

# FROM GRIEVANCE TO WELFARE: A RESHAPING IDENTITY OF PAST GROSS VIOLATION OF HUMAN RIGHTS VICTIMS IN INDONESIA

## DARI PENDERITAAN KE KESEJAHTERAAN: PEMBENTUKAN IDENTITAS BAGI PARA KORBAN PELANGGARAN HAM DI INDONESIA

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### Abstract

This article attempts to describe a shift of identity of the victims and survivors of past gross human rights violations in Indonesia, through examining the socio-economic violence that happened in the past and the current available *reparative* mechanisms for them. Arguably through this examination, and by taking the wider framework of Indonesia's transition policy, it could be seen that there is a reshaping of victim's interest from violence grievances to structural economic vulnerability. This shift is mainly caused by several contributing factors: *first* is the absence of national holistic paradigm in resolving the past. This could be depicted by the absence of a clear legal framework and the lack of political will to resolve past injustices; and *second* is the emerging pragmatic choice made by the government and the (group of) victims/survivors – particularly given the current challenge of welfare-based needs of the victims/survivors. While the exercised state's *reparative* mechanisms, through judicial process and general assistance programs, have been considerably useful in empowering the victims/survivors, this situation however would potentially lead to a failure in portraying the structural (socio-economic) violence that happened in the past.

**Keywords:** victim, past gross violation of human rights, identity.

### Abstrak

Artikel ini mencoba untuk menggambarkan pergeseran identitas di antara korban dan penyintas pelanggaran hak asasi manusia yang berat di Indonesia, melalui pemeriksaan terhadap kekerasan ekonomi yang terjadi di masa lalu dan mekanisme reparatif yang tersedia saat ini. Melalui pemeriksaan tersebut, dan mengingat secara lebih luas kerangka kerja transisi di Indonesia, dapat terlihat bahwa terdapat pembentukan ulang kepentingan korban dari penderitaan atas kekerasan menjadi kerentanan secara ekonomis. Pergeseran ini utamanya disebabkan oleh beberapa faktor pendukung: *pertama*, ketiadaan paradigma holistik di tingkat nasional dalam menyelesaikan masa lalu. Hal ini dapat tercermin dalam absennya kerangka kerja hukum dan rendahnya keinginan politik untuk menuntaskan ketidakadilan masa lalu; dan *kedua* ialah pilihan pragmatis yang sedang mengemuka yang diambil oleh pemerintah dan kelompok-kelompok korban/penyintas – khususnya di tengah tantangan kesejahteraan yang dihadapi oleh korban/penyintas saat ini. Di saat mekanisme reparatif yang dijalankan – melalui proses yudisial dan program pendampingan umum, telah sangat berguna dalam memberdayakan korban/penyintas, situasi ini berpotensi untuk menuju kegagalan dalam memotret kekerasan struktural (ekonomi) yang terjadi di masa lalu.

**Kata kunci:** korban, pelanggaran hak asasi manusia berat masa lalu, identitas.

### Introduction

Almost two decades after the 1998 reform, Indonesia has been struggling with the nation's challenge to resolve its past. The promise of reconciliation and rule of law under a transitional justice framework appears to be difficult to reach, even after several achieved substantial and procedural democracy in the

country (Bräuchler, 2009; Ehito, 2015). Despite the foregone absence of mechanism in dealing with the past, a particular inevitable aspect of past injustices is the victim's grievance. Not only inevitable however, the state's measures to *repair* the existing injuries and damages ought to be taken independently, separated from any other retributive programs, such as criminal prosecution

and/or any other non-judicial truth telling processes.

Paradigmatically, the victims of past gross violation of human rights could be categorized into those individuals or groups who suffer direct physical impact or those extended to an economical aspect of violence (Sharp, 2014, pp. 11-12). However, the economic aspect of violence has been posited more at the background of historical injustice narratives. Practically speaking, it is then undeniable that such a ‘constructed invisibility’ of economic violence has significantly contributed in understanding past historical injustices anywhere in the world (Arthur, 2009, pp. 361-62). This impact-based categorization is not merely needed in terms of historical narrative necessities about

past gross violations of human rights, but it is also urged to give effects towards victim’s right to reparation (McEvoy & McConnachie, 2013, pp. 504-5). This paradigmatic point of view could certainly be applied into the situation of Indonesia. Departing from past gross human rights violations cases that have been investigated by the National Human Rights Commission, there are at least two categories of rights affected, namely: civil and political, and economic and social rights. Arguably, if Indonesia is willing to be consistent with its human rights protection commitment, an analysis towards the existence of economic violence hence should not be positioned as, based on Sharp’s historical distinction, a sole ‘background’ of the violence experience.

