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# CRIMINAL JUSTICE AND COMMUNAL CONFLICT: A CASE STUDY OF THE TRIAL OF FABIANUS TIBO, DOMINGGUS DA SILVA, AND MARINUS RIWU

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Criminal justice is an important part of the response to violent inter-ethnic and inter-religious conflict. Criminal trials are usually a key demand of affected communities, members of which may themselves engage in violence if they perceive that the state will take no action against perpetrators living in their vicinity. When held while conflict is ongoing, trials can also have the preventive effect of imprisoning key perpetrators of violence and thereby removing them from the conflict setting. There is also a moral and philosophical imperative to bring perpetrators to account, lest impunity embolden them or others to perpetuate the violence.

These assertions are more than merely an abstract concern for Indonesia, which in the immediate post-Suharto period found itself dealing with several instances of large-scale murderous inter-religious fighting. One of the worst of these conflicts took place in Poso district, Central Sulawesi, where between six hundred to one thousand people, both Muslims and Christians, are estimated to have been killed since December 1998. Violence peaked in 2000–2001, with more than half of all deaths in the conflict

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occurring during those two years. Although violence has lessened since, the district has remained the site of sporadic shootings, bombings, and other murders.

Given the scale and persistence of violence in Poso, it may be surprising to learn that more than 150 suspects have stood trial for crimes there.<sup>2</sup> A few trials took place after the initial fighting in the district in December 1998, but the first large set of trials started in late 2000. Almost all of the more than one hundred suspects in this set of trials were charged over their involvement in the May–June 2000 violence in Poso, in which at least 246 people, mostly Muslims, were killed. Since then, at least fifty to seventy more suspects have faced the courts for various violent incidents occurring between late 2000 and 2006. There is no complete data set of all those who have stood trial and the sentences they received, but the available information shows that there have been significant numbers of both Muslim and Christian defendants. A few of those tried have received stern sentences: most notably three death sentences, but also a few sentences of between five to fifteen years. The majority of those to stand trial though, both Muslims and Christians, have received relatively short sentences—even when charged with involvement in killings—and so have been quickly released.

The trials held so far have done little to answer community demands for justice in Poso, and have not had a discernable impact on stemming violence. The literature on criminal justice and conflict provides several explanations for why criminal trials and investigations can be ineffective in responding to conflict situations:<sup>3</sup> (i) Police, prosecutors, and courts may be overwhelmed by the scale of the violence or cease to function altogether, meaning few trials are ever held; (ii) Even after the peak of the conflict, it may be difficult to restore or reactivate the police, prosecutors, and courts because of the social identification of their officers with one of the combatant parties; the particular difficulties of gathering evidence in a conflict setting and social pressures on those institutions, such as the threat of retribution, may be further hindrances; (iii) With consensus between polarized communities on who should be prosecuted difficult to obtain, communities may view the courts' work as "victor's justice;" (iv) Criminal trials may actually inflame tensions and make the situation worse, or key perpetrators may not be brought to justice because of their influence or problems of jurisdiction;<sup>4</sup> (v) Victims' families and the affected communities are unlikely to be satisfied with a court sentence as closure for the violent death of a loved one; and (vi) Criminal trials are only one component of a comprehensive notion of justice, which victims may understand to encompass social and economic recovery and reparations in addition to affixing blame and meting out punishment.<sup>5</sup>

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<sup>2</sup> The total number of those to stand trial may in fact be closer to two hundred.

<sup>3</sup> An excellent treatment of the issues discussed in the text is presented in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004), which set out to measure empirically the contribution of criminal trials to post-conflict rebuilding of communities. The following chapters are of particular relevance to the above issues: Eric Stover and Harvey M. Weinstein, "Introduction: Conflict, Justice, and Reclamation," pp. 1–28; Laurel E. Fletcher and Harvey M. Weinstein, "A World unto itself? The Application of International Justice in the Former Yugoslavia," pp. 29–48; Alison des Forges and Timothy Longman, "Legal Responses to Genocide in Rwanda," pp. 49–68; and Eric Stover and Harvey M. Weinstein, "Conclusion: a Common Objective, a Universe of Alternatives," pp. 323–42.

<sup>4</sup> On the former point in the specific context of the Maluku conflict, see the report by International Crisis Group, *The Search for Peace in Maluku*, February 2002, p. 25.

<sup>5</sup> See Stover and Weinstein, "Introduction," p. 4; Stover and Weinstein, "Conclusion," p. 324.

A close look at the Poso conflict shows that trials in Central Sulawesi have suffered less from those problems than do many of the cases described in the literature. As severe as violence in Poso has been, this violence has largely been contained within just one of Indonesia's four-hundred-odd districts, and in terms of numbers killed, the magnitude of the violence is well below cases of intranational war or genocide such as occurred in the former Yugoslavia and Rwanda. This has meant that, outside of Poso itself, Indonesia's judicial system has remained intact, and while the task of investigating the violence still stretches police and prosecutors, it is not of impossible scale.

Moreover, since Poso is not the provincial capital of Central Sulawesi, the nearby provincial capital, Palu, although not entirely unaffected by the conflict, has served as a location where trials could be held when it was considered too dangerous in Poso.<sup>6</sup> This contrasts with other areas of post-Soeharto inter-religious and inter-ethnic conflict, such as in Maluku and North Maluku provinces, where the provincial capitals were the scene of serious fighting. Nor are Indonesia's courts institutionally linked to one or the other combatant party, reducing (although not eliminating altogether) the grounds on which to claim victors' justice.

Conspiracy theories notwithstanding, the limited scale of the conflict, which has taken place at the district level, also means that many key combatants were local civil servants, members of prominent local families, or local youths. (The *mujahidin* from other parts of Indonesia who fought in Poso from late 2000 onward are an obvious exception.) These individuals may be able to protect themselves from investigations pursued at the local level, but are unlikely to have the connections to shield themselves from prosecution in the face of concerted political will from the central government.

What, then, best explains the lack of a discernable contribution on the part of the trials held thus far to stemming violence in Poso? Are there particular weaknesses in these investigations and trials that, if improved, might enhance their positive impact? To answer these questions, this paper focuses on the most prominent manhunt, investigation, and trial to arise from the Poso conflict—the case of Fabianus Tibo, Dominggus da Silva, and Marinus Riwu. These three men—all Catholics originally from East Nusa Tenggara (Nusa Tenggara Timur, NTT) province involved in a conflict primarily fought between Protestants and Muslims—were sentenced to death in April 2001 in connection with the May–June 2000 phase of fighting in Poso, which, as mentioned above, was a period in which hundreds of Muslims were killed. They were convicted of murder on the basis that they were “among the leaders” of Christian forces in May–June 2000, and in that capacity incited others to kill.<sup>7</sup> This

<sup>6</sup> Indonesian criminal procedural law allows for trials to be moved from the area where the offence occurred at the suggestion of the head of the district court or the head of the district prosecutor's office, should the “local situation not permit” the trial to go ahead there (Article 85, Criminal Procedural Code). Between 2000–2005, most criminal and terrorism trials stemming from the Poso conflict were thus held in Palu; from late 2005, police began to push for high-profile cases to be moved away from Central Sulawesi altogether and instead be tried in Jakarta. At the time of writing, seven defendants had been tried for Poso violence in courts in Jakarta; the trials of at least another twenty suspects are expected to take place in Jakarta in 2007.

<sup>7</sup> They were also convicted of arson (Article 187 [1] of the Indonesian Criminal Code, maximum sentence of twelve years) and battery (Article 351, maximum sentence of two years and eight months), but these two lesser charges were incidental to the trial and are not discussed at any length in this article.

characterization of the men as “among the leaders” appears to have been accurate for Tibo and Dominggus. Each appears to have been more than rank-and-file combatants in May–June 2000, though not themselves the highest leaders of Christian forces. We know far less about the role of Marinus, either from the trial material or other available information.

A close examination of the investigation and trial of the three men reveals several procedural shortcomings that served to undermine its contribution to stemming violence. The information in Tibo’s depositions in particular could have been used to develop a clear picture of the command structure of Christian forces in May–June 2000, and thereby prosecute other key combatants. Prosecutors instead focused on just the three men, which meant that many other key combatants remained free, and over time Muslims protested that the death sentences against the three men did not absolve the government of the need to investigate other perpetrators of violence against Muslims.

This failing—repeated in many subsequent investigations in Poso—seems all the more significant in light of the admittedly limited available evidence from other Indonesian conflicts that suggests apprehending a large subset of key perpetrators can make a significant contribution to stopping violence. A key example of the success of pursuing a larger set of key perpetrators comes from the 2005 Maluku conflict, where wide-reaching arrests of those responsible for a string of attacks from May 2004–May 2005 has all but halted violence in the last twenty months.

Returning to the Tibo case, the prosecutors also did not use all the information in the interrogation depositions to file as comprehensive an indictment as possible—one that noted the full extent of the men’s involvement in the violence and listed all possible charges. Considered in isolation, that shortcoming may appear of marginal importance, given that the three men could not possibly have received a heavier sentence. But as a pattern repeated across many cases, and even if the perpetrators may be in prison, it denies communities a clear record of who was responsible for particular acts of violence. In addition, when police speculate publicly before trials that the suspects are involved in cases for which they are not subsequently charged, it denies those individuals the chance to challenge the accusations in court and can lead to claims of deliberate “stigmatization.”

The procedural quality of the Tibo trial was also poor. The trial took place under hostile circumstances, with one witness even managing to slap the three defendants in the face before testifying. The judgment was also poorly assembled, with little legal reasoning and insufficient clarification of what specific testimony supported the judges’ conclusions. This doubtless caused some Christian disaffection at the time, but far more crucially, when the case became controversial in 2006 after the men’s plea for clemency was rejected and the executions seemed imminent, it meant that there was no clear record of the case against the men. Had the guilt of the men been more clearly demonstrated, the scope for protests would have been reduced.

