The Relationship Between Criminal Courts and Truth and Reconciliation Commissions Truth and Reconciliation Commission (TRC) and Truth and Friendship Commission (TFC)

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Abstract

This research explores the complex relationship between criminal courts, both national and international, truth and reconciliation commissions (TRC), and the Truth and Friendship Commission (TFC) in the context of resolving gross human rights violations in Indonesia. Examining the legal frameworks, the study delves into the dilemma surrounding the prosecution of perpetrators versus the forgiveness approach adopted by TRC/TFC for the sake of national unity. Drawing on Geoffrey Robertson's perspective, it questions the feasibility of pardoning heinous crimes and emphasizes the role of courts in establishing democratic legitimacy. The research aims to clarify criteria for utilizing ad hoc Human Rights Courts and TRC, considering provisions from MPR Decree No. V/MPR/2000 and Law No. 26/2000 on Human Rights Courts. Understanding TRC/TFC as extra-judicial institutions, the study discerns their limitations, specifically addressing human rights violations predating Law No. 26/2000. The research utilizes legal analyses and explores the implications of different approaches on justice, societal trust, and democratic consolidation. Ultimately, it seeks to contribute insights into the effective resolution of past human rights abuses and their impact on Indonesia's legal and social fabric.

Keywords: gross human rights violations, TRC, TFC.

Gross human rights violations that occurred in the past have caused suffering for victims. Victims not only experience physical suffering, but also social, political and economic suffering. In fact, this suffering does not end immediately, in the sense that victims remain as victims who have never experienced resolution. Therefore, it is not wrong to say that victims have experienced prolonged suffering.

The resolution of gross human rights violations that occurred in Indonesia was attempted when the reformation began in 1998. It was during this period of reform that pressure to pay attention to human rights and the legal

process for human rights perpetrators began to show its role.

Several pieces of legislation relating to human rights have been created to legally prosecute human rights violators. For example: Law No. 39/1999 on Human Rights, which came into force on 23 September 1999, Law No. 26/2000 on Human Rights Courts, which came into force on 23 November 2000.

which came into force on 23 November 2000, and Law 27/2004 on the Truth and Reconciliation Commission which came into force on 6 October 2004. In addition, former Foreign Minister Hassan Wirajudha announced the establishment of the Truth and Friendship Commission (TFC) during the first session of the United Nations Human Rights Commission 61 in Geneva, Switzerland; that is, when speaking in a session devoted to hearing reports from the 53 member states of the commission on the human rights situation in their respective countries (high level segment). The establishment of the TFC on 14 December 2004 was a joint agreement with the government of Timor Leste. President Bambang Susilo Yudhoyono and President Xanana Gusmao signed the agreement on 9 March 2005 (Arief, 2012; Webster, 2018).

Gross human rights violations, as in many countries, cannot be separated from the political conditions during the reign of a regime. Calls for the prosecution of human rights violators generally indicate that they occurred at a time when a regime had succeeded in replacing a regime that, when it was in power, had committed many gross human rights violations, resulting in a large number of victims. Thus, the resolution of human rights violations always begins when there has been a change of power, and gross human rights violations always occur in the past. For this reason, trials for gross human rights violations are always conducted by applying the principle of retroactivity.

Not only in Indonesia, in several countries that experienced authoritarian rule and succeeded in defeating and replacing authoritarian rule with a democratic government, experienced a transition period that wanted gross human rights violations to be tried through the legal process. Settlement through the legal process (ad hoc courts) is considered to create national disintegration.

The research addresses the complex relationship between national or international human rights courts, both permanent and ad hoc, and Truth and Reconciliation Commissions (TRC) or Friendship Commissions (TFC), exploring the extent of their interplay in addressing past human rights violations.

"To what extent is the relationship between criminal courts such as national or international human rights courts, permanent or ad hoc, and TRC and/or TFC?"

