



**Reparation for the Victims of the Dutch Military Operation in
Indonesia 1945-1949**

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1. Introduction and Methodology

1.1. Introduction

...Kami sekarang mayat. /
Berilah kami arti /
Berjagalah terus di garis batas pernyataan dan impian /
Kenang kenanglah kami /
Yang tinggal tulang-tulang diliputi debu /
Beribu kami terbaring antara Karawang dan Bekasi ¹

The following poetry was one of the most celebrated work of Chairil Anwar—a famous Indonesian poet who supposedly witnessed the massacre which occurred seventy years ago in Rawagede, West Java, Indonesia.² On 9 December 1947, Dutch soldiers carried out an attack against the Indonesian forces which had become active in that area. They rounded up the villagers, inquired after the location of the Indonesian soldiers, and executed a large part of the village’s male—unarmed—population.³ Reports on the number of victims who died during the Rawagede massacre (hereinafter referred to “**Rawagede case**”) vary between 150 people (from the Dutch figure)⁴ and 431 (from the Indonesian side).⁵ Even though it happened 70 years ago, the discussion in the public sphere is quite fresh since the case was brought to court in the recent years.

The massacre in Rawagede was part of the Dutch military action in Indonesia after the declaration of Indonesia’s independence after a long period of colonization. In the 16th century, the Portuguese came to the Indonesian archipelago, followed by the English and Spanish. Thereafter, the Dutch came and colonized Indonesia (at that time known as the “Dutch East

¹ “Now, we are corpses /give us meaning /watch out on the line of reality and dream / remember, remember us / we are left bones covered by dusts / We are thousands who we lay down between Karawang – Bekasi” (my translation), Ambar Wahyu Kartikasari, ‘Nasionalisme dalam Sajak Karya Chairil Anwar (Analisis Semiotik dalam Sajak Karawang Bekasi)’ (2014) 2 (3) AVATARA <<http://jurnalmahasiswa.unesa.ac.id/article/12064/38/article.pdf>> accessed 13 March 2018

² Ibid.

³ *Wisah binti Silan v The State of the Netherlands* (Judgement)[2011] District Court of The Hague 354119/HA ZA 09-4171, par. 2.5

⁴ *Nota Betreffende Het Archievenonderzoek Naar Gegevens Omtrent Excessen in Indonesie Begaan Door Nederlandse Militairen in De Periode 1945 – 1950, 1968-1969-10 008, Bijlage 5, 22[Excessennota]*

⁵ Bart Luttikhuis and A. Dirk Moses, ‘Mass violence and the end of the Dutch colonial empire in Indonesia’ (2012) 14 *Journal of Genocide Research* 257

Indie).⁶ During World War II, in 1942, the Japanese occupied Indonesia while the Netherlands was occupied by Nazi Germany. In the period of Japanese occupation, the Japanese soldiers attacked Dutch troops and civilians, and around 170.000 (65.000 Dutch militaries 25.000 other Allied troops, 80.000 civilians (including women and children) were interned.⁷ The Japanese occupation ended when Japan was defeated in August 1945, which was immediately followed by a declaration of Indonesia's independence on 17 August 1945. After the declaration, people armed themselves and was ready to fight "in the name of freedom."⁸ They tried to eliminate any foreigners suspected of being a spy, such as the Dutch, Eurasian, and Chinese people.⁹ Historians stated that this was the first and most immediate decolonization struggles of the violent postwar struggles against European colonial powers.¹⁰ Since the Dutch refused *de jure* recognition of the Indonesian independence, they tried to regain the control over Indonesia with assistance from the British military.¹¹ From that time onwards, Indonesia started its revolution while the Dutch regarded it as a counter-insurgency. The battle was designed to be waged between European and non-European troops, but it turned out that many of the victims were civilians.¹²

During the Indonesian revolution, there were many incidents of violence from the very east to the west of the Indonesian archipelago. For instance, in 1946, the Dutch sent their soldiers to counter the terror campaign in South Sulawesi. Westerling, the operation's leader, rounded up the people's village in the central square and then chose people (based on advance intelligence operation) and forced them to choose whoever they wanted to be identified as nationalist—"terrorist".¹³ The approach was brutal and the indicated cost of human lives varied between 3000 and 40.000 in over three months.¹⁴ In the recent years, this event was brought up to the Den Haag District Court as the victims raised their voice and 35 widows and children asked for

⁶ William H. Frederick, 'Historical Setting' in William H. Frederick and Robert L. Worden (eds), *Indonesia a Country Study* (6th ed, Library of Congress, 2011) 23

⁷ M.C. Ricklefs, *A History of Modern Indonesia since c 1200*, (3rd ed, Palgrave Macmillan, 2001) 248

⁸ Amrin Imran and others, *Indonesia dalam Arus Sejarah*, (PT Ichtar Baru van Hoeve collaborating with the Ministry of Education and Culture, 2012) 202

⁹ Adrian Vickers, *A History of Modern Indonesia* (Cambridge University Press, 2005), 98

¹⁰ William H. Frederick (n 6), 54

¹¹ Adrian Vickers (n 9), 99

¹² Bart Luttikhuis and A. Dirk Moses (n 5), 261

¹³ Stef Scagliola, "Cleo's 'unfinished business': coming to terms with Dutch war crimes in Indonesia's war of independence" (2012) *Journal of Genocide Research* 419; Bart Luttikhuis and A. Dirk Moses (n 5), 261

¹⁴ Remco Raben, 'On genocide and mass violence in colonial Indonesia' (2012) *Journal of Genocide Research* 485

reparation. This case started in 2012, with settlements for ten victims amounting to € 20,000 each. Others are still in progress.¹⁵

This demand for reparation was not the first attempt. Instead, it was following the landmark case of reparation for the Netherlands' colonial past in the so-called Rawagede case of 2011. The Dutch Court acknowledged that this was one of the unfinished histories of the Netherlands, and that the Dutch government had acted wrongfully and was liable for the damage. After the judgement, the Dutch government and the victims negotiated and at last agreed to pay compensation of €20,000 to each widow.¹⁶ After the judgment, the Dutch government established the Civil Settlement Scheme which gives access to reparation for widows of victims of mass killings carried out by the Dutch troops between 1945 and 1949 who endured similar damage in nature with the Rawagede and South Sulawesi cases.¹⁷

Nowadays this type of cases are growing either by means of a juridical process or out-of-court settlement. Besides the two mentioned cases, there are two other cases of violence during the Indonesian struggle for independence before a Dutch court. One case deals with rape,¹⁸ and the other with torture,¹⁹ which also involved Dutch soldiers within the period of Dutch Military Operation. Lately, dozens of widows and more than 500 children have been claiming the damages on the basis of the Civil Settlement Scheme.²⁰

In the recent years, there has been an increase of number and boldness of calls for reparations, both intra-nationally and internationally.²¹ Reparation is used in the wide sense to refer to all those measures that may be employed to redress the various type of harms of which

¹⁵ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* [2015] The District Court of The Hague, C-09-428182 + C-09-458254 + C-09-467025 + C-09-467029 and *South-Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The Netherlands* [2016] The District Court of The Hague, HA ZA 12-1165, HA ZA 14-96, HA ZA 14-653

¹⁶ *Wisah Binti Silan et al v. The State of The Netherlands (Ministry of Foreign Affairs)* (International Criminal Database) accessed 4 August 2018.

¹⁷ The Netherlands State, 'STAATSCOURANT Nr. 25383' (Koninkrijk der Nederlanden, 10 September 2013) < <https://zoek.officielebekendmakingen.nl/stcrt-2013-25383.html>> accessed on 9 August 2018.

¹⁸ *East Java rape victim v. The State of the Netherlands* [2016] District Court of the Hague C/09/483032/HA ZA 15-200

¹⁹ *East Java torture victim v. The State of the Netherlands* [2016] District Court of the Hague C/09/483033/HAZA 15-201

²⁰ 'Trial management meeting in court cases re:post-colonial violence in former Dutch East-Indies' (Prakken d'Oliveira, 29 May 2017) < <http://www.prakkendoliveira.nl/en/news/trial-management-meeting-in-court-cases-re-post-colonial-violence-in-former-dutch-east-indies/>> accessed 14 August 2018.

²¹ Jeppe von Platz and David A. Reidy, 'The Structural Diversity of Historical Injustice' (2006) 37 *Journal of Social Philosophy* 360

victims may have suffered as a consequence of certain crimes.²² The notion of reparation has been delineated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter referred to “**The van Boven-Bassiouni principle**”) including restitution; compensation; rehabilitation; satisfaction; and guarantees of non-repetition.²³

The van Boven-Bassiouni principle basically aims to restore justice by focusing on the criminal responsibility of perpetrators and identifying the exposure of the wrong inflicted on the victims by retributive justice and reparative justice.²⁴ Albeit the recognition of the comprehensive human rights protection within the international legal framework, it has been a major task to repair the injustice occurred in recent years. Moreover, some injustices took place such a long time ago, even before the international community acknowledged the dignity of human beings, as exemplified by the existence of Atlantic slave trade.

This type of past wrong—historical injustice—raises some issues in terms of demanding reparation. Firstly, most of the acts were lawful at the time they were committed.²⁵ The criminal law cannot be applied retroactively (non-retroactive principle). Secondly, the statute of limitation bars the prosecution of criminal acts which happened long time ago because it may obscure the causes of harm.²⁶ Thirdly, the perpetrator and victims may be dead, or the regime may have changed. These issues are also relevant in the reparation cases for violations during Indonesia’s decolonization, such as the Rawagede case.

Furthermore, in the reparation for historical injustice, some scholars agree to consider the differing possible minimal and maximal weight of forward- and backward-looking approach. The combination of this approach aims to get justice closer to the victims. Given the previous view, this thesis will scrutiny more to answer the following question: *how do the reparations by*

²² Pablo de Greiff, ‘Justice and Reparations’ in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press, 2006) 452

²³ United Nation General Assembly (“UNGA”) RES/60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) on the report of the Third Committee (A/60/509/Add.1)

²⁴ UNGA Introductory Note of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) Historic Archives <http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html> accessed 8 August 2018.

²⁵ Dinah Shelton, ‘Reparation for Historical Injustice in Dinah Shelton, *Remedies in International Human Rights Law* (1st pub, Oxford University Press, 2005) 457

²⁶ Dinah Shelton (n 25), 457

the Netherlands to the victims of Dutch Military Operation in Indonesia National Revolution (1945-1949) incorporate backward- and forward-looking approaches to reparation for historical injustice)?

1.2. Objective and Methodology

Objective

Reparative justice has been a compelling issue within the fields of victimology and criminal justice. This thesis aims to gain more understanding about the aim of reparation for historical injustices and its correlation with justice. Notably, the objective of this thesis is to give more understanding about what happened during the Dutch Military Operation in Indonesia 1945-1949 and its aftermath. Lastly, this research will contribute a thorough analysis of the reparations provided by the Dutch Government to the victims of the Dutch Military Operation in Indonesia between 1945 and 1949, and whether they fulfilled the forward- and backward-looking approach.

Research Strategy

In order to understand how this study was done, this section will discuss the strategy to conduct this research, including the research design and the source selection and analysis.

Research Design

The design of this research is a literature study. This research will begin with the historical background of the Dutch military action in Indonesia. Thereafter, a case law analysis of the four reparation cases of Indonesian victims before Dutch District Court of The Hague will be conducted. The research will not only study the court decision documents but also scholarly literature from international journals and books.

Source Selection and Analysis

The sources selected and collected for this research were obtained through assorted search methods, among others was the use of some electronic search engines, such as Google Scholar and WorldCat. Particularly, the author used search terms such as “reparation,”

“reparation of historical injustice,” “Indonesian history,” “Indonesia National Revolution,” “mass violence in Indonesia,” “Dutch reparation for victims in decolonization.” In addition, the supervisor for this thesis, Manon Bax, also recommended several books and articles relevant to the cases and theory used here. In addition, snowballing was used to find other relevant sources.

Limitation

In conducting this research, there were some limitations to be considered. Firstly, due to the limited time and resources, direct interviews with the victims is considered unfeasible. Secondly, since the original texts of the decisions and articles were written in Dutch, an electronic translation engine was used to improve comprehension. Thus, there is a possibility of misinterpretation. Lastly, even though the author will try to be as neutral as possible, the bias of the author as an Indonesian citizen may also influence the research. However, the bias can be limited by giving conflicting views of scholars.

Outline

This research will contain five chapters to answer the research question. Chapter two will deliberate the theory of reparation, the aim of reparation, and the reparation for historical wrongs. In that chapter, the author will also elaborate on the challenges in repairing the past in order to meet the aim of reparation. Chapter three will explain the events which happened in Indonesia between 1945-1949. In chapter four, the author will scrutinize the Dutch court cases dealing with reparation for crimes committed during the Dutch Military Operation in Indonesia. Furthermore, chapter five will discuss how the reparations by the Netherlands to the victims of Dutch Military Operation in Indonesia National Revolution (1945-1949) incorporate backward- and forward-looking approaches to reparation for the historical injustice. Finally, the discussion will end with a conclusion and recommendation.

2. REPARATIONS FOR HISTORICAL INJUSTICE

When a person puts the value on an object, it may become precious. Let us take an example of a necklace. A necklace may worth differently to different people. For example, a woman losing a necklace given to her by her grandmother on her wedding day would be devastated. People might think that she could always buy a new one, but for her, it was not about the object, but the special value in the object. Sometimes reparation might fix something that was broken, but for others, reparation could not restore the condition completely.

In this chapter, the term “reparation” will be discussed within the legal and political framework. Afterwards, it is salient to see what is behind the reparation. Furthermore, the author will scrutinize the concept of reparation in historical injustice. From this, the discussion will move on to the means to analyze the (valid) claims of reparation using the backward- and forward-looking approaches.

2.1. Reparation and Justice

Reparation is generally defined as the action of making amends for a wrong one has done, by providing payment or other assistance to those who have been wronged.²⁷

Reparation in the International Legal Framework

Regardless of the challenge in distinguishing the responsibility between individuals and the state, Grotius, a 17th-century jurist, and scholar, indicated that from an injury, an individual is entitled to a right to reparation. Therefore, “*there arises an obligation by the Law of Nature to make Reparation for the Damage, if any be done*”.²⁸ This formulation was also echoed in the prominent verdict of the Permanent Court of International Justice in the Factory at Chorzow Case (1928) which stated that “reparation must, as far as possible, wipe out all the consequences of the

²⁷ ‘reparation’ (*English Oxford Living Dictionaries*) <www.oxforddictionaries.com/definition/reparation> accessed 30 July 2018.

²⁸ Hugo Grotius, ‘The Rights of War and Peace, Book II’ in Knud Haakonssen (eds) *Natural Law and Enlightenment Classics* (Liberty Fund, Inc, 2005) 884

illegal act and re-establish the situation, which would, in all probability, have existed if that act had not been committed.”²⁹ Hence, the concept of reparation for a damage because of a wrong has long existed and has been implemented in the international sphere.

