



## **Delay in the formation of the Truth & Reconciliation Commission (KKR) in Aceh**

Human Rights are universal, basic and eternal rights that are naturally inherent to humans. Because of these features, human rights must be protected, upheld and respected. These basic rights must not be ignored, reduced or deprived of by anyone. Abuses of these rights must be disclosed and investigated to provide remedy to those whose rights have been violated.

The Government of Indonesia after the Soeharto era has given a lot of attention to cases of human rights violations. The Law (*Undang-Undang/UU*) No. 26 year 2000 on the Human Rights Court clearly mandated that human rights violations should be acted upon, which amongst other things means establishing a Truth & Reconciliation Commission (*Komisi Kebenaran dan Rekonsiliasi/KKR*) in line with the stipulation of Article 47 paragraph (2) of the Human Rights Court law. The establishment of KKR is also confirmed by means of the Decree of the People's Consultative Assembly (MPR) No. V/MPR/2000 on Strengthening National Unity and Integrity.

KKR has proven to be successful in a number of countries such as Argentina, South Africa and Chile amongst others. This commission is aimed at solving cases on past human rights violations. Members of KKR work in the field to reveal past human right violations by hearing, meeting and investigating witnesses as well as the victims of violence. Only after that and after the case is clearly disclosed, the process for reconciliation can commence.

"No reconciliation can commence without revealing the background of the cases," says Ihdhal Kasim, the Chair Person of the National Commission on Human Rights (*Komnas HAM*) during a seminar on KKR in Banda Aceh in early August 2008. The reconciliation should always refer to the common interest of the nation. The KKR will be responsible for revealing cases of human rights violations before the Human Rights Court law takes effect.

The steps in KKR are: disclosure of truth, admission of guilt, provision of forgiveness, peace, law enforcement, amnesty, rehabilitation or other means that uphold the unity and integrity of the nation and respect justice at the same time.

The formation of KKR in Aceh has become one of the Acehnese's strongest aspirations as a follow up to the peace process in the region. The Helsinki MoU and the Law on Governing Aceh clearly stipulate the need for the establishment of KKR in Aceh. The Commission should have been established two years before but it has been constrained by incomplete and inaccurate law instruments.

Initially, the establishment of KKR in Aceh was planned to take place after the establishment of the national KKR. In response to this, the Indonesian Parliament (DPR RI) enacted the Law No. 27 year 2004 on the National Commission for Truth and Reconciliation. However, human rights activists in Indonesia demanded a judicial review of the law to the Constitution Court because some significant provisions in the



Law were not in favour of the victims and in violation of the national constitution (UUD 1945) as well as international law. In its decision of 7 December 2006, the Indonesian Constitutional Court annulled all of the provisions in the Law on KKR. As a result, the establishment of the KKR in Aceh is also pending.

The Head of the Constitutional Court, Jimly Asshidiqie, says that the revocation has been attributed to one article on amnesty, which constituted the main soul of the Law. The provision on amnesty in the KKR law was considered to be in violation of international law. The revocation of that specific provision meant the revocation of the whole of the Law No. 27 year 2004 because the provision on amnesty directly influences the whole of the Law. "To prevent more severe legal problems from being raised, it is better that the Law was announced as no longer in effect and binding," confirmed Jimly. He says that if the Law on the National KKR was not revoked, the objective of reconciliation may never be achieved.

Following the decision of the Constitutional Court, the urge for the establishment for a national KKR has dwindled. However, the demand for the establishment of KKR in Aceh, especially for resolution of past human rights violations, is still strong. Protests after protests were posed by the public in a number of cities, demanding the government to immediately find a way out to solve human rights violations in Aceh.

An idea for the development of a special *qanun* on KKR in Aceh was once launched but was soon thwarted due to the many problems it faced. In addition, it was realised that the specific nature of the *qanun* would only mean that it would only take into effect in Aceh while it is assumed that many perpetrators of past human rights violation are not residing in Aceh. With that view in mind, people are aware that a *qanun* only will not sufficiently equip members of any potential KKR in Aceh to carry out their duties.

