

THE PEACE PROCESS AND TRANSITIONAL JUSTICE IN ACEH, INDONESIA



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1.

Introduction and Contextual Background

The Aceh conflict began in 1976 after the Free Aceh Movement (GAM) declared Aceh's independence at Mt. Halimun, Tiro Sub-district, Pidie District, Aceh. The Government of the Republic of Indonesia responded to the situation by carrying out a series of military operations from 1982 to 2005. The intensity of military operations increased significantly in the period 1989–1998 as seen by the high escalation of conflicts with GAM armed forces which, at that time, had spread to three regions along the east coast of Aceh, namely in the districts of Pidie, North Aceh, and East Aceh. Consequently, there were many cases of human rights violations against civilians. In 1999, the Aceh Forum of Concern for Human Rights (*Forum Peduli HAM Aceh*), a local NGO, recorded that during the military operations from 1989–1998 there had been at least 1321 extrajudicial killings, 1,958 enforced disappearances, 3,430 torture cases, 128 rape cases, and 597 property-burning cases.¹ The Aceh Reintegration Agency (*Badan Reintegrasi Aceh*, BRA) estimates that almost 30,000 people were killed during the conflict.²

The Indonesian reform movement succeeded in overthrowing President Soeharto in 1998. Since then, efforts to find facts to

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1. Aceh, Peace with Justice, the Commission for Disappeared and Victims of Violence, KontraS (2006)
 2. Craig Noble et al., Multi Stakeholder Review of Post-Conflict Programming in Aceh: Identifying the Foundation for Sustainable Peace and Development in Aceh, THE WORLD BANK, (Dec. 20019), available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/857501468049458698/ringkasan-eksekutif>.

expose various crimes of human rights violations have been carried out through the work of a number of fact-finding teams, among others teams formed by the government, the Indonesian Parliament, and by the National Human Rights Commission (*Komnas HAM*). Opportunities for peace negotiations also began to open.

Once Abdurrahman Wahid was appointed President in 1999, efforts towards peace were carried out under the facilitation of the Henry Dunant Center for Humanitarian Dialogue (HDC), namely the Humanitarian Pause (2000–2002). Peace through dialogue continued, then it was followed with the Cessation of Hostility Agreement or CoHA (December 2002–May 2003). The spirit of seeking a peaceful path at the elite level was not always the same as conditions on the ground, as gunfights continued. Despite ongoing peace negotiations, a series of military and police operations continued, such as the Love Meunasah Operation (*Operasi Cinta Meunasah* or OCM, June 2000–September 2001),³ the Operation to Restore Security (*Operasi Pemulihan Keamanan*, February 2001–November 2003), and so forth, effectively ensuring that efforts towards peace would fail. After Wahid resigned from his presidency, President Megawati then declared martial law in Aceh on 19 May 2003.

On 26 December 2004, a tsunami hit the

coastal areas of Aceh killing up to 200,000 people and causing massive destruction in its wake. The tsunami opened new opportunities to resume the resolution of the Aceh conflict through negotiations. Massive post-disaster damage required international support for its recovery. One of the prerequisites needed for international parties to enter Aceh was that the situation must be conducive for negotiations. This meant that while violence and armed clashes still occurred, they were not as intense as before the tsunami. Crisis Management Initiatives (CMI), an NGO led by Martti Ahtisaari, the former President of Finland, began serious efforts to bring the fighting parties back to the negotiating table. After all points of the peace agreement were

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3. *Meunasah*, a term unique to Aceh, means a small mosque.



2.

Negotiating Transitional Justice

President Susilo Bambang Yudhoyono, a reform-minded, former army general, and Vice President Jusuf Kalla were appointed in 2004. They brought prospects for a peaceful resolution to the Aceh conflict. Due to his experience in negotiation and conflict resolution with previous conflicts in Poso, Central Sulawesi, and Maluku, the Vice President was asked to approach GAM leaders about a peaceful end to the conflict. He sent Deputy Coordinating Minister for People's Welfare to begin quiet talks with GAM leaders both in Aceh and abroad.

Talks between the Government of Indonesia (GoI) and GAM were mediated by Crisis Management Initiative (CMI), a Finnish NGO under the former president of Finland, Martti Ahtisaari and supported by the European Union. The negotiations were conducted in Helsinki, Finland.

