

# Searching for *Indonesia Baru* (New Indonesia) The Politics of Reconciliation in the Post-Suharto Era

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Forgiving and being reconciled are not about pretending that things are other than they are. It is not patting one another on the back and turning a blind eye to the wrong. True reconciliation exposes the awfulness, the abuse, the pain, the degradation, the truth.

Desmond Tutu

## **Introduction**

This paper has developed from observing the dynamics of the reconciliation process in Indonesia in the post-Suharto era. It is focused primarily on the public debates on the reconciliation process in Indonesia especially giving attention to a plan proposed by the Abdurrahman Wahid government and non-governmental organizations (NGOs) to establish a Truth and Reconciliation Commission (*Komisi Kebenaran and Rekonsiliasi*) with a mandate to investigate the gross human rights violations that happened in Indonesia in the past. This paper will argue that the reconciliation process has social, legal and political dimensions. It also suggests that the proposed establishment of the Truth and Reconciliation Commission can be seen as a result of political processes and also as an effort to break from the past. There are three questions worth asking: How is post-Suharto Indonesia responding to the public demand to deal with the gross human rights violations that happened in the past? What are the

constraints and obstacles for the reconciliation process in Indonesia? Who has participated in the public debates on the proposed Truth and Reconciliation Commission in Indonesia? To what extent will the distribution of power in Indonesia's fragile democratic transition influence the course of the reconciliation process?

This paper is divided into four parts. The first discusses briefly the existing literatures that deals with the question of truth and reconciliation efforts in new democracies. The second part discusses the political, legal and social constraints that influence the reconciliation processes in the post-Suharto period. The third part looks closely at the proposed Truth and Reconciliation in Indonesia, giving attention to how the idea of establishing the Truth Commission came about, who proposed it and the political processes that are involved. The last part summarizes the main arguments and underlines the importance of transitional justice in Indonesia's new democracy.

### **The Politics of Truth and Reconciliation in New Democracies**

There has been a growing interest in the dilemma faced by new democratic governments in dealing with the gross human rights violations committed by previous authoritarian governments (Kirtz, 1995; Mc Adams, 1997). This is a shift from previous studies that had given much more emphasis to the roles of political elites and political institutions in a transition from authoritarian regime to democracy (DiPalma, 1990; Bermeo, N., 1992; Munck, 1994; Hagopian, 1993; and Linz and Stepan, 1996). O'Donnell and Schmitter (1986) and Huntington (1991) are among political scientists who seriously discussed the difficulties of a new democratic regime in dealing with the legacies of the human rights crimes. Huntington (1991: 211) point outs that new democratic governments would always face a dilemma in choosing different strategies to deal with the human rights crimes committed by previous authoritarian regimes. He argues that these choices would depend very much on "the nature of the democratization process" and "the distribution of political power during and after the transition" (Huntington, 1991: 215). However, new democratic governments also often face a situation in which they have to promote a reconciliation process that require all parties to end

their hostilities against each other in order to protect a new democratic system. But, at the same time, if they ignore the public demands to punish or investigate the perpetrators who committed the past crimes, these new democratic governments would be accused of maintaining a culture of impunity that, at the same time, would also erode the public support for a new democratic political system as well. Juan Mendez writes:

The fact that there are strong legal and moral arguments in favor of prosecuting former human rights abusers does not eliminate the enormous political difficulties that such a policy faces in the delicate balance of powers that characterizes most transitions...Politically, it makes no sense to assume that newly democratic powers must be weak by definition; this weakness becomes a self-fulfilling prophecy. The point, of course, is not to deny the harsh reality of political pressures on transitional governments (1997: 8-9).

Facing this dilemma, new democratic governments often have to choose, as O' Donnell and Schmitter (1996: 30) suggest, the "least worst" strategy which combines the elements of prosecution, punishment, forgiveness and rehabilitation for both the perpetrators and the victims.

How, then does, a new democratic regime deal with this dilemma? Recent studies have shown that new democratic regimes have chosen different strategies and policies in dealing with the crimes of the past (Hayner, 1995; Bronkhorst, 1995; Rotberg and Thompson, 2000; Chapman and Ball, 2001). Throughout the 1980s and 1990s truth commissions were popular in new democratic countries (**Table 1**). Truth commissions, each with different mandates, scopes and characteristics, were chosen because they provide an opportunity for both the perpetrators and the victims, to speak publicly about their own accounts of the gross human rights violations that occurred in the past. By engaging victims and perpetrators in a story telling or disclosure exercise, the truth commission has been seen as a symbol of breaking with the past, of making reconciliation, and of maintaining political stability for new democratic regimes. Politically, as Skaar (1999:1110) points out, the establishment of a truth commission can be seen as political compromise solution for new democratic regimes in dealing with the human rights crimes of the past.