The discussion of TRC and/or TFC to resolve past human rights violations is a dilemma. On the one hand, gross human rights violations are said to be hotis humanis generis, as the enemy of mankind, so the perpetrators are said to be erge omnes (McGregor & Setiawan, 2019; Webster, 2017). They should be punished. Wherever they go, they can be arrested and punished by any country. Jurisdiction always follows where it goes, and there is no place to take refuge. On the other hand, the TRC and/or TFC in resolving the problem chose to pardon, after a certain process, the perpetrators of gross human rights violations. This means that the philosophy of the TRC and/or TFC is that "for the sake of national unity, gross human rights violations that occurred in the past can be forgiven, not forgotten, by first uncovering the truth". This requires acknowledgement by the perpetrators of past human rights violations, followed by an apology to the state and the victims who have suffered.

Geoffrey Robertson QS in "Crimes Against Humanity, The Struggle For Global Justice" (Penguin Books, London, 2000, p. 266), as quoted by Made Darma Weda, said:

It is unacceptable that state torturers and assassins should go scot free: confessions, followed by pleas of guilty and evidence against colleagues and superiors, may earn pardons or light sentences but it is absurd to believe that

such crimes will be forgiven or that reconciliation with families or victims is possible (Keman, 2011; Strating, 2014).

What a new regime or a new democracy needs most is legitimacy as a basis for political stability. Courts are seen as essential to demonstrate the supremacy of democratic values and norms in order to gain the trust of the people. Failure to prosecute, on the other hand, can lead to popular cynicism and distrust of the political system. Some analyses believe that courts can enhance long-term democratic consolidation. One argument is that if no crimes are investigated and prosecuted, there will be neither trust nor democratic norms in society and thus no real democratic consolidation (Keman, 2011; Schmidtke, 2017).

It is argued that the legal process, in this case bringing past criminals to justice, during and after the transitional government is crucial. This is because this process has a major role to play in efforts to eliminate the practice of impunity and other 'preferential treatment' previously enjoyed by state leaders and high-level state officials who violated human rights in the past. According to the arguments above, trials as a legal process to end impunity have become a key requirement for success in upholding justice in the future (Marzuki & Ali, 2023; Otsuki, 2008).

Many atrocities in the past have been allowed to go unpunished, which has not only led to a loss of confidence in Indonesia's legal system, but has also threatened the social fabric of society. Lately in Indonesia, it seems that people no longer believe in the legal system and its enforcers. What happens then is that people try to find their own form of law, which sometimes takes the form of violence such as: 'street courts' or other forms of vigilantism, which are also forms of human rights violations.

While trials are important, many doubt that due process alone is sufficient to address past human rights violations, especially when they are attempted during a time of transition when political stability has not yet been achieved. Another argument against litigation is that newly established democracies are fragile structures.Some analyses therefore argue that tolerance in dealing with past abuses is a condition for democratic processes to survive.President Sanguinetti of Uruguay stated that the conditions of transition in his country are a difficult choice: "Which is more just, consolidating the security of the country where human rights can then be guaranteed or seeking retributive justice that could threaten that peace?" (Chandranegara, 2019; Pahri, 2017).

In relation to issues relating to the TRC, there are several legal bases that require the establishment of a TRC. In Chapter V number 3 of MPR Decree Number V/MPR/2000 on Strengthening National Unity and Integrity, it states:

"Establish a National Truth and Reconciliation Commission as an extra-judicial institution whose number of members and criteria are determined by law. The commission is tasked with upholding the truth by revealing past abuses of power and human rights violations, in accordance with the provisions of applicable laws and regulations, and carrying out reconciliation in the perspective of the common interests of the nation. Steps after the disclosure of the truth may include admission of guilt, apology, forgiveness, peace, law enforcement, amnesty, rehabilitation or other alternatives that are beneficial to upholding national unity and integrity with full regard to the sense of justice in society."

In addition to the MPR Decree, Law No. 26/2000 on Human Rights Courts, specifically Article 47 paragraph (1) states that: "Gross human rights violations that occurred prior to the enactment of this law do not rule out the possibility of resolution by the Truth and Reconciliation Commission." While in paragraph (2) it states that: "The Truth and Reconciliation Commission as referred to in paragraph (1) shall be established by law."