**Table 1**  
Historical Distinction of the Impact of Violence

Set in foreground	Set in the background
Civil and political rights	Economic and social rights
The public	The private
The state, the individual	The community, group, corporation
The legal	The political
The secular	The religious
The international	The local
The modern	The traditional
Form, process, participation, procedure	Substance
Formal, institutional enforcement	Informal, cultural, social enforcement

Source: Sharp, 2014.

Transitional justice as a conceptual framework ought to be applied as a rational in advancing our analysis on the treatment of the victims of past human rights violation in Indonesia. In this sense, transitional justice has been arguably perceived as a mechanism that capable in reshaping identity of a previously divided society (Arthur, 2011). By taking the relation between transitional justice and social identity as basic premise, this article attempts to examine how the current transition in Indonesia shapes the victim’s identity, in particular from socio-economic rights perspective.

While the economic-social dimension of victims in Indonesia is currently still under studied, it is firstly important to base the rational that right to remedy is a part of human rights (Farid, 2005). As a consequence, it would be logical for the state to bear the obligation to repair the victim’s right. At an international level, based on the General Assembly Resolution 60/147, the guiding principle on the right to

remedy of human rights violation victim delineates that:

Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

In practice, a transitional justice based victim’s reparation policy has actually been exercised in several countries, particularly in South American region (Skaar, 2011). In July 2005 for instance, Peru initiated a Comprehensive Reparations Plan Law (*Ley que crea el Plan*

*Integral de Reparaciones*), which for the first time defines the term victim and introduces some types of reparation for human rights violations that occurred in the past (Arthur, 2011: 28). A relatively similar stance was taken by Colombia through establishing a national reparation program in 2011. These measures were taken by the states in order to repair damages suffered by the victims, by weighing more on economic and social aspect (Widodo & Abidin, 2014). Nonetheless, it is also worth to note that the right to remedy should not be *prima facie* considered to be an international customary law that:

... the human rights treaties and their implementation at the domestic level do not, in any event, seem to provide clear and strong evidence of a customary right to compensation. The duty to compensate asserted by human rights bodies is at best normally implicit in the right to an effective remedy. It is, on the face of the provisions, not an express and absolute right in the case of all human rights violations in all circumstances (O'Shea 2004: 275).

In order to describe the (re-)shaping of victim's identity from economic rights perspective, this article initially attempts to examine the economic impact of past gross human rights violations in the country. Subsequently, an analysis shall be taken towards any available mechanisms to *repair* the victims and survivors. Arguably through this examination, and given a wider framework of Indonesia's transition policy, it could be seen that there is a shift of identity amongst the victims and survivors. In this sense, identity is to be seen a complex social construction rather than a single and defined category (Arthur, 2011, p. 7). To some extent, this shift of identity might arguably be to a certain extent determinant in predicting the future of the nation's effort to reconciliation.

### **Overlapping Situation: The Socio-Economic Aspect of Violence**

Before proceeding to the dynamics between state's reparation policy towards past human rights violations and several efforts to reshape victim's identity, it would be best to depict the nexus between human rights violation and the social and economic dimension of the victim. Such a nexus could be described as 'overlapping situation' within crimes against humanity, both in terms of normative framework

and international judicial practices (Schmid, 2015). In doing this, a reference to some international practices is of particular important in order to see the dynamics of international (criminal) law in dealing with economic severity of international crimes.

In relation to this, the Rome Statute of the ICC rules that crimes against humanity as "any of ten acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Based on this definition, it is important to scrutinize the elements of crime in order to understand the presumed 'overlapping situation' in the crimes. First, a common understanding on 'attack' should be interpreted as a violent conduct. In this sense, 'violence' ought to be translated as broader than a sole physical suffering, or a mere number of those injured or death caused by the attack. It should also be understood, as Gilligan (1997:89) argued:

[a]s long as we can identify that adverse human agency played the key role in the creation of the outcome, violence for the purpose of the attack requirement encompasses 'the increased rates of death and disability suffered by those who occupy the bottom rungs of society, as contrasted with the relatively lower death rates experienced by those who are above them'.

Furthermore, Mettraux (2002, p. 249) explains six factors considered by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in determining the existence of an attack directed against civilian population, to include: (i) Whether there has been an authoritarian takeover of the region; (ii) Whether a new authoritarian power structure has been established; (iii) Whether discriminatory measures such as restrictions on bank accounts held by one group of citizens, or *laissez-passer* requirements have been imposed; (iv) Whether summary arrests, detention, torture, and other crimes have been committed; (v) Whether massive transfers of civilians to camps have taken place; (vi) Whether the enemy population has been removed from the area. Consequently in terms of economic, social and cultural rights (ECSR) aspect, as Schmid (2015) argues, "[W]hile administrative and legislative measures imposed against a population that deprive it of access to ESCR do not in themselves constitute an attack, they can do so if the imposition of such measures is itself violent or is accompanied by acts of violence."

