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Published in:
Article 2

Publication date:
2006

Document version
Publisher's PDF, also known as Version of record

The Human Rights Courts and other mechanisms to combat impunity in Indonesia

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Article 1 (3) of the revised Constitution of Indonesia affirms that Indonesia is a state ruled by law. Article 4 (1) states that the President of the Republic holds the power of government "in accordance with the Constitution"—thus binding the executive power in general to the law and constitution. Similarly, the presidential oath in article 9 binds the president to respect the constitution and "to conscientiously implement all statutes and regulations".

Thus, all agents of the state who exercise public powers under the ultimate authority of the president, do so only in accordance with the law and constitution. Use of state power that is not for a legal purpose or carried out according to legal rules is illegal and potentially criminal.

The independence of the judiciary is guaranteed by article 24 of the constitution. A catalogue of human rights, including the rights to legal protection and equality before the law (article 28D), is guaranteed in chapters X and XA. The state and government's duty to protect and fulfil these rights is laid down in article 28I(4).

Among the most difficult challenges faced by any legal system is that of ensuring that officials of the state whose job it is to enforce the law are themselves subject to punishment for breaking it. This can be a difficult balance. Police must be allowed to effectively protect the community against crime, and must be

This is an abridged version of a longer article prepared under the same title. The authors are respectively the Head of the Education Team and Project Manager at the Danish Institute for Human Rights. The DIHR has been in partnership with the Indonesian Supreme Court since November 2003, aiming at improving the capacity and performance of the Human Rights Courts. To this end a series of seminars has been held with the Human Rights Courts at all levels, and Courts of General Jurisdiction. As well as judges, the seminars have included participants from the prosecution, police, military judges and prosecutors and (occasionally) the Human Rights Commission, Komnas HAM.

allowed to act based on their best judgment in difficult and dangerous situations. At the same time, the powers given to law enforcers are subject to law and allowed only for particular purposes. They must never degenerate into a licence to commit crime with impunity. A lack of control can undermine public faith in the legal system and the legitimacy of the state itself.

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According to law, there are three possible legal forums where serious violations of human rights can be prosecuted and tried in Indonesia. These are:

(i) Courts of General Jurisdiction, applying the Indonesian Penal Code, if the offences are tried as ordinary crimes;

(ii) Human Rights Courts established under Law 26/2000, if the offences are classified as crimes against humanity or genocide as defined for the purposes of that law; and,

(iii) Military courts, applying the Penal Code and the Military Penal Code, if the offences are assessed as having been committed by a member of the armed forces on duty.

Courts of General Jurisdiction

As a general rule, military personnel cannot be tried in Courts of General Jurisdiction. This is by virtue of article 9(a) of Law 31/1997, which provides that the Military Court has the jurisdiction to "prosecute any crime committed by a person when (the person) committing the said crime is a soldier". Article 2 of the Military Penal Code states further that "unless there are exceptions determined by law, the Penal Code shall apply for any crimes which are not included in this Military Penal Code that are committed by any person subject to the Military Court". An exception exists as regards criminal trials in which military personnel and civilians are indicted as co-accused. In such cases, the trial may be heard in a Court of General Jurisdiction according to the 'koneksitas' procedures described in Chapter XI of the Criminal Procedure Code. To date these procedures have only rarely been used in practice, although they may become more common in the future, following the entry into force of Law 4/2004 on the Justice Authority. Article 24 of Law 4/2004 provides that crimes jointly committed by those who are under the Civil Court and the Military Court will be prosecuted by the Civil Court, unless special circumstances exist, in which the head of the Supreme Court may issue a decree that the case be prosecuted by the Military Court.

One can broadly distinguish between two classes of crimes committed by military personnel. Firstly, there are incidents where a soldier, in the course of performing military duties, abuses the force and powers given to him or her and commits a crime. Secondly, there are crimes which, though unrelated to military service, are committed by a person who happens to be a member of the armed forces. Either type of offence can involve cooperation between soldiers and non-soldiers. Law 4/2004 does not seem to distinguish between these two categories. In the

past, the koneksitas model has been used for both of these classes of crime. While the failure to prosecute senior officers was strongly criticised, the prosecution of soldiers and a civilian for the killing of Teuku Bantaqiah and his followers in Aceh in July 1999 is a notable example of the use of koneksitas procedures for crimes related to military actions. However, it should be pointed out that a koneksitas court is not properly a court of general jurisdiction. Military judges sit together with civilian ones, and military police and prosecutors work together with their civilian counterparts.