If the provisions of Article 47 are linked to Article 43 of Law No. 26/2000 which states that: "Gross human rights violations that occurred

prior to the enactment of this law shall be examined and decided by an ad hoc Human Rights Court;" thus, according to Law No. 26 of 2000, there are two ways to resolve gross human rights violations, namely through an ad hoc Human Rights Court and a TRC. The problem is which human rights violations will be resolved through the ad hoc Human Rights Court and which will be resolved through the TRC, and what criteria will be used to use these institutions.

RESEARCH METHOD

The research method employed in this study involves a document analysis and literature review approach. Document analysis is used to identify and evaluate the legal framework and policies related to the handling of human rights violations in Indonesia, with a focus on Law No. 39/1999 on Human Rights, Law No. 26/2000 on Human Rights Courts, and Law No. 27/2004 on the Truth and Reconciliation Commission (TRC). Literature review is utilized to comprehend the fundamental concepts of addressing human rights violations, the role of Truth Commissions, and the relationship between human rights courts, Truth Commissions, and Friendship Commissions.

Furthermore, this research incorporates a conceptual analysis by examining the perspectives of various experts such as G. O'Donnell, P.C. Schimitter, Samuel P. Huntington, and Jűrgen Habermas on the dilemmas faced by new democratic governments in dealing with past human rights violations (Pereira, 2021; Schmidtke, 2017). A comparative approach is employed to compare Indonesia's experience with other countries undergoing democratic transitions.

Data for this research primarily come from legal documents, books, and scholarly articles related to human rights violations in Indonesia, the role of Truth Commissions, and human rights courts. Data analysis will be conducted critically and conceptually to understand the complexity of handling human rights violations, the role of Truth Commissions, and their relationship with human rights courts.

By using this approach, the research aims to gain a comprehensive understanding of the role and impact of Truth Commissions in addressing human rights violations and their connection to human rights courts in Indonesia. The implications of the research findings are expected to contribute to a deeper understanding of the effectiveness of legal enforcement mechanisms and reconciliation in the context of past human rights violations.

RESULT AND DISCUSSION

Definition of Commission, and Handling of Past Human Rights Violations

Definition

There has always been a dilemma for new democratic governments in dealing with human rights violations committed by the previous regime. This is a shift from previous studies that emphasised the role of political elites and institutions in the transition from authoritarian to democratic regimes. G. O'Donnell and P.C. Schimitter, and Samuel P. Huntington (Pereira, 2021) are among the political analysts who have seriously discussed the difficulties of a new democratic regime in dealing with the legacy of human rights abuses.

Huntington points out that democratic governments will always be faced with the dilemma of choosing different strategies to deal with human rights crimes committed by previous authoritarian regimes. He argues that these choices will depend largely on "the nature of the democratisation process" and "the distribution of political power during and after the transition process (Menzel, 2020; Pereira, 2021)." However, new democratic governments also often face a situation where they must promote a process of reconciliation that requires all parties to end their hatred of the other, in order to protect the new democratic system. At the same time, if they do not heed public demands to punish or

investigate the perpetrators of past crimes; the new democratic government will be accused of fostering a culture of disregard for the law, which will simultaneously erode public support for the establishment of a new democratic political system.

Faced with this dilemma, a new democratic government will invariably have to choose, as O'Donnel and Schmitter suggest, a 'best of the worst' strategy by combining elements of prosecution, punishment, forgiveness and rehabilitation, for both perpetrators and victims.

Truth and Reconciliation Commissions were chosen because they provide opportunities for both perpetrators and victims to speak publicly about their position on past human rights violations. By encouraging perpetrators and victims to tell their stories or reveal the truth, truth commissions will be seen as symbolising a break with the past, a process of reconciliation and the maintenance of political stability for the new democratic regime. Politically, the creation of a truth commission could be seen as a political compromise for a new democratic regime that deals with past human rights crimes (Maier-Katkin et al., 2017; Sulistiyanto, 2007).