The concept of reparation has been applied with various terms in the international legal framework. Terms such as “effective remedy,”³⁰ “right to compensation,”³¹ “right to fair and adequate compensation,”³² “the right to be compensated”³³ as well as “just satisfaction to the victims” are used.³⁴

Moreover, the notion of reparation has been explored in more detail in the last decade with the van Boven-Bassiouni Principles. These principles include five types of reparations: (1) restitution, which whenever possible restores the victim to the original situation (*status quo ante*); (2) compensation, which should be provided for any economically assessable damage; (3) rehabilitation, which includes medical and psychological care as well as legal and social services; (4) satisfaction, which are especially broad categories including official apologies and judicial ruling; and (5) guarantees of non-repetition, which include institutional reform, where applicable in order to contribute to prevention.³⁵

Generally speaking, the international community agrees to interpret the “full restitution” (*restitution in integrum*), and when that is not possible, “fair and adequate compensation” as the ideal form of reparations.³⁶ It means that the victim should be restored to the situation he/she was before the wrong happened (the *status quo ante*).³⁷ Nevertheless, in the case where it is impossible to get full restitution, for example when a death has occurred, compensation is required.³⁸ Even so, there are circumstances that either restitution or compensation are unrealizable; for instance, it is impossible to bring someone back to life, or a condition of real

²⁹ Factory at Chorzow, Germany v Poland, Judgement, Claim for Indemnity, Merits, Judgement No. 13, (1928) PCIJ Series A No. 17, ICGJ 225 (pcij 1928), 13th September 1928, League of Nations (historical) [LoN]; Permanent Court of International Justice (historical) [PCIJ]

³⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc. A/RES/217A (III) art 8.

³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UN Doc. A/RES/2200A (XXI) art 9 point 5.

³² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) UN Doc. A/RES/39/46 art 14.

³³ American Convention on Human Rights (adopted 22 November 1969) art 10.

³⁴ European Convention for Protection of Human Rights and Fundamental Freedoms [1950] art 50.

³⁵ The Van Boven-Bassiouni Principles Art 19-23.

³⁶ Pablo de Greiff (n 22), 455

³⁷ Ibid.

³⁸ Ibid.

scarcity of resources which makes it unfeasible to satisfy the claim to compensation of all victims simultaneously.³⁹ These difficulties also apply in the context of mass violations committed in the past.

Backward- and Forward-Looking Approach in Reparative Justice

There is countless association on reparative justice, varying from punitive justice, compensatory justice, or even political transformation.⁴⁰ Generally, reparative justice aims to repair the wrong in the past and repair the moral relationship for the future.⁴¹ Reparative justice, as the aim of reparation, incorporate backward- and forward-looking approaches.⁴² The former approach focuses on the past and repairing the past as the same as corrective justice, while latter concerns to the better future likewise in distributive justice.

Backward-looking Approach

Reparative justice to some degree has the same element as the idea of corrective justice. Corrective justice entails that a wrong can be set right by giving back what has been lost to the injured party. This action aims to restore the “equality” or fairness.⁴³ This idea also has a similar nature with compensatory justice as appears in the private law relationship, such as contract and torts.⁴⁴ It aims to return to the *status quo* prior to the situation before the wrong occurred.⁴⁵ Since it focuses to the past, corrective justice therefore generally recognizes the backward-looking approach.⁴⁶

³⁹ Ibid, 457

⁴⁰ Margaret Urban Walker, ‘Restorative Justice and Reparations’ (2006) 37 *Journal of Social Philosophy* 377, 377-378

⁴¹ Walker determines six tasks that might build a relationship to repair moral wrong. (1) placing responsibility on wrongdoers and others who share responsibility for wrongs; (2) acknowledging and addressing wrong, harm, affront, or threat to victims and communities; (3) reinstating moral terms and standards within communities; (4) creating trust among individuals in the recognition of shared moral standards; (5) nourishing hope that moral understandings and those who are responsible for supporting them are worthy of trust; and (6) reconnecting moral relationship between the wrongdoers and the victims; See Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (1st pub, Cambridge University Press, 2006) 28.

⁴² Jeppe von Platz and David A. Reidy (n 21), 360

⁴³ Ernest J. Weinrib, ‘Corrective Justice in a Nutshell’ (2002) 52 *University of Toronto Press* 349

⁴⁴ Ernest J. Weinrib, *The Idea of Private Law* (President and Fellows of Harvard College, 1995) 56.

⁴⁵ Jeppe von Platz and David A. Reidy (n 21), 361

⁴⁶ Jeppe von Platz and David A. Reidy (n 21), 361

Similar to corrective justice,⁴⁷ reparative justice is also unavoidably backward-looking, at least to some degree. This notion presupposes and is responsive to a past wrong or injustice.⁴⁸ In the international legal framework, The van Boven-Bassiouni principle also incorporates the backward-looking approach as appears in Article 15 “adequate, effective, and prompt” reparation should be assigned which is “...proportional to the gravity of the violations and the harm suffered.”⁴⁹ This backward-looking consideration also appears in most of the types of reparation because it unavoidably considers the wrong past to repair the damage incurred. Restitution and compensation must acknowledge this approach.⁵⁰ The idea of reparative justice, to some extent, necessarily considers backward-looking approaches.

Forward-Looking Approach

Into some degree, reparative justice has the similar aim as in distributive justice. In the simple way, the distribution might be seen as just if everyone entitled to the holdings possesses under the distribution.⁵¹ From this description, it is evident that the distributive justice does not focus on the particular wrong act, instead of in the future, therefore is forward-looking.

Like distributive justice, the idea of reparative justice incorporates a forward-looking approach, at least to some degree. Walker states that “moral repair is the task of restoring or stabilizing—and in some cases creating—the basic elements that sustain human beings in a recognizably moral relationship.”⁵² Basically, to build a relationship human being needs trust, hope, and shared value.⁵³ This idea has six tasks: (1) placing responsibility on wrongdoers and others who share responsibility for wrongs; (2) acknowledging and addressing wrong, harm, affront, or threat to victims and communities; (3) reinstating moral terms and standards within communities; (4) creating trust among individuals in the recognition of shared moral standards; (5) nourishing hope that moral understandings and those who are responsible for supporting

⁴⁷ Aristotle deliver the idea of corrective justice. Aristotle states that injustice occurs when equality is absent—one party is gaining something from a particular act, while the other party loses because of this act ; See Ernest J. Weinrib (n 43), 349; Margaret Urban Walker, *What is Reparative Justice?* (Marquette University Press 2010) 9-10

⁴⁸ Jeppe von Platz and David A. Reidy (n21), 361

⁴⁹ UNGA Introductory Note of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) Historic Archives <http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html> accessed 8 August 2018; The van Boven-Bassiouni Principle Art 15

⁵⁰ The van Boven-Bassiouni Principle Art 19 and 20

⁵¹ Robert Nozick, *Anarchy, State, and Utopia* (Blackwell Publishers Ltd,1974) 183.

⁵² Margaret Urban Walker (n 41), 23.

⁵³ Margaret Urban Walker (n 41), 24.

them are worthy of trust; and (6) reconnecting moral relationship between the wrongdoers and the victims.⁵⁴

This type of reparative justice, to some extent, is also forward-looking because it seeks the repair the moral relationship, an ingredient necessary to a shared and just future.⁵⁵ The van Boven-Bassiouni principle also concerns this, to some extent, if not generally. The “satisfaction” which concludes a broad range of measures of reparation may also concern this approach.⁵⁶ It may be seen in the “guarantees of non-repetition” which may contribute to preventing the injustice from happening again in the future.⁵⁷

2.2. Reparations for Historical Injustices

The twentieth century was characterized by a lot of violence, as Pitirim Sorokin claimed *“the curse of privilege to be the most devastating or most bloody war century belongs to the Twentieth; in one quarter century it imposed upon the population a ‘blood tribute’ far greater than that imposed by any of the whole centuries compared.”*⁵⁸ Yet, a lot of cases of gross violations were not dealt with; they still have the status of “letting bygones be bygones.” Thus, reparation for these cases often emerged after the events had passed for a long time. For instance, victims of the Holocaust claimed and received reparations from the German state.⁵⁹ Herero population in Namibia demanded and received reparation from Germany for the allegedly genocidal act in the colonization period.⁶⁰ In Kenya, Mau-mau people have received compensation for the widow of freedom fighters who were detained and tortured by the British colonial administrator and now have been demanding to redress the true history on the

⁵⁴ Margaret Urban Walker (n 41), 28.

⁵⁵ Jeppe von Platz and David A. Reidy, ‘The Structural Diversity of Historical Injustice’ (2006) 37 *Journal of Social Philosophy* 360, 361

⁵⁶ UNGA Introductory Note of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) Historic Archives <http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html> accessed 8 August 2018.

⁵⁷ The van Boven-Bassiouni Principle Art. 23.

⁵⁸ Pitirim Sorokin, *Social and cultural Dynamics: A Study of Change in Major System of Art, Truth, Ethics, Law and Social Relationship* (2nd ed, Porter Sargent Publisher, 1957) 553.

⁵⁹ Susan Slyomovics, *How to Accept German Reparations* (University of Pennsylvania Press, 2014) 23.

⁶⁰ Sidney Haring, ‘German Reparations to the Herero Nation: An Assertion of Herero Nationhood in the Path of Namibian Development’ (2002) 104 *West Virginia Law Review* 393

independence struggle against British.⁶¹ The Japanese-Americans also demanded and received reparations including an apology and compensation for the wartime internments.⁶²

Historical Injustice

Historical injustice has particular elements. Shelton sees historical injustice as similar to mass violations of human rights in modern time. It comprises of targeting entire groups, either disfavored minorities or foreign populations. They are not individual cases. Historical injustice also concerns populations which have been killed, excluded, and subject to discrimination by others who have enriched themselves through privilege and suppression.⁶³

In the moral sense, Kutz emphasizes that historical wrongs depict the denial of their victims' humanity. In most cases, the political leaders brought about many of these crimes precisely by getting the direct actors (such as soldiers) to see their victims as non-human. This sufferings of the victims either simply failed to register or it was not seen as suffering, but as a form of healthy discipline for the victims instead.⁶⁴

Von Platz and Reidy see that there is a structural diversity of the historical injustices. There are four identified types of historical injustice, ranged based on the notion of entitlement. It is important to acknowledge the following four type of historical injustice in order to figure out the needs of consideration in reparative claims.

First, historical injustice is entitlement violation. It occurs when someone's entitlement is deprived. A person basically gains entitlement from the rules of the social practices in which she participates.⁶⁵ In each entitlement underlies value basis. For example, someone has a right to physical safety. It lays on the value of dignity as a human being. Once a person physically injured her, the entitlement to enjoy a healthy body is violated. From this violation of entitlement, a responsibility to repair the wrong is imposed to the injurer. In the context of reparation for

⁶¹ Mickie Mwanza Koster, 'Mau mau Reparations, Memorialization and Kenya's Future: Reflections After Fifty Years of Independence' (Kessa.org, 2013) < http://kessa.org/yahoo_site_admin/assets/docs/8_Mwanzia-Korster_KESSA_Proceedings_2013.362145023.pdf> accessed 19 August 2018; Lotte Hughes, "'Truth be Told": Some Problems with Historical Revisionism in Kenya' (2011) 79 *African Studies* 182.

⁶² Leif Wenar, 'Reparations for the Future' (2006) 37 *Journal of Social Philosophy* 396

⁶³ Dinah Shelton (n 25), 428

⁶⁴ Christopher Kutz, 'Justice in Reparations: The Cost of Memory and the Value of Talk' (2004) 32 *Phylosophy and Public Affairs* 277

⁶⁵ Jeppe von Platz and David A. Reidy (n 21), 363.

historical injustice, this demands not only compensation for harms done or losses suffered, but also an apology or whatever else to make amends and repair the torn relationship. The relationship hereby means a moral relationship of mutual recognition and trust within a rule-governed international order.⁶⁶

Secondly, historical injustice is an unjust exclusion from a system of entitlement.⁶⁷ It happens when a system of entitlements excludes some persons who ought to be included based on morally-acceptable values. Such exclusions may exist since there is a failure to track, capture, and express the accepted value basis, and therefore it leads to a system which is unjust, morally indefensible, inconsistent, or incoherent. An example might be seen in the American slavery, which in 1810, slaves were wrongly excluded from any system of entitlements given by the rule of the state.⁶⁸ The “black” had nothing to be entitled to, unlike the “white”.

Thirdly, historical injustice is a systematic failure on the part of a system of entitlements to express a morally plausible value basis. It appears when a system of entitlements fails to express its morally-acceptable value.⁶⁹ One might find an example through a legal punishment which is unjust because, according to the accepted value, moral wrong should not be imposed with hard punishment. Once the legal system allows it, this might be considered as injustice.

Lastly, historical injustice is the systemic embodiment in a system of entitlement of a morally corrupt or unacceptable value basis.⁷⁰ It is not necessarily related to the subject who rules or participates in the system. At that moment in time, the participating subject might mistakenly think that the value basis *was* acceptable. The practice of human sacrifice in the Aztec community or the international order with its permissive stance toward conquest and colonialism in the fifteenth and sixteenth century are some of the examples. In the latter case, the practice wronged persons because they systematically expressed and reflected (corrupted) value which was impoverishing.⁷¹ This problem of this injustice was the value basis itself.

⁶⁶ Ibid., 364.

⁶⁷ Ibid.

⁶⁸ Ibid., 365

⁶⁹ Ibid., 364-365

⁷⁰ Ibid., 363-365

⁷¹ Ibid., 365-367

Rationalization of Reparation for Historical Injustices

Some scholars agree that reparation for historical injustice is important. Firstly, the actions were illegal under national or international law at the time they were committed, yet the victims have been unable to secure redress. This is due to political reasons, the concealment of evidence, as well as procedural limitations.⁷² In case the particular crime might be regarded as legal at that time conducted, with the recent moral values, this act might be considered wrong, and therefore something must be done.

Secondly, the wrongdoers have unjustly profited by many of the abuses, collecting wealth from the victims. This leads to economic disparities created over generations.⁷³ This damaging effect remains and continues between generations. Therefore, the descendants of victims might be affected by the act as well.

Thirdly, there are significant moral issues since the events mostly took place during or after the emergence of the human rights principles. The payment of damages is a symbol of moral condemnation of the abuses that occurred.⁷⁴ This idea leads to the responsibility of the present generation to the past. This past, yet, has shaped individuals within the society or culture that form a historic identity.⁷⁵ As the past shaped the identity of society and became the collective memory, the changes of the past will correct the collective memory, which is orally told or written in the history book.

At last, reparation for historical injustice is crucial because it acknowledges the suffering of the victims and the legacies of the suffering in contemporary society.⁷⁶ This type of reparation is mostly seen in apologies. Apologies can have positive psychological effects on both sides and improve relationships.⁷⁷ However, the apology might be seen empty without the other forms of reparation.

From the abovementioned, it can be understood that reparation for historical injustices is important in order to repair the past as well as to repair the moral relationship within society, as in backward- and forward-looking approach. The first and second reasons emphasize the

⁷² Dinah Shelton (n 25), 456

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid., 457.

⁷⁶ Ibid.

⁷⁷ Janna Thompson, 'Is Political Apology a Sorry Affair?' (2012) 21 Social & Legal Studies 215, 216

significance of human dignity and basic human rights and assign the backward-looking approach. Moreover, the third and the fourth reasons repair the collective moral value and reconciliation in order to repair moral relationships within society, they, thus, incorporate forward-looking approach.