Secondly, the discussion also arises on how to depict the 'directed' phrase. In the context of Rome Statute, it is stated that, 'a course of conduct ...pursuant to or in furtherance of a State or organizational policy to commit such attack'." In practice, Schmid (*ibid*) notes:

The strictest interpretation is that a policy requirement exists and that the author of such a policy must be state. Even then, overlap between ESCR violations and the attack requirement of crimes against humanity is undoubtedly possible, such as when governments exercise violence against any civilian population and such conduct is inflicted pursuant to or in furtherance of a policy that has the effect of harming the enjoyment of socio-economic or cultural rights.

Lastly, the third threshold would be the widespread element of an attack, which defined as a "massive, frequent or large-scale action", and systematic that means "an act or omission which is thoroughly organised, follows a pattern or a common policy and/or involves the use of state resources" (Schmid, 2015, p. 90).

Aside from the three thresholds of crimes against humanity, Schmid notes furthermore that the seven forms of crimes, including: deportation and forcible transfer of population, enslavement, persecution, apartheid, murder, extermination, torture, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury, have an overlapping situation with socio-economic rights violation. Evidently, based on judicial practices and any other international findings, it could be concluded that economic-social rights violation could not be *simply* regarded as a violation of human rights, as in some instances it also may amount to a serious violation of human rights, particularly a crime against humanity.

Consequently within the context of socio-economic impact, the past gross violations of human rights actually create two 'spillovers' within a divided society (Greiff, 2009, p. 42): *First* is that the victims have been suffering deep and long fear along with life uncertainty after the violence, and *second* is that these impacts are not only found upon those who are suffering from physical violence, but could also be extended towards greater community as a whole. At this point, we arrive to the concept of phenomenology of victimhood, upon which de Greiff (2009, pp. 42-3) defines as "dense and complex, but it

overwhelmingly gravitates toward the conclusion that the pain and suffering endured in the violation itself is merely the beginning of sequelae that frequently include a deep sense of uncertainty and a debilitating and in some cases incapacitating sense of fear."The legacy of violence therefore could structurally cause various types of incapacitation towards the victims within the society. In a broader perspective, such a victim's incapacitation situation has impacted the non-victim civil groups. In this sense, the victim's situations that "lead substantially more reclusive lives than they led before the violations, to withdraw from public spaces, to disengage from social networks, and particularly to refrain from making claims to authorities and formal institutions", (Greiff, 2009, p. 43) could apparently also be found amongst the non-victim groups. Departing from this concept, there is a need for transitional justice field to include the developmental aspect as part of its project in addressing past structural violence.

Conceptually, the relation between transitional justice and development could be articulated by the victim reparation and remedy program (Greiff, 2009, pp. 37-38). The 'traditional' form of reparation program would be monetary compensation and restitutions. Beyond that, some practices have gone further to include basic services, such as health and education. It could then be argued that from a transitional justice lens, the dynamics of reparation could be undertaken in various kinds of program and implementation that evidently, should be seen as an attempt to narrow the gap between the existing victim's incapacitation and the challenging factors of development.

Although such a position seems to be feasible and politically 'safe' in real politics, to see the relation between victim's right to remedy and development as a mere (economic) empowerment matters provided by the government, is certainly perilous. The current Indonesia's normative structure in regulating victim's right to remedy has seemed to be ambivalent in dealing with this issue. In practice, the traditional approach taken by the state has been misleading, given that the protection and reparation towards (criminal) victims is to be regarded as state's charity rather than as state's human right obligation (Meliala, 2014, p. 37). In such context, the integration between historic injustices and victim's right to remedy faces a

rather multidimensional challenge, let alone in seeking comprehensive and inclusive economic reparation (Waldorf, 2012, pp. 174-75). While arguably, any positive laws do not explicitly mention anything on victim's right, the practice of human rights law at the European Court of Human Rights implies three main things on this: firstly is "it has accorded victims an independent civil right to a fair trial in certain circumstances"; secondly "it has incorporated victims' rights/interests into the proportionality requirement of the defendant's right to a fair trial in article 6 ECHR"; and thirdly, "it has imposed positive obligations on Member States to ensure that victims' rights to life in article 2 ECHR, freedom from torture and inhuman or degrading treatment or punishment in article 3 ECHR, and respect for private and family life in article 8 ECHR are upheld" (Wolhuter, Olley & Denham, 2009, p. 122). It is under this virtue that the state bears positive obligations to protect victim's right to: right to life protection, freedom from torture and cruel and inhuman treatment and punishment; and respect towards private and family life (Wolhuter, Olley, & Denham, 2009, pp. 125-28). Based on this understanding, the national discourse on resolving past gross human rights ought to direct the victims to not only the civil and political dimension, but also to the structural socio-economic impact (Sandoval, 2017).