"Police can legally block the investigation and prosecution of their own personnel"

So in practice, almost all criminal prosecutions of military personnel—including for alleged human rights violations—can only be tried by military courts under existing Indonesian law.

By contrast, since the separation of the police from the armed forces with the fall of the New Order regime, police officers can be prosecuted and tried by the Courts of General Jurisdiction.[1] Nevertheless, there is major legal obstacle to the prosecution of police in that the Criminal Procedure Code (Kitab Undang-undang Hukum Acara Pidan, or KUHAP) does not permit prosecution of any case that has not been the subject of an investigation by the police, including cases against the police themselves. KUHAP makes a distinction between preliminary investigators and investigators. Article 4 defines a preliminary investigator as "an official of the state police of the Republic of Indonesia". Article 6(1) defines an investigator as "an official of the state police" or "a certain official of the civil service who is granted special authority by law". Indonesian police and prosecutors have interpreted these provisions to mean that, in the absence of special authority having been granted by legislation, no one but the police can carry out a criminal investigation and no prosecution can take place without such an investigation having first been carried out.

The effect of this provision is that police can legally block the investigation and prosecution of their own personnel. This obstacle is only likely to be overcome where a case is of such high profile that there is sufficient political pressure on the police to conduct an internal investigation. The possibility that exists in many other civil law countries of filing a complaint directly with the prosecution does not exist in Indonesia. The resulting lack of a check or balance on police power is a serious flaw that leaves the door open for abuse, but one that could be remedied by legislation granting special authority to a public agency functionally and operationally independent of the police force to investigate all cases of alleged police criminal wrongdoing.

KUHAP should be changed to allow for impartial, transparent and accountable investigations of police. A team of experts should examine this issue and recommend the most appropriate legal and institutional changes necessary.

Law 26/2000 and the Human Rights Courts

"The Human Rights Court has interpreted that it is necessary to establish that a person was exercising *de jure* authority over the person or persons perpetrating the violations [to be held legally responsible]"

The Human Rights Courts were established due to international pressure on Indonesia as a result of gross violations of human rights committed in the lead up to the independence of Timor Leste (East Timor). In 2000–2001 there was much hope that the Human Rights Courts could be used to seriously combat old patterns of impunity for human rights violations. Most observers, both Indonesian and international, agree that this has not proved to be the case.

While Law 26/2000 was generally intended as a vehicle to incorporate some serious international crimes into Indonesian law, and although article 7 of Law 26/2000 makes explicit reference to the Rome Statute of the International Criminal Court, there are some significant definitional differences between the two, in particular with regards to "gross violations of human rights". Some of the important differences are as follows:

- Article 8 of Law 26/2000, dealing with genocide, does not include the ancillary crimes of complicity, attempt, incitement and conspiracy.

- Article 9, dealing with crimes against humanity, is to be read together with the General Provisions of Law 26/2000, which contain definitions of these crimes. While these definitions are broadly similar to the definitions of crimes contained in the Rome Statute and the "Elements of Crimes" elaborated pursuant to the Statute, there are some unfortunate gaps. One of these is the lack of a general inclusive provision similar to article 7(1)(k), covering "acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".[2]

- Article 9 of Law 26/2000 inserts the word "direct" into the definition of crimes against humanity; i.e., acts perpetrated as part of a widespread and systematic direct attack. International law knows no requirement that the attack be "direct".

- Article 42 of Law 26/2000, on superior responsibility for the crimes referred to in articles 8 or 9, contains (at least in the English translation), some significant variations from the text of the corresponding provision in article 28 of the Rome Statute. Article 42(1) provides that a military commander or person acting as a military commander "may" be held responsible, while article 28 uses the mandatory form "shall". Representatives of both the Supreme Court and the Attorney General's Office have confirmed that the word used in the Indonesian text is "may". Further, in relation to Article 42(2), the Human Rights Court has, in the jurisprudence arising from the East Timor cases, interpreted the word 'subordinates' as indicating that it is necessary to establish that a person was exercising *de jure* authority over the person or persons perpetrating the violations. At international law, it is well established that *de jure* responsibility may be indicative but is not conclusive of responsibility. The test to be satisfied is

whether a superior, be he *de jure* or *de facto* responsible for the actions of others below him in the chain of command, had effective control over the persons committing the violations.[3]

> "Many serious violations of human rights do not fall within the jurisdiction of the Human Rights Courts"

In terms of jurisdiction, in order for an offence to be tried by the Human Rights Courts, the crime alleged must be either genocide or crimes against humanity (Law 26/2000, articles 4 & 7). Many serious violations of human rights, including torture, extrajudicial killing or enforced disappearance, do not in themselves meet this requirement and so do not fall within the jurisdiction of the Human Rights Courts.