Mode of Reparation in Historical Injustice

Seeing that reparation aims to repair the past wrongs and the moral relationships within society, it is important to see the different forms of reparations for historical injustices can take. In this sub-section, the author will elaborate on the four general forms: financial compensation, apologies, holistic approach, and historical narrative.⁷⁸

Compensation

In a number of historical injustice cases, financial compensation is demanded. This type of reparation is tangible and immediate, which benefits the recipients directly. Albeit the small contribution in repairing the damage, it nonetheless gives contribution which may help to improve the lives of individual recipients.⁷⁹ However, some scholars stand against this idea because it is too contentious and too confrontational to provide reconciliation for the future.⁸⁰

Nevertheless, the claims of compensation are still highly practiced, since the goal is not only monetary benefits but also symbolic benefits. De Greiff argues that reparation for historical injustice should aim for recognition, solidarity, and civic trust.⁸¹ Therefore the idea is not to compensate the victims in proportion to the harm they suffer, but to repair them through a system or program with a collective dimension.⁸²

Apology

Another common mode of reparation for historical injustices is apologies. An apology can give positive psychological effects to both sides; the apologizers and those to whom it is

⁷⁸ Gerry Johnstone and Joel Quirk, 'Repairing Historical Wrongs' (2012) 21 *Social & Legal Studies* 155

⁷⁹ *Ibid.*, 161

⁸⁰ Roy L. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (University of California Press, 2004) 98

⁸¹ Pablo de Greiff (n 22), 460-466

⁸² *Ibid.*, 459

delivered.⁸³ Some scholars agree that the apology requires a combination with the other types of reparation, such as monetary compensation. The amount of money given in compensation symbolizes the apology and makes it believable.⁸⁴ This type of reparation is a symbolic form in order to not only “acknowledge and accept the responsibility for a past wrong,” but also re-establishes the moral value in order to restore relationships.⁸⁵ A significant number of apologies have been given in ways which raise questions about their sincerity.⁸⁶ The most common critic about it is whether it is genuine or merely a “half-apology.”⁸⁷ A state would seem to be placed in a vulnerable position by giving an apology. Therefore, it might attempt to half-apologize. Sometimes it happens because the apologizer fails to acknowledge the full extent of the offense. The ceremonial act of apology usually uses passive language. The apology is given by raising questions about whether the conduct was really harmful. In addition, another example of “half apologies” is that the apologizer uses empathetic rather than apologetic language. It is also possible that the apologizers apologize to the wrong party.⁸⁸

On the other side, a genuine political apology needs preparation.⁸⁹ With the nature of historical injustice, an apology is given by people representing a nation who had nothing to do with the injustices being apologized for. Since a state does not have feelings, the political apology needs preparation through a political and social process. The former is manifested in the act of responsibility by acknowledging the past and is perhaps combined with compensation. The latter moreover depends on preparation for public awareness on the reparation. It calls for debates and discussions which encourage the people of the nation to understand why an apology is necessary and what it means to their future relations with whom the apology is given.⁹⁰

Holistic Approaches

The holistic approach relies upon the idea of satisfaction of the victims. It can meet a range of psychological needs of victims caused by a wrongful act. It frames the reparation in terms of healing and reconciliation. Therefore, it might involve a broad description on the needs, depending on the victims and the nature of the wrongful act. Walker gives some examples, such

⁸³ Janna Thompson (n 77), 216

⁸⁴ Roy L. Brooks (n 80), 112; Margaret Urban Walker (n 40), 377;

⁸⁵ Margaret Urban Walker (n 40), 377

⁸⁶ Gerry Johnstone and Joel Quirk (n 78), 163

⁸⁷ *Ibid.*, 162-163

⁸⁸ Aaron Lazare, *On Apology* (Oxford University Press, 2004) 85-105.

⁸⁹ Janna Thompson (n 77), 218-220

⁹⁰ Janna Thompson, (n 77), 218-220

as the creation and funding of memorials, celebrations, historical projects, museums, educational programs, genealogy project, public art, or dramatic performance.⁹¹ However, in practice, it is often complicated to implement these holistic approaches, particularly when there is a different and highly politicized “understanding of history.”⁹² And this will lead to the next mode of reparation.

Historical Narratives and Political Arguments

“History is written by the winner”. It has long been known that historical interpretation is an inexact science at best.⁹³ The interpretation of a certain historical wrong can be different on each side of the parties. Reparation might also change the historical narrative and might affect the identity of each party. Even though this might be highly politicized, reparation of historical narratives is an important form of recognition.⁹⁴

However, in many cases, there have been competing narratives which tend to be resistant to change because they are deeply rooted in models of identity and community. To attempt this, the reparation should also generate political campaigns, organizational infrastructure, or a set of clearly defined goals to raise the level of political organization and activism associated with the historical injustice.⁹⁵

⁹¹ Margaret Urban Walker (n 40), 389

⁹² Gerry Johnstone and Joel Quirk (n 78), 163-164

⁹³ Ibid., 164

⁹⁴ Ibid.

⁹⁵ Ibid., 164-166

2.3. Field of Reparative Justice: Backward- and Forward-looking Approaches to Reparations for Historical Injustices

Granting justice to victims is a general aim of a reparation.⁹⁶ Recent scholars on reparation pass over several different phrases of damage and repair, including psychosocial, legal, political, and moral ones.⁹⁷ Some scholars focus on restoring the *status quo ante* by making the victim whole again and focusing on compensatory justice as in corrective justice.⁹⁸ This view appears to be too narrow to capture the logic of mass reparations for systemic or historical injustice.⁹⁹ Within the latter context, the idea of reparative justice might mix the backward- and forward-looking approaches relevant to the judgment of any reparative justice claim.¹⁰⁰

Jeppe von Platz and David A. Reidy develop the differing possible minimal and maximal weights, which might be assigned to backward- and forward-looking approach in the adjudication of different sorts of reparation claims.¹⁰¹ These sort of claims will be seen from the four structural features of the historical injustice as already mentioned in the previous section. Each of the historical injustices may demand different needs of backward- and forward-looking approaches. This approach is called “field of reparative justice.” A figure on this framework is given in the last of the description (Figure 1).¹⁰²

Entitlement Violation

For the first feature of historical injustice, entitlement violations, backward-looking approach shall be given great weight in adjudication of reparative claim.¹⁰³ For example in the case of theft. The victim’s entitlement of property was violated by someone, and therefore a judgment might consider the act and might simply order the return of the stolen property coupled

⁹⁶ Pablo de Greiff (n 22), 455

⁹⁷ Margaret Urban Walker, ‘Truth Telling as Reperations’ (2010) 41 *Metaphilosophy* 525, 531

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*; Pablo de Greiff (n 22), 454

¹⁰⁰ Jeppe von Platz and David A. Reidy (n21), 360

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, 367

with an apology or some other reparative act to restore the moral trust and recognition between the parties as participants in the system of entitlement.¹⁰⁴

When a judgment considers a great weight of backward-looking approach, it does not necessarily have no weight on forward-looking one.¹⁰⁵ In the past, the act of stolen property might be regarded as good faith acquisition. This act then may have been impacted by economic efficiency or distributive justice to some degree. In this situation, the “return to the status quo ante” may not be the only demand for a reparative claim. The utility of protecting expectations or consideration of economic efficacy or distributive justice may also be considered with the forward-looking approach.¹⁰⁶

The exact weights of the mix of backward- and forward-looking approach will depend on the facts of the case.¹⁰⁷ Nonetheless, for reparative claims arising out of entitlement violations, backward-looking considerations are often very substantial, and even sometimes seems to be the only relevant approach.¹⁰⁸ On the contrary, forward-looking considerations are never particularly weighty and often insubstantial.¹⁰⁹

Unjust Exclusion from System of Entitlement

In the second feature, a reparative claim consideration shall include a significant weight of backward-looking approach as well, however not as much as it has in the entitlement violations historical injustice.¹¹⁰ Without an entitlement violation, there is no straightforward entitlement basis to assess the compensation needed to make amend and repair the wrong done.¹¹¹ For example in “black” slavery case in Jim crow case. At that time, the “black” were discriminated by the policy. They were separated from the “white” in public areas, such as public transportation, schools, hospitals, and even church. Not to mention, the exclusion from the right to vote.¹¹² Another example is the exclusion of women from any system of entitlements.¹¹³ There was no entitlement for them, while the other group had.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 368

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., 369

¹¹¹ Ibid.,369

¹¹² David K. Fremon, *The Jim Crow Laws and Racism* (Enslow Publishers, Inc, 2014) 36-53

As it assigns less necessary weight to backward-looking approach, thus it leans more towards the forward-looking one.¹¹⁴ Because the wrong done has been structural or systemic, its reparation should be more systemic as well. However, sometimes people merely apply the forward-looking approach and disregard the backward-looking one, as in the exclusion of “black” in the Jim Crow case. This might be a mistake. They were basically wronged by the members of the American polity, which solely consist of “white.” The fact of “white” and “black” as parties—wrongdoer and victim respectively—to an ongoing moral relationship, generates a backward-looking demand for repair.¹¹⁵

Systemic Failures and Corrupted Value of Entitlement System

In this part, the reparation claims are discussed within the third and fourth situation of historical injustices. It is when one is subject to an institutionalized system of entitlement indefensible either because it fails to track or reflect its manifest and morally sound value or because its manifest value is morally corrupt or unacceptable. In this sort of cases, the wrong past or injustice is systemic or holistic.¹¹⁶ Example of this might be seen in the institutionalized practices of slavery and slave-trade as well as colonialism.¹¹⁷

The institutionalized national and international system of entitlement in the early modern period allowed the practice of slavery. It does not mean that slavery was then just. It was not. This act has always been morally unjust.¹¹⁸ There are two possibilities when it comes to the structure of this sort of historical injustice. First, the possibility of which the relevant national and international system of entitlement would simply fail across the board to track or reflect their manifest and morally plausible value, such as the dignity of persons. Second, the possibility of which the value of these systems of entitlement would be morally defective because, for example, they lack an understanding of the dignity of moral personality.¹¹⁹ It is presumed that the injustice of slavery, as well as colonization, might suit the latter (fourth) sort of historical injustice. There was no international entitlement to be free of attack, conquest, and colonization whatsoever.

¹¹³ Naila Kabeer, ‘Gender equality and women’s empowerment’ (2005) 13 *Gender and Development* 13

¹¹⁴ Jeppe von Platz and David A. Reidy (n 21), 369

¹¹⁵ *Ibid.*, 370

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, 371

¹¹⁹ *Ibid.*

The injustice done was more complete and systemic than the first and the second features. They wronged “everyone”. Everyone, in this case, only refers to “everyone” who have some degree or characteristics.¹²⁰ For example, much of Africa suffered much worse than others. To the contrary, much of Europe suffered less or even benefited from the absence of a morally sound system of entitlement.

In regard to reparative justice claims in the cases like these, the minimal necessary weight of backward-looking approach would be assigned closer to the zero point. Accordingly, one shall incorporate more of the maximal possible weight to forward-looking approach.¹²¹ This harm is an act caused by human being, not by nature. Thus, these past harms must be acknowledged. In this type of historical injustice, backward-looking approach should be applied together with the forward-looking approach.

The two scholars deliver a figure which might represent the analytic framework of the reparative claims as elaborated above (Figure 1).¹²²

¹²⁰ Ibid., 372

¹²¹ Ibid.

¹²² Ibid., 373

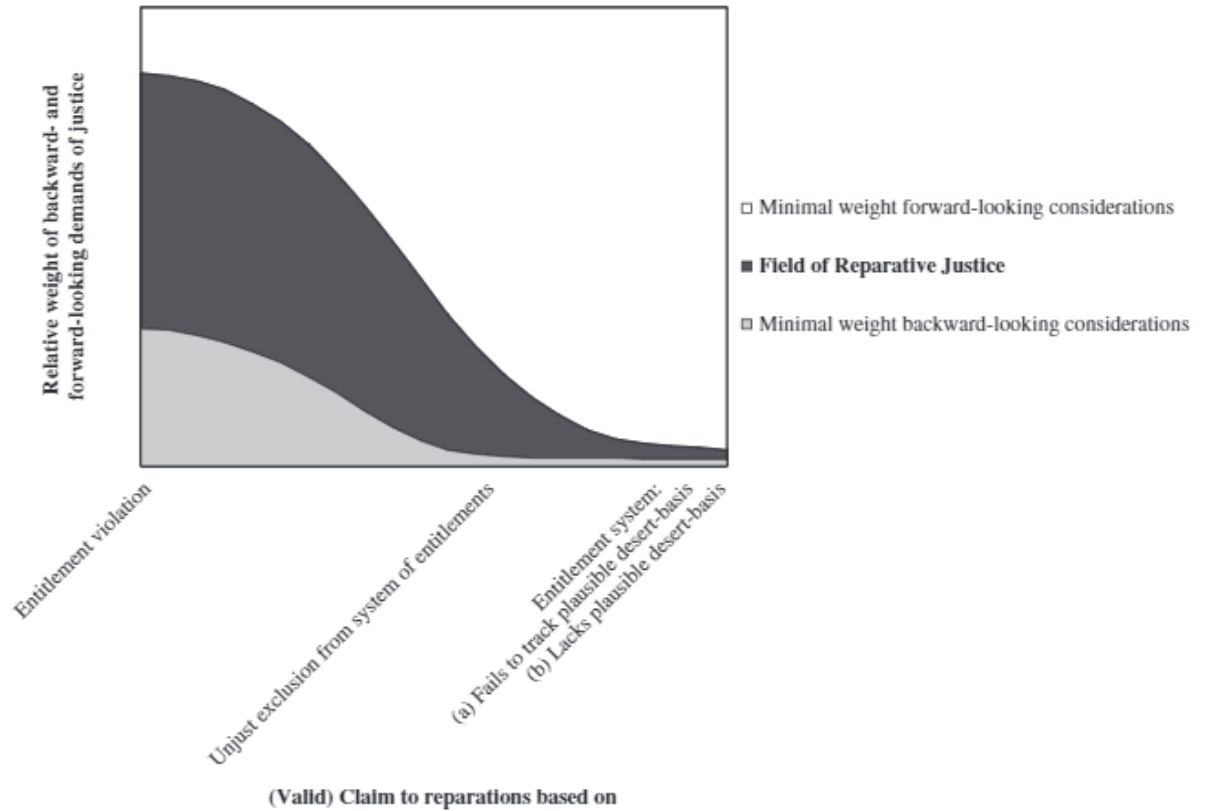


Figure 1¹²³

The upper boundary shows maximal possible and minimal necessary weights to be incorporated in backward- and forward-looking approaches, respectively. The lower boundary indicates the minimum necessary and maximal possible weights to be assigned in backward- and forward-looking respectively as well. This field, however, does not represent the exact weight of or the relationship between the backward- and forward-looking considerations for any particular claim. It merely represents a possible field of judgment.¹²⁴

¹²³ Ibid., 373

¹²⁴ Ibid.

