

Mapping Political Supports to Resolve the Past

(Promoting the Reinstatement of the Truth and Reconciliation Commission Law)

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This nation has released itself from the clench of an authoritarian regime for more than a decade, however, various issues inherited, as a result of policies made in the past, were still attached in the nation's journey. One of the main factors of the continuance of the past problems, in daily life, was the unclear solution to deal with some mistakes committed in the past. Many past human rights abuses have remained unresolved until today.

The absence of any solution to deal with the past, in the transition process from authoritarian to democratic period, will surely become a 'historical obstacle' for the future of this nation. This will result in the perpetuation of social segregation in the society. Victims will continue to suffer from stigmatization inherited from the past authoritarian regime. Should this situation continue to happen, it can be a time bomb waiting to explode another horizontal conflict and can, very likely, lead to the recurrence of an even worse atrocity. Why so? Because this nation has never learnt from its mistakes. By resolving the past, this nation will learn and will avoid repeating the mistakes in the future.

The Mandate to Establish a TRC

Learning from the experiences of other countries that have gone through a transition process, shortly after *reformasi*, Indonesia has actually had an initiative to resolve the legacy of past cases. The initiative was initiated through the issuance of the TAP MPR (the People's Assembly Decree) NO. V/MPR/2000 on the Improvement of National Unity. The Decree gives a mandate on the importance of genuine awareness and commitment to improve national unity, matters that have to be fulfilled in concrete actions in a form of the establishment of a Truth and Reconciliation Commission (TRC).ⁱ

Furthermore, Indonesia also has the Law no. 26 of 2009 on Human Rights Courts, which lays a basic foundation of the establishment of a court to prosecute crimes against human rights. The court is important as a mean to resolve the past, particularly for the sake of legal accountability of past atrocities to draw a fine line between victims and perpetrators. Since the establishment, the Human Rights Courts have already prosecuted two cases of past abuses, namely the atrocities in East Timor following the 1999 referendum processes and the Tanjung Priok massacre in 1984. Unfortunately, the court's mechanism does not adequately fulfill the rights of the victims to justice or reparation.ⁱⁱ

The Law on Human Rights Courts is not only a basis of the establishment of human rights courts but also gives a mandate to the establishment of a TRC, as enshrined in the Article 47. According to the law, the establishment of a TRC is important, particularly with regard to the resolution of gross human rights violations happened in the past, occurring prior to coming into force of the Law on Human Rights Court.

Besides the Law on Human Rights Courts, the mandate to establish a TRC is also spread out in various laws. For instance in the Law No. 12 of 2001 on Special Autonomy for Papua that affirms the establishment of TRC limited only for Papua, just as enshrined in the Article 46 of the Law. The same thing also applies in the Law No. 11 of 2006 on Aceh Administration that has been an indivisible part of the Helsinki Peace Accord between the Indonesian Government and the Free Aceh Movement (referred as GAM).ⁱⁱⁱ

Furthermore, on January 16 2007, simultaneously with the issuance of the Law No. 17 of 2007 on National Long-Term Development Plan, Indonesia, as a nation, was also reminded on the importance of implementing national reconciliation. This action is aimed at becoming a mechanism to resolve and to put a closure to all burdening problems of the past, such as gross human rights abuses and political offences, committed on behalf the State, as a part of consolidation of democracy.

Table 1: The Mandates to Establish a TRC

State Policies	Mandates
TAP MPR No. V.MPR/2000 on the Improvement of National Unity	The improvement of national unity shall be fulfilled into concrete actions, through the establishment of a Truth and Reconciliation Commission.
The Law No. 26 of 2000 on Human Rights Courts	The establishment of a TRC is important; particularly to resolve human rights violations occurring prior to coming into force of this law.
The Law No. 20 of 2001 on Special Autonomy for Papua	The need to establish a TRC in Papua in order to clarify the history of Papua. It aims at improving the unity of the nation.
The Law No. 11 of 2006 on Aceh Administration	A Truth and Reconciliation is necessary in Aceh in order to seek the truth and reconciliation in Aceh
The Law No. 17 of 2007 on the National Long-term Development Plan	A national reconciliation is important as a mechanism to resolve and to put a closure to all burdening problems of the past, such as gross human rights abuses and political offences, committed on behalf the State