Instead, the execution of the men in September 2006 became a focal point for accumulated disaffection with Poso’s criminal justice process, and the debate preceding their death by firing squad sharpened old religious enmities in Poso. By this time, Christians were aggrieved that no other punishments had approached the severity of the sentences handed down to Tibo, Dominggus, and Marinus, whereas

Muslims felt the executions were insufficient because other cases of violence had not been investigated. The renewed tensions had tangible consequences: a group of Christians murdered two Muslim men in Poso district several days after the executions took place. Moreover, the same tensions almost led to clashes among rival crowds on the fringes of the district's capital city, a pattern of violence absent since 2002.

Before discussing the three men's trial and its shortcomings in detail, this paper first provides a brief overview of the Poso conflict. To assist in evaluating the case presented against the men during the trial, the essay also sets out current knowledge of who Tibo, Dominggus, and Marinus were and what their roles were in Poso's May–June 2000 violence.

### Background: The Poso Conflict

The conflict in Poso—a coastal district of some 200,000–300,000 people—is not attributable to any single cause.<sup>8</sup> As with the conflicts in Maluku and North Maluku that also started in the immediate post-Soeharto period, local political contests to control state patronage that fed pre-existing tension between religious communities and weak law enforcement both contributed to violence, but those two factors did not by themselves make the occurrence of violence or its escalation inevitable. A large part of the explanation lies in individuals' experience of the conflict and how, over time, this led some individuals to perceive members of the other religious community as enemies or as an immediate threat to their own security, or both.

There were two periods of violence in Poso prior to May–June 2000 (the point when Tibo, Dominggus, and Marinus became involved in the conflict). The first of these periods was December 24–28, 1998; the second was sixteen months later, April 16–20, 2000. During each of those periods, violence was contained within the city limits. No one was killed in the December 1998 riot, while seven people were killed in April 2000.<sup>9</sup>

Although relatively few people were killed in the first two periods of violence, Christians fared worse than the Muslims, particularly in terms of property losses. As a result, many Christians fled the city during the second period, when several churches were burned or damaged. Such targeted violence fed into a pre-existing anxiety among Poso's Christian community, including members of the indigenous Pamona ethnic group, that they were being marginalized and cut off from political positions, civil-service posts, and land ownership by wealthy Muslim migrants, particularly those from South Sulawesi province. This anxiety was aggravated by a feeling on the part of Christians that few of those individuals whom they held responsible for the first two

<sup>8</sup> Fuller accounts of the conflict are provided in Lorraine V. Aragon, "Communal Violence in Poso, Central Sulawesi: Where People Eat Fish and Fish Eat People," *Indonesia* 72 (October 2001): 45–69, which provides a preliminary chronology of the first three periods; Human Rights Watch, *Breakdown: Four Years of Communal Violence in Central Sulawesi*, December 2002; Anto Sangaji, "Pembakaran Rumput Kering," unpublished manuscript; George Aditjondro, "Kerusuhan Poso Dan Morowali, Akar Permasalahan Dan Jalan Keluarnya," Pro-patria Discussion Paper, January 7, 2004; ICG, *Indonesia Backgrounder: Jihad in Central Sulawesi*, Asia Report No. 74, February 3, 2004; ICG, *Weakening Indonesia's Mujahidin Networks, Lessons from Maluku and Poso*, Asia Report No. 103, October 13, 2005; and ICG, *Jihadism in Indonesia: Poso on the Edge*, Asia Report No. 127, January 24, 2007.

<sup>9</sup> Three of these were killed when police opened fire on a crowd of Muslims.

periods of violence had been arrested or brought to trial.<sup>10</sup> Immediately after the April 2000 violence, a sub-section of the Christian community, including some of those whose houses had been burned, began to plan for an attack on those they termed “*perusuh*” (rioters) and “*provokator*” (provocateurs). The result was a third period of violence that lasted for two weeks, from late May–June 2000, during which time Tibo, Dominggus, and Marinus were recruited to fight.

The May–June 2000 violence was on a much larger scale than anything that had occurred previously in Poso. For two weeks there was an almost complete breakdown of law and order, and at least 246 people, mostly Muslims, were killed. Widespread arson destroyed many village and government buildings, and tens of thousands of individuals fled from the district in all directions.<sup>11</sup> Many Christians describe the May–June violence as “revenge” (*pembalasan*) for the earlier attacks on Christians, but it is also common for them to describe it as “defending our territory” (*mempertahankan kita punya wilayah*). This latter rationalization embodies local Christians’ idea that the third period of violence was a “spontaneous” defensive response, even though that violence was on a far greater scale than what had gone before.<sup>12</sup>

I’ll describe the initial incident of the third period in some detail, because it was at this point that Tibo, Dominggus, and Marinus first came to public attention in Poso. This first incident took the form of a foray by a group of around fifteen black-clad Christians into the suburbs of Kayamanya and Moengko before dawn on May 23. The group, led by civil servant A. L. Lateka, was looking for specific *provokator* from earlier violence in Poso, but instead killed three men they happened to encounter, including a policeman, before fleeing to the nearby Santa Theresia Catholic school compound, in Moengko.<sup>13</sup> When the group of Christians arrived at the school, Tibo, Dominggus, and Marinus were there. A large Muslim crowd, roused by news of the murders, gathered in front of the school shortly afterward. Those harbored inside fled, after which the Muslim crowd torched the school.

The subsequent violence took several forms: additional small forays (like the May 23 attack described above); large clashes between rival crowds armed with machetes, traditional weapons, and crude homemade firearms; and the murders of hostages taken from the other community. The single worst incident during the third period of violence took place at and around the Walisongo Islamic boarding school, about nine kilometers south of the city.<sup>14</sup> After a clash at the boarding school, the Muslim men who remained there were killed. Those who fled were rounded up over the course of the next few days. In all, around one hundred Muslims were killed in this massacre;

<sup>10</sup> Only a few trials were held in response to the first and second periods of violence. The harshest penalty in this set of trials was meted out to a Protestant man Herman Parimo, sentenced to fifteen years imprisonment for his role in the December 1998 violence. He died in custody in April 2000.

<sup>11</sup> The figure of 246 is taken from the Central Sulawesi governor’s report on the violence. Given the breakdown of law and order and the political uses to which a lower or higher number of casualties could be turned, no accurate figure is ever likely to emerge for how many people were killed in May–June 2000. Official estimates of casualties in large-scale Indonesian riots have generally been held to be conservative.

<sup>12</sup> Interviews with Poso men, February 2002 and July 2003.

<sup>13</sup> Lateka’s brother-in-law had been imprisoned for involvement in the first period and by late May 2000 had died in custody. See footnote 10.

<sup>14</sup> The boarding school was located near Sintuwulemba village, a location sometimes also called Kilo 9. The incident is sometimes referred to using these place names.

and some of the women taken prisoner appeared to have been sexually assaulted before being released.

During the two weeks of violence, Christians established a command post (*posko*) in Tagolu, just south of the city. This is where Tibo, Dominggus, and probably Marinus were based for most of the May–June violence. Hundreds, maybe even thousands, of Christians gathered there. This command post was only disbanded on June 8, 2000, as the violence of the third period waned and security forces made a concerted push into Poso. The newly deployed security forces—both police and military—belatedly made arrests, seized weapons, and began reburying bodies found around the district. Before this, when the unrest was building and peaking, many police and village officials left their posts. A few police and military officers even joined with crowds and took part in the violence themselves.

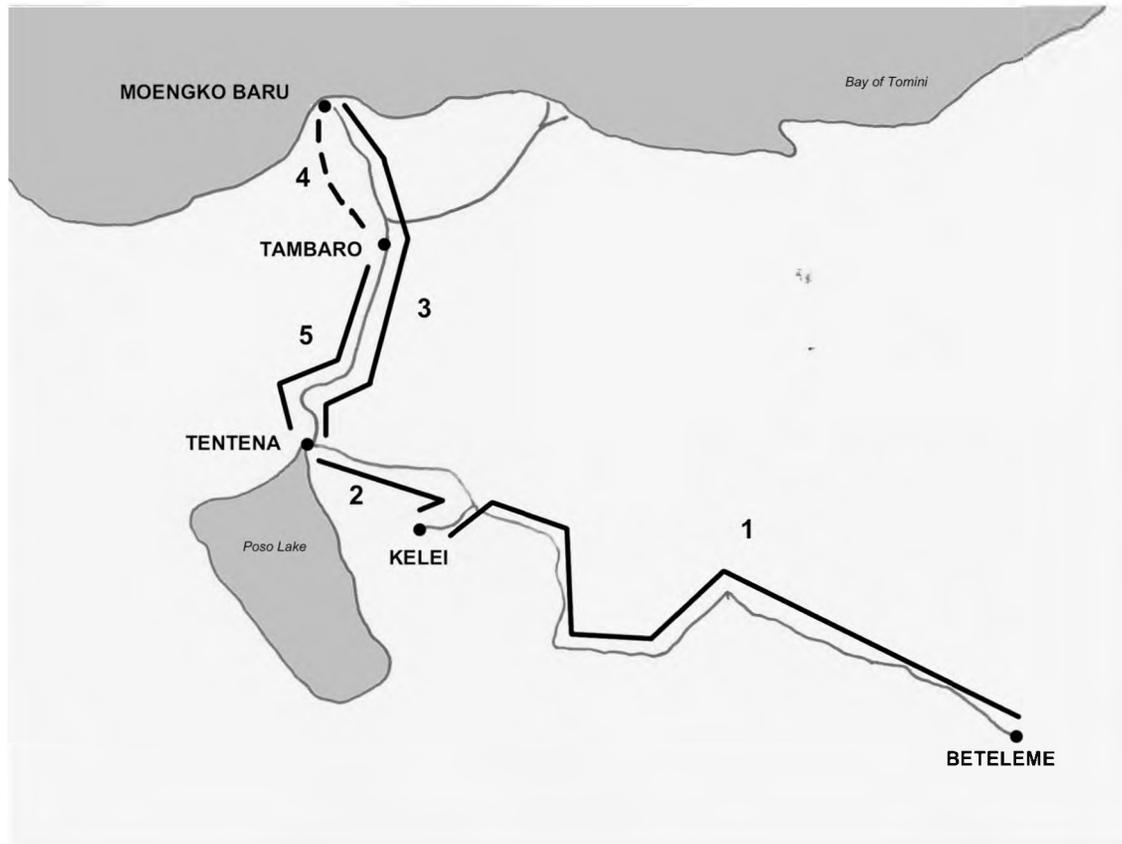
The third period of violence marked the shift to protracted conflict in Poso. It created a group of angry young Muslim men who had seen family members killed or their houses destroyed, and who later recalled that their only thought after this period of the conflict was how to take revenge.<sup>15</sup> News of the violence, including gruesome photos of the remains of murder victims, also drew in Muslim fighters from other parts of the country, many of them veterans of the Maluku conflict by the time they arrived in Poso. Sporadic violence gradually escalated to a fourth period of conflict in June–July 2001 and a fifth in October–December 2001.