**Table 1**  
**Options for Dealing the Past Human Rights Crimes**

<b>Sponsor</b>	<b>Truth commissions</b>	<b>Trials</b>	<b>Both</b>	<b>Nothing</b>
<b>National government</b>	Philippines (1986) Uganda (1986) Chad (1990) Chile (1990) Haiti (1995) South Africa (1995) Indonesia (2001)?	Greece (1975-76) Rwanda (1994-) Malawi (1995)	Bolivia (1982)/(1986-93) Argentina (1983)/(1985) East Germany (1992-)/(1992-) Ethiopia (1992)/(1997-)	South Korea* Columbia* Namibia* Angola* Mozambique** Eastern European countries**
<b>Non-government or international</b>	Brazil (1985) Uruguay (1985) El Salvador (1991) Guatemala (1996)	Yugoslav (1994-)	Rwanda (1993)/(1994-)	Cambodia*

Notes:

\*There have been calls for truth commissions, but the governments in these countries have either not yet officially responded or have responded negatively.

\*\*No formal claims for truth commissions or trials have been made by the public in these countries.

Sources: Skaar (1999) and Kasim (2000).

What is a truth commission? There is no fixed definition about of a truth commission. Priscilla Hayner (1994: 604) suggests that there are four important elements in a truth commission. *First*, a truth commission must focus on the past. *Second*, a truth commission is established to gain an overall picture about gross human rights violations over a period of time and is not focused on a specific event. *Third*, it is established for a specific period with its specific purpose and it will be dismantled when the truth commission publishes the final report. *Fourth*, a truth commission has a power and a high degree of authority to access information in every government institution and to guarantee the safety of the witnesses.

Overall, it can be suggested that a truth commission has advantages over an ordinary court in dealing with past crimes. The truth commission is useful in a transitional period because it

avoids prolonged legal battles that are often costly in many ways (Hayner, 1996: 20). However, the truth commission is not a legal institution and it has no legal power in terms of giving punishment to the perpetrators, but, at the same time, it has power to give recommendations to government to take further legal action. A truth commission would be in a better position to address the issues related to impunity and retributive justice. For instance, amnesty would not be given to perpetrators who are not willing to confess about their crimes committed in the past. Also, the truth commission would recommend that the victims are entitled to some sort of compensation and rehabilitation as part of restoring their dignity and as part of strengthening the reconciliation process.

What is “truth”? According to a German Philosopher, Jurgen Habermas (as quoted in Bronkhorst, 1995: 145), there are three aspects to truth. *First*, truth must deal with something that really did happen and exist. Facts are the main element of the truth. *Second*, truth must be accompanied by a normative system in which both the victims and perpetrators can make judgments about their own stories. They would, for instance, acknowledge that someone can be categorized as a criminal when the person commits genocide or crimes against humanity. *Third*, truth would only become ‘truthful’ when it is told in a right way. At the end, both the perpetrators and victims and their families have an equal right to tell their own stories or accounts so that the general public could take lessons and also learn from them in order to avoid similar things happen again in the future.

What is reconciliation? Reconciliation can be understood as an effort to find a peaceful solution by bringing together various conflicting parties, regardless of their different motives, backgrounds and interests. Reconciliation must involve various ways of restoring and recognizing the rights and dignities of each conflicting parties so that both sides can overcome their past in order to embrace the future. According to Daan Bronkhorst (1995: 53-54) a reconciliation process must consist of the four elements of investigation, mediation, settlement and adjudication. Investigation is done when a government publishes an official statement about those who are implicated in the past human rights abuses. Mediation requires an effort to bring conflicting parties together under the auspices of domestic or international mediators.

Settlement involves efforts to rehabilitate and compensate the victims. Adjudication deals with possibilities for taking further legal actions against the perpetrators who may be brought to trial for their crimes in the past.

In reality, however, the establishment of a truth and reconciliation commission is also not an easy process and it involves both political as well as a legal processes. Priscilla Hayner writes:

A truth commission generally works under much public pressure, with little time and limited resources, often confronting the most sensitive issues in the political sphere—who did what, when, how and why—with the difficult aim of writing a report that will be universally accepted as impartial, fair and an accurate representation of history (1996: 19-20).

