

POST-CONFLICT REPARATION: THE RIGHT FOR AMBONESE PEOPLE

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ABSTRACT

Ambon's vicious conflict in 1999, ostensibly for religious motivations, caused widespread damage, loss of life, and displacement. Although the conflict has since subsided, effects linger due to the inefficiency or unavailability of effective reparations programmes offered by the Indonesian Government to remedy the damage caused. This article discusses the basis of the government's obligation to provide effective reparations. The article then discusses the types of reparations that should be made available, its relevance for the Ambonese victims. The article concludes that reparations are obligatory, and Indonesia should undertake these efforts to accommodate healing, reconciliation, and to prevent the re-emergence of similar conflicts.

Keyword: Post Conflict, Victims, Right to Reparation, Ambon.

INTRODUCTION

Ambon is a city known for its plurality with regards to both the ethnic and religious affinity of its inhabitants. For centuries, peoples of different backgrounds and faiths had lived together in harmony, brothers and sister's side-by-side, as reflected in the Ambonese adage living in brotherhood (Watloly, 2005). Deservedly, Ambon is often colloquially known as sweet Ambon (Ambon Manise), reflecting a communal commitment to always live together in harmony. However, the Ambonese conflict of 1999-2002 caused the once peaceful city to become an extraordinary arena of violence, wherein peoples could reciprocally kill, destroy and humiliate because of clashing religious identities (Dandirwalu, 2014).

The conflict surprised many, and gave rise to serious concerns of whatever happened to sweet Ambon Manise. Ambon's local wisdom reflecting the Manise life, since the beginning, always has always taught how to live in brotherhood through the internalization of hidop orang basudara values through Pela and Gandong. These are deeply ingrained relations of mutual goodwill and friendship, leading to a commitment to live together in harmony. Pela and Gandong bonds in the hidop orang basudara philosophy had been propagated by generations so they could ward off any effort of destroying Ambon's harmony as a habitat of life (Jati, 2013)

However, the efficacy of hidop orang basudara and Pela and Gandong local wisdoms in preventing conflicts should be examined when only because of a minor dispute between two youths from different communities, Christians and Muslims respectively, Ambon was then dragged into a high-mass and massive escalation conflicts. A small incident during the Eid al-Fitr commemoration at Batumerah, between Muslim and Christian youths, had sparked widespread and enlarged conflicts. (Böhm, 2006) Ambonese people who once lived peacefully,

suddenly found themselves have to fight, a situation that forced them to be conflict actors and victims of the conflicts at a time. Because of the anger and hatred coming from nowhere, Ambon was then completely segregated and devastated. In the period of 1999-2002, thousands of people died, injured and physically disabled 80% of public facilities and homes were destroyed, thousands of people also became refugees and homeless losing land they occupied for life and lost property. Even the suffering and impact of the conflicts remain existing today (Dewi et al., 2017)

The suffering of the Ambonese communities added by the obscurity of the reparation program made available for the victims of the conflict are still felt to date. Many of excuses and interpretations claiming that the violence in Ambon amounted to a horizontal conflict between two religious communities had obscured the issue of victim reparation. Reparation in the technical sense of the word is considered a recovery effort that a State is obliged to provide if the State has committed violations to its citizens' rights (Buchanan, 2011). Therefore, in horizontal conflicts, the State's obligations to make reparations are often put into question. In particular with regards to the Ambon issue, it is often claimed that if the State conducts reparation, it does not arise because of the State's obligation as a consequences of unlawful acts, but only as part of the State's task to organize and manage the life of its subjects.