3. PAST WRONGS IN THE DECOLONIZATION ERA IN INDONESIA

Indonesia is the fourth largest country in the world¹²⁵ with an estimated population of around 230 million in 2010.¹²⁶ It consists of around 19,000 islands with over 200 major cultural and language groups on the islands. Before the colonization era, there were kingdoms all over the Indonesian archipelago. Indonesia was not one country as a unity until the last period of colonization.¹²⁷

3.1. Colonialization Era and Violence

The colonization era began in the sixteenth century, where the first Europeans, the Portuguese, came to Melaka—an island part of Malaysia today—and ended up on east Indonesia's Maluku island for the spices trade. Following not far behind them were the English, the Spanish, and finally the Dutch.¹²⁸ In the seventeenth and eighteenth centuries, the Dutch had established a multinational company, the United East Indies Company (*Vereenigde Oost-Indische Compagnie*, hereafter referred to as "VOC") which played a significant economical role.¹²⁹ The VOC used extreme force to build its trade empire. One of the most gruesome and well-known example is the genocidal act committed under the direction of Governor-General Jan Pieterszoon Coen in Banda Island to enforce the Dutch spice trade monopoly.¹³⁰

By 1800, the Company was dissolved, but the Dutch had achieved control over most of Java, some parts of Sumatera, Maluku (Moluccas), and the borderland of various ports in Makassar and Kupang.¹³¹ In this era, the Dutch East Indies (the name of Indonesia as the Dutch colony) was formed and the Dutch enlarged their possessions through a series of wars, forced

¹²⁵ Adrian Vickers (n 9), 1

¹²⁶ Trophy Endah Rahayu, *Pertumbuhan dan Persebaran Penduduk Indonesia: Hasil Sensus Penduduk 2010* (Badan Pusat Statistik, 2010) 7

¹²⁷ Adrian Vickers (n 9), 2

¹²⁸ Colin Brown, *A Short History of Indonesia: The Unlikely Nation?* (1st ed, Colin Brown, 2003) 39

¹²⁹ William H. Frederick (n 6), 23

¹³⁰ Bart Luttikhuis and A. Dirk Moses (n 5), 265

¹³¹ Adrian Vickers (n 9), 10

labor, torture, and sadism as the Dutch tactics.¹³² The strategy was intended to suppress guerilla opposition by using ruthless exemplary violence to ‘awe’ the population into obedience. The army did not hesitate to unleash extreme violence against the population when intimidation tactics failed.¹³³ There was also a widespread practice of burning down of villages. The worst impact was a large number of civilian casualties since it was difficult to separate between enemy fighters and civilians.¹³⁴

A research on the nineteenth-century colonial warfare shows that the military and civilian administration developed a form of environmental warfare to destroy the region’s infrastructure supporting basic needs such as fields and livestock. The destruction exposed the Acehnese population to large-scale disease, malnutrition, and ultimately mortality which could be regarded as an “indirect genocide.”¹³⁵

In the twentieth century, the Dutch had established an integrated territory with an authoritarian government. The colonization brought depressive condition to the people since only a few Dutch profited, while tens of thousands Indonesian colonial subjects were starved.¹³⁶ They were used as forced labors in plantations controlled by a regime followed by high death rates.¹³⁷

In 1901, the Dutch government announced that the Netherlands would strive to improve the welfare of its colonial subjects, including the Indies.¹³⁸ This so-called ethical policy had two opposing proposition. The first proposition is the moral obligation—a feeling that the Netherlands owed its colony some recompense for centuries of exploitation. The other proposition was the economic interest, such as the labor and the market in the Dutch colony.¹³⁹

Unification and the idea of Indonesia’s Independence

The ethical policy stumbled in the early 1920s during the monetary stringency, in the 1930s under the impact of Great Depression, and under the notion that it had given rise to Indonesian nationalism particularly through the education expansion, and it ended with the occupation of

¹³² Adrian Vickers (n 9), 11

¹³³ Bart Lutikhuis and A. Dirk Moses (n 5), 265

¹³⁴ Ibid.

¹³⁵ Ibid., 265-266

¹³⁶ Adrian Vickers (n 9) 16

¹³⁷ Adrian Vickers (n 9) 17

¹³⁸ Robert Cribb, ‘Development Policy in the Early 20th Century’, *Selected Works of Robert Cribb*, (The Australian National University, 1993) 225

¹³⁹ Ibid., 226

Japan in 1942.¹⁴⁰ It was apparent that education was the key to modernity, yet later on it was also the door to criticism and the idea of independence. Being fed up with all the deep unease with colonization, the educated as well as the nationalists tried to echo the independence idea by establishing various organizations.¹⁴¹

The idea of unifying the archipelago —with the formula “one nation, one homeland, one language”— was publicly exposed in the Congress of the Indonesian Youth in October 1928.¹⁴² At that event, the youth formulated a “sacred pledge” sworn:

1. *Kami poetera dan poetri Indonesia mengakoe bertoempah-darah satoe, tanah Indonesia.*
2. *Kami poetera dan poeteri Indonesia mengakoe berbangsa jang satoe, bangsa Indonesia.*
3. *Kami poetra dan poetri Indonesia mendjundjung Bahasa Indonesia.*”¹⁴³

From that moment on, people became more aware about the independence and started the nationalist movement. A large number of youths joined organizations which were ethnically, religiously, or politically based,¹⁴⁴ as well as armed struggle groups (*badan perjuangan*) to bring sovereignty into reality.¹⁴⁵ Nevertheless, by 1941 the movement was in a politically weak position because all the leaders were either jailed or exiled.¹⁴⁶

In 1942, after the Pearl Harbor Attack, the Japanese came to the Indonesian archipelago. They aimed to restructure and redirect the Indonesian economy to support Japan’s war effort and its plans for long-term economic control in East and Southeast Asia.¹⁴⁷ The Japanese launched a propaganda to convince Indonesians that the Japanese were their brothers-in-arms for the new order in Asia and to fight against the Western elements. They employed some Indonesian artist

¹⁴⁰ Ibid.

¹⁴¹ Keith Foulcher, ‘Sumpah Pemuda: The Making and Meaning of A Symbol of Indonesian Nationhood’ (2000) *Asian Studies Review* 377

¹⁴² Ibid.

¹⁴³ 1) *We, the sons and daughters of Indonesia, acknowledge one motherland, Indonesia.*

2) *We, the sons and daughters of Indonesia, acknowledge one nation, the nation of Indonesia.*

3) *We, the sons and daughters of Indonesia, respect the language of unity, Indonesian.* Ibid

¹⁴⁴ Brown (n4), 116-117; For the detail process on the rise of these organizations see Ricklefs (n 7)

¹⁴⁵ M.C. Ricklefs (n 7), 264

¹⁴⁶ Colin Brown (n 128), 137

¹⁴⁷ M.C. Ricklefs (n 7), 249

to influence the people through movies, drama, *wayang*,¹⁴⁸ and radio.¹⁴⁹ This propaganda worked as some people welcomed the Japanese as liberators.¹⁵⁰ World War Two was “welcomed” enthusiastically by the Indonesians as the start of being liberated from the Dutch by the Japanese. The Japanese trained and spread nationalist sentiments so the Indonesians would rebel against the Dutch. In March 1942, the Dutch commander surrendered to Japan.¹⁵¹

Nevertheless, the realities of occupation became clear. During the occupation, there was an economic chaos, a terror of the Military Police (*Kenpeitai*), severe food shortages and malnutrition in some areas, beatings, and rapes. The Japanese also conducted *romusha*—forced labor system.¹⁵² Although it is impossible to calculate the exact number of *romusha* workers, an estimated a quarter of a million people were transported overseas, tens and perhaps hundreds of thousands died away from home and their family.¹⁵³ In addition, the Japanese mopped up the Dutch civilians and Allied troops. In some areas, they attacked Dutch troops and civilians. Within a year, almost all Dutch civilians and soldiers were interned in poor internment camps. There were approximately 170.000 internees, consisting of 65.000 Dutch military, 25.000 Allied troops, and 80.000 civilians, including women and children. In the internment camps, around 13 per cent of the civilian women and 10 per cent of the children died.¹⁵⁴

Those who welcomed the Japanese as liberators were often quickly discouraged. Even so, this anti-Western campaign led to a tense anti-Dutch sentiments throughout the Indonesian society and contributed to the spread of the idea of a united Indonesia and furthermore to the Revolution act.

3.2. Indonesian National Revolution

The defeat of the Japanese in 1945, was a significant moment for Indonesia as it marked the beginning of its formation as a state. After Japan surrendered on 15th August 1945, Indonesian leaders declared their independence on the 17th August 1945. However, the Dutch did not

¹⁴⁸ Wayang is a puppet theatre art performance in Indonesia and some parts of Southern Asia that tells dramatic story through shadows thrown by puppets.

¹⁴⁹ M.C. Ricklefs (n 7) 250

¹⁵⁰ Colin Brown (n 128), 139

¹⁵¹ Adrian Vickers (n 9), 85-87

¹⁵² William H. Frederick (n 6), 50; M.C. Ricklefs (n 7), 250

¹⁵³ M.C. Ricklefs (n 7), 250; Theodore Friend, *Indonesian Destinies* (The Belknap Press of Harvard University Press, 2003) 29.

¹⁵⁴ M.C. Ricklefs (n 7) 248

formally acknowledge its sovereignty until the 27th December 1949. During the period between the declaration of independence and its acceptance, Indonesia went through both a revolution and a decolonization war.¹⁵⁵ On the Indonesian side, it is the period when the Indonesian nationalists struggled for a full independence. However, on the Dutch side, it was the time when they tried to re-attain the control over the archipelago through what so-called “police actions.” In referring to this period, the author will use Indonesia National Revolution (hereafter referred to as “**The Revolution**”).

Only few sources elaborated on what happened exactly during the Revolution which lasted from 1945 till 1949. William F. Frederick, a historian, stated that it was the first and most immediate decolonization struggles of the violent postwar struggles with European colonial powers.¹⁵⁶ The Revolution brought political independence and, under the circumstances, a remarkable degree of unity to a diverse and far-flung nation of then 70 million people who were geographically one of the most fragmented nations of former colonies in Asia and Africa.¹⁵⁷ Yet, nowadays, it seems that both sides have forgotten their colonial past in the sense that there are almost no traces of it left in the public sphere.¹⁵⁸

The Dutch and the Indonesian revolutionaries saw The Revolution as a time of continuity in the past. On the Dutch side, the aim was to ruin the state controlled by collaborators with the Japanese and to restore a colonial regime which they believed they had built out of 350 years of hard work. On the other side, revolutionary leaders aimed to complete and perfect the process of national unification and revival which had begun since the early 18th century. Each side presumed their own justification for what they did, however, it was also reprehensible.¹⁵⁹

What came to pass was beyond a bare fight between two sides, the Indonesian revolutionaries and the Dutch. Poor communications, internal divisions, the weakness of the central Indonesian leadership and ethnic diversity contributed to the fragmented phenomenon of

¹⁵⁵ Gert Oostinide, Ireen Hoogenboom, and Jonathan Verwey, ‘The decolonization war in Indonesia’ (2018) *War in History* 254

¹⁵⁶ William H. Frederick (n 6), 54

¹⁵⁷ *Ibid.*

¹⁵⁸ Paul Bijl, ‘Colonial memory and forgetting in the Netherlands and Indonesia’ (2012) 14 *Journal of Genocide Research* 441

¹⁵⁹ M.C. Ricklefs (n 7), 262.

the Revolution. After all, the return of the Dutch to the Indonesian archipelago bestowed the diverse Indonesian nation to unite into a republic.¹⁶⁰

Revolution Kick-off 1945-1949

A lot of violence occurred during the Revolution, which some scholars categorized as war crimes.¹⁶¹ The revolution had intense violence and reached its peak when it occurred in the “police actions” period. There were summary executions, reprisal, and torture to gain information about pending attacks.¹⁶² Not to mention the act of burning the village (*kampongs*).¹⁶³ The timeline of what happened would be explained in this section.

The Revolution started not long after Indonesia declared their independence. Albeit all the discourse on how to reach the sovereignty,¹⁶⁴ Sukarno and Hatta finally proclaimed the independence of Indonesia on 17 August 1945. At that moment, the *pemuda* (youth) group was ready for any conflict, even if it would lead to an armed conflict.¹⁶⁵ The news spread across the archipelago through the use of radio and telegram, as well as by words of mouth.¹⁶⁶ At that time, they knew that Japan would not give the independence to Indonesia, so the chances of a bloodless revolution were rather slim.¹⁶⁷

From the declaration of independence until the end of 1945, the Indonesians had the upmost hatred to any foreigners.¹⁶⁸ This period has been called the “*Bersiap*” Period, or “getting ready” period. The youth frequently attacked Dutch, Eurasians, Chinese, and anyone suspected of being a spy.¹⁶⁹ In the first weeks after Sukarno proclaimed the independence, the Revolution has started in various places across the country. The youth shouted “*siap*” (ready) and “*merdeka*” (freedom/independent) as the expression of their readiness to fight against who they perceived as

¹⁶⁰ M.C. Ricklefs (n 7), 262.

¹⁶¹ Gert Oostinide, Ireen Hoogenboom, and Jonathan Verwey (n 155), 254; Stef Scagliola (n 13), 419

¹⁶² Stef Scagliola (n 13), 423

¹⁶³ *Ibid.*, 431

¹⁶⁴ It was quite complicated since they had different perspective on how to get the sovereignty between the older and younger generations. Sukarno and Mohammad Hatta, the older leaders, believed that the independence could be achieved through diplomatic means to prevent any conflict. On the other hand, Sjahrir, Sukarni and Wikana as the leaders of the underground groups or the young groups called *pemuda* (youth) expected that the independence should not be granted as a gift from Japan as they promised; Anthony Reid, *The Indonesian National Revolution*, (1st ed, Longman Australia, 1974) 25-26

¹⁶⁵ *Ibid.*

¹⁶⁶ Adrian Vickers (n 9), 97

¹⁶⁷ George McTurnan Kahin, *Nationalism and Revolution in Indonesia*, (Cornell University Press, 1952) 136

¹⁶⁸ Amrin Imran and others (n 8) 202

¹⁶⁹ Adrian Vickers (n 9), 98

enemies.¹⁷⁰ During this period, there were organized massacres, particularly against women and children perpetrated by the Indonesian youth groups. Such atrocities continued throughout the Revolution.¹⁷¹

Between 16 and 25 August 1945, the Japanese disarmed and disbanded the Peta/Giyugun and Heiho—Indonesian voluntary armies trained by the Japanese to assist their forces in opposing the Allies in Java, Bali, and Sumatra. Most of them had no idea of the declaration of independence. It was the pioneer of the national army of the Republic of Indonesia and then, later on, grew from the local initiatives by able, younger leaders with charisma and/or access to arms. This disorganization created a major problem within this building period of establishing a rational military structure which obeys the central government of the Republic.¹⁷²

With a sense of freedom, yet with the unclear knowledge on what is entailed to this commitment, Indonesian masses regarded themselves as pro-Republican. The euphoria of revolution began to spread all over the country, and particularly the Indonesian youth responded to the excitement and challenge of Independence. Many discreetly allowed young Indonesians to acquire arms. However, some Indonesian bureaucratic administrators, such as the Javanese *priyayi* (or *prijaji* in Dutch),¹⁷³ had no idea what to do in that unprecedented circumstances and decided to stay safe and compromised with the foreign rulers.¹⁷⁴

The Indonesian leaders were still trying to achieve sovereignty through diplomatic measures. The Dutch, however, refused *de jure* recognition and instead came back to Indonesia with British assistance and the Netherlands Indies Civil Administration (NICA) forces in September 1945.¹⁷⁵ From that moment onwards, there were tensions between revolutionaries and the Allied forces in some areas across the archipelago. The tensions started with the Australian forces, continued by the British Indian troops. Later, the British helped the Dutch to

¹⁷⁰ Amrin Imran and others (n 8), 202

¹⁷¹ Adrian Vickers (n 9), 98

¹⁷² Ibid., 98

¹⁷³ *Priyayi* is a term regards to high social class which has descendants of the governors (pre-colonial era kingdoms). In the colonial era, the *priyayi* moved into the colonial civil service.