In the context of dealing with gross human rights violations, government and civil society have joint responsibility to bring about the reconciliation process. In a new democratic political system, a truth commission often operated in a transitional situation where the ‘status quo’ and ‘reform’ forces are still competing for control over political processes. Jose Zalaquett (1995: 17) points out that political constraints during the transitional period means that the establishment of a truth commission often would be accompanied by power struggles among conflicting parties.

Where does Indonesia fit in? Post-Suharto Indonesia offers an interesting case study. Similar to countries such as Argentina, Chile and recently South Africa that experienced transitions to democracy during the 1980s and early 1990s, since the downfall of Suharto in May 1998, Indonesians have been experiencing difficulties in overcoming with the legacy of the gross human rights violations of the previous decades as part of the reconciliation process. To understand this, we need to examine the political, legal and social constraints and obstacles faced by the Habibie and Abdurrahman Wahid governments in dealing with the legacies of the gross human rights violations that occurred in the past. These constraints and obstacles are intertwined and these constraints, in many ways, have been part of the dynamics of Indonesian politics in the post-Suharto era.

## **Constraints and Obstacles for Reconciliation in Indonesia**

The difficulties of the Habibie and Abdurrahman Wahid governments in dealing with the issue of the gross human rights violations of the New Order period primarily rest on the magnitude of the issue. The Suharto era left bad records and memories in the area of human rights. Many reports on this have been published by international and national human rights organizations (ICG, 2001; Komnas Ham, 1999). The gross human rights violations that occurred during the Suharto era affected a range of segments of Indonesian society. Members or sympathizers of the Communist Party of Indonesia (*Partai Komunis Indonesia*, PKI) and their families were traumatized by the killings, torture, imprisonment and humiliation following their scapegoating after a failed coup attempt in 1965 which marked the rise of Suharto into power. Urban and student activists experienced political repression in late 1970s and the 1980s. Meanwhile ‘petty criminals’ were killed systematically in early 1980s. Islamic leaders and their followers were jailed for their involvement in the Tanjung Priok (1984) and Lampung (1989) cases. The supporters of Megawati Sukarnoputri’s Indonesian Democratic Party (*Partai Demokrasi Indonesia*, PDI) and the Peoples’s Democratic Party (*Partai Rakyat Demokrat*, PRD) were arrested following the takeover of the Indonesian Democratic Party on July 27, 1996, which is known as the 27 July 1996 affair. More recent cases are the killings of Trisakti University in May 1998 and of Atmajaya University in November 1999. Above all, the gross human right violations also affected hundreds of thousands of civilians in rebellious provinces like East Timor, Aceh and West Papua.

The departure of Suharto from the center of power was followed by the pressure on the domestic and international fronts to investigate the gross human rights violations of the previous three decades. The Habibie government failed to response these demands. Unlike Suharto, Habibie was a weak president and his presidency rested on political support from the ruling party *Golongan Karya (Golkar)* and the Indonesian military. Habibie himself was part of Suharto’s inner circle and with this proximity he would have been reluctant to investigate the gross human rights violations committed during the Suharto era because this would implicate Suharto himself and other top military generals. The Abdurrahman Wahid

government also had been slow to deal with these legacies. Although Abdurrahman Wahid was democratically elected, but politically he is also a weak president because his party, the National Awakening Party (*Partai Kebangkitan Bangsa*, PKB), only won about 10% of the votes in the 1999 general elections. With this weak power base, Abdurrahman Wahid had been more interested in protecting his presidency than in investigating the crimes committed by Suharto and other top generals in the past. Not only that, any investigation of the past crimes would implicate Abdurrahman Wahid's Islamic organization, the *Nahdatul Ulama* (NU) and its youth wing, *Banser*, who participated in the mass killing of the supporters and sympathizers of the Communist Party of Indonesia in East Java province in the 1960s.

The attempts to investigate past crimes has been stalled by a lack of political will on behalf of the Habibie and Abdurrahman Wahid governments. Both governments inherited enormous economic, political and social problems. From the beginning, the reform agenda proposed by the pro-reform groups had been focused very much on the changing of the political leaders, on the establishment of a multi-party system, on the reduction of the Indonesian military's role in politics, and on the elimination of the so-called "corruption, collusion and nepotism" (*korupsi, kolusi* and *nepotisme* or KKN) practices (Budiman, Hatley, Kingsbury, 1999; Manning and van Diermen, 2000). In other words, the demands to investigate the gross human rights violations and for the strengthening of the reconciliation process were seen as a less important than other reform agendas mentioned above. As we can see, during the heyday of the *reformasi* movement throughout 1998, there were only a few political leaders who seriously demanded investigation of the gross human rights violations of the Suharto era.

