Statute as it had already held human rights trials under a law that adopted several provisions from the Rome Statute.<sup>132</sup> In addition to the support of prominent Indonesian legal figures, what makes this book valuable is that it contains a foreword by Amir Syamsuddin, Yudhoyono's Minister for Law and Human Rights. Syamsuddin stated that the Indonesian government had taken several initiatives, such as academic notes and a draft bill to ratify the Rome Statute. He continued his statement by saying that:

Regardless of the discourse on whether Indonesia should ratify [the Rome Statute], the government determines that the ratification of the Rome Statute is significant for the protection, respect, fulfilment, and progression of human rights in Indonesia. With the ratification of the Rome Statute, it will not only confirm Indonesia as a democratic country but also place Indonesia in the same position with other countries in the efforts to continue the respect and protect human rights.<sup>133</sup>

The book was published in 2012, one year before the deadline to ratify the Rome Statute (2013). While Syamsuddin's remarks show assurance that the Indonesian government was committed to adopting the Rome Statute, Yudhoyono's administration failed to reach its RANHAM goal for the ratification of the Rome Statute. In a meeting with the DPR, Purnomo Yusgiantoro, the Minister for Defence, commented that the government put the adoption plan on hold as more research was needed before it decided to sign the treaty.<sup>134</sup> Yusgiantoro's statement contradicted Syamsuddin's remarks where the Ministry of Law had prepared the draft bill in order to ratify the Rome Statute, which means that the government had done adequate research on the Rome Statute and the ICC.<sup>135</sup>

#### **4.7.3 Challenges Faced by the Coalition**

The advocacy to adopt the Rome Statute conducted by the Civil Society Coalition for the ICC has been challenged by external and internal conditions of the Coalition, which confirms previous studies on Indonesia's civil society organisations in post-Suharto Indonesia. Firstly, their success is dependent on their ability to manage themselves as an organisation. This is related to the organisation's capacity, leadership and resources. In addition to these endogenous factors, the accomplishment of Indonesia's civil society organisations has been contingent upon various issues,

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<sup>132</sup> Muladi, "Statuta Roma tahun 1998 tentang 'International Criminal Court' sebagai karya monumental antar bangsa," in *Menuju Keadilan Global*, ed. ICTJ & Indonesian Civil Society Coalition for the International Criminal Court (Jakarta: ICTJ & Indonesian Civil Society Coalition for the International Criminal Court, 2012).

<sup>133</sup> ICTJ & Indonesian Civil Society Coalition for the International Criminal Court, *Menuju Keadilan Global: Pengertian, Mandat dan Pentingnya Statuta Roma*, xxiii.

<sup>134</sup> Margareth S. Aritonang, "Govt Officially Rejects Rome Statute," *The Jakarta Post*, 21 May 2013.

<sup>135</sup> More of this will be discuss in Chapter 5. The research shows that there have been some differences between the government's agencies on the importance of the Rome Statute.

such as the government's willingness to pursue reform or the readiness of the society in adopting new norms or values.<sup>136</sup>

The first challenge is the nature of the coalition format. Establishing a coalition was part of the strategy agreed by the creators of the Civil Society Coalition for the ICC; their inspiration was the international networks of NGOs that had been campaigning for the Rome Statute/ICC under the Coalition for International Criminal Court (CICC). The choice of working in a coalition was also regarded as the most suitable form for Indonesian NGOs because its loose structure allows these various NGOs to continue to work on their separate projects.<sup>137</sup>

Forming a coalition is common among NGOs.<sup>138</sup> Unlike networking, which is the usual relationships built between NGOs, a coalition requires a commitment among its members but without further binding them in a formal institution. Establishing a coalition is considered valuable and becomes an important strategy for NGOs because it will help them in building their legitimacy in the eyes of their stakeholders. Building a coalition is also important because it will boost the credibility of the NGOs in claiming their expertise on the issue that they are campaigning for. Nonetheless, there are some drawbacks. Since a coalition is not compulsory the members can come and go easily from the group. The lack of a force that binds the members of the coalition could jeopardize the works or even the credibility of the group. The Civil Society Coalition for the ICC shared this organizational setbacks. When asked about the latest status of the coalition, Mugiyanto stated that, because the coalition is not a formal organisation, different projects or priorities have affected the commitment of the members of the Coalition, which has put the organization in an idle status. Mugiyanto also admitted that reliance on donors has constrained the advocacy of the coalition:

This coalition is without a structure, that is why my position is only as a convener, not a coordinator. I do not have the authority to direct; I only convene people from different organizations to meet. There are of course a lot of factors that had impacted the coalition. People moved from their organizations and that each organization has its own priority. And there is the financial issue as well—we cannot deny that—as not many donors are interested in the Rome Statute. But we position ourselves like the CICC in New York; we wanted a loose cooperation and avoided forming a new organization. Establishing a coalition is part of the strategy because we do not want to fight for resources. Every organization has its own

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<sup>136</sup> There have been a number of research that analyze the role of Indonesia's CSOs and their challenges. The internal and external challenges have been discussed in: Antlöv, Brinkerhoff, and Rapp, "Civil Society Capacity Building for Democratic Reform: Experience and Lessons from Indonesia."; Nancy Slamet, "Civil Society and Security Sector Reform in Indonesia: 1998-2006," (Montreal: Rights & Democracy and IDSPS, 2008); Fabio Scarpello, "Stifled Development: The SSR — Civil Society Organizations Community in Post-Authoritarian Indonesia," in *Security Sector Reform in Southeast Asia: From Policy to Practice*, ed. Felix Heiduk (New York: Palgrave Macmillan, 2014).

<sup>137</sup> Mugiyanto, interview.

<sup>138</sup> Helen Yanacopulos, "The Strategies that Bind: NGO Coalitions and Their Influence," *Global Networks* 5, no. 1 (2005).

specialization [and source of donor]. ELSAM has done a lot of research on the ICC. PHSK, LBH, and KontraS have their own interest. Let it be that way.<sup>139</sup>

In a different take on the status of the Coalition, which has been stagnant since the end of Yudhoyono's presidency, Putri from KontraS expressed her dissatisfaction with working in a coalition:

Too many ideas and they are old schools. What we in KontraS have done is working our way outside the coalition building a front with international organizations. We focus on learning from others. Why, for example, in Southeast Asia only three countries that are parties to the Rome Statute? How about countries from other regions? We also build a relationship with the oldest NGO in the world FIDH in Paris, France. FIDH's memberships include NGOs from countries in Africa where ICC member countries are abundant. So we try to learn from them too. In our effort to break away from the coalition fatigue, we have approached national figures, such as H.S. Dillon, Marzuki Darusman, and Makarim Wibisono.<sup>140</sup>

The Coalition of Civil Society for the ICC had attempted to persuade prominent figures to join the campaign. In celebrating World Day for International Justice on 17 July 2011, for example, the Coalition invited Mahfud, M.D., who was the Chief Justice of the Constitutional Court at the time. Mahfud gave his support for Indonesia to ratify the Rome Statute, arguing that, in comparison to the early period of *Reformasi*, Indonesia had become more conducive to such a measure and that structured violations of human rights have rarely taken place.<sup>141</sup> The Coalition has also succeeded in getting Muladi, who served as the Minister for Justice during Habibie's administration and was on the advocacy team for the military officials that were indicted in the East Timor case, to finally join the pro-Rome Statute group.<sup>142</sup>

With the termination of the IALDF programs in Indonesia in 2010, the abandonment of the plan to adopt the Rome Statute by Yudhoyono's administration in 2013, and the failure of Yudhoyono's successor, Joko Widodo, to reinstate the Rome Statute in their human rights policy,<sup>143</sup> the Coalition has become inactive.<sup>144</sup> In his critique of the Coalition, Supriyono Eddiyono from Institute for Criminal Justice Reform (ICJR) reminded his colleagues in the Coalition to not stop fighting for the

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<sup>139</sup> Mugiyanto, interview.

<sup>140</sup> Putri, interview.

<sup>141</sup> ANTARA, "Mahfud MD dukung ratifikasi Statuta Roma," 12 Desember 2011.

<sup>142</sup> Muladi was one of the contributors in a book published by the Coalition of Civil Society for ICC alongside with Indonesia's notable figures in law and human rights. Muladi, "Statuta Roma tahun 1998 tentang 'International Criminal Court' sebagai karya monumental antar bangsa." See also: "The Necessity to Ratify the 1998 Rome Statute," *The Jakarta Post*, 23 August 2011.

<sup>143</sup> In contrast to Yudhoyono's ambitious RANHAM, Widodo's human rights policy (RANHAM 2015-2019) focuses only on implementing the national action program on disability issues. RANHAM 2015-2019 does not contain any single target for ratifying international human rights treaties.

<sup>144</sup> Only a few NGOs that have continue their concerns on the Rome Statute/the ICC. KontraS, for example, has been criticizing the revision of Indonesia's criminal code, which according to them would protect the impunity culture in Indonesia. See: "Siaran Press: Rancangan Kitab Undang-Undang Hukum Pidana: Keluarkan Pengaturan Pidana Pelanggaran HAM Berat dan Lindungi Hak Asasi Warga Negara " 2015, KontraS, accessed 6 August 2018, <http://www.kontras.org/home/index.php?module=pers&id=2181>

issue of the Rome Statute, as the next challenge for Indonesia's civil society groups will be the revision of the Criminal Code where the Rome Statute's provisions will be incorporated:

I invited members of the Coalition in a focus group discussion that discussed the alteration of Indonesia's Criminal Code. I wanted to relive the discussion on the Rome Statute because the draft was even worse than the Law on Human Rights Court in 2000. They should pay attention to this matter because the draft could have a serious implication on the plan to join the ICC.<sup>145</sup>

Nevertheless, the biggest challenge for the Civil Society Coalition for the ICC has been the ability to convince policymakers (the government) to ratify the Rome Statute. Chapter 5 will discuss how elements in the government were split in regards to the ratification of the Rome Statute. The Ministry of Foreign Affairs and the Ministry of Law and Human Rights were in favour of adopting the Rome Statute, whereas the Ministry of Defence opposed the plan to adopt the treaty. The resistance of the Ministry of Defence, which represents the voice of the military, is acknowledged by the members of the coalition.

The cause of the opposition from the military has never been explicitly documented. Some members of the Coalition view it as confusion about how the Rome Statute and the ICC works. As explained by Ifdhal Kasim:

There has been some anxiety in regards to the authority of the ICC prosecutor in conducting an investigation of human rights violations. According to the Rome Statute, the investigation of grave human rights crimes can start under two determinant variables. The first one is unable; it is related to the condition where a state is in collapse and its judicial body is inoperable. The second variable is unwilling. This is what has been concerning our legal experts from the [the Ministry of Defense]. They think that [the ICC prosecutor] will use the Court as a shield because the government is unwilling to run a human rights trial. They probably have that assumption because they know that there is a lack of willingness to take the action... So while they are open to discussing the Rome Statute/the ICC in the context of the academic forum, when it comes to the preparation of the ratification, there will be efforts to stop the initiatives. Not to mention that the Ministry of Defense hired people like Buyung [Nasution] and Hikmahanto Juwana.<sup>146</sup>

The misperception of the Ministry of Defence on the Rome Statute/ICC was also described by Indriaswati Dyah Saptaningrum from ELSAM.<sup>147</sup> It was said that there has been concern that by ratifying the Rome Statute, it would be used to indict military generals who committed human rights abuses in the past. In addition, there was also the concern that the ratification of the Rome Statute would result in the weakening of sovereignty, an issue that the military takes seriously. According to Sumigar, also from ELSAM, the rejection coming from the Ministry of Defence was caused by the zero-sum thinking, a traditional view of the military in analysing international affairs. The Rome Statute, according to this perspective, will only be used as a tool to interfere with

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<sup>145</sup> Eddiyono, interview.

<sup>146</sup> Kasim, interview. Adnan Buyung Nasution was known for his role in advocating the military during the investigation of the East Timor mass violence in 1999. Meanwhile, Hikmahanto Juwana has been known for his opposition towards the ICC. Both names were also mentioned in an interview with Marzuki Darusman, a former KOMNAS HAM commissioner that involved in the Coalition of Civil Society for ICC.

<sup>147</sup> Hukum Online, "Pemerintah Masih Takut Meratifikasi Statuta Roma," 17 July 2013.

Indonesia's national interests, regardless of its main purpose to deter future mass atrocities. This perspective is in contrast with other government agencies, such as the Ministry of Foreign Affairs or the Ministry of Law and Human Rights, that were more receptive to discussing the necessity of the Rome Statute.<sup>148</sup> The Coalition claimed that Saptaningrum had tried to contact the Ministry of Defence to discuss the Rome Statute and the ICC but received no response.<sup>149</sup>

Mugiyanto, as the convener of the Coalition, gave a more cynical account that the rejection from the military on the Rome Statute reflected the state of the Indonesian military in the post-authoritarian Indonesia:

I remember in one of the FGDs that we organized, we invited people from the police and TNI and that is what their argument: they view the ratification of the Rome Statute as a way that the human rights NGOs have chosen to bring them into court. But I do think this is beyond of a misunderstanding of what the ICC can and cannot do. I believe this is part of their belief that *Reformasi* has crushed their domination. *Reformasi* has turned their roles 180 degrees in Indonesia's modern history. Therefore, things that are related to human rights, justice, and so on are the tool to justify their loss. This includes the effort to sign [human rights] covenants and conventions. So it is an ideology. Their ideology to not looking like a loser. They will try, whenever possible, to fight.<sup>150</sup>

When asked about why the Coalition did not approach the military in its campaigning, Mugiyanto answered that the military would have rejected the Coalition because of the preconceived notion among the military elites that NGOs will use the Rome Statute to prosecute military personnel.<sup>151</sup>

It is worth reflecting back to when the 1999 East Timor violence was being investigated in order to understand what Mugiyanto has said above. The trial of East Timor was the first human rights case to be brought to a human rights court. When Komnas HAM announced the involvement of the military in its preliminary investigation, the military was defensive. They rejected the notion that they were responsible in perpetrating the civil conflict that affected thousands of East Timorese, and called Komnas HAM's report baseless.<sup>152</sup> Wiranto, who was named as one of the suspects, also denounced the inquiry made by Komnas HAM: "In fact, if the independent commission had a clear mind, they would not have come to that kind of conclusion. The problem is that they have a predisposition against the TNI. This is not only against me but also against the TNI as an institution."<sup>153</sup> His apprehension towards Komnas HAM and the effort to investigate past wrongdoings emerged again in 2001. In an op-ed he wrote, Wiranto asserted that human rights discourse in Indonesia was being manipulated as an act of retribution towards the previous regime—especially the military—while at the same time disregarding abuses caused by the non-

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<sup>148</sup> Sumigar, interview.

<sup>149</sup> Hukum Online, "Pemerintah Masih Takut Meratifikasi Statuta Roma."

<sup>149</sup> Mugiyanto, interview.

<sup>150</sup> Ibid.

<sup>151</sup> The Jakarta Post, "Generals Protest 'Baseless' Accusations."

<sup>152</sup> The Straits Times, "Words of Wiranto."

<sup>153</sup> Wiranto, "Konsistensi Penegakan HAM di Indonesia."

military groups.<sup>154</sup> Wiranto's argument might have been shaped by a lack of understanding that, as the authoritative entity, the state has the responsibility to protect the rights of the people, but it is important to note that the loss of East Timor and the accusations addressed towards the military were regarded as an embarrassment.<sup>155</sup> This has affected how the military perceived the Rome Statute.

This standpoint was complicated by the arguments made by academics that Indonesia should not hastily conform to international human rights treaties, including the Rome Statute. Romli Atmasasmita from *Universitas Padjadjaran* argued that state's sovereignty will be significantly affected by the implementation of the Rome Statute of the ICC, especially with rules such as the complementarity principle and issues of admissibility (Article 17 and the prohibition to reserve specific articles from the Rome Statute Article 120).<sup>156</sup> In addition to Atmasasmita, there is also Hikmahanto Juwana from *Universitas Indonesia* who claimed that the ratification of the Rome Statute is not that crucial because Indonesia already has the Law on Human Rights Court to try grave human rights violations. He recommended that, rather than pursuing the adoption of the Rome Statute, Indonesia should focus on amending the Law on Human Rights Court: "Do not ratify the Rome Statute only for the purpose of image building. It should be that Indonesia can take of its own problem without the push from an international treaty."<sup>157</sup> Juwana also argued that it is not pressing for Indonesia to conform to the ICC when countries like the United States are unwilling to participate.<sup>158</sup> Juwana further elaborated this view in an interview:

[If the Court works on the complementarity principle] the question is why then the United States does not ratify the Rome Statute? Because they too can process their military officers before handing the case to the Court. This is because the United States is aware that there is a thin line between a hero and a loser [in regards to human rights crimes]. They know that there will be a possibility for their soldiers to be detained in some countries and being sent to the ICC. That is why even though the United States rejects the ICC, they are making sure that other countries will not surrender their soldiers to the ICC through a non-surrendering agreement. Regardless of whether the ICC will bring advantage to Indonesia or not, does Indonesia want to act more than the United States that claimed to be the champion of human rights? Even now many of the African countries withdrew their memberships from the ICC. They said 'what is the point of the ICC when it is eventually targeting us?' This is because the mindset when the Rome Statute was adopted it was meant for the developing countries, the uncivilized ones. Are we allowing ourselves to be classified as an uncivilized country? We have already proven, through the East Timor or Tanjung Priok cases, that we can handle serious human rights crimes. So what is the urgency for Indonesia to adopt the Rome Statute? It is true that Indonesia was promised that by becoming a member of the ICC, it will open the opportunity for Indonesia to participate as a judge. But is it worth the price

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<sup>154</sup> Wiranto, "Konsistensi Penegakan HAM di Indonesia."

<sup>155</sup> See: IISS, "The East Timor Crisis," Strategic Comments 5, no. 8 (1999); John B. Haseman, "East Timor: The Misuse of Military Power and Mismatched Military Power," in *Out of the Ashes: Destruction and Reconstruction of East Timor*, ed. James J. Fox and Dionisio Babo Soares (Canberra: ANU E Press, 2003).

<sup>156</sup> Romli Atmasasmita, "Pengaruh Konvensi Internasional terhadap Perkembangan Asas-asas Hukum Pidana Nasional" (paper presented at Seminar on Principles on Criminal Law, Semarang, 26 April 2004).

<sup>157</sup> Hukum Online, "Silang Pendapat Ratifikasi Statuta Roma," 13 December 2011.

<sup>158</sup> Investor Daily, "Hikmahanto: Tak Perlu Buru-Buru Ratifikasi Statuta Roma," 12 December 2011.

when the United States does not support the ICC and the Court lost the support of the African countries?<sup>159</sup>

Juwana and Atmasasmita's names were often mentioned in the interviews with members of the Coalition as the legal experts hired by the Ministry of Defence.<sup>160</sup> While this claim needs to be further proven, their arguments to delay the ratification of the Rome Statute were also shared by the people at the Ministry of Defence. Purnomo Yusgiantoro, the Minister for Defence from 2009-2014, for example, stated that Indonesia should consider the lack of support of big countries like the United States for the ICC. He also added that Indonesia's Law on Human Rights Court has lessened the urgency of the Rome Statute.<sup>161</sup> The concern that the Rome Statute and the ICC weaken the state's sovereignty has also been expressed by officials from the Ministry of Defence. However, what is often disregarded by those who oppose the Rome Statute on the basis of protecting sovereignty is the fact that international crimes like genocide, crimes against humanity, war crimes, and crime of aggression do impact the sovereignty of a state. Moreover, they also dismiss that the ICC itself is not intended to take over the state's authority, as explained by Cherif Bassiouni:

[ICC] is not a supra-national body, but an international body similar to other existing ones... The ICC does no more than what each and every state in the international community can do under existing international law. The ICC is, therefore, an extension of national criminal jurisdiction established by a treaty whose ratification under national parliamentary authority makes it part of national law. Consequently, the ICC neither infringes upon national sovereignty nor overrides national legal systems capable of and willing to carry out their international legal obligations.<sup>162</sup>

It is worth mentioning here that one of the members of the Coalition did have a professional relationship with the military. Agus Fadillah, an expert in international law, was recruited by the International Committee of the Red Cross (ICRC) Indonesia to disseminate information on international humanitarian law to TNI officers.<sup>163</sup> He mentioned that, despite the fact that the government ended up ignoring the plan to adopt the Rome Statute, in his capacity as a trainer of humanitarian law for the military officers, he kept talking about the necessity of the Rome Statute:

As an academic and as a member of the Coalition, especially as someone who believes that the Rome Statute and the ICC are important for my country, I will continue to talk in front of the young military officers about those issues. I hope that they will understand what ICC is and not reeled when we finally

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<sup>159</sup> Hikmahanto Juwana, interview by Yessi Olivia, 8 November, 2016.

<sup>160</sup> In interviews with Ifdhal Kasim, Marzuki Darusman, and Mugiyanto, Hikmahanto Juwana was named as the expert that has been shaping the negative perception of the ICC among the people at the Ministry of Defense. See also: Investor Daily, "TNI Justru Diuntungkan Ratifikasi Statuta Roma," 21 July 2011.

<sup>161</sup> These arguments were also brought up in a discussion with the several officials from the Ministry of Defense in November 2016.

<sup>162</sup> M. Cherif Bassiouni, "The Permanent International Criminal Court," in *Justice for Crimes Against Humanity*, ed. Mark Lattimer and Phillippe Sands (Portland: Hart Publishing, 2003).

<sup>163</sup> ICRC has long been operating in Indonesia in its role in providing humanitarian assistance to victims of natural disasters or civil conflicts. In regards to the promotion of international humanitarian law, ICRC started the dissemination program of IHL in Indonesia in 1996. It then built partnership with Indonesia's armed forces (TNI) and has continued educating the military officers on IHL ever since. See: "ICRC di Indonesia," ICRC, accessed 3 August 2018, <http://blogs.icrc.org/indonesia/tentang-icrc/icrc-di-indonesia/>

ratify the Rome Statute. My law firm and I have tried to clear out the confusion in the military on the ICC, but I cannot do this alone.<sup>164</sup>

While the Ministry of Defence was regarded as the main obstacle, other government agencies were also criticised by members of the Coalition. Eddiyono from ICJR commented that, “Komnas HAM as an independent body should do more work on pushing the ratification of the Rome Statute. Komnas Perempuan [Women’s Human Rights Commission] should also take the matter of ICC seriously, but they did not so much.”<sup>165</sup> Criticism of Komnas HAM also came from KontraS, as explained by Putri:

It seems that Komnas HAM has lost its critical edge. It is no longer promote crucial human rights agenda, at least in securing international human rights treaties that need to be ratified by the government. So if we invite [the UN] special rapporteur or ICC judges to come to Indonesia we can have a constructive dialogue with the government. During the previous leadership, Komnas HAM often organized discussions [with the civil society groups] regarding international human rights instruments. But this is because most of the commissioners came from NGOs, so they have adequate information about the necessity to adopt the Rome Statute.<sup>166</sup>

Nevertheless, other than the Coalition’s complaints about the government’s agencies, they criticised the indecisiveness of President Yudhoyono for being unable to resolve the disagreement among his ministries. Putri from KontraS asserted that the probability of the Rome Statute being adopted during Yudhoyono’s term was high because his administration’s interests in democracy and human rights were strong. In addition, Yudhoyono had a cordial relationship with civil society organisations as part of his campaign’s program in empowering Indonesia’s civil society.<sup>167</sup>

KontraS contributed in the process of drafting Yudhoyono’s RANHAM 2011-2014. People from the office of Vice President Budiono, *pak* Kuntoro Mangkusubroto to be exact, contacted us asking for suggestion on human rights perceptions in order to strengthen RANHAM. Besides us, there was also a drafter team from the Ministry of Law and Human Rights. We included the Rome Statute in our version of RANHAM. What happened next is that they compare our plan with the one produced by the Ministry of Law and Human Rights. In the end, the president chose the Ministry of Law and Human Rights’ document. They too inserted the Rome Statute in their human rights plan...During Yudhoyono’s tenure, the chances were high in comparison with the Joko Widodo’s administration. Precisely because of the Yudhoyono’s administration concern on human rights issues that the advocates for the Rome Statute were very active to promote it.<sup>168</sup>

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<sup>164</sup> Fadillah Agus, interview by Yessi Olivia, 11 November 2016. ICRC is an international organization that has been known to have a relationship with Indonesia’s military in regards to educate the military on issues related to humanitarian laws. Agus, in his capacity as an ICRC trainer, often interacted with young military officers in a series of trainings and workshops. He told that there has been an improvement on how the new generation of TNI view human rights issues in contrast with the older generation. The problem with the military is that these new voices are not influential enough to change the culture of TNI.

<sup>165</sup> Eddiyono, interview. The lack of initiative coming from KOMNAS HAM was also expressed in an interview with Ifdhal Kasim and Puri Kencana Putri. In another interviews, respondents like Fadillah Agus mentioned about the failure of the Ministry of Foreign Affairs to convince the military to adopt the Rome Statute-

<sup>166</sup> Putri, interview.

<sup>167</sup> Susilo Bambang Yudhoyono and M. Jusuf Kalla, *Membangun Indonesia yang Aman, Adil, dan Sejahtera: Visi, Misi, dan Program* (2004).

<sup>168</sup> Putri, interview.

However, as previously mentioned, Yudhoyono's administration failed to meet the deadline to ratify the Rome Statute as well as other core international human rights treaties listed in the RANHAM 2011-2014. Commitment to an international human rights regime was not the only thing that Yudhoyono's presidency failed to achieve. He was also unsuccessful in amending the Law on Human Rights Court and redrafting the Law on Truth and Reconciliation Commission that was annulled by the Constitutional Court in 2006. All of these regulations are crucial to support the national mechanism for handling serious human rights crimes.

## **4.8 Conclusion**

This chapter began with a description of the development of Indonesia's civil society organisations. As a nation that has a long history of dictatorship, Indonesia's civil society has not been well developed because of years of oppressive policies on civil liberties. The end of Suharto's era brought new developments for civil society in Indonesia. There number of pro-democratic groups has been growing, but the legacy of the old regime has challenged them.