The Right of Victim for Reparation

In 1999 the Maluku sectarian conflicts erupted and quickly widespread to cause sufferings and damages in Maluku. A small spark in the form of political rivalries between Ambonese gangs in Jakarta eventually spread to Ambon and triggered the first conflict in January 1999 after a relatively small incident between Muslim and Christian youths on the Feast of Eid day at Batumerah (Böhm, 2006). Due to the segregated nature of Ambonese society, this conflict quickly spread and culminated in a widespread civil war between religious factions, predominantly that of Muslims against Christians (Ansori, 2014)

The Ambon conflict was not propagated by religious tensions and hate alone. Many historical, cultural and political factors also played a decisive role in fuelling the conflict. The conflict persisted and escalated over a long period of time. From January 1999 to October 2002, approximately 15,000 individuals were reported dead and 8,000 injured and 187 schools, 103 public offices, 39 medical facilities, 13 hospitals, 23,600 houses, and 144 churches and mosques were destroyed or burned. The war displaced 425,679 people, 80,686 of which were forced to leave their native districts. Refugees had to seek shelters in schools and religious sites. During the time Ambon was segregated even further. Civilians were grouped based on the identities of religion, market, schools, hospital, office, commerce, and route of transport. The whole population was separated by a firm line of Muslims versus Christians (Adam, 2010). Whether the victims of Ambonese Conflict are entitled to reparation?

State responsibility to provide reparations can be triggered by grave violations to international human rights laws, such as the right to life, right to freedom, and the prohibition on any forms of torture or inhumane or degrading treatment. With regards to the conflict in Ambon, the primary question thus becomes: Does the Ambonese conflict, which had resulted in widespread loss of life, loss of income, property damage, and displacement, trigger State responsibility and a duty to provide reparations?

It is uncontroversial to put forward that State responsibility is triggered whenever a Government Agency or a State Actor, acting on behalf of the State, engages in human rights violations. It is problematic to prove the conflict in Ambon was committed by State authorities. Violations during the Ambon conflict were committed by independent actors or groups acting in private capacity, for personal or religious motivations. The question that must be put forward at this junction is therefore whether State responsibility is still applicable for such conflicts which are decidedly horizontal in nature.

According to human rights laws theory, a State's responsibility vis-à-vis its nationals' human right encompasses to respect, protect, and fulfil. The duty to respect implies that a State must ensure that its own actors do not violate human rights laws. In contrast, the duty to protect is more active in nature, imposing an obligation to proactively ensure the human rights of its subjects. Finally, the duty to fulfil refers to the State's obligation to facilitate the enforcement of human rights in its territory.

General Assembly Resolution 56/83 on State Responsibility states that there is an internationally wrongful act of a State

“When conduct consisting of an action or omission (...) is attributable to the State under international law (...) and constitutes a breach of an international obligation of the State.”

In particular, this Resolution mentions that both commissions and omissions can constitute an internationally wrongful act. Violations occurring in the territory of a State, irrespective of whether they occur due to active commission by State actors or due to an omission by the State to prevent such violations from occurring, amount to fundamental failures of governance, giving rise to State responsibility.

A question that frequently arises is whether such a conflict as in Ambon can be construed as a violation against human rights. By narrowing the notion of human rights violation as a violation of the citizens' fundamental rights the occurrence of massive atrocities in Ambon should be then seen as a violation against their fundamental rights. The further question was who had violated the human rights in the conflict? The State made excuses to dodge from its responsibility as the perpetrator of human rights violations by considering it as a horizontal conflict. To dismiss such opinion a research then needed to be carefully conducted.

The plural and segregated citizens of Ambon city since the days of the Dutch Colonial Government coupled with the arrival of immigrants and the formation of ethnic and religious based villages had factually created vulnerability (Frost, 2004). The segregation existing since the independence of Indonesia until the end of the New Order Government was left to remain without adequate handling efforts even though the potential of vulnerability had been predictable from the beginning. The enactment of the Law 5 of 1974 on the Principles of Regional Government reinforced by Law 5 of 1979 on Local Governments that unifies regional governments had further sharpened the sentiments of different groups in Ambon. The enactment of the two Acts had gradually eliminated the local sacred values as the unifying factor of various groups' within Ambonese society and it was to be one of the forms of violation against people's customary rights. Both Laws caused Ambon local wisdom implemented in government order had been shifted by the concept formulated by the Central Government. This minimized the power and authority of the customary leaders who were previously very authoritative and charismatic in ruling the local governments. This condition, in the conflictual atmosphere, would further

exacerbate and increased the risk of friction among the communities because there were no leaders who were traditionally respected by generations (Tomagola et al., 2008).