The failure to investigate these past crimes strengthens the 'culture of impunity' enjoyed by military and political leaders from the Suharto regime. So far investigation of the perpetrators of the gross human rights violations in the past has been impossible since many of them are still in power or still powerful enough to influence the current political processes. There are a number of reasons why the culture of impunity still strong in Indonesia. Firstly, the weakness of the Indonesian legal system and the impotence of the law enforcement institutions in Indonesia. Indonesia's criminal code known as *Kitab Undang-undang Hukum Pidana* (KUHP)



is inherited from the Dutch and designed for dealing with ordinary crimes and therefore it is useless in dealing with gross human rights. Judges, prosecutors and lawyers are not trained to deal with human rights crimes and they also have little knowledge of human rights laws and principles. Although, in theory, the perpetrators can be put on trial, a court of law often has difficulty in providing strong evidence and witnesses in cases related to gross human rights violations. Secondly, the Indonesian military courts system also fails to bring high-ranking military officers to justice. The military courts often are conducted in secrecy with no observers or public scrutiny and therefore the general public has difficulty in gaining accurate information about the crimes committed by these officers. In several cases, those who are brought to trial are lower-ranking military officers and often they receive only light sentences since they argue that they had to follow orders coming from their superiors and they believed that the orders were legally acceptable and therefore they followed the government policy at the time (ICG, 2001: 12). Thirdly, the ‘culture of impunity’ has become ‘normality’ as those who were suspected of committing crimes in the past (including former President Suharto and other high-ranking military officers) refused to take responsibility for their actions and were not held accountable. In the eyes of a High Court Judge, these leaders have failed to show shame (*budaya malu*) and to behave in a gentlemanly manner (*sikap kesatria*) (Artidjo Alkostar, 20/2/2001). The denial attitude became a common practice among by many former Suharto followers. No one has ever declared that they would resign from a top or important position in government for being suspected as a perpetrator of human rights violations. This all creates the misleading perception that that Suharto and his followers are above the law and immune from prosecution.

The lack of political will and consensus among the Indonesian elites has also hampered the reconciliation process in Indonesia. Although, in late 1998, the pro-reform leaders known as the *Ciganjur* Four comprises himself, Amien Rais, Megawati Sukarnoputeri and Sultan Hamengkubuwono IX, came out with the idea of “national reconciliation” (*rekonsiliasi nasional*), aiming to reconcile the political conflicts between the supporters and the enemies of President Habibie, but the reconciliation issue was not part of the core issues of the *reformasi* movement in 1998. However, since then there was a realization that the reconciliation process

was a crucial agenda especially after Abdurrahman Wahid introduced an idea of “national reconciliation” (*rekonsiliasi nasional*) as a part of efforts to build ‘new’ Indonesia, similar that in South Africa in the post-apartheid era (*Jawa Pos*, 21/11/98; *Kompas*, 26/11/98). But the public reacted cautiously. The national consensus was not established. President Habibie himself questioned what sort of national reconciliation that Indonesia must embark on, who would lead the reconciliation process and in what form it can be carried out?

Meanwhile, other political leaders responded with different interpretations. Lt. Gen. Agum Gumelar from the National Defense Institute (*Lembaga Pertahanan Nasional*, a military think tank), came out with what he called a “national get-together” (*rembug nasional*), a forum that would bring together every leader from both formal and informal institutions to discuss the reconciliation process (*Media Indonesia*, 30/11/98). Once again, President Habibie rejected the idea of *rembug nasional*. Habibie preferred that a reconciliation process should be carried out constitutionally under the 1945 Constitution, and so believed it could only be done by the People’s Consultative Assembly as the highest institution in Indonesia (*Suara Pembaruan*, 8/12/98; *Jawa Post*, 8/12/98; *Media Indonesia*, 8/12/98). Eventually, the idea of national reconciliation stalled until President Habibie was voted out the presidential race in September 1999.

The election of Abdurrahman Wahid as President in October 1999 had a positive impact on the reconciliation process in Indonesia. There was optimism that the reconciliation process could be continued under his presidency (*Berita Buana*, 24/10/99; *Kompas*, 23/10/99; *Media Indonesia*, 24/10/99). At that point the image of Indonesia in the international community was tarnished with the media covering the massacres and mass killings that happened following the United Nations-sponsored referendum in East Timor in August 1999. This is created a sense of outrage and shame among ordinary Indonesians both inside and outside the country. The decision of the United Nations to consider the establishment of an International Tribunal Court to try those who committed human rights crimes in East Timor was a warning for Indonesian leaders about the seriousness of the human rights violations in Indonesia. Against this backdrop, many in Indonesia and the international community put their hope in the newly

elected President Abdurrahman Wahid to embark upon the reconciliation process and to bring about justice for the people in Indonesia. It was in this setting that the public demands to establish a Truth and Reconciliation Commission in Indonesia gained momentum.