The case of the activism on the adoption of the Rome Statute has demonstrated how Indonesia's civil society faced the obstacles coming from those who resisted democratic change. As shown in the analysis, the campaign for the Rome Statute cannot be separated from the broader discussion on how Indonesia should resolve issues of past human rights abuses and reform the law and security sector. Despite the many suggestions coming from Indonesia's civil society, elements of the old regime (e.g. the military) remained influential in blocking the efforts for transitional justice. Similar to the topic of transitional justice, the campaign for the Rome Statute also had to contend with resistance from the military. The Civil Society Coalition for the ICC's advocacy was also challenged by the uncertainty of the government, especially during Yudhoyono's administration, in implementing their human rights policy (RANHAM).

To reflect on how the Coalition has evolved, it can be argued that the campaign for the Rome Statute has lost some of its crucial momentum. Indonesia's civil society should have capitalised on the trials of East Timor or Tanjung Periok as their entry point to launch the campaign for the Rome Statute. Other critical events were the discussion of the law on TRC or the law on Indonesia's military, which has failed to reinstitute the supremacy of civilians over the military. Still, the advocacy for the Rome Statute will depend on the willingness of the government to continue the legal and security sector reforms.

# CHAPTER 5 THE FLUX IN INDONESIA'S HUMAN RIGHTS POLICY

## 5.1 Introduction

This thesis started with a question of how democratisation that began in 1998 has affected Indonesia's human rights policy. In the Suharto years, the Indonesian government was unwilling to accept human rights initiatives. Submission to international human rights treaties, for example, was done for window dressing purposes only with no intention to implement the treaties in domestic policies.<sup>1</sup> The *Orde Baru* regime was also on defence when mistreatment of Indonesian citizens was exposed and the regime feared international interference in Indonesia's domestic affairs. There were also complaints coming from the government on how Western countries had used human rights as a condition in providing foreign aid to Indonesia. Former President Suharto even claimed that human rights were incompatible with Indonesia's traditional norms that prioritised the group's interest rather than individual's endeavor.<sup>2</sup>

This chapter analyses the shift of the government's perception of human rights since *Reformasi*. In contrast to the authoritarian years, the government in post-Suharto Indonesia has acknowledged human rights as part of Indonesia's transformation to becoming a democratic country. This circumstance was attributed to pressure coming from inside and outside the country for Indonesia to democratise and to adopt human rights policy. The effort to balance the anticipation coming from the domestic and international audience, however, has not been followed by the intention to implement Indonesia's policy on human rights even when the government was in a favourable position to do so.

This condition can be seen during Yudhoyono's presidency (2004 to 2014). As President, Yudhoyono enjoyed a phase of consolidated democracy, economic prosperity and a thriving civil society.<sup>3</sup> In addition to the domestic stability, Yudhoyono also governed during a time where

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<sup>1</sup> Prasetyo, "The Power(less) of Ratification: Holding the State Responsible for Human Rights Respect in Indonesia."

<sup>2</sup> See: Jeffrey A Winters, "Suharto's Indonesia: Prosperity and Freedom for the Few," *Current History* 94, no. 596 (1995); Peter Baehr, Hilde Selbervik, and Arne Tostensen, "Responses to Human Rights Criticism: Kenya-Norway and Indonesia-The Netherlands," in *Human Rights in Developing Countries Yearbook 1995*, ed. Peter Baehr, et al. (The Hague: Kluwer Law International, 1995); Human Rights Watch, *Human Rights Watch World Report 1997* (New York: Human Rights Watch, 1996); Denise Leith, *The Politics of Power: Freeport in Suharto's Indonesia* (Honolulu: University of Hawaii Press, 2003).

<sup>3</sup> Susilo Bambang Yudhoyono won the presidential election in 2004. The election was special because it was the first time Indonesian cast their votes to directly choose a president. As a result, Yudhoyono did not suffer with legitimacy problem unlike his predecessors from Habibie to Megawati that got the president seat without going through general election mechanism. This circumstance, according to some analysts, has adequate enough to call Indonesia as a consolidated democratic country. See: "Indonesia Under SBY: Consolidating Democracy," 2005, USINDO, accessed

Indonesia was no longer under the scrutiny of the international community. It was during Yudhoyono's tenure that the language of democracy and human rights was intensively asserted in both foreign and domestic policies. His presidency was characterised by Indonesia's increasing participation in regional and international affairs.<sup>4</sup> However, while world leaders lauded him for his support of democracy,<sup>5</sup> human rights groups in the country criticised him for his lack of willingness to execute policy on human rights or to improve human rights protection in Indonesia.<sup>6</sup>

Previous studies on Yudhoyono's policy on human rights have centred the analysis on the reasons for Indonesia to adopt human rights policy, the stagnancy of Indonesia's democracy or the leadership style of Yudhoyono as a president.<sup>7</sup> While this research is important and supports the thesis argued here, especially in describing the state of human rights in Indonesia, this chapter offers another factor that is also significant: the role of bureaucracy in promoting or obstructing the adoption of human rights norms. As shown in the case study of the plan to adopt the Rome Statute, related ministries in charge of the adoption plan (the Ministry of Foreign Affairs, the Ministry of Law and Human Rights and the Ministry of Defence) were split on the Rome Statute/ICC with resistance coming from the Ministry of Defence. The division among government ministries and the lack of initiative coming from the President to propose a solution contributed to the abandonment of the plan to ratify the Rome Statute in Indonesia.<sup>8</sup>

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11 August 2018, <http://www.usindo.org/briefs/indonesia-under-sby-consolidating-democracy/>; Louay Abdulkaki, "Democratisation in Indonesia: From Transition to Consolidation," *Asian Journal of Political Science* 16, no. 2 (2008).

<sup>4</sup> Avery Poole, "The Foreign Policy Nexus: National Interests, Political Values," in *Indonesia's Ascent: Power, Leadership, and the Regional Order*, ed. Christopher B. Roberts, Ahmad D. Habir, and Leonard C. Sebastian (Houndsmills: Palgrave Macmillan, 2015).

<sup>5</sup> For example, in his meeting with US former president Barack Obama before he handed the presidential seat to Joko Widodo, Yudhoyono was praised for his success in navigating Indonesia to become a democratic country. "In Bahasa Indonesia, Obama Praises President SBY," 2014, SETKAB, accessed 20 August 2018, <http://setkab.go.id/en/in-bahasa-indonesia-obama-praises-president-sby/>

<sup>6</sup> See: KontraS, *Hak Asasi Diakui tapi Tidak Dilindungi: Catatan Hak Asasi Manusia dimasa Pemerintahan Presiden Susilo Bambang Yudhoyono [2004-2014]*; "President Yudhoyono's Blind Side: Religious Violence in Indonesia," 2014, Phelim Kine, accessed 6 March 2015, <http://www.hrw.org/news/2014/08/25/president-yudhoyono-s-blind-side-religious-violence-indonesia>

<sup>7</sup> See: Mukhlis, "Indonesia's Human Rights Policy Shift and Continuity 1945-2014: A Neoclassical Realism Perspective."; Marcus Mietzner, "Indonesia: Democratic Consolidation and Stagnation under Yudhoyono, 2004-2014," in *Routledge Handbook of Southeast Asian Democratization*, ed. William Case (New York: Routledge, 2014); Berger, "Human rights and Yudhoyono's test of history."

<sup>8</sup> According to the Presidential Decree on the National Action Plan on Human Rights 2004-2009 (*Keputusan Presiden No. 40/2004*), the ministries that were responsible for the ratification of international human rights treaties including the Rome Statute of the ICC were the Ministry of Foreign Affairs and the Ministry of Law and Human Rights and "related institutions." Since the ratification of the Rome Statute will implicate the action of the soldiers (military), the Ministry of Defence was also part of the decision making process to adopt the Statute. This research finds out there was an opposition coming from the Ministry of Defence regarding the ratification of the Rome Statute. The opposition itself cannot be separated from the event that took place in 1999 where Indonesia's military officers were prosecuted for the allegation of perpetrating serious human rights crimes in East Timor. Part of reasons of the Ministry of Defence's resistance to the Rome Statute and the ICC was the uneasiness that future military officials will be brought to the Court. Based on the interviews with respondents from the Ministry of Foreign Affairs and the Ministry of Law and Human Rights, they failed to convince their colleagues at the Ministry of Defence that there is a number of procedures that the

This chapter will be organised as follows. The first part will discuss what caused the Indonesian government to become receptive to human rights norms. The analysis will be followed by how the Ministry of Foreign Affairs adopted the language of democracy and human rights in Indonesia's foreign policy. The lack of progression in the Ministry of Defence's reform will also be addressed. The second part of this chapter will look at how the plan to adopt the Rome Statute was discussed among the ministries and how the plan was finally discarded by the government because of the reluctance of the Ministry of Defence. Overall, the chapter concludes that the continuation of human rights policy in Indonesia has been contingent upon the bureaucrats who are responsible for implementing it. Democratic progression in the bureaucracy, in this case, is vital in shaping the bureaucrats' commitment to the improvement of human rights in Indonesia. This can be realised, of course, with the political will of the President to carry on the reform initiatives.

## 5.2 The Turmoil Periods of Habibie and Wahid

This section analyses the shift in the Indonesian government's behaviour in regards to human rights. In interviews with Dewi Fortuna Anwar (an ex-advisor to former president Habibie) and Marzuki Darusman (a former Komnas HAM Commissioner and Indonesia's Attorney General), both Habibie and Abdurrahman Wahid were said to have genuine interests in reforming the country including in adopting human rights policies.<sup>9</sup> However, it cannot be denied that the transitional governments operated in an environment where they were pressured to take immediate actions. The transitional period in Indonesia was also a time when old powers still remained intact in Indonesia's political system,<sup>10</sup> a circumstance that impacted the reform initiatives. As described by Darusman:

*Pak Habibie was honest and had the idealism to reinstate democracy and human rights. No doubt about it. It is just that political dynamics during pak Habibie's tenure...we still had the influence of people like pak Wiranto, pak Prabowo... Even though Habibie was serious, there were a lot of people from the past regime that sit in the government offices that did not share Habibie's spirit to reform the country.*<sup>11</sup>

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ICC must take in order to prosecute serious human rights offenders, including prioritizing the national court to conduct the investigation and the trial.

<sup>9</sup> Dewi Fortuna Anwar, interview by Yessi Olivia, 19 September, 2016; Marzuki Darusman, interview by Yessi Olivia 7 September 2016.

<sup>10</sup> Slater, "Indonesia's Accountability Trap: Party Cartels and Presidential Power after Democratic Transition."; Robison and Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*.

<sup>11</sup> Prabowo Subianto was a former son-in-law of Suharto. He was admitted to Magelang Military Academy in 1970 and graduated in 1974. His connection to Suharto was believed to be reason of his fast-tracking career in the military. In 1995, he became the commander of KOPASSUS, a special military operative unit and in March 1998, two months before Suharto's resignation, he was appointed as the Commander of the Army Strategic Reserve Command (KOSTRAD). This move had raised the suspicion that Prabowo would repeat the history of Suharto, a former KOSTRAD commander himself, in starting a military revolution. When Habibie became president, he had to deal with the rivalry between Wiranto and Prabowo. It was reported that in the wake of Suharto's resignation, Prabowo looked for Habibie to demand the highest position in the military. Habibie, who suffered from the lack of supports for his appointment as the president sided with Wiranto. Prabowo's career ended when he was dismissed from the military for his involvement in the abduction of pro-democracy activists. See: Takashi Shiraishi, "The Indonesian Military in Politics," in *The Politics of Post-Suharto Indonesia*, ed. Adam Schwarz and Jonathan Paris (New York: Council on

Former presidents Habibie and Wahid, who were responsible for leading Indonesia through the transitional period, shared similar goals; first, to find ways to secure financial resources to help the country recover from the economic crisis, and, second, to restore Indonesia's reputation that had been tarnished by its domestic crisis. In regards to economic improvement, President Habibie relied on international institutions like the World Bank and the IMF to provide financial assistance to Indonesia's economy. These institutions were at first sceptical of Habibie because they saw him as part of Suharto's regime, but subsequently they agreed to help Indonesia to recover from the economic crisis because the Habibie administration agreed to take the economic reform package provided by the IMF.<sup>12</sup> President Wahid, who took office in October 1999, took a different approach where he embarked on many foreign trips to look for alternative sources of finance. He contemplated forming a coalition with major Asian states like India and China in order to break Indonesia's dependence on the West and international institutions like the IMF. Wahid also went to the Middle East on his quest to find potential investors and even considered establishing diplomatic ties with Israel, a state that Indonesia had not established a formal relationship with due to its hostile history with Palestine.<sup>13</sup> However, Wahid was not clear on his Asian coalition plan and none of the states he approached took his idea seriously, especially since Indonesia did not have sufficient leverage to persuade countries like China and India.<sup>14</sup> Wahid's idea to normalise relations with Israel also did not work out because he faced a backlash from Muslim groups.<sup>15</sup> His Foreign Minister, Alwi Shihab, even had to clarify to the parliament that opening diplomatic ties with Israel

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Foreign Relations Press, 1999); Schwarz, *A Nation in Waiting: Indonesia's Search for Stability*; Jemma Elizabeth Purdey, *Anti-Chinese violence in Indonesia, 1996-1999* (Singapore: NUS Press, 2002); Ginandjar Kartasmita and Joseph J Stern, *Reinventing Indonesia* (Singapore: World Scientific Publishing, 2016).

<sup>12</sup> The IMF's aids were actually started to pour not long after the Asian financial crisis hit Indonesia—President Suharto signed the letter of intent for the funding in October 1997. The implementation of the IMF economic reform program did not run well because Suharto was reluctant to take a structural adjustment that would impact the businesses of his inner circle, including his family members. When Suharto handed the power to Habibie, there were some concerns from international financial institutions that Habibie would take similar position to Suharto. It was argued that one of the reasons that organizations like the IMF finally agreed to support Indonesia's economic reforms was due to the appointment of pro-reform people like Ginandjar Kartasmita and Prof. Widjojo Nitisastro to sit as Habibie's economic advisors. The economic support programs from the IMF ran from 1997 until 2003, started under the tenure of Suharto and ended during Megawati's presidency. See: Davis and Schlesinger, "IMF, World Bank to Continue Insisting on Indonesia Reform."; Shalendra D Sharma, "The Indonesian Financial Crisis: From Banking Crisis to Financial Sector Reforms, 1997-2000," *Indonesia*, no. 71 (2001); Hadi Soesastro, Haryo Aswicahyono, and Dionisius A. Narjoko, "Economic Reforms in Indonesia after the Economic Crisis," in *Institutions for Economic Reform in Asia*, ed. Philippa Dee (New York: Routledge, 2010).

<sup>13</sup> See: Michael Richardson, "Indonesians Plan a Drive to Recover Role in Asia After Setbacks, Wahid Puts Focus on Region And Investors' Return," *International Herald Tribune*, 6 November 1999; Xinhua News Agency, "Wahid Calls For Greater Cooperation Among China, India, Indonesia," 9 February 2000; Nayan Chanda, "Indonesia -- Jakarta to Jerusalem: Wahid Looks to Israel for Investment and Harmony," *Far Eastern Economic Review*, 10 February 2000.

<sup>14</sup> Sukma, *Islam in Indonesian Foreign Policy: Domestic Weakness and the Dilemma of Dual Identity*, 115. See also: Aria Teguh Mahendra Wibisono, "Political Elites and Foreign Policy: Democratization in Indonesia" (Thesis, Universiteit Leiden, 2009). Both Sukma and Wibisono pointed out the incoherence of Wahid's foreign policy. Wahid believed that the coalition between Asian countries required 'common identity,' but he failed to elaborate what he meant by that term. Moreover, he disregarded the rivalry between China and India, which makes his coalition plan even harder to execute.

<sup>15</sup> Samsu Rizal Panggabean, "Indonesian Responses," in *Islamic Perspectives on the New Millennium*, ed. Virginia Matheson Hooker and Amin Saikal (Singapore: ISEAS, 2004).

was not the government policy, but merely “an appeal”.<sup>16</sup> Eventually, Indonesia went back to its regular donors like the IMF, which had supervised Indonesia’s economic recovery program since the outbreak of the Asian economic crisis in 1997.

Another initiative that the transitional governments took to regain the trust of the international community and to distance the state from Suharto’s Indonesia was through installing human rights policy and institutions. Habibie, through the Ministry of Foreign Affairs, introduced the National Action Plan on Human Rights (*Rencana Aksi Nasional Hak Asasi Manusia*—RANHAM), a five-year plan on human rights promotion and protection policy. RANHAM included programs such as the ratification of international human rights instruments; the dissemination of information and the conduct of social education on human rights; measures to address human rights issues; and the implementation of ratified international human rights conventions.<sup>17</sup>

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<sup>16</sup> BBC, "Indonesia Postpones Plan to Open Trade Ties with Israel," 18 November 1999.

<sup>17</sup> The origin of a national plan of action on human rights can be traced from the World Conference on Human Rights in Vienna in 1993. This was the second world conference on human rights after the first conference held in Tehran in 1968. During the Vienna conference, a consensus was reached that states are committed to the protection and respect of human rights. It is worth noting that this conference cannot be separated from the context of the post-Cold War environment. At that time, there was the sense of optimism, especially among Western countries, that democracy and human rights would become the new norms of the post-Cold War world. The results of the Vienna conference was transcribed in the Vienna Declaration and Program and Action, where one of the ways to demonstrate states’ commitment to human rights was through creating a national action plan on human rights: “The World Conference on Human Rights recommends that each State consider the desirability of drawing up national action plan identifying steps whereby that State would improve the promotion and protection of human rights.” *See*: United Nations, "Vienna Declaration and Programme of Action."

**Table 1: RANHAM 1998-2003**<sup>18</sup>

No.	Name of the Treaties	Target	Realization
1.	International Covenant on Economic, Social, and Cultural Rights	First Year	2005 (under Yudhoyono adm.)
2.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment-CAT		1998 (under Habibie adm.)
3.	International Convention on the Elimination of All Forms of Racial Discrimination		1999 (under Habibie adm.)
4.	Convention on the Prevention and Punishment of the Crime of Genocide	Second Year	-
5.	Anti-Slavery Convention		-
6.	Convention on the Protection of the Rights of All Migrant Workers and Members of the Families	Third Year	2012 (under Yudhoyono adm.)
7.	Convention for the Suppression of Trafficking in Persons	Fourth Year	-
8.	International Covenant on Civil and Political Rights	Fifth Year	2005 (under Yudhyono adm.)

Habibie, who only ruled for a short period from May 1998 to October 1999, only managed to ratify two of the core international human rights treaties of his RANHAM program; the first was the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was adopted in 1998 into Law No. 5/1998, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which was adopted into Law No.

<sup>18</sup> The data was compiled from: "Keputusan Presiden Republik Indonesia Nomor 129 tahun 1998 tentang Rencana Hak-Hak Asasi Manusia," (1998); "Undang-Undang Republik Indonesia Nomor 5 Tahun 1998 tentang Pengesahan Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia)," (1998); "Undang-Undang Republik Indonesia Nomor 29 Tahun 1999 tentang Pengesahan International Convention on the Elimination of All Forms of Racial Discrimination 1965 (Konvensi International tentang Penghapusan Segala Bentuk Diskriminasi Rasial 1965)," (1999); "Undang-Undang Republik Indonesia Nomor 11 Tahun 2005 tentang Pengesahan International Covenant on Economic, Social and Cultural Rights (Kovenan Internasional tentang Hak-hak Ekonomi, Sosial dan Budaya)," (2005); "Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional tentang Hak-hak Sipil dan Politik)," (2005); "Undang-Undang Republik Indonesia Nomor 6 Tahun 2012 tentang Pengesahan International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Konvensi Internasional Mengenai Perlindungan Hak-hak Seluruh Pekerja Migran dan Anggota Keluarganya)," (2012).

29/1999. Nevertheless, these adoptions cannot be separated from the context of 1998 when Indonesia received backlash following the exposure of human rights abuses and violence that started in early 1998. The Indonesian government worried that the publication of abuses would put financial assistance to Indonesia at risk. In the United States, some politicians called for the IMF, from which Indonesia sought financial aid, to “link its loans to improvements in human rights”.<sup>19</sup> Meanwhile, James Foley from the U.S. State Department commented that:

We call on the government of Indonesia to conduct a full investigation into these serious allegations made by this individual. We have raised this issue at high levels with the government of Indonesia and will continue to pursue the matter until the cases are resolved.<sup>20</sup>

Thus, even though Ali Alatas, Indonesia’s Foreign Minister, claimed that the adoption of CAT was based on “the respect for the right of all people to be free from the threat of torture”,<sup>21</sup> arguably it was the desire to secure financial aid from international donors that contributed to the government’s decision to accept the treaty.<sup>22</sup>

There were three cases of human rights violations that caught the attention of the world because they contributed to the resignation of Suharto; first was the abduction of 23 civilians, mostly pro-democracy activists, from February-May 1998 that was allegedly conducted by a sub group from KOPASSUS (Indonesia’s special military unit) called *Tim Mawar* (Rose Team). According to KontraS (the Commission for the Disappeared and Victims of Violence), out of the 23 people that were kidnapped under force, only nine of them were released. Moreover, of the fourteen people that had gone missing, only one of them was found with a gunshot wound in his body.<sup>23</sup> Second was the shooting of the protestors on 12 May 1998 by Indonesian security forces.<sup>24</sup> The incident began when students from *Universitas Trisakti* marched to demand Suharto’s resignation. Their peace protest turned deadly when, in the attempt to push the demonstrators back towards the main campus, the riot squad started shooting at the crowd. There were eight casualties of the Trisakti incident (six of them were Trisakti students). According to Hermawan Sulisty, one of the members of May 1998 fact-finding team, all of the victims were shot with 5.56mm bullets, the standard ammunition used by the military.<sup>25</sup> Third was the mass riots that took place after the shooting at Trisakti campus from 13-15 May 1998. The unrest that took place in several cities in Indonesia, like Jakarta, Solo, Medan, Palembang, and Lampung, had caused destruction to shopping centres,

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<sup>19</sup> Janet Guttman, "IMF Set to Offer Indonesia Cash, Watching Closely," 29 April 1998.

<sup>20</sup> Reuters, "U.S. Urges Indonesia to Probe Reported Abduction," 28 April 1998.

<sup>21</sup> The Jakarta Post, "House Gets Support on UN convention," 18 July 1998.

<sup>22</sup> Nadirsyah Hosen, "Human Rights and Freedom of the Press in the Post-Soeharto Era: A Critical Analysis," *Asia Pacific Journal on Human Rights and the Law* 3, no. 2 (2002).

<sup>23</sup> KontraS, "Kronik Kasus Penculikan dan Penghilangan Paksa Aktivis 1997 – 1998."

<sup>24</sup> Mark Landler, "Indonesian Riot Police Open Fire At Protests, Killing Six Students," *The New York Times*, 13 May 1998.

<sup>25</sup> Sulisty, *Lawan! Jejak Jejak Jalanan di Balik Kejatuhan Soeharto*.

vehicles and public and private property. Based on the findings of the investigative team of the May riots, the victims of the mass riots included people from all social classes but there was a clear indication that main target of the riots was the ethnic Chinese community. The investigative team also found evidence of sexual violence that ranged from sexual assault to the rape of women, most of whom were ethnic Chinese.<sup>26</sup>

After much pressure, domestically and internationally, in June 1998, General Wiranto held a press conference and admitted that there were some military personnel involved in the kidnapping.<sup>27</sup> In an attempt to quell the public anger, Wiranto formed the Honorable Council of Military Officers (*Dewan Kehormatan Perwira*—DKP) to investigate the involvement of Lieutenant General Prabowo Subianto, Mayor General Muchdi P.R. and Colonel Chairawan. The result of the internal inquiry stated that all of them were guilty of ordering the kidnapping of pro-democracy activists. Prabowo was then dismissed from the military.<sup>28</sup> While Wiranto argued that Prabowo's secret unit (*Tim Mawar*) operated outside the regular chain of command,<sup>29</sup> Sidney Jones from Human Rights Watch (HRW) claimed that top-ranking officials were aware that the actions took place.<sup>30</sup>

What was interesting in the adoption of CAT and CERD is how influential the domestic setting was. During the *Orde Baru* period, foreign policymaking was directed under the command of the President with the Ministry of Foreign Affairs and the influence from other government agencies such as the Ministry of Defense, the State Intelligence Agency (*Badan Kordinasi Inteligen Negara*—BAKIN) and the National Resilience Institute (*Lembaga Ketahanan Nasional*—LEMHANAS).<sup>31</sup> It is worth mentioning that, as part of the practice of TNI's military and civilian function (*Dwifungsi* doctrine), many of the military officers were granted positions in civilian offices including in the Department of Foreign Affairs.<sup>32</sup> After Suharto's era came to an end, the pressure to consent to international norms came from a domestic audience: the parliament, human

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<sup>26</sup> TGPF Mei 1998, *Temuan Tim Gabungan Pencari Fakta Peristiwa Kerusuhan Mei 1998* (Jakarta: Komnas Perempuan, 2002).

<sup>27</sup> The Jakarta Post, "Armed Forces Members 'Involved in Abductions'," 30 June 1998.

<sup>28</sup> Bhakti et al., *Tentara yang Gelisah Hasil Penelitian Yipika tentang Posisi ABRI dalam Gerakan Reformasi*. In contrast to many analysts that saw Prabowo was responsible to the riots in 1998, Fadli Zon claims that Prabowo was a victim of a smear campaign of his rivals. He also argues that foreign commentators had contributing in framing a negative image of Prabowo. Zon believes that Prabowo is not guilty because there has been no concrete evidence that he perpetrated the riots or the shooting of the Trisakti students. See: Fadli Zon, *Politik Huru-hara Mei 1998* (Institute for Policy Studies: Jakarta, 2004).

<sup>29</sup> Abdullah, Azhari, and Wiranto, *Bersaksi Di Tengah Badai: Dari Catatan Wiranto, Jenderal Purnawirawan*.

<sup>30</sup> Reuters, "U.S. Group Denounces Indonesia Disappearances," 28 April 1998.

<sup>31</sup> Suryadinata, *Indonesia's Foreign Policy under Suharto : Aspiring to International Leadership*.