The jurisdictional split between the Human Rights Courts, the Courts of General Jurisdiction and Military Courts renders impossible indictments for crimes against humanity or genocide where there are alternative lesser charges of ordinary crimes or violations of the laws of war. The actors at the preliminary stages of the criminal process, the Human Rights Commission (Komnas HAM) as the inquirer, and the Attorney General's Office as the investigator, must decide whether the case ought to be prosecuted as genocide or crimes against humanity in the Human Rights Courts, as ordinary crimes in a Court of General Jurisdiction, or as violations of the Military Penal Code, under the jurisdiction of the Military Court.

At international law, special conditions are required to meet the evidentiary burden for crimes against humanity. In simple terms, it must be shown that the act was one of the crimes referred to in article 9 of the Rome Statute, that it occurred as part of a widespread or systematic attack directed against any civilian population, and that the perpetrator was aware of such an attack. Proving the widespread or systematic requirement is very onerous. This requires extensive documentation of the general situation at the time, evidence showing that the attack was backed by state or organisational policy, and, as regards the third element evidence, that the alleged perpetrator was either *de facto*, or in certain circumstances, *de jure* aware of the attack.

At first sight, it would appear to be a far more attractive option for a busy and under-resourced prosecutor to prosecute (non-military) personnel in the Courts of General Jurisdiction, thus avoiding the need to prove that the incident was part of a widespread or systematic attack. Taking this course would mean sending the inquiry report to the National Police to conduct the investigation or, if the case involves only military personnel, to the military police or prosecutor.

However, the Human Rights Courts offer procedural advantages not present in the general courts, namely, an inquiry by a Komnas HAM team and the ability to try military personnel in a civilian court, especially one including ad hoc judges from outside the career judiciary. In Indonesia, lack of public confidence in the impartiality and probity of the principal justice institutions—the police, the prosecution service and the courts—make these procedural differences significant.

A further advantage of Law 26/2000 is the concept of superior responsibility, which by virtue of article 42 extends to criminal liability for omissions. By contrast, article 55 of the Penal Code of Indonesia (Kitab Undang-undang Hukum Pidana, the KUHP), dealing with forms of participation in criminal acts, does not include liability for omissions. Among articles 127, 129 and 132 of the Military Penal Code (the KUHPM), which address command responsibility, article 132 provides that superiors who intentionally fail to take proper steps to repress criminal acts by their subordinates will be subject to prosecution, but only as accomplices. There is no reference to command responsibility in Law 31/1997 on the Military Courts. Doubts have also been raised about the capacity and commitment of the Military Courts to investigate or prosecute senior military officials.

"The limited jurisdiction of the Human Rights Courts is poorly understood among judges and prosecutors"

The jurisdictional and procedural advantages of Law 26/2000 could lead to situations where Komnas HAM (or the Attorney General's Office) is tempted to recommend for investigation human rights violations which, while they are very serious and should be prosecuted, do not amount to crimes against humanity or genocide as these terms are understood at international law. The Attorney General, although legally free to make his own determination on this issue, may feel considerable public pressure to adopt the same view and proceed to an indictment under Law 26/2000, concluding in an unsuccessful prosecution.

The limited jurisdictional reach of the Human Rights Courts is poorly understood among judges and prosecutors, as well as many Indonesian human rights campaigners and the general public. There is a widely-held perception that any cases involving serious violations of human rights should be a matter for these courts, rather than the ordinary courts. This also appears to be the case among some members of Komnas HAM inquiry teams. Komnas HAM has attempted to address this problem through continuing education. Added to this is an understandable urge (in the absence of other courts where perpetrators can be held accountable) to stretch the limits of the Human Rights Courts' jurisdiction through a liberal interpretation of the "widespread and systematic" concept.