The negotiations, conducted from January to August 2005, eventually resulted in the signing of a Memorandum of Understanding (MoU) between GAM and the GoI on 15 August 2005. Stakeholders included the GoI and GAM teams, international observers, diplomats, and academic advisors. Chief negotiator

Hamid Awalludin, then the Minister for Law and Human Rights, led the Indonesia team with assistance from a few other high-ranking ministers. Even though the President and Vice President did not attend the peace negotiations, both of them reportedly gave guidance and were called upon to affirm crucial decisions, such as the establishment of Acehese political parties. GAM's team comprised members of its self-appointed leadership in exile, led by Prime Minister of the Government of the State of Aceh, Malik Mahmud. GAM's foreign minister, political officers, and leaders from the Aceh diaspora accompanied Mr. Mahmud during the process. However, neither the GAM delegation nor the Indonesian government delegation included women at the start. Eventually, one woman did join the GAM team at the end of the negotiation process. Teams from members of EU countries, Norway, Switzerland, and ASEAN members monitored the negotiations process.

The discussions were conducted in several rounds in which tangible and agreeable points were negotiated, while points of disagreement were postponed. The key phrase throughout the process was:

“Nothing is agreed until everything is agreed.”⁴ Most of the points in MoU were GAM suggestions and GAM had control on the field.⁵ The GAM combatants and even the people of Aceh accepted the entire contents of the MoU.

Both parties confirmed their commitment to a peaceful, comprehensive, and sustainable solution to the conflict in Aceh with dignity for all. They agreed on several issues:

1. Governance of Aceh would include stipulations to enact the law for governing Aceh, political participation, economics, and the rule of law;
2. The fulfilment and protection of human rights;

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4. Munawar Liza Zainal, member of the GAM negotiation team in Helsinki, said this in his presentation at a public seminar, *The Truth of Strengthening Peace* (Banda Aceh, Oct. 12, 2017).
 5. Muhammad Nur Djuli, member of the GAM negotiation team in Helsinki, said this statement at an online discussion, *From MoU Helsinki to Law of Government of Aceh*, KONTRAS (Banda Aceh, Aug. 14, 2020).



3. Amnesty for GAM fighters and their reintegration into society;
4. Appropriate security arrangements for the implementation of the MoU;
5. Post conflict monitoring and the establishment of the Aceh Monitoring Mission; and
6. A process for dispute settlement.⁶

To ensure a sustainable peace, the MoU set out in general terms the future governance of Aceh and attempted to address the key social, political, and economic causes of the conflict. However, at the heart of the agreement, which was accepted by GAM, was the expanded autonomy for Aceh within Indonesia, with Gol concessions on matters including the formation of local political parties and security arrangements in Aceh.⁷ Despite relatively little discussion on the subjects of justice and accountability, the MoU clearly provided for transitional justice approaches, in particular a Truth and Reconciliation Commission (TRC) and a Human Rights Commission (HRC). The Helsinki MoU simply states that “a Human Rights Court will be established for Aceh...[and] a TRC will be established for Aceh by the Indonesian TRC with the

task of formulating and determining reconciliation measures.”⁸ There was not a deep discussion on this issue, since the human rights law and law of truth and reconciliation commission already existed in Indonesia at the time of the negotiations.⁹

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6. MoU Between Government of Indonesia and Free Aceh Movement (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).
 7. Edward Aspinall, *Peace without justice?: The Helsinki peace process in Aceh*, CENTRE FOR HUMANITARIAN DIALOGUE (2007).
 8. MoU Between Government of Indonesia and Free Aceh Movement Article 2.2 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).
 9. Law on Truth and Reconciliation Commissions, UU No. 27/2004 (Indonesia, 2004).



3.

Transitional Justice Outputs

Transitional justice elements of the peace process eventually became part of the final MoU. The MoU included provisions for:

Accountability	The establishment of an HRC of Aceh. ¹⁰ However, GAM and GoI had different interpretations on this point. According to GAM, the HRC was established for Aceh, not necessarily placed in Aceh, so that cases of human rights violations could be tried anywhere in Indonesia.
Truth seeking	The establishment of a permanent TRC for Aceh, with the task of formulating and determining reconciliation measures. ¹¹
Reparations	A reintegration program for former combatants, political prisoners, and “civilians who suffered demonstrable loss.” ¹²
Institutional reform	specified institutional reforms to help strengthen the rule of law, ¹³ including redrafting the code for Aceh on the basis of universal principles of human rights, creating an impartial court system for Aceh, transferring the power of appointing the chief of police forces to the head of the Aceh administration, and trying civil crimes committed by military personnel in civil courts.