An Overview of the First Edition of the TRC Law

Shortly after the fall of the bureaucratic authoritarian regime of Soeharto and the transition of administration, some groups, including *Komnas HAM*, responded to the situation with an initiative on the need to have a national reconciliation. The initiative got more attention after the issuance of the TAP MPR No. V/MPR/2000 and the Law No. 26 of 2000 of Human Rights Courts that give the mandate to establish a truth and reconciliation commission. In response to the mandate, the government, through the Law and Legislation Department, then prepared a draft of the truth and reconciliation bill. After receiving inputs from various groups, in 2003 the bill was handed over to the State Secretariat

In the same year, this government-initiated bill was handed over to the House of Representatives (referred as DPR) for a deliberation. The deliberation process was conducted through a Special Committee (referred as Pansus) consisted of 50 members of legislators from different fractions. The deliberation process of the TRC bill involved at least fifty groups and individuals from different layers to provide inputs and opinions for the

substance of the law. After a year and a half of deliberation, the TRC bill was finally passed into law in the House plenary meeting on September 7 2004. The bill was passed into Law no. 27 of 2004 on the Truth and Reconciliation Commission.

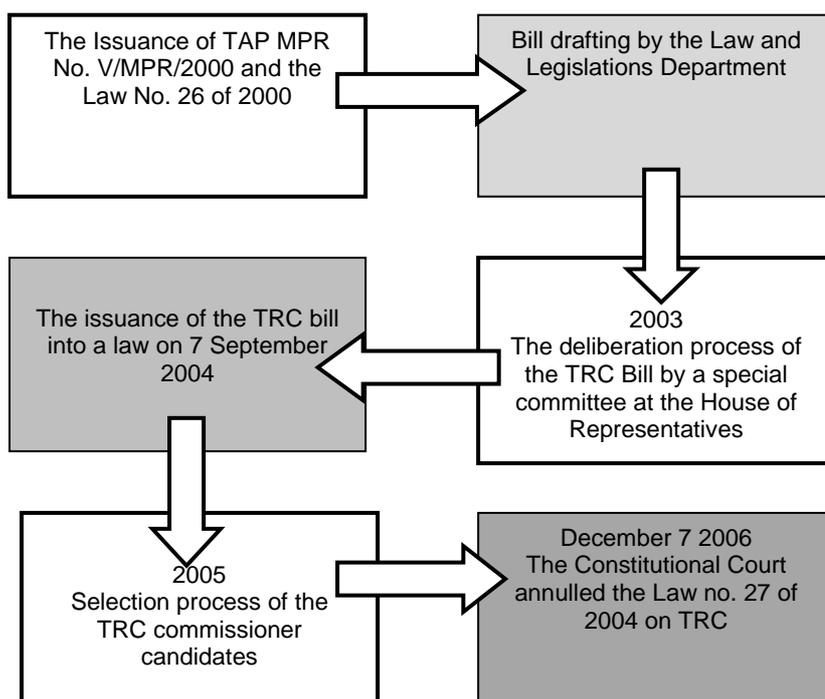
Although the TRC Law gives a mandate to establish a TRC not longer than one year after the law comes into force, but the government seemed reluctant and less responsive to immediately establish a TRC. The selection process of the TRC commissioner candidates had not been done until April 2005 and was ended in August 2005. There were 42 elected candidates for TRC commissioners by the end of the selection process. The list of the candidates was then handed over to the President in order for him to appoint 21 out of 42 candidates to be the TRC commissioners.^{iv}

Before the Truth and Reconciliation Commission was established, in 2006, a number of elements from civil society have petitioned a judicial review against the Law No. 27 of 2004 to the Constitutional Court. The petition was based on some critical points in the TRC Law with regard to the provisions of amnesty, the procedure of compensation that is depended on amnesty and the substitutive nature of the TRC mechanism to prosecution. The uncertain and imperfect concepts of the three said provisions have raised some concerns over the absence of a legal framework for the victims' narrative, as an implication of the law, that may result in the denial of state's accountability on past abuses. In addition to that, the provisions enshrined in the law have lost the spirit to reveal the truth and may lead to the preservation of the practice of impunity.