For as long as specialized courts dealing with human rights violations are maintained, it should be considered to extend their jurisdiction *ratione materiae* to cover both war crimes and ordinary crimes under the KUHP. This would remove the obvious jurisdictional and practical gap. War crimes need to be included in their jurisdiction because of, among other reasons, the concept of superior responsibility. Both civilians and military should be liable for the acts of persons under their effective control. Article 28 of the Rome Statute makes no distinction between military and civilians in this respect. This is now the position in customary international law as a result of the Celebici decision.

Coordination between Komnas HAM and the Office of the Prosecutor also needs to be improved. There has been a consistent tendency on the part of the Prosecutors' Office to blame

the quality of the inquiry for problems encountered during investigation or at trial. Some of the criticisms may be justified, but a more constructive approach could lead to regular dialogue and exchange of opinions between the two institutions.

Law 26/2000 also does not include mechanisms for addressing a situation where the inquirer and the investigator reach different conclusions as to whether or not to prosecute a case, or as to which person or persons should be indicted. In their absence, the Attorney General has the final say, under article 23(1). In the Tanjung Priok case, Komnas HAM identified 33 people who in its opinion should have been made accountable for their actions, among them General Benny Moerdani (former head of the military, now deceased) and General Try Sutrisno (who at the time of the incident was Regional Military Commander). The Attorney General decided to indict only 14 persons. Neither Moerdani nor Sutrisno were among them, and no reasons were provided for the decision. For Komnas HAM to protest the decision or to make a formal request for reasons would be to go beyond its mandate under the law, yet there remains a common public perception that both Moerdani and Sutrisno were involved. The larger question here is whether or not Komnas HAM's very specific role in *pro justitia* inquiries under Law 26 is compatible with its general mandate as a human rights monitor. If Komnas HAM did not have the inquiry function, it might be more openly critical of the Attorney General's approach to such cases, demanding transparency and the provision of clear reasons for non-prosecution.

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Where the Attorney General refers a case for prosecution but the prosecutors decide not to proceed, article 140 of KUHAP requires that they specify whether the decision is based on insufficiency of evidence, that the facts do not disclose commission of a crime, or closure in the interest of law. However, there is no requirement that this information be provided to victims or complainants.

Military Courts

Since the fall of the New Order regime, several significant administrative and legal reforms have been undertaken in relation to the armed forces. The military no longer enjoys separate representation in Parliament, and according to a law passed on 30 September 2004 it will be obliged to give up its commercial interests over a five-year period.

However, the status of the military remains controversial, especially the continuation of the regional commands, which enable it to maintain a presence at all levels of government. Some fear that this will continue to allow the military to influence government policy and its execution. Serving military personnel can reportedly continue to occupy positions in the civilian administration. Furthermore, the military has not yet been placed under the control of the Ministry of Defence, which is considered to be necessary to ensure that policy development and budgetary

matters are determined by the government of the day. More recently, Law 31/2004 placed the Military Courts under the Supreme Court. Nevertheless, pending further legal reforms the Supreme Court does not have formal supervision over the Military Courts. For now, the military remains in control of their composition, organisation, procedure and financial administration.

"The most significant obstacle to the effective implementation of human rights laws in Indonesia is fear of the military"

There is a vibrant ongoing debate in Indonesia regarding the implications of the above reforms, and whether—or when—further amendments to those laws governing the armed forces will occur. This could include a transfer of jurisdiction over some types of crimes committed by military personnel to the Courts of General Jurisdiction.

For example, a revised KUHPM might include a distinction between "service related" and "non-service related" offences, with jurisdiction for the latter category of offences under the civilian courts. This distinction is made in criminal justice systems in many countries, and has often been identified as a step that should be taken in order to promote accountability within the armed forces. With such a change it would be important to indicate clearly that serious violations of human rights, including torture, rape, hostage taking, enforced disappearance and the deliberate killing of persons not taking part in hostilities cannot be considered "service-related acts", and must always be tried in either Courts of General Jurisdiction or the Human Rights Courts, depending on the alleged crime. This is the position increasingly adopted in international human rights bodies and in national best practice.

Pending reforms to the KUHPM, it is important that there nevertheless exist mechanisms within the military justice system to ensure the effective investigation and prosecution of any persons believed to be responsible for crimes, irrespective of rank or status. This clearly requires ensuring that military police, prosecutors and judges are placed outside of the ordinary military command hierarchy.