### **Redefining Victim: The Background Grievances**

Legal discourse over the right to remedy for the victims of gross human rights violations was once discussed in the Truth and Reconciliation Act judicial review case. In this case, the Constitutional Court argues that procedurally in granting amnesty, such a procedure shall have no legal effect as long as victim's right to reparation is concerned. Therefore, it would be best to assume that victim's right to reparation as a stand-alone process and should be executed independent from any other procedure (Kurnia, 2005, pp. 47-79).

Practically, in the context of past gross human rights violation cases in Indonesia, one could identify several forms of violence that have direct implication on victim's socio-economic rights, to mention: slavery, enforced relocation, arbitrary deprivation of liberty and any other physical freedom during the 1965/1966 communist purge case, destroying and burning households, religious places, stores, pharmacies,

and vehicles in the 1984/85 TanjungPriok murder case, and enforced relocation and displacement in the 1989 Talangsari murder case (NHRC, 2014). Arguably, several practices in some region in Indonesia appear to conform this economic and social approach reparation.

Based on the research findings, there should be a further categorical analysis in order to describe the state of victim of past gross human rights violation in Indonesia. The emerging victim's socio-economic right should be conceptually defined in the first place, in order to explain the fundamental difference between the so-called governmental *assistance* and human rights remedy.

The field interview undertaken in this study shows a multi-faceted dimension of grievance of the victims of past gross violation of human rights. One victim of the 1989 *Talangsari* Murder Case for instance, who was serving as a state's elementary school teacher during the incident, was arbitrarily imprisoned by the military for around one and a half year. After being released from the prison, he practically lost his job as a civil servant without any compensation, including pension payment. Other victim populations also lost their piece of land, as few weeks after the assault the military occupied the land around the site. This also, economically, includes the victims who lost house, properties, and households. Consequently, the victims' access to work and to gain a proper living has been shut through this arbitrary action; as most of them were and are still working as farmer. Stigmatization as state's enemy, or it was widely known as security disorder movement (*gerakan pengacau keamanan*), on the victims to a certain extent implicated their right to socio-economic access, such as job and healthcare. One victim expressed his difficulties in getting a job due to most possibly his residential address in *Talangsari* village. Such a prolonged stigma is still happening up to the present, as the village is still believed to shelter criminals and alleged radical religious teaching. Moreover, infrastructures to basic needs, such as water and electricity, were underdeveloped in the village for more than fifteen years after the incident. The victims believe that such a situation was a direct implication from the common view towards people at the village. Furthermore, the senses of fear and incapacitation have been prevalence amongst the victims and survivors (Wandita, 2015). This condition is found mainly amongst

the 1965/66 communist purge survivor and victim (Farid, 2005, p. 12).

In the context of transitional justice, the impact of human rights violation may create two spill overs (Greiff, 2009, p. 42). First is that the victims who suffer serious human rights violation left a deep and unending fear along with uncertainty in life. Second is that this impact is not limited to those who suffer physical violations, but also systematically to a larger group of people. Based on this understanding consequently, there emerges a concept of 'phenomenology of victimhood', as a "dense and complex, but it overwhelmingly gravitates toward the conclusion that the pain and suffering endured in the violation itself is merely the beginning of sequelae that frequently include a deep sense of uncertainty and a debilitating and in some cases incapacitating sense of fear" (Greiff, 2009, p. 43). Under this understanding, the legacy of violence therefore creates a kind of incapacitation towards victims structurally amongst other citizens. In a broader sense, such victim's incapacity may have impact towards non-victim groups. The victim's conditions that "lead substantially more reclusive lives than they led before the violations, to withdraw from public spaces, to disengage from social networks, and particularly to refrain from making claims to authorities and formal institutions" may also be faced by non-victim groups (Greiff, 2009).