Furthermore, in the petition to the Constitutional Court, the petitioners argue that some provisions in the TRC Law are not in line with the 1945 Constitution, in particular the provisions on amnesty for the perpetrators and the resolution of past human rights abuses that as though allowing a negotiation with the perpetrators, since the pre-condition of reconciliation or resolution of gross human rights abuses in the past is amnesty for the perpetrators. These provisions perceived in conflict with international human rights law, humanitarian law and the principles regarding the rights of the victims.^v

On December 7 2006, the Constitutional Court, unexpectedly, annulled not only the provisions petitioned by the petitioners, but the whole TRC Law, through the Court Decision number 006/PUU-IV/2006. The Court, in the holding, argues that the law cannot obtain the objectives of the TRC. In the reasoning (*ratio decidendi*), the Court argues that the annulled provisions are the 'heart of the law' where all objectives of the TRC law were laid upon. Therefore, by annulling the said provisions, the TRC cannot obtain its objectives and hence the annulment of the TRC Law as a whole.

A Flowchart of the First Edition TRC Law



However, even though the Constitutional Court had annulled the TRC Law as a whole, but in the reasoning, the Court emphasizes the needs and the importance of truth revelation and reconciliation for Indonesia as a nation. The Court argues there were many ways to obtain it, among other things, by fulfilling reconciliation through a law that is in line with the 1945 Constitution and the universally recognized human rights instruments, or by conducting reconciliation through a political policy in the framework of general rehabilitation and amnesty.^{vi} In other words, the Constitutional Court's decision reaffirms the constitutionality of a TRC to resolve past human rights abuses, as a part of democracy transition processes. In light of that, the Court ruled the reinstatement of the TRC Law that is in line with the 1945 Constitution and the International Human Rights Law.

Toward the fifth year after the Constitutional Court had annulled the Law No. 27 of 2004 on TRC, finally in November 2010, the Ministry of Law and Human Rights has completed academic and legal drafts of Truth and Reconciliation Commission Bill. After a harmonization process had be completed, both the academic and legal drafts of the bill were handed over to the President in order for him to endorse the bill through a Presidential Letter. The Presidential Letter is required for the bill to be handed over to the House for deliberation. In the National Legislative Program (referred as *Prolegnas*) 2010-2014, the Truth and Reconciliation Commission Bill is incorporated as a legislative priority for 2011. However, until the fourth month of 2011, the President has not yet endorsed the bill to the House for deliberation.

Political Supports for the Reinstatement of the TRC Law

Looking back at the promises made by President Yudhoyono and VP. Budiono during the presidential campaign in 2009, there should not be any excuse to prevent immediate deliberation process of the TRC Law. With regard to human rights, President Yudhoyono at least promised the following four things during his presidential campaign: (1) Justice without discrimination; (2) To guarantee freedom and human rights; (3) To protect women and

children; and (4) Politics of non-discrimination. To fulfill the four promises, the establishment of a truth and reconciliation commission is imperative for the purpose of fulfilling the rights of the victims of past human rights abuses, which has not been done until now. Justice that should be able to be enjoyed by the victims was in fact delayed and even seemed to almost not exist; this is actually a denial of their right to justice (justice delayed is justice denied).

Meanwhile, the current position of political parties at the House, from Elsam's perspective, is, generally, supportive to the reinstatement of the TRC Law, considering the urgency of the law to the nation's future. One of the supports came from Yahdil Harahap, a member of the National Mandate Party Fraction (F-PAN). He argued that the TRC Law is very important, since there were so many tragedies in our nation's history that have not been resolved, also secret operations that no one knew what really happened. The TRC Law is expected to resolve all of the said problems, including the cases of Aceh, Tanjung Priok, enforced disappearances, Trisakti and Semanggi I and II.

Yahdil, who is also a member of the House Commission III, emphasizes that the law has no intention to dig on anyone's mistakes or to pry into past violations. "This nation has so many dark histories, through this law, our history will not be dark again, so that our children and descendants will know their history", he argues.