10. MoU Between Government of Indonesia and Free Aceh Movement Article 2.2 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).

11. MoU Between Government of Indonesia and Free Aceh Movement Article 2.3 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).

12. MoU Between Government of Indonesia and Free Aceh Movement Article 3.2.5.c (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).

13. MoU Between Government of Indonesia and Free Aceh Movement Arts. 1.4.2-1.4.5 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).

The peace process also provided amnesties for those imprisoned for their participation in GAM activities, with a reaffirmation of the government's obligations to adhere to international human rights instruments.¹⁴ Specified benchmarks and timetables for the demobilization, disarmament, and decommissioning of GAM and Indonesian security forces in Aceh were also established.

During the negotiations, GAM delegates were vocal on the need for accountability for past crimes, and insisted on the inclusion of a provision to address this need. The Indonesian delegation also never objected to the inclusion of these provisions because of existing laws for a national HRC and a national TRC.¹⁵ However, pushing for state accountability remained an extremely sensitive issue that could provoke members of the Indonesian military and legislature, setting back the government's efforts to reform the military. Another controversial issue during the peace process related to the provision for an HRC—would it have jurisdiction over past crimes or only future human rights abuses? GAM negotiators and advisors remained adamant that the intention of the clause was to facilitate retroactive prosecution. On the other hand, the establishment of a TRC that was perceived as forgiving and forgetting

past crimes could serve to appease the military.

The peace negotiations failed to link reintegration or victim compensation to a judicial or truth-seeking process. The mechanism to reintegrate former combatants and prisoners into society was to compensate all civilians who suffered a demonstrable loss due to the conflict with an allocation of suitable farm land, employment, or, in cases where people were unable to work, adequate social security from Acehese authorities.¹⁶

In the MoU, there was no explicit mention of victims of the conflict, instead referring to them only as “affected civilians.” This shifts attention from individual harms suffered and contributes to the failure to recognize the particular harms inflicted on victims of gender- based violence.

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14. MoU Between Government of Indonesia and Free Aceh Movement Art. 3.1 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).
 15. Law on Truth and Reconciliation Commissions, UU No. 27/2004 (Indonesia, 2004).
 16. Scott Cunliffe et al., *Negotiating Peace in Indonesia: Prospects for Building Peace and Upholding Justice in Maluku and Aceh*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE AND ELSAM (2009).

“Affected civilians” could refer to all Acehese, including former combatants, who could prove their “demonstrable loss” as an impact of the conflict.¹⁷

The Aceh peace process did help to promote human rights in Indonesia. As stated in the MoU, the GoI will adhere to the International Covenant on Civil and Political Rights and to the International Convention on Economic, Social, and Cultural Rights.¹⁸ From the perspective of transitional justice, the Helsinki MoU initially appeared to represent a step forward in Indonesia’s attempts to address past human rights violations.

Civil society and human rights NGOs in Indonesia did not play a major

role in either set of negotiations. The massive impact of the tsunami and the geographical distance of Helsinki prevented most of Aceh’s NGO activists from attending negotiations.

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17. MoU Between Government of Indonesia and Free Aceh Movement Art. 3.2.5.c (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).
 18. MoU Between Government of Indonesia and Free Aceh Movement Art. 1.4.2 (Government of Indonesia and Free Aceh Movement, Aug. 15, 2005).





4.

Implementation and Assessment of Transitional Justice Mechanisms in Indonesia

In the time of the peace negotiations, the Indonesian government already enacted the Law No. 26/2000 on Human Rights Court and Law No. 27/2004 on Truth and Reconciliation Commissions to deal with the past. After the peace negotiations, the Indonesian Parliament codified many of its MoU obligations in law by passing the Law on Governing Aceh (LoGA) in August 2006. This law includes key elements of transitional justice:

Accountability

In 2000, Indonesia established a national HRC (*Komnas HAM*) to try cases of genocide and crimes against humanity. *Komnas HAM* has a mandate to investigate and refer cases of gross violations of human rights to the Attorney General. The commission has recently completed ad hoc *pro justitia* inquiries into three cases of gross violations of human rights in Aceh: killings and acts of torture, including sexual violence, at Rumah Geudong, Pidie (1997–98); Simpang KKA, North Aceh (1999); and Jamboe Keupok, South Aceh (2003). In 2016 and 2018, the commission filed these cases with the Attorney General's office to join the previous referrals that have languished there for many years for various legal and political reasons.¹⁹ This situation is similar to other cases of gross violations of human rights in Indonesia.