### **The Drafting of the Truth and Reconciliation Commission Bill**

In response to the public demands for delivering justice and upholding the rule of law, the Indonesian parliament passed several new human rights Bills aiming to deal with the gross human rights violations that happened in different parts of Indonesia. Two important Bills were enacted at the end of 1999. The first one was the Law on Human Rights which originally was drafted during the Habibie presidency, and amended by the Abdurrahman Wahid government. In addition, the Indonesian parliament also enacted the Law on Human Rights Courts in November 2000 and the Ad Hoc Human Rights Courts.

What follows is a discussion on the drafting the Truth and Reconciliation Commission Bill.

Firstly, the idea of establishing a Truth and Reconciliation Commission was originally proposed at a meeting between the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*) and the then President B.J. Habibie in 1998 (*Merdeka*, 5/9/98; *Media Indonesia*, 5/9/98; *Suara Pembaruan*, 5/9/98; *Kompas*, 5/9/98). The idea was based on the idea that justice must be delivered and those who are responsible for the gross human rights violations during the New Order period must be brought to trial. Also, it was argued that reconciliation process could only be achieved in Indonesia if there was disclosure of the gross human rights violations of the past and this would be an important step for the whole nation to learn so that this would not happen again in the future. In the first instance, President Habibie responded to this idea positively, wanted to discuss the issue first with the then Minister of Defence and the Chief of the Indonesian Armed Forces, General Wiranto (Asmara Nababan, 21/2/01). Later on, President Habibie told the National Commission on Human Rights that General Wiranto had refused the idea because it would create more problems within the Indonesian military as an institution whose image at this time was already damaged in the eyes

of the Indonesian people. According to Ifhdal Kasim (22/2/01; and *Republika*, 3/6/00) General Wiranto believed that what the Indonesian military did in the past was to follow the government policy of the day and because of that, the military officers cannot be blamed for violating human rights principles. From this point, the idea of establishing a Truth and Reconciliation Commission did not get further support from the Habibie government and the political elites.

The 1999 general elections brought changes in the Indonesian political landscape. New political parties and political players took more prominent roles in national politics, contesting the dominance role of the ruling party *Golkar* and the Indonesian military in both the government and the parliament. Those who had been lobbying for the establishment a Truth and Reconciliation Commission in Indonesia regarded this time of political change as an opportunity to increase their efforts. A few prominent lawyers from non-government organizations lobbied the newly elected members of Parliament to incorporate the reconciliation issue in the parliament's agendas (*Suara Pembaruan*, 26/10/99). However, the new politicians in the parliament were divided in their response to the idea of establishing a Truth and Reconciliation Commission. Some thought that a truth commission was not an important issue, while others promised to bring this idea to the Annual Meeting of the Peoples' Consultative Assembly in 2000 (*Kompas*, 8/12/99). At this point, there was no strong bi-partisan support in the parliament (Ifdhal kasim, 22/2/2001).

Despite this, efforts to lobby for the establishment of a Truth and Reconciliation Commission continued. At a seminar held in Puncak, a small resort town about 100 km from Jakarta, about thirty-six non-government organizations collectively urged the new Abdurrahman Wahid government to establish a Truth and Reconciliation Commission in Indonesia (*Kompas*, 2/12/99). The new Law and Human Rights Minister, Professor Yusril Ihza Mahendra, responded positively to the idea and requested Abdul Hakim Garuda Nusantara and Ifdhal Kasim (both from Elsam, the Jakarta-based Institute for Policy Research and Advocacy) to formulate a draft bill on the Truth and Reconciliation Commission and to explain the rationale and reasons on why such a Commission was important for Indonesia (Ifdhal Kasim, 22/2/2001). Abdul Hakim Garuda Nusantara and Ifdhal Kasim responded by producing a draft

Bill for limited circulation. Subsequently Minister Yusril asked his deputy, Professor Romli Atmasasmita, who was then in charge of legal drafting, to oversee the discussion on the draft Bill proposed by Elsam. At that time Professor Romli was also preparing the new Law on Human Rights Courts for parliament approval.