Regarding to the journey process of the second edition TRC bill, although F-PAN has never discussed about the bill in a specific manner, but, in general, all fractions at the House knew about it. Yahdil says that the Directorate General of Human Rights at the Ministry of Law and Human Rights had invited member of House Commission III, three people for each fraction, to explain about the substance of the TRC Law. In other words, all fractions have already had the copy of the bill. This representative from the electoral district of North Sumatera II adds that a TRC has become a hope of the victims of human rights abuses, as one of the alternatives to resolve past human rights violations. As to the establishment of Human Rights Courts, Yahdil argues if the President has the political will, the law will be reinstated. The House is now waiting for the President's decision.

On the other hand, another member of House Commission III, from the United Development Party Fraction (F-PPP), Ahmad Yani, questions the decision of the Constitutional Court to annul this law. According to him, Indonesia needs to learn from South Africa that has dealt with its past. This representative from the electoral district of South Sumatera I argues that the TRC bill must be deliberated immediately, so this nation could stop talking about its past, "we must break the dark history, we must think forward" he says.

In his opinion, history is a part of the nation's dynamic journey towards the future. Therefore, the TRC Law is very important to free ourselves from captivity. Yani emphasizes that whatever had done in the past were mistakes, therefore facts must be revealed before reconciliation, "how can we reconcile if there are no facts of the real violations and the truth" he argues.

Ahmad Yani, one of the PPP regional chairpersons, argued that the resolution of past abuses has become an important agenda to end the dark history's burdens of this nation, which eventually will also burden the next generations. This is why the law is important, on the issues of what and how the mechanisms to resolve past human rights abuses, it will be regulated later. He ends his statement by saying that this nation's history has been colored by blood, therefore to prevent the atrocities from happening again in the future, we need to

resolve them, including to provide rehabilitation and compensation for the victims, such as those who have become the victims of the Tanjung Priok, Talang Sari and also the 1965 atrocities.

While the Chairperson of the National Awakening Party (PKB) Fraction at the House, Marwan Ja'far, admitted that his fraction has yet to discuss the TRC Bill. However, in terms of the idea and substance, PKB agreed with the TRC Bill. According to this member of House Commission V, all past human rights abuses must be revealed, not only small perpetrators who should be punished, the intellectual actors must also be revealed. This representative from the electoral district of Central Java III furthermore argues that the national reconciliation process is expected to reveal all truth from past atrocities, "never forget the past, because it is part of the nation's history", Marwan says.

Ganjar Pranowo, a member of the Indonesian Democratic Party of Struggle (PDIP) Fraction, argues on the need to be more cautious in legislating this law, since it had been annulled once by the Constitutional Court. The philosophical and sociological grounds must be thoroughly considered to prevent the law from another annulment by the Constitutional Court. Although the bill has yet to deliberate in his fraction, but he agreed that the bill was important in order for this nation to move on and if we want to build this nation together. According to this member of the House Commission II, the people of Indonesia should not be constantly put under a situation of endless darkness.

Besides being cautious in formulating the law, according to this representative from the electoral district of Central Java VII, Indonesia must learn from South Africa, that reconciliation is not without a condition. Before someone asks for forgiveness, he/she must confess first, after the confession (she/he) may continue to the next phase. In general, F-PDIP supports the law, however they will wait until the bill is being handed over by the government. "Until today, we still do not understand why the law was annulled as a whole by the Constitutional Court" Ganjar argues.

For Ganjar, the TRC Law is like a redemption day that purifies everything, since the law would be a momentum to return to zero point. From that zero point we will restart to build this nation. With regard to the relation between the TRC and the Human Rights Courts, Ganjar argues that the TRC is more of a political approach, while the court is a legal approach. We have to make a position, this nation cannot carry on with vengeance, they need to sit down and forgive each other so that reconciliation can be fulfilled.

While a member of House Commission II from the Gerindra Party fraction, Desmond J. Mahesa, admits that he had attended some meetings with the Ministry of Law and Human Rights, but until now, the TRC Bill has not been handed over to the House's Legislation Body (Baleg). Desmond explains that since the *reformasi* era, the TRC has become an important issue, because it addresses how we, as the nation's children, can move on without any wounds anymore. Desmond argues that there should be a law that gives amnesty, forgiveness, rehabilitation and compensation for the victims' groups. However, what he did not understand is why the current TRC Bill is being held back.