In the face of the mounting death toll—around one hundred people were killed in 2001 alone—government officials brought representatives of the Muslim and Christian communities to the negotiating table in late December 2001. The resulting deal—called the Malino Agreement—initially brought about some peace and security (in part attributable to a large increase in security-force deployment to Poso earlier in December), with clashes between crowds becoming rare by late 2002. Low-intensity violence continued, though, with more than 150 people killed in Poso after the accord was signed. The worst incidents since the accord are nevertheless gravely serious, including several large-scale bombings during 2004–2005, the beheading of three Christian schoolgirls in October 2005, and, most recently, a shootout in the course of a January 2007 police raid, during which more than a dozen Muslim men, most of whom were fighting the police, were shot dead (along with one policeman).

As the focus of this essay is on the trial of Fabianus Tibo, Dominggus da Silva, and Marinus Riwu, let's return to the third period of the conflict to chart the extent of their involvement. Remembering that these men's murder convictions rested on the judges' view that the men were leaders during the May–June 2000 violence, the following section aims both to discuss what information is available regarding the status of Tibo, Dominggus, and Marinus within the *kelompok merah* (red group—one name for Christian fighters), as well as to map out what is known about the extent of their involvement in specific incidents.

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<sup>15</sup> Interviews with Poso men, July 2003.



#### Tibo Group Movements—May 2000

1. Beteleme to Kelei, around May 14; 2. Kelei to Tentena, May 22; 3. Tentena to Moengko Baru, May 22; 4. Moengko Baru to Tambaro, May 23; 5. Tambaro to Tentena, May 23–24

#### The Role of Tibo, Dominggus, and Marinus

The prosecution's primary charge against Tibo, Dominggus, and Marinus was premeditated murder. The prosecution also added the provision of Article 55 (1), subclause 1, that the men would be punished as murderers if they had either "perpetrated (the murder), ordered others to do so, or taken part (with others in the murder)." The murder indictment alleged the men had been involved in four specific (multiple) murders: the May 23, 2000, foray into Kayamanya and Moengko (described in the previous section); the May 28 Walisongo massacre; murder incidents from May 28–June 1 near the community health centre (Puskesmas) in Tagolu; and the June 1 murders at a Tagolu sand-mining location on the bank of the Poso river. Note that adding Article 55 meant that the prosecution's case did not rest solely on whether the three men had participated directly in murders in any specific attacks. The case against the three men also incorporated other alleged actions on their part, such as training Christian combatants to kill Muslims and acting as leaders during the May–June 2000 violence. Indeed, by mentioning in the indictment that 191 people had been killed in

the third period of violence, the prosecutors were implying that the men's actions had wider implications than just the four cases listed above.

The next sections set out the role of the men, in terms of their charges and convictions. To do so, I use materials other than just the evidence presented during the court trial to provide the fullest possible picture of the men's involvement in the May–June violence. The narrative is drawn from a comparison of my interviews with the men in 2003–04, interviews the three gave to the press around the time of their arrest in 2000, as well as information from their trial and interrogation dossiers.<sup>16</sup> In general, I have given less weight to information contained only in interrogation depositions if the deponents did not appear as witnesses at the trial, as their non-appearance limits the grounds on which to gauge the accuracy of the information.

### **Fabianus Tibo**

The narrative of Tibo's involvement in the Poso violence starts in Beteleme village in Morowali district, which lies adjacent to the southeast portion of Poso, where he said he worked as a farmer. Tibo, a long-term migrant to Sulawesi from Flores, in the archipelagic Nusa Tenggara Timur province, about 800 kilometers south of Poso district, turned fifty-five years old immediately before the May–June 2000 violence. The most prominent among the three, he appears to have stood as an unsuccessful candidate for the now-defunct Democratic Catholic Party in the 1999 election for the Poso district legislature. He had previously served a six-year prison term in Poso in the early 1990s for his involvement in a dispute between transmigrants from Bali and Flores, in Lawangke village, in which four Balinese were killed. This conviction led to a widespread belief that Tibo was a *preman* (thug), although no specifics are known.<sup>17</sup>

Tibo's first actions of direct relevance to the May–June 2000 violence were to gather a group of men, mostly transmigrants from NTT, to go to Poso. For this, Tibo traveled to Malores village, where Marinus lived, also in Morowali district, most likely at some point between May 10–14, 2000 (about three weeks after Poso's second period of violence). Tibo and the prosecution each promoted different versions of his motives at this point. Tibo said he went to gather the men after a Protestant man, whom he had never met before, came to his house and told him the students of a Catholic boarding school in Poso were in danger. He thus went to Malores, by his account, to warn the parents to go and retrieve their children.<sup>18</sup> In its indictment, the prosecution stated only

<sup>16</sup> The use of information from interrogation dossiers requires particular caution. In the Indonesian criminal legal system, each prosecution witness called at the trial must first make a deposition to interrogators, but the depositions are often not verbatim records of their deposition. It is also generally not possible to know the circumstances under which the depositions were made. Moreover, in other conflict trials, witnesses have withdrawn their depositions when called before the court, sometimes with apparent justification. Wherever possible, information in interrogation dossiers is used only in comparison with other sources.

<sup>17</sup> Tracing the details of any *preman* status may be a fruitful future research project to further elucidate the May–June 2000 violence, but it is incidental to this paper.

<sup>18</sup> Dominggus stated in his interrogation deposition that he had a grandchild, a nephew, and a niece at the school, and that one of the vehicles the group used there was his white Mitsubishi Colt. Marinus stated in an interview that he had a child at the school (although he may not have understood the question).

that Tibo gathered men to attack Poso, telling them “this is a matter of religion,” and ordering those willing to come to Poso to make weapons to bring along.<sup>19</sup>

The week following this meeting in Malores—May 14–21, 2000—was a crucial period for the murder conviction, because any training that Tibo, Dominggus, and Marinus provided to the *kelompok merah* would have taken place during this week. This means that the precise date that Tibo arrived in Kelei—the village where training was said to have taken place—is a very significant detail. Not surprisingly, Tibo and the prosecution presented different versions of his movements.

In interviews with me, Tibo claimed that he and his companions stopped in Kelei for just one night, on May 21, after various delays over the course of several days in finding transportation from Beteleme to Poso. If true, this would mean Tibo was not in Kelei during the period when training is alleged to have occurred, but his account seems dubious, as it would seem to suggest a remarkable lack of urgency to leave for Poso and rescue the children.

The prosecutors alleged Tibo and his companions arrived in Kelei on May 14. The testimony of one witness at the trial, one deposition read out at the trial, and two other depositions from members of Tibo’s group all describe varying degrees of training, but to some extent contradict each other. To my mind, the most credible of these sources are the depositions of Tibo’s two companions, even though prosecutors did not call these men as witnesses or read their depositions out at the trial, meaning the information was not admissible as evidence.<sup>20</sup>

These two men say Tibo and his group arrived in Kelei on or around May 14, and while there made weapons to use in Poso and train for the coming violence. They each say Tibo told them to make weapons, while Marinus trained them in the use of arrows. The two men say they left Kelei for Poso on May 22, after about a week of preparation in the village. By this time, they had been given black clothing and wristbands (called *kongkoli*); one of the men told interrogators that Tibo had given the directive, “anyone not wearing black clothing or a wristband is the enemy and must be attacked.”<sup>21</sup> From their depositions, Tibo was clearly the leader of their traveling party, but his precise authority in a wider setting is not yet clear.

In its indictment, the prosecution was more expansive about the degree of training and Tibo’s role in it, categorizing him as the overall leader of Christian forces at the time. A comparison with Tibo’s interrogation dossier makes it clear the phrasing of the indictment was based primarily on the deposition of just one individual, named Anton, who, as explained in a later section, stands out as the least credible witness at the trial.

The next stage in examining Tibo’s narrative is to explain how he got from Kelei village to the town of Poso, still at least three hours’ journey away. It seems clear that Tibo and his companions left Kelei early on the morning of May 22, 2000, and before

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<sup>19</sup> Interview with Fabianus Tibo, July 28, 2003. *Surat Dakwaan No. Reg. Perkara. PDM-18/POSO/11/2000*, p. 3.