¹⁷⁴ M.C. Ricklefs (n 7), 264

¹⁷⁵ Adrian Vickers (n 9), 99

regain control over Indonesia, seemingly poised to wipe out the entire force. Thousands died during this period.¹⁷⁶

Between November and December 1945, the Revolution in the countryside was begun. This phase has commonly been known as “social revolution.” However, this term did not necessarily have anything to do with social class issues; it resulted from the competition between alternative elites, ethnic and communal groups, or generations. In the name of “the people’s sovereignty,” young revolutionaries intimidated, kidnapped, and sometimes murdered administrators, village headmen, and policemen whose loyalty was suspect, or who were accused of corruption, profiteering, or oppression during the Javanese occupation. It was also sometimes confusing that the actions in the name of Revolution seemed similar to simple acts of crimes, such as robbery, looting, extortion, and the settling of old scores.¹⁷⁷

Political Negotiation

The battles between the radicals and the authorities kept going. At the same time, the negotiations with the Dutch were also at a delicate stage. In March 1946, a negotiation was supposed to end with a *de facto* recognition of the Republican sovereignty over Java, Madura, and Sumatra. However, it seemed that the Dutch did not act in good faith, particularly when the Dutch decided unilaterally to set up a federal Indonesia under Dutch control.¹⁷⁸ With the unchanged aim to create a federal Indonesia, the Dutch organized a conference to gather 39 representatives of the local government, Christians and several other ethnic groups to gain the support of the notion of a federal state. In November 1946, the Dutch finally concluded their first diplomatic agreement with the Republic as *de facto* recognition of the Republic authority over Java, Madura, and Sumatera, with the creation of a federal United States of Indonesia. The Republic would be one of the states and the Dutch queen was to become the symbolic head of the Dutch-Indonesian union of sovereign states. Nonetheless, due to the distrust between each other, the agreement did not last long.¹⁷⁹

Westerling’s Massacre

By November 1946, The Dutch sent Westerling’s Special Forces to South Sulawesi in order to counter the terror campaign of local militias targeting Dutch authorities and local people

¹⁷⁶ This period has been celebrated as Heroes Day (*Hari Pahlawan*); M.C. Ricklefs (n 7), 265-267

¹⁷⁷ *Ibid.*, 269

¹⁷⁸ *Ibid.*, 274

¹⁷⁹ *Ibid.*, 275

cooperating with them.¹⁸⁰ The approach was brutal and rigorous. Westerling first rounded up the people of an area in a central square and then choose someone (based on intelligence gained in advance) to point out whoever they thought were terrorists among them. Those identified would be immediately executed.¹⁸¹ Moreover, the Republican youth groups were executed.¹⁸² The number of victims rose from at least 3000 to 40.000 within three months.¹⁸³ According to this event, one article published a letter of a Dutch officer denouncing war crimes and a general culture of lawlessness.¹⁸⁴ All of these developments only deepened the Republican distrust of the Dutch and the hate towards the *Linggajati* agreement which aimed to establish a new federal state of Indonesia.¹⁸⁵

It was proven that the Linggadjati Agreement was worth little in practice. The Dutch control over the economy of its colony become limited, thus they became worried about the weakening of colony's economy which might lead to bankruptcy. The Finance Minister of the Netherlands at that time then seconded the idea of military intervention.¹⁸⁶ Later on, the Dutch commander-in-chief in Indonesia, General S.H. Spoor, embraced the plan and predicted military success.¹⁸⁷

The Dutch then attempted their two major offensives, the so-called "Police actions".¹⁸⁸ The Dutch used this term as a campaign to signal that they viewed the conflict as an internal matter of law and order between the Netherlands and its colony.¹⁸⁹ In the later date, the Dutch regarded the violence within the "police actions" period as "excesses" or "excessive violence." Peter Romijn, a historian, perceived this term as a category which regarded violence as an accepted means to an end. Thus, it categorized the excesses as incidental to legitimate military action.¹⁹⁰

¹⁸⁰ Ibid., 276

¹⁸¹ Stef Scagliola (n 13), 419

¹⁸² Remco Raben (14), 485

¹⁸³ Remco Raben (14), 485; M.C. Ricklefs (n 7), 275

¹⁸⁴ Gert Oostinide, Ireen Hoogenboom, and Jonathan Verwey (n 155), 254

¹⁸⁵ M.C. Ricklefs (n 7), 276

¹⁸⁶ Peter Keppy, *The Politics of Redress: War Damage Compensation and Restitution in Indonesia and the Philipines, 1940-1957*, (ProQuest Ebook Central, 2010) 31

¹⁸⁷ Ibid.

¹⁸⁸ M.C. Ricklefs (n 7), 276

¹⁸⁹ Bart Lutikhuis and A. Dirk Moses (n 5), 266

¹⁹⁰ Ibid., 269

Police Action I

The first “police action” took place between 21 July and 5 August 1947.¹⁹¹ This action was launched in violation of the *Linggadjati* Agreement, an agreement between the Republic and the Dutch who were attempting to set up a puppet state to create an Indonesian Federation. Major columns swept out from Jakarta and Bandung to occupy West Java (excluding Banten) and from Jakarta and Bandung to occupy Madura and the Eastern Salient. Another Dutch column secured the Semarang area. The Dutch thereby gained control of all the deep-water ports in Java. Besides, in Sumatra, plantations around Medan, oil and coal installations around Palembang and the Padang area were secured by the Dutch troops as well.¹⁹²

The International community did not approve this action. The Dutch believed it might affect their post-war reconstruction aid. Therefore, the Netherlands accepted the UN’s call for a ceasefire on the 4th of August 1947, together with Soekarno on behalf of the Republicans.¹⁹³ Another diplomatic negotiation, the Renville Agreement, was held on 17 January 1948. In the negotiations, they discussed not only the ceasefire but also the proposal for a federal Indonesia state as proposed before in the *Linggadjati* Agreement.¹⁹⁴

It turned out that both states, the Netherlands and Indonesia, failed to uphold the Renville Agreement as well as the ceasefire. Between April and June of 1948, the United Nations (hereinafter referred to “UN”) urged both sides to come back to the negotiation table.¹⁹⁵ The Netherlands and the Republic then tried to open another negotiation in Kaliurang which ended in a deadlock. The failed negotiations were followed by another “police action”.¹⁹⁶

Police Action II

The second “police action” took place between 21 December 1948 and 5 January 1949.¹⁹⁷ This military operation was designed to eliminate the Republic altogether.¹⁹⁸ In this period, the Dutch troops arrested Republican leaders, occupied the Republic’s capital at that time in Yogyakarta—and set a larger number of agricultural businesses under Dutch control. However,

¹⁹¹ Adrian Vickers (n 9), 99; *Wisah binti Silan v The State of the Netherlands* (Judgement)[2011] District Court of The Hague 354119/HA ZA 09-4171, par 2.5

¹⁹² M.C. Ricklefs (n 7) 276-277

¹⁹³ Ibid.

¹⁹⁴ Peter Keppy (n 186), 31

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Colin Brown (n 128), 168

the Indonesian resistance was quite strong and hard to contain. The guerilla warfare and the occupation of plantations continued.¹⁹⁹ Not to mention the fact that the international public opinion had turned against the Dutch.²⁰⁰

The Security Council of the UN then issued a resolution on the conflict. The UN Resolution forced the Netherlands to adhere to the ceasefire with the Republic. The United States administration then suspended the Marshall Aid to the Netherlands, even though this was merely a political gesture to placate the US Congress.²⁰¹ The Dutch realized that they were ill-prepared militarily and politically, particularly with the international pressure, to fight a long guerilla campaign. Eventually, this forced a change of policy on the part of the government in The Hague.²⁰²

With all the pressure and the realization that there was no other way to conquer the land anymore, they began yet another round of negotiations, which was called the Round Table Conference, from 3 August to 2 November 1949.²⁰³ This was later followed by a formal Dutch recognition of the Indonesian independence on 27 December 1949.²⁰⁴

Adrian Vickers, a historian, revealed that Indonesians—more civilians than the fighters—felt the impact of the Revolution. Most Indonesian merely armed themselves with bamboo spears and mystical powers of invulnerability bestowed by teachers and talismans, and they died in much greater numbers than their enemies. The total number of British and Dutch troops killed over the whole period from 1945 to the end of 1949 was 700.²⁰⁵ The British were the majority of them. More Japanese were executed. In intense wars in cities such as Bandung, 1057 of the Emperor's men died. Less than half of them were in an actual combat. The others were murdered violently by the Indonesians. They killed tens of thousands of Chinese and Eurasians and left them homeless, regardless of the fact that many Chinese supported the Revolution.²⁰⁶

Albeit all the non-accurate and various figure of Indonesians who died over the course of the Revolution, but those who really died fighting could be anywhere between 45,000 and

¹⁹⁹ Peter Keppy (n 186), 31

²⁰⁰ Ibid., 32

²⁰¹ Ibid.

²⁰² Colin Brown (n 128), 169

²⁰³ Colin Brown (n 128), 169; Ibid., 32

²⁰⁴ Colin Brown (n 128), 169

²⁰⁵ Adrian Vickers (n 9), 99

²⁰⁶ Ibid., 100

100,000.²⁰⁷ It was estimated that six thousand Indonesians were executed as part of the ruthless Dutch counter-insurgency tactics in Sulawesi in late 1946 to early 1947. In the latter case, the Republican claimed the real number was 40,000.²⁰⁸ Civilian catastrophes overall exceeded 25,000, and might have been as high as 100,000.²⁰⁹ Over seven million people were displaced on Java and Sumatra within this period.²¹⁰

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

4. REPARATION IN THE INDONESIAN NATIONAL REVOLUTION

The 1945-1949 period might be a bloody history of which both countries chose to leave no traces in the public sphere. Various historians, journalists, politicians, veterans from the Dutch colonial army, as well as students looking back on their high school education have made a claim that the Netherlands have forgotten their colonial past.²¹¹ Not only the Netherlands, but also the Indonesians are plagued by this “amnesia”.²¹² However, there are people who chose to not forget the past. Some victims of the Rawagede massacre, the South Sulawesi carnage, as well as the rape case in Pniwen and torture case in Malang, along with their lawyers filed lawsuits to The Hague Court District. They mostly won the case and were granted some amount of money as compensation and (implicitly) an apology. The torture case is still ongoing, thus it is not included in this discussion. These cases were the pioneer of the acknowledgement of the horrendous memory, which will be discussed in this chapter.

4.1. Reparation Cases of Indonesian National Revolution

Reparation in the Rawagede Case

The first police action lasted from 21 July until 5 August 1947. During this action, the Dutch military occupied the lowland plains surrounding the city of Krawang, which is located a couple of kilometers south of Rawagede (nowadays known as Balongsari village).²¹³ On 9 December 1947, Dutch soldiers under the command of major Wijnen carried out an attack on Rawagede in order to fight against the Indonesian forces. A large part of the male population was executed without trial by Dutch soldiers, and some were injured during the attack.²¹⁴

The UN Security Council conducted an on-site investigation and came up with a report on 12 January 1948, which concluded that the oriented action against Rawagede by the Dutch

²¹¹ Paul Bijl (n 158), 441

²¹² Ibid., 442

²¹³ *Wisah binti Silan v The State of the Netherlands* (Judgement)[2011] District Court of The Hague 354119/HA ZA 09-4171, par 2.4

²¹⁴ *Wisah binti Silan v The State of the Netherlands*, par. 2.5

forces was “deliberate and ruthless.” According to Dutch information, the massacre costed the lives of 150 Indonesians, and no death or injuries on the Dutch side.²¹⁵ Furthermore, in 1969, the Dutch government adopted the *Excessennota*, a document concerning the investigation of the records into data on excesses committed by Dutch soldiers in Indonesia in the period 1945-1950.²¹⁶ The attack of Rawagede is one of them. It is written that the Dutch admitted to having committed acts of excessive violence in general, but argued that these acts must be seen in the situation of an unregulated guerilla war, where Indonesians’ ambushes and acts of terror instigated the Dutch’s mopping-up operations and acts of counter-terror.²¹⁷ The Public Prosecution Service thus conducted an exploratory investigation which concluded that a prosecution was no longer possible due to political reasons, even though the criminal acts were committed by the Dutch soldiers.²¹⁸

In 2007, a foundation named *Komite Utang Kehormatan Belanda* (Committee of Dutch Honorary Debt, hereinafter “**KUKB Foundation**”) was established to represent the interest of the civilian (Indonesian) victims and relatives, who have survived the colonial period under the violence of the Dutch regime and the violation of human rights committed in the colonial period. This foundation also endeavors to obtain the acknowledgment from the Dutch government for Indonesian victims and the damages resulting from war, and to realize legal rehabilitation for the victims.²¹⁹

Nine surviving relatives of those killed in the Rawagede massacre, sought damages from the Dutch government in 2008. In the first place, they argued that the execution of their husband and father was a wrongful act. In the second place, they claimed that the decision to not investigate the executions and to not prosecute the responsible Dutch officers were constituted

²¹⁵ *Wisah binti Silan v The State of the Netherlands*, par. 2.6, 2.11

²¹⁶ Excessennota is a compilation of investigated cases which were divided into two groups: violence and looting. A researcher delivers Doorn and Hendrix writing in the book *Het Nederlands/Indonesisch conflict, ontsporing van geweld* that total 110 cases are listed for assault, murder, manslaughter and severe or mild abuse. There are also 19 sex crimes, 11 cases of robbery excluded because the motives are unclear. The finding also shows that there are 75 cases are relating to the military function, as well as 54 cases of murder and manslaughter. Furthermore, there are 45 cases (60%) of homicide with evidence of existence of police actions.; Rodney Westerlaken, ‘History in Cultural Studies. War Excesses in the Former Dutch Indies’ (2017) II Jurnal Studi Kultural 13, 15.