The LoGa stated that to investigate, prosecute, rule on and resolve cases of human rights violations that take place subsequent to the enactment of this law, a human rights court shall be established in Aceh.²⁰

19. Transitional Justice: Indonesia Case Study, ASIA JUSTICE AND RIGHTS AND KONTRAS ACEH (2017), available at <https://asia-ajar.org/wp-content/uploads/2018/12/English-Indonesia-Case-Study.pdf>
20. Law on the Governing of Aceh art. 228(1) Republic of Indonesia Law No. 11/2006 (Indonesia, 2006)

A difference from the scope of the HRC as provided for in the MoU, the LoGA limits the HRC's jurisdiction to abuses that occurred only after the MoU was signed in August 2005.²¹ Furthermore, to date, an HRC has not been established in Aceh. The promise of the peace agreement to establish an HRC has been abandoned because it is seen as too difficult to implement, despite the growing global recognition that the delivery of justice is related to preventing the rise of extremism.

Truth-seeking

At the time of the Helsinki negotiations, the national parliament had already passed a national TRC Law (No. 27, 2004).²² By late 2006, the Indonesian Constitutional Court deemed this law unconstitutional because of a clause that required victims to accept amnesty for perpetrators before being eligible for reparations. Rather than amending the law, it was revoked.

LoGa stated that to seek the truth and reconciliation, a truth and reconciliation commissions shall be established in Aceh by virtue of this law.²³ The LoGa provided that the TRC in Aceh shall constitute an inseparable part of the TRC, and operate in accordance with prevailing laws and regulations.²⁴ In resolving cases of human rights violations in Aceh, the TRC in Aceh may take into account the living *adat* principles of local communities.²⁵

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21. Law on the Governing of Aceh, Republic of Indonesia Law No. 11/2006 (Indonesia, 2006)
 22. Republic of Indonesia Law No. 27/2004 (Indonesia, 2004)
 23. Law on the Governing of Aceh, art. 229 Republic of Indonesia Law No. 11/2006 (Indonesia, 2006)
 24. Law on the Governing of Aceh, art. 229(2) Republic of Indonesia Law No. 11/2006 (Indonesia, 2006)
 25. Law on the Governing of Aceh, art. 229 Republic of Indonesia Law No. 11/2006 (Indonesia, 2006)

Both national and Aceh governments claimed that without a national TRC there could not be a local truth commission for Aceh. However, there were growing legal opinions that the LoGA allowed for the establishment of a local TRC without waiting for a national mechanism.²⁶ An Acehnese civil society group continued to push for the establishment of an Aceh TRC through provincial-level legislation (*qanun*), and by 2009, civil society groups in Aceh had prepared a draft *qanun* to establish a local truth commission for Aceh. The law to establish the Aceh TRC was finally passed in 2013, by Qanun No. 17/2013.²⁷

Three years later, in October 2016, the Aceh TRC began its work. The parliament of Aceh appointed seven commissioners to the Aceh TRC. Its mandate includes: uncovering the truth about past human rights violations to strengthen peace initiatives; promoting reconciliation between perpetrators of human rights violations, both individuals and institutions, and victims; and recommending comprehensive reparations for victims of human rights violations in accordance with universal standards relating to the rights of victims.²⁸

The Aceh TRC started its work by strengthening the capacity of its commissioners and staff with knowledge and skills related to the issue of transitional justice, and by developing internal mechanisms. The TRC continues to struggle in terms of political and budgetary support from the government; therefore, civil

26. Amiruddin Al-Rahab and Wahyudi Djafar, *The Commission of Truth and Reconciliation in Aceh, opportunity and challenges*, ELSAM (2016), available at https://kontras.org/wp-content/uploads/2020/05/2016_Naskah-KKR-Aceh_Peluang-dan-Tantangan-Pembentukan.pdf.