<sup>20</sup> Their depositions appear most credible because they were questioned very soon after the events—on May 29 and May 30—months before Tibo was arrested and even longer before the other witnesses made their statements. Their account also matches most closely with both the prosecution’s and Tibo’s accounts of his other movements in mid to late May 2000.

<sup>21</sup> Deposition of Lenoardus Lewa in dossier of Fabianus Tibo, May 30, 2000, p. 2.

reaching Poso stopped briefly at the majority-Christian town of Tentena, two hours south of Poso. Tibo and his group of between twelve and thirty men then arrived at the Santa Theresia Catholic School compound in Moengko (Poso suburb) some time during the middle of the day. They were now at the school that would be burned the next day in the first moments of the May–June 2000 violence (when the Christians, led by A. L. Lateka, who themselves had committed violence, fled from the school, as described in the previous section). Tibo’s accusers have often claimed that Tibo’s group and Lateka’s group were one and the same.

Tibo said that, upon arriving at the school on May 22, he was unable to convince the school’s principal that the children should flee immediately, because they were in the midst of national examinations. Given this situation, Tibo said, he remained at the school to guard it, with a plan to take the children home the following day. This is how Tibo accounted for being in front of the school before dawn the next morning, on May 23, clad in black and holding a machete, when a Muslim crowd gathered at the school looking for Lateka’s group—who were also wearing black—who, the Muslims charged, had just murdered three people. Tibo said he had been asleep when the murders took place and that the school’s children woke him to tell him there was trouble in the city and that some men were hiding in the school.<sup>22</sup> Thus, Tibo denied involvement in the Kayamanya murders on May 23, the first specific incident that the prosecution named in its murder indictment.

Tibo’s version of events does not ring true and is unlikely to be the whole truth. It is possible he and his men were not directly involved in the Kayamanya murders, but their very presence at the school, let alone their black clothing and weapons, seems too much of a coincidence to be entirely unrelated. But the prosecution’s version of the morning’s events is not correct, either, for the simple reason that it confuses details of two different attacks. In its indictment, the prosecution states that Tibo, Dominggus, and Marinus led a group of 130 men to attack Moengko and Kayamanya that morning. That number is much larger than what witnesses to the attacks remember. A comparison with Tibo’s interrogation deposition shows that the number “130” actually comes from his description of an attack on Moengko that took place about a week later.<sup>23</sup>

The confusion surrounding Tibo’s exact role in the morning’s events notwithstanding, it is clear that, after being found outside the school, Tibo handed over his machete to police. Despite the presence of the increasingly large crowd of Muslims and a request from the policemen present that he accompany them to Poso’s police station, Tibo somehow managed to flee into the forested hills behind the school complex. Most of Tibo’s men, Lateka’s group, and the school’s students and teachers also made their escape. These various groups headed south toward the majority-Christian areas of Poso, first to Tambaro village just south of the city and then farther south, to Tentena. Behind them, the crowd torched the school complex.

The next day, May 24, Tibo says he was taken from Tentena back to Kelei village, the reputed site of *kelompok merah* training. There he attended a meeting with around ten people, including A. L. Lateka and another man Tibo named as a key *kelompok*

<sup>22</sup> Interview with Fabianus Tibo, July 28, 2003.

<sup>23</sup> Deposition of Fabianus Tibo in dossier of Fabianus Tibo, July 28, 2000, p. 3.

*merah* leader, retired Protestant military officer Paulus Tungkakan.<sup>24</sup> According to Tibo, at this meeting Lateka gave the order to raze Poso.<sup>25</sup> Although Tibo depicts his presence at the meeting as the product of coercion—saying Lateka prevented him from returning to his home village of Beteleme—Tibo’s attendance is another sign that he was a *kelompok merah* leader (given that the other attendees were also figures of authority). By comparison, Dominggus and Marinus do not appear to have attended.

Thereafter, Tibo again says he was taken back to the outskirts of the city, to Tagolu village, probably early on the morning of May 25, and appears to have been primarily based there until June 8. While in Tagolu, says he, he stayed at the command post (*posko*) that Christians had set up in the house of Bakte Lateka, the younger brother of A. L. Lateka.

The most detailed account of Tibo’s presence in Tagolu comes from one of the interrogation depositions read out at the trial in lieu of the witness appearing before the court to testify—that of Ros Kristina, a Christian woman. She said Muslim captives were brought to Tibo for questioning at the *posko*, and that Tibo then handed over the prisoners to others, including Dominggus and Marinus, to be “*diamankan*” (secured), which was a euphemism for murder. According to Ros Kristina’s deposition, Dominggus reported to Tibo about murders at other locations in Tagolu, although due to her involuntary presence as a forced laborer in the *posko* itself, she did not actually witness these murders herself.<sup>26</sup>

The accounts of Muslim captives who appeared as witnesses at the trial were not as detailed as Kristina’s, but their testimony corroborates some aspects of her deposition and depicts Tibo as a figure of authority in Tagolu. One, Taiyeb Lamelo, testified that when he was first brought to Tagolu, Tibo asked for his identity card (Kartu Tanda Penduduk, KTP) and later assured him he would not be hurt. Lamelo also testified that when *kelompok merah* members from his village came to ask that Lamelo be allowed to return home, they met with Tibo (to secure his release).<sup>27</sup> Another Muslim man captured and held in Tagolu, Mahfud Rosid, testified that all three defendants were

<sup>24</sup> Tungkakan moved to Tentena in April after suffering a large slash wound to his back in the second phase. He has never stood trial, but was arrested in May 2004 on suspicion of firearms possession. He was released without charge, and those familiar with the investigation following his arrest told me that it appears to have focused as much on Tungkakan’s involvement in the May–June 2000 violence as on the firearms charge. The figure of ten attendees at the Kelei meeting comes from interviews with the author; in his depositions, Tibo said forty people attended. Information from interviews with Paulus Tungkakan, February 2002 and June 2006; with Fabianus Tibo, July 28, 2003; with Dominggus, May 2004; and with a Palu lawyer, June 2006. Also: interrogation deposition of Fabianus Tibo, in dossier of Fabianus Tibo, July 26, 2000, p. 5.

<sup>25</sup> Interview with Fabianus Tibo, July 2003. When interviewed, Tibo volunteered incidental details of this meeting that make his claim that he was present appear authentic. For instance, he recalled Lateka had been angry because Tungkakan arrived late and thereby kept everyone waiting. See also interrogation deposition of Fabianus Tibo, in dossier of Fabianus Tibo, July 26, 2000, p. 6.

<sup>26</sup> Deposition of Ros Kristina in dossier of Fabianus Tibo, July 6 and 7, 2000.

<sup>27</sup> If this account is true, it suggests that the village affiliations between Lamelo and the *kelompok merah* members trumped their religious difference. Record of testimony of Taiyeb Lamelo, in *Decision of Palu District Court No. 459/PID.B/2000/PN.PL in case of Fabianus Tibo, Dominggus da Silva, and Marinus Riwu* (hereafter *Tibo Decision*), pp. 43–44.

present at the Tagolu command post and that all decisions had to be cleared by them; he also said he was ordered to give Tibo a massage.<sup>28</sup>

The prosecution's indictment alleged Tibo took part in four distinct attacks, and implied that other Muslim deaths in the May–June 2000 violence were the result of his actions. Tibo denied involvement in the murders specifically named by the prosecution, but in his depositions and interviews with me he made it clear that he took part directly in attacks during the two weeks he was in Tagolu. He admits to taking part directly or being present at four clashes during the May–June 2000 violence:

- **May 25: Sepe–Silanca village.** Christians clashed with Muslims attempting to advance toward Tagolu from the majority-Muslim areas east of the city. Tibo admits his presence in his interrogation deposition; residents of the villages also recall seeing Tibo there.<sup>29</sup>
- **May 28: Sayo village.** Tibo describes this clash, on the southern outskirts of the city, as an attempt to rescue nine Christians trapped in Sayo the previous day during another attack on the village.<sup>30</sup>
- **May 28: Walisongo.** Tibo admits being present at or around the Walisongo boarding school on the day it was attacked, May 28. His account is inconsistent in different sources, however. In his interrogation dossier he says he arrived in Walisongo only after the *kelompok merah* had surrounded the mosque there, and that he left again before the violence proper began, after being struck by a dart (*anak peluncur*). When I interviewed Tibo in 2003, he said that he arrived at Walisongo only after the violence there had occurred, saying when he got back to Tagolu from Sayo the women there told him “It’s already [happened] in Kilo 9 [Walisongo]. It’s been razed.”<sup>31</sup> One witness at the trial—a Muslim survivor of the Walisongo violence—also testified that Tibo led the attack.<sup>32</sup>
- **Late May or early June: Moengko.** The fourth attack Tibo admitted to leading or taking part in took place in the city suburb of Moengko in the last days of May or early June 2000. Tibo’s account of the attack (from his interrogation deposition) says he led 130 men in the attack, clashed with the *kelompok putih* (one name for Muslim fighters) for half an hour, and then burned six houses.<sup>33</sup> In an interview with me in 2003, Tibo described this attack as a “dawn raid” (*serangan fajar*), claimed it was the only occasion Christians had attacked the

<sup>28</sup> Ibid., pp. 27–28 (record of Mahfud Rosid Kusni testimony).

<sup>29</sup> This attack was not directed at Sepe and Silanca, which were majority Christian villages. Once Christians gained the ascendancy in this part of Poso, they burned many of the nearby Muslim settlements. It is possible that the specific attack Tibo referred to in fact took place on May 26.