²¹⁷ *Wisah binti Silan v The State of the Netherlands*, par. 2.11; *Nota Betreffende Het Archievenonderzoek Naar Gegevens Omtrent Excessen in Indonesie Begaan Door Nederlandse Militairen in De Periode 1945 – 1950, 1968-1969-10 008[Excessennota]*

²¹⁸ *Wisah binti Silan v The State of the Netherlands*, par. 2.14, 3.4

²¹⁹ *Wisah binti Silan v The State of the Netherlands*, par. 2.16

wrongful acts as well.²²⁰ Regarding the first claim, the Dutch government acknowledged that the summary execution was wrongful, expressed regret, and emphasized that it had allocated €850.000 development aid to the Rawagede village.²²¹ However, in doing so, the Netherlands government also invoked the statute of limitation in regard to both claims.²²²

The Court furthermore determined that the case was governed by the Dutch law thus the statute of limitations indeed formally applied in both claims. Pursuant to the law which was enforced at the time event, the claims would only have been time-barred five years after the year in which they had become claimable. The provision on statutory limitation as applied in 1947 was absolute and had no exceptions. Yet, the claimants applied general clause from the Dutch civil code on reasonableness. With this ground, the claimants argued that it would be unreasonable for the Netherlands government to invoke the statute of limitations. The Court eventually agreed with the claimants' rationale concerning the first claim, but not in relation to the second one on the failure to prosecute.²²³

The court found that it was unreasonable for the Netherlands to invoke statutory limitations as a barrier to civil liability for the executions. The Court apparently made an unprecedented judgment in the Dutch jurisprudence by seeing this case as a "particularly exceptional situation." Furthermore, the Court criticized the Dutch government for its passiveness towards this matter over a long period of time.²²⁴ The Court also acknowledged that even though the facts are old, these are still facts referring to a period in the history of the Netherlands which has not yet been finalized.²²⁵

The decision was basically in favor with the victims of the executions on 9 December 1947, stating that the Netherlands government had acted wrongfully and thus was liable for damages to the relatives of the executed men. The judgment had no specific amount of damages to be awarded.²²⁶ The Netherlands, following the decision, negotiated with the victims and came to a settlement. It was agreed that the Netherlands would pay reparation of €20,000 per victim,

²²⁰ *Wisah binti Silan v The State of the Netherlands*, par. 3.1

²²¹ *Wisah binti Silan v The State of the Netherlands* (Pledooi) [2011] Rechtbank 's-Grenhage, rolnummer 2009/4171

²²² *Wisah binti Silan v The State of the Netherlands*, par. 4.8

²²³ *Wisah binti Silan v The State of the Netherlands*, par

²²⁴ *Wisah binti Silan v The State of the Netherlands*, par 4.15

²²⁵ *Wisah binti Silan v The State of the Netherlands*, par 4.16

²²⁶ *Wisah binti Silan v The State of the Netherlands*, par 5.

which was limited to the widows who were the claimants. Additionally, the Netherlands also agreed to offer a formal apology, which was accomplished during the remembrance ceremony of 9 December 2011.²²⁷

The judgment had become final since the Netherlands did not file an appeal. At last, the Dutch government paid the reparation to the victims. However, upon their return, the survivors were forced by other members of the village to share 50% of the reparation settlement because they claimed that they had the same history as the victims of the massacre.²²⁸

Victim's Perspective on the Reparation

After the victims of Rawagede case received the money from the Dutch government, the village had taken a part of the widows' money. Furthermore, they were also threatened by the people in the village if they refused to give the money to them.²²⁹ Jeffry Pondaag from KUKB and Liesbeth Zegveld, the lawyer of the victims, saw this action as a violation of the widows' personal rights and a form of corruption.²³⁰ Pondaag went to the village and tried to insist that the money was meant for the widows, however he also experienced threats and even needed police protection.²³¹ Pondaag, whose shirt was torn by some of the village youth, downplayed the incident and expressed understanding of the situation, citing the poor living conditions, the lack of education, and the emotionally laden subject as the justification. Pondaag also highlighted, "they are descendants, mostly children, their families were also executed there. So basically their suffering is neglected."²³²

"I was disappointed. It should be Uuk's (*Tijeng, one of the widows in Rawagede case*) right only. In the end, the compensation money we finally received was too little after so many years fighting for the money. They dragged Uuk to go to Jakarta, or drag her to attend the meetings. Sometimes Uuk was not in good condition. Finally, when the money arrived, it had to

²²⁷ 'Wisah Binti Silan et al v. The State of The Netherlands (Ministry of Foreign Affairs)' (International Criminal Database) accessed 4 August 2018.

²²⁸ Nicole L. Immler, Narrating (In)justice in the Form of a Reparation Claim in Nanci Adler (ed), *Understanding the Age of Transitional Justice: Crimes, Courts, Commissions, and Chronicling* (Rutgers The State University of New Jersey, 2018) 151; Immler is a researcher who went to Rawagede to examine what happened following the reparation in the life of the victims as well as the community. Immler did narrative research by interviewing the people.

²²⁹ Ibid.

²³⁰ Ibid., 152-153

²³¹ Ibid., 153

²³² Ibid., 152-153

be shared. It wasn't worth it," Tijeng's granddaughter told her feeling to Immler. She further said that the village people forced her to give them 100 million rupiah or around 6000 euros. Albeit the intimidation, the granddaughter somehow understood how the village people felt, therefore she finally decided to give them some money.²³³

In responding to the judgment, however, Tijeng said that even though she had to share it, she was happy with the recognition through the money. She further said, "I have forgiven the Dutch for what happened, I don't have grudges. It is safe and peace now. What happened, it is in the past now. We have forgiven each other."²³⁴ There were substantial changes into the life of these widows. Most of them could finally own their own houses.²³⁵

In the perspective of the village people, Sukarman—head of the Rawagede foundation,²³⁶ there were 181 victims' families reinforced the victims' position. He further stressed, "...collectivity is an unwritten custom, the money has to be divided (to the rest of the 181 victims' family)."²³⁷ He also admitted that there were some grandchildren of the victims who told him, "If you will not share the money, we will burn your house."²³⁸ For him, it was the matter of personal, as his mother is one of the widows granted compensation. Yet, it was also a public issue which he was expected to act in the name of all the 181 victims as the Foundation's head.²³⁹

From her research, Immler highlighted some interesting findings on how the victims and the community attributed the reparation money as a part of the recognition process.²⁴⁰ Firstly, the people (victims, family, and the village community) saw the tragedy as a struggle for independence from the Dutch, therefore they preferred to celebrate the independence and its heroes—a nationalist mind-set, instead of commemorating its civilian victims.²⁴¹ Secondly, there was an ambivalent post-colonial relationship. The Dutch have been forgiven, but the past is never forgotten. It shows in the tradition to celebrate Indonesia's Independence Day every 17th

²³³ Ibid., 155

²³⁴ Ibid., 154-156

²³⁵ Ibid., 156

²³⁶ Rawagede foundation is an institution which was established to act on behalf of Rawagede massacre's victims.

²³⁷ Nicole L. Immler (n 228), 162

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid., 157

²⁴¹ Ibid., 158-159

August and a commemoration of the “heroes” every December in Rawagede.²⁴² Thirdly, the money was mostly used to improve the claimants’ poor living condition. However, it has not been for long-term improvement, but rather merely for daily living costs.²⁴³ Fourth, the money had disaggregated the victims and the society. The family of the victims perceived the involuntary sharing of money as an act of “robbing”, while village people claimed it as “participating.”²⁴⁴ Fifth, the issue of the shared money was nevertheless a picture of collectivity in the community. Therefore, the leader of the village emphasized that the collectivity was an unwritten custom which meant that the money must be divided specifically among 181 victim’s family. For them, it had to be done to keep the solidarity between them.²⁴⁵

Reparation in the South Sulawesi Case

Within the Revolution period, a particular mass atrocity happened in South-Sulawesi, one of Indonesia’s islands. Throughout 1946, the nationalists’ movements in South Sulawesi were becoming more extensive and violent. In order to restore the order, the Dutch East Indies government proclaimed a state of war. Under the leadership of Captain Raymond Westerner, Dutch soldiers were sent to South Sulawesi with a mission to “purify” South Sulawesi from nationalist insurgents who they might have perceived as guilty of the serious terrorist act.²⁴⁶

During the purification action, a lot of men suspected of doing nationalistic or terror activities were slaughtered. A lot of civilian population in the village also attended the executions. Westerling, a person who gave the purification order, later summarized this act himself, stating that he “acted as public prosecutor, judge, and executioner at the same time.” Since there was no detailed procedure, the Dutch soldier then conducted the action at their own discretion.²⁴⁷

²⁴² Ibid., 159

²⁴³ Ibid., 159-160

²⁴⁴ Ibid., 161

²⁴⁵ Ibid., 162

²⁴⁶ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement) [2015] District Court of The Hague C-09-428182 + C-09-458254 + C-09-467025 + C-09-467029, par 2.3

²⁴⁷ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement) [2015], par. 2.4

According to the judgment, on the 14th of January 1947, 22 men were executed in the Pare-Pare village. Moreover, on 28 January 1947, during the purification operation, more than 200 men were killed in the village of Suppa. In another village, 364 men were slaughtered on 1 February 1947. Within the same month, two executions happened near the village of Salomoni on 7 and 12 February 1947 with 9 and 20 victims respectively. Not only in those areas, but another execution on approximately 250 men also occurred in the Bulukumba region between December 1946 to April 1947.²⁴⁸

There was a report on an investigation which stated that the action taking place between December 1946 and February 1947 in South Sulawesi was an attempt to restore the order.²⁴⁹ In 1949, a criminal investigation was run against four leading military personnel of the Dutch soldier, and in 1954 it was concluded that the soldiers had committed criminal acts. However, the soldiers who were responsible were never prosecuted.²⁵⁰ After the judgment of Rawagede was issued in 2011, the widows and children of the men who were killed during the purification act in South Sulawesi at the same period claimed that they were entitled for the reparation of the damage as well. The KUKB Foundation sent a letter to the government demanding liability for the damage. It stated that there were, “*more than 3000 victims of the violent act from the State on South Sulawesi in the months of December 1946 to March 1947, virtually all unarmed civilians.*”²⁵¹

Since there was no response from the Netherlands, the victims filed four summons separately. The first summons was filed on 13 July 2012 by ten widows and six children of the executed men. In the second summon, seventeen widows filed a lawsuit on 26 September 2013 claiming for the repairing of the damage. The third and the fourth summons were submitted on 7 and 8 April 2014 by the widow on each case, respectively. The summons basically claimed that

²⁴⁸ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement) [2015], par. 2.6

²⁴⁹ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.7

²⁵⁰ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, par. 2.8; Liesbeth Zegveld, ‘Press Release: Declaration of liability of the State for massacres on South Sulawesi in 1947’ (Bohler Advocaten, KUKB, 7 May 2012).

²⁵¹ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.17

the Netherlands conducted unlawful act in South Sulawesi in the context of purification action, and is therefore liable for the damage suffered.²⁵²

During the trial, the Netherlands had already recognized that the purification carried out by the Dutch soldiers was unlawful. The Court stated that the Netherlands was liable for the damage caused thereby.²⁵³

From the total 35 claimants, ten widows have made a settlement with the Dutch government on 26 April 2013 demanding the same amount as the widow of Rawagede, € 20,000 per person. The Dutch government subsequently paid the settlement in July and August 2013, with the lawyer's fee in addition.²⁵⁴ On 12 September 2013, the Dutch Ambassador in Jakarta officially apologized the victims of South Sulawesi, however the victims did not present at the moment considering that the victims were too old—around 90-100 years old—to travel to Jakarta from South Sulawesi.²⁵⁵ Furthermore, the victims asked the Dutch Foreign Affairs Minister to offer the apologies on South-Sulawesi.²⁵⁶

Two widows died in the middle of the process, thus they were withdrawn from the claim in February 2014. In July 2014, the Netherlands government offered the 7 surviving widows a settlement, which was not the same with the requested amount of € 20,000 and without legal fees. The widows did not accept the offer eventually.²⁵⁷

The Court observed that there were nine widows and five children who had not been convincingly proven as entitled entities. In line with that, The Court will furthermore verify on the exact amount of material damages as the result of the loss of live which was imposed to each individuals (seventeen widows and five children) due to the execution of their husband and

²⁵² *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 1.1-1.4

²⁵³ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 4.31

²⁵⁴ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.20

²⁵⁵ Liesbeth Zegveld, 'Widows definitely not present during apologies for summary executions in Jakarta' (Bohler Advocaten, 5 September 2013).

²⁵⁶ Liesbeth Zegveld, 'Widows request that the Dutch State offers apologies on South-Sulawesi' (Bohler Advocaten, 5 September 2013).

²⁵⁷ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.27

father.²⁵⁸ This might be seen from the living expenses required, such as the level of the deceased's income, the mortality risk of the person, whether the widow had remarried, whether there was any other provider for their living, etc.²⁵⁹ In terms of immaterial damage, the Court decision stated that the widows and the children have no enforceable right to compensation due to the limitation of the legal framework.²⁶⁰

In the next decision in 2016, the claimants argued that it was inefficient, complex, time-consuming, and expensive to conduct research into the loss of livelihood at this state of the dispute. The widows and the children made a rough outline of the loss of livelihood, based on the used starting points, varying between \$ 1,800 and \$ 3,300 for remarried widows, \$ 119,527 for widows who did not remarry. They also made calculations for the children, resulting in between \$2,100 and \$ 5,400.²⁶¹ The Court appointed some experts to conduct further investigation on whom are entitled to the reparation of the damage, however, the finding of the expert was broadly known and some of the Court's questions had not been answered.²⁶² Therefore, the Court decided to continue the trial and hear the witnesses.²⁶³ The trial is now on going in the The Hague District Court.

Reparation in Pniwen Case

Within the context of Revolution among Indonesians and the so-called "police action" by the Dutch, there was a report on atrocities, rape, robbery, and looting, including Pniwen village, Malang, East Java, on 19 and 20 February 1949. While searching the local village Pniwen, the

²⁵⁸ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 4.93

²⁵⁹ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 4.78

²⁶⁰ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 4.63 – 4.76

²⁶¹ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Judgement)[2016] District Court of The Hague C / 09/428182 / HA ZA 12-1165, C / 09/458254 / HA ZA 14-96, C / 09/467029 / HA ZA 14-653, par 2.65

²⁶² *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement)[2016] District Court of The Hague C / 09/428182 / HA ZA 12-1165, C / 09/458254 / HA ZA 14-96, C / 09/467029 / HA ZA 14-653, par 3.1-3.2.; *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement)[2018] District Court of The Hague, C-09-428182-HA ZA 12-1165 par. 2.14

²⁶³ *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands* (Interlocutory Judgement)[2018], par. 3.2-3.3

Dutch military summarily executed some people and committed other unlawful acts. In the course of this case, a woman claimed that she was raped on 19 February 1949 in her house at gunpoint by five Dutch military men.²⁶⁴ The woman seeks judgment that the Dutch government acted wrongfully towards her through the rape action by the Dutch soldiers. She claimed that the Netherlands should be liable for immaterial damage she had already suffered and would be suffering in the future. The woman demands € 50,000 for the damage.²⁶⁵

Albeit the applicable law has exceeded the legal limitation period, the Court decides that applying this in the particular case would contradict the principle of good faith.²⁶⁶ The Court takes into account all specific circumstances of the case in order to establish whether it contradicts the principle of good faith,²⁶⁷ among others: the psychological suffering;²⁶⁸ the serious violation of physical integrity;²⁶⁹ the fact that the act was a breach of the instruction given by the Dutch government;²⁷⁰ and the implausibility of the claimant to sue the Netherlands in regard with her lack of access to justice.²⁷¹ By following its previous reasoning in the Rawagede and South Sulawesi case, the Court considers that the claim comes from the dark chapter in Dutch history which has not been closed yet.²⁷²

The Court furthermore concludes that the allegation of rape by Dutch soldiers are sufficiently proven. The Court uses its discretionary power to impose another legal grounds which determines the attribution of the action to the Netherlands.²⁷³ Therefore, the Dutch government is liable for the damage suffered by the claimant, in this case psychological suffering, regardless its fairly scant evidence. The Court furthermore grants compensation for immaterial damage of € 7,500.²⁷⁴