<sup>32</sup> The military infiltrated the Ministry of Foreign Affairs as part of the attempts of the *Orde Baru* regime to eradicate the supporters of the communist party (PKI). In 1970 the existence of the military in the MFA was formalized through the creation of the Directorate of Security and Communications. Ibid.; MacDougall, "Patterns of Military Control in the Indonesian Higher Central Bureaucracy."; Sukawarsini Djelantik, *Diplomasi antara Teori dan Praktik* (Yogyakarta: Graha Ilmu, 2008).

rights commission and civil society. In the case of the adoption of CAT, it was the DPR that, for the first time, used its initiative right to propose the ratification. All factions of DPR agreed that CAT must be adopted on the basis that human rights abuses were prevalent. Abu Hasan Sazili from Golkar explained why the treaty was urgently needed:

It is no secret that many people have been arbitrarily mistreated, forced to lie on ice blocks and, even worse, raped in interrogation rooms by those who actually should protect them. Many others have been abducted for having different opinions and political views.<sup>33</sup>

It is worth noting the changing tone of Golkar, which was the government's party during Suharto's era. Suharto's administration actually signed CAT on 23 October 1985 to allay international scrutiny over the regime's human rights abuses in the 1980s.<sup>34</sup> However, since there was no pressure coming from the people or the parliament, especially from Golkar as the majority party in the DPR, the treaty was abandoned. It was not until the government established the National Commission on Human Rights (Komnas HAM) in 1993 that the case for the adoption of CAT resurfaced. In an interview with Roichatul Aswidah, who served on Komnas HAM from 1995, it was said that Komnas HAM had pushed for the ratification of CAT long before *Reformasi*:

KOMNAS HAM has always been in the position of suggesting the government to ratify international human rights instruments. Even before *Reformasi*, we had proposed the adoption of human rights treaties, including Convention against Torture. However, it was only after Indonesia had gone through a drastic transformation that Indonesia finally adopted the convention. Surely it happened because there was the commitment coming from the government (Habibie's administration) on the issue of human rights that was different from the previous regime.<sup>35</sup>

Similar to the acceptance of CAT, all factions in the DPR pushed for the ratification of CERD. They even expressed their support for the prohibition of racism,<sup>36</sup> which was ironic since they were part of the previous regime that was responsible for discriminatory laws against minorities, especially towards the Chinese communities.<sup>37</sup>

The adoption of CERD cannot be separated from the 13-15 May riots that were mentioned previously. In a systematic attack towards Chinese communities, thousands of people died and hundreds of Chinese women suffered sexual violence.<sup>38</sup> It was reported that the anti-Chinese riots

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<sup>33</sup> The Jakarta Post, "House Hacks UN Convention Approval," 8 July 1998.

<sup>34</sup> Prasetyo, "The Power(less) of Ratification: Holding the State Responsible for Human Rights Respect in Indonesia."

<sup>35</sup> Aswidah, interview.

<sup>36</sup> Xinhua News Agency, "Indonesian House Ratifies Anti-Discrimination Law," 7 April 1999.

<sup>37</sup> Indonesia's Chinese communities were associated with the PKI (Indonesia's Communist Party) in the 1950s. Following the purge of PKI members and supporters, which led to the rise of the *Orde Baru* regime, Indonesian Chinese were forced to disassociate with their Chinese identity and culture. The discriminatory policies towards the Chinese including: pressuring the Chinese origins to adopt Indonesian names, banning the religious practice and festivity related to Chinese tradition, and limiting their citizen rights.

<sup>38</sup> John Stackhouse, "Indonesia's Ethnic Chinese Live in a world of fear, discrimination plagued by racial attacks for generations, the minority of eight million people has seldom seen persecution this vicious and co-ordinated," *The Globe and Mail*, 16 September 1998.

had driven 150,000 people to flee the country. Many of them were of Chinese origin and took their assets as they departed.<sup>39</sup> The government did not quickly respond to one of the worst crises in modern Indonesian history. Wiranto, who at that time served as Indonesia's Military Commander, doubted the mass rape reports.<sup>40</sup> Tuti Alawiyah, the Minister for Women's Affairs, even denied the abuse allegations towards Chinese women at first.<sup>41</sup> It was only after receiving wide criticism that the Habibie administration took drastic measures to stop the flight of people as well as their capital. Among Habibie's efforts to appeal to the Chinese Indonesians was establishing a fact-finding team (*Tim Gabungan Pencari Fakta (TGPF) Kerusuhan Mei 1998*) to investigate the May 1998 riots and forming the women's crisis centre which was endorsed by the president's wife.<sup>42</sup> As discussed in Chapter 3, Habibie and Wahid's tenures as presidents were cut short because of self-inflicted crises, the tense rivalry of elites and the fact that the military was still a significant political actor in Indonesian politics. President Habibie's career ended when a no-confidence motion against him passed the parliament in October 1999 after his high-risk gamble on East Timor.<sup>43</sup> Meanwhile, President Wahid paralysed his own government with his unpredictability and his penchant for traveling to foreign countries. He infuriated his allies in the parliament, as well as his Vice President, by sacking ministers from political parties that had supported him in the presidential election. He defended his decisions by stating that the dismissed ministers were involved in corruption even though the evidence was thin. His unusual way of governing, breaking the established practices and norms, eventually also cost him his supporters—especially his allies—in the parliament.<sup>44</sup> In July 2001, after a long standoff with the parliament, he was impeached on the basis of corruption.<sup>45</sup>

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<sup>39</sup> Associated Press, "Report: More than 150,000 Fled Indonesian Riots," 9 June 1998.

<sup>40</sup> Agence France-Presse, "Indonesian Government Finds No Evidence of Rapes: Military Chief," 2 September 1998.

<sup>41</sup> The Jakarta Post, "Rights Body Blames Govt for Gang Rapes," 10 July 1998.

<sup>42</sup> Susan Blackburn, "Gender Violence and the Indonesian Political Transition," *Asian Studies Review* 23, no. 4 (1999). Marzuki Darusman who at that time was the head commissioner of Komnas HAM led TGPF. His TGPF team members consisted of people from legal aids, human rights activists, religious leaders and the military. TGPF worked from July to October 1998. TGPF found that the 13-15 May 1998 the result of the political struggle within Indonesian elites and the deterioration of Indonesia's economy after being hit with a financial crisis. TGPF argues that there has been a strong indication that the riots were perpetrated by some elites that involved in the rivalries. TGPF also confirms that sexual violence including rape occurred during the riots. In its report, TGPF recommends the government to do a thorough investigation of the May 1998, including the meeting at the Army Strategic Command (KOSTRAD) headquarter on 14 May 1998, where the unrest was planned. See: TGPF Mei 1998, *Temuan Tim Gabungan Pencari Fakta Peristiwa Kerusuhan Mei 1998*.

<sup>43</sup> Kompas, "Pidato Habibie Ditolak," 20 October 1999.

<sup>44</sup> See: Tim Dodd, "Wahid's Year of Living Nervously," *The Australian Financial Review*, 20 October 2000; Sukma, *Islam in Indonesian Foreign Policy: Domestic Weakness and the Dilemma of Dual Identity*; Kartasasmita and Stern, *Reinventing Indonesia*. The lowest point of the relationship between Wahid and DPR was when DPR demanded the investigation of corruption allegation that involved President Wahid's aides and family members. In the case known as the Buloggate, it was reported that Wahid's masseur attempted to misuse Rp35 billion funds from *Bulog* (the National Logistic Board). There was also the accusation of the undisclosed US\$2 million donation made by the Sultan of Brunei that allegedly funnelled to Wahid's behalf. The parliament invited President Wahid to clarify these charges, but since Wahid did not come with clear and convincing arguments, the parliament rejected his explanations and pushed for an

Habibie's short-lived government left behind a number of unfinished tasks that should have been resolved during a transitional period. It failed, for example, to find a solution to Indonesia's past problem with human rights abuses that were perpetrated by Suharto's regime, as Aswidah, a former Komnas HAM commissioner, recalled:

At that time Komnas HAM helped the government [the Habibie's presidency] in regards to how to solve human rights crimes that happened in the past [in the context of transitional justice]. But the military was against the idea of revealing them. I remember we discussed this topic with *pak* Muladi from the Ministry of Law but we did not have common ground how to solve the problem. They wanted a national reconciliation but not conforming to the international standard of reconciliation where disclosing the past actions matters. That is why past crimes are so hard to solve even until now.<sup>46</sup>

The Habibie administration also did not follow up the recommendations from the report by TGPF as the military denied their involvement in the May riots. The resistance of the military to the fact-finding report was notable when Wiranto criticised TGPF. He said that TGPF had crossed the line by providing an analysis rather than just collecting facts.<sup>47</sup> The inability of the Habibie administration to override the military's influence can also be seen in its failure to finalise a reconciliation body, as discussed in Chapter 4. What is also important is that Habibie failed to investigate allegations of corruption, or at least freeze the wealth of Suharto and his cronies, even though he was mandated to eradicate corruption under the MPR Decree on State Structure that is Clean and Free of Corruption, Collusion, and Nepotism (*TAP MPR XI/1998 tentang Penyelenggara Negara yang Bersih dan Bebas Korupsi, Kolusi, dan Nepotisme*).<sup>48</sup> It is likely that his past relationship with Suharto, and his relationship with the military, contributed to his unwillingness to investigate Suharto. Moreover, as discussed in Chapter 3, Wahid experienced different challenges

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impeachment. The accumulation of crisis surrounded President Wahid was then led to his removal from office on 23 July 2001.

<sup>45</sup> ANTARA, "Abdurrahman Wahid Officially Fired," 23 July 2001.

<sup>46</sup> Aswidah, interview.

<sup>47</sup> Agence France-Presse, "Indonesian Military Denies Involvement in May Riots," 4 November 1998. In an interview with Marzuki Darusman, he admitted the influence of military in the work of TGPF: "TGPF was created by the government and DPR. The coordinator of TGPF was *pak* Wiranto. We worked for three months since TGPF was created. When we finished the work and handed the report to the government, the government rejected our report. Now that *pak* Wiranto is the Menkopolkam (the Coordinating Minister for Political, Legal, and Security Affairs), we should try to pursue him about this case because there is no expiration date for a report from a fact-finding team." (The interview was conducted in September 2016 where Wiranto served as the Coordinating Minister under Joko Widodo's presidency)

<sup>48</sup> TIME magazine ran an exposé published in May 1999 on the fortune of Suharto and his family. In the article entitled "The Family Firm", TIME claimed that Suharto's wealth was estimated around US\$ 15 billion. It was told that this fortune was originated from years of corrupt practices, such as money laundering and monopolizing government's concessions. Suharto and his families also gained their wealth through their connection with Indonesia's conglomerates. The staggering publication had forced the government to investigate, but the probe of Suharto's corruption, as with many investigation that involved his regime, often met with a dead-end. The Habibie's administration began the investigation by sending Muladi (the Minister of Law) and Andi M. Ghalib (the Attorney General) to Switzerland and Austria. The case was then dropped in October 1999 on the basis of lack of evidence. When president Wahid took office he instructed for the case to be reopened. In September 2000, the court called Suharto was unfit to face charge. See: "Indonesian Team to Go to Austria, Switzerland to Trace Suharto Funds," 27 May 1999; Jeremy Wagstaff and Puspa Madani, "Suharto Case Is Dropped On Insufficient Evidence," *The Wall Street Journal*, 12 October 1999; Calvin Sims, "Jakarta Court Drops Charges Against Ailing Suharto," *The New York Times*, 29 September 2000.

as someone who came from the outside of Indonesia's established political parties. His proposal to reconcile with the victims of the anti-communist purge, for example, was rejected by the Muslim community, including his own family circle.<sup>49</sup> His conflict with Wiranto over the case of East Timor had also damaged his relationship with the military as most of the military elites saw the firing of Wiranto as "an insult to the honor of the military".<sup>50</sup> In addition to the complicated relations between the presidents and the military, the uncertainty surrounding the investigation of human rights was related to the ignorance of the rest of the elites in understanding what human rights were. This condition, according to Ihdhal Kasim, was related to the environment surrounding post-*Reformasi*:

After *Reformasi*, our public officials—especially from the government—were receptive of human rights but they put limitations on them. This is actually related to the unchanged composition of the elites even after we have gone through changes. The main difference was Suharto was no longer the president. The bureaucrats, the ministries, and the military, were not affected by the changes in 1998. So most of the elites are those from *Orde Baru* especially those who served in the ministries. At DPR we could see new forces entered the political system [through the 1999 election]. However, changes did not touch the bureaucracy. Due to the political development in the country, they inevitably became the reformist, whether they wanted or not. That is why they took the reform ideas half-heartedly. [Before *Reformasi*] we fought hard for human rights to be recognized, but since *Reformasi* human rights automatically became part of their vernacular. The problem with this condition is whether what they understood of human rights are similar to our [the activists] interpretation. That is the question. There was a wide gap between them and us where they perceived human rights in the context of survival.<sup>51</sup>

Nevertheless, Habibie and Wahid's leadership contributed to the establishment of Indonesia's human rights mechanism. Habibie began the efforts of acknowledging human rights with the issuance of RANHAM and the passing of the Law on Human Rights. Through this law, Komnas HAM was rejuvenated as an independent body, unlike the human rights commission during *Orde Baru*. Habibie was also responsible for the creation of the Women's Rights Commission (Komnas Perempuan) on 9 October 1998. Wahid was known for his initiatives to restore the rights of the Chinese Indonesians, from acknowledging Confucianism as an official religion, allowing the celebration of Chinese holidays and repealing the ban on Chinese schools, media and characters.<sup>52</sup>

### **5.3 Embracing Democracy and Human Rights in Indonesia's Foreign Policy**

The previous section discussed how *Reformasi* forced the transitional government to place human rights as one of the priorities in order to restore the trust of the international community. This section touches on similar issues but focuses more on the reform that took place in the Ministry of Foreign Affairs (MoFA) under the leadership of Hassan Wirajuda. Wirajuda was the Minister for

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<sup>49</sup> See: John Colmey and David Liebhold, "The Family Firm," *TIME*, 24 May 1999; Seth Mydans, "Indonesia to Revive Investigation of Suharto," *The New York Times*, 28 October 1999; Suhelmi, "Communism Debated Again: The Muslim Response to the Idea of Revoking the 1966 anti-Communism in Post-Soeharto Indonesia."

<sup>50</sup> Said, "President Abdurrahman Wahid and the Indonesian Military: The Short Honeymoon," 166.

<sup>51</sup> Kasim, interview.

<sup>52</sup> Ian Storey, *ASEAN and the Rise of China* (New York: Routledge, 2013).

Foreign Affairs under the presidency of Megawati Sukarnoputri who replaced Wahid after he was impeached in July 2001. Analysis on Megawati's presidency, especially the new direction that Wirajuda took on Indonesia's foreign policy, is significant for this chapter because Wirajuda initiated the incorporation of the language of democracy and human rights in Indonesia's foreign policy. As discussed further below, the adoption of democracy and human rights in Indonesia's foreign policy turned out to be problematic for the Indonesian government.

When he was in charge of the MoFA, Wirajuda was responsible for taking a series of reform initiatives, better known as *proses benah diri* (self-improvement process) which included: terminating the influence of the military in MoFA, boosting the skill and capacity of MoFA human resources, and upgrading the communication systems that connect the Jakarta office with the Indonesia's diplomatic mission offices throughout the world. As the primary institution that represents Indonesia in the international forum, the changes that happened in MoFA were intended to "better reflect Indonesia's democratic values and the practice of modern corporate culture".<sup>53</sup>

In addition to organisational restructuring, what is significant of Wirajuda's legacy is how he reshaped Indonesia's foreign policy. It is worth noting that the changes Wirajuda took to improve Indonesia's foreign policy ideals are inseparable with the context of the terrorist's attacks that hit New York in September 2001 and Denpasar (Bali) in October 2001. In his remarks before Jakarta's Foreign Correspondents' Club in October 2001, Wirajuda stated that the intention of the Indonesian government was to improve Indonesia's misperception of human rights:

For a long time, the Indonesian public did not see human rights in the same way that the international public did. This discrepancy in perception became a constraint in the development of our foreign relations. We will do our best to remove that perception gap.<sup>54</sup>

In November 2001, Hassan Wirajuda, who served as the Minister for Foreign Affairs, delivered a speech at the 56<sup>th</sup> Session of the UN General Assembly that outlined the redefinition of Indonesia's foreign policy.<sup>55</sup> He began his remarks by stating that global problems, such as terrorism, poverty, and ongoing conflict, are caused by the "imbalance in the human relationship" and democracy is the best way to resolve those problems. He continued to talk about Indonesia's confidence in democracy despite the painstaking road to reform it had taken:

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<sup>53</sup> Greta Nabbs-Keller, "Reforming Indonesia's Foreign Ministry: Ideas, Organization and Leadership," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 35, no. 1 (2013): 67.

<sup>54</sup> "N Hassan Wirajuda: We are concerned by these military strikes," 2001, accessed 20 August 2018, <https://www.independent.co.uk/voices/commentators/n-hassan-wirajuda-we-are-concerned-by-these-military-strikes-9210340.html> Wirajuda here referred to the *Orde Baru*'s era where the government opposed to the idea of universal human rights and regarded human rights were incompatible with Indonesian culture. See: Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990*.

<sup>55</sup> ""The Democratic Response" Statement by H.E. Dr. N. Hassan Wirajuda Minister for Foreign Affairs Republic of Indonesia At the 56th Session of The UN General Assembly," 2001, Hassan Wirajuda, accessed 23 March 2018, <http://www.un.org/webcast/ga/56/statements/011115indonesiaE.htm>

Against the expectations of many outside and indeed within our own nation, over the past three years, especially the last six months, and in the midst of financial crisis, Indonesia has relentlessly pursued the difficult process of reform and democratization. We are able to manage successive transitions of power in a democratic, peaceful and constitutional manner. Thus, Indonesia today stands proud as one of the largest democracy in the world. As a nation, with an overwhelmingly Muslim population, we are the living refutation of the erroneous notion that Islam and democracy are incompatible. Islam has always stood for the equality and fraternity of all human beings, for the optimum exercise of the human will, and if only for that, we Indonesians have a natural affinity to democracy. The challenge for all of us is to ensure that democracy works and that it does actually deliver a better life for the people.<sup>56</sup>

The purpose of this speech was clear: Indonesia was introducing its new identity to the rest of the world by sharing its experience with democracy. This was in line with what Dewi Fortuna Anwar had suggested: that Indonesia's foreign policy should reflect Indonesia's new character that was shaped by the democratisation process that began in 1998.<sup>57</sup> Another characteristic that was highlighted by Wirajuda in his speech is Indonesia's status as a Muslim majority country. By underlining this point, Wirajuda's speech also served as Indonesia's diplomatic effort to contribute to the post-9/11 discourse to address misconceptions regarding Islam and democracy. With the growing paranoia in the Muslim community following the terrorist attacks, Wirajuda pointed out that Indonesia is the best example to contradict the notion that Islam and democracy cannot go hand in hand.<sup>58</sup>

However, the problem with proclaiming the new status of Indonesia was the capacity of the Indonesian government to actualise its new status. What should be made of Indonesia's new status as a democratic state? Or, to borrow Rizal Sukma's question: "is Indonesia's foreign policy more about 'democracy projection' than democracy promotion?"<sup>59</sup> One of the tests to Indonesia's improved foreign policy was when Indonesia held ASEAN chairmanship during the Ninth ASEAN Summit in 2003. Indonesia's self-assured posture was lauded as the comeback of the group leader

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<sup>56</sup> Ibid. Emphasis added.

<sup>57</sup> Dewi Fortuna Anwar, "Menggagas Politik Luar Negeri Indonesia Baru (Initiating Indonesia's New Foreign Policy)," in *Orasi Ilmiah Pengukuhan sebagai Ahli Peneliti Utama Puslitbang Politik dan Kewilayahan Lembaga Ilmu Pengetahuan Indonesia*, ed. LIPI (Jakarta2000).

<sup>58</sup> The compatibility of Islam and democracy in Indonesia became the talking point of president Yudhoyono, Wirajuda, and his successor Marty Natalegawa when they communicated with international audience. See for example: Hassan Wirajuda, "The Democratic Response," *Brown J. World Aff.* 9, no. 1 (2002); Susilo Bambang Yudhoyono, "Opening Remarks of Indonesian President in Bali Democracy Forum," ed. Ministry of Foreign Affairs Republic of Indonesia (2008); Hassan Wirajuda, "Keynote Statement by H.E. Dr. N. Hassan Wirajuda, Minister for Foreign Affairs Republic of Indonesia At the Second International Roundtable on Islam and Democratization In Southeast Asia: Challenges and Opportunities?," ed. Ministry of Foreign Affairs Republic of Indonesia (2005); "Remarks By H.E. Dr. Marty Natalegawa, Foreign Minister of the Republic of Indonesia On the Occasion of the 7th General Conference of the Council for Security Cooperation in the Asia Pacific 16 October 2009," 2009, Marty Natalegawa, accessed 21 March 2018, <http://www.cscap.org/uploads/docs/General%20Conf%20Reports/7GenConfMinisters%20Remarks.pdf>; Marty Natalegawa, interview by Lee Cullum, 20 September, 2010; Susilo Bambang Yudhoyono, interview by Charlie Rose, 25 April, 2011; Hassan Wirajuda, "Democracy and Diplomacy," *New Zealand International Review* 37, no. 2 (2012).

<sup>59</sup> Rizal Sukma, "Indonesia Finds a New Voice," *Journal of Democracy* 22, no. 4 (2011): 111. This question was posed by Sukma when he observed Indonesia's intention "to project its internal values across international borders" through its foreign policy. According to Sukma, the answer to such question laid on the circumstances that drove the insertion of "democracy agenda" in Indonesia's foreign policy and whether they were "harmful or constructive."

since Indonesia had suffered from the political and economic crisis during the late 1990s.<sup>60</sup> During the Summit, Indonesia proposed the idea to form the ASEAN Security Community, an integrated forum for cooperation on issues of politics and security.<sup>61</sup> Indonesia was then mandated to elaborate the ASEAN Security Community proposal. The plan, which was completed in February 2004, reflected Indonesia's post-authoritarian identity that highlighted the importance of democracy and human rights.<sup>62</sup>

Nevertheless, Indonesia's proposal was altered to accommodate a number of of ASEAN countries that were reluctant to adopt the progressive plan. For example, in regards to ASEAN Security Community's political outlook, Indonesia suggested as follows:

...members shall promote political development in support of ASEAN Leaders' commitment to strive for democracy as an *ASEAN shared value*...In order to better respond to the new dynamics within the respective ASEAN member countries, ASEAN shall nurture such common socio-political values and principles as democracy and *human rights*.<sup>63</sup>

In the final draft, the proposal was altered to:

Members shall promote political development in support of ASEAN Leaders' shared vision and common values to achieve peace, stability, democracy and prosperity in the region... In order to better respond to the new dynamics within the respective ASEAN Member Countries, ASEAN shall nurture such common socio-political values and principles.<sup>64</sup>

Indonesia's proposal also contained the article that challenges ASEAN's non-interference norms: "ASEAN member countries shall not tolerate unconstitutional and undemocratic government changes." But this line was not approved, and was revised to: "ASEAN Member Countries shall not condone unconstitutional and undemocratic changes of government of the use of their territory for any actions undermining peace, security and stability of other ASEAN Member Countries."<sup>65</sup>

The reluctance of other ASEAN countries to align themselves with Indonesia's democratic development was also notable when Indonesia suggested the establishment of a "regional peacekeeping force, a non-aggression pact, an extradition agreement, [and] an arms registry."<sup>66</sup> On the necessity to form a regional peacekeeping force, Wirajuda argued that: "most conflicts in the world today are not between states but within states, and internal strife has a way of spilling over

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<sup>60</sup> Anthony L Smith, "ASEAN's Ninth Summit: Solidifying Regional Cohesion, Advancing External Linkages," *Contemporary Southeast Asia* (2004).

<sup>61</sup> ASEAN Security Community was later adopted with ASEAN Economic Community and ASEAN Social and Cultural Community to form ASEAN Community, the umbrella for all ASEAN collaboration.

<sup>62</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (New York: Routledge, 2014).

<sup>63</sup> *Ibid.*, 229.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

from the embattled country to the rest of the region.”<sup>67</sup> While Indonesia’s initiative to establish ASEAN peacekeeping troops was welcomed by the United Nations, other ASEAN members were not enthusiastic about Indonesia’s suggestion. Thailand’s Foreign Minister, Surakiart Sathirathai, for example, viewed it as an unnecessary move: “No international conflicts were raging in the region and if such problems arose and help from members of the Association of Southeast Asian Nations was needed, individual members could send their troops in to help.”<sup>68</sup> Meanwhile Singapore’s Foreign Minister, S. Jayakumar, and Vietnam’s Nguyen Dy Nien shared a view that Indonesia’s peacekeeping idea did not fit with the nature of ASEAN, given that it “was neither a security nor a defence organisation”.<sup>69</sup>

While Wirajuda and MoFA were focusing on boosting Indonesia’s image through reformulating Indonesia’s foreign policy, domestically, Megawati’s weak leadership jeopardised democratic progression. In her three-year tenure from 2001 to 2004, her legacy had been a combination of successes and failures. Her administration was lauded for being able to improve the economy by decreasing the budget deficit to 1.3% of Indonesia’s GDP<sup>70</sup> and increasing economic growth to 5% per year.<sup>71</sup> Megawati’s presidency also succeeded in steering the relatively peaceful 2004 general election where Indonesian people directly cast their votes for president.<sup>72</sup> However, as pointed out by critics, Megawati was an ineffectual leader. She was described as a leader who was more interested “to reign than to rule”<sup>73</sup>; she was “ill-equipped”<sup>74</sup> and had a “lack of political ideas” and “political experience.”<sup>75</sup> These characteristics cast a shadow over her presidency where, for example, she became too reliant on her ministers. It is reported that she was “dependent on the three co-ordinating ministers, namely for security and political affairs, economic affairs, and social affairs”.<sup>76</sup> Other analysis pointed out that Wirajuda, who was known as a seasoned diplomat, was handed greater autonomy by Megawati because of her inexperience in international affairs<sup>77</sup> and her

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<sup>67</sup> Adianto P. Simamora, "UN Welcomes ASEAN Peacekeeping Force, Promises Help," *The Jakarta Post*, 26 February 2004.