Referring to the German philosopher Jűrgen Habermas (Pohlman, 2016), it is said that there are three aspects to truth. Firstly, truth must relate to what really happens and is real. Facts are the main element of truth. Second, truth must be accompanied by a normative system, where both victims and perpetrators can offer justifications for their respective stories. They will, for example, know that a person can be categorised as a criminal when that person commits genocide or crimes against humanity. Thirdly, the truth will only be 'true' when it is declared immediately. In the end, both perpetrators and victims and their respective families so that the general public can take lessons and also learn from them so as to avoid the same thing in the future.

Meanwhile, Law No. 27/2004 on the Truth and Reconciliation Commission, in Article 1 point 1 states that "Truth is the truth of an event that can be revealed regarding gross human rights violations; both regarding victims, perpetrators, places, and times."

Reconciliation, then, can be understood as an attempt to reach a peaceful solution by engaging all parties to the conflict, regardless of their different motives, backgrounds and goals. Reconciliation should involve various ways of repairing and recognising the rights and dignity of each conflicting party so that all parties can put the past behind them in order to achieve the future. According to Daan Bronkhorst (O'Brien, 2022; Webster, 2018), reconciliation should consist of four elements: investigation, mediation, settlement and judgement. Investigations take place when the government issues an official statement about those who committed human rights crimes. Mediation is required as an attempt to bring the conflicting parties together under the assistance of a local or international mediator. Settlement involves attempts to rehabilitate and compensate victims. Court decisions will relate to possibilities for further legal action for perpetrators who may be brought to justice for past crimes.

According to Article 1.2 of Law No. 27/2004 on the Truth and Reconciliation Commission, reconciliation is the result of a process of truth-telling, acknowledgement, and forgiveness, through the Truth and Reconciliation Commission in order to resolve gross human rights violations for the establishment of national peace and unity.

Priscilla Hayner proposes that there are four essential elements to a truth commission. First, truth commissions should focus on the past (Bräuchler, 2015; Kimura, 2015). Second, the truth commission is established to obtain a full picture of crimes against human rights over a period of time and not focus on one specific incident. Third, the commission is established for a specific period of time with a specific purpose and will be disbanded after it issues its final report. Fourth, truth commissions have a high degree of power and authority to access

information in all government institutions and to ensure the safety of witnesses.

Article 1.3 of Law No. 27/2004 on the Truth and Reconciliation Commission, states that the Truth and Reconciliation Commission is an independent institution established to reveal the truth about gross human rights violations and to carry out reconciliation.

Based on the above, it can be argued that in general, a truth commission has advantages over a regular court in dealing with past crimes. Truth commissions are particularly useful in a transitional period, as they can prevent lengthy and costly litigation. A truth commission is not a legal institution and has no legal power with respect to punishing perpetrators of human rights crimes, but at the same time it has the power to make recommendations for the government to take legal action. A truth commission would be in a better position to address issues related to amnesty and retributive justice. For example, amnesty will not be granted to perpetrators who are unwilling to admit their past crimes. Also, the truth commission will recommend that a victim can receive compensation and rehabilitation as part of restoring their dignity and strengthening the reconciliation process.

The TFC, which was established on 14 December 2004 as a joint agreement with the government of Timor Leste and signed by the presidents of both countries on 9 March 2005, was established after Indonesia had worked closely with the government of Timor Leste over the past three years on past issues. At the same time, Indonesia has also successfully promoted reconciliation between the governments and communities in both countries.