²⁶⁴ *East Java Rape Victim v. The State of the Netherlands* (Judgement) [2016] District Court of The Hague C / 09 / 483032 / HA ZA 15-200, par 3.2, 4.8

²⁶⁵ *East Java Rape Victim v. The State of the Netherlands*, par. 3.1

²⁶⁶ *East Java Rape Victim v. The State of the Netherlands*, par. 4.4

²⁶⁷ *East Java Rape Victim v. The State of the Netherlands*, par. 4.6

²⁶⁸ *East Java Rape Victim v. The State of the Netherlands*, par. 4.7

²⁶⁹ *East Java Rape Victim v. The State of the Netherlands*, par. 4.8

²⁷⁰ *East Java Rape Victim v. The State of the Netherlands*, par. 4.10

²⁷¹ *East Java Rape Victim v. The State of the Netherlands*, par. 4.15

²⁷² *East Java Rape Victim v. The State of the Netherlands*, par. 4.21

²⁷³ *East Java Rape Victim v. The State of the Netherlands*, par. 4.57

²⁷⁴ *East Java Rape Victim v. The State of the Netherlands*, par. 4.72, 5.1

4.2. Reparation Program by the Dutch Government

Following the judgment of Rawagede case, the Dutch government has established a reparation scheme for the other victims of the independence war in Indonesia in 1945-1950. On 10 September 2013, The Minister of Foreign Affairs and the Minister of Defense announced the Civil Settlement Scheme procedure for compensation of damage to widows of victims of summary executions which suffer similar damage in nature with the Rawagede and South Sulawesi cases. The amount of compensation is € 20,000, as much as the widows in the Rawagede case received. On the letter, the Dutch government acknowledged that the mass execution was unlawful, thus the victims of similar cases are entitled to the compensation. The widows must meet the requirements to be regarded as eligible entity, among others (1) proof that she has been married to a person who was executed during the event; (2) the event has similar nature and severity with the Rawagede and South Sulawesi case; and the particular execution must be mentioned in already published public sources.²⁷⁵

The scheme was valid for two years. However, the lawyers of the victims asked for extension because the process of claim needed more time, and the Dutch government responded by giving 2 more years until September 2017.²⁷⁶ In 2016, Lisbeth Zegveld reported that 30 widows received compensation in total, while dozens were still pending.²⁷⁷ One scholar, Janet van de Bunt, criticizes the implementation of the scheme. According to her, the requirements for the compensation are too difficult, as can be seen from the small number of claims granted. Furthermore, she also highlighted on the limitation of the beneficiaries, the limitation of validity, and the long process to be taken due to the difficult requirements.²⁷⁸

²⁷⁵ The Netherlands State, 'STAATSCOURANT Nr. 25383' (Koninkrijk der Nederlanden, 10 September 2013) <<https://zoek.officielebekendmakingen.nl/stcrt-2013-25383.html>> accessed on 9 August 2018.

²⁷⁶ De Minister van Buitenlandse Zaken, 'Verzoek verlenging Civielrechtelijk Regeling' (13 August 2015) <<http://www.prakkendoliveira.nl/nl/nieuws/verlenging-civielrechtelijke-regeling-ter-verkrijging-van-schadevergoeding-indonesische-weduwen/>> accessed on 9 August 2018.

²⁷⁷ Lisbeth Zegveld, 'Historical Wrongs-the case of Rawagdeh' (2016) <http://www.liesbethzegveld.com/user/file/160414_historical_wrongs.pdf> accessed on 9 August 2018.

²⁷⁸ Janet van de Bunt, 'Een regeling voor weduwen van slachtoffers van Nederlands geweld in Indonesie' (2014) *Nederlands Juristenblad* 3048

4.3. Large-scale Research on Violence during Decolonization War

The Netherlands decided to authorize a comprehensive and independent study regarding the decolonization of Indonesia at the end of 2016. This study aims to answer questions regarding the nature, scale, and causes of structural violence in Indonesia, considered in a broader political, social, and international context. The research group will closely work with Indonesian researcher and open the opportunity for witness accounts from the Netherlands and Indonesia to be present.²⁷⁹

The Dutch government designated 4.1 million euros for this study.²⁸⁰ It was a response to the increasing number of scientific and journalistic publications which have revealed that the Netherlands army used excessive and structural violence during the conflict. Historians had been lobbying the Netherlands' support this for years. The study will be published in 2021.²⁸¹

²⁷⁹ '4.1 million for study in Dutch East Indies war of decolonization' (Universiteit Leiden News, 2 March 2017) <<https://www.universiteitleiden.nl/en/news/2017/02/4.1-million-for-study-on-decolonisation>> accessed 19 August 2018

²⁸⁰ Ibid.

²⁸¹ Ibid.

5. DISCUSSION

After examining the notion of reparation and reparative justice in the context of historical injustice, investigating what happened in the past during Indonesian National Revolution 1945-1949, and studying the reparation cases with respect to it, this chapter will further discuss some points to finally answer the following research question:

“How do the reparations by the Netherlands to the victims of Dutch Military Operation in Indonesia National Revolution (1945-1949) incorporate backward- and forward-looking approaches to reparation for historical injustice?”

In order to give a thorough answer to this question, the discussion will start with investigating the kind of historical injustice of the past wrong and analyzing how the reparation should be done using the Field of Reparative Justice. Furthermore, the discussion will study the types of reparations made by the Dutch government and how this might incorporate backward and forward looking approaches for historical injustice. This will answer the research question. In the third part, the author will also highlight the finding from the research which might be beneficial for future considerations regarding the reparation for historical injustice in general, as well as the reparation for victims of Dutch Military Operation during Indonesia’s National Revolution. Lastly, this chapter will be closed with a conclusion of the thesis and recommendation for both Indonesia government and the Netherlands.

5.1. Backward-Looking and Forward-Looking Approaches in Reparation for Historical Injustice

From the abovementioned findings, this section will further discuss the kind of historical injustice which happened in the period of 1945-1949 in Indonesia, and will finally answer the research question on whether the reparation of such historical injustice incorporated backward-looking and forward-looking approach.

There are four type of historical injustice according to Jeppe von Platz and David A. Reidy. They are: (1) entitlement violations, which happens when someone’s entitlement is deprived; (2) historical injustice is an unjust exclusion from a system of entitlement; (3)

historical injustice is a systematic failure on the part of a system of entitlement to express a morally plausible value basis; and (4) the systemic embodiment in a system of entitlement of a morally corrupt or unacceptable value basis. To these four types, different weight of backward- and forward-looking approach will be assigned using the Field of Reparative Justice.²⁸²

From the previous categories, the author would argue that the massive executions as well as the rape case which happened during the Dutch Military Operation in the Revolution can be categorized as a structural historical injustice. This suits the third or fourth category: the systemic failure and corrupted value of the entitlement system. The arguments are based only on the facts about the past wrong. Firstly, it has a structural element. The Dutch soldiers were representing the Dutch government, which was the colonizer party in the colonialism era prior to the Revolution. Secondly, there was no criminal justice enforcement to the perpetrators even though some of the criminal acts were reported after the events. Thirdly, the Dutch government has denied any historian accusation regarding the war crime acts, and regarded the act as “excessive violence.”

The second and the third reasons show that the Dutch government at that moment had a morally corrupt system which facilitated people to commit morally and legally erroneous actions. Hence, this kind of act should be categorized as a structural historical injustice.

As this historical injustice lays in the third or fourth type of structural historical injustice, the minimal necessary weight of backward-looking approach would be assigned closer to the zero point. Accordingly, the forward-looking approach shall be incorporated maximally.

5.2. Reparations for Victims of Dutch Military Operation during the Revolution Incorporate Backward- and Forward-Looking Approaches

The Netherlands' Apologies

The Dutch representative delivered apologies to the victims of Rawagede and South Sulawesi following the judgment which stated that the Dutch has been liable for the wrong

²⁸² Jeppe von Platz and David A. Reidy (n 21), 360

past.²⁸³ This was a symbolic act not only to “acknowledge and accept the responsibility” of what the Netherlands had done during the Rawagede and South Sulawesi atrocities, but also to “reestablish the moral value in order to restore relationship,” and as a recognition of the dignity of the victims as human being.²⁸⁴ From these apologies, both sides might benefit from the psychological effects entailed.²⁸⁵

The apologies made by the Netherlands showed that it assigned forward-looking approach for historical injustice. The apology aimed to restore the moral relationship between the state and the victims of Dutch Military Operation, particularly in Rawagede and South Sulawesi.²⁸⁶

Compensation

The apology was not given alone. The act was followed by a compensation paid by the Netherlands to the victims of Rawagede and South Sulawesi.²⁸⁷ The combination of apologies and compensation by the Dutch government made the apologies more real and believable.²⁸⁸

The Court merely calculated the damage incurred in the rape case, and did not do the same in the Rawagede and South Sulawesi case.²⁸⁹ The Dutch government agreed in a settlement with victims of Rawagede and South Sulawesi and would pay compensation for €20,000 each person for the damage of the execution.²⁹⁰ In the rape case in Pniwen, the Court ordered the Netherlands to pay €7,500 for the immaterial damage.²⁹¹ Since the original victims (husband of the widows and father of the children) had died during the past wrong event and no reparation

²⁸³ ‘Wisah Binti Silan et al v. The State of The Netherlands (Ministry of Foreign Affairs)’ (International Criminal Database) accessed 4 August 2018;

²⁸⁴ Margaret Urban Walker (n 40), 377; Pablo de Greiff (n 22), 451-477

²⁸⁵ Janna Thompson (n 77), 216

²⁸⁶ Jeppe von Platz and David A. Reidy, ‘The Structural Diversity of Historical Injustices’ (2006) 37 *Journal of Social Philosophy* 360, 361

²⁸⁷ ‘Wisah Binti Silan et al v. The State of The Netherlands (Ministry of Foreign Affairs)’ (International Criminal Database) accessed 4 August 2018; *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.20

²⁸⁸ Roy L. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (University of California Press, 2004) 112; Margaret Urban Walker (n 40), 377;

²⁸⁹ In South Sulawesi cases the 10 widows were excluded from the court case after agreeing and receiving the compensation out of court through settlement. *East Java Rape Victim v. The State of the Netherlands*, par. 4.72, 5.1; *Wisah binti Silan v The State of the Netherlands*, par 5.

²⁹⁰ ‘Wisah Binti Silan et al v. The State of The Netherlands (Ministry of Foreign Affairs)’ (International Criminal Database) accessed 4 August 2018; *South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands*, (Interlocutory Judgement) [2015], par. 2.20

²⁹¹ *East Java Rape Victim v. The State of the Netherlands*, par. 4.72, 5.1

can be made to return the *status quo ante*, compensation was the most appropriate way to symbolize the reparation.²⁹²

Paying the compensation was a mix between backward- and forward-looking approach. Ideally, this should be an attempt to restore the condition from the damage incurred. In the Pniwen case, the Dutch Court applied backward-looking approach as it only looked at the wrongful act to measure the damage. It might only be able to be carried out by looking at the past wrong and seeing the damage. However, in events involving more victims, such as the Rawagede and South Sulawesi, the Court generally ordered to settle the damage incurred. This judgment seemed to be open to any type of reparation in order to repair the damage, particularly the moral relationship, such as symbolic reparation which concerns future restoration. In these two cases, the Court as well as the Netherlands assigned forward-looking approach to reparation for the historical injustice.

Civil Settlement Scheme

Moreover, the Netherlands also established the Civil Settlement Scheme in order to give compensation for victims of the same nature as Rawagede and South Sulawesi with the same amount of money—€20,000—as received by the widows of Rawagede and South Sulawesi.²⁹³ In the requirements, the widows need to prove that she was married to the executed victim. Moreover, the execution in the claim must be mentioned in an already published public source.²⁹⁴ The established scheme might cut down the complexity of court procedure. Disregarding the complicated administration procedures, this out-of-court type of reparation shows that the Netherlands has acknowledged other victims outside of the claimants in the Rawagede and South Sulawesi cases.

From the acknowledgement implied through the civil settlement scheme, it is clear that the Netherlands incorporates a mix of backward-looking and forward-looking approach in judging this historical injustice. The Netherlands has acknowledged the past wrong since one of

²⁹² Pablo de Greiff (n 22), 455

²⁹³ De Minister van Buitenlandse Zaken, ‘Verzoek verlenging Civielrechtelijk Regeling’ (13 August 2015) <<http://www.prakkendoliveira.nl/nl/nieuws/verlenging-civielrechtelijke-regeling-ter-verkrijging-van-schadevergoeding-indonesische-weduwen/>> accessed on 9 August 2018

²⁹⁴ The Netherlands State, ‘STAATSCOURANT Nr. 25383’ (Koninkrijk der Nederlanden, 10 September 2013) <<https://zoek.officielebekendmakingen.nl/stcrt-2013-25383.html>> accessed on 9 August 2018.

the requirements was for the execution event to have been publicly published. However, the Netherlands also understands that the compensation made is important to repair the relationship and acknowledge the dignity of each of the victims.

Large-Scale Research Programme on Decolonization, violence and war Indonesia 1945-1950

The Netherlands has now been financially supporting a large-scale research on the decolonization, violence, and war in Indonesia during 1945-1950. This research is conducted by three research institutes in the Netherlands, cooperating with several Indonesian researchers and will be published in 2021.²⁹⁵ Regardless of some critiques on the research²⁹⁶, this might be the start to uncover the truth regarding the structural violence in the Dutch warfare and encouraging a better understanding of the chain of violence.²⁹⁷ There is no official statement from the Dutch government that this research is related with the aforementioned cases, however, this might support future settlements regarding such cases.

The documents in regards to the violence during the colonialism and the Revolution are rarely available. The research initiative by the institutions and the financial support by the Netherlands are a positive beginning to challenge the “amnesia” of the Dutch government.²⁹⁸ It upholds the idea of memorability which relates to the concept of recognizability. The act of remembrance shows recognition.²⁹⁹ Furthermore, this might also open the possibility to a “historical dialogue”.³⁰⁰ All of these are the future aims.

Accordingly, it is plausible to see that the Netherlands has assigned forward-looking approach through this research. It notices the present conditions, such as the rare documentation

²⁹⁵ ‘About the Program’ (Decolonization, violence, and war Indonesia 1945-1950) < <https://www.ind45-50.org/en/about-programme>> accessed 19 August 2018.

²⁹⁶ There have been some critiques on the Dutch research project by the activist. According to this group, the Netherlands has not only provided funds for this big research, but is also dictating its approach from the start. For them, it is important to take the colonial context as the starting point of the research on the violence; ‘Questions about the Dutch research project Decolonization, Violence and War in Indonesia, 1945-1950’ < <https://historibersama.com/questions-about-the-dutch-research-project/>> accessed 19 August 2018.

²⁹⁷ Gert Oostinide, Ireen Hoogenboom, and Jonathan Verwey (n 155), 254; ‘Indonesians want more focus on fine details in research on war of decolonization’ (Universiteit Leiden, 5 December 2016) < <https://www.universiteitleiden.nl/en/news/2016/12/indonesians-want-more-subtlety-in-research-on-war-of-colonisation>> accessed 19 August 2018.

²⁹⁸ Paul Bijl (n 158), 441.