27. Local regulation No. 17/2013 on Aceh TRC.

28. Local regulation No. 17/2013 on Aceh TRC, article 3.

society support the TRC. Ongoing consultation with experts connects the Aceh TRC with other truth commissions in Asia and beyond. This effort provides an opportunity to develop a local TRC with optimal participation of civil society.

Aceh's TRC has, to date, taken statements from more than 4,000 victims and has conducted three public hearings.²⁹ So far, 244 individuals have been recommended to the government of Aceh to receive urgent reparations, i.e., an immediate measure to provide emergency assistance.³⁰ The Aceh TRC was preparing a grassroots reconciliation process for Central Aceh, one of the high-tension districts during the conflict, but it was postponed due to the covid-19 pandemic.³¹ Currently, the Aceh TRC is working on completion of a database and data analysis, while preparing a final report.³² The report's recommendations will include comprehensive

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29. AJAR and Transitional Justice Asia Network, Webinar discussion: Lesson from transitional justice efforts in Nepal, Aceh and Asia region, a presentation of Afridal Darmi, a chair of Aceh TRC (Jun. 17, 2020).
 30. AJAR and Transitional Justice Asia Network, Webinar discussion: Lesson from transitional justice efforts in Nepal, Aceh and Asia region, a presentation of Afridal Darmi, a chair of Aceh TRC (Jun. 17, 2020).
 31. 31 AJAR and Transitional Justice Asia Network, Webinar discussion: Lesson from transitional justice efforts in Nepal, Aceh and Asia region, a presentation of Afridal Darmi, a chair of Aceh TRC (Jun. 17, 2020).
 32. AJAR and Transitional Justice Asia Network, Webinar discussion: Lesson from transitional justice efforts in Nepal, Aceh and Asia region, a presentation of Afridal Darmi, a chair of Aceh TRC (Jun. 17, 2020).

reparations measures and institutional reforms.³³ The Aceh TRC will complete its work by the end of 2021. It is then likely to transform into an institution to preserve the memory of human rights violations in Aceh and to ensure the care of victims and survivors.

The Aceh TRC's truth-seeking efforts are seen as the foundation for building peace, democracy, and security in Aceh. As the first TRC in Indonesia, these efforts, in turn, serve as a cornerstone and pioneer in Indonesia's journey to a better future.

Reparations

Under Indonesia's current human rights legislation, reparations are provided only by a decision made by a court of law.³⁴ Thus, the demise of the national HRC has effectively blocked victims in Aceh (and other areas of Indonesia) from receiving reparations. However, at a national level, the Witness and Victims' Protection Agency (*Lembaga Perlindungan Saksi dan Korban*, LPSK), created in 2006, is empowered to provide referrals for urgent health and psychosocial service for victims, including those whose cases were investigated by *Komnas HAM*. Since 2018, LPSK has been providing health and psychosocial services for victims in Rumoh Geudong, Pidie, as follow up from the investigation of *Komnas HAM*.

During the conflict, the Governor of Aceh initiated a

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33. AJAR and Transitional Justice Asia Network, Webinar discussion: Lesson from transitional justice efforts in Nepal, Aceh and Asia region, a presentation of Afridal Darmi, a chair of Aceh TRC (Jun. 17, 2020).
 34. Law No. 26/2000 on Human Rights Court, Art. 35 (Indonesia, 2000); Government Regulation on Compensation, Restitutions and Rehabilitation.

compensation scheme according to the Islamic tradition known as *diyat*, for the families of those killed or disappeared.³⁵ After the peace negotiations, the Aceh Reintegration Agency (*Badan Reintegrasi Aceh* or BRA) was forced to work with an incredibly broad definition of “victim” understood as conflict-affected communities that made a commitment for individual reparations often difficult to implement. BRA received 45,000 applications for reparations, but was unable to verify the clarification further.³⁶ Eventually, the delivery of the compensation for victims did not function effectively. Among other victims and survivors, just view individual victims received economical assistance. Even though BRA had a program to built memorial site on the violations in Aceh, such as the Simpang KKA tragedy monument, it was rejected by victims groups, because they were involved in those process. They eventually built another monument of Simpang KKA in the violation occurred.³⁷

15 years since the agreement was signed, most of the provisions have not been implemented. The peace process is not bringing the significant changes. The fund for victims of conflict has not been able to improve the welfare of the community.³⁸

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35. Leena Avonius, Reintegration, BRA's roles in the past and future visions, CRISIS MANAGEMENT INITIATIVE, available at <http://www.acehpeaceprocess.net/pdf/avonius.pdf>.
 36. 36 Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh, UNDP (2007).
 37. Interview with Hendra Saputra, a Director of KontraS Aceh (June, 26, 2020).
 38. Malik Mahmud, Wali Nanggroe of Aceh (a traditional leader of Aceh), interview with INews Aceh (Aug. 19, 2020), available at <https://youtu.be/PO5ko1SrgnQ>.