<sup>68</sup> Bangkok Post, "In Brief; Peacekeepers 'Not Necessary'," 23 February 2004.

<sup>69</sup> The Straits Times, "Asean's Peace," 8 March 2004. In responding to the scepticism coming from the members of ASEAN on Indonesia’s intention to include democracy and human rights in the ASEAN’s Political and Security Community blueprint, Wirajuda stated other members of ASEAN could not prevent Indonesia from speaking about those issues—regardless of the flaw of Indonesia’s democracy—because he believed that democratic and human rights initiatives that Indonesia made outside the countries would impact the development of human rights in Indonesia. See: KontraS, "HAM dan Diplomasi," (2014).

<sup>70</sup> Hal Hill, "Yudhoyono's Six Challenges to Get Indonesia Growing," *Far Eastern Economic Review* 2004.

<sup>71</sup> The New York Times, "For Megawati, the Legacy is Mixed," 20 October 2004.

<sup>72</sup> Clinton Bennett, *Muslim Women of Power: Gender, Politics and Culture in Islam* (London: Continuum, 2010).

<sup>73</sup> Crouch, *Political reform in Indonesia after Soeharto*, 32.

<sup>74</sup> Aspinall, "Semi-Opponents in Power: The Abdurrahman Wahid and Megawati Soekarnoputri Presidencies," 126.

<sup>75</sup> Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement*, 88.

<sup>76</sup> Mohammad Sadli, "Economic Review," in *Governance in Indonesia Challenges Facing the Megawati Presidency*, ed. Hadi Soesastro, Anthony L. Smith, and Han Mui Ling (Singapore: ISEAS, 2003), 185.

<sup>77</sup> Nabbs-Keller, "Reforming Indonesia's Foreign Ministry: Ideas, Organization and Leadership."

intention to take care of domestic issues.<sup>78</sup> Megawati failed to maximise her impact during her term as the president. In the wake of the Bali bombing in October 2002, for example, her leadership was questioned when she failed to lead the nation in condemning the attack.<sup>79</sup> She even missed the first anniversary of the attack and sent Yudhoyono, her Coordinating Minister for Politics, Social, and Security, to Denpasar in her place.<sup>80</sup>

Nevertheless, what became the most concerning factor was her relationship with the military. As discussed in Chapter 3, Megawati had full support from the military to replace Wahid as the president because she shared a similar traditional nationalist orientation with the military (e.g., national unity and stability). Many analysts argued that this dynamic would bring a significant impact to the effort to reform the military, especially since Megawati demonstrated her disregard on the issue of security reform. As one indication, Harold Crouch pointed out that Megawati surrounded herself with military officers like Ryamizard Ryacudu (the army Chief of Staff) and Endriartono Sutarto (the Commander of the Armed Forces) who were known for their reluctance to reform the army. Crouch also criticised Megawati's lack of interest in improving the security sector in Indonesia, as shown by her indifference to the vacant seat left at the Ministry of Defence after Matori Abdul Jalil fell ill.<sup>81</sup> Jun Honna, in an interview with *The Jakarta Post*, also talked about the closeness between Megawati and conservative figures in the military:

These people are not hardliners, but key people in the Army. And especially people like Hendropriyono and Theo, are also former army Special Forces (*Kopassus*) members. I think if these people influence Megawati's policy, it will be quite difficult to expect genuine reform of civilian-military relations."<sup>82</sup>

Megawati's relationship with the anti-reform group was also mentioned in an interview with Sri Yanuarti, a researcher from LIPI, who was involved in a working group on Indonesia's security sector reform in the wake of *Reformasi*:

After *Reformasi* we [the civil society groups that have interest in security reform] had a good relationship with the military. They were open with data, opinions, and our suggestions, but then during Megawati's

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<sup>78</sup> See: Vibhanshu Shekhar, *Indonesia's Foreign Policy and Grand Strategy in the 21st Century: Rise of an Indo-Pacific Power* (New York: Routledge, 2018).

<sup>79</sup> Megawati's tardiness in responding to terrorist attacks was widely reported in the news media. See for example: Ahmad Pathoni, "Bali Blast Raises Questions over Megawati's Political Future," *Agence France-Presse*, 25 October 2002; Joe Cochrane, "Dazed and Confused; If Megawati doesn't face her fear of Islamic radicals soon, many more may pay the price with their lives," *Newsweek*, 28 October 2002; Muhammad Nafik, "Mega's Poor Leadership Hurts Nation," *The Jakarta Post*, 29 October 2002. However, as argued by political analysts, Megawati's flaw on the issue of terrorism was influenced by her inability to unite the divided voices in the parliament on that matter, especially Islamic political parties that backed her government. See: Michael S Malley, "Indonesia in 2002: the Rising Cost of Inaction," *Asian Survey* 43, no. 1 (2003); Anthony L Smith, "The Politics of Negotiating the Terrorist Problem in Indonesia," *Studies in Conflict & Terrorism* 28, no. 1 (2005).

<sup>80</sup> The New York Times, "For Megawati, the Legacy is Mixed."

<sup>81</sup> Crouch, *Political reform in Indonesia after Soeharto*.

<sup>82</sup> The Jakarta Post, "Army under Gen. Endriartono Growing More Powerful," 1 September 2001. Megawati chose A.M. Hendropriyono as the head of Indonesia's intelligence agency (*Badan Intelijen Nasional*—BIN) while Theo Syafei was appointed as the executive member of Megawati's party (PDI Perjuangan).

tenure we saw a setback [in regards to military reform] with the return of conventional military figures like Ryamizard Ryacudu—we grouped him as the conventional military officer because of his true belief on orthodox military corps. This circumstance was in contrast with what happened during 1999 until 2003 when progressive military officers like Agus Widjojo or Agus Wirahadikusumah dominated the discourse of military reform...<sup>83</sup>

Among Megawati's decisions that benefitted the military were rejecting the termination of territorial command and declaring martial law status in Aceh as Aceh's insurgent group rejected the ceasefire agreement.<sup>84</sup> Another example was Megawati's apparent indifference to the East Timor trial process, as discussed in Chapter 4.

It is important to underline here how unusual the Indonesian military reform was and how it affected democracy in Indonesia. The Indonesian military, during the Suharto years, was known for its dual function doctrine (*doktrin dwifungsi*), where the military had both security and socio-political roles.<sup>85</sup> In the wake of *Reformasi*, the military responded to the political developments by stating its commitment to reform itself with the release of the 'new paradigm' in 1998.<sup>86</sup> At that time, there was no civilian authority involved in monitoring the changes and, most importantly, there was no law that bound the military to carry out the reform.<sup>87</sup> It was only after the military underwent internal changes that Indonesia passed several laws that restructured the military, for example, the passing of Law No. 3/2002 on State Defence (*Undang-Undang Pertahanan Negara*) that reinstalled the military as the state's instrument for defence purposes. In relation to the State Defence Law, Indonesia also issued the Law No. 2/2002 on State Police (*Undang-Undang Kepolisian Negara*), which delegated domestic law enforcement to the police. Another important change was the amendment of the 1945 Constitution that stripped the military and police factions from the parliament and the introduction of Law No. 34/2004 on Indonesian Military (*Undang-Undang Tentara Republik Indonesia*), whereby the military was mandated to serve professionally within the defence realm.<sup>88</sup>

As argued by Agus Widjojo, a pro-military reform general, because the civilian authority was formally consolidated after the 2004 election, civilian government "lagged behind" too much to

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<sup>83</sup> Sri Yanuarti, interview by Yessi Olivia, 17 October, 2016.

<sup>84</sup> Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance." See also: Kingsbury, *Power Politics and the Indonesian Military*; David Jenkins, *Suharto and His Generals: Indonesian Military Politics, 1975-1983* (Singapore: Equinox Publishing, 2010); Sebastian, *Realpolitik Ideology: Indonesia's Use of Military Force*.

<sup>85</sup> For literature on the dual-function of the Indonesian military, see: Jenkins, *Suharto and His Generals: Indonesian Military Politics, 1975-1983*; Crouch, *The Army and Politics in Indonesia*.

<sup>86</sup> Markas Besar ABRI, *ABRI Abad XXI Redefinisi, Reposisi, dan Reaktualisasi Peran ABRI dalam Kehidupan Bangsa*.  
<sup>87</sup> Widjajanto, "Transforming Indonesia's Armed Forces."

<sup>88</sup> Aditya Batara Gunawan, "Civilian Control and Defense Policy in Indonesia's Nascent Democracy," in *Reforming Civil-Military Relations in New Democracies Democratic Control and Military Effectiveness in Comparative Perspectives*, ed. Aurel Croissant and David Kuehn (Cham: Springer, 2017).

impose effective control over the military including pushing further the military reform.<sup>89</sup> It is why some of the issues that are important to military reform, such as the military's territorial command and business ventures, and military justice reform are left unresolved.<sup>90</sup> The inaction to improve the military has been attributed to several factors from the incapacity of the parliament and the government in ensuring military reform progresses, to the unwillingness of the military to further improve.<sup>91</sup> The leadership of Megawati in 2002-2004 was critical in this regard. Megawati, and her conservative view on the role of the military, provided the military top brass with opportunity to consolidate the military's "autonomy from civilian control".<sup>92</sup> Thus, while Wirajuda proudly claimed Indonesia's status as one of the largest democratic countries at the headquarters of the United Nations, in reality, the unwillingness of the military and Megawati herself to further the reform impacted the democratic progress in Indonesia.

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<sup>89</sup> Herlijanto, "The Current State of Military Reform in Indonesia: Interview with Lieutenant General (Retired) Agus Widjojo (Part 1)," 3.

<sup>90</sup> Territorial command (*Komando Daerah Militer-KODAM*) is a regional division units created in the 1950s. Under this system, Indonesia is divided into several military territories (currently 15 KODAMs) where a commander general is in charge each of area that covers the provincial and the district levels. The original purpose of KODAM was to respond to internal threats (at that time separatists and insurgencies), but during *Orde Baru* the territorial command structure's authority expanded to persuading local governments to support the regime's policy and overseeing civilian activities especially those that were opposing Suharto's regime. Another problem that the territorial command structure created is it has been enabling the military to generate informal income for the organization and its officers, for example providing security to companies. The military's illegal activities were mostly go unreported or untouched because the protection given by the *Orde Baru* regime. The military has been also benefitted from their justice system that protects them from being prosecuted under civilian courts. When Abdurrahman Wahid was the president, he planned to end the territorial system, but in the wake of terrorist attacks in several places in Indonesia Ryamizard Ryacudu rejected the plan on the basis of the military was needed to be included in the counterterrorism initiatives. Even during the presidency of Yudhoyono, the issues of ending territorial command, military's business venture, and the military justice system were unsettled. See: Kingsbury, *Power Politics and the Indonesian Military*; Sebastian, *Realpolitik Ideology: Indonesia's Use of Military Force*; Bob Lowry, *Indonesian Defence Policy and the Indonesian Armed Forces*, vol. 99, Canberra Papers on Strategy and Defence (Canberra: ANU, 1993); Angel Rabasa and John Haseman, *The Military and Democracy in Indonesia: Challenges, Politics, and Power* (Santa Monica: RAND, 2002); Crouch, *The Army and Politics in Indonesia*; Sukardi Rinakit, *The Indonesian Military after the New Order* (Singapore: Nias Press & ISEAS, 2005); Baker, "Professionalism without Reform: The Security Sector under Yudhoyono."

<sup>91</sup> The military reform efforts itself were highlighted with the struggle between the military and the pro-democracy groups in redefining the role of the military in post-authoritarian Indonesia. When the Law on the Armed Forces was drafted, many of the provisions were criticized because they posed a threat to the civilian supremacy of the military. One of the examples was Article 19 (1), which was approved by the Ministry of Defense. Dubbed as the *coup d'état* provision, it was stated that: "In an emergency where the sovereignty of the state, the unity of the nation and the safety of the people are under threat, the Commander of the Armed Forces could use power of TNI as a way to prevent collateral damage." According to Riza Shihbudi and Hamdan Basyar, by asking the civilian government to give military the authority to declare the state in an emergency, the article implied that military do not trust the civilian government. Shihbudi and Basyar also asserted that this provision contradicted the Law of State Defense where it is stated that the President who has the power to instruct the military in case of an emergency. See: Riza Shihbudi and Hamdan Basyar, "Evaluasi Reformasi Doktrin TNI," in *Evaluasi Reformasi TNI (1998-2003)*, ed. Sri Yanuarti (Jakarta: P2P-LIPI, 2003). For the lack of development in pushing military reform in Indonesia see: Leonard C Sebastian and Iis Gindarsah, "Assessing military reform in Indonesia," *Defense & Security Analysis* 29, no. 4 (2013); Kusnanto Anggoro, "Departemen Pertahanan Republik Indonesia Supremasi Sipil tanpa Kendali Efektif," in *Almanak Reformasi Sektor Keamanan Indonesia 2007*, ed. Beni Sukadis (Jakarta: LESPERSSI & DCAF, 2007); Beni Sukadis, "Reformasi di Kementerian Pertahanan RI," *Jurnal Keamanan Nasional* II, no. 2 (2016); Rico Marbun and Hilman Rosyad Shihab, "Dewan Perwakilan Rakyat dan Reformasi Sektor Keamanan," in *Almanak Reformasi Sektor Keamanan Indonesia 2007*, ed. Beni Sukadis (Jakarta: LESPERSSI dan DCAF, 2007).

<sup>92</sup> Malley, "Indonesia in 2002: The Rising Cost of Inaction," 141.

## 5.4 Susilo Bambang Yudhoyono's Rise to Presidency

As mentioned in the introduction, the focus of this chapter is studying human rights policy, especially in the case of the plan to adopt the Rome Statute under Yudhoyono's presidency. Yudhoyono served as the sixth President of Indonesia for two terms (2004-2009 and 2009-2014). He won the first ever direct election to be held in Indonesia under *Partai Demokrat* (Democratic Party), a political party that was founded in 2001. Before assuming public office, Yudhoyono had served in the military in a wide range of positions, both in the field and administrative positions.<sup>93</sup> He graduated from the Military Academy (AKABRI) as the highest achieving graduate of the 1973 Class; he was the runner up in the infantry basic training courses. He then served the Military Strategic Reserve (KOSTRAD) in Bandung and was appointed as the platoon commander of *Batalyon Lintas Udara 330/Tri Dharma* (an airborne battalion). Because of his intelligence and English proficiency, Yudhoyono was often sent abroad to attend military courses. His first experience was when he was admitted to Fort Benning's Army Airborne School and Ranger School in the United States not long after he was stationed in Bandung. Similar to other military officers in Indonesia, Yudhoyono also served a deployment to East Timor; his last position in the region was the 744 Infantry Battalion Commander (1986-1988). Other highlights of his military career were as the territorial military commander in South Sumatra and Yogyakarta, and in the United Nations Peacekeeping Force in Bosnia. His highest military position was the Territorial Chief of Staff from 1998 to 1999 where he handled political and security affairs.

Yudhoyono's civilian career began when President Wahid asked him to serve as the Minister for Mining and Energy in 1999. Initially, Yudhoyono was hesitant to accept the nomination because he desired to spend his entire career in the military.<sup>94</sup> His main concern was that he would have to sacrifice his military career if he were to accept President Wahid's offer. In addition, his nomination as a minister would contradict his effort to reform the military that focused on returning military officers to their military positions. This was not the first time he rejected a request from a president; Yudhoyono also turned down Habibie's invitation to serve as a minister in his cabinet. Habibie later

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<sup>93</sup> A detailed description of Yudhoyono's military career can be found in his biography *SBY Sang Demokrat* published in 2004. Another Yudhoyono's memoirs worth reading are Yahya Ombara, *Presiden Flamboyan SBY yang Saya Kenal* (Yogyakarta: Eswi Foundation, 2007); John McBeth, *The Loner: President Yudhoyono's Decade of Trial and Indecision* (Singapore: Straits Times Press, 2016).

<sup>94</sup> It is said that leaving the military was a very hard decision for Yudhoyono and he only accepted the ministerial post after he spoke to his father. See: Hisyam et al., *SBY Sang Demokrat*; Garda Maeswara, *Biografi Politik Susilo Bambang Yudhoyono* (Yogyakarta: Penerbit Narasi, 2009). However, according to Greg Fealy, Yudhoyono's wife, Ani, was the key figure that influenced him to agree to Wahid's offer. Ani Yudhoyono is the daughter of Sarwo Edhi, a military commander of Para-Comando Regiment (RPKAD) who was responsible in overseeing the purge of communist followers in the 1965-66. It was told that by accepting the position as a minister in Wahid's administration, it would open a path for Yudhoyono's career as a politician. See: Greg Fealy, "The Politics of Yudhoyono: Majoritarian Democracy, Insecurity and Vanity," in *The Yudhoyono Presidency Indonesia's Decade of Stability and Stagnation*, ed. Edward Aspinnall, Marcus Mietzner, and Dirk Tomsa (Singapore: ISEAS, 2015).

mandated Yudhoyono with the task to reform the military, which he accepted as he claimed that he was interested in that particular issue. Nevertheless, after discussing the matter with his family, Yudhoyono accepted President Wahid's request and joined Wahid's National Unity Cabinet in October 1999.<sup>95</sup>

Yudhoyono's nomination was the subject of friction between President Wahid and Wiranto, who had been asked by the President to determine his cabinet. It was later revealed, that during the power transition from Habibie to Wahid, Wiranto had his own plans in regards to his departure as the Commander of Indonesian Armed Forces (Panglima TNI). Wiranto intended to delegate his position to Admiral Widodo Adi Sucipto (Vice Commander of the Armed Forces) and he would nominate Yudhoyono to be the Chief of Staff of the Indonesian Army (KASAD TNI). Wahid rejected Wiranto's suggestion by promoting Yudhoyono to KASAD TNI because he already had his own preferred candidate to fill the cabinet position. Wahid claimed that Yudhoyono was not fit for KASAD TNI because he was too political. This was something that Wiranto assumed came from Wahid's perception of Yudhoyono's position as the chief of staff on political and social affairs:

I did not know why the President rejected my suggestion with the excuse that Lieutenant General Susilo Bambang Yudhoyono was too engaged with political affairs. I tried to explain to him that it was his duty as the Chief of Staff on Social and Political Affairs in the Armed Forces that made him involved with political issues.<sup>96</sup>

Wiranto then added that President Wahid seemed to disregard the military's career path system which should have led Yudhoyono to the KASAD seat. In the end, Wiranto proposed that Yudhoyono be given a seat in the cabinet, which Wahid approved. They reached an agreement to give Yudhoyono the position of Minister for Mining and Energy:

I explained to the President that if the position of a Commander of the Armed Forces was an equivalent to a minister, logically [the position of] Chief of Staff of Indonesian Army was below that. Therefore, if the qualified person could not be promoted to be the Chief of Staff of Indonesian Army, [they] should be given a ministry post. It appears that the President was impressed to this idea and gave his approval.<sup>97</sup>

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<sup>95</sup> Hisyam et al., *SBY Sang Demokrat*.

<sup>96</sup> Abdullah, Azhari, and Wiranto, *Bersaksi Di Tengah Badai: Dari Catatan Wiranto, Jenderal Purnawirawan*, 229.

<sup>97</sup> Ibid., 232. The problem is not with Wahid's unfamiliarity with the military's culture. Wahid was aware with the significant influence of the military in Indonesian politics and his attempts to meddle with military's internal affairs had resulted a complication in his relationship with military elites. This topic has been the subject of many analysis on civil-military relationship in Indonesia, for example: Nayan Chanda, John McBeth, and Dan Murphy, "Wahid's Coming Clash," *Far Eastern Economic Review*, 3 February 2000; Rabasa and Haseman, *The Military and Democracy in Indonesia: Challenges, Politics, and Power*; Honna, *Military politics and democratization in Indonesia*; Kingsbury, *Power politics and the Indonesian military*; Paulo Gorjão, "Abdurrahman Wahid's Presidency What Went Wrong?," in *Governance in Indonesia: Challenges Facing the Megawati Presidency*, ed. Hadi Soesastro, Anthony L. Smith, and Han Mui Ling (Singapore: ISEAS, 2003); Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance."; Said, "President Abdurrahman Wahid and the Indonesian Military: The Short Honeymoon." Wahid began his tenure by creating initiatives intended to reform the military, which included the appointment of Juwono Sudarsono, an academic, as the Minister of Defense or Admiral Widodo Adi Sucipto as the Commander of the Armed Forces, a position that used to be served for the Army. Him placing military figures such as

In 2000, Wahid promoted Yudhoyono to become the Coordinating Minister for Political, Social and Security Affairs, but his career did not last long as Wahid fired him in 2001 when Wahid was engulfed in a corruption scandal. The reason for Yudhoyono's dismissal was his refusal to take Wahid's order to declare a state of emergency as the parliament drew closer to instigating impeachment for Wahid's mishandling of the government. This standoff ended with the parliament impeaching Wahid in July 2001.<sup>98</sup> Yudhoyono's experience serving during Wahid's chaotic presidency was said to be influential in shaping his perspective on Indonesia's politics:

He observed at close range how Wahid self-destructed by alienating almost the entire political elite, including his allies. Yudhoyono himself was eventually fired from his position, and Wahid was impeached shortly afterwards. The spectacle of Wahid's downfall had a tremendous impact on Yudhoyono's political thinking, convincing him that a president needed to accommodate rather than confront Indonesia's myriad interest groups.<sup>99</sup>

Following MPR's Special Session that resulted in the impeachment of Wahid in July 2001, several parliament factions from PDIP, Golkar, Functional Groups (*Utusan Golongan*) and Indonesian National Unity (*Kesatuan Kebangsaan Indonesia*—KKI) approached Yudhoyono. They persuaded Yudhoyono to enter the vice presidential election. At that time, the process of electing the president and vice president was still held in the parliament. It is said that Yudhoyono at first rejected the offer, as he claimed he was not interested in the position, but after more persuasion from the parliament members who supported his nomination, he finally agreed to join the race.<sup>100</sup> However, he lost to Hamzah Haz from PPP who received support from Megawati's PDI-P. The political union between Hamzah Haz and Megawati's parties was, in fact, a difficult decision for Megawati because most of the Islamic parties opposed her presidential nomination in the 1999 election. However, Megawati believed that she needed the Islamic parties on side to support her presidency.<sup>101</sup>

The lesson that Yudhoyono took from his defeat in the vice presidential election was that, in order to achieve his political ambition, he needed a political party as his vehicle.<sup>102</sup> For those who believed in Yudhoyono's leadership capability, his loss in the vice presidential election inspired the

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Wiranto, Yudhoyono, and Agum Gumelar in his cabinet could also be understood as his way to abate the influence of the military—in addition to soothe the Army for choosing Sucipto. Nevertheless, Wahid's relations with military deteriorated when Wahid sided with reformist generals and annoyed the rest of the military's top brass because Wahid was accused of meddling with military's politics. The sacking of Wiranto as a result of the fallout of East Timor was another example that further strained Wahid's relationship with the military as the move was seen as dishonouring the military. Wahid's confrontation with the military reached a climax when he lost the support of the military/police faction during the standoff between Wahid and the parliament in 2001.

<sup>98</sup> Rachel Harvey, "New Era as Susilo Bambang Yudhoyono Takes Office," *BBC News*, 20 October 2004.

<sup>99</sup> Edward Aspinall, Marcus Mietzner, and Dirk Tomsa, "The Moderating President: Yudhoyono's Decade in Power," in *The Yudhoyono Presidency Indonesia's Decade of Stability and Stagnation*, ed. Edward Aspinall, Marcus Mietzner, and Dirk Tomsa (Singapore: ISEAS, 2015).

<sup>100</sup> Hisyam et al., *SBY Sang Demokrat*.

<sup>101</sup> Sukma, *Islam in Indonesian Foreign Policy: Domestic Weakness and the Dilemma of Dual Identity*.

<sup>102</sup> Hisyam et al., *SBY Sang Demokrat*.

creation of *Partai Demokrat* in 2001. According to Honna,<sup>103</sup> *Partai Demokrat* was supported by a group of “entrepreneurs and academics” and instigated by two businessmen “affiliated with Megawati’s PDIP” who were disappointed with Megawati’s decision to team up with Hamzah Haz. One of the earlier political moves made by *Partai Demokrat* was prompting discussion on changing the election process whereby the president and vice president would be elected through direct ballot.<sup>104</sup> This idea received popular support since the mechanism of electing the president/vice president through the People’s Consultative Assembly (MPR) was criticised as being merely “a result of horse-trading between fragmented parties in MPR” and prone to the influence of “money politics”.<sup>105</sup> With pressure coming from the people, this issue became part of the discussion in the 3<sup>rd</sup> amendment of the 1945 Constitution agenda that took place on 1-9 November 2001. The parliament then agreed to amend the constitutional provision regarding presidential election.<sup>106</sup>

Although Yudhoyono failed to secure the vice president position, he eventually joined Megawati’s administration as the Coordinating Minister for Political, Legal, and Security Affairs, a similar position to the one he held during the final year of Wahid’s presidency. According to John McBeth,<sup>107</sup> the Coordinating Minister job was part of the “compensation” for his loss in the vice presidential race. His status as Megawati’s top minister had caused Yudhoyono to not openly support *Partai Demokrat* out of respect for Megawati, even though he was involved in the formation of the party. Yudhoyono was also hopeful that Megawati would ask him to be her vice president for the 2004 election. However, as he was informed that Megawati “was looking for a non-Javanese”<sup>108</sup> partner in the election, Yudhoyono changed his mind about entering the presidential race. As it became apparent to Megawati that Yudhoyono would be her competitor in the 2004 election, their relationship turned sour<sup>109</sup> to the point where Megawati alienated him from her cabinet. Yudhoyono finally quit Megawati’s administration in March 2004<sup>110</sup> and confirmed his presidential bid under *Partai Demokrat*.<sup>111</sup>

Yudhoyono became the sixth President of Indonesia in 2004. The presidential election itself was held in two rounds, first in June 2004 and then in September 2004. In the first round, Yudhoyono

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<sup>103</sup> Jun Honna, "Inside the Democrat Party: Power, Politics and Conflict in Indonesia's Presidential Party," *South East Asia Research* 20, no. 4 (2012): 474.