At the end of 1999, the Ministry of Law and Human Rights set up an inter-departmental team comprised of representatives from various government departments, and non-government organizations, including religious leaders, scholars and lawyers. The team discussed the merits of establishing a Truth and Reconciliation Commission in Indonesia. There was discussion what is a Truth and Reconciliation Commission and why Indonesia needed one. In early 2000 the Ministry of Justice ran a three-day seminar held in Bogor, West Java, to discuss the merits of establishing a Truth and Reconciliation Commission in Indonesia. This seminar produced the first draft of the Truth and Reconciliation Commission Bill which was accepted by the Ministry of Law and Human Rights as an official document (Ifdhal Kasim, 22/2/01; *Kompas*, 11/1/00). In substance, this draft was not very different from the Elsam version, except that the time framework was expanded to include the Old Order (pre-Suharto) period. In other words, in the future the Truth and Reconciliation Commission would also be able to investigate the gross human rights violations happened during the Old Order period. According to Ifdhal Kasim (22/2/01) Minister Yusril insisted this inclusion was necessary so that the Truth and Reconciliation Commission could include cases from the Old Order period like the political persecution experienced by the members of the modern Islamic-based political party, *Majelis Syura Indonesia (Masyumi)* and the Indonesian Socialist Party (*Partai Sosialis Indonesia*, PSI) during the Sukarno's Guided Democracy period.

To gain more knowledge about the operation of a truth commission, Elsam and the Ford Foundation invited overseas experts Pricilla Hayner, a human rights lawyer who is an expert on truth commissions, Paul van Zyl, a former General Secretary of South Africa's Truth Commission, and Douglas Cassel, formerly in charge of El Salvador's Truth Commission, to discuss the plan to establish a truth commission in Indonesia (*Kompas*, 4/3/00). The delegation also met President Abdurrahman Wahid, Minister Yusril and representatives from the Ministry

of Justice, primarily to discuss the various models of for a truth commission and to suggest the model that would suit Indonesia (Ifdhal Kasim, 22/2/01). Elsam published the views of those legal and human rights experts on Indonesia's Truth Commission (Elsam, 2000). Among the models available, the South African model emerged as the one that would suit Indonesia best. At this point, the Ministry of Law and Human Rights was not sure yet which model Indonesia would adopt. However, there were strong opinions reported in the Indonesian media that the South African model was the most suitable option for Indonesia.

Early indications that the Abdurrahman Wahid government planned to adopt the South African model were confirmed when the President himself visited South Africa in April 2000. During his visit, he met both the South African President Thabo Mbeki and representatives from the South Africa Truth and Reconciliation Commission, learning of the experiences of South Africans in dealing with the past crimes and requesting them to share their knowledge with Indonesians (*Kompas*, 10/4/00; *Jakarta Post*, 12/4/00). The public and the Indonesia media reacted positively to the possibility of establishing a truth commission similar to that in South Africa (*Republika*, 11/4/00). Satjipto Rahardjo, a prominent law scholar, suggested that a Truth and Reconciliation Commission was needed for dealing with issues or problems that could not be solved through an ordinary court and this view was also supported by Minister Yusril (*Suara Merdeka*, 14/4/00; *Media Indonesia*, 16/4/00). Munir, from Kontras (a human rights organization), supported the establishment of a Truth and Reconciliation Commission because it would assist the reconciliation process through the functions of prosecuting and forgiving (*Republika*, 20/4/00).

Meanwhile, Akbar Tanjung, the Speaker of the House of Representatives, went further in suggesting that respected Muslim scholar, Nurcholis Madjid, and prominent Catholic figure, Frans Seda, should be considered as candidates for running the future Truth and Reconciliation Commission in Indonesia (*Suara Pembaruan*, 11/4/00; *Media Indonesia*, 11/4/00). Meanwhile, Abdul Hakim proposed prominent Islamic leader, Sahal Mahfudh, and at the same time, Marzuki Darusman, from the Attorney General's Office, suggested Ichlasul Amal, the Rector of Gajah Mada University, as potential candidates for the job (*Suara*

*Merdeka*, 12/4/00; 16/4/00). Asmar Oemar Saleh, the Deputy Minister for Human Rights, underlined the need to gain a national consensus on the importance of knowing and investigating past crimes before the reconciliation process could begin (*Republika*, 19/4/00).

