STATE OBLIGATION TO RESOLVE PAST HUMAN RIGHTS ABUSES: AN OVERVIEW OF THE CASE OF THE 1965-1966 EVENTS IN INDONESIA¹

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A. Introduction

*Kuman Di Seberang Lautan Tampak, Gajah di Pelupuk Mata Tak Tampak* (able to see a germ even across the sea, unable to see an elephant even in the eyelids) is an Indonesian proverb which describes someone who was unaware about things in his or her surroundings, yet very much concerned about other party’s affair however small it was. The aforementioned maxim really fit to describe the nescience of the vast majority of Indonesians over a dark page in the history of their own country. The racial extermination against the Jews in many parts of Europe during World War II might be a knowledge that has been widely known to many Indonesians particularly because the tragedy has long been a subject taught in schools. This, ironically, is not the case with the appalling killings of an estimated five hundred thousand or more suspected-leftists and or leftist sympathizers in Indonesia during the six months of October 1965 to March 1966.³

Even up to the writing of this paper, the killings never became part of the formal history of the nation despite being reported as one of the worst mass murders of the 20th Century.⁴ The massacres were known only to limited people of younger generation at least until the

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screening of *The Act of Killing* (TAoK) when they began to receive unprecedented massive attention from both the national and international communities.\(^5\)

This paper will be discussing about a humanitarian tragedy that occurred in the Indonesia in the mid-1960’s popularly known as the 1965-1966 Events. The paper will not only be explaining about the events which caused so many casualties among Indonesian people, but more importantly things that have been done by the Indonesian government to settle the case. In addition, the paper will propose strategies that can be done to push and or speed up the settlement of the case which in turn will expectedly bring justice to the victims of the events and or their families.

**B. The 1965-1966 Events: A Brief Description**

TAoK, a title of the movie being discussed in the introductory section above, is not a usual film where the actors interactively play their roles as written down in the scenario. Anwar Congo, the central figure of the movie just had to act as himself and do precisely what he did toward anyone deemed to be member and or sympathizer of the *Partai Komunis Indonesia* (*Indonesian Communist Party*, PKI) decades before its premiere at *Toronto Film Festival* in 2012.\(^6\) Instead of showing remorse for what he did, Anwar proudly demonstrated various methods in executing his victims ranging from stabbing with a knife to strangling with stiff wire. Anwar was only one of thousands of anti-communist people who took part in the violence and his cruelty as depicted in TAoK was just a tiny fragment of an immense tragedy that struck Indonesia back in the mid-1960’s. Just as Anwar in North Sumatera, many people across the country at that time became extremely mad at the PKI after hearing the brutal murder of six top generals and a lieutenant in Jakarta and the rumour that put the party as

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the main suspect. Accusations held that the assassinations were carried out as part of a coup attempt to change the official State ideology from Pancasila to Communism and that the PKI were preparing to eliminate their political adversaries precisely as they did to the generals.⁷ Although affiliation with the PKI was at that time lawful, the allegations that the party had committed inhumane acts against prominent figures in the Army had fuelled the anger of the masses who then vented their hatred toward anyone identified and or perceived to be members of the PKI.

The vast geographical spread of the killings coupled with the fact that there was little record keeping at the time has made it difficult to ascertain the exact number of casualties. Sarwo Edhie Wibowo, the former commander of the Resimen Parakomando Angkatan Darat (Army Paracommando Regiment, RPKAD) is said to have confessed that no less than 3,000,000 people had been killed by his troops.⁸ Until his death in 1989, Sarwo Edhie never corrected his controversial confession.⁹ Meanwhile, Central Intelligence Agency (CIA) and the Department of State estimated the death toll in the massacre between 250,000 to 500,000 people.¹⁰ Robert Cribb, one of the leading experts on this subject even believe that the total amount of people killed in the massacre was vastly greater compared to similar cases of political oppression toward the powerful and previously legal communist party in Chile and Argentina which took place shortly afterward.¹¹


¹¹ See Robert Cribb, ‘Unresolved Problems in the Indonesian Killings of 1965-1966’ (2002) 42 Asian Survey 550, 552. The number of people killed in Chile under the military regime led by Augusto Pinochet was around 3,000 people, while some 3000 to 4000 other were tortured by the government. See Hannibal Travis, Genocide,
The huge number of victims who were killed in the purge being described above might be shocking and even beyond imagination, yet it was actually a phenomenon that is not hard to understand given the protection afforded by the military to the people who participated in the purge.\textsuperscript{12} Felt threatened and angry at once, the people particularly those from right-wing paramilitary groups enthusiastically helped to slaughter anyone believed to be members, cadres, or sympathizers of the PKI.\textsuperscript{13} Religious sentiment in which PKI members were seen by the people as evil who deserved to be killed for what they did to the generals was also an explanation of why so many people killed in the extermination.\textsuperscript{14} Apart from the contributing factors that caused so many casualties above, the brutal killings of so many civilians with the support of State apparatus were not the only feature of the tragedy. Other crimes in the form of torture, rape, enforced disappearance, and arbitrary detention also occurred and even marked the birth of a new regime which called itself the New Order.\textsuperscript{15}