From a broader perspective, it would be fruitful to borrow the conceptual framework of victim in the field of victimology (Killean, 2018). One possible framework would be Landau and Freeman-Longo's (1990: 282-83) concept on multi-dimensional victim's typology. Under this multi-dimensional approach to victim, it is clear that the whole dimensions and categories of victim *ought to* be applied in order to construct the criteria of victim: *firstly*, in terms of source of victimization, state's structural violence has been spilled over to the society and individual level; despite the fact that there is also a case in Aceh that involves corporate activity in alleged human rights violation during military operations in the region. This source of victimization has been widely manifested through repressive policy, suspicions, and stigmatization that deeply-rooted in state apparatus and daily activities level. *Secondly*, based on the available legal mechanism framework depicted above, all types of victim involve the administrative, civil

and obviously criminal dimensions of enforcement. *Third*, from the intention category, based on the Commission's investigation and several judicial decisions referred above show that all human rights violations were sponsored by the state within the ambit of security judgment (NHRC, 2015).

Furthermore, the identification process of victim results from two categories of victim, namely: individual and groups of individual. However, the terms groups of individual should not be reduced to a mere organized group of victims, but also might cover a wider dimension of community as some individuals are still reluctant to expressly their grievances of past human rights abuses. *Fifthly*, vulnerability of victim covers age, sex, and other social characteristics. Such a vulnerability derives from the form of victimization conveyed by several informants to include physical, economic, psychological, reputation, that by and large implicate the other categories of impact, ranging from mild to extreme degree of severity. Moreover, in terms of the relation between victims and the perpetrators, based on the Commission's investigation it could be assumed that there have been both impersonal and personal relations. Lastly, in the two cases examined the victim's contribution towards the cases range from the minimal up to the maximal level. In this sense, the maximal contribution depicts a complete contribution of the victim to the victimization process, while the maximum level describes certain members have become the spillover over the victimization. However, this idea of contribution is not to deny the existence of the victims that fall within the range of maximum and minimum level.

These dimensions could be an important basis in formulating the term victims of past gross violation of human rights. It could be defined that victim is a person or group of persons that inflicted by repressive action, suspicion, and stigmatization of the past that cause physical, economic, psychological, and reputation injuries, and/or other civil rights infringement in the field of criminal, civil, and administrative laws.

Based on such an understanding, one particular challenge in resolving past gross violation of human rights is to classify victim. On the one hand, the victim and survivor consider that structural violence has occurred

and conducted by state's apparatus, especially the military. On the other hand, there is a long perceived label towards the group as security villain or rebels. Based on the victimization view, recognition of 'victim' by the state shall involve a complex consideration, especially in terms of degree of complicity of a human rights violation case (McEvoy & McConnachie, 2012). In a broader sense, a complex victimization approach ought to cover: (i) The level of severity of victimization ranging from mild, moderate, severe up to extreme; (ii) Contribution to the event; (iii) Individual's vulnerability of age, sex, and other social characterizations; and (iv) The nature of relations between the alleged perpetrators and the victim, which might be personal or impersonal. Under such an understanding, it is therefore necessary for the state to recognize the victim by considering the stated elements. This recognition thus implicates forms of state's remedy, which might differ in each case, that:

As a political project, given the asymmetry between suffering and the law's ability to hold those responsible to account, reparations in TJ processes often involve prioritizing the suffering of certain individuals and groups over others. Human rights law perhaps can provide guidance here in trying to remedy the harm suffered by gross violations of human rights, without distinction, but it gives little guidance on the responsibility of complex victims in victimizing others (Moffet 2016, 167).

In this context, recognition towards the existence of past gross violation of human rights could produce counter arguments, given the high resistance primarily from the military side. As a consequence, one particular alternative policy that could be taken by the government is to deciding victim without regard to any recognition of the perpetrator.<sup>1</sup>

### Repairing the Victim: An Indonesian Context

Based on an NGO Coalitions for Truth and Justice's (*Koalisi untuk Keadilan dan Pengungkapan Kebenaran*) advocacy and findings, a progressive measure in repairing victim/survivor's rights has actually been taken by a

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<sup>1</sup>In Columbia, the reparation of victim policy enshrines that: "*This law paves the way for the recognition of victims without regard to who the perpetrator was; it recognizes their rights, prioritizes access to state services and transforms victims and their families into recipients of reparation.*"

local government initiative in Palu City, the capital of Central Sulawesi Province. In this context, the Mayor of Palu at that time, Rusdi Mastura, issued a Palu Mayor Regulation on the City Human Rights Action Plan. Through this Action Plan, the Palu administration explicitly regulates the reparation mechanism towards victims of human rights violations; a clause that was not specifically mandated in the National Human Rights Action Plan. Importantly, the reparation mechanism also applies for any human rights violations that happened in the past. The KKKPK also furthers its statement that:

This local policy is an implementation of apology conveyed orally by Palu Mayor, Rusdy Mastura, on 24 Maret 2012, as commitment of Palu as a 'Human Rights City'. Based on the Mayor Regulation, the victims of past human rights violations shall get access to social aid from the City Administration, in the form of housing reconstruction, healthcare, scholarship, and others (KKPK, 2015).