<sup>104</sup> Ibid.

<sup>105</sup> Crouch, *Political Reform in Indonesia after Soeharto*, 56.

<sup>106</sup> Indrayana, *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-making in Transition*.

<sup>107</sup> McBeth, *The Loner: President Yudhoyono's Decade of Trial and Indecision*.

<sup>108</sup> Ibid., 18.

<sup>109</sup> According to McBeth, it was reported that Megawati had asked Yudhoyono’s seriousness in running against her in the 2004 and Yudhoyono answered he would not join the presidential race. Yudhoyono’s decision to quit Megawati’s administration and entered the race were seen as a betrayal by Megawati.

<sup>110</sup> Agence France-Presse, "Indonesia's Security Minister Quits after Row with Megawati," 11 March 2004.

<sup>111</sup> ANTARA, "Susilo States Readiness to Be Nominated For Presidency," 12 March 2004.

and Megawati defeated the other presidential nominees including Amien Rais, Wiranto and Hamzah Haz, Megawati's former vice president. In the second round, Yudhoyono won over Megawati in a landslide, receiving 61% of the total votes.<sup>112</sup> Yudhoyono's victory marked an important transition in Indonesia's democratic history; his triumph was a result of the first direct election ever held in Indonesia. Thus, in contrast to his predecessors like Habibie and Megawati, Yudhoyono did not suffer lack of legitimacy because it was the people who chose him as the president, and not the parliament. Secondly, as pointed out by many analysts,<sup>113</sup> the 2004 election cemented the stabilisation of democratic practices in Indonesia—notwithstanding its weaknesses—represented through fair election and popular participation.

Many factors contributed to Yudhoyono's triumph in the 2004. His rift with Megawati, for example, had benefitted him in gaining the public's sympathy and increasing popularity, which surpassed Megawati's favourability.<sup>114</sup> What was also influential was the success of *Partai Demokrat* and Yudhoyono in projecting his image as "a professional and modern politician" and an intellectual who has a skill set to lead and to govern Indonesia.<sup>115</sup> In the news media he received positive reviews because he was regarded as a clean and intellectual military individual with a favourable personality.<sup>116</sup> His involvement in the early military reform initiatives in 1998 and his vow to further the reform had even made some analysts predict that Indonesia would finally achieve civilian control over the military.<sup>117</sup>

However, analysts argued that Yudhoyono was not the reformer or progressive he was portrayed as in his 2004 presidential campaign. Jun Honna<sup>118</sup> has written in great detail on how military elites (ABRI) in the 1990s discussed the future role of the military. Yudhoyono, in this case, was inclined towards preserving the status quo (i.e., *dwifungsi* or the dual function of the military). He was more concerned about the competence of the military and issues like management and leadership than

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<sup>112</sup> BBC, "Yudhoyono Wins Indonesian Vote," 4 October 2004.

<sup>113</sup> See: Aspinall, "Elections and the Normalization of Politics in Indonesia."; Aris Ananta, Evi Nurvidya Arifin, and Leo Suryadinata, *Emerging democracy in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2005); R William Liddle, "Year One of the Yudhoyono–Kalla Duumvirate," *Bulletin of Indonesian Economic Studies* 41, no. 3 (2005).

<sup>114</sup> Ananta, Arifin, and Suryadinata, *Emerging democracy in Indonesia*. His popularity had actually begun to rise when he became Megawati's Coordinating Minister. During Bali bombing incident in 2002, it was Yudhoyono who became the voice of reason in Megawati's administration as Megawati refused to speak up against terrorist attack or even explained her policy to counter radicalism in Indonesia. See: Anthony L Smith, "Destiny's Child: Prospects for Megawati," (Asia-Pacific Center For Security Studies Honolulu HI, 2003).

<sup>115</sup> Aspinall, "Elections and the Normalization of Politics in Indonesia," 131.

<sup>116</sup> See: Derwin Pereira, "A General and an Intellectual," *The Straits Times*, 21 October 2004; Andrew Burrell, "Man of the Moment," *The Australian Financial Review*, 29 October 2004.

<sup>117</sup> See: Slobodan Lekic, "Yudhoyono May Finally Bring Indonesia's Brutal Military under Civilian Control," *Associated Press*, 21 September 2004; Agence France-Presse, "Indonesia New Leader to Pick Civilian Defense Minister, Vows Military Reform," 14 October 2004; BBC, "Indonesian President-elect Pledges Military Reform to Foreign Representatives," 24 September 2004.

<sup>118</sup> Honna, *Military Politics and Democratization in Indonesia*, 77-79.

identifying the many problems within Indonesia's military. Yudhoyono also rejected the liberal notion of military professionalism, where its role is limited to security and defence matters only and justified the *dwifungsi* role as the uniqueness of Indonesia's military. His interpretation of professionalism for the military was that military officers should be proficient in undertaking both social-political and defence roles. As pointed out by Honna, Yudhoyono's beliefs were in contrast to those of Agus Widjojo, who doubted the ability of ABRI to act professionally in its political role.<sup>119</sup> Yudhoyono eventually succumbed to the people's demand during the *Reformasi* period to terminate the role of the military in Indonesian politics, but he wanted to implement this change gradually.<sup>120</sup> His position was described in a book that discussed the redefinition of the role of the military in the 21<sup>st</sup> century (*ABRI Abad XXI—Redefinisi, Reposisi, Reaktualisasi Peran Abri dalam Kehidupan Bangsa*).<sup>121</sup> Nevertheless, Yudhoyono was still criticised for not being progressive enough to carry out military reform, as described by Yanuarti:

Based on his thoughts, when it comes to military reform discourse we grouped Yudhoyono as a conventional military figure. He has grand ideas in regards to military reorganization but those ideas are lacking of substance and merely intended for symbolic purposes. His project of establishing Peace Centre in Sentul for security and defence studies is one of the examples. In terms of substance, he has not done enough for military reform. We can see that from his administration's failure to finalize *Undang Undang Keamanan Nasional* [the National Security Act]. He served for two periods but he did not able to pass the law. I do not know whether this is because of his personality where he has been known to be an indecisive person, but he has failed to [undertake military reform] because he wanted to play safe and not wanting to take risk.<sup>122</sup>

Jacqui Baker provided another example of Yudhoyono's different take on military reform. Baker argued that Yudhoyono's obsession with professionalism projects, like modernising weaponry, had undermined the work of strengthening the military and police institutions through the

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<sup>119</sup> Ibid.

<sup>120</sup> Hisyam et al., *SBY Sang Demokrat*.

<sup>121</sup> A measured development in decreasing the role of military as proposed by Yudhoyono was in line with the statement made by several moderate leaders like Abdurrahman Wahid, Megawati Sukarnoputri, Amien Rais, and Sultan Hamengkubuwono X in Ciganjur in November 1998. In Ciganjur Declaration, a timeline was set that within six years the military dual function should be ended. As can be seen in the previous chapters, the existence of the military in Indonesian politics in post Suharto's Indonesia, especially in the parliament, had a significant impact to the efforts of democratizing the nation.

<sup>122</sup> Yanuarti, interview. The National Security Act was one of legislations that were part of Indonesia's effort to reform its security. The bill was drafted since the Wahid presidency, but it was during the Yudhoyono's presidency (in 2005) that the bill was submitted to the parliament. During a public hearing the draft bill received negative responses from academics, security experts, and NGOs. The main criticisms for the bill revolved around the concern that it allowed more authority for the military to enter into the public sphere (e.g. the role of TNI in anti-terrorism activities). The bill was also scrutinized for expanding the terminology of national threats that included non-military threats such as ideology, which was argued by civil society groups and some of the parliament members as violating human rights. The parliament returned the bill to the government and asked for the draft to be revised in 2012, but the government resent it without any modification as requested. This uncertainty had made the draft was rejected by the members of the parliament. Until the end of Yudhoyono's tenure, the bill failed to be finalized. See: Slamet, "Civil Society and Security Sector Reform in Indonesia: 1998-2006."; Siti Nur Solechah, "Kontroversi Rancangan Undang-Undang tentang Keamanan Nasional," *Info Singkat Pemerintahan Dalam Negeri IV*, no. 20 (2012); Iwan Santosa, "Ada 55 Pasal RUU Keamanan Nasional Perkuat Rezim," *Kompas* 8 November 2012; Rico Afrido Simanjuntak, "RUU Kamnas Melanggar HAM," *Sindo News*, 5 March 2012.

implementation of accountability and transparency principles.<sup>123</sup> Yudhoyono was also unable to put an end to the military's lucrative business interests and reassign those assets to the state.<sup>124</sup>

## 5.5 Discrepancy in Yudhoyono's Foreign Policy on Democracy and Human Rights

This section outlines the inconsistencies between Yudhoyono's foreign policy rhetoric and the domestic reality on the issue of democracy and human rights. Irwansyah Mukhlis<sup>125</sup> argued that the adoption of democracy and human rights in Yudhoyono's foreign policy was a way for the administration to balance the demand coming from inside and outside of the country. When Yudhoyono became President in 2004, there was an expectation that he would further the democratic progression in Indonesia. According to Mukhlis, this expectation was not only coming from the thriving pro-democracy civil society groups, but also from the members of parliament who supported Yudhoyono's policies on democracy and human rights. Mukhlis also asserted that the decision to include democracy and human rights as part of Yudhoyono's foreign policy rhetoric was caused by the relaxed relationship between Indonesia and Western countries that were no longer putting pressure on Indonesia, especially the United States that wanted Indonesia's support to anticipate the rise of China and to back the War on Terror. Meanwhile, Dominic Berger<sup>126</sup> argued that, while Yudhoyono had made some progress on human rights promotion in Indonesia, he only addressed issues that would benefit his and his allies' political interests. Both researchers highlighted important points in their analysis on the state of human rights in Indonesia, especially during Yudhoyono's administration. However, another significant element that has been overlooked is the bureaucracy's role in driving or obstructing the implementation of human rights policy.

Under Yudhoyono's tenure, Indonesia's foreign policy direction took what analysts like Dewi Fortuna Anwar referred to as an "activist approach"<sup>127</sup> where Indonesia's relative success in adopting democracy had boosted the government's confidence to pursue regional and international leadership. This can be seen from Indonesia's active participation in the various UN initiatives, such as UN Peacekeeping Operations,<sup>128</sup> the UN Democracy Fund<sup>129</sup> and in the UN Human Rights

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<sup>123</sup> Baker, "Professionalism without Reform: The Security Sector under Yudhoyono."

<sup>124</sup> Mietzner, "Indonesia: Democratic Consolidation and Stagnation under Yudhoyono, 2004-2014."

<sup>125</sup> Mukhlis, "Indonesia's Human Rights Policy Shift and Continuity 1945-2014: A Neoclassical Realism Perspective."

<sup>126</sup> Berger, "Human Rights and Yudhoyono's Test of History."

<sup>127</sup> "Indonesia's Cautious Confidence," 2013, Dewi Fortuna Anwar, accessed 23 August 2018, <https://www.project-syndicate.org/commentary/asean-and-indonesia-s-foreign-policy-priorities-by-dewi-f--anwar?barrier=accesspaylog> See also: Poole, "The Foreign Policy Nexus: National Interests, Political Values."

<sup>128</sup> Dewi Fortuna Anwar, "Indonesia's Peacekeeping Operations: History, Practice, and Future Trend," in *Asia-Pacific Nations in International Peace Support and Stability Missions*, ed. Chiyuki Aoi and Yee-Kuang Heng (New York: Palgrave Macmillan, 2014).

<sup>129</sup> Hassan Wirajuda, "Sambutan Menteri Luar Negeri RI DR. N. Hassan Wirajuda Pada Seminar Partisipasi Aktif Indonesia dalam Dewan HAM PBB," ed. Ministry of Foreign Affairs Republic of Indonesia (2006).

Council where Indonesia was re-elected several times as a council member.<sup>130</sup> International activism during Yudhoyono's tenure was also notable in the enthusiasm to host international events like the Climate Change Conference in 2008 or working in initiatives that promote democracy (e.g., Bali Democracy Forum) or interfaith dialogue (e.g., ASEM Interfaith Dialogue). Interfaith dialogue, according to Marty Natalegawa (who replaced Wirajuda as the Minister for Foreign Affairs in 2009), represented Indonesia's strength or "soft power" in foreign policy.<sup>131</sup> Indonesia also took great pride in becoming a member of the G-20, an international forum of developed and emerging economies, in 2008. As explained by Natalegawa, Indonesia's involvement in the G-20 would not only open up opportunities for Indonesia's economy to improve but would also boost Indonesia's international standing: "Hence, we see our membership of G-20 as offering valuable opportunity Indonesia to project its role onto the world stage as responsible power. And we will certainly be ensuring that we are playing a key role in that forum."<sup>132</sup>

The eagerness of the Yudhoyono administration to be involved in various international forums was caused by the conducive environment both internally and externally. As pointed out by Mukhlis,<sup>133</sup> when Yudhoyono won the presidency in 2004, his government faced an engaged parliament that was genuinely concerned with international affairs. The parliament was supportive of Yudhoyono's policy on human rights, such as the plan to adopt human rights in the ASEAN Charter and to approach Myanmar on human rights issues. Moreover, external support also came from the normalisation of Indonesia's relations with powerful nations when Yudhoyono came to power. The United States, for example, terminated the arms embargo sanction that was originally implemented due to the East Timor Crisis in 1999.<sup>134</sup> In addition to this development, Yudhoyono benefited from Megawati's economic policy which stabilised the economy after the 1997 financial crisis,<sup>135</sup> a condition that critical for the Yudhoyono administration to boost economic growth. Throughout his ten years as president, Yudhoyono succeeded in increasing economic growth to above 4% (even when the global financial crisis shook the world in 2008) and maintaining the ratio of the country's debt to GDP at 23%, which Yudhoyono claimed to be "among the lowest in the G20".<sup>136</sup>

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<sup>130</sup> ANTARA, "Indonesia Terpilih Kembali Sebagai Anggota Dewan HAM PBB," 21 May 2011.

<sup>131</sup> Natalegawa, "Remarks By H.E. Dr. Marty Natalegawa, Foreign Minister of the Republic of Indonesia On the Occasion of the 7th General Conference of the Council for Security Cooperation in the Asia Pacific 16 October 2009".

<sup>132</sup> Ibid.

<sup>133</sup> Mukhlis, "Indonesia's Human Rights Policy Shift and Continuity 1945-2014: A Neoclassical Realism Perspective."

<sup>134</sup> Scott Morrissey, "U.S. Lifts Indonesia Arms Embargo," *Arms Control Today* 36, no. 1 (2006).

<sup>135</sup> Haryo Aswicahyono and Hal Hill, "Survey of Recent Developments," *Bulletin of Indonesian Economic Studies* 40, no. 3 (2004).

<sup>136</sup> "The Strategist Six: Susilo Bambang Yudhoyono," 2016, accessed 5 September 2018, <https://www.aspistrategist.org.au/the-strategist-six-susilo-bambang-yudhoyono/>

In addition to the democratic development that benefited Yudhoyono's presidency, Indonesia's active participation in foreign relations was also influenced by Yudhoyono's drive to boost Indonesia's international standing.<sup>137</sup> His vision on international affairs correlated with Wirajuda's 2001 effort to reform MoFA and to democratise Indonesia's foreign policy.<sup>138</sup> In Yudhoyono's maiden speech on Indonesia's foreign policy before the Indonesian Council on World Affairs (ICWA) on 20 May 2005, Yudhoyono explained his vision for refining Indonesia's foreign policy doctrine to become independent and active in the context of a world no longer divided between the United States and the Soviet Union. He argued that relying on being "independent of judgment" and having "freedom of action" alone are not enough in dealing with present-day phenomena such as globalisation, interdependence, governance, NGOs and international terrorist networks.<sup>139</sup> Indonesia, Yudhoyono suggested, should take "a constructive approach" in order to make Indonesia's foreign policy mantra relevant again:

In short, constructivism helps us to use our independence and activism to be a peace-maker, confidence-builder, problem-solver, bridge-builder. This way, our independent and active policy becomes relevant—relevant to our national interests, relevant to our people, relevant to the international community.<sup>140</sup>

Yudhoyono also declared his intention to eliminate the malpractice in the conduct of Indonesia's foreign policy, including "siege mentality, wild conspiracy theories, excessive suspicion, and an overly defensive attitude" and to project Indonesia's new image as an "open, moderate, tolerant, and outward-looking" nation.<sup>141</sup>

Yudhoyono, who his adviser dubbed as 'Indonesia's first foreign policy president',<sup>142</sup> delivered a different kind of internationalism that was unlike what Sukarno had projected during Guided Democracy. Both Sukarno and Yudhoyono aspired for Indonesia to have international standing, but they had different interpretations of how to execute this. Sukarno saw the world as a hostile environment where he believed that the old forces (the Western countries) wanted to continue the exploitation of newly liberated countries. He then responded by acting confrontationally, not only with big countries, but also with Malaysia, a neighbouring state that he saw as a tool for the British.<sup>143</sup> In contrast to Sukarno's negative views of the world, Yudhoyono saw that international

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<sup>137</sup> Azyumardi Azra, "Indonesia's Middle Power Public Diplomacy: Asia and Beyond," in *Understanding Public Diplomacy in East Asia: Middle Powers in a Troubled Region*, ed. Jan Melissen and Yul Sohn (New York: Palgrave Macmillan).

<sup>138</sup> Yudhoyono maintained Wirajuda's position as the Minister of Foreign Affairs in his first term as the president and later appointed Natalegawa as Wirajuda's replacement in his second term.

<sup>139</sup> "Speech by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia before the Indonesian Council on World Affairs (ICWA)," ed. Ministry of Foreign Affairs Republic of Indonesia (2005).

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> McBeth, *The Loner: President Yudhoyono's Decade of Trial and Indecision*, 111.

<sup>143</sup> See: Alastair M. Taylor, "Sukarno - First United Nations Drop-out," *International Journal* 20 (1965); Bunnell, "Guided Democracy Foreign Policy: 1960-1965 President Sukarno Moves from Non-Alignment to Confrontation."

affairs offered opportunities that were waiting to be exploited. He believed that Indonesia could take advantage of this type of international environment by being the “peace-maker, confidence-builder, problem-solver, [and] bridge-builder.”<sup>144</sup>

Throughout his ten-year tenure, Yudhoyono represented himself to the world as a leader who believed in democracy and the progress that Indonesia had made with democracy. He spoke about these topics on numerous occasions. Speaking before the General Assembly in 2005, Yudhoyono stated that:

In regards to human rights, we do not have a problem because Indonesia is a democratic country and has the commitment to protect and to promote human rights. That is why we support the establishment of the Human Rights Council under the supervision of the General Assembly and urge that this Council is formed under the principles of openness, transparency, and inclusivity.<sup>145</sup>

There was also a strong emphasis on Indonesia’s new identity during international events. In his remarks at Forbes’ CEO Conference in Singapore in 2006 Yudhoyono stated that:

Now Indonesia is proudly becoming the third largest democracy in the world after India and the United States... Indonesia is a proof that Islam, modernity, and democracy can go hand in hand... Pardon me, because I have high hope for our democracy, because I believe that democracy is good for business. As the sixth President of Indonesia I have a target to further Indonesia’s democracy and reform, accelerate Indonesia’s transformation, and to improve Indonesia’s economy.<sup>146</sup>

Yudhoyono mentioned similar points at the Bali Democracy Forum in 2008, an international forum that was instigated by his Foreign Minister, Wirajuda:

We learned that democracy is anything BUT easy, and takes a lot of hard work and getting used to. It demands that we evolve an appropriate political culture to nourish it. We learned that the best way to consolidate a democracy is by strengthening its institutions, and by subordinating even the high and mighty to the supremacy of the law. We learned that in Indonesia democracy effortlessly goes hand-in-hand with Islam and modernity.<sup>147</sup>

His belief in Indonesia’s democratic development was again mentioned in 2010 when he delivered remarks at the Assembly of the World Movement for democracy:

Yet we proved the sceptics wrong. Indonesia’s democracy has gone from strength to strength. We held three peaceful national elections on schedule in 1999, in 2004, and in 2009. We peacefully resolved the conflict in Aceh with a democratic spirit, and pursued political and economic reforms in Papua. We made human rights protection a national priority. We pushed forward an ambitious decentralization program. Rather than regressing, Indonesia is progressing.<sup>148</sup>

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<sup>144</sup> "Speech by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia before the Indonesian Council on World Affairs (ICWA)."

<sup>145</sup> Susilo Bambang Yudhoyono, *Indonesia Unggul Kumpulan Pemikiran dan Tulisan Pilihan oleh Presiden Republik Indonesia* (Jakarta: Bhuana Ilmu Populer, 2009), 66.

<sup>146</sup> *Ibid.*, 183.

<sup>147</sup> "Opening Remarks of Indonesian President in Bali Democracy Forum."

<sup>148</sup> "The Democratic Instinct in the 21 st Century," *Journal of Democracy* 21, no. 3 (2010): 7.

After he was no longer the president, Yudhoyono claimed that his presidency succeeded in strengthening Indonesia's democracy:

But I can say with confidence that during my presidency, Indonesia continued its upward trajectory across the board: we became a stronger democracy, an emerging economy, a more united nation, more peaceful and more actively engaged internationally. The World Economic Forum called it Indonesia's 'Golden Decade'. I wouldn't disagree with them.<sup>149</sup>

While Yudhoyono received acclaim for his leadership and his concern with democracy and human rights issues,<sup>150</sup> civil society groups criticised Yudhoyono for failing to act on what he had said about democracy and human rights. Civil society groups expressed their disappointment in the lack of progression made during Yudhoyono's presidency on those issues during the Working Group on the Universal Periodic Review (UPR) in 2008 and 2012.<sup>151</sup> The Indonesian government was scrutinised for failing to eliminate capital punishment or doing enough to eradicate violence, even though it had ratified international conventions on torture and the protection of women and children. Observations were also made by civil society groups about the lack of improvement in Indonesia's legal system and the poor enforcement of human rights by the government. What also became the focus of the discussion was the government's disregard for the protection of religious minorities and LGBTI groups.

It is argued that Yudhoyono's indecisiveness and over-cautious character that crippled his presidency and caused stagnation for Indonesia's democracy.<sup>152</sup> On a number of occasions, he was criticised for being unable to reach a definite resolution on national problems including human rights issues. As stated by Todung Mulya Lubis, a notable lawyer that has been involved in human rights activism in Indonesia since the *Orde Baru* period:

His administration is known for its ambiguity. Human rights violations, which should be handled firmly and with a consequence, were ignored because the government do not want to interfere further. Whereas in fact they do not need to interfere, it is their right to find a solution to human rights problems. So I see there is a gap between their perception and their action... It seems like the human rights promotion is taken half-heartedly. And this is very noticeable in, for example, the case of the capital punishment, which we have been fought against since 1979. Until now we have not yet succeeded in eliminating the

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<sup>149</sup> "The Strategist Six: Susilo Bambang Yudhoyono".

<sup>150</sup> See for example: SETKAB, "In Bahasa Indonesia, Obama Praises President SBY"; "Secretary-General's joint press conference with Indonesia President Susilo Bambang Yudhoyono," 2012, United Nations, accessed 5 September 2018, <https://www.un.org/sg/en/content/sg/press-encounter/2012-03-20/secretary-generals-joint-press-conference-indonesia-president> ; 2012, "A speech by The Queen at the Indonesian State Banquet, 2012," accessed 9 September 2018, <https://www.royal.uk/queens-speech-indonesian-state-banquet-31-october-2012>

<sup>151</sup> See: Human Rights Council, "Working Group on the Universal Periodic Review," (Geneva: United Nations, 2008); "Working Group on the Universal Periodic Review," (Geneva: United Nations, 2012). According to UN Human Rights Council, UPR is "a review of the human rights records of all UN Member States" that "provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations." UPR mechanism also includes country visit by the UN special rapporteurs to review particular cases or themes and reviews from the State's stakeholders such as the national human rights commission or civil society organizations.

<sup>152</sup> See: Fealy, "The Politics of Yudhoyono: Majoritarian Democracy, Insecurity and Vanity."; *ibid.*; Dirk Tomsa, "Indonesian Politics in 2010: The Perils of Stagnation," *Bulletin of Indonesian Economic Studies* 46, no. 3 (2010).

death penalty. It is absurd that when one of our migrant workers was sentenced to death by a foreign court, [the government] fought hard to stop the execution, yet back home we still preserve such punishment.<sup>153</sup>

Another example of Yudhoyono's ambiguity on human rights issues was when Indonesia had to deal with the increasing religious intolerance towards minority groups. Ahmadiyah, a small Islamic sect, was one of the minorities that had often become the target of persecution by vigilante groups like FPI. It was in 2005 that the harassment turned deadly. FPI members launched an attack on the Ahmadiyah community in Cikeusik, West Java that left three people dead. Instead of taking definitive action to stop future persecution, the government came up with a Joint Ministerial Decree (*Surat Keputusan Bersama-SKB*) in 2008 that contained vague recommendations that potentially put Ahmadiyah at further risk.<sup>154</sup> For example, the SKB stated that Ahmadiyah should not disseminate their interpretation of Islam that is allegedly divergent from the established and recognised teaching of Islam. While this policy itself contradicts the Law of Human Rights, Yudhoyono's administration took no further action to revise it. Ahmadiyah was also left in limbo because the government had failed to provide protection to their community. As pointed out by Ismatu Ropi, since the government could not ban Ahmadiyah and, at the same time, did not want to confront the mainstream Muslim community that disapproved of Ahmadiyah's doctrine, they opted for the issuance of the SKB which helped the government to avoid conflict with the majority Muslim community, but left the Ahmadiyah issue unresolved.<sup>155</sup>

He also failed to solve human rights abuses despite, several times, making promises to do so. In the case of Munir, Indonesia's human rights activist who was poisoned during his flight from Jakarta to Amsterdam on 7 September 2004, for example, Yudhoyono instructed a special team to investigate the case after receiving pressure from civil society groups.<sup>156</sup> Munir's death was considered a high-profile case because it was assumed to be related to his work as a human rights activist where he often interacted with the military and the police. His colleagues demanded that the government investigate Munir's case seriously because of the alleged involvement of "powerful institutions" behind his unusual cause of death.<sup>157</sup> However, the investigation of Munir's case disintegrated when

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<sup>153</sup> Todung Mulya Lubis, interview by Yessi Olivia, 9 June, 2016. In his annual press statement in 2012, Marty Natalegawa mentioned the success of the Indonesian government to save the Indonesian people from the death penalty through all diplomatic channels conducted by Indonesia's representative abroad to the president to ask for clemency. It is stated that the assessment of the legal system of the host country would be treated as an input in sending future Indonesian migrant workers. See: Ministry for Foreign Affairs of the Republic of Indonesia, "Annual Press Statement by H.E. Dr. R. M. Marty M. Natalegawa Minister for Foreign Affairs of the Republic of Indonesia 4 January 2012." While it is the responsibility of the government to protect its citizens while they are in foreign countries, what the government had done to thwart the death penalty sentences rings hollow since Indonesia is still one of the countries that utilize capital punishment.