Handling Past Human Rights Violations

The provisions on expiry and retroactive application do not apply to gross human rights violations (Marzuki & Ali, 2023). According to Jozé Zalaquett, the state basically has the discretion to determine the substance of policies to deal with past human rights violations (McGregor & Setiawan, 2019). However, in all cases the substance of the policy must fulfil certain conditions of legitimacy, namely: First, the truth must be known or fully disclosed, and exposed and announced to the public; Second, the human rights policy must represent the will of the people, i.e. the national policy must obtain popular approval through a referendum; Third, the human rights policy does not violate international human rights. Which means on the one hand it is the obligation of every state to act in accordance with international law. If the state takes steps to grant pardons to human rights violators, the policy must be subject to the limits set by international law. On the other hand, if the human rights policy leads to punishment, international standards relating to the fair trial, treatment of suspects and punishment must be respected; Fourth, the human rights policy contains objectives to reparate the losses suffered by victims and prevent the recurrence of human rights violations in the future.

Abdul Hakim Garuda Nusantara, argues that according to Jozé Zalaquett's study, both punishment and pardon can serve to prevent the recurrence of human rights violations (Strating, 2014). Punishment can serve as a deterrent as long as it is carried out in accordance with international legal standards. On the other hand, paradoxical as it may seem, in certain situations pardons can serve a preventive function. For example in cases where pardons are necessary for national unity, or to support an overall political plan for institution-building and democratic consolidation.

If Jozé Zalaquett's perspective is used to examine Indonesia's national human rights policy, especially with regard to the handling of past human rights violations as stipulated in MPR Decree No. V/MPR/2000 and Law No. 26/2000 on Human Rights Courts, it can be said that the transitional democratic government regime adopted a moderate policy in handling past human rights violations. That is, two avenues are provided, namely the Ad Hoc Human Rights Court Forum and the TRC Forum. The substance of MPR Decree No. V/MPR/2000 and Law No. 26/2000 does not contain anything

that contradicts international human rights law standards. For example, TAP MPR No. V/MPR/2000 emphasises the obligation to reveal the truth before amnesty or pardon is granted. Similarly, the provisions relating to gross human rights violations include the crimes of genocide and crimes against humanity. The fact that no statute of limitations applies to these crimes, as well as the application of the principle of retroactivity to these gross human rights violations as set out in Law No. 26/2000, is not contrary to international human rights law.

This opinion is in line with Lawrence Whitehead's opinion in an article titled Consolidation of Fragile Democracy, that "If major crimes are not investigated and perpetrators are not punished, there will be no real growth of confidence in honesty, no maintenance of democratic norms in society at large, and therefore no consolidation of democracy." Democratic consolidation is not possible with elections alone. Democratic consolidation requires other prerequisites, among which is the establishment of the rule of law. In the context of the rule of law, the resolution of past human rights violations is important (Pohlman, 2016).

Based on the above, to ensure the implementation of the reconciliation process for national unity, and to support all political plans for institution-building and democratic consolidation, three perspectives need to be considered (Keman, 2011): First, the process of truth-seeking and reconciliation should be conducted on a solid conceptual foundation. This means that the implementation of the TRC's tasks, which are laden with human rights dimensions, is carried out in accordance with scientific principles, logic, ethics, aesthetics, and moral and religious values that are rooted in a very diverse society. Secondly, many people consider that ABRI has been involved in various cases of human rights violations in the past. ABRI is often highlighted as the most responsible party in various cases such as: the Trisakti incident, Semanggi I and II, the Tanjang Priok case, and so on. On the other hand, all problems cannot be resolved if they are only imposed on the shoulders of ABRI alone. It should be realised that ABRI at all levels is facing objective conditions that are transitional with complicated internal dynamics due to the uncertain political life. Exacerbated by the unresolved and increasingly widespread social conflicts in various regions such as Aceh, Poso, Ambon, and others; waning public compliance with existing laws and social norms, the strengthening of democratic euphoria that seems to have lost its way, the fragility of social institutions, as well as the strong perception of some political elites about the past that is more oriented towards power (power) so that ABRI is contested by all political forces to be led to the flow of certain interests. What is even more worrying is that in these circumstances, ABRI has very limited supporting factors to improve cadre development and welfare. Third, the TRC in carrying out its duties as stipulated in Law No. 27 of 2004 has a number of agendas that seem urgent to complete. In the case of resolving which cases, the TRC provides signposts:

1) Past gross human rights violations are very important and urgent to be gradually revealed, because these gross human rights violations have had a very broad impact on the development of the unity and integrity of the Indonesian nation;

2) The resolution of past gross human rights violations is not aimed at vengeance, but at creating national unity through a national dialogue mechanism within the TRC;

3) The TRC functions as the only institution that is independent and authorised to resolve cases of gross human rights violations in the past, in accordance with the provisions of Law No. 26/2000 on Human Rights Courts;

4) The resolution of past gross human rights violations through the TRC must not be counterproductive to the future interests of the Indonesian nation, but must be fully responsible and able to resolve it with the spirit and soul of nationalism;

5) The TRC must be able to function as a mediator and negotiator between perpetrators and victims of gross human rights violations, which is impartial;

6) The TRC can only carry out its duties, functions and authority efficiently and effectively if it succeeds in revealing the truth before creating reconciliation;

7) The TRC is not an institution that functions to resolve past gross human rights violations through compromising means, but through honest, transparent, objective, chivalrous, and moral means;

8) The TRC must be a proactive and positive institution that provides full assistance to the government in resolving cases of past gross human rights violations;

9) The TRC is not an amnesty granting body, although it does provide recommendations/considerations for amnesty to the President;

10) The membership of the TRC must reflect and represent the heterogeneity of Indonesia's multi-ethnic society; and the establishment of the TRC is only intended to resolve specific cases of past gross human rights violations, both in terms of tempus and locus delicti.

TRC and Courts

The provisions of the Human Rights Court Act recognise that not all gross human rights violations can be dealt with through legal means, so it provides a resolution to address gross violations through TRC (Article 47).

The TRC's primary concern is not with individual cases, but with major events in which large numbers of people have had their rights violated. Viewing human rights violations as part of widespread and systematic repression rather than as individual cases is an important criterion for investigation. Among the cases considered were the mass killings of 1965-1966, the repression of Muslims in the 1980s, aspects of the Tanjung Priok case that were not revealed at trial, the Warsidi case in Lampung in 1989, human rights violations in Aceh and Papua, and other matters relating to Indonesia's invasion of East Timor in 1975 (Webster, 2018).

As noted earlier, TRC and criminal trials are two important mechanisms in a democratic transition. Each serves unique purposes that cannot be achieved by either alone. They are not substitutes, but rather complements, and fulfilment of the full range of objectives can only be achieved when there are both criminal courts and TRC, although some countries have decided not to opt for both.

Criminal courts can do things that TRC cannot: they can secure convictions in the trial of specific individuals for specific crimes, and can impose prison sentences and other forms of punishment. The ability to secure a conviction and sentence enables criminal courts to fulfil three public functions. Firstly, to ensure retributive justice, although retributive justice is only one aspect of justice, many people feel that punishment of the guilty party is part of justice. Second, criminal convictions and sentences can help overcome impunity and break a pattern that occurs in authoritarian regimes where the ruler, members of the military and police can commit criminal acts, and they will never be prosecuted or punished. Third, by destroying the 'rule' and the perception of impunity, criminal trials can help to establish the rule of law as they emphasise that no one, no matter how powerful a state leader, is above the law and cannot be punished.

At the same time, it must be recognised that there are important limitations to the application of criminal courts and their consequences. The history of many countries has shown that in general only a relatively small number of cases can be brought before the courts. There are several reasons for this. Criminal trials for human rights violations in the past have tended to be extremely costly, requiring professional investigators, prosecutors and judges. In addition, perpetrators of human rights crimes have often concealed evidence of the crimes, destroyed documents, or given unwritten orders, only doing what they were told verbally, or

intimidated or disappeared witnesses in order to create evidentiary problems during the trial. Sometimes the crimes in question were committed many years ago and this makes it more difficult to prove, as evidence has been lost, witnesses' memories are no longer fresh and complete, and many of the witnesses and perpetrators are elderly or even deceased. This is a difficult endeavour, especially in Indonesia, where hard evidence and more than one direct witness are required by law in cases brought to court.