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\item Ben Kiernan, Blood and Soil: A World History of Genocide and Extermination From Sparta to Darfur (Yale University Press 2007) 578.
\item See Soe Tjen Marching, ‘Torture, Slur, Sexual Harassment’ [2015] Bhinneka 14. The New Order is a term coined by Suharto to label his administration, distinguishing it from the Old Order of the Sukarno administration. The phrase ‘New Order’ gives a notion of improvement, a replacement of old things which had been deprecated. In the context of law, governance and many aspects of political life, the term even sounds like an alternative for a more representative government, an expectation of a better and fresher system of administration. See Hiroyoshi Kano, Indonesian Exports, Peasant Agriculture and The World Economy, 1850-2000: Economic Structures in Southeast Asian State (NUS Press 2008) 19; Saiful Mujani, ‘Civil Society and Tolerance In Indonesia’ in Azyumardi Azra and Wayne Hudson (eds), Islam Beyond Conflict: Indonesian Islam and Western Political Theory (Ashgate Publishing Limited 2008) 203.
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Contrast to the official version of history which left no single page for the mass persecution of the communists, TAoK has, in Ariel Heryanto’s words, “broken the general onscreen silence that has lasted for over a quarter of a century”. The movie perfectly reflects the reality in Indonesian politics, a depiction on how the New Order’s horrible myth about the PKI remain to have a gruesome effect on the society even long after the fall of the regime. Such impression makes violent actions toward anyone perceived to be communist felt by many as something tolerable and even justified. The pride expressed by the perpetrators and the support shown by the newer generation for what their senior did in the 1960’s give an important message on how the culture of impunity is still going on in Indonesia. To a certain extent, TAoK seems to question the silence of the State in dealing with past crimes while depicting the shocking impact of such neglect at grassroots level when truth and justice are deliberately ignored. The denial of human rights as such continues to happen with the negative stigma of the PKI as the traitor of the nation dominating the minds of the public which makes any violent actions against the victims being regarded more as patriotic deeds rather than crimes that deserve punishment.

C. Formal Attempts To Resolve the 1965-1966 Events

Despite the reluctance of post-New Order administrations to seriously investigate the crimes, attempts to resolve the tragedy through formal channels are by no means have never been carried out. In 2012, the National Human Rights Commission (NHRC) submitted a full report to the Attorney General Office (AGO) following the preliminary investigation carried out by the Commission over the alleged human rights abuses during a period called


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19 Outside the issue related to the crimes, legal attempts to restore justice has been undertaken by the people, including the judicial review of Law No. 12 of 2003 on General Election. The Constitutional Court declared Article 60 g of the General Election Law contradictory to the 1945 Constitution and therefore the Article lost its binding legal force.
by the Commission as ‘the 1965-1966 events’. One of the most crucial points of the report is the acknowledgement of the Commission that there is an adequate initial evidence to believe that crimes against humanity had taken place from September 1965 until at least 1978. Various types of acts are said to have occurred in the events including killings, torture, slavery, and forced disappearance. In this regard, State officials under the Komando Pemulihan Keamanan dan Ketertiban (Operational Command for the Restoration of Security and Order, Kopkamtib) that served from 1965 to 1967 and between 1977 to 1978 are being mentioned to be responsible for the crimes. In relation to the aforementioned statement, the Commission urges that military officials who were involved in the purge being mentioned above to be brought to trial. Two recommendations being proposed by the NHRC at the end of the statement for the follow up of the investigation are as follow:

1. In accordance with the provisions of Article 1 (5) and Article 20 (1) of Law No. 26 of 2000 on Human Rights Court, the Attorney General Office is requested to follow up this preliminary investigation with further investigation.

2. In accordance with the provisions of Article 47 (1) and (2) of Law No. 26 of 2000 on Human Rights Court, the result of this investigation may also be resolved through non-judicial mechanisms to fulfill the sense of justice of the victims and their families.