<sup>30</sup> References to the dates of the Sayo attacks are inconsistent. They appear to have taken place on May 27 and 28, but may also have taken place on May 28 and 29. In a deposition in the dossier of Marinus Riwu, Tibo says the attack on Sayo occurred because they had heard that a church in the neighboring suburb of Kawua would be attacked.

<sup>31</sup> A Protestant policeman who went to Walisongo also testified that he requested Tibo’s permission, as leader of the *kelompok merah*, to go there. Record of testimony of Hopni Saribu, *Tibo Decision*, p. 43.

<sup>32</sup> Another witness, Sutarmin, said Tibo was the leader when the *kelompok merah* killed captives three days after the Walisongo attack. See Record of testimony of Ilham, Untung Djumadi, *Tibo Decision*, pp. 32–33.

<sup>33</sup> Interrogation deposition of Fabianus Tibo in dossier of Fabianus Tibo, July 28, 2000, p. 3.

city, and said that the raid was ordered by Paulus Tungkunan. He said the *kelompok merah* members (Christians) withdrew after one of their number was shot dead, without mentioning whether there were any *kelompok putih* (Muslim) casualties.<sup>34</sup>

After these attacks, the next clear record of Tibo's whereabouts places him at two peace meetings in early June, held on consecutive days as the violence of the third period began to wane.<sup>35</sup> Both the Deputy Head of Central Sulawesi Police and the newly appointed Poso Police Chief, Superintendent Djasman Baso Opu, were present at each meeting, but no attempt was made to take Tibo into custody.<sup>36</sup> His presence at the first meeting in particular, where he appeared as a representative of the *kelompok merah* and shook hands with several Muslim men, strengthens the picture that Tibo was more than an ordinary combatant.<sup>37</sup>

After these meetings, by which time the Tagolu command post had been disbanded, Tibo's interrogation depositions suggest that he spent two nights in Kuku village, south of Tagolu, and a week in Tentena. We know no further details of his activities prior to his arrest in Jamur Jaya village, near Beteleme, at the end of July.

The consistent impression from the available material is that Tibo was much more than a rank-and-file combatant. There are allegations that he provided training and acted as a leader in Tagolu, and he himself admits taking part in some attacks (although he does not admit to killing anyone). In his own depositions, found in his interrogation dossier, which he acknowledged as correct during the trial but later disparaged, Tibo constantly described himself as a figure of authority. In the depositions, he describes himself as leading crowds in different locations, explains tactics he instituted to fool the *kelompok merah's* adversaries into thinking they were fighting far more men than was the case, and says he negotiated with the *kelompok putih* in Walisongo to get them to lay down their weapons.

What isn't clear from this material is his exact position within the *kelompok merah* hierarchy. Tibo's own description, both in his depositions and interviews with me, depicts him having been very much ordered around by Lateka and Tungkunan rather than making decisions himself.<sup>38</sup> This accords with the perception popular even among

<sup>34</sup> Interview with Fabianus Tibo, July 28, 2003.

<sup>35</sup> The dates in different accounts of the meetings are not consistent, but these meetings took place at the end of the first week of June, most probably on June 8 and 9. However, some sources place the meetings on June 6 and 7. Tibo's attendance is not in doubt, though; he himself admits being present, and numerous other sources provide details.

<sup>36</sup> At the meeting in Tentena, a Protestant minister, Reverend Rinaldy Damanik, read out loud "Lateka's mandate"—a justification of the violence during the preceding two weeks addressed to the National Commission on Human Rights (Komnas HAM) and penned by Ir. AL Lateka, the *kelompok merah* leader who led the first foray into the city, and who was killed in fighting in Kayamanya suburb on June 2, 2000. For an account of the reading and a mostly accurate transcript of Lateka's letter, see Darwis Waru, "Memperjuangkan Amanat Lateka," *Formasi* 48, July 2000. A photocopy of Lateka's letter is in the author's possession.

<sup>37</sup> One of the Muslim men recounted that the police guarded Tibo extremely closely, but were less concerned about other Christian men present at this meeting. He expressed his displeasure at participating in the meeting, but had wanted to see what Tibo looked like. Interview, Poso, July 2003. Also see "Kelompok Merah akan Turun Poso," *Mercusuar*, June 10, 2000.

<sup>38</sup> In his depositions, Tibo named Paulus Tungkunan and another man, "Erik" (probably Erik Rombot), as the highest leaders in Tagolu, saying that he and several other men carried out their orders. Lateka was

most of his accusers—that Tibo was a field commander but by no means the highest authority within the *kelompok merah*.

### Dominggus da Silva

Before the May–June 2000 violence in Poso, Dominggus da Silva lived just across the provincial border in Soroako, in South Sulawesi, the site of the large PT Inco nickel mine. When I interviewed him in prison, Dominggus said he had been a mechanic at the mine. He had known Tibo for many years before May 2000, he said, as Dominggus frequently visited Beteleme, where Tibo lived.<sup>39</sup> He was thirty-two when the violence started in May 2000.

Many of Dominggus’s movements immediately prior to the third period of violence were similar to those of Tibo, so only the differences are described here. After being recruited by Tibo to travel to Poso in May 2000, Dominggus, like Tibo, traveled to Kelei at some point between May 14–21, probably at the beginning of that time period. Most of the information on military-style training for Christians in Kelei does not provide any indication of what role Dominggus played there, however, with the exception of the dubious testimony of the witness Anton, who testified that Dominggus taught him to kill without leaving a mark.<sup>40</sup> Dominggus then traveled with Tibo to the Santa Theresia school on May 22, was present at the school on the morning of May 23 when the third period of violence began, and, like Tibo, fled south via Tentena, only to be back in Kelei by May 24.

One deposition from a member of Tibo’s group arrested at the Santa Theresia school on May 23 suggests Dominggus was an authority figure within that group, naming Dominggus as one of three leaders of the group at that point. Whatever authority he held within the wider context of the *kelompok merah* appears to have been less than that held by Tibo, however. This is assumed because, although Dominggus was present in Kelei village on May 24 when the meeting of key *kelompok merah* personnel took place, Tibo himself asserted in interviews that Dominggus was not among the participants at the meeting.<sup>41</sup>

After the meeting, Dominggus—as did Tibo—apparently went to the Christian command post in Tagolu, where it appears he was based from May 25 until at least June 5, 2000.<sup>42</sup> Dominggus, like Tibo, featured prominently in the deposition of Ros

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primarily active elsewhere in Poso. Interviews with Fabianus Tibo, July 2003 and May 2004. Deposition of Fabianus Tibo in dossier of Fabianus Tibo, July 28, 2000.

<sup>39</sup> Interviews with Dominggus, July 28, 2003 and May 2004. The request for judicial review filed by the men’s third defense team says Dominggus was a public transport driver in Beteleme. See Tim Pembela Padma Indonesia, *Memori Peninjauan Kembali*, February 2006, p. 6.

<sup>40</sup> This contrasts with Anton’s interrogation deposition, where he says Dominggus taught fighting with knives.

<sup>41</sup> In his interrogation dossier, Dominggus says only that he stayed at the house of Bram Parimo in Kelei. Bram was the son of A. L. Lateka’s son-in-law, Herman Parimo, who died in custody shortly before the third period of violence. Source: deposition of Dominggus da Silva in dossier of Dominggus da Silva, August 1, 2000, p. 4.

<sup>42</sup> Dominggus says in his deposition as a witness in Tibo’s dossier that he went to Tagolu later than Tibo and Marinus, on May 26. If true, this conflicts with a possible sighting of him near Tagolu on the night of May 25 (see below).

Kristina, the Christian woman whose deposition was read at the trial. As noted earlier, her deposition said Tibo would pass Muslim captives to Dominggus to be “secured” (murdered). Her deposition, while not based on firsthand evidence, said Dominggus participated directly in these murders, a conclusion based on his reports to Tibo. Kristina’s deposition also noted that, when the posko was disbanded, Dominggus took her by car to Tentena, stopping at each village along the road and telling them to man their guard posts, as well as introducing her as his aide.

One of the same captives who testified about Tibo’s involvement also testified regarding Dominggus’s activities, although (as with Tibo) in substantially less detail than Kristina’s deposition. The captive, Taiyeb Lamelo, said that, after being captured in his home village, he was taken north to Tagolu, Sangira. Dominggus was in the car, and they stopped along the way to burn corpses that had been dumped in a ditch.<sup>43</sup> In his trial testimony, Dominggus admitted being in the vehicle, but provided a different version of events. According to Dominggus, the *kelompok merah* in Lamelo’s village were going to assault him, and Dominggus saved Lamelo; as for the bodies, others had already burned them before the men passed by in the car, he said.<sup>44</sup>

Outside of the report noting Dominggus’s presence at the command post, the earliest mention of Dominggus in Poso after his arrival in Tagolu places him there on the night of May 25. A press interview with a survivor of the Walisongo massacre placed Dominggus at the Walisongo Islamic boarding school that night, three days before the massacre there. At the time, Christians and Muslims at the school negotiated a short-lived agreement that the school would not be attacked if they took down a two-wave radio (HT) antenna. The interviewee said that one of the men negotiating for the Christians identified himself as Dominikus D, an apparent reference to Dominggus.<sup>45</sup>

A policeman who was also present at Walisongo that night testified during the trial that Dominggus appropriated his truck the next day, May 26, in front of the Lage police station in Tagolu, purportedly to transport IDPs. Appropriating a police truck seems beyond the authority of a mere rank-and-file combatant. The policeman also said that he had seen Dominggus shouting instructions to subordinates.<sup>46</sup>

After this, in one of the initial depositions in his interrogation dossier, Dominggus admits to leading an attack on Sayo village, just north of Tagolu, in which ten houses were burned, one by Dominggus himself.<sup>47</sup> This account probably refers to an attack on May 27.<sup>48</sup> No *kelompok putih* members were killed during this attack, he said, but one Christian died.<sup>49</sup>

<sup>43</sup> Record of Testimony of Taiyeb Lamelo, *Tibo Decision*, pp. 43–44.