Obstacles to human rights cases in Indonesia

Perhaps the most significant single obstacle to the effective implementation of human rights laws in Indonesia to date is fear of the military. Military intimidation of victims and witnesses, members of the Komnas HAM inquiry teams, prosecutors and judges, real or perceived, direct or indirect, eats away at the effectiveness of the process and prevents all parties from carrying out their roles effectively. However, to date the prosecution of most human rights violations alleged to have been committed by military personnel remains almost exclusively within the remit of the military justice system rather than the civilian courts.

Intimidation is often coupled with other forms of interference in the judicial process. Victims are frequently bought off. The notion of punishment as a deterrent is not widely appreciated.

Witnesses are unprotected, and it is hardly surprising that they choose out of court settlement over the uncertainties of a judicial system that has obtained little respect among the population. There is still no law on witness protection, and no way to provide it.

The reports on the East Timor trials contain many criticisms of the work of the prosecution, documenting a lack of seriousness in prosecuting the accused that can only be described as deliberate bad faith.[4] The criticisms can be categorized in several groups.

Firstly, there are criticisms of the prosecution concerning improper influence, corruption and politics. In this respect, human rights cases cannot be seen in isolation from the general condition of the Attorney General's Office. Many reports have underlined the enormity of the task of reforming this centralized bureaucracy, with a rigid command structure, insufficient guarantees of independence from government and, according to many, institutionalized systems of unofficial payments. It has also been no secret among prosecutors that there is little career incentive to work on trials involving senior military officers.

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A second set of problems involves a lack of knowledge and resources among prosecutors. There have been some efforts to resolve these, with the creation of a special unit within the prosecution to pursue human rights cases. This unit has sought external assistance, through which it has received some limited training.

A third set of difficulties is organisational. Komnas HAM officials have pointed out that there is too much rotation of staff within the prosecution, so that those with skills are moved on. Even within the same case, there is a lack of continuity of prosecutors at investigation and trial. As the prosecutor at trial is not permitted to introduce evidence other than that described in the bill of indictment, poor work done at the indictment stage can fatally hamper the work done later in court. New evidence can only be introduced if asked for by the judges. The lack of a pre-trial procedure to iron out problems like this is a weakness of KUHAP.

Yet a fourth set of obstacles concerns the inability of prosecutors to obtain evidence, either documentary or testimonial, from the military. Unlike, for example, the Rules of Procedure and Evidence of the ICC, Law 26/2000 contains no provisions relating to the confidentiality of matters affecting national security. Neither do the rules laid down by KUHAP. The result is that in theory, the armed forces are obliged to reveal all information required of them by the civilian investigators, even matters that might jeopardize the security of members of the armed forces in combat situations. In practice, the armed forces simply signal an unwillingness to comply. The prosecutors appear not to insist, and the evidence is not forthcoming. The authors are unaware of any principled legal contest on this issue between

the prosecution and the armed forces that has gone to court. The Attorney General's office has instead attempted to negotiate a Memorandum of Agreement with the military. Thus, instead of having a set of rules with reasonable safeguards for legitimate cause, there are unrealistically broad rules that are unenforceable in practice. Subordinating the military to the rule of law and civilian institutions is still in its early days in Indonesia, particularly in the judicial domain.

"A significant group of judges opposes reform and deeply resents the international pressure which led to the introduction into Indonesian legal practice of international human rights law"

It is also certain that Indonesian investigators and judges will continue to come under close domestic and international scrutiny, and questions regarding their independence will continue to be posed. Pressure to acquit will, for political and institutional reasons, remain high for the foreseeable future. A culture of judicial and prosecutorial independence and professionalism will take time to firmly establish, and it is by no means guaranteed that current reform initiatives will not be reversed in the future. A significant group of judges, particularly in the higher courts, opposes reform and deeply resents the international pressure which led to the establishment of the Human Rights Courts and introduction into Indonesian legal practice of international human rights law and jurisprudence. Through Law 26/2000 and the related Law 39/1999, concerning human rights, Indonesian law has begun to engage with the international human rights standards.

The reform process has likewise promised transparency, giving rise to an expectation that judgments can be readily accessed and a proper explanation will be given for the decision reached in each case. A problem that exists across the whole judiciary is the frequent inaccessibility of judgments, not only for interested members of the public, but even for the parties to the proceedings and their legal representatives. Many observers have commented on the desirability for the whole judiciary to practice increased openness and to facilitate the access of interested parties, their legal representatives and the general public to decisions of the courts, and the Supreme Court has identified this as a reform priority.