To follow up the recommendations above, President Susilo Bambang Yudhoyono ordered the AGO to examine the report and to notify the result of examination to the President and

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23 Komisi Nasional Hak Asasi Manusia, Ringkasan Eksekutif Pelanggaran Hak Asasi Manusia Berat (Komnasham RI 2014) 40.
other relevant parties. As a response, the AGO issued a letter No. 56/A/JA/08/2012 dated 1 August 2012 concerning the establishment of a team, consisted of 12 persons, with the main task to examine the report of the NHRC.

D. Justice Delayed is Justice Denied

The establishment of the team and the examination of the report, however, did not end up with the recommendations of the NHRC being followed up with further investigation. The AGO argued that improvements should be made to the report to justify an official legal investigation. Although the Commission had ever since the rejection resubmitted the report with improvements, the AGO repeatedly refused to carry out an investigation as recommended by the Commission with the same reason of incompleteness. The administration of Susilo Bambang Yudhoyono eventually failed to follow up the recommendations until the end of its term in 2014. Prolonged delay in following up of the recommendations as described above has even brought the NHRC to conclude that the Indonesian government had neither ability nor willingness to resolve the humanitarian problem caused by the 1965-1966 events.

The refusal of the AGO to follow up the recommendation which continued even up to the administration of Joko Widodo when this paper was being written seems to be an anti-

24 Kejaksaan Republik Indonesia, “Perintah Presiden Untuk Jaksa Agung” (2012).


climax in the search for justice for the victims of the 1965-1966 events. Undoubtedly, the culture of impunity that remains entrenched instead of vanishing despite the passing of the New Order regime has made the victims continue to suffer even long after the tragedy and after the fall of the repressive regime that deprived their rights. Indeed, President Joko Widodo affirmed on 16 August 2015 that the government was still trying to find the best solution possible for the settlement of past human rights abuse and that the establishment of a reconciliation committee for past human rights violation was being considered, yet not specifically mention about the 1965-1966 events. A few weeks later on Hari Kesaktian Pancasila (Pancasila Efficacy Day), a yearly ceremony to commemorate the killings of six Army generals on 1 October 1965, Widodo even made a statement which seemed to break the hope of many people by saying that he would not ask forgiveness to the victims. From a human rights perspective, the lack of commitment and seriousness to address the humanitarian problems caused by the events can be seen as an indication of the inability and even unwillingness of post-Suharto administrations to detach the ties with the past abusive regime.

The reluctance of post-Suharto administrations to resolve the 1965-1966 events as discussed above has a very serious impact on the country’s movement toward democracy. The nation remains in a situation of mutual distrust and sensitive against anything associated with Communism and or the PKI, a fear that often generates new conflicts and hostilities. The


30 See ‘Jokowi Tegaskan Tak Akan Minta Maaf Soal G30S’ (CNN Indonesia) <http://www.cnnindonesia.com/nasional/20151001103301-20-82042/jokowi-tegaskan-tak-akan-minta-maaf-soal-g30s/> accessed 25 August 2015. Widodo’s statement was in line with the stance of the Defence Minister Ryamizard Ryacuddu who firmly rejected the idea to ask forgiveness to the victims by calling such proposal unacceptable due to the murder of the Army officers as well as the rebellion that are said to be carried out by the PKI. See ‘Ryamizard Tak Senang Jokowi Minta Maaf Soal PKI, Ini Sebabnya’ (Tempo, 2015) <http://nasional.tempo.co/read/news/2015/08/20/078693495/ryamizard-tak-senang-jokowi-minta-maaf-soal-pki-ini-sebabnya> accessed 1 September 2015.
passing of time proved to be unable to dampen resentment among people and although often invisible, the ideological sentiment toward anything associated with the party often came to the surface and transformed to another injustice and or violation of rights and freedoms. In 2001 for example, Aliansi Anti Komunis (Anti-communist Alliance, AAK) raided bookstores and student residences in order to find and burn books considered or perceived to be containing Communism teachings. Public screening of TAoK in several campuses had to be stopped and or faced cancellation either by the local authorities or by religious organizations possessed by the phobia of PKI and or the propaganda of the latent danger of communism. Meanwhile, national gathering of the victims of 1965-1966 events which was planned to be held in August 2015, also had to ended up with cancellation due to the intimidation from a radical-religious organization group Front Pembela Islam (The Islamic Defenders Front, FPI). All of the horizontal conflicts being described above provide a strong basis for the argument that the 1965-1966 events is not a tragedy that has passed, but is still a serious problem that continue to be a thorn in the flesh for the nation. The root of the problems being described above is nowhere but in the lack of seriousness and or willingness of the State to resolve the case.