During the past two years, the debate on the need for KKR has been ongoing. In a number of discussions in Banda Aceh and Jakarta, it was agreed to make the government propose a draft Law on KKR that is in line with the National Constitution and international legal instruments. The Department for Law and Human Rights has finally taken over the task for the drafting of the Bill on KKR. Until July 2008, the draft bill has gone through several stages of development. It is hoped that by the end of August the draft bill can be submitted to the DPR RI for deliberation and that Indonesia will have a Law on KKR before the change of parliament.

Significant points in the draft Bill of KKR

**Article 3: The KKR is established to:**

- a. Resolve past gross violations of human rights out of court to achieve peace and nation's unity.
- b. Attempt and establish national reconciliation and unity in the spirit of mutual understanding.

**Article 6 : Function, Responsibility and Authority of KKR**

KKR has the following responsibilities:



- a. To receive complaints and reports from perpetrator, victim or heirs of victim;
- b. To carry out investigations and clarifications regarding gross violations of human rights
- c. To provide recommendations to the President regarding request for amnesty
- d. To provide recommendations to the government regarding provision of compensation and/or rehabilitation; and
- e. To submit annual reports and final report on the result of investigation and other issues related to the implementation of responsibilities and authority

**Article 7:**

(1) In the implementation of responsibilities as mentioned in article 6, the commission has the following authorities:

- a. To carry out investigations in line with the legislation
- b. To request information form victims, heirs, perpetrator, and/or other parties within and outside of the country;
- c. To request and obtain official document from civilian or military institutions as well as other agencies within and outside of the country;
- d. To carry out coordination with relevant institutions within and outside of the country to provide protection to the victim, witness, *rappporteur*, perpetrator, and the evidence in line with the legislation;
- e. To summon anyone relevant to provide information and to bear witness
- f. To make decisions regarding provision of compensation, restitution and/or rehabilitation; and
- g. To refuse requests for compensation, restitution or amnesty if the case has already been referred to the human rights court;

(2) In the implementation of these authorities, KKR can ask the court to issue decisions for KKR to enforce the decisions.

In the proposed draft bill on the national KKR, the Department of Law and Human Rights does not specifically mention Aceh. It means that the future KKR will work on a general basis for violations of human rights all over Indonesia. This makes it different from the annulled Law No. 27 year 2004, which strongly mentioned the establishment of a National KKR and a KKR for Aceh.

In this light, Aceh has the opportunity to make the KKR have specific duties by developing a *qanun*. With the *qanun*, Aceh will have an institution that strengthens the functions and authority of the national KKR and vice versa.

If one looks at the history of human rights violations in Indonesia, they can understand the heavy duty that the national KKR will have to bear. In addition to cases in Aceh, a whole range of other cases of human rights violation are also on the list for resolution, among others the cases of Tanjung Priok, Talangsari in Lampung, Semanggi shooting, Abepura tragedy in Papua, Kedung Ombo and a number cases related to the involuntary disappearance of human rights activists.



The high number of cases are not in proportion with the small number of commission members. While the past KKR Bill No. 27 year 2004 stipulated that the members of KKR were 21, the current draft bill says only 9 people should be members. However, the process of recruitment of the members remains the same between the two bills. The selection committee consist of two persons from the government and three persons from civil society.

The selection committee will shortlist 18 candidates who are considered eligible to be proposed to the President. After that the President will further shortlist to 9. The selected candidates will have to swear their loyalty to the state and the law according to their religion.

The draft Bill on KKR will have substantial difference with the provisions in the Human Rights Court. It will not govern issues related to the process of legal enforcement but rather to the process of truth disclosure, provision of compensation and rehabilitation and consideration for grants of amnesty.

Based on the fact findings of the future KKR, if the perpetrator admits their guilt and the truth of facts as well as admitting regret over their conduct and willingness to ask forgiveness to the heirs of the victim, they can submit a request for amnesty to the President. Compensation or rehabilitation must be granted to the victim of human right violations accordingly. If the president denies the request, the case can be referred to the court in line with the provision in the Law No. 26 year 2000 on the Human Rights Court.

The ad hoc court for human rights does not have the authority over decisions made by KKR on human rights violations unless the request for amnesty is denied by the President. On the other hand, KKR does not have the authority to deal with cases on gross violations of human rights that have already been decided by the ad hoc court. In other words, both the decision by KKR and the ad hoc human rights court are final.