Desmond admits that the *Gerindra* Fraction was very serious in discussing about this Bill. His fraction has conducted several meetings on it. According to him, the TRC Bill will be a strategic issue for the *Gerindra* Party to address past human rights abuses. Due to the accusation of the involvement of some political parties in the past abuses, and the position of Desmond himself as one of the victims, the discourse of the TRC Bill became a concern for his party. He expected that, with the existence of the TRC Law, there would be an assurance

on the statuses both for the victims and the perpetrators; in order to put a closure to this prolonged process to resolve the cases.

Furthermore he argues that we can learn about how the TRC put into practice in South Africa, Indonesia could adopt it from there. We could compare it with some adjustments to the local context of Indonesia. In general, according to this representative from the electoral district of East Kalimantan, a TRC Law has a high urgency. With regard to the jurisdiction of the law, it is still debatable. According to Desmond, it is a state's obligations to pardon the perpetrators and to provide compensation and rehabilitation for the victims, on a condition that everything should be done in accordance with our cultural setting.

Sutan Bhatoegana, a Secretary to the Demokrat Party Fraction, argues that this TRC Law is important, "we can look up to South Africa, they can develop because they do not dig into the past anymore, since everything in the past is wrong, so everybody is also perceived to be wrong. So let's look forward, let's take Mandela as an example, he forgave everybody, do not dig into past sins, we cannot move on by doing it", Sutan argues. He explains that the Demokrat Party will support it if it is good for the nation and the state. "When we founded this party, we had a slogan of 3R that stands for Reconciliation, Reconstruction, and Reformation, so of course we will support the reinstatement of this law. So we can forgive those who deserve forgiveness, as I said then, we are all wrong, so we have to be better in the future" he ends his statement.

Meanwhile, Deputy General Secretary of the Justice and Prosperity Party (PKS), Fahmi Hamzah says that the TRC Law has a high urgency, because the nation is still struggling with unresolved issues from the past. All forms of past human rights abuses must be resolved and must not happen again, one way to resolve it is by issuing this law. "Unless we think that those things do not exist, but in fact, they do exist. The cases of enforced disappearances, Tanjung Priok, Communist Party of Indonesia (PKI), those are the issues that must be resolved, so there will not be any problem left between us", Fahri explains. All forms of state crimes will result in claims for accountability in the future. According to Fahri, to settle matters outside the court is more important, because not everything can be perceived as a legal matter.

Meanwhile the *Golkar* Party Fraction shows an indecisive position, as addressed by one of its members, Harry Azhar Aziz. According to this Deputy General Secretary of *Golkar* Party, we must take a case-by-case approach to resolve the past and not a general one. "So if a particular case emerges, then it will be addressed. It will be more effective than to generalize everything into a political case", he argues. The position of the *Golkar* Party, on whether or not to support the TRC Bill, depends on the case "It depends on the case, we do not want this to be used as a political tool to put pressure on another group by using the law as a tool" says he.

This member of the House Commission XI argues that in fact, politically, victims' groups, for instance the ex-members of the PKI and Indonesians of Chinese descent, who had been discriminated, have already repaired during the Gus Dur administration. He even argues that reconciliation in the economic sector is more complicated with regard to access to economy and land-related conflicts that have not been resolved. He gave some examples on some state's officials and military generals who were accused of committing human rights abuses, such as in the case of East Timor. "Did we agree that the state should not protect those accused? They may be guilty but there is also a chance that they are not, if our judicial system finds them not guilty while other judicial systems find them guilty, what are we

supposed to do?”, he argues.

A rejection to the TRC Law came from the *Hanura* Party Fraction. According to one of its members, Akbar Faisal, although the *Hanura* Fraction has never had an official discussion, “but if it will, eventually, touch Mr. Wiranto, I would officially say that it is an old trick. Every time Mr. Wiranto wants to do something critical, that kind of character assassination is always used against him, it is an old trick”, says this member of the House Commission II.