<sup>44</sup> Record of testimony of Dominggus da Silva, *Tibo Decision*, p. 52.

<sup>45</sup> Recording of Darwis Waru interview with Il, made available to the author.

<sup>46</sup> The policeman said Dominggus took the truck on threat of force; Dominggus said the policeman allowed him use of the truck only after Dominggus gave the policeman Rp50,000 for diesel fuel. A comparison with Dominggus’s interrogation depositions suggests he may have used the truck in Silanca. Interview with Dominggus da Silva, July 28, 2003. Record of testimony of Moh Najib, *Tibo Decision*, pp. 36–37.

<sup>47</sup> In a later interrogation session Dominggus said he did not know who led the attack.

<sup>48</sup> Or May 28. Dominggus said during his interrogation (according to the dossier) that this was on June 1, but there is reason to believe he was mistaken. For instance, during the trial he responded to the testimony

It is not clear whether Dominggus was present at the Walisongo attack on May 28. In his interrogation dossier and interviews he denies being there, saying he was in Sayo when it took place, and the record of his testimony in the defense plea contains no admission of his presence. But the records of the same testimony in the prosecution's sentencing request and in the judgment says he admitted being present when the Al-Hijrah mosque (the mosque at Walisongo) was attacked. A survivor of the attack also testified that Dominggus led the attack, although inconsistencies between this witness's two interrogation depositions place doubt on this testimony.<sup>50</sup>

The next clear account of Dominggus's whereabouts is provided by the testimony of two women held prisoner in Tambaro village after the Walisongo attack, who stated during the trial that Dominggus sexually assaulted them there on the night of June 1.<sup>51</sup> The women testified that Dominggus ordered them to strip naked and then inspected their vaginas to check to see if they were wearing magic amulets.<sup>52</sup> Dominggus denied taking part in sexual assaults but did admit his presence in the village. His testimony in his defense on this point actually adds to the impression that he held authority within the *kelompok merah*. His explanation was that he had stopped off in Tambaro that night for only ten minutes, just after 11:00 PM, to see if there were women from Lamasi village there. Before that evening, Dominggus said, he had saved four Muslim men from Lamasi who were being held captive in a truck by seven *kelompok merah* members who planned to murder the Muslims. Dominggus took them off the truck, and sent them to safety at the military company headquarters. Following this event, Dominggus said he traveled to Tambaro, where the men's wives were being held, because he wanted to tell the women that he had saved their husbands from being executed.<sup>53</sup> If true, his account of himself as being able to intervene to take captives away from other *kelompok merah* members, even when they were intent on killing them, suggests he held more authority than just a rank-and-file combatant.

After June 1, there are fewer specific details of Dominggus's whereabouts. A statement he made long after his trial indicates he was in Tambaro village on June 5, which, because of its proximity, suggests he was staying in Tagolu.<sup>54</sup> Thereafter, the

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of Sutarmin, who claimed that Dominggus led the attack on Walisongo, by saying he was in Sayo that morning. See *Tibo Decision*, p. 29.

<sup>49</sup> Interrogation deposition of Dominggus da Silva, August 1, 2000, p. 4. In the same deposition, Dominggus also denies involvement in attacks on four other villages.

<sup>50</sup> Questioned on June 10, 2000, before the arrest of Tibo, Dominggus, and Marinus, Sutarmin did not identify any of the *kelompok merah* attackers and said they wore masks. When police questioned him again after the three men's arrest, they showed him a photograph of the three in the newspaper and asked him whether he knew the three men. He said they were the "perpetrators of murders" in Sintuwulemba on May 28, but the manner of their identification—from a newspaper image rather than from a set of photos—casts doubt on its validity. He also made detailed claims about the role of Tibo and Marinus in his second deposition, which he does not appear to have repeated during the trial. See deposition of Sutarmin in the dossier of Fabianus Tibo, June 10, 2000 and August 20, 2000.

<sup>51</sup> Interrogation deposition of Dominggus da Silva, August 2, 2000, in dossier of Dominggus da Silva.

<sup>52</sup> Record of testimony of Siti Munawarah and Sufiah Siswandi, *Tibo Decision*, pp. 42–45.

<sup>53</sup> He said he had put them on an IDP truck leaving for the military company headquarters in the city suburb of Kawua. Interrogation deposition of Dominggus da Silva, August 2, 2000, pp. 2–3.

<sup>54</sup> Dominggus's statement, signed by Tibo, described him apprehending a Christian man, Herry Mangkawa, who the statement said had obstructed a *kelompok merah* attack on May 31, 2000. The statement was part of an appeal by Mangkawa against a twelve-year sentence for taking prisoners on May 31 and by

next mention of Dominggus's presence is at the peace meeting in Tentena on June 9 (described earlier). This in turn is the last detail describing his whereabouts prior to his arrest in early August 2000.

The impression from this material is that Dominggus, like Tibo, was a figure of authority within the *kelompok merah*. It is clear even from his own account that he took part in at least some attacks and was probably in Kelei when *kelompok merah* training took place. His dealings with police—both the appropriation of the truck and a comment during interviews with me that he had tried to call the Poso police chief repeatedly to demand that he send police to deal with crowds—also seem to show that he had authority beyond that of an ordinary combatant.<sup>55</sup> His precise role, though, appears to have differed from that of Tibo's, as his authority seems to have been less.

### Marinus Riwu

Marinus was born in NTT province's capital city, Kupang, on the west coast of West Timor. He was also a long term migrant to Sulawesi, and said he had known Tibo since buying a generator from him shortly after Marinus arrived in Sulawesi.<sup>56</sup> He was forty-two when the violence started in May 2000.

We have a much less clear picture of the status and movements of Marinus during the third period of violence than we do of the other two men. The case presented against him in the trial was weak, and he is mentioned less often in depositions. An unreliable witness testified that Marinus trained other Christians in the use of arrows,<sup>57</sup> and Ros Kristina's deposition mentions him as Dominggus's accomplice at the Tagolu command post. But apart from that, he was hardly mentioned.

Nevertheless, it is clear that Marinus followed a path similar to that of Tibo and Dominggus prior to the third period and during the early moments of the May–June violence. It was in Marinus's village, Malores, that Tibo says he began to gather a group to go to Poso, and Marinus was one of those to go along. Like the other two men, Marinus stopped in Kelei on the way to Poso, arrived at the Santa Theresia school on May 22, fled when it was burned down on May 23, and then made his way via Tentena to be back in Kelei on May 24.

Marinus claimed both in his deposition and in interviews with me that he took part in only one clash after May 24, in Sepe village near Tagolu (probably on May 25). Even then, Marinus said, he developed cramps in his leg on the way to the attack. Because of

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so doing contributing to their death. *Kesaksian* (testimony), handwritten statement signed by Fabianus Tibo and Dominggus da Silva, dated September 26, 2002.

<sup>55</sup> Interviews with Dominggus, July 2003 and May 2004; and record of testimony of Muh Najib, in *Tibo Decision*, pp. 36–37.

<sup>56</sup> He says he met Dominggus only when they arrived at the school in Moengko, as the two of them had come to Poso in different vehicles. Interview with Marinus, July 29, 2003.

<sup>57</sup> This claim was corroborated by two depositions of members of Tibo's group arrested at the very beginning of the May–June 2000 violence. Their depositions, however, were not read out at the trial.

his condition, he said, he turned around and returned to his village, Malores, in Morowali district, and did not come back to Poso until after his arrest.<sup>58</sup>

Despite his claim, it is more probable that he was based at the command post in Tagolu for most of the May–June 2000 violence, as various pieces of information contradict his claim to have left Poso on May 25. Tibo stated in a deposition that Marinus took part in the May–June attack on Moengko, which would have been days after Marinus claimed he went back to Malores.<sup>59</sup> Asked about this contradiction during an interrogation session in which he was “confronted” with Tibo’s claim, Marinus admitted that he took part in this later attack.<sup>60</sup> In addition, in one of the few mentions during the trial of Marinus’s whereabouts, two witnesses testified that Marinus was still in Poso after May 25. The two women who testified that Dominggus had sexually assaulted them also claimed that Marinus was present in Tambaro village, which would place him there on June 1.<sup>61</sup> Another witness, Mahfud Rosid, who was held captive in Tagolu during the third phase, testified that all three defendants were present in Tagolu while Rosid was there, although the record of his testimony does not give a date. Finally, Ros Kristina’s deposition also mentions Marinus as present in Tagolu, and describes him as being an accomplice along with Dominggus and Tibo in the murder of prisoners.

A final mention of Marinus came from the deposition of Apson Parera Patras, who stated Marinus had led an arson attack on Toinasa village on June 16, 2000.<sup>62</sup> Although the prosecution included this detail in its indictment, it did not present Patras as a witness during the trial, nor does it appear to have produced any other evidence to support this charge.

It is clear that Marinus was involved in the May–June 2000 violence and that he probably provided some degree of training in Kelei, but beyond this we have little basis on which to gauge his exact role. To the extent that he may have held authority, it appears to have been less than that of Tibo and Dominggus. The three men were actually directly questioned on their relative authority during a “confrontation” interrogation (when each is asked to answer the same question in turn in each other’s presence). Asked which of the three was regarded as the more senior (*dituakan*) in their group, each gave the facetious answer that Tibo was clearly the oldest, relying on a play on Indonesian words to misinterpret the question.<sup>63</sup>

<sup>58</sup> Interview with Marinus Riwu, July 29, 2003. A substantially similar account appears in his interrogation dossier, see deposition of Marinus Riwu in dossier of Marinus Riwu, August 1, 2000, pp. 3–4.