Trials also tend to be expensive and time-consuming because in order to achieve their purpose, which is to demonstrate the importance of the rule of law, they must follow due process of law in accordance with international standards. Particularly when trying people previously belonging to the ruling 'class'. In the Indonesian context, it must be recognised that the resources required are not only in terms of the presence or absence of sufficient funds, but also in terms of political will and the need for trained, skilled and experienced prosecutors and investigators to prove these cases. This also means that more funds must be allocated from the state budget for the purpose of legal reform.

There is also the political reality, which seems to be present in the experience of most countries undergoing democratic transition, that there is only a relatively short window of opportunity to prosecute past crimes. Moreover, there are consequences as a result of a criminal trial or tribunal ending in one of the following options: If it takes too long or is settled, the public tends to become tired of focusing on the past and there is less political will to support the prosecution. On the other hand, once prosecutions have been brought, if one or two of them successfully prosecute and convict a powerful military figure, there tends to be a backlash from the military, as powerful military officials become concerned that the prosecutors will target them next. So the military, which had not been particularly opposed to a small number of prosecutions, began to worry that there would be a larger number of prosecutions, and they began to demonstrate their opposition more intensively. On the basis of all this, it can be tentatively concluded that prosecutions are necessary for justice, to establish the rule of law and consolidate the democratic transition; While at the same time, it must be recognised that there are limits to the success that can be achieved in most countries.

One reason why TRC have been established as part of the means to address human rights violations in many countries is the recognition that they have been relatively successful in some other countries (Arief, 2012). There are now approximately 20 TRC in the world and the largest with the most comprehensive functions is the one in South Africa. TRC cannot and should not replace the functions of the courts, because they are not judicial bodies. They are not legal proceedings, they do not have the power to send someone to prison or convict someone of a particular crime. However, a TRC can do some important things that cannot generally be achieved through the prosecution of a criminal court trial.

One of these is that a TRC can handle a relatively larger number of cases than a criminal court. In situations where there have been widespread and systematic gross human rights violations under previous regimes and governments, a TRC can seek to investigate all or a large number of cases comprehensively and not be limited to handling a small number of cases.

In Indonesia, acts of violence integrated into the governance system have resulted in thousands of cases of human rights violations over the past 37 years. Many of these cases have never been resolved, creating a 'snowball effect' of victimisation within the wider community of Indonesian citizens. For example, there are more than 14,000 cases of enforced disappearances in Indonesia (O'Brien, 2022). It would be very difficult financially, physically and in terms of human resources to try 14,000 cases in a relatively short period of time. Not to mention

the rehabilitation and/or compensation process for victims. This does not include other types of human rights violations, such as: summary executions, torture, crimes against humanity, systematic rape (of women of certain ethnic groups), and so on. TRC, such as the one in South Africa, can seek to provide an opportunity for a large number of victims to 'step up to the plate' and tell their stories and have the opportunity to express their feelings and demands for justice in ways that cannot be realised through the criminal courts, because the criminal courts do not have access to the full range of victims, both geographically and in terms of numbers. In other words, TRC provide an opportunity for victims to voice their stories and be heard, perhaps for the first time.

TRC may also be in a position to provide practical assistance to victims, by specifically identifying and proving which individuals or families are victims of past crimes, so that they are legally entitled to some form of reparations in the future. TRC can also be used to try to answer big questions such as: how did a human rights violation occur? Why did it happen and what factors in Indonesian society and state allowed it to happen? What changes must be made to prevent these acts of violence and human rights violations from happening again, and so on. It can also promote public education through the publication of an official report or record of these violations.

Moreover, a TRC can help bring about some kind of resolution by recognising the suffering of victims, mapping the effects of past crimes, and recommending reparations. It can also recommend certain reforms in public institutions, such as the police and courts, with the aim of preventing the recurrence of human rights violations. Finally, a TRC can disaggregate issues of accountability and reveal the perpetrators.