Table 2: Political Supports for the TRC Bill from the House of Representatives

No	Fractions	Position on the TRC Bill	Information
1	National Mandate Party (Yahdil Harahap)	Supportive	The TRC Bill has no intention to dig on anyone’s mistakes or to pry into past violations, it aims at resolving the past, as a lesson learned for the future. The rights of the victims must be fulfilled.
2	United Development Party (Ahmad Yani)	Supportive	Emphasizing on truth revelation, reconciliation and reparation of victims.
3	National Awakening Party (Marwan Ja’far)	Supportive	The importance of truth revelation, including the punishment of the perpetrators, and the need to have reconciliation. The past should not be forgotten as a part of history that serves as a lesson for the future.
4	Indonesian Democratic Party of Struggle (Ganjar Pranowo)	Supportive	Emphasizing on truth revelation, state’s official confessions and reconciliation. It is important to be cautious to prevent the law from another annulment at the Constitutional Court
5	<i>Gerindra</i> Party (Desmond J. Mahesa)	Supportive	Emphasizing on amnesty and the fulfillment of victims’ rights. Everything must be done in accordance with the culture of Indonesia.
6	<i>Demokrat</i> Party (Sutan Bhatoegana)	Supportive	Emphasizing on amnesty and apologies.
7	Justice and Prosperity Party (Fahri Hamzah)	Supportive	Emphasizing on truth revelation, reconciliation, settlements outside the court
8	<i>Golkar</i> Party (Harry Azhar Aziz)	Indecisive	Case-by-case approach to prevent from harming a particular group.
9	<i>Hanura</i> Party (Akbar Faisal)	Refuse with some conditions	There will be further discussions, but if the law eventually touches Wiranto, the party will obviously refuse the bill.

The great number of political supports as mentioned above has, at least, created a hope to accelerate the reinstatement of the TRC Law, or the resolution of past abuses in general. A refreshing step and the resolution of past abuses would be a proof of the president's and the parliament's observance to the constitution as well as their political promises. While a delay in resolving past abuses, particularly in the establishment of a TRC, is a denial of the constitution for it would be an abandonment of the rights that should be enjoyed by the victims. Moreover, the absence of the resolution of past abuses would lead this nation to stagnation, hampering it from moving forward. []

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- ⁱ Chapter V of the Tap MPR No. V/MPR/2000 regarding the Implementation Guidelines, in point number 3 it says that: "To establish a National Truth and Reconciliation Commission as an extra-judicial where the number of its members and their criteria shall be determined by the law. This Commission shall hold the responsibility to establish the truth by revealing the practices of power and human rights abuses in the past, in accordance with the governing law and legislation, and to hold reconciliation in a common interest perspective as a nation. A truth revelation phase shall be followed up by phases of confession of guilt, apology, forgiveness, peace, law enforcement, amnesty, rehabilitation, or other alternatives that benefit the establishment of the national unity, by fully aware of the sense of justice in the society".
- ⁱⁱ The Human Rights Court for the East Timor had prosecuted 18 defendants, all of them were released from all charges and compensation for victims was not granted. While the Human Rights Court for the Tanjung Priok Case had prosecuted 14 defendants, all were military officers, and it again released all the defendants from all charges (the Trial Court had found 12 out of 14 defendants guilty, and the court included compensation in the decision, however the decision was turned down by the Appeal and Supreme Courts, both courts released all of the defendants).
- ⁱⁱⁱ In the chapter regarding to human rights, which is a part of the clauses in the peace accord, it says that a TRC in Aceh shall be established by the Indonesian TRC, it holds the responsibilities to formulate and establish truth revelation and reconciliation phases.
- ^{iv} See ELSAM, *Mendorong Pembentukan Kembali Undang- Undang KKR* (Promoting the Reinstatement of the Truth and Reconciliation Law), Policy Brief 1 of 2011
- ^v See Indriaswati Dyah Saptaningrum et al., *Menjadikan Hak Asasi Manusia sebagai Hak Konstitusional: Pandangan Kritis atas Putusan Mahkamah Konstitusi terhadap Judicial Review UU KKR dan Implikasinya bagi Penyelesaian Pelanggaran HAM di Masa Lalu* (Making Human Rights as Constitutional Rights: A Critical Review of the Constitutional Court Decision on the TRC Law and the Implications Towards the Resolution of Past Human Rights Abuses) ELSAM Briefing Paper No. 01. January 2007.
- ^{vi} See the Constitutional Court Decision No. 006/PUU-IV/2006, page. 131.