Conclusion

Since the adoption of Law 26/2000, there has been overwhelming domestic and international expectation on the Indonesian Human Rights Courts, and on the agencies responsible for investigating and prosecuting crimes that fall within their jurisdiction, to bring the perpetrators of serious violations of human rights to account for their actions. In large part, these expectations have been disappointed. There are many reasons for this, legislative, political, and procedural.

Nevertheless, even within the existing legal and judicial framework there exist underutilised possibilities to ensure accountability for these crimes. The Indonesian Penal Code contains numerous provisions that could be used to prosecute human rights violators, which in many cases would be more

suited to the crimes alleged than the restricted list of crimes that fall within the jurisdiction of the Human Rights Courts but in practice are not being used to any significant degree at present. The result of this, when coupled with the jurisdictional limitations of Law 26/2000, is that violators of human rights continue to enjoy impunity, bar a few exceptions.

At the same time, all criminal justice institutions in Indonesia need to continue with measures to root out the corruption and nepotism that was a characteristic of the New Order period, and to replace these values with a working culture that promotes probity, professional independence, a love of justice and a desire to uphold the rule of law. Instilling such values will require a commitment by the government of Indonesia to improve material conditions of service for justice officials, and by the government and cooperation partners alike to increase the legal knowledge and capacity of these officials to implement the law faithfully.

Further legal and procedural reform is needed to close some of the gaps in human rights protection and enforcement mechanisms that currently exist. Of the many issues raised in this article, three are of particular concern.

First, the Human Rights Courts—or any other court that may in the future be given jurisdiction to try cases of crimes against humanity and genocide—must also be able to consider indictments in the alternative, so as to avoid a situation where a defendant can walk free, despite strong evidence to support a conviction for a crime of, for example, extrajudicial killing or torture because the evidence is not sufficient to meet all of the elements of one of the previously named crimes. Further, in this regard, courts trying cases of alleged human rights violations by military personnel must be invested with jurisdiction over war crimes.

Secondly, there must be a review of existing jurisdictional demarcation between the different courts as regards competence to try military officials accused of human rights violations, and at the same time to ensure that the principle of superior responsibility in Indonesian law is in accordance with international law, so that both *de jure* and *de facto* leaders can be held to account.

Thirdly, cases involving the alleged commission of human rights violations under the KUHP by members of the police force must be carried out by an independent agency, and the police officers in question suspended from their posts pending the outcome of the enquiry. The outcome of such investigations should always be made public. The first of these measures is required to ensure full compliance with Indonesia's obligations under the UN Convention against Torture, which it has ratified.

Under the revised constitution, Indonesia is now a state ruled by law, where all holders of public office, from the president down, are obliged to respect the constitution and apply the laws of the land faithfully. Measures undertaken by the judiciary, together

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with prosecution and investigation agencies, to hold violators of human rights accountable are not only in the interests of the vast majority of the people of Indonesia; they also protect and strengthen the legitimacy of the state and its institutions.

Endnotes

[1] MPR Decree VII/MPR/2000, clause 3.4.a and 7.4 provides that the police should be subject to the civilian courts. The decree was implemented by Law Number 2 of 2002 on the National Police of the Republic of Indonesia (POLRI).

[2] A complete discussion of the divergences between Law 26/2000 and the Rome Statute can be found in the Amnesty International document, 'Amnesty International's comments on the Law on Human Rights Courts (Law No. 26/2000)', AI Index: ASA 21/005/2001, available online at: www.amnesty.org.

[3] See the Celibici case: *Prosecutor v Delalic et. al.*, IT-96-21-T, Judgment 16 November 1998 (Trial Chamber); *Prosecution v Delalic et. al.*, IT-96-21-A, Judgment 21 February 2001 (Appeals Chamber).

[4] See 'Intended to Fail: the Trials before the Ad Hoc Human Rights Court in Jakarta', Professor David Cohen, International Centre for Transitional Justice, available online at: www.ictj.org. See also, 'The failure of Leipzig repeated in Jakarta: Final Assessment on the Human Rights Ad-Hoc Tribunal for East Timor', Elsam, Jakarta, 9 September 2003, available online at: www.elsam.or.id.