<sup>154</sup> HRW, "Atas Nama Agama Pelanggaran terhadap Minoritas Agama di Indonesia," (New York: HRW, 2013).

<sup>155</sup> Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Springer, 2017).

<sup>156</sup> ANTARA, "President Forms Independent Team to Investigate Munir's Death," 23 December 2004.

<sup>157</sup> Fabiola Desy Unidjaja, "Susilo Backs Probe into Munir's Death," *The Jakarta Post*, 25 November 2004.

the court released Muchdi PR, a former deputy at Indonesia's State Intelligence Agency (BIN) that was allegedly responsible for ordering Munir's death, in December 2008.<sup>158</sup>

According to Albert Hasibuan, one of his senior advisers, Yudhoyono had the intention of resolving past human rights violations, which he referred to as the "burden of history" of the country: "So that the people of Indonesia can face the future, human rights abuses that happened in the past must be solved in order to not becoming the burden of history."<sup>159</sup> These cases include the shooting of student activists in 1998, the Tanjung Priok case in 1984, the Talangsari case in 1989 and the May 1998 riots. In his capacity as the advisor to the president on human rights issues, Hasibuan claimed that he had taken several steps aimed at redressing these issues, including meeting with human rights NGOs and victims of human rights violations and their families. He also submitted a recommendation to the President in regards to resolving human rights abuse<sup>160</sup> and asserted to the media that Yudhoyono is set to ask for forgiveness for past wrongdoings.<sup>161</sup> This was later retracted and the plan to resolve past human rights abuses remained unaddressed.

According to Puri Kencana Putri from KontraS, a human rights NGO, Yudhoyono had contacted civil society groups asking them to help him in finding a way to solve past human rights violations:

If I am not mistaken, Yudhoyono called Usman Hamid from Kontras and Ihdhal Kasim from KOMNAS HAM and asked them to come with a suggestion, a solution map, for solving past human rights abuses. We still use this map until now. It is a simple map, really. It is suggested that the president should cut the deadlock between Komnas HAM and the Attorney General Office by taking over the responsibility in deciding whether the cases should go to the ad-hoc human rights court. What we have seen so far is that Komnas HAM and the Attorney General Office could not find a common ground and ended up with sending the preliminary dossiers back and forth. So the president could end this gridlock by establishing a committee for resolving past crimes. This committee is responsible to rechecking all of the documents prepared by Komnas HAM and to assess whether there is enough witness or evidence to bring the case to the court. If they were inadequate, they could take the truth and reconciliation commission since this the government tends to prefer this mechanism. The members of this committee should consist of experts on international law and international human rights law. The president was actually interested in solving the deadlock between Komnas HAM and the Attorney General Office, but he a little bit worried with the 1965 case. He said that I had responsibility to my coach Sarwo Edhie from RPKAD. So because of this all other cases were abandoned.<sup>162</sup>

Dewi Fortuna Anwar argued that the inconsistency between Yudhoyono's foreign policy and domestic policy on human rights was caused by the intricacy of human rights problems in Indonesia:

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<sup>158</sup> TEMPO, "Jalan Bebas Muchdi di Kasus Munir," 9 September 2012.

<sup>159</sup> Albert Hasibuan, *Akuntabilitas Penasihat Presiden* (Jakarta: Gramedia Pustaka Utama, 2016), 5.

<sup>160</sup> Ibid.

<sup>161</sup> Fathiyah Wardah, "SBY Siap Minta Maaf atas Pelanggaran HAM Masa Lalu," *VoA Indonesia*, 30 April 2012.

<sup>162</sup> Putri, interview. A list of recommendations to resolve past human rights crimes made by KontraS and International Center for Transitional Justice (ICTJ) can be found in ICTJ and KontraS, "Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto."

Our openness to human rights issues [in foreign policy] should have been seen as opportunities as well as challenges to improve the practice of human rights because people will scrutinize what we said in the international forum to what we practice inside the country. However, the problem with human rights in Indonesia is so complex because there are many stakeholders involved that some are resistant to human rights issues, including the effort to settle past human rights abuses. So in one side, the government is facing the pressure to solve the 1965 case, or the 1998 case, or the death of human right activists like Munir, and because of that pressures, the government took several measures to try to resolve them. In another side, there are the stakeholders, not only the military [that opposed the decision]. In the 1965 case, for example, there are the people, especially from the Islamic communities, who are traumatic and against the opening of the 1965 case. In addition to that, there is also the impact of decentralization that we have to think about because the some of the policies made at the regional level are violating human rights... So human right improvement needs a lot of sources not only the Ministry of Foreign Affairs—it is not the job of the Ministry of Foreign Affairs to take care of human rights—but other parties outside the government as well.<sup>163</sup>

The plan to adopt the Rome of Statute is an example of where Indonesia's foreign policy on human rights conflicted with the interests of a certain group in the country. The group in question is the Indonesian military, which is known in the past to have involved in human rights abuses. The Rome Statute did not get ratified as scheduled in RANHAM 2004-2009 and RANHAM 2011-2014. Part of the reason was the inability of the Ministry of Foreign Affairs to influence the Ministry of Defence to accept the Rome Statute. Another important point is that the resistance of the Ministry of Defence, which reflects the interests of the military, was caused by the uncomfortable civil-military relationship that had emerged in Indonesia since *Reformasi*. In this case, Yudhoyono, who has been lauded as a reformist general,<sup>164</sup> was unable to further reform in the military and the Ministry of Defence.

## **5.6 Case Study: The Abandonment of the Rome Statute**

### **5.6.1 The Divergence between Ministries on the Rome Statute**

The plan to ratify the Rome Statute was first listed under RANHAM 2004-2009, which was signed by Megawati on 11 May 2004.<sup>165</sup> When Megawati failed to win the presidential election in September 2004, the implementation of the human rights plan was passed on to Yudhoyono's administration. The commitment to continue Megawati's human rights plan was demonstrated in a letter sent to the United Nations by the Yudhoyono's administration that stated: "Indonesia will continue its efforts to respect and support the international human rights instruments through the signing, accession or ratification of those instruments outlined in its national plan of action of 2004-

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<sup>163</sup> Anwar, interview.

<sup>164</sup> See: Greg Sheridan, "SBY Shepherds Indonesia into a Modern Society," *The Australian*, 25 February 2012.

<sup>165</sup> "Keputusan Presiden Republik Indonesia Nomor 40 tahun 2004 tentang Rencana Aksi Nasional Hak Asasi Manusia tahun 2004-2009," ed. Republic of Indonesia (2004).

2009.”<sup>166</sup> The table below presents the list of international human rights instruments targeted under RANHAM 2004-2009.

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<sup>166</sup> Permanent Mission of the Republic of Indonesia to the United Nations, "Commitment and voluntary pledges of Indonesia in the field of human rights," (New York 2006).

**Table 2 RANHAM 2004-2009**<sup>167</sup>

No.	Name of Treaties	Ratification Target	Realization
1.	Convention for the Suppression of Trafficking in Persons	2004	-
2.	Convention on the Prevention and Punishment of the Crime of Genocide	2007	
3.	Convention on the Protection of the Rights of All Migrant Workers and Members of the Families	2005	-
4.	Convention on the Status of Refugees	2009	
5.	International Covenant on Civil and Political Rights (ICCPR)	2004	2005
6.	International Covenant on Economic, Social, and Political Rights (ICESCR)	2004	2005
7.	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	2008	-
8.	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	2005	-
9.	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts	2006	-
10.	Optional Protocol to the Convention on the Rights of the Children on the Sale of Children, Child Pornography, and Child Prostitution	2005	-
11.	Protocol to the Convention on the Status of Refugees	2009	-
12.	Rome Statute on International Criminal Court	2008	-

The Rome Statute of the ICC was not actually a part of the core international human rights treaties,<sup>168</sup> but it regulates the response to grave violations of human rights, which had not been

<sup>167</sup> "Keputusan Presiden Republik Indonesia Nomor 40 tahun 2004 tentang Rencana Aksi Nasional Hak Asasi Manusia tahun 2004-2009." Only two human rights treaties were adopted into national laws under RANHAM 2004-2009: the ICCPR and the ICESCR. The ICESCR was ratified into Law Number 11/2005 and the ICCPR was adopted into Law Number 12/2005. The Indonesian government made a declaration to both treaties that the right of self-determination cannot be interpreted as an effort to disintegrate from a sovereign country. The timing of the adoption of the two international human rights bills cannot be separated from the appointment of Makarim Wibisono, Indonesia's senior diplomat, as the chair of the United Nations Commission on Human Rights for the year 2005. It is likely that the ratification of the ICCPR and ICESCR was taken as an effort to enhance Wibisono's credibility as the chair of the UN Human Rights body.

fully addressed in Indonesia's legal system. It is then worth asking why the Rome Statute was included in RANHAM. However, during interviews with several respondents, the researcher found no convincing argument as to who added the Rome Statute to Indonesia's human rights plan in the first place, nor their motivations for doing so. In an interview with Dicky Komar from the Directorate of Human Rights at the Ministry of Foreign Affairs, the influential role of the ministry was revealed:

The Ministry of Foreign Affairs played a role in providing initiatives [on human rights instruments including the Rome Statute] because we believe that our commitment on [accessing to] international human rights instruments demonstrates our seriousness in carrying the State's responsibilities as mandated in UUD 1945. Each of the conventions that we plan to ratify has been based on the national Constitution, so not on some baseless ground. We must look upon the articles of the Constitution to strengthen the reason why we need to adopt certain convention.<sup>169</sup>

While that is a tactful statement, it does not provide a clear explanation of the impact of the adoption of the Rome Statute to Indonesia. The staff from the Directorate of Human Rights Instruments, Ministry of Law and Human Rights signalled that the plan to ratify the Rome Statute would impact Indonesia's justice system.<sup>170</sup> The respondent said that, since Indonesia participated in the international meetings that produced the Rome Statute, and the fact that Indonesia had adopted several provisions regarding serious human rights violations in its Law on Human Rights Court, the incorporation of the Rome Statute in RANHAM 2004-2009 can be seen as an effort to follow on from the previous policies that Indonesia had implemented. The respondent believed that changes have to be made to the Indonesian criminal system and one of the ways is through the adoption of international treaties like the Rome Statute. In this case, the adoption of the Rome Statute would put pressure on the Indonesian government to improve Indonesia's Criminal Code (KUHP), which still applies the penal code that was inherited from the Dutch East Indies in 1915. It was only in 2013 that the Indonesian government finally submitted the reformed draft of the criminal laws and criminal procedure code to DPR and expanded on the types of crimes that were included in the Rome Statute: genocide, crimes against humanity, war crimes and aggression.<sup>171</sup> In addition to the expansion of Indonesia's criminal code, the respondent also believed that the adoption of the Rome Statute would impact the Law on Human Rights Court, which needs improvement because of its rushed drafting following the East Timor case in 1999.<sup>172</sup>

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<sup>168</sup> There are at list fourteen conventions and optional protocols that are considered as the core international human rights treaties by the United Nations. See: Office of the United Nations High Commissioner for Human Rights, *The Core International Human Rights Treaties*.

<sup>169</sup> Dicky Komar, interview by Yessi Olivia, 15 November, 2016.

<sup>170</sup> Staf from the Ministry of Law and Human Rights, interview by Yessi Olivia, 12 October, 2016, Ministry of Law and Human Rights.

<sup>171</sup> Kristian Erdianto, "Empat Kejahatan Internasional Masuk dalam Draf RKUHP," *Kompas*, 5 February 2018.

<sup>172</sup> Staf from the Ministry of Law and Human Rights.

Komar's answer implies the direction that the Ministry of Foreign Affairs took in 2003 in regards to Indonesia's foreign policy: it should reflect the democratisation of Indonesia and the respect of human rights. However, behind the optimism, the inclusion of the Rome Statute in RANHAM has been problematic from the beginning. Firstly, Indonesia's diplomacy regarding the Rome Statute and the Court before RANHAM 2004-2009 was heedful. The cautious diplomacy of the Indonesian representatives regarding the Rome Statute and the Court before RANHAM 2004-2009 was noticeable in the letter sent by Muladi, who served as Indonesia's Minister for Justice under the Habibie administration, to the President of the Plenipotentiaries Conference in Rome 1998. Indonesia declared its support for the ICC to the diplomatic conference, but remained concerned about whether the Court would be impartial or not:

...I wish to express that the participation of Indonesia in this Conference is to fulfil its obligation as mandated by its 1945 Constitution. The preamble of the Constitution clearly stipulated that acts which are not in conformity with humanity and justice should be abolished, and Indonesia should contribute to the establishment of a world order based on freedom, genuine peace and social justice. Accordingly, I wish to pledge the unswerving support and cooperation of the Indonesian Government to the holding of this conference and its endeavours to make the International Criminal Court a reality.

...the Court should be impartial and independent especially from political influence of any kind, including that of the United Nations organs, in particular the Security Council, which should not direct or hinder the functioning of the Court nor assume a parallel or superior role to the Court...the Conference should develop an appropriate means to deter the launching of frivolous charges.<sup>173</sup>

It is because of these considerations that Indonesia withheld its support when members of the conference cast their votes at the end of the diplomatic conference. Ferry Adamhar, as one of the Indonesian delegates that attended the conference, recalled that the act of abstaining was because of the elimination of the suggestions made by the delegation of Indonesia and the doubt that Indonesia had over the proposal regarding the prosecutor's ability to undertake the preliminary examination of alleged serious human rights crimes (also known as *proprio motu* investigations). Adamhar also said that the abstaining vote was necessary at that time:

We have what we call delegate guidelines. These guidelines were discussed not only among the Ministry of Foreign Affairs' officials but also with other ministries that will be impacted by the international treaties. In the case of the Rome Statute, another ministry that was involved was the Ministry of Defence. We as delegates cannot divert from these delegate guidelines. However, we also cannot block the effort of the international community to form the international criminal court. So the only problem is that we did not sign the treaty but we were active participants in the conference. The point is the delegate guidelines listed our concerns [on the contents of the statute] so we decided to hold the signing.<sup>174</sup>

Komar also added that the choice to abstain was related to the critical conditions in Indonesia in 1998:

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<sup>173</sup> Minister of Justice Republic of Indonesia, "Statement by H.E. Mr. Muladi, minister for justice, head of delegation of the Republic of Indonesia before the plenipotentiaries conference of the establishment of the International Criminal Court Rome, 15-17 July 1998," (1998).

<sup>174</sup> Ferry Adamhar, interview by Yessi Olivia, 10 November 2016.

We know what happened to Indonesia during the mid-1998. In the international forum, it was the role of the Ministry of Foreign Affairs to represent Indonesia, but we do not act in the interest of our office. We had to voice the national consensus and the situation and the context of 1998 were influential in the decision [to abstain from the vote].<sup>175</sup>

In a meeting of the Sixth Committee (the legal committee of the United Nations) regarding the establishment of the ICC on 10 November 1999, Indonesian officials also reiterated the country's support to the Court, and cited that the Court was needed to fill gaps in the capabilities of national judicial systems, as well as international legal mechanisms, to deal with serious human rights crimes and that Indonesia was still assessing the Statute before proceeding with the ratification option. Since the time of the meeting was concurrent to the investigation of the East Timor crisis, his remarks projected the anxiety in Jakarta where there were demands to bring the East Timor case to an international court like the ICTY and the ICTR. First, he stated that the Court should receive universal support: "Universal participation should be the cornerstone of the Court so that it would not fall prey to narrow political agendas."<sup>176</sup> Secondly, he emphasised that the Court should function as an addition to the national legal procedures and as a deterrent mechanism:

The principle of complementarity was of paramount importance, as the Court was intended to supplement and not supplant national jurisdiction. It should, therefore, exercise jurisdiction only with the consent of the States concerned, and refrain from handling cases that were already before national courts. The Court must not become a mechanism for interfering in State's internal affairs but should fulfil its central objective of facilitating international cooperation and deterring the perpetration of heinous acts.<sup>177</sup>

As explained in Chapter 4, following the humanitarian disaster after the referendum in East Timor in 1999, Indonesia tried to mitigate international pressure by creating a special court to try the East Timor case. This decision was made because of the raising concerns, especially among the military, that the East Timor case might be solved outside of Indonesia. Even president Wahid at that time had to give reassurance that the case would be settled domestically and that trying the case in an international court would be a violation of Indonesia's sovereignty.<sup>178</sup> As a result, in 2000, Indonesia adopted the Law on Human Rights Court and brought the East Timor case to trial in

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<sup>175</sup> Komar, interview.

<sup>176</sup> United Nations, "Summary record of the 14th meeting on the establishment of an international criminal court," ed. General Assembly (1999), 3.

<sup>177</sup> Ibid.

<sup>178</sup> The Jakarta Post, "TNI Leaders 'Will Not Face Int'l Court'," 23 December 1999. In a report made by the International Center for Transitional Justice (ICTJ), the trials conducted by the Ad-hoc Human Rights Court for East Timor were criticized for ignoring the preliminary investigation made by Komnas HAM or information supplied by UNTAET, the interim authority in East Timor set by the United Nations. ICTJ also highlighted the failure of the prosecutors in presenting adequate evidence to support the crimes against humanity convictions. Above all, ICTJ criticized the lack of political will coming from the Indonesian government in bringing those who were mostly responsible in perpetrating human rights crimes in East Timor. See: David Cohen, "INTENDED TO FAIL The Trials Before the Ad Hoc Human Rights Court in Jakarta," (International Center for Transitional Justice, 2004).

2001. However, the trials were deemed lacking in credibility and the Indonesian government was criticised for conducting the trials only to appease the international community.<sup>179</sup>

The second problem with the addition of the Rome Statute to RANHAM was related to the discrepancy among the ministries on the Rome Statute, or even RANHAM in general. One of the factors that created this situation has been related to how each ministry has evolved since *Reformasi*. While the Ministry of Foreign Affairs had undergone a democratic transformation under the leadership of Hassan Wirajuda in 2003, bureaucratic reform in the Ministry of Defence failed to produce any significant democratic progress. Overall, *Reformasi* succeeded in dismantling the political role of the military as defined by the *Dwifungsi* doctrine. There were also efforts to separate the Ministry of Defence from the armed forces and to appoint civilians as ministers in related portfolios. Since *Reformasi*, four civilians have served as the Minister for Defence: Juwono Sudarsono (1999-2000, 2004-2009), Mahfud MD (2000-2001), Matori Abdul Djilil (2001-2004), and Purnomo Yusgiantoro (2009-2014). However, the Ministry of Defence has remained an institution where civilian leadership has not been able to “take democratic control over the armed forces”.<sup>180</sup> Under Yudhoyono’s presidency, in particular, the inability of the civilian government to rein in the military was visible in the failure to finalise the Law on Military Court, which was one measure taken to bring an end to the culture of impunity within the military and to curtail the military’s business ventures. In addition, despite the increasing number of civilians working in the Ministry of Defence, most of the upper echelon positions are held by military personnel. This includes important positions like the Directorate General of Strategic Defence, which is responsible for defining the national security policy.<sup>181</sup> It is because of the domination of the military presence in the Ministry of Defence that its policies reflect the military culture that is inward looking and a remnant of the pre-*Reformasi* era. The 2008 Defence White Paper, for example, described the non-military threats coming from outside of Indonesia that were manifested in the forms of the revival of communist ideology (i.e., Indonesia’s Communist Party), fundamentalism and foreign countries

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<sup>179</sup> Kurniawan, "East Timor Human Rights Trials - All Just a Game."

<sup>180</sup> Beni Sukadis, *Departemen Pertahanan dan Penegakan Supremasi Sipil dalam Reformasi Sektor Keamanan* (Jakarta: IDSPS & DCAF, 2009), 195. The Law No. 34/2004 on TNI (Indonesia’s Armed Forces) is an influential factor that causes the asymmetrical civil-military relationship in Indonesia. Under the Law on TNI, the Commander of Armed Forces is positioned under the President not under the Minister of Defence where it is supposed to be. The law also allows the Commander of Armed Forces to reach out the military personnel who chose to work outside the military (i.e. the Ministry of Defence) on the basis of *pembinaan karir prajurit* (soldier’s career coaching)

<sup>181</sup> Kusnanto Anggoro, "Otonomi Relatif, Interdependensi dan Transformasi Orientasi Departemen Pertahanan (Relative Autonomy, Interdependency and Orientation Transformation of the Ministry of Defence)," in *Almanak Reformasi Sektor Keamanan Indonesia 2009*, ed. Beni Sukadis (Jakarta: LESPERSI & DCAF, 2009). See also: "Departemen Pertahanan Republik Indonesia Supremasi Sipil tanpa Kendali Efektif."; Baker, "Professionalism without Reform: The Security Sector under Yudhoyono."

that use “human rights promotion, democratisation, environment, good governance” to intervene in Indonesia’s domestic affairs.<sup>182</sup>

This perception informed the Ministry of Defence’s disapproval of the Rome Statute. In a discussion with several officials from the Directorate General of Strategic Defence, the idea of joining the Rome Statute/ ICC was seen only as disadvantageous and harmful to Indonesia’s national interests. They believed that the military was the primary target of the ICC and the government should not let its military officials be brought before an international court.<sup>183</sup> This position reflected the similar stance that the military had taken when the post-referendum violence in East Timor led to the demand for an international tribunal.

It is implied from the conversation with staff at the Directorate General of Strategic Defence that there has been an ill-informed understanding of what the Court can and cannot do, which undermines, for example, the intricate process that the Prosecutor of the ICC must undertake in order to open an investigation of a case. Hakristuti Harkrisnowo, the former Director General for Human Rights from the Ministry of Law and Human Rights, recalled her encounter with the people at the Ministry of Defence that confirmed the information gap in understanding on the Rome Statute/ ICC:

In a meeting with the Ministry of Defence, I argued on the importance of the ratification of the Rome Statute for Indonesia, but the expert staff to the Minister Sudarsono told us that the Rome Statute/the ICC is a form of victor justice. It seems at that time that his expert staff confused the ICC with the ICTY and the ICTR. ICC is not an institution built on a victor justice. It was a product of a multilateral cooperation where a lot of countries participated, unlike the Nuremberg or the Tokyo trials in 1945. They then asked me whether the Rome Statute applies the retroactive principle. I said no because the Rome Statute clearly states that the Court operates on the non-retroactive principle. Amusingly, the staff dared me to swear that what I had said to them is a fact, indicating that they do not have a clear grasp of the Rome Statute.<sup>184</sup>

Victor justice, to borrow Lars Waldorf’s definition of the term, is “an extreme form of selective prosecution which occurs when only members of the losing side are prosecuted”.<sup>185</sup> International tribunals held in Nuremberg and Tokyo in the aftermath of the World War II are often mentioned as primary example of victor justice, since crimes committed by the Allies forces were excluded from the international tribunals. Ad-hoc tribunals to prosecute human rights offenders in Rwanda and the former Yugoslavia in the 1990s have also been criticised for retaining the victor justice tradition, as

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<sup>182</sup> Kementerian Pertahanan Republik Indonesia, *Buku Putih Pertahanan Indonesia* (Jakarta: Kementerian Pertahanan Republik Indonesia, 2008), 33.

<sup>183</sup> Based on a conversation with the head and the staffs of the Directorate General of Strategic Defense on 13 November 2016.

<sup>184</sup> Hakristuti Harkrisnowo, interview by Yessi Olivia, 8 June, 2016.

<sup>185</sup> Lars Waldorf, "A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal," *Fordham Int'l LJ* 33 (2009): 1273.

they failed to prosecute those who were on the ‘winning side’.<sup>186</sup> Since the adoption of the Rome Statute and the operation of the ICC in 2002, some critics have expressed cynicism on the future of the ICC. Their doubt is centred on the involvement of the UN Security Council in selecting a case to be investigated by the ICC Prosecutor (Article 13) and in postponing a case (Article 16). With the politics surrounding the UN Security Council permanent members, their authority to refer or to defer a case has been seen as the politicisation of the Court.<sup>187</sup> One fact that cannot be ignored is that the Rome Statute is a product of a political compromise; it was reported that the permanent members of the UN Security Council were divided on that issue during the negotiations of the Rome Statute.<sup>188</sup> However, people like William A. Schabas,<sup>189</sup> who maintains optimism about the ICC, argued that the ICC is “a considerable development” in comparison to the Rwanda and former Yugoslavia ad-hoc tribunals. Schabas’ justification is that the power of the UN Security Council over the ICC is not “a *sine qua non* for the beginning of the investigations and prosecutions”.<sup>190</sup> As stated in Article 53 of the Rome Statute, the ultimate decision to proceed or not proceed with an investigation still lies in the hands of the Prosecutor of the ICC.

Those who supported Indonesia’s accession of the Rome Statute expressed their concern about misinformation regarding the ICC and the Rome Statute. Todung Mulya Lubis, for example, doubted that the military would be easily convinced about joining the ICC:

The misinformation is rampant that it would take a much longer time to persuade the military generals that joining the ICC does not mean that we will bring to court past human rights crimes in East Timor, Papua, or Aceh.<sup>191</sup>

Meanwhile, Marzuki Darusman, Indonesia’s former Attorney General offered a different take on the reluctance of the Ministry of Defence. He claimed that Juwono Sudarsono was inclined to support the ratification but was opposed by his staff:

*Pak Juwono had the drive for the Rome Statute accession, but his staffs were doubtful on this issue, especially since Buyung Nasution and Hikmahanto Juwono influenced them. Both Hikmahanto and Buyung gave the incorrect information to TNI as if our military personnel will automatically be indicted by the ICC.*<sup>192</sup>

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<sup>186</sup> See: Robert M Hayden, "Biased Justice: Humanrightsism and the International Criminal Tribunal for the Former Yugoslavia," *Clev. St. L. Rev.* 47 (1999); Ralph Zacklin, "The Failings of Ad Hoc International Tribunals," *J. Int'l Crim. Just.* 2 (2004); Luc Reydam, "The ICTR Ten Years On: Back to the Nuremberg Paradigm?," *Journal of International Criminal Justice* 3, no. 4 (2005).

