

Institute For Policy Research and Advocacy (ELSAM)
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Against Gross Human Rights Violations in East Timor
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The Acquittal on East Timor Trials: A Wasted Opportunity to Learn

The acquittal is hardly surprising. The problem is that when the “not guilty” verdict was issued, the other cases concerning different defendants but with the same context of indictment and incidents were still in process. If we are within the same scope of presumption with the process of examination, indictment, substantiation and charge of the cases the defendants acquitted today, then such acquittal will influence all the other cases.

A Human Right Court processing crime against humanity should avoid the danger of it becoming a mock court. Thus the court should exert maximum effort in conveying the truth concerning the root and nature of the incident in order to avoid sharpening prejudice in the future. In order to meet this end the prosecutor and panel of judges should have paid attention to the reason behind the establishment of the court and the composition of Law on Human Right Court.

First of all the main objective of establishing the human right court is to examine the assumption that crime against humanity had occurred, as stated by Geoffrey Robertson “policies resulting in crimes conducted beyond the boundaries of humanity not always emerge from de jure orders, the policies may also come forth from “powers” that may or may not be of the legitimate government but possess de facto control, or free reign in a certain area”. Second is to demand accountability from the policy makers who abused their power or authority and thus causing or enabling the crime against humanity to happen in East Timor pre and post referendum. Third is to create process of justice for the victims.

Observing the three objectives then it is clear that the acquittal have not answered any of them. The question is why it could happen. It was made possible by several factors:

First the prosecutors in the trial should have functioned as the representatives of the people (state) in fighting the crime. Instead, they have “reversed” their function into becoming the defender of crimes due to their failure in presenting relevant and significant witness and evidence in court. The prosecutors should have shown their maximum

effort in locating and presenting witnesses and evidences whereas judging from the indictment and the cross-examination of witnesses they certainly have not done so. Because of the failure, the prosecutors become a future threat to the society in fighting crime, especially crime against humanity.

Second, the panel of judges have been under immense pressure. This pressure emerged from the weak evidences and witnesses presented by the prosecutor. Thus the judges found it difficult to formulate holistically what had happened in East Timor. Pressure may have also come from the growing strength of conservative politic outside the court, thus the panel of judges became hesitant in making the maximum decision amidst the weak witnesses and evidences. Pressure may also occur as the result of the lack of appropriate facilities in processing the cases, thus they did not have further opportunity in maximizing their ability.

Third, the prosecutors and the panel of judges face difficulties in interpreting crime against humanity per Law No. 26/2000 definition due to the restricting parameters of the criminal code of procedure designed to deal with common crimes. When the ordinary criminal code of procedure is implemented in the trial process of extra ordinary crime the instrument became crippled. Thus in extracting and identifying the crime against humanity in East Timor the prosecutors and judges lost their direction and trapped in the common crime's logic and hypotheses. The crime against humanity as a serious threat to humankind deemed by the international community as the common enemy to humankind has become a crime equal to the common crime in the hand of the judges. The necessity to prosecute has been abandoned.

Fourth, due to the difficulties and limitation in comprehending and implementing the provisions contained in Law 26/2000, the prosecutors and judges took the minimum route in examining the root of the case. Thus the court has been trapped in merely exercising the formal routine of presenting witness and evidence. Similarly in examining the elements of crime against humanity such as command responsibility, the process became oriented merely to identify perpetrators and accountable parties. Thus in their verdict instead of proving crime against humanity in the context of systematic and widespread, the judges only stated that there was occurrence of manslaughter. Thus the contradiction and ambiguity of the verdict was unavoidable, stating that there was crime against humanity but no one was accountable except the pro-integration group.

Fifth the prosecutors and judges have been immersed in narrow-minded image of nationalism, blunting their senses in identifying what had really occurred in East Timor amidst the abundant evidences. In their eyes the defendants were not people suspected of having done a crime but patriots who have exercised their duty to the state. Such people deserve defense and not prosecution. In such condition the judges and the prosecutors have served as the real defense in the trials. The court thus has metamorphosed into the strongest fortress for the protection of the defendants.

From the above five possibilities the acquittals issued by the panel of judges show a serious failure in upholding justice for the victims and promotion of human rights. What is the lesson to be learned from such process? Generally it can be said that the first process of trials is a failure in maximally utilizing this opportunity to learn the proper conducts in prosecuting crime against humanity as serious international crime. We have also failed in gaining max-

imum benefit in promoting and protecting human rights and giving justice for the victims. In other words, this ad hoc human right court has failed in pioneering the effort to break the chain of impunity and promoting legal steps in the context of human rights in Indonesia. It has also failed in comprehending the existence of abuse of power in the human right violations that fall under its jurisdiction.