Moreover, Indonesia's National Commission on Human Rights with financial assistance from the United States Aid and International Development (USAID) office in Jakarta organized a study trip for an Indonesian delegation to South Africa in May-June 2000. This delegation comprised about thirty persons who were representatives from government institutions, non-government organizations, religious leaders, and lawyers. Unfortunately, no political party sent a representative. During a two-week visit, the delegation visited Johannesburg, Capetown, and Pretoria, primarily studying the activities of the Truth and Reconciliation Commission in these cities. They also met with various non-government organizations, lawyers and with the apartheid victims. The delegation learned how the structures and mechanisms of a Truth and Reconciliation Commission work in reality, as opposed to in theory. And they learned the importance of amnesty and compensation or rehabilitation policies as essential components in the reconciliation process in South Africa. According to a member of this delegation, the visit was successful in the sense that Indonesia could learn many things from South Africa, but at the same time, it was clear that the South African model could not be applied in full because of the different political, legal and cultural settings in South Africa and Indonesia which needed to be taken into consideration (Ifdhal Kasim, 22/2/01). This similar view also shared by Dr Alex Boraine, a Vice-Chairman of South Africa's Truth Commission who visited Indonesia in June 2000 (*Kompas*, 14/6/00). He specifically mentioned the role of Nelson Mandela in the establishment of South Africa's Truth and Reconciliation Commission.

The Ministry of Law and Human Rights revised the draft several times throughout 2000. It incorporates suggestions from many Indonesian and overseas experts and takes into consideration the insights that the Indonesian delegation gained from their trip to South Africa (Ifdhal Kasim, 22/2/00). Finally, at the end of 2000, the Ministry drafted the proposed Truth and Reconciliation Commission Bill. The seventh draft of the Bill was obtained by the writer in February 2001. The main features of the draft will be discussed briefly below.

The definitions of “Truth”, “Reconciliation”, and “the Commission” are given in the introduction of the Truth and Reconciliation Commission Bill (Article 1). “Truth” means “truth with regard to events than can be described in connection with gross human rights violations, with regard to victims, perpetrators, places and times”, and “reconciliation” means “the product of a process of speaking the truth, acknowledgement, pardon, and compensation which is agreed with the aim of resolving gross human rights violations to bring about peace and national unity”. While, the Commission is defined as “an independent body established to uncover and disclose the truth with regard to gross human rights violations and to bring about reconciliation”.

The Truth and Reconciliation Commission would only deal with two types of gross human rights violations namely “genocide” and “crimes against humanity” which are stated in the Law on Human Rights Courts. Genocide refers to “every act that is intended to destroy or annihilate all or part of a group of nation, race, ethnic, religious community” (Article 8). Crimes against humanity refers to any act carried out as a part of an extensive and systematic attack against the civilian population and this can include killing, disappearances, slavery, forced relocation, torture, rape and apartheid crimes (Article 9).

Overall, the Truth and Reconciliation Commission would be set up for a 3-year period (with 1 year extension) and it would have legal jurisdiction for accepting complaints about and reports from the perpetrators and victims of the gross human rights violations of the past. The Commission would be responsible for collecting data on and clarifying the gross human right violations and also for giving recommendations to the government regarding various forms of compensation, restitution and rehabilitation for the victims. The Commission also would give legal opinions to President regarding the granting or not granting of amnesty for those who committed crimes in the past. At the end, the Commission would produce a final report about their activities and findings to President, the Parliament and the Supreme Court.



In terms of organizational structure, the Commission would be divided into three sub-commissions on data collection and clarification; amnesty; and compensation, restitution and rehabilitation. The draft bill states that membership of the Commission “will be drawn from a selection process carried out by the National Commission on Human Rights, from a list of nominations submitted by individuals, community groups and humanitarian organizations” (Article 30). In terms of recruitment for the members of the Commission, the National Commission on Human Rights would set up a selection committee comprised of five persons (three persons from the National Commission on Human Rights and two persons from the civil society). This selection committee would nominate sixty persons to be interviewed and screened and then, finally, thirty members would be selected and then be approved by the Parliament. At the final stage, the President as Head of State would appoint the thirty persons as the members of the Commission.

Is the Truth and Reconciliation Commission the right choice for Indonesia at the moment? According to Ifdhal Kasim (22/2/01), the establishment of the Truth and Reconciliation Commission is an important step for Indonesia’s democratic transition because it would be a good way of dealing with the gross human violations that happened in the past. More importantly, the Commission would be a proper institution in which Indonesians would be able to reconcile with each other in order to prevent a reoccurrence of these events in the future. The Commission also would be able to avoid the prolonged legal battles through an ordinary or human rights court which are often time-consuming and costly (Kasim, 2000: pp.8-9). In other words, the Commission would be one of a number of options for delivering a sense of justice during the transitional period. This would help to restore the trust in the Indonesian society that had been torn apart with conflicts in the past (Asmara Nababan, 21/2/01). This is in line with the view that for the sake of protecting a new democratic political system and maintaining the political stability, new democratic governments have to deliver what human rights scholars and political scientists call a “transitional justice” (Teitel, 2000; Heyner, 2000; Friedrichs, 2000; Hesse and Post, 1999).