Normatively, there are at least two *reparation* mechanisms accessible by the victims, namely: judicial and general assistance mechanism. Related to the former, there are several case-laws that could be referred when dealing with socio-economic impact of past human rights violations. In *Wimanjaya Case*, the repressive policy during the authoritarian era has allegedly infringed the defendant's right to work. By filing a civil suit against the government, Wimanjaya argues that the government's legal acts against the defendant through interrogation, detention, defendant's book censorship, and international travel ban, have caused a significant loss to the him and his family, both in terms of material and immaterial damages (*Wimanjaya vs. Govt of Rep. of Indonesia*, 2015). As for the material lost, the defendant proceeds, during the legal proceedings he could not find a proper living for him and his family, there were no salary or honorarium as a lecturer, has lost time and concentration to write and translate books, there were no time to sell and promote his writings, he has lost time and opportunities to attend seminar or international conference abroad, along with other bunch of items of lost which amount to 26,7 billion rupiahs. For the immaterial aspect, he further claims a sum of 100 billion rupiahs for his incapacitation in finding jobs and doing business due to his political nature of crime conducted.

Interestingly in its legal consideration, the Court argues that, while evidently the General Attorney has exercised its duties and authorities based on the existing positive law during the authoritarian period, it ought to be presumed that the book censorship and travel ban imposed against the defendant was “backed by abuse of power of the ruling government (President) during the time.” The first level Court proceeding then decides that, given the fact on how the defendant has been struggling for his right as a citizen to live properly despite the imposition of government’s restriction, the Government has to pay one billion rupiahs as a form of ‘compensation’ for the defendant. Referring to the Court’s decision at hand, it should shed a reflection that there appears a kind of judicial activism that acknowledges, through a human rights lens, economic and social rights violation in the context of past abuse of power exercised by the government.

Another alternative that could be referred to the treatment of victims is through administrative court proceeding. Being lived under a prolonged stigmatization and discrimination, the political prisoners finally in 2011 filed a judicial review on Presidential Decree 28/1975 about Treatment on People involved in Communist Movement Category C. They argue that the Category C (*Golongan C*) labeling on their identification card has disabled them to access jobs and proper living. Finally, the Administrative Court rules that the 1975 Decree is incompatible with the current positive law, including that of Article 17 of the 1999 Human Rights Law and Article 26 of the ICCPR (TRC Judicial Review, 2011). Again at this point, it would be quite clear that through accessing the judicial channel, the victim of past injustices could claim a form of reparation for their ‘social-economic’ dimension of human rights violation.

Secondly, general assistances provided by some state’s auxiliary bodies and the (local and central) government. The main role on this aspect was long held by the Victim and Witness Protection Agency (LPSK). Although the agency faces a normative framework challenge to fulfil victim’s right to compensation and restitution of past human rights violation cases, as it requires the ad hoc human rights court’s decision, it has considerably succeeded in providing medical and psychosocial aid for the victims. These aids cover medical and hospital costs, transportations and accommodation cost. In 2013 alone, there

are 1,560 requests for aid from the victims, and there was a bit decline in 2014 to 1,076 due to administrative reasons. In 2014, due to the high number of request, which mainly came from the 1965/66 communist purge case, the Agency’s aid could be accessed by those who already obtained recommendation letter from the National Human Rights Commission. The collaboration between the two bodies then becomes determinant in repairing victim’s basic right.

From the government’s side, the previously mentioned Palu administration’s policy to give welfare-based assistance for the 1965/66 Communist Purge victims should be seen as a progressive effort. Rather than pragmatically providing state’s fund towards the victims, the city administration instead conducted systematic and participative policy. The idea commenced from a formal and open public (personal) apology made by the mayor himself in March 2012, which could be regarded as an element of satisfaction in state’s remedial policy enshrined under the UNGA Res 60.<sup>2</sup>147. As a follow-up, the administration subsequently issued City Decree 180/1090/HKM/2014 stating names of the 1965/66 Communist Purge victims in the city. This progress was made succeed through participation of SKP HAM-Palu, a leading local Palu-based NGO that focusing on the promotion of empowerment towards victims of human rights violation. (Fernida, 2014) Through collaboration between the City administration and the victims group, the Palu City administration has even successfully integrated the victim reparation program into the city’s human rights action plan.