Needless to say, what has been discussed above is a situation which is contrary to the principles of justice and humanity. It is an obligation of the government to protect the human rights of everyone under its jurisdiction including those who became victims of the past human rights abuse.\textsuperscript{34} As stated in Article 8 of the \textit{Universal Declaration of Human Rights}, “Everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted him by constitution or by law.” Even if post-New Order administrations claimed that they were not complicit in the crimes, such reasoning is not an excuse to escape the responsibility to undertake necessary steps to settle any violations of human rights committed by the past regimes and to give justice to the victims. The commitment and seriousness to resolve past gross violations of human rights would even be a mark, which distinguishes a new regime from the past regime it replaced.

\textbf{E. What To Do?}

Bearing in mind that Indonesia is still far from fulfilling its obligation, political approach to push the Indonesian government to adhere its obligation to resolve the case had become a sensible option to be done. Regarding this, various forms of activism to achieve the aforementioned goal have actually been carried out. A series of examination held by the International People’s Tribunal (IPT) \textit{1965} in The Hague from 10-13 November 2015 was probably the most monumental example of this approach. Although the IPT was not a real court with a binding legal force in its decisions, the tribunal was succeeded in drawing the attention of global community to understand the mass persecution that occurred in Indonesia on that period as well as the stance of the Indonesian government toward the events.\textsuperscript{35} Political pressure through diplomatic means is also an approach that has been


\textsuperscript{35} At the end of the tribunal, the panel judges of the IPT 1965 concluded that “…allegations by prosecution of cruel and unspeakable murders and mass murders of over tens of thousands people, of unjustifiable imprisonment of hundreds of people without trial and for unduly long periods in crowded conditions, and the subjection of many of the people in prison to inhumane and ruthless torture and to forced labour that might well have amounted to enslavement, are well founded.” See ‘Concluding Statement of The Judges’
taken with the speech of the US Senator Tom Udal on 10 December 2014. Udal openly condemned the mass violence and emphasized the disclosure of the 1965-1966 events as an important step to be taken by Indonesia if the country wants to be a leader at both global and regional level. The senator expressed the same suggestion with the NHRC by emphasizing the need to establish a Truth and Reconciliation Commission and to investigate living senior military officials responsible for the crimes for the settlement of the case.

Various political approach being described above might still far from succeeded in pushing the Indonesian government to carry out its obligation, yet it does not necessarily mean that they do not make any contribution toward the settlement of the events. At home, a government-sponsored National Symposium on 1965 Tragedy was held in Jakarta to discuss the 1965-1966 events and was expected to the find solution for the problem. The symposium that was attended by representatives of the victims, experts, as well as the military recommended the government to seriously settle the 1965-1966 events either through reconciliation or through law enforcement process. Until the writing of this dissertation, however, none of the recommendation above had been followed up by the government.

Apart from the effectiveness of political efforts being described above, in-depth examination over the suggested follow-ups of the preliminary investigation of the 1965-1966 events as


recommended by the NHRC in its report is something which is not only relevant but also important to be done. The information obtained from the investigation would be needed once the Indonesian government, regardless of due to all of the measures being discussed above or because of other reason, considered to implement the recommendation of the NHRC to put an end to this humanitarian problem. Regarding this, the examination to be carried out should aimed to provide comprehensive information over the strength as well as the weaknesses of the suggested follow-ups so that the best approach for the settlement of the events might be rightly decided. The findings of the investigation would be useful not only for the settlement of the 1965-1966 events but also as a reference for the settlement of other past human rights violations not only in Indonesia but any other countries which have the same situation with Indonesia.\footnote{The killings that happened after September 1965 re-occurred in the 1980’s. The New Order Suharto assassinated people suspected as criminals in 1982 by using dead squad to execute. Many bodies were found dead in the hands of Petrus, acronym of Penembak Misterius (mysterious shooter). See Justus M van der Kroef, "’Petrus’: Patterns of Prophylactic Murder in Indonesia’ (1985) 25 Asian Survey 745, 745.}

F. Conclusion

The paper shows that in the case of the 1965-1966 events, the Indonesian government is still far from fulfilling its obligation to give justice to the victims of past human rights abuse. Such situation is of course contrary to the principle of justice and humanity. From a human rights perspective, the injustice caused by prolonged delay in the settlement of the events should be ended as soon as possible so that the victims of human rights can regain their rights. Furthermore, the settlement of the events is very important so that the same tragedy will never happen again in the future. In relation to this, there are strategies that can be done to push the Indonesian government to fulfil its obligation to resolve the case. However, a thorough investigation on the available framework to settle the events should also be done so that the best solution to settle the case can be obtained.

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