²⁹⁹ Judith Butler, *Frames of War: When is Life Grievable?* (Verso, 2009) 9.

³⁰⁰ Historical dialogue is a process in a conflict resolution by inviting all parties to express their view (including historians for each side) aiming not at reconciliation but at rapprochement; Nicole L. Immler (n 228), 151

on the violence committed and the need to for a better future on the history and the relationship between the Netherlands and Indonesia.

5.3. The Needs of Collective Recognition

After the compensation was paid, it disaggregated the victims and the society because the members of the village demanded half of the money.³⁰¹ This made by the village people in Rawagede shows that, as a community, they regarded themselves as victims in the cases as well.³⁰² A village people claimed that the widows (claimants in the cases) were not the only victims. He had a list of 181 people who were allegedly executed, which meant that at that time, almost all men in the village died.³⁰³ A monument was also built with their names written on it. The people also said that this Balongsari village (today's name of the village) has been famous due to the atrocity story.³⁰⁴ This story has been a story told from generation to generation.³⁰⁵ This memory has become their identity.

A community shares memories, including historical past, which may play a role in forming the identity of individuals as members of community.³⁰⁶ The past can be vividly present for the members of a community.³⁰⁷ As the history has already become this village's story, the demand to share the money of reparation is plausible considering the collective cultural society in Indonesia, at least to some degree. In this type of cultural society, the value of solidarity is upheld.

Furthermore, human rights theory, as well as international legal instruments, were influenced by Western perspectives, such as universalism.³⁰⁸ This universal principle assumes that all cultures value the protection of individual human dignity and that they would establish

³⁰¹ Nicole L. Immler (n 228) 151

³⁰² Ibid., 162

³⁰³ Ibid.

³⁰⁴ Ibid., 158

³⁰⁵ Ibid., 149-174

³⁰⁶ Janna Thompson, 'Apology, historical obligations and the ethics of memory' (2009) 2 *Memory Studies* 195

³⁰⁷ Ibid.

³⁰⁸ Katherine Bernnan, 'The Influence of Cultural Relativism on International Human Right Law: Female Circumcision as a Case Study' (1989) 7 *Law & Inequality: A Journal of Theory and Practice* 367

similar minimum standards to protect their individual members.³⁰⁹ This idea might be contradictory to the idea of “sharing” and “solidarity” in the collective cultural society. Thus, in the collective structural society, the international legal instrument might harm the social structure.

5.4. Conclusion and Recommendation

Moving on does not always mean “letting bygones be bygones.” In terms of reparation, one should consider the future as well as the past. It also applies in reparation for the (structural) historical injustice which incorporates forward- and backward-looking approach. The forward-looking approach focuses on repairing the moral relationship between the victims and wrongdoers for the better future, while the backward-looking approach concerns the damage incurred by the acts and repairs them.³¹⁰ Both of these approaches uphold the idea of recognition for the equality and dignity.³¹¹

The reparation cases of the victims of Dutch Military Operations during the Revolution (1945-1949) have emerged in the public sphere in recent years. Several types of reparations have been made either through judgment of the court or out-of-court settlement. The victims of two cases—Rawagede, and South Sulawesi— have mostly received compensations. In the rape case, the Court stated that the Netherlands was wrongful therefore is liable for the immaterial damage incurred. This reparation concerns backward-looking principles as it focuses to the wrongful act and the damage incurred. Yet, it also incorporates forward-looking because in the case that the aim is restoring to the status *quo ante*, compensation is seen as a symbolic reparation to restore the moral relationship. Besides compensation, the Netherlands also delivered apologies, established civil settlement scheme and supported the large-scale research on decolonization era in 1945-1949. These three types of reparation assign more forward-looking approach than the backward-looking one. They aim to restore the moral relationship between the Netherlands and the Indonesian victims.

³⁰⁹ Ibid., 371

³¹⁰ Jeppe von Platz and David A. Reidy (n 21), 360; See Margaret Urban Walker (n 41), 28; Ernesto Verdeja, ‘A Normative Theory of Reparations in Transitional Democracies’ (2006) 37 *Metaphilosophy* 450

³¹¹ Ernest J. Weinrib (n 43), 349;

This research finds that these cases are merely the image of a number of violence occurred during the Revolution. Future legal practice should consider translating international transitional justice to the society or village level. The need of collective recognition should also be considered. Furthermore, some parts of the history are still in the dark chapter which and need to be studied further in order to find the truth. The process might be long. In the meantime, the Netherlands and Indonesia government should arrange “historical dialogue” for the harmony.

Bibliography

Books and Articles

Bernnan K, 'The Influence Of Cultural Relativism On International Human Right Law: Female Circumcision As A Case Study' (1989) 7 *Law & Inequality: A Journal of Theory and Practice*

Bijl P, 'Colonial Memory And Forgetting In The Netherlands And Indonesia' (2012) 14 *Journal of Genocide Research*

Brooks R, *Atonement And Forgiveness: A New Model For Black Reparations* (University of California Press 2004)

Brown C, *A Short History Of Indonesia: The Unlikely Nation?* (1st edn, Colin Brown 2003)

Butler J, *Frames Of War: When Is Life Grievable?* (Verso 2009)

Cribb R, 'Development Policy in the Early 20th Century', *Selected Works of Robert Cribb*, (The Australian National University 1993)

de Greiff P, 'Justice And Reparations', *The Handbook of Reparations* (Oxford University Press 2006)

Foulcher K, 'Sumpah Pemuda: The Making And Meaning Of A Symbol Of Indonesian Nationhood' (2000) 24 *Asian Studies Review*

Friend T, *Indonesian Destinies* (The Belknap Press of Harvard University Press 2003)

Grotius H, 'The Rights Of War And Peace, Book II', *Natural Law and Enlightenment Classics* (Liberty Fund, Inc, 2005)

Haring S, 'German Reparations To The Herero Nation: An Assertion Of Herero Nationhood In The Path Of Namibian Development' (2002) 104 *West Virginia Law Review*

'Historical Wrongs-The Case Of Rawagdeh' (*Liesbethzegveld.com*, 2016)
<http://www.liesbethzegveld.com/user/file/160414_historical_wrongs.pdf> accessed 9 August 2018

Hughes L, 'Truth Be Told': Some Problems With Historical Revisionism In Kenya' (2011) 79 African Studies

Immler N, 'Narrating (In)Justice In The Form Of A Reparation Claim', *Understanding the Age of Transitional Justice: Crimes, Courts, Commissions, and Chronicling* (Rutgers The State University of New Jersey 2018)

Imran A, M ZedM PaEni, *Indonesia Dalam Arus Sejarah* (PT Ichtiar Baru van Hoeve collaborating with the Ministry of Education and Culture 2012)

Johnstone GJ Quirk, 'Repairing Historical Wrongs' (2012) 21 Social & Legal Studies

Kabeer N, 'Gender Equality And Women'S Empowerment' (2005) 13 Gender and Development

Kahin G, *Nationalism And Revolution In Indonesia* (Cornell University 1952)

Keppy P, *The Politics Of Redress: War Damage Compensation And Restitution In Indonesia And The Philipines, 1940-1957* (ProQuest Ebook Central 2010)

Koster M, 'Mau Mau Reparations, Memorialization And Kenya'S Future: Reflections After Fifty Years Of Independence' (*Kessa.org*, 2013)

<http://kessa.org/yahoo_site_admin/assets/docs/8_Mwanzia-Korster_KESSA_Proceedings_2013.362145023.pdf> accessed 19 August 2018

Kutz C, 'Justice In Reparations: The Cost Of Memory And The Value Of Talk' (2004) 32 Philosophy and Public Affairs

Lazare A, *On Apology* (Oxford University Press 2004)

Luttikhuis BA Moses, 'Mass Violence And The End Of The Dutch Colonial Empire In Indonesia' (2012) 14 Journal of Genocide Research

Nozick R, *Anarchy, State, And Utopia* (Blackwell Publishers Ltd 1974)

Oostindie G, I HoogenboomJ Verwey, 'The Decolonization War In Indonesia' (2018) 25 War in History

Raben R, 'On Genocide And Mass Violence In Colonial Indonesia' (2012) 14 Journal of Genocide Research

Rahayu TE, *Pertumbuhan dan Persebaran Penduduk Indonesia: Hasil Sensus Penduduk 2010* (Badan Pusat Statistik 2010)

Reid A, *The Indonesian National Revolution* (1st edn, Longman Australia 1974)

Ricklefs M, *A History Of Modern Indonesia Since C 1200* (3rd edn, Palgrave Macmillan 2001)

Scagliola S, 'Cleo's 'Unfinished Business': Coming To Terms With Dutch War Crimes In Indonesia's War Of Independence' (2012) 14 *Journal of Genocide Research*

Shelton D, 'Reparation For Historical Injustice', *Remedies in International Human Rights Law* (Oxford University Press 2005)

Slyomovics S, *How To Accept German Reparations* (Univ of Pennsylvania Press 2014)

Sorokin P, *Social And Cultural Dynamics: A Study Of Change In Major System Of Art, Truth, Ethics, Law And Social Relationship* (2nd edn, Porter Sargent Publisher 1957)

Thompson J, 'Apology, Historical Obligations And The Ethics Of Memory' (2009) 2 *Memory Studies*

Thompson J, 'Is Political Apology A Sorry Affair?' (2012) 21 *Social & Legal Studies*

Van de Bunt J, 'Een regeling voor weduwen van slachtoffers van Nederlands geweld in Indonesie' (2014) *Nederlands Juristenblad*

Verdeja E, 'A Normative Theory Of Reparations In Transitional Democracies' (2006) 37 *Metaphilosophy*

Vickers A, *A History Of Modern Indonesia* (Cambridge University Press 2005)

von Platz JD Reidy, 'The Structural Diversity Of Historical Injustices' (2006) 37 *Journal of Social Philosophy*

Wahyu Kartikasari A, 'Nasionalisme dalam Sajak Karya Chairil Anwar (Analisis Semiotik dalam Sajak Karawang Bekasi)' (*Jurnalmahasiswa.unesa.ac.id*, 2018)

<<http://jurnalmahasiswa.unesa.ac.id/index.php/avata/article/view/9036>> accessed 13 March 2018

Walker M, *Moral Repair: Reconstructing Moral Relations After Wrongdoing* (1st edn, Cambridge University Press 2006)

Walker M, 'Restorative Justice And Reparations' (2006) 37 *Journal of Social Philosophy*

Walker M, 'Truth Telling As Reparations' (2010) 41 *Metaphilosophy*

Walker M, *What Is Reparative Justice?* (Marquette University Press 2010)

Weinrib E, *Corrective Justice In A Nutshell* (University of Toronto Press 2002)

Weinrib E, *The Idea Of Private Law* (President and Fellows of Harvard College 1995)

Wenar L, 'Reparations For The Future' (2006) 37 *Journal of Social Philosophy*

William H. Frederick, 'Historical Setting', *Indonesia a Country Study* (6th ed, Library of Congress 2011)

Zegveld L, 'Historical Wrongs-The Case Of Rawagdeh' (*Liesbethzegveld.com*, 2016)
<http://www.liesbethzegveld.com/user/file/160414_historical_wrongs.pdf> accessed 19 August 2018

Websites

--'About the Program' (Decolonization, violence, and war Indonesia 1945-1950) <
<https://www.ind45-50.org/en/about-programme>> accessed 19 August 2018.

--'Indonesians Want More Focus On Fine Details In Research On War Of Decolonization' (2016)
<<https://www.universiteitleiden.nl/en/news/2016/12/indonesians-want-more-subtlety-in-research-on-war-of-colonisation>> accessed 19 August 2018.

--'Trial Management Meeting In Court Cases Re: Post-Colonial Violence In Former Dutch East-Indies - News - Prakken D'oliveira - Human Rights Lawyers' (*Prakkendoliveira.nl*, 2018)
<<http://www.prakkendoliveira.nl/en/news/trial-management-meeting-in-court-cases-re-post-colonial-violence-in-former-dutch-east-indies/>> accessed 14 August 2018.

--'Questions about the Dutch research project Decolonization, Violence and War in Indonesia, 1945-1950' <
<https://historibersama.com/questions-about-the-dutch-research-project/>> accessed 19 August 2018.

Other Documents

Nota Betreffende Het Archievenonderzoek Naar Gegevens Omtrent Excessen in Indonesie Begaan Door Nederlandse Militairen in De Periode 1945 – 1950, 1968-1969-10 008, Bijlage 5, 22

'Bekendmaking Van De Minister Van Buitenlandse Zaken En De Minister Van Defensie Van 10 September 2013, Nr. Minbuza.2013-256644, Van De Contouren Van Een Civielrechtelijke Afwikkeling Ter Vergoeding Van Schade Aan Weduwen Van Slachtoffers Van Standaardrechtelijke Executies In Het Voormalige Nederlands-Indië Van Vergelijkbare Ernst En Aard Als Rawagedeh En Zuid Sulawesi' (*Zoek.officielebekendmakingen.nl*, 2018)
<<https://zoek.officielebekendmakingen.nl/stcrt-2013-25383.html>> accessed 9 August 2018

'STAATSCOURANT Nr. 25383' (Koninkrijk der Nederlanden, 10 September 2013) <<https://zoek.officielebekendmakingen.nl/stcrt-2013-25383.html>> accessed on 9 August 2018.

De Minister van Buitenlandse Zaken, 'Verzoek verlenging Civielrechtelijk Regeling' (13 August 2015) <<http://www.prakkendoliveira.nl/nl/nieuws/verlenging-civielrechtelijke-regeling-ter-verkrijging-van-schadevergoeding-indonesische-weduwen/>> accessed on 9 August 2018

Liesbeth Zegveld, 'Press Release: Widows definitely not present during apologies for summary executions in Jakarta' (Bohler Advocaten, 5 September 2013)

Liesbeth Zegveld, 'Press Release: Widows request that the Dutch State offers apologies on South-Sulawesi' (Bohler Advocaten, 5 September 2013)

Wisah binti Silan v The State of the Netherlands (Pleedooi) [2011] Rechtbank 's-Grenhage, rolnummer 2009/4171

Table of Legal Instruments and Cases

UN Human Rights Treaty Bodies Documents

Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc. A/RES/217A (III)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UN Doc. A/RES/2200A (XXI)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) UN Doc. A/RES/39/46

American Convention on Human Rights (adopted 22 November 1969) art 10.

European Convention for Protection of Human Rights and Fundamental Freedoms [1950]

Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted 16 December 2005) UN Doc . A/RES/60/147 (IX)

United Nation General Assembly (“UNGA”) RES/60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) on the report of the Third Committee (A/60/509/Add.1)

UNGA Introductory Note of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) Historic Archives
<http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html> accessed 8 August 2018.

Permanent Court of International Justice

Factory at Chorzów (Merits) [1928] PCIJ Rep Series A No. 17

The Hague District Court

Wisah binti Silan v The State of the Netherlands (Judgment)[2011] District Court of The Hague 354119/HA ZA 09-4171

South Sulawesi widows, children & Foundation Komite Utang Kehormatan Belanda v. The State of the Netherlands (Interlocutory Judgment) [2015] District Court of The Hague C-09-428182 + C-09-458254 + C-09-467025 + C-09-46702

East Java Rape Victim v. The State of the Netherlands (Judgment) [2016] District Court of The Hague C / 09 / 483032 / HA ZA 15-200