Furthermore, it is also worth to mention that in 2014 the former Palu Mayor has enlisted all Palu resident victims of 1965/66 communist purge case by name and address. In the decree, the victim is defined as “individual or group of individuals who suffer physical, mental, or emotional injuries, economic damage or whose basic rights was neglected, reduced, or expropriated as a consequence of human rights violations in 1965/66 incident, who has been verified by the Palu City Development Planning Agency.” As a result of this policy, 352 Palu

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<sup>2</sup>The elements covering: (1) *verification of the facts and full and public disclosure of the truth* [...]; (2) *an official declaration or a judicial decision restoring the dignity, the reputations and the rights* [...]; (3) *public apology, including acknowledgement of the facts and acceptance responsibility*. .



citizens have been verified as the victims; who subsequently being categorized into several human rights fulfilment programs according to each person's need. Administratively, the Mayor himself then tasked the city technical units to conduct such right fulfilment programs, covering: health and social security services, scholarship, housing renovation, entrepreneurship assistance, access to jobs, rice for the poor or *beras miskin*, plantation seeds and cattle, free birth certificate, clean water, and free electricity installation. It is to be understood that the so-called human rights fulfilment program is created and executed by the benevolence of the mayor himself.

Evidently, Palu experience in treating human rights violation victims in 1965/66 incident case should also be seen a progressive collaboration between civil society participation organized in a *victim* community, and certainly a well-founded political will by the city mayor during the period. Nevertheless, the city administration itself seems to be cautious in choosing the term of victim's right 'fulfilment' rather than 'reparation'. Considerably, the decision over the term was highly debated during the bylaws drafting process. It was mainly due to victim's basic need consideration then the debate resolved.<sup>3</sup> From the civil society point of view, the use of 'fulfilment' phrase was agreed by them as a mere way out in endorsing the city administration's attention towards the 1965/66 incident's victims in the city.<sup>4</sup> It was anticipated by the victims that the use of 'reparation' could create a negative response by the public in general, as the policy shall be deemed as toleration towards the existence of the Indonesia Communist Party in Indonesia. On the city administration's side however, such victim's right 'fulfilment' programs have considerably contributed to the poverty eradication in the city, as the enlisted victims were mostly classified as poor citizens. Aside from the local government initiative, the efforts to fulfil victim's right are also facilitated through a program run by the Coordinating Ministry of Human and Culture Development. The established SKP-HAM in Palu is one of the program beneficiaries that actively working on victim's right and victim's

empowerment. In practice, the organization has established cooperation as empowerment and welfare medium for its members.<sup>5</sup>

Although in fact the economic impact spill over has seemed to be left unanswered through these progress, but the economic grievance could find its channel through state's institutions and programs. While it is evident that, in terms of economic reparation, the victim's active participation is very obvious and a prerequisite in judicial mechanism, the quasi-judicial and general assistance mechanisms have rather been moreflexible in channelling grievances. Thisphenomenon should be a clear sign that the economic aspect of violence during the past injustices is self-evident and, importantly, could be resolved separately through several available mechanisms.

From a transitional justice perspective, it could be assumed that the current judicial practices are yet to be directed to achieve the envisioned national reconciliation. Although arguably, a more holistic approach in addressing state's structural violence and its economic effects is recognized by the Court. It is through this mechanism as well, that "the operation of law in transition speaks directly to the idea that there is a need to move from one form of society to another, thus responding to the history and narrative of conflict and therefore law" (Turner, 2013). The limit of this mechanism is, however, including the absence of a stated (personal) apology. Although, it could be assumed as well that the case laws played a role to play in telling the story of past abuses, in forging narratives of right and wrong and in responding also to those charges (Teitel, 2015) (McAuliffe, 2013). On the other hand, the general assistance program seems to able to accommodate the limit of judicial mechanism through public apology by state's (local) administration; along with efforts to channel counter narratives against the deeply-rooted stigmatization and labelling towards the victims and survivors (Hearman, 2009). To a certain extent, this (local) public apology could be seen as a catalyst in providing counter narratives from the victim's side (Thompson, 2012). While considerably in general, both mechanisms have succeeded to address victim/survivor's incapacitation and the need to empowerment.

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<sup>3</sup>Interview with Head of Legal Division, Palu City Administration (12 May 2016).

<sup>4</sup>Interview with Palu-based NGO activist. (11 May 2016).

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<sup>5</sup>Interview with Jakarta-based NGO activist (2 August 2016).