Will the Indonesian parliament support the legislation of the Truth and Reconciliation Commission? The answer is that we do not know yet. By looking at the distribution of power in Indonesia (**Table 2**) we can see that it is likely that the major political parties such as the Indonesian Democratic Party-Struggle, the National Awakening Party and other reform and Islamic parties who belong to the so-called Central Axis will support the reconciliation process and the legislation of the Truth and Reconciliation Commission Bill. We still do not know whether the former ruling party *Golkar* and the Military/Police faction in the parliament will agree to support the legislation of the Truth and Reconciliation Commission Bill. There are strong reasons for skepticism at this point, because the images of both *Golkar* and the Indonesian military will be tarnished if many of their leaders are the subject of inquiries by the future Truth and Reconciliation Commission (M. Yamin, 19/2/01). But, in short, unless there is strong political commitment from the current leaders in Indonesia, the reconciliation process will go nowhere.

**Table 2**  
**Distribution of Power in the House of Representatives (DPR)**

Political Party	Seats	Percentage
<b>Indonesian Democratic Party-Struggle</b> (Megawati)	153	30.6
<b><i>Golongan Karya</i></b> (Akbar Tanjung)	120	24.0
<b>The Nation Awakening Party</b> (Gus Dur)	51	10.2
<b>Central Axis</b> (Amien Rais and others):		
The United Development Party (PPP)	58	11.6
<i>Reformasi</i> (PAN and PK)	41	8.2
The Crescent Star Party (PBB)	13	2.6
<b>Nationalist front</b> (KKI)	12	2.4
<b>Islamic front</b> (PDU)	9	1.8
<b>Christian front</b> (PDKB)	5	1.0
<b>Military/Police</b> (appointed)	38	7.6
<b>Total</b>	500	100

Source: Kompas (2000)

At this point in time, with the fluidity of coalitional politics in Indonesia in the post-Suharto era, it is certainly difficult to predict the preferences of the major political parties as to who

would chair and become the members of the Truth and Reconciliation Commission. In this respect, it is clear that the board-based support from the current political elites is crucial.

Romli Atmasasmita says:

Support from all levels of society is absolutely necessary. And yet agreement between the political elite and the broader society is a determining factor in reconciliation (interview, 19/2/01).

Asmara Nababan also says:

But whether the Truth and Reconciliation is effective or not is very dependent on our macro-political situation. What I mean is, if this Commission is accompanied by instruments of transitional justice, I would be optimistic. But if it stands alone, as through the Commission would be the end of everything --that would be difficult-- because the elements of the previous authoritarian regime are still in power (interview, 21/2/01).

More importantly, the successful legislation of a Truth and Reconciliation Commission will also depend on the continuous support of civil society in Indonesia. As in South Africa, civil society will play a crucial role in the establishment of a Truth and Reconciliation Commission. The Mandela government would not have been able to embark upon the reconciliation processes in the post-apartheid era without support from the South African civil society (Villa-Vicencio and Verwoerd, 2000). At this point in time, it is too early to know to what extent the civil society in Indonesia will unite to put pressure on the parliament to pass the Truth and Reconciliation Commission Bill.

### **Concluding Remarks**

This paper has explored the politics of the reconciliation process in the post-Suharto era giving attention to the plan to establish a Truth and Reconciliation Commission in Indonesia.

Indonesia is in a transition period. Similar other new democratic countries, Indonesia is facing difficulties in dealing the gross human rights violations committed during the Suharto era. The political uncertainties that shape Indonesia's fragile democratic transition will influence the choices between prosecuting, forgiving, and forgetting strategies in dealing with past crimes. It can be suggested that these choices will be influenced by the dynamics of Indonesian politics. In this context, it is likely that the establishment of a Truth and Reconciliation Commission in Indonesia will be a result of political compromise and a means to providing prosecuting, forgiving and forgetting for the people of Indonesia in the context of protecting a new democratic political system and promoting political stability in Indonesia. Therefore, the establishment of a Truth and Reconciliation Commission would be part of restoring the dignity of the Indonesian people and the society at large. As Aryeh Neier says:

There are so many people who feel that they were victimized and it is important for them to see that the government and the country as a whole is facing up to the past and acknowledging the suffering that they experienced (*Jakarta Post*, 28/3/00).

More importantly, the Truth and Reconciliation Commission would be an important symbol for the on-going efforts to search for a 'new Indonesia' (*Indonesia baru*) in which the Indonesians themselves can reconcile with their past, and with each other for their future.

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