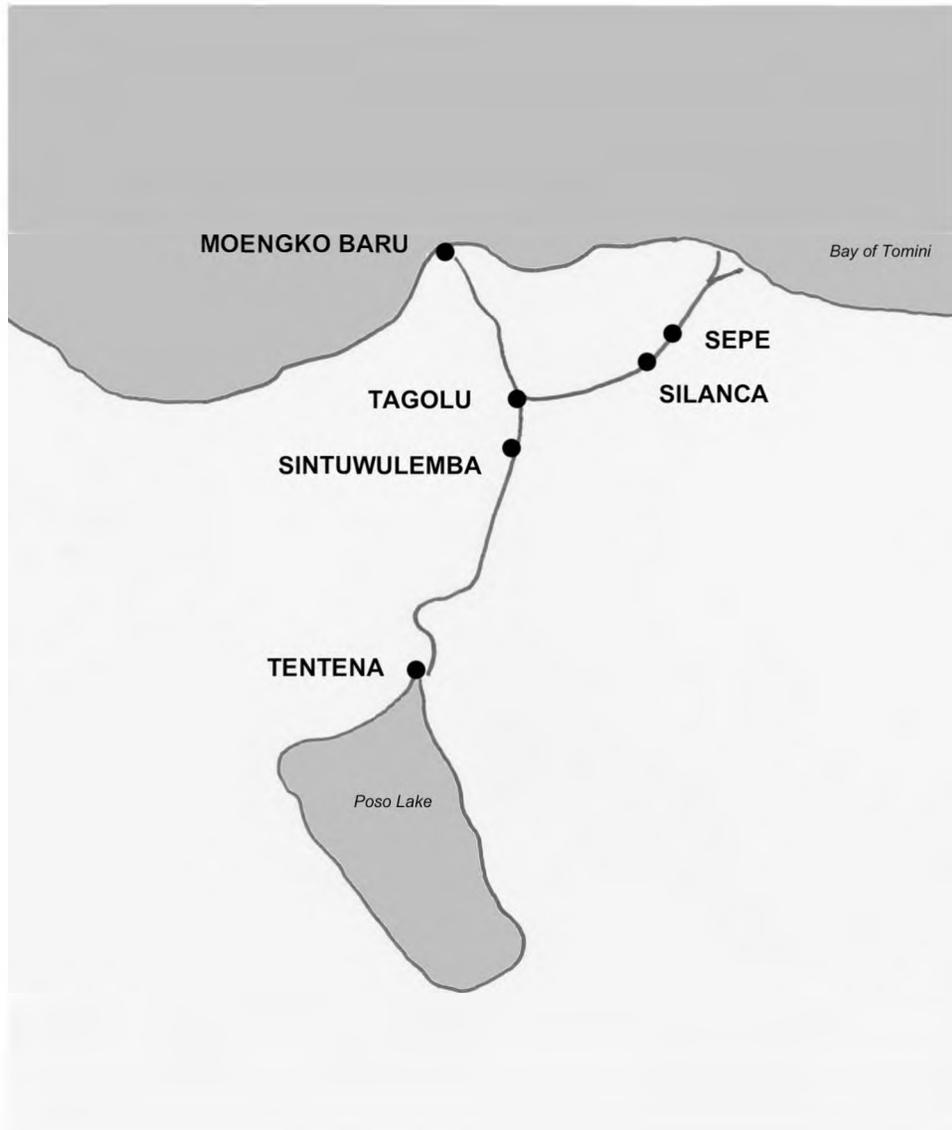
<sup>59</sup> See deposition of Fabianus Tibo in dossier of Fabianus Tibo, July 28, 2000, p. 7.

<sup>60</sup> In answer to the police question of whether it was true that Marinus had taken part in an attack in which fifteen houses were burned, Tibo answers that he and Marinus had taken part in an attack, but that he did not know who had burned houses. Marinus then answers that he and Tibo took part in an attack and burned houses at the time. No specific details of date or location are provided, but examination of Tibo’s deposition in Marinus’s dossier makes it clear that the question could only refer to the Moengko attack. See Berita Acara Konfrontasi in dossier of Marinus Riwu, October 6, 2000, p. 2; and deposition of Fabianus Tibo in dossier of Marinus Riwu, August 10, 2000.

<sup>61</sup> Record of testimony of Sufiah Siswandi, Siti Munawarah, *Tibo Decision*, pp. 42–43, 44–45.

<sup>62</sup> Deposition of Apson Parera Patras, in dossier of Marinus Riwu, August 17, 2000, p. 2.

<sup>63</sup> Berita Acara Konfrontasi in dossier of Marinus Riwu, October 6, 2000.



**Key Locations: The Tibo, Dominggus, and Marinus indictment**

### **The Trial**

The trial of Tibo, Dominggus, and Marinus commenced at the Palu District Court on December 11, 2000.<sup>64</sup> In accordance with Indonesia's civil-law system, a three-judge panel presided over the case, chaired by Soedarmo, a Muslim, with one Muslim and a Christian (Protestant) as the other panel members.<sup>65</sup> The trial was held in Palu because of continuing instability in Poso. Even in Palu, angry crowds gathered outside the court for each session and sometimes threw rocks at the courthouse, although the

<sup>64</sup> A much shorter, early account of the trial published six months after its conclusion is provided in Aragon, "Communal Violence in Poso," but it reflects the inaccuracies of media reporting at the time.

<sup>65</sup> The judges were Soedarmo, Ach Fauzi (both Muslim), and Ferdinandus.

disturbances did not escalate into a more serious disruption of the trial. Each of the trial's sixteen sessions over the course of almost four months was also subject to extensive media coverage, indicative of the intense public interest.<sup>66</sup>

The prosecution presented nineteen witnesses, read the interrogation depositions of seven others, and submitted sixteen pieces of physical evidence. Of the nineteen witnesses who appeared, seven were Muslims who escaped the May 28, 2000, attack at Walisongo, or who suffered sexual assault shortly thereafter; five were members of the security forces (four police and a military intelligence officer); two were members of a team that evacuated corpses after the May–June 2000 violence; two had been held captive by the *kelompok merah* during the riot; one was a member of the *kelompok merah*; one claimed to have infiltrated the *kelompok merah*; and the final prosecution witness was the Poso district head (*bupati*).

In Indonesian criminal trials, defendants take the stand themselves after the prosecution has presented all of its witnesses. The defense then has the opportunity to present its own witnesses. In this trial, there were three defense witnesses: two members of the Central Sulawesi Christian church and a teacher from the Santa Theresia school.<sup>67</sup>

Once all the testimony has been entered, the prosecution submits a sentencing request. This is followed by the defense plea, after which each party makes its concluding statements. The following section provides a summary and commentary on the arguments presented at trial, based primarily on the written record.

### **Trial Testimony, Sentencing Request, and the Defense**

No witnesses actually saw the men commit murder; as such, the charge of murder came to rest on the allegation that Tibo, Dominggus, and Marinus incited or ordered others to commit violence. Testimony about the men's authority and positions within the *kelompok merah* therefore became integral to the prosecution's case. As outlined above, several witnesses gave testimony that shed some light on the men's authority, but the judgment suggests that the key prosecution witness was Anton (an alias), a Muslim man who claimed to have infiltrated *kelompok merah* training in Kelei village prior to the third period.<sup>68</sup> He testified in detail regarding a timetable for the training and said Marinus taught fighters how to use arrows, Dominggus taught to kill without leaving a mark, and Tibo gave instructions and doctrinal explanations at night regarding the coming attacks on Poso. He also said each man led his own group of fighters: Tibo, armed with an M16 rifle, led the hundred-strong Bat Force (*Pasukan*

<sup>66</sup> The print media went to unusual lengths to publish anything about Tibo, including two "imaginary interviews" that melded distorted quotes from his police interrogation depositions. A Palu journalist remarked that, for a time, any mention of Tibo was guaranteed to sell newspapers (private correspondence with Palu journalist, January 2002). For imaginary interviews, see "Saya pimpin seratus orang," *Formasi* 54, October 2000; and "Saya pimpin penyerangan ke Sayo," *Formasi* 55, November 2000.

<sup>67</sup> The GKST members were Rinaldy Damanik and Misdianto Posende; the teacher was Yosefina. It is not uncommon in Indonesian trials for the defense to call few or no witnesses. When interviewed nine months after the trial's conclusion, however, one of the defense lawyers lamented the unwillingness of Poso's indigenous Protestants to come forward. Interview with defense lawyer, January 2002.

<sup>68</sup> The question of Anton's credibility is discussed in a subsequent section on the fairness of the trial.

*Kelelawar*); Dominggus, armed with a pistol, led the three hundred-strong Tiger Force (*Pasukan Macan*), while Marinus led a force armed with arrows.<sup>69</sup>

To corroborate Anton's account, the prosecution read out the deposition of Junior Bobi Tingginehe, a Protestant originally from the Sanger Talaud archipelago in North Sulawesi. Police questioned him on the same day they questioned Anton, in November 2000.<sup>70</sup> Tingginehe's deposition also contained the statement that Tibo led the training in Kelei and gave the instruction that "*kelompok putih* must be killed" if they stood in the way of the *kelompok merah*. He also said Marinus provided some training, but did not mention Dominggus. Where Anton claimed the training went on for forty-two days, however, Tingginehe said it took place only from May 12–21, and he does not mention seeing factory-standard weapons.<sup>71</sup>

Given the importance of Tingginehe's deposition, particularly as it relates directly to Anton's testimony, it is curious that the prosecution did not present him in person as a witness during the trial. Admittedly, under the Indonesian criminal procedural code, if there is a valid obstacle to the witness attending the trial, their sworn deposition may be read out in the trial and has the same evidentiary status as witness testimony.<sup>72</sup> But reading out a sworn deposition is clearly not the same as questioning a witness in person, as there is no opportunity to clarify that person's answers or ask additional questions. The wording of the criminal procedural code anticipates that distance may be one obstacle to a witness attending the trial; this was not an obstacle in Tingginehe's case, as he appears to have been in custody in Palu at the time of the trial.