<sup>187</sup> Jon Holbrook, "'World Court' is a Creature of Politics Rather than Justice," *The Times*, 26 September 2000.

<sup>188</sup> William A. Schabas, "'Victor's Justice': Selecting 'Situations' at the International Criminal Court," *John Marshall Law Review* 32 (2010).

<sup>189</sup> *Ibid.*, 541.

<sup>190</sup> *Ibid.*

<sup>191</sup> Lubis, interview.

<sup>192</sup> Darusman., interview.

The relationship between the Minister for Defence and figures like Hikmahanto Juwana was unintentionally mentioned in the conversation with the Director-General of Strategic Defence. The Director-General said that the Ministry of Defence contacted Juwana for advice in regards to the ICC. Juwana, who is known to have an unfavourable view of the Rome Statute and the ICC,<sup>193</sup> stated that:

The Rome Statute was included in RANHAM because of the pressure coming from the civil society groups to end the practice of using the military for political purposes. They thought that the Rome Statute is a good instrument to stop that and if it could, [the ratification of the Rome Statute] should also apply the retroactive principle. I said how they could think without considering the general context. Even the US refuses to be part of the ICC—sure the European countries are fully supporting the ICC. I remember in a forum with DPR that the Foreign Minister Hassan Wirajuda and the Director-General Hakristuti Hakrisnowo endorsed the Rome Statute, but I opposed their endorsement and [the Ministry of Defence] thanked me for afterward. It does not matter that my position on the Rome Statute was seen as helping the Ministry of Defence; I believe that was the right thing to do. And fortunately, the Rome Statute has not been ratified until today.<sup>194</sup>

The disinclination towards the Court coming from the Ministry of Defence can be seen to contradict Yudhoyono's foreign policy to project the image of Indonesia as the peacemaker and bridge builder. It was under Yudhoyono's presidency that there had been a significant increase in the number of soldiers and police sent to some of the conflict areas in the world under the UN Peacekeeping Mission Operations.<sup>195</sup> The Ministry of Defence, in this regard, was responsible for managing the Indonesia Peace and Security Centre where the training centre for peacekeeping missions is located.<sup>196</sup> Membership of the ICC, in this case, would be beneficial for Indonesia because the Court provides legal protection for peacekeeping personnel since the Rome Statute states that it is a war crime to intentionally attack peacekeeping missions in both international and non-international conflicts.<sup>197</sup>

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<sup>193</sup> See: Hikmahanto Juwana, "Should RI Ratify ICC Statute?," *The Jakarta Post*, 2 April 2009; Detik News, "Indonesia Belum Tepat Ratifikasi Statuta Roma," 8 March 2013.

<sup>194</sup> Juwana, interview.

<sup>195</sup> Nurhadi Suchahyo, "Indonesia Tingkatkan Jumlah Pasukan Perdamaian (Indonesia Increases the Number of Peacekeeping Operation Teams)," *VoA*, 16 March 2012. Under Yudhoyono's presidency, Indonesia has boosted its ranking as the contributor country for the UN Peacekeeping Operations. In year 2005, it was recorded that Indonesia sent 201 individuals (Ranking of Military and Civilian Police Contributions to UN Operations, Month of Report: 28 February 2005 from [https://peacekeeping.un.org/sites/default/files/february2005\\_2.pdf](https://peacekeeping.un.org/sites/default/files/february2005_2.pdf)). In 2014, the number has increased to 2,000 peacekeeping staffs, which placed Indonesia to number 16 out of 122 countries that support the UN Peacekeeping Operations (see: Ranking of Military and Civilian Police Contributions to UN Operations, Month of Report: 31 December 2014 [https://peacekeeping.un.org/sites/default/files/dec14\\_2.pdf](https://peacekeeping.un.org/sites/default/files/dec14_2.pdf))

<sup>196</sup> Indonesia Peace and Security Centre (IPSC) was initiated by Yudhoyono in 2010 and formally launched in 7 April 2014. In addition to training centre for peacekeeping personnel, there are training centres for the National Agency for Combating Terrorism and the National Board for Disaster Management, and Indonesia's Defence University.

<sup>197</sup> Article 8 (2) (b) (iii) and Article 8 (2) (e) (iii) of the Rome Statute on the definition of war crimes: "Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict." See also: Silvia Fernández de Gurmendi, "New Models of Peacekeeping: Security and Protection of Human Rights. The Role of the UN and Regional Organizations," ed. ICC (2017); Mohamed A. Bangura, "Prosecuting the Crime of Attack

In another interview with the former head of Sub-directorate Law at the Ministry of Defence, the decision of the Ministry of Foreign Affairs to list the Rome Statute in RANHAM was even criticised for not including the Ministry of Defence in the drafting of RANHAM. The respondent argued that the Rome Statute is not a priority for Indonesia to ratify and claimed that there are other international treaties that need more urgent attention. The respondent mentioned the Additional Protocols of the Geneva Convention,<sup>198</sup> which they argued are more useful for Indonesia to sign considering the threat of civil conflict remains imminent in some parts of the country.<sup>199</sup> Once again, the respondent based his assumption on the strategic/military perspective. Since the Geneva Conventions and their Additional Protocols do not specify trial procedures, it is implied that the preference to these treaties is because the military does not want to risk becoming subject to a non-military court. This position suggests the military's lack of self-awareness and commitment to stop human rights abuses from happening. As observed by Lubis:

Their biggest fear is that the military will be brought to the ICC if we signed the Rome Statute. We know that the ICC has been clear that it does not use retroactive principle. The problem is that we do not know how aware the government or most military officials about the mechanism of the ICC. Or they may perhaps understand the consequence of joining the ICC and they wanted to anticipate the future human rights offenders from being prosecuted to the ICC.<sup>200</sup>

Yanuarti from LIPI expressed a similar position:

I argue that their resistance to the Rome Statute is not merely because they are afraid of the reopening of the cold case, but they themselves cannot guarantee that they can stop human rights abuse especially when their members are sent to conflict areas like Papua, for example. In addition, it has also become their comfort zone that they can neutralize such condition through impunity, which protects the people who are responsible for the abuse.<sup>201</sup>

### 5.6.2 The Half-hearted Campaign

The inability of the Ministry of Foreign Affairs to convince the Ministry of Defence on the issue of the Rome Statute/ICC resulted in the inconsistency of the Ministry of Foreign Affairs' position on whether or not Indonesia should ratify the Rome Statute. On the one hand, officials from the Ministry of Foreign Affairs praised the ICC and expressed Indonesia's interest to join the Court but, on the other hand, they criticised the ICC for its partiality and weaknesses.

Over the span of 10 years of Yudhoyono's presidency, the period of 2004-2008 was a time when there had been an intense movement for the Rome Statute adoption. From civil society, there was the Civil Society Coalition for the ICC that campaigned for the Rome Statute/ICC through seminars

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on Peacekeepers: A Prosecutor's Challenge," *Leiden Journal of International Law* 23 (2010); Ola Engdahl,

"Prosecution of attacks against peacekeepers in international courts and tribunals," *Mil. L. & L. War Rev.* 51 (2012).

<sup>198</sup> Protocol I of the Geneva Convention regulates about the protection of victims in international armed conflict and the Protocol II standardizes the protection of victims in internal armed conflict.

<sup>199</sup> Ex-staff of the Ministry of Defence, interview by Yessi Olivia, 2016.

<sup>200</sup> Lubis, interview.

<sup>201</sup> Yanuarti, interview.

and publications. Indonesia's human rights commission, Komnas HAM, released a position paper on the adoption of the Rome Statute. In its report, Komnas HAM argued that Indonesia's Law on Human Rights Court does not have the comprehensive jurisdiction as mandated in the Rome Statute's jurisdiction. Therefore, Indonesia needs to amend the Law on Human Rights Court in order to ensure the national jurisdiction as the primary jurisdiction, with the ICC serving only as the complementary jurisdiction.<sup>202</sup>

It is worth noting that the DPR members at that time were supportive of the plan to ratify the Rome Statute. This was because of the involvement of members of DPR's Commission I (Foreign Affairs & Defence) and Commission II (Legislation, Justice, and Human Rights) in the Parliament for Global Action (PGA), an international network of legislators from 140 countries around the world. One of the issues that were advocated by PGA was Rome Statute/ ICC accession and Indonesia has engaged with PGA on this topic since 2004.<sup>203</sup> On 18 February 2008, PGA held a working meeting on the issue of the Rome Statute's accession, where members of Commission I and III declared their support for the ratification of the Rome Statute. Theo Sambuaga from Commission I indicated that many countries around the world have ratified the Rome Statute and that Indonesia was "a law-abiding nation that has nothing to lose and all to gain by becoming an ICC Member State."<sup>204</sup> Nursyahbani Katjasungkana, a distinguished advocate for women's rights who served on Commission III, emphasised that "justice is not an option and is not negotiable if the goal is the respect for the life and the human dignity of the civilian population".<sup>205</sup> Aziz Syamsuddin, also from Commission III, claimed that there was united support from the members of the Law and Human Rights Committee on the accession of the Rome Statute.<sup>206</sup>

The government, represented by the Ministry of Foreign Affairs and the Ministry of Law and Human Rights that were invited to the PGA events in 2007-2008, showed their support for the Rome Statute/ICC. In the inauguration of the Indonesian Chapter of the PGA in November 2007, Hassan Wirajuda lauded the ICC as an achievement in "the internationalisation of rule of law",<sup>207</sup> and claimed that the ICC did not collide with Indonesia's national interest, which contradicted the statement made by the people at the Ministry of Defence that the Rome Statute/ICC would harm

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<sup>202</sup> Komnas HAM, "Kertas Posisi tentang Pengesahan The Rome Statute of the International Criminal Court (Statuta Roma Mahkamah Pidana Internasional) (Statuta Roma), 1998," 05/SP/III/2009 (2009).

<sup>203</sup> "Indonesia," 2018, Parliamentarians for Global Action, accessed 6 May 2018,

<http://www.pgaction.org/campaigns/icc/asia/indonesia.html>

<sup>204</sup> "Parliamentarians Urge The Indonesian Government to Transmit as Early as Possible to Parliament the International Criminal Court (ICC) Accession Bill," news release, 18 February, 2008.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid., 2.

<sup>207</sup> "Senior Legislators and the Government of Indonesia Agree to Accede to the Rome Statute of the International Criminal Court (ICC)," news release, 2007, <http://www.pgaction.org/pdf/pre/Indonesia%20Press%20Release.pdf>.

Indonesia's interests. Hakristuti Harkrisnowo, from the Ministry of Law and Human Rights, supported Wirajuda's statement and said that her ministry "will intensify preparations of the relevant legislative tools to accede and implement the Rome Statute".<sup>208</sup> On 29-30 April 2008, the Ministry of Foreign Affairs held the expert meeting on the ratification of the Rome Statute. The meeting, which was attended by the ICC prosecutor, Luis Moreno Ocampo, gave the impression that Indonesia was serious in its intention to become part of the ICC. In her presentation, Harkrisnowo stated that Indonesia had confirmed its legal and political commitment to ratify the Rome Statute in RANHAM 2004-2009. She argued that the ratification of the Statute is important because it would strengthen the national justice system. She dismissed doubts that the ICC's jurisdiction would not undermine the national court's jurisdiction because of the ICC's complementarity principle.<sup>209</sup> Meanwhile, Mulya Wirana, from the Directorate General Law and International Treaties of the Ministry of Foreign Affairs, reassured that compliance with the ICC is aligned with the mandate of the 1945 Constitution and stated that Indonesia is committed to acceding to the Rome Statute.<sup>210</sup>

However, in a closed meeting with the DPR Commission I on 23 June 2008, Wirajuda backflipped on the previously favourable position of the Ministry of Foreign Affairs on the Rome Statute/ ICC. When asked by Djoko Susilo<sup>211</sup> from the National Mandate Party (PAN) faction about why the government had not yet sent DPR the Rome Statute draft bill, Wirajuda responded as follows:

The Government did schedule the ratification of the Rome Statute, and the focal point is the Ministry of Law of Human Rights, to DPR this year. My assumption is that the House Committee I support the ratification. However, there has been some problems where key countries such as the United States that does not want its soldiers to be tried before the Court, the same goes to China, Russia, and India, which have not given a sign that they will ratify this Statute. In other words, even though all the European Union countries and some other countries have ratified [the Rome Statute], we should study whether this forum [the Court] will be effective to solve the problems [gross human rights violations]. For Indonesia, being part of the Rome Statute will enhance the human rights promotion and protection system, because it will deter potential abusers from committing human rights violations with the consequence of being tried under the Rome Statute.<sup>212</sup>

The answer given by Wirajuda contradicts the effort of President Yudhoyono to reintroduce the free and active doctrine of Indonesia's foreign policy. It was ironic that Indonesia, which Yudhoyono envisioned in his seminal speech should be more independent and engaged with the world, was

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<sup>208</sup> Ibid.

<sup>209</sup> Badan Pengkajian dan Pengembangan Kebijakan Departemen Luar Negeri, "Laporan Lengkap Pertemuan Kelompok Ahli "Indonesia Menuju Ratifikasi the Rome Statute of the International Criminal Court: Implikasi Hukum dan Pengimplementasiannya" Bandung 29-30 April 2008 (Complete Report on the Experts Meeting "Indonesia's Road to the Ratification of the Rome Statute of the International Criminal Court: Legal Implication and Implementation)," (Departemen Luar Negeri, 2008).

<sup>210</sup> Ibid.

<sup>211</sup> Djoko Susilo, along with Nursyahbani Katjasungkana, was also active in the PGA's advocacy on the accession to the Rome Statute.

<sup>212</sup> Departemen Luar Negeri Republik Indonesia, *Rapat Kerja Menteri Luar Negeri dengan Komisi I Dewan Perwakilan Rakyat Republik Indonesia 23 Juni 2008* (Jakarta: Sekretariat Jenderal Departemen Luar Negeri, 2008).

taking a wait-and-see approach. Meanwhile, in an interview with Hakristuti Harkrisnowo, she claimed that her office had sent the academic text that supported the ratification to the Office of the President, but received no feedback.<sup>213</sup>

The period of 2009-2014 was the last chance for the Yudhoyono presidency to finalise the ratification of the Rome Statute. Teuku Faizasyah, spokesperson for the Ministry of Foreign Affairs, reassured that the government remained committed to adopting the Rome Statute<sup>214</sup> and, according to Eva Kusuma Sundari, a member of parliament from PDI-P Party, President Yudhoyono sent a letter to President ICC Song Sang-Hyun in 2012 to confirm Indonesia's commitment to the Rome Statute accession.<sup>215</sup> In reality, there were no significant changes undertaken by the government to complete the plan. Interestingly, the Ministry of Foreign Affairs, which had been supportive of the ICC, had now altered their position on the Rome Statute of the ICC. Marty Natalegawa, who served as Indonesia's representative at the United Nations, said that the ICC was not a "panacea to abolish impunity", and added:

There are other ways and means by which Indonesia can demonstrate [its] opposition to impunity and promote of human rights. While we are yet to ratify the ICC, there are important elements of the statute that have been taken to on board our national legislations on human rights.<sup>216</sup>

Wirajuda, who met with Commission I on 22 June 2009, highlighted some of the issues that were still being debated in the Ministry of Law and Human Rights:

At the Rome Conference in 1998, Indonesia gave its support to the creation of the ICC that is based on the complementarity principle. Indonesia also tried to push for the opt-in procedure on the basis that it reflects the complementarity principle because it requires the consent of state before the ICC begins its investigation... But the result of the Rome Conference in 1998, as laid down in the Rome Statute, adopted the inherent jurisdiction that bestows the prosecutor with extensive power (*proprio motu*) to investigate crimes within the ICC jurisdiction. This inherent principle, along with the *proprio motu* procedure weakens the complementarity principle, because the ICC prosecutor can initiate an investigation based on the report or complaints that they have been received.<sup>217</sup>

Wirajuda mentioned the incompatibility of the Indonesian legal system with the ICC: "Indonesia needs more time to adjust its legal system, in particular, the completion of its Criminal Code Law and its Procedures", and the lack of qualified human resources: "Indonesian judges and prosecutors are not qualified in dealing with gross human rights violations, including crimes against

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<sup>213</sup> Harkrisnowo, interview.

<sup>214</sup> Ary Hermawan, "RI Committed to Ratifying ICC, but Doubt Remains," *The Jakarta Post*, 5 May 2009.

<sup>215</sup> Eva Kusuma Sundari, "Support the Ratification of the Rome Statute, Generals," *ibid.*, 16 December 2013 2013.

<sup>216</sup> Ary Hermawan, "ICC Ratification No Panacea to End Impunity: Marty," *ibid.*, 12 June 2009.

<sup>217</sup> Departemen Luar Negeri Republik Indonesia, *Rapat Kerja Menteri Luar Negeri dengan Komisi Dewan Perwakilan Rakyat Republik Indonesia 22 Juni 2009* (Jakarta: Sekretariat Jenderal Departemen Luar Negeri, 2009).

humanity.”<sup>218</sup> Wirajuda also said that Indonesia was still waiting developments regarding the crime of aggression which, at that time, was not yet clearly defined in the Rome Statute.<sup>219</sup>

Based on our observation, there had been no significant improvement on the discussion regarding the crime of aggression and act of aggression, and the correlation between the UNSC Resolution and the ICC jurisdiction in regards to the act of aggression. The resolution of this matter is important for Indonesia in order to guarantee the independence of the ICC and to prevent the politicization of issues in the future.<sup>220</sup>

The blunt assessments provided by Natalegawa and Wirajuda may have been caused by several factors. Firstly, the Ministry of Foreign Affairs officials realised that ICC is problematic with respect to the relationship between the Court and the UNSC. Secondly, the waning support for the ICC may have also resulted from the backlash coming from the African countries against the ICC, which they claimed had treated them unfairly.<sup>221</sup> In this regard, Komar commented that:

We have observed the trend where several African countries withdrew their membership from the ICC. Even though some of the cases were referred to the Court by these African countries, we could not ignore the negative sentiment shared by them. While we still open to the idea of the ratification, we took the current dynamic like the one happened in Africa as a consideration too.<sup>222</sup>

These circumstances made it harder for officials from the Ministry of Foreign Affairs to convince their colleagues at the Ministry of Defence. As a result of the inability to break the stalemate they had with the Ministry of Defence, optimism on the Rome Statute and the ICC faded.

The climax of the Rome Statute’s adoption plan was when, in May 2013, Purnomo Yusgiantoro, the Minister for Defence, stated that Indonesia had abandoned plans to adopt the Statute.<sup>223</sup> His remarks undermined the letter sent to the President of ICC by Yudhoyono on 20 April 2012 that stated that

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<sup>218</sup> Ibid., 26.

<sup>219</sup> When the Diplomatic Conference in 1998 adopted the Rome Statute and listed four serious human rights crimes, the participants did not agree upon the definition of crime of aggression. In 2010, during the Review Conference of the ICC in Kampala, Uganda, an agreement was made on the definition of crime of aggression. The participants also agreed to amend the Rome Statute of the ICC in order to provide mandate for the Court to exercise the jurisdiction over crime of aggression. The activation of this jurisdiction began on 17 July 2018 following the resolution made during a special session of the Assembly of State Parties to the Rome Statute of the ICC in December 2017. "Assembly activates Court’s jurisdiction over crime of aggression," 2017, International Criminal Court, accessed 9 October 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1350>

<sup>220</sup> Departemen Luar Negeri Republik Indonesia, *Rapat Kerja Menteri Luar Negeri dengan Komisi Dewan Perwakilan Rakyat Republik Indonesia 22 Juni 2009*, 28.

<sup>221</sup> Several African states, such as Kenya, South Africa, and Burundi have expressed some complains that that the ICC has been biased towards African countries. These states then threatened to withdraw their membership from the ICC; Burundi became the first to pull out from the Court in October 2017 and South Africa has been flip-flopping on its decision to withdraw. Despite the imperfection of the Court, analysts argue that critics on the unfairness of the ICC towards the African states is not entirely true because some of the cases tried in the Court were submitted by the African countries themselves (e.g. Central African Republic (CAR), Côte d’Ivoire, Democratic Republic of the Congo (DRC), Mali, and Uganda). Research on the opposition of the Court also demonstrates the domestic politics factor where some governments avoided to be held accountable for the wrongdoings. See: Torque Mude, "Demystifying the International Criminal Court (ICC) Target Africa Political Rhetoric," *Open Journal of Political Science* 7, no. 01 (2016); The Guardian, "Burundi becomes first nation to leave international criminal court," 28 October 2017; Manisuli Ssenyonjo, "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia," *Criminal Law Forum* 29, no. 1 (2018).

<sup>222</sup> Komar, interview.

<sup>223</sup> Aritonang, "Govt Officially Rejects Rome Statute."

Indonesia was still committed to ratifying the Rome Statute. Yusgiantoro's statement also thwarted the work of the Deputy of the Minister for Law and Human Rights who had travelled to the ICC headquarters in the Netherlands a few months earlier.<sup>224</sup> It should be made clear here that Yusgiantoro's statement cannot be viewed as a decision from the Minister for Defence to overrule the government's human rights policy (RANHAM) nor that the Ministry of Defence has an overreaching power over the other ministries. The Minister's comment cannot also be taken as an official statement from the Yudhoyono administration—the final decision should have come from the office of the President himself. However the circumstances surrounding the issue of the Rome Statute had been vague since there was no clear signal coming from the government on the status of the plan to ratify the Rome Statute. The situation became even hazier since the deadline to adopt the Rome Statute coincided with the 2014 presidential election. Rumours abounded that the postponement of the Rome Statute adoption was related to the presidential election where Prabowo Subianto, who was removed from his military position for his involvement in kidnapping pro-democracy activists in 1998, planned to run for president.<sup>225</sup>

The uncertainty on the fate of the Rome Statute had drawn criticisms on the seriousness of the government with its human rights policy. Marzuki Darusman pointed out this subject as well as how Indonesia's human rights policy had been swayed by the elements within the government itself—an opinion shared by the other respondents interviewed on this matter:

I think that the government is not serious in implementing its human rights plan. They are doing it half-heartedly, not because they did not want to do it, but because of the pressures coming from the inside of the government. [In regards to the Rome Statute] it implies that TNI still has enormous influence on this subject.<sup>226</sup>

In the report of the officials from the Ministry of Law and Human Rights who visited the ICC headquarters in 2013, it is mentioned that the Ministry of Law and Human Rights planned to include staff from the military headquarters in an inter-department meeting to discuss the Rome Statute, however this proposal was never realised as the government was preoccupied with preparations for the 2014 presidential election. Darusman's assumption has a ring of truth to it; if Yudhoyono had the political will, he could have broken the logjam between the ministries regarding

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<sup>224</sup> According to the report from the Ministry of Law and Human Rights officials who travelled to the Hague, the bill draft to ratify the Rome Statute was on the last revision and almost ready to be sent to the parliament. It was planned that after returning to Indonesia, the office of the Ministry of Law and Human Rights would convene to discuss the finalization of the draft bill. The Ministry of Law and Human Rights also planned to have an inter-department meeting with the Ministry of Defence (the last meeting that they had was on 14 November 2011). The report also mentioned the scheme to invite staffs from TNI headquarters in the inter-department meeting and to encourage the Indonesian Coalition of Civil Society for the ICC to communicate with the parliament to discuss about the ratification of the Rome Statute. Ministry of Law and Human Rights Republic Indonesia, "Official Visit Report to the Netherlands," (2013).

<sup>225</sup> Prabowo entered the 2014 presidential race but then lost to his contender, Joko Widodo. Zulhidayat Siregar, "Hikmahanto Duga Prabowo-SBY Bahas Langkah Denny Indrayana," *Rakyat Merdeka Online*, 13 March 2013.

<sup>226</sup> Darusman, interview.

the status of the Rome Statute. Moreover, he could have at least tried to improve the legal foundation that could strengthen the reason to adopt the Rome Statute, such as revising the Penal Code, the Law on Truth and Reconciliation that was annulled by the Constitutional Court in 2006 or amending the Law on Human Rights Courts. Yudhoyono's indecision on this matter, as well as in regards to resolutions to other human rights issues such as past wrongdoings, only resulted in the criticism that he was being insincere about his commitment to human rights promotion and protection.<sup>227</sup>

## 5.7 Conclusion

This chapter has shown how post-Suharto governments have perceived human rights. Unlike during the Suharto years, human rights have been accepted because they contribute to Indonesia's new identity as a democratic country. The democratisation process that took place in 1998 played a significant role in changing the perception of the government on human rights. It was during the transitional periods that Indonesia established its human rights legal framework from ratifying international human rights and amending the constitution to include human rights provisions, to strengthening the powers of the human rights commission. However, it cannot be emphasised enough that Indonesia took this direction because of the pressure coming from both inside and outside of the country. In addition, since the process of transforming into a democracy was embarked upon without total reform to the political system, the post-Suharto governments found it hard to implement some of their human rights policies. This can be seen by how the government was unable to solve past human rights crimes perpetrated by the Suharto regime.

The analysis on Susilo Bambang Yudhoyono's administration produced an interesting view on the development (or the lack thereof) of human rights in Indonesia. Yudhoyono actually enjoyed a supportive and conducive setting for the implementation of human rights policy. He did not suffer from problems of legitimacy because he secured his presidency through a direct election in 2004. He also received the support of civil society to further improve democracy and human rights in Indonesia. Throughout his ten years as President, he was able to propagate Indonesia's image as a thriving country that upheld democracy and human rights.