**Table 2**  
Comparison of two available mechanisms

	Level	Financial compensation/aid	Apology	Holistic approach	Historical narratives
Court mechanism	Individual	V	X	X	V
Assistance program	Communal	V	V (limited)	X	X

### Reshaping Identity: From Victim to Vulnerable

The participation of victim group is considerably prerequisite in reshaping victim's identity under transitional justice framework. As exercised in local practice in Palu City, for instance, the collaboration between local government and group of victim has been significant in initiating government's outreach. Through truth-telling process, along with victim identification and verification policy, and consultation between the government and victim group, both parties have been able to reshape victim's identity from the previously state's enemy to be the victims of past injustices. A sort of political campaign thus emerges at this point to counter the existing narratives dominated by the previous authoritarian discourse.

Nonetheless, if we take the above *reparation* mechanisms into consideration, they have arguably further shaped the victim/survivor's identity from grievance to welfare category. Based on several interviews conducted, it could be assumed that rather than finding a comprehensive idea of victim of past gross violation of human rights, the government's approach has been directed to treat the victims as part of larger (socially) vulnerable groups; as considerably most of the victims/survivors have been relatively poor or marginalized. This could be reflected during the *reparation* program implementation that after the victims/survivors identification and verification processes, various programs were subsequently granted for them, such as housing rehabilitation, jobs, social security, and economic assistance to entrepreneurship. As part of the local government's public policy, the choice taken to undertake the economic-social rights reparation for past human rights violation victims is considerably difficult in terms of gaining public legitimacy (Correa, Guillerot, & Magarrell, 2009, p. 388). Several assistance measures taken by the Palu City Government for instance, have also taken the general Palu citizen's economic and social capacity into consideration, as the assistance process itself was conducted periodically and proportionate to the

public outside the victim's category. Under this standpoint, in terms of victimization it could be argued that victim's identity appears to be shifted from the interest of state's violence grievances to structural economic vulnerability.

Furthermore, the reshaping of victim's identity has been reflected by the activities taken by victim's group movement. At some point, as the demand to pursue justice through the court has been considerably seen difficult to achieve, the emerging issue was then directed (or advocated) to be more on social and economic empowerment. The two victim's groups have been setting up a small scale enterprises aimed to provide funding for the movement and its members, as the majority of the survivors have been marginalized in terms of economic and social access. On the government's side, the empowerment scheme provided by the Coordinating Ministry of Human Development has considerably been supporting these types of activity. Putting aside the *restorative* aspect of dealing with the past, the victim/survivor movements have been attempting to address trauma resulting from past abuses. This rather *therapeutic* aspect is implemented through memorialization events, testimonies, and landmarks (Danieli, 2009). These programs have by and large affirmed the idea of reshaping identity of victims and survivors to become vulnerable groups that need to be empowered (economically) by the state.

Pragmatism is then currently hampering the actors, which directly put the complete figure of truth of historical injustices in the country further than before. While arguably there is a clear connection between Indonesia's political economy towards state violence in the past, it is evident that there is a precarious setback that should be anticipated in the country's effort to reach the envisioned national reconciliation (Hayner, 2002, p. 178). This idea of a mere pragmatic economic approach would potentially fail to portray the structural (socio-economic) violence that happened in the past that, as Miller elaborates, might cause: (i) An incomplete

understanding of the origins of conflict; (ii) An inability to imagine structural change due to a focus on reparations; and (iii) The possibility of renewed violence due to a failure to address the role of inequality in conflict (Miller, 2008); (Moon, 2004, p. 196).

As a consequence, this reshaping of identity consequently results a lack of debates over Indonesia's historical narratives, and "[i]nstead of being tested in the courts, where standards of evidence and judicial proceedings could be expected to result in a decision one way or the other, competing narratives instead tend to play out in the court of public opinion, where there is frequently a strong bias in favour of narratives that end up minimizing or sanitizing wrongs committed by dominant groups" (Johnstone & Quirk, 2012, p. 165). Seeing through this way, the current articulation of victim/survivor's identity might fail the country's transitional justice language to respond to traumatism where the evil comes from the possibility of repetition (Borradori, Habermas, & Derrida, 2003).

### Conclusion

This article concludes that there is a shift of identity of the past gross human rights violations victims/survivors. An effort to surface the idea of victim, who bears grievances resulting from past injustices, seems to be reshaped to become vulnerable marginalized groups of people. From a transitional justice lens, such a phenomenon is mainly caused by several contributing factors: *First* is the absence of national level holistic paradigm in resolving the past. This could be depicted in the absence of clear legal framework and the lack of political will to resolve the past. *Second* is the emerging pragmatic choice made by the government and the (group of) victims/survivors; particularly given the current existing challenge of welfare-based needs faced by the victims/survivors. While the exercised *reparative* mechanisms, through judicial process and general assistance programs, have been considerably useful in empowering the victims/survivors, this situation would nevertheless potentially lead to a failure in portraying the structural (economic) violence that happened in the past.

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