Eventually the sharpening of religious violence occurred in Ambon in 1999 although a number of studies showed that the violence was not solely due to religious sentiments (Tomagola et al., 2008). Many people believed that the human tragedy at Mollucas was systematically triggered by the agendas of military and rulers in Jakarta who wanted to protect their political and economic interests. The intensity of the conflict was maintained by returning Ambon's thugs who had long roamed in Jakarta and brought the issue of rivalry among them to increase the heat at their homeland. The escalation of conflict increased after the actors behind the conflict brought thousands of Laskar Jihad (Jihad soldiers) members from Java (Aditjondro, 2004). The presence of Laskar Jihad in Ambon, in the context of State's responsibility, made it obvious that the issue was to be the State's obligation to overcome the problems so that the chaotic situation would not increasingly rampant. However, the absence and silence of the State made dragging on the conflict caused more victims and this could be seen as one of the forms of human rights violations happening in Ambon.

Based on international law a State has an obligation to make reparations when it does wrongful acts. This obligation has become a principle of international law affirmed by the Permanent Court of International Justice (PCIJ) in the often-quoted Chorzow Factory case (Case, 1928):

"It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form."

The PCIJ also established that the ultimate purpose of reparations is to achieve restitutio in integrum: so far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. In the opinion of the International Court of Justice (ICJ), this obligation of a state vis-a-vis another state also exists in the relationship between State and individuals. Therefore, this obligation is incorporated into the confines of international human rights law. Once a state's responsibility for acts or omissions amounting to human rights violations has been established, that the state has the duty to repair the harm inflicted against individuals (International Commission of Jurists, 2006)

Relevance of Reparations in International Law to the Situation in Ambon

Reparations are a fundamental part of international law and are awarded to by States to victims of grave human rights violations within their jurisdiction. Having established that the events in Ambon and the failure of the State of Indonesia to prevent the commission of such violations can give rise to State responsibility, it is necessary here to determine what avenues of remedy should be available or be made available by the State towards victims of the Ambonese conflict. In this regard, United Nations guidelines distinguish, in particular, five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These were replicated in the Orentlicher Principles.

Restitution is the first form of reparation and embodies the general principle of restitution in integral mentioned above. In essence, restitution aims to restore, as far as possible, the

victim's situation and condition as it was before the violation had occurred. The United Nations guidelines elaborate that restitution can take any form as necessary to achieve this goal. For example, it can take the form of restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property, and can even involve restoration to environmental damage.

In practice, this form of reparation would prove the most beneficial for the peoples of Ambon, who had often been forced to migrate away from their native soils to take shelter from the conflict. This also resulted in a loss of income, as farmers had to abandon their plantations, fishermen had to move away from shorelines, and many businesses were closed or ransacked during the violence. Even now, some communities in Ambon have not been able to fulfil their dream of returning to their old territories in fear of renewed violence, or because their old soil had been annexed by other groups during the conflict (Pattipawae & Lefmanut, 2017). Restitution would prove the ideal panacea for the great social, territorial and economic fluctuations brought about by the conflict, although application in its purest sense may be challenging, as this would require significant effort and funds, as well as substantial time, to realise (Sameaputty and Thenu, 2020).