However, the realisation of human rights policy in Indonesia has been constrained by the multiple actors within the government itself. The case of the plan to adopt the Rome Statute was an example that reflected the various actors involved in determining human rights policy in Indonesia. As shown in the analysis, not all of the elements within the government supported the adoption of

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<sup>227</sup> KOMPAS, "SBY Dinilai Tak Sungguh-sungguh Selesaikan Kasus HAM," 23 September 2012.

Rome Statute of the ICC. The Ministry of Defence, which is closely tied to the armed forces, was unfavourably inclined to the treaty in fear that the Rome Statute would be used against Indonesia's security forces. Meanwhile, supporters of the Rome Statute, such as the Ministry of Foreign Affairs, Ministry of Law and Human Rights and Indonesia's human rights commission, Komnas HAM, failed to correct the misperceptions around the ICC and convince the Ministry of Defence of the significance of the Rome Statute for Indonesia. Essentially, the disagreement between the ministries could have been ended if the President had been willing to break the deadlock. However, looking back at Yudhoyono's indecision on human rights issues—the unresolved past human rights abuses and the ambiguity regarding the protection of the rights of minorities (e.g., the Ahmadiyah case)—it can be argued that his equivocation contributed to the his administration's inability to execute its human rights policy, including the commitment to adopt international treaties such as the Rome Statute of the ICC.

## CHAPTER 6 CONCLUSION

Overall, this thesis has shown that in post-authoritarian Indonesia human rights are only regarded as the elements needed to support Indonesia's status as a democratic country. During the transitional period, human rights were finally recognised and actualised by the government in the form of regulations and institutions. However, since the priority of the transitional government was to dismantle Suharto's authoritarian legacy and to meet the demands coming from inside and outside Indonesia for the country to democratize, the issue of improving human rights was not a priority.

Moreover, this thesis has demonstrated how significant the political environment created under the period of democratic transformation has been to the trajectory of human rights development in Indonesia. First of all, the end of Suharto era did not mean the culmination of the elites from *Orde Baru* as they were too powerful and too influential in Indonesian politics. As a result, Indonesia's democratization was characterised by the compromise reached between the old establishment and the new elites. As the thesis findings indicate in the following section, this resulted in the unsatisfactory outcomes for Indonesia's human rights policy.

Thus, in this chapter I will first summarise the findings regarding the politics surrounding human rights in Indonesia. Following this, I set out how this study that highlights the setbacks to the promotion of human rights contributes to the discussion regarding human rights in Indonesia.

### 6.1 Thesis Findings

The discussion chapters (Chapters 3-5) have demonstrated the politics of human rights in Indonesia after the Suharto era ended that has been influenced by the democratic transition that was characterised by agreements between old and new elites.

After laying out the historical background on how authoritarianism rose and the *Orde Baru* regime shut down human rights in Chapter 2, Chapter 3 sets the tone for the argument that the obstacle to the normalisation of human rights norms stems from the survival of elements of *Orde Baru* during *Reformasi*. Thus, despite the fact that the transitional government demonstrated a shift in accepting human rights as Indonesia was going through a democratic transformation, the penetration of human rights norms was contingent upon whether or not they competed with the interests of the old regime. How the elements of the old regime confronted human rights norms was explained through the analysis of the East Timor crisis. The violence that followed the East Timor referendum was said to be premeditated by Indonesian security forces, and this circumstance sparked international

condemnation and a demand for an investigation and an international tribunal to try the perpetrators of human rights abuses. This is where the case study of the Rome Statute of the ICC in Indonesia has been crucial, because it has provided valuable information on how political elites reacted to human rights discourse.

Chapter 3 demonstrated how the crisis in East Timor challenged the political setting formed during *Reformasi*, including the relationship between Habibie, as the transitional President, and the military. As shown in the discussion, Habibie did not have the capacity to completely overturn the old system where he himself was part of the past regime. This caused tremendous implications for the execution of the *Reformasi* agenda that related to human rights promotion and protection. In regards to military reform, for example, Habibie was allowing the military handle its internal reforms without establishing an accountability mechanism due to his dependency on the military to support his government. It is arguable that the dynamic between the military and the elites, which were mostly from *Orde Baru*, contributed to the decision of how the East Timor case was finally settled in a domestic court rather than an international tribunal that could potentially expose more of *Orde Baru*'s wrongdoings. Another important issue that Chapter 3 discussed is how the pro-military interest groups were instrumental in interfering with the East Timor crisis. This could be seen in the drafting of Law No. 26/2000 on Human Rights Court that adopted some provisions from the Rome Statute of the ICC and exempted senior officials from being held accountable before the court. Interference in the East Timor case was also notable during the East Timor trials, which led to criticism on how poorly Indonesia was handling the trial. Since the end of the East Timor trials, Indonesia has not updated or amended the Law on Human Rights Court, despite the fact that the law was criticised for its errors. This has signalled a lack of seriousness in ending the impunity culture in Indonesia and put the plan to adopt the Rome Statute of the ICC in doubt.

Chapter 4 pointed out the condition of civil society in Indonesia and the complication that civil society groups faced in promoting democracy and human rights in post-Suharto Indonesia. Indonesia's civil society, which had been weakened in its political resources by Suharto's regime, was unorganized and divided following the resignation of Suharto. The division among civil society groups was notable in the issue of dealing with past human rights abuses where some groups demanded justice through trial and repatriation while the others focused on seeking reconciliation. This disagreement can be seen as a missing opportunity as the civil society groups failed to use the *Reformasi* momentum to generate public support to pressure the new government to settle the past human rights problems.

Chapter 4 also displayed how *Reformasi* has created opportunities for civil society groups to grow as the defenders of democracy and human rights causes. The development of democracy in Indonesia has also allowed them to engage with the government in promoting their causes. This is in contrast to the *Orde Baru* era where the government closely monitored the activities of pro-democracy groups. However, *Reformasi* also created some challenges from divisiveness in addressing issues of financial matters which, in the end, has impacted the sustainability of their campaigns.

The study on the Civil Society Coalition for the ICC in Indonesia (*Koalisi Masyarakat Sipil untuk Mahkamah Internasional*) demonstrated the above premise. On the one hand, the Coalition has provided an example of how civil society groups in post-Suharto Indonesia have been actively approaching the decision makers from the Government's ministries and the Parliament in discussing the ratification of the Rome Statute. The Coalition has also attempted to reach out to the broader community, through seminars, broadcast programs and printed publications, in voicing the need to ratify the Rome Statute of the ICC. In advocating for the adoption of the Rome Statute in Indonesia, the Coalition has also relied on the international network of non-governmental organisations that were campaigning on a similar concern. Nevertheless, despite the above progress, the Coalition still suffers from long-standing problems. The Coalition, for example, has been dependent on financial assistance from international donors. As the funding shrunk, the campaign for the Rome Statute of the ICC also (and consequently) stalled. As a result, the urgency of the issue that the Coalition was advocating for weakened.

While chapters 3 and 4 look at how the military contested human rights issues and how civil society groups' organisational problems affected the human rights campaign in Indonesia, Chapter 5 argued that another obstacle to the normalisation of human rights in Indonesia came from internal conflict within government bodies on human rights issues. This condition has its roots in the particular characteristics of the transitional period where the influence of the old regime remained strong, especially in the people who held positions in the bureaucracy. Habibie, as the interregnum leader, began the transformation by adopting several policies, such as electoral reform and deregulating Suharto's rules that suppressed civil rights. Habibie also issued several human rights policies from ratifying human rights treaties and setting up a national action plan on human rights to empowering the human rights commission. Habibie's decision to democratise the country could not be separated from the environment that surrounded *Reformasi*. He was facing demand coming from the public, as well as from the international community, to liberalise the state. However, as shown in Chapter 3, Habibie's actions were constricted by the political constellation after Suharto resigned from office. He, for example, was dependent on the support of the military, whose influence was deeply

entrenched in Indonesia's political system. The transactional relationship between Habibie and the military had resulted in the inability of the government to control the reform route that the military undertook. It is arguable that the relationship between Habibie and the military influenced his administration's abandonment of the demand to address human rights violations that took place during Suharto era. Habibie's successors unfortunately did not do much to fulfil the appeal coming from the people, especially from the victims' families.

Unintentionally, Indonesia's democratisation process was also affected by the separation of East Timor from Indonesia. The chaos that followed East Timor's referendum in 1999 resulted in a number of human rights violations. Indonesia was then forced to take immediate action in order to avoid international prosecution, as had occurred with the Yugoslavia and Rwanda trials. The assertion that Indonesia would handle the case within the country led to the issuance of the Law on Human Rights Court in 2000. However, the trials of the East Timor offenders were heavily criticised for the lack of independence and professionalism coming from the Attorney General's Office and the Court, which resulted in decisions that were biased towards Indonesia's security forces.<sup>1</sup>

At the same time, when former elites from the old regime who had remained in positions of power challenged the implementation of human rights norms—as can be seen from the East Timor trials—other government bodies embraced human rights for a different purpose. The Ministry of Foreign Affairs, for example, adopted the language of democracy and human rights into Indonesia's foreign policy to cultivate Indonesia's identity as a democratic state. This feature significantly affected the confidence of Indonesia to become more active in participating in international forums, a contrasting direction to *Orde Baru's* subtle foreign policy approach. The utilisation of democracy and human rights to boost Indonesia's international standing was notable during the presidency of Susilo Bambang Yudhoyono that became the central focus of Chapter 5. Despite his relative success in achieving this goal, Yudhoyono's presidency revealed the gaps between Indonesia's foreign and domestic policies on human rights. While in the international forum, Indonesia participated in the international democracy and human rights initiatives, as can be seen by the willingness to submit to the Universal Periodic Review mechanism at the United Nations, inside the country, Yudhoyono's presidency faced significant problems in actualising its policy on human rights. Some of the issues were created and passed on by the transitional governments before Yudhoyono, such as unresolved past human rights violations, the delay in legal reform and the lack of ability to fully control the military. But other concerns, as one of the respondents pointed out,

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<sup>1</sup> Cohen, "INTENDED TO FAIL The Trials Before the Ad Hoc Human Rights Court in Jakarta."

have been related to how the government in post-authoritarian Indonesia have played down human rights as an administrative issue with targets set that eventually were missed or ignored rather than a matter of the state's responsibility to protect its citizens. In this chapter, this particular concern has been explained in relation to how bureaucratic politics has also played a part in the indecision regarding the status of the Rome Statute of the ICC in Indonesia. This finding has added more insight to the previous studies on Yudhoyono's presidency that placed emphasis on the leadership of Yudhoyono as someone who was reluctant to take definitive action. As shown in Chapter 5, as part of introducing the newly democratised Indonesia to the world, the Ministry of Foreign Affairs was undergoing a democratic transformation that included the infusion of democracy and human rights rhetoric into its policies. Meanwhile, the military, as explained in Chapter 3, had its own transformation route that siloed the organisation from further democratic reform. As a result, the Ministry of Foreign Affairs and the Ministry of Defence, which represented the military's interests, have had a disagreement on issues such as human rights. For the Ministry of Foreign Affairs, Indonesia's participation in democratic and human rights initiatives is beneficial for Indonesia's image as the third largest democratic state in the world, whereas for the Ministry of Defence, some international initiatives are deemed unnecessary and seen to pose a threat to Indonesia's security.

To conclude, chapters 3-5 have highlighted the state of human rights in post-Suharto Indonesia. Essentially, *Reformasi* pushed the government to change its behaviour from being indifferent to accommodating human rights. The momentum of *Reformasi* has also driven Indonesia to establish human rights mechanisms (i.e., laws, policies, and human rights bodies). The actualisation of the human rights policy, however, is contingent upon whether or not the policy threatened the interests of political actors that were involved in the power struggle during *Reformasi*. It is also dependent on the interests of the government (the policymakers) despite the fact that human rights policy gained the support of civil society.

## **6.2 The Future of the Rome Statute of the ICC in Indonesia**

There is no simple answer when it comes to the topic of human rights in Indonesia. As this thesis has demonstrated, the issue of human rights is a convoluted subject that intermingles with other problems that Indonesia has faced since *Reformasi*. However, in the case of the plan to adopt the Rome Statute of the ICC in Indonesia, things could have been handled differently if the decision makers understood the importance of the Rome Statute for Indonesia. Firstly, Indonesia is a country that has gone through a dark past where the government abused its power by suppressing and

violating the people's rights for the personal gain of the few elites.<sup>2</sup> What is then the assurance that post-authoritarian government could prevent future mass atrocities from happening? At the time this thesis was written, the only legal avenue available to try serious human rights crimes in Indonesia is the Law on Human Rights Court that was issued in 2000. The law, which, as explained in this thesis, covers only two crimes (genocide and crimes against humanity), is in need of amendment because it was drafted hastily and contains several significant errors that undermine efforts to end impunity. Revising the law is not only a crucial step in accepting the human rights norms embodied in the Rome Statute on which the Law of Human Rights was based, but it is also important to strengthen the human rights mechanisms that Indonesia has developed since *Reformasi*.<sup>3</sup> As discussed in Chapter 3, amending the Law on Human Rights Court, especially in regards to expanding the mandate of Indonesia's Human Rights Commission as the main investigator, could also break the deadlock between the Human Rights Commission and the Attorney General's Office in resolving past human rights abuses.<sup>4</sup> Improving the Law on Human Rights Court is most certainly not the only human rights mechanism that the government of Indonesia has to work on. Learning from criticism directed at the process of the East Timor trials,<sup>5</sup> Indonesia must also improve the quality of its judicial system, most notably by recruiting people that hold qualifications in human rights law. Indonesia should also look at how other countries settled in regards to how they handled the past human rights violations. South Africa, for example, managed to create a restorative justice mechanism through establishing the Truth and Reconciliation Commission (TRC). While South Africa's TRC is not a perfect institution,<sup>6</sup> the government of South Africa at least demonstrated their willingness to acknowledge the dark history of their country.

Secondly, many of the counter arguments regarding the plan to ratify the Rome Statute of the ICC were unjustified and tended to be politically driven. The people that opposed the ratification, for example, claimed that by becoming a member to the ICC, Indonesia would allow a foreign entity to interfere with its domestic affairs. They also insisted that Indonesia should not rush the adoption of the treaty because the ICC is not an institution that receives support from powerful countries like the United States.<sup>7</sup> Pointing out the complementarity principle applied under the Rome Statute

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<sup>2</sup> Anderson, *Violence and the State in Suharto's Indonesia*; Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*; Budiardjo, "Militarism and Repression in Indonesia."; "Political Imprisonment in Indonesia."

<sup>3</sup> Yustina Trihoni Nalesti Dewi, Grant R. Niemann, and Marsudi Triatmodjo, "Indonesia's Human Rights Court: Need for Reform," *Asia-Pacific Journal on Human Rights and the Law* 18 (2017).

<sup>4</sup> Kompas, "Sesuai UU, Komnas HAM Minta Kejaksaan Sidik Pelanggaran HAM Masa Lalu," 6 August 2018; Dewi, Niemann, and Triatmodjo, "Indonesia's Human Rights Court: Need for Reform."

<sup>5</sup> Cohen, "INTENDED TO FAIL The Trials Before the Ad Hoc Human Rights Court in Jakarta."

<sup>6</sup> See: Mahmood Mamdani, "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)," *Diacritics* 32 no. 3/4 (2002).

<sup>7</sup> Aritonang, "Govt Officially Rejects Rome Statute."

could easily refute these claims. Under this norm, the national court is prioritised and the ICC will only become operational only under specific conditions.<sup>8</sup> But what makes the anti-ICC claims ironic is that the anti-ICC group is contradicting the principles of Indonesia's foreign policy where Indonesia intends to be active and independent and to "contribute to the implementation of a world order based on freedom lasting peace and social justice".<sup>9</sup> The misinformation regarding the Rome Statute and the ICC would not have happened if the government was consistent with its statements during the Rome Diplomatic Conference in 1998 that Indonesia's participation in the ICC negotiation is because Indonesia supports the notion that the ICC "will not only end impunity for heinous crimes, but also, the presence of the threat of prosecution will deter the perpetration of such despicable adventurism in the future."<sup>10</sup> This standpoint should be the main argument of the government in countering the opposition to ratify the Rome Statute but, as analysed in Chapter 3 and Chapter 5, the political development after *Reformasi*, from the East Timor crisis to the success of the military to exempting itself from the *Reformasi* agenda, has affected the trajectory of human rights policy in Indonesia. Furthermore, with the availability of basic information regarding the Rome Statute and the ICC, and the communication that the Indonesia government has built with the Court,<sup>11</sup> the government should have enough reasons to execute its plan to ratify the Rome Statute.

Lastly, studies have shown that the role of civil society groups in advocating human rights issues should not be undermined.<sup>12</sup> However, as highlighted in Chapter 4, social activism in post-Suharto Indonesia has experienced challenges that affected the sustainability of the activists' programs. In the case of the Civil Society Coalition for the ICC in Indonesia, the organisation has become dormant due to lack of financial support. What the Coalition struggled with is actually not uncommon for pro-democracy movement groups in Indonesia,<sup>13</sup> but this impacted the campaign for the Rome Statute in Indonesia, especially since President Joko Widodo, the successor to President Yudhoyono, neglected to include the Rome Statute of the ICC in his action plan on human rights.<sup>14</sup>

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<sup>8</sup> ICC, "Rome Statute of the International Criminal Court."

<sup>9</sup> Republic of Indonesia, "The Constitution of the Republic of Indonesia of 1945," ed. UNESCO.

<sup>10</sup> Minister of Justice Republic of Indonesia, "Statement by H.E. Mr. Muladi, minister for justice, head of delegation of the Republic of Indonesia before the plenipotentiaries conference of the establishment of the International Criminal Court Rome, 15-17 July 1998," 1-2.

<sup>11</sup> Sundari, "Support the Ratification of the Rome Statute, Generals."; Bagus B.T. Saragih, "Denny to leave for The Hague for study on Rome Statute," *ibid.*, 4 March.

<sup>12</sup> See: Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*; Richard Price, "Transnational Civil Society and Advocacy in World Politics," *World politics* 55, no. 4 (2003).

<sup>13</sup> Mikaela Nyman, "Civil Society and the Challenges of the Post-Suharto Era," in *Democratization in Post-Suharto Indonesia*, ed. Marco Bünte; and Andreas Ufen (Oxon: Routledge, 2009).

<sup>14</sup> In a revision to the Presidential Regulation No. 75/2015 in 2018, the Widodo administration only listed one human rights instrument—the International Convention for the Protection of All Persons from Enforced Disappearance—under the section on international human rights instrument. There is no exact deadline on when this treaty is going to be ratified. See: Presiden Republik Indonesia, "Peraturan Presiden Republik Indonesia Nomor 75 Tahun 2015 tentang Rencana Aksi Nasional Hak Asasi Manusia Tahun 2015-2019." (2015); "Peraturan Presiden Republik Indonesia Nomor

With this in mind, the pro-ICC group should look to adopt new strategies. As shown in Chapter 4, KontraS, one of the member groups of the Coalition, have taken the different approach of building a network with prominent leaders who share its ideas about the importance of the Rome Statute in Indonesia, and learning from NGOs from outside of Indonesia where the Rome Statute campaign succeeded. Another entry point that civil society groups could use to raise the awareness regarding the Rome Statute is through the reform of Indonesia's Criminal Code. It is known that the Indonesian government intended to add genocide and crimes against humanity provisions in the new Criminal Code, which will create confusion because Indonesia already has a law that regulates those crimes (Law No. 26/2000 on Human Rights Court). The concern regarding this move has been raised by NGOs that focus on legal reform.<sup>15</sup> The Civil Society Coalition for the ICC in Indonesia should also take the opportunity to stress this issue, because, as extraordinary crimes, genocide and crimes against humanity should be regulated outside of the penal code that defines and prosecutes regular crimes. Since Indonesia has Law No. 26/2000, the Indonesian government should either amend the law to adopt all criminal provisions from the Rome Statute, or ratify the treaty.

### 6.3 Research Implications

The implications of this thesis to the study of the development of human rights in post-Suharto Indonesia can be unpacked into several points.

First, this thesis has presented the complexity of human rights in post-Suharto Indonesia. *Reformasi* set a new tone for how the government of Indonesia reacted to human rights, from being dismissive to acceptance. The continuation of human rights progression, however, has been determined by the evolution of Indonesia's politics after *Reformasi*, where some elements of the past regime survived and continued to influence Indonesia's politics. Scholars have examined the political landscape during *Reformasi*, which was marred by the efforts of political players from the past regime to secure their own interests.<sup>16</sup> The research on the effect of *Reformasi* on government ministries has shown how different the democratisation process unfolded in each ministry. The Ministry of Foreign Affairs, for example, was quick to adapt to democracy because of its primary role of

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33 Tahun 2018 tentang Perubahan Atas Peraturan Presiden Nomor 75 Tahun 2015 tentang Rencana Aksi Nasional Hak Asasi Manusia Tahun 2015-2019." (2018).

<sup>15</sup> Abidin and Eddyono, *Degradasi Extraordinary Crimes Problematika Perumusan Kejahatan Genosida, dan Kejahatan Terhadap Kemanusiaan dalam RKUHP*; Edyono, *Catatan terhadap Beberapa Ketentuan dalam Rancangan KUHP 2015*.

<sup>16</sup> See: Robison and Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*; Malley, "Beyond democratic elections: Indonesia embarks on a protracted transition."; King, *Half-hearted reform: electoral institutions and the struggle for democracy in Indonesia*.

presenting a democratic Indonesia in the international forum.<sup>17</sup> In contrast, the Ministry of Defence still retained domination of the military at the cost of civilian agency.<sup>18</sup> All of these developments have influenced how human rights norms have been socialised in Indonesia. Previous research on human rights in Indonesia has demonstrated the impact of *Reformasi* where the government was faced with enormous pressure from within and outside of the country to reform Indonesia's policy on human rights.<sup>19</sup> This has changed with the evolution of Indonesia's foreign policy as Indonesia, through the Ministry of Foreign Affairs, became more assertive in talking about democracy and human rights.<sup>20</sup> This thesis offers another insight where bureaucratic politics matters played a part in shaping Indonesia's human rights policy. The case study of the adoption of the Rome Statute of the ICC has brought to light how each of the ministries implicated with the treaty has different views on the Rome Statute. It is unfortunate that Yudhoyono, who became the president on the premise of enhancing Indonesia's democracy, was not able to formulate a solution to break the logjam within his own cabinet.

Second, this thesis has highlighted the role of Indonesia's civil society groups in advocating for human rights causes, a topic that needs to be explored in greater detail in the study of the development of human rights in Indonesia. This thesis examined the case of Indonesia's Civil Society Coalition for the ICC in campaigning for urgent adoption of the Rome Statute. This thesis has shed light on the opportunities and challenges in human rights promotion from the perspective of civil society. While the organisation failed to push the government to adopt the Rome Statute, the Coalition has demonstrated a new outlook in post-Suharto Indonesia where the engagement between the government and civil society has become a regular exercise in contrast to the *Orde Baru* period when the government isolated itself from civil society.

In regards to areas for further research, there are several topics related to the study of human rights in Indonesia that are deserving of deeper exploration. Since human rights protection is related to the termination of impunity culture in the military, a thorough study on the continuation (or lack thereof) of military reform and the trajectory of the relationship between civilian government and the military in Indonesia is essential. In addition to this, it is also important to do more research on civil society groups that focus on advocating for military reform issues, either in their engagement with the government, the parliament, or in their works of supporting the victims of State violence. Lastly, and most importantly, it is also worth to study how the education system in Indonesia

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<sup>17</sup> Greta Nabbs-Keller, "The Impact of Democratisation on Indonesia's Foreign Policy" (Thesis, Griffith University, 2013).

<sup>18</sup> Sukadis, "Reformasi di Kementerian Pertahanan RI."

<sup>19</sup> See: Hosen, "Human Rights and Freedom of the Press in the Post-Soeharto Era: A Critical Analysis."; Prasetyo, "The Power(less) of Ratification: Holding the State Responsible for Human Rights Respect in Indonesia."

<sup>20</sup> Mukhlis, "Indonesia's Human Rights Policy Shift and Continuity 1945-2014: A Neoclassical Realism Perspective."

supports the teaching of human rights in the educational institutions as misinformation on human rights issues could potentially harm the progress of human rights in Indonesia.

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### Appendix 1. List of Respondents

No.	Name	Occupation	Date of Interview
1.	Anonymous	Former official from Ministry of Defense	26/07/2016
2.	Anonymous	Officials from Ministry of Law and Human Rights	12/10/2016
3.	Dewi Fortuna Anwar	Academic and Deputy Secretary for Political Affairs to Vice President of Indonesia	19/09/2016
4.	Dicky Komar	Official from Ministry of Foreign Affairs	15/11/2016
5.	Enny Soeprapto	Former Komnas HAM Commissioner	23/06/2016
6.	Fadillah Agus	Lawyer & trainer on international humanitarian law	11/10/2016
7.	Ferry Adamhar	Official from Ministry of Foreign Affairs	10/10/2016
8.	Hakristuti Hakrisnowo	Former official from Ministry of Law and Human Rights	08/06/2016
9.	Hikmahanto Juwana	Academic	08/11/2016
10.	Ifdhal Kasim	Former Komnas HAM Commissioner	07/06/2016
11.	Marzuki Darusman	Former Attorney General and Member of Parliament	07/09/2016
12.	Mugiyanto	NGO	12/10/2016
13.	Puri Kencana Putri	NGO	30/09/2016
14.	Roichatul Aswidah	Komnas HAM Commissioner	22/06/2016
15.	Ruben Sumigar	NGO	16/11/2016
16.	Sri Yanuarti	Researcher at LIPI	17/10/2016
17.	Supriyadi Eddiyono	NGO	24/08/2016
18.	Todung Mulya Lubis	Human rights lawyer	09/06/2016

**Appendix 2. Keputusan Presiden Republik Indonesia Nomor 40 Tahun 2004  
Tentang Rencana Hak Asasi Manusia Tahun 2004-2009**

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**Appendix 3. Peraturan Presiden Republik Indonesia Nomor 23 Tahun 2011  
Tentang Rencana Hak Asasi Manusia Tahun 2011-2014**

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**Appendix 4. *Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang  
Pengadilan Hak Asasi Manusia***

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[http://www.dpr.go.id/dokjdi/document/uu/UU\\_2000\\_26.pdf](http://www.dpr.go.id/dokjdi/document/uu/UU_2000_26.pdf)