One of victims of conflict, M, from Tangse, Pidie stated:



Peace is very good in text. If we look at the contents, it is very accommodating to the interests of conflict victims. But in practice, 15 years have passed, for me it has failed miserably. Both the center and Aceh do not appear to be serious about realizing every point of the agreement. So I think justice for the victims is still far away. There are victims who are elderly, some even die, but have never received compensation and recognition from the government.³⁹

In response to the Aceh TRC's recommendation to the government of Aceh that urgent reparation be given to 244 victims, the Governor of Aceh issued Regulation No. 330/1209/2020 on the Determination of the Recipient of the Urgent Reparation for the Fulfilment of Victims' Rights for this first group.⁴⁰ The urgent reparation includes medical support, psychological support, economic support, and provision of insurance and citizenship status for particular elderly victims.⁴¹

BRA as government agency, which has to implement the regulation of Governor of Aceh, is committed to delivering the urgent reparations for victims of Aceh and also comprehensive

39. Interview with M, a victim of conflict from Tangse, Pidie, August, 18, 2020.

40. Regulation No. 330/1209/2020 on the Determination of the Recipient of the Urgent Reparation for the Fulfilment of Victims' Rights (Indonesia, 2020).

41. Standard Operational Procedure of reparation for victims of human rights violations, Aceh TRC.

reparations as a recommendation from Aceh TRC final report. BRA is currently preparing their internal regulation for its policy.⁴²

On the other hand, as part of the complementary effort between judicial and non judicial effort, the National Commission of Human Rights also has a similar concern for reparations for victims. The National Commission of Human Rights also supported the effort of various stakeholders in fulfilling the victims' rights in Aceh. The precedence of the case of Aceh can serve as a good lesson learned for Indonesia as well.⁴³

Institutional reform

Following the fall of President Suharto in 1998, Indonesia achieved a milestone in security sector reform when Indonesia's police force was separated from the army and placed under civilian control (1999). In addition, the military was no longer automatically granted seats in Parliament (2004). However, continued efforts to reform the security sector have faced many challenges, such as ongoing police brutality and lack of accountability on police and military violations.

Institutional reform in Aceh was advanced with support from the Aceh Monitoring Mission, an international coalition mandated to monitor the implementation of the peace agreement. Jakarta

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42. Agusta Muchtar, Deputy of Economic Empowerment and Social Welfare of BRA on the Stakeholders Virtual Discussion: 15 years of Aceh Peace Process, Agreed on the Reparation for Victims (Meupakat Pemulihan Hak Korban) by Aceh TRC (Aug. 26, 2020).
 43. Choirul Anam, a commissioner of the National Commission of Human Rights on the Stakeholders Virtual Discussion: 15 years of Aceh Peace Process, Agreed on the Reparation for Victims (Meupakat Pemulihan Hak Korban) by Aceh TRC, August 26, 2020.

recalled 25,000 “non-organic” military soldiers and police, released GAM prisoners by issuing an amnesty, and agreed to the establishment of local political parties in Aceh. GAM disarmed 840 weapons and decommissioned its armed fighters, and re-organized itself as a political party, *Partai Aceh* (PA).⁴⁴

In addition, the Aceh peace process helped to promote the development of human rights in Indonesia. The Indonesian Parliament eventually ratified the International Covenant on Civil and Political Rights and the International Convention on Economic, Social, and Cultural Rights in 2006, actions that resulted from the MoU negotiations. However, the MoU provisions which stated that civilian crimes committed by Indonesian military personnel in Aceh will be tried in civil courts in Aceh cannot be implemented because that requires a revision of the law governing the Military Court.

Aceh TRC will deliver a recommendation for the government in Aceh and Indonesia for the institutional reform.