The same can be said of the decision to read out Ros Kristina's deposition, described at some length earlier, rather than presenting her as a witness. This use of written depositions rather than witness testimony was one point the three men's lawyers raised in their defense plea.

If it is curious that the prosecution read out Tingginehe's and Kristina's depositions, it is more puzzling that they did *not* read out the two depositions of Leonardus Lewa and Rafael Sina, the members of Tibo's group arrested on May 23, just after Tibo, Dominggus, and Marinus fled the Santa Theresia school. Those depositions contained the earliest information on training obtained by the interrogators, and was obtained within ten days of the period during which it was alleged training had occurred. Because they did not read out the depositions or call the men as witnesses, the prosecutors did not enter their information as testimony.

In the opinion of the judges, the defendants' depositions contained important evidence in support of a conviction. These are mentioned specifically in the judgment along with Anton's testimony; no other witnesses or depositions are specifically mentioned. It is not uncommon for defendants to claim during the trial that information in their dossiers should be inadmissible, on the basis that they were forced during interrogation to confess. When they were asked during their trial whether their

<sup>69</sup> Record of testimony of Anton in *Tibo Decision*, p. 40.

<sup>70</sup> Tingginehe was himself sentenced to six years in prison for kicking two Muslim men who were fatally lynched by a crowd in front of the BRI bank in Tentena. See "Pembunuh di Tentena Divonis Tujuh Tahun," *Mercusuar*, date not recorded.

<sup>71</sup> Interrogation deposition of Junior Bobi Tingginehe, in dossier of Fabianus Tibo, November 4, 2000.

<sup>72</sup> Article 162, Criminal Procedural Code.

depositions were correct, the Palu District Court judgment indicates that Tibo, Dominggus, and Marinus acknowledged their depositions' veracity. In Tibo's case in particular, this is a strange detail, given his subsequent denial of involvement in the May–June 2000 violence, as the material in his interrogation depositions is at least as incriminating as the witness testimony given during the trial.<sup>73</sup> Tibo later said in interviews that the information in the deposition was "somewhat different" from what he had told interrogators. In contrast, Dominggus actively encouraged me to obtain a copy of his deposition, while Marinus said the information in his was "very light" (that is, not incriminating).<sup>74</sup>

The previous section outlined the different roles that Tibo, Dominggus, and Marinus appeared to play. In its indictment in particular, but also in the sentencing request, the prosecution often made little differentiation regarding the disparate roles of the three men, frequently referring to them collectively as "the defendants" or "the defendants and other *kelompok merah* members." The most explicit differentiation the prosecution made of the alleged role of each defendant in the May–June 2000 violence was provided in their sentencing request:

"Tibo was the leader who determined the movements of the *kelompok merah* or at least was an individual held in esteem within the *kelompok merah* during the period of their attacks on Muslims..."

"Dominggus with his fearsome looks was the Field Commander who appeared cruel and fierce in attacking and murdering Muslims."

"Marinus was directly involved in the murder of Muslims; planning in Melores [sic], Kelei, and Tagolu; and attacks in Poso."<sup>75</sup>

The prosecutors also made no differentiation among the men regarding the punishment sought for the alleged crimes, seeking the death penalty for each of the men. They noted Tibo had been sentenced previously to six years imprisonment in an earlier case, and that the defendants acted sadistically in causing the death of many people, thereby causing misery for their victims' widows and children, as well as giving rise to the threat of national disintegration. The prosecution found no mitigating factors.<sup>76</sup> For its part, the defense asked that the men be acquitted, but noted that if the judges felt the men were guilty, the court might consider (the defense's contention)

<sup>73</sup> *Tibo Decision*, p. 63. The most incriminating testimony is answer ninety-seven (and to a lesser extent ninety-six) of Tibo's deposition on July 31, 2000. In it, he says that, although he left Walisongo before anything happened, it was his "crowd" (*massa*) that perpetrated the murders and arson and that "...although I had left the scene; but on my order the red crowd did whatever I wanted." This testimony, given in the final of four interrogation sessions in July 2000, contradicts answer fifty-six in Tibo's third interrogation session, where he says he did not know whether or not murders had taken place at Walisongo. Between the third and the fourth sessions, the interrogator was changed.

<sup>74</sup> Interviews with Dominggus da Silva, July 28, 2003, and Marinus Riwu, July 29, 2003.

<sup>75</sup> *Kejaksanaan Negeri Poso, Surat Tuntutan Pidana Terdakwa Febianus [sic] Tibo, Dominggus da Silva, Marinus Riwu* (hereafter *Tibo Sentencing Request*), March 15, 2001, p. 61. The men's lawyers challenged this characterization in their defense plea, saying that the prosecution's identification of Tibo, Dominggus, and Marinus as leaders of the *kelompok merah* was not consistent with the characterization of the *kelompok merah* in other trials. In support of their objection, the defense cited nineteen other indictments relating to the May–June 2000 violence in which prosecutors had not mentioned the three men as leaders, and claimed that in two of them, prosecutors had named two other men—Lateka and Ngkai Da'a—as leaders.

<sup>76</sup> *Tibo Sentencing Request*, March 15, 2001, p. 68.

that the men had been trapped into their actions by provocateurs and had been motivated by the noble intention to save the Santa Theresia church from rioters.<sup>77</sup>

In addition to the formal defense, toward the end of the trial the three men also submitted a list of sixteen Protestant men to the court, whom Tibo, Dominggus, and Marinus claimed were most responsible for the conflict in Poso. The first name on the list was Paulus Tungkanan, the retired military officer who Tibo alleges ordered various attacks in the May–June 2000 violence. The judges reproduced the list in their judgment, thereby making it public. Since the sixteen men were named in court, their arrest and investigation have been consistently demanded by Muslim groups in Poso who see the lack of prosecutions against the sixteen men as symbolic of injustice.<sup>78</sup> In any event, the naming of the men did not assist the defense—in their judgment, the judges dismissed the issue by saying that it was not within their authority to order that the men be arrested and questioned. Naming names did have the effect of shifting public attention away from the three defendants, however. After the judgment was read out in the trial, the crowd waiting outside the court immediately moved off to the Palu house of Yahya Patiro, a former senior civil servant from Poso whose name was on the list.<sup>79</sup>

### The Judgment

On April 5, 2001, the panel of judges presiding over the trial pronounced Tibo, Dominggus, and Marinus guilty of all three charges and sentenced them to death. The judges found that although it had not been proven that the three men themselves committed the offences, they had incited others to do so, which they ruled to be equivalent under Article 55 of the Indonesian Criminal Code.<sup>80</sup> The judges made the following statement on this point:

The above discussion and the defendants' interrogation depositions in particular provide an indication [*petunjuk*] that the defendants were among the leaders of the *kelompok merah* who had provided thoughts/ideas to their subordinates to perpetrate the attacks/rioting that took place between the *kelompok merah* and *kelompok putih*, see Anton's testimony, and this caused the deaths of a number of people whose bodies were found in several locations.<sup>81</sup>

<sup>77</sup> See *Pembelaan dalam Perkara Pidana No. 459/PID.B/2000/PN.PALU* (hereafter *Tibo Defense Plea*), pp. 113–114.

<sup>78</sup> The idea that the men were all involved in the conflict is now ingrained, but its accuracy is not beyond question. Some of the names were supplied to the three defendants by a fellow prisoner; exactly who is included on the list has changed over time and, by 2006, police had narrowed the list down to ten men.

<sup>79</sup> Patiro was forced to leave Poso after the first period of violence there in December 1998, as a result of popular allegations that he was implicated in organizing the violence. "Tibo Cs Divonis Hukuman Mati," *Mercusuar*, April 6, 2001.

<sup>80</sup> The men's defense lawyers protested this point in their appeal to the Supreme Court, arguing that the indictment had listed only one sub-clause of Article 55 (Article 55 (1) 1), whereas the judgment appeared to also introduce Article 55 (1) 2. The Supreme Court refused to consider this objection specifically, saying the reasoning in the lower courts' judgments was correct and that the Supreme Court could not consider objections to these courts' judgments regarding proof. See Mahkamah Agung RI, *Putusan Nomor: 1225 K/Pid/2001*, October 11, 2001, pp. 44, 72–75, 81.

<sup>81</sup> *Tibo Decision*, pp. 63, 69.

As evidence of the men's guilt for the primary charge of murder, the judges go on to mention that the three defendants acknowledged the veracity of their police interrogation depositions during the trial, in contrast to what the judges characterized as their otherwise evasive testimony. The judges, however, do not state which specific parts of the depositions or Anton's testimony support the murder conviction.

The judgment does not always make clear what items of evidence supported each conviction or how the judges concluded that the men were guilty of each charge. Indeed, although the judgment ran to eighty-two pages, it contained little reasoning: the first fifty-eight pages simply list the details of the men's arrest and detention and reproduce material presented during the trial. This is typical of most district court judgments, however.

Some of the reasoning in the judgment is also shallow. A particular example is the discussion of religious grounds for imposing the death penalty, part of a five-page section in the judgment on whether the death penalty is appropriate for the case. The judges first say that the Qur'an states that