CONCLUSION

Moving on from MPR Decree No. V/MPR/2000 and the Law on Human Rights and Human Rights Courts, there are several things that need to be understood in relation to TRC and/or TFC. First, the TRC and/or TFC are extra-judicial institutions that can be used to resolve cases of human rights violations outside of court. As extra-judicial institutions, commission decisions have the same legal force as court decisions. In the sense that a case that has been resolved by the commission cannot be brought again to a human rights court. Thus, the principle of ne bis in idem is adhered to in resolving human rights violations. Second, the TRC and/or TFC can only deal with human rights violations that occurred before the enactment of Law No. 26/2000 on Human Rights Courts.

WORKS CITED

Arief, D. S. M. (2012). An Investigation on the Establishment of a Truth and Reconciliation Commission (TRC) for the Republic of Indonesia. University of Pretoria (South Africa).

Bräuchler, B. (2015). Decentralization, Revitalization, and Reconciliation in Indonesia. In The Cultural Dimension of Peace: Decentralization and Reconciliation in Indonesia (pp. 39–67). Springer.

Chandranegara, I. S. (2019). Defining judicial independence and accountability post political transition. Const. Rev., 5, 294.

Keman, H. (2011). Third ways and social democracy: the right way to go? British Journal of Political Science, 41(3), 671–680.

Kimura, E. (2015). The struggle for justice and reconciliation in post-Suharto Indonesia. Southeast Asian Studies, 4(1), 73–93.

Maier-Katkin, D., Mears, D. P., & Bernard, T. J. (2017). Towards a criminology of crimes against humanity. In The Criminology of War (pp. 27–55). Routledge.

Marzuki, S., & Ali, M. (2023). The settlement of past human rights violations in Indonesia. Cogent Social Sciences, 9(1), 2240643.
McGregor, K., & Setiawan, K. (2019). Shifting from international to "Indonesian" justice measures: Two decades of addressing past human rights violations. Journal of Contemporary Asia, 49(5), 837–861.
Menzel, A. (2020). The pressures of getting it right: Expertise and victims' voices in the work of the Sierra Leone Truth and Reconciliation Commission (TRC). International Journal of Transitional Justice, 14(2), 300–319.
O'Brien, M. (2022). Human Rights and Atrocities. In The Oxford Handbook of Atrocity Crimes. Oxford University Press.
Otsuki, T. (2008). Memory of justice: dealing with the past violation of human rights: the politics of Indonesia's Truth and Reconciliation Commission. University of British Columbia.
Pahri, R. (2017). Demokrasi; Pemilihan umum dan kriteria pemimpin perspektif yusuf al qaradhawi.
Pereira, A. W. (2021). Samuel P. Huntington, Brazilian 'decompression'and democracy. Journal of Latin American Studies, 53(2), 349–371.
Pohlman, A. E. (2016). A year of truth and the possibilities for reconciliation in Indonesia. Genocide Studies and Prevention: An International Journal, 10(1), 8.
Schmidtke, O. (2017). Revival: The Third Way Transformation of Social Democracy (2002): Normative Claims and Policy Initiatives in the 21st Century. Routledge.
Strating, R. (2014). The Indonesia-Timor-Leste commission of truth and friendship: Enhancing bilateral relations at the expense of justice. Contemporary Southeast Asia, 232–261.
Sulistiyanto, P. (2007). Politics of justice and reconciliation in post-Suharto Indonesia. Journal of Contemporary Asia, 37(1), 73–94.
Webster, D. (2017). Truth and reconciliation in Southeast Asia and the Melanesian Pacific: Potential Canadian contributions and potential lessons for Canada. International Journal, 72(1), 120–130.
Webster, D. (2018). Flowers in the wall: truth and reconciliation in Timor-Leste, Indonesia, and Melanesia. University of Calgary Press.