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Human Rights
Judgments Over-Easy-- Executions Rare

An Indonesian general has been found guilty in an American court. Is there any resounding impact?

The end of February 2000; a man greets Indonesian Military Lt. Gen. Johnny Lumintang at Dulles International Airport in Washington, D.C. "Good afternoon, General," he says. Lumintang smiles warmly, thinking that this man is a participant in the seminar on military reform the day before, where Lumintang was a guest speaker. The smile comes prematurely.

Lumintang's facial expression turns to shock when the man shows him a profile of serious allegations identifying him as responsible for crimes against humanity after the September 1999 independence referendum in East Timor.

Last Thursday, a year after the fact, Federal Judge Alan Kay pronounced Lumintang--the ex-deputy Army Chief of Staff and Governor of the National Resilience Institute--guilty as charged. The judge accepted the case made by attorney Steven M. Schnebaum that Lumintang had committed human rights violations, although not with his own hands. " He was aware of, or at the very least ignored the decision to use military violence in East Timor." Judge Kay announced a penalty of US\$66 million, around Rp653 billion.

This is the second time an Indonesian general has been dealt such a verdict. In 1992, an American Federal Judge pronounced Maj. Gen. Sintong Penjaitan responsible for one of the deaths in the Santa Cruz massacre in Dili, East Timor a year before. The judge ruled in favor of Helen Todd, the mother of Kamal Bamadhaj, one of the dozens of victims who were slain in this incident, and ordered Sintong to pay compensation of US\$14 million.

Two organizations and one lawyer lodged the accusations against Lumintang: Center for Constitutional Rights (New York), Center for Justice and Accountability (San Francisco), and James Klimaski (Washington, DC). The three parties gained authority from a number of East Timorese citizens whose names have been concealed: a mother whose child was killed, a man who claims to have been tortured and a man who lost his leg during a riot.

These lawsuits were possible under the Alien Tort Claims Act 1789, which allows non-American citizens to make complaints of violations of American law or international law that

occur outside America. Also, the 1992 Torture Victim Protection Act approves complaints to American courts if the accused receives a letter of accusation in America.

During the court session, the prosecutor presented amongst other proof a telegram dated 5 May 1999 from Lumintang to Maj. Gen. Adam Damiri, the Udayana Military Commander. The contents stated that the field commander need not hesitate in wiping out pro-independence supporters, and also included the command to evacuate if the pro-independence faction won the referendum. Also produced was the Army instruction booklet, number 43-B-01, 30 July 1999 which contained Lumintang's signature. Its contents revealed Army Special Forces intelligence operations to undertake kidnappings, terror, propaganda, agitation and sabotage against East Timorese pro-independence activists, before and after the referendum.

Lumintang--now the Secretary-General of the Defense Ministry--refuted the accusations from the beginning, as did the Indonesian government (at that time headed by President Abdurrahman Wahid) and the TNI Headquarters, which both rejected this American justice model.

"The accusations were wrongly addressed," Lumintang told TEMPO, when he arrived in Jakarta at that time, "I have had no personal business with East Timor." As the representative of the Strategic Military Commander, he stated, his authority was only to supervise, not to mobilize soldiers. Lumintang indeed acknowledged sending a telegram to Adam Damiri, but insisted its purpose was to "prevent East Timor becoming another Saigon", referring to the evacuation operation of American citizens at the end of the Vietnam War. As the Representative of the Strategic Military Commander, Lumintang felt it necessary to prepare an emergency plan in anticipating the worst. "I would be accused of being wrong if I hadn't have prepared that plan," he said. However, his plea did not make it to the courts. He was tried and sentenced in his absence.

As serious as the case may be, the verdict from America is difficult to execute, apart from the fact that Lumintang has assets that could be seized and withheld. Up until this point, even Sintong has not paid a cent and the American courts have not made a fuss. However, what is clear is that neither general will ever be able to set foot again on American soil.

Lumintang himself does not appear overly concerned. "I am an Indonesian citizen, I only bow to Indonesian law," he said.

Looking at the law in Indonesia, the government has indeed prepared an ad hoc court system to deal with violations of human rights in East Timor due to demands from the international community. However, all of this is meaningless in terms of legal advancement. The verdict that came out of America, although only symbolic, will put more pressure on the Indonesian government to try its generals. This also provides us with proof, at whatever price. It is somewhat ironic, however, America once supported the Indonesian military's escapades.

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