Compensation is an alternative to restitution, and aims to instead restore the damage incurred due to the violation nominally. It must be emphasised that in spite of this definition, not only purely material damages may be liable for compensation. Reparation must be awarded to all damage that can be valued economically, (Hayner, 2005) and should involve pecuniary losses, non-pecuniary damage as well as costs and expenses (Shelton & Ingadottir, 1999). Van-Boven (1999) elaborates that compensation can and should be also awarded, for example, for mental damages, lost opportunities (e.g. employment and education), and income and potential income. (UN Principles)

Compensation can be a worthwhile alternative in regards to the Ambon case, although it should be emphasised that the choice to award compensation must not come at the cost of eventual restitution. Compensation is frequently preferred by States as a means of reparation because of its relative simplicity compared to restitution. Where restitution requires intensive effort to restore the previous condition, compensation instead translates the damage into pecuniary awards. It is the most commonly used form of reparation because of its simplicity, but it has drawbacks. Some forms of loss can never be replaced in the form of money. In the Ambon case, this is evident in the cases of land victims had to abandon during the conflict. In Ambon, land is inseparably linked to a community's identity and culture. Land is often regarded as sacred, and many important traditions and communal events are tied to certain locations or objects (totems) found on this land. No amount of money can restore the damage incurred by having lost this territory, which the group often inhabited since the times of its ancestors. As such, compensation should not act as a replacement to restitution, but as a complement. Some authors even put forward that reparation programmes should always prioritise restitution first, and should only resort to compensation if restitution is impossible to provide (Shelton & Ingadottir, 1999).

Rehabilitation refers to legal, medical, psychological and other care and services, as well as measures to restore the dignity and reputation of the victims, while satisfaction encompasses a wide range of efforts such as verification of the facts and full and public disclosure of the truth, apologies, and an inclusion of an accurate record of human rights violations in educational

curricula and materials (Van-Boven, 1999). All of these can be implemented in some way or form to accommodate and honour the victims' plights and experiences in Ambon.

Finally, non-repetition broadly refers to efforts to prevent the occurrence of similar conflicts in the future. The Orentlicher Principles state that:

"States shall ensure that victims do not again have to endure violations of their rights".

Non-repetition is just as crucial for the State of Indonesia to implement, if not more crucial, for the situation in Ambon. After all, in the words of UN Special Rapporteur Van-Boven:

"It is clear that the preventive approach should receive due priority and emphasis because an ounce of prevention is more effective than a pound of cure."

Non-repetition is forward-looking and attempts to remove or neutralise factors that can potentially lead to new conflicts, or a resurgence of the same conflict, in the future. In this context, non-repetition can take many forms, depending on the specific situation leading to the violation. States can undertake to repair structural issues like State practices or laws promoting violence or violations, social and economic discrimination and marginalisation, and a lack of available remedies (legal or otherwise) (Sunarso, 2014). Non-repetition also involves improving control over and accountability of law enforcement officers and military personnel, strengthening the rule of law, and reforming laws or policies which contribute to the impunity of violators (Orentlicher).

CONCLUSION

It is clear that violations against human rights and against fundamental freedom, especially massively committed, is naturally impossible to be repaired. In such instances any remedy or redress stands in no proportional relationship to the grave injury inflicted upon the victims. It is nevertheless an imperative norm of justice that the responsibility of the Indonesian Government be clearly established and that the rights of the victims be sustained to the fullest possible extent. In this light, reparations are an imperative part of doing justice to all victims in post-conflict Ambon. Not only do reparations aim at restoring the victim's dignity, but also at promoting peace and reconciliation.

It can be concluded that the Indonesian Government misconduct or wrongdoing to take appropriate action in Ambon conflict has raised State's responsibility to pursue peace-keeping, peace-making and peace-building. However, the reconciliation in Ambon had still far away from focusing on effective reparations for victims as one of the keys of conflict resolution and reconciliation.

The conflict in Ambon was brought about by a series of colliding socioeconomic and political factors which had created intergroup suspicion, ideological and religious polarisation, economic inequality, and weakened traditional mechanisms for dispute resolution. As such, any effort the Government can make to mitigate these conflict-inducing factors can greatly reduce the chance of a resurgence of violence in the future as a form of reparation for the victims.

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