Since the Aceh TRC has not yet completed its work, so far there is no official institution of the Aceh government with the task of resolving human rights violations in Aceh. In addition, there has also been no official oversight related to the work of transitional justice institutions in Aceh. Despite this, non-formal supervision is carried out by civil society groups and victims of human rights violations in Aceh.

44. See Giovanni Grevi, *The Aceh Monitoring Mission: Toward Integrated Crisis Management* in Pierre-Antoine Braud and Giovanni Grevi, *The EU Mission in Aceh: Implementing Peace*, EUROPEAN UNION INSTITUTE FOR SECURITY STUDIES (Dec. 2005).



5.

Lessons Learned

Various factors have contributed to the overall success or failure of transitional justice mechanisms designed by the Aceh peace process. The successes included:

- The involvement of a third party helped to ensure that the peace negotiation was conducted smoothly. The third party should include an independent organization and leaders who have integrity, have experience as negotiators and who are trusted by all parties.
- Civil society and international actors' roles in pushing for accountability is very significant. Civil society in Aceh has been continuously advocating to measure the transitional justice mechanisms during the early phase of the Aceh peace process as well as after the peace negotiations. The establishment of the Aceh TRC is clearly the result of tireless advocacy by civil society.

On the other hand, the challenges included:

- The design of a peace agreement

has to integrate transitional justice initiatives in a clear context. It is important to avoid wording that allows for multiple interpretations of the agreement. As with other provisions of the MoU that relate to the government of Aceh, provisions related to human rights must be clearly stated, and should mention the settlement of landmark human rights violations cases.

- The political situation, including the situation of democracy, following the peace process depends on the national political context and its regime. If national politics do not reform, it is difficult to implement transitional justice initiatives in particular areas in that country. The local government will weigh the national government's support for their further governance, particularly in relation to economic issues. This may hamper the local government's implementation of transitional justice mechanisms.

Many efforts are required to make transitional justice more successful during

a peace process, including:

- Members of civil society, including women and victims, need to participate in the peace process. Victims of human rights violations are the main ones who have suffered an impact from the conflict. They have a right to contribute to the peace process and to provide input on how the peace process could support them. The voice of women should be strengthened to provide a space for the fulfilment of women's rights. Members of civil society, who seek to address the needs of victims and experts on practical particular issues, would be valuable additions to the peace process.
- Special programs are needed for victims of the conflict, not just for former combatants. Peace agreements often focus on former combatants but remain silent about victims of human rights violations. Victims' groups should be strengthened and prepared to engage local and national government officials in a struggle for truth and justice that may take decades. Therefore, victims need acknowledgment and socio-economic support.
- Programs that strengthen human rights and the rule of law

should integrate acknowledgment and accountability for past crimes. Justice and accountability measures are part of rebuilding trust in the institutions of governance and the rule of law. Allowing perpetrators to roam freely, without social, administrative, or judicial sanctions shakes the foundation of trust in the peace-building process.

6.

Conclusion

The peace process in Aceh has reached an important moment, not just for Aceh but also for Indonesia's history. The peace process has provided a reform process, having helped to end violent conflict and having a foundation to achieve accountability. The peace process created a momentum to recognize transitional justice mechanisms, particularly in Aceh.

The initial step for disarmament, decommission, and reintegration largely succeeded, enabling Aceh to be evolve into a region with special autonomy and governance powers, which has independence over their political authority (Aceh political party) and manages its economic income. In addition, the transitional justice agenda in the peace process continues to provide hope for accountability for past crimes in Aceh.

However, this peace process between parties who were involved in conflict has been contingent on ongoing political compromise, which excluded victims of human rights violations from the process. A decade-long delay of the establishment of the TRC, and the absence of a HRC demonstrates that the stated intentions

to provide for transitional justice and accountability for human rights abuses has not been entirely genuine. Despite this, the Aceh TRC provides hope for victims seeking to reveal the truth about the past and find a way to achieve justice. Both the Aceh TRC and *Komnas HAM* must work together in the future to bring truth and justice for victims in Aceh, and also to provide a historical justice in Aceh.

Among others, the role of civil society has been key in pushing truth and justice in the absence of effective state initiatives. The establishment of Aceh TRC was a tireless advocacy of civil society and victims organizations that led to its establishment many years later, after much international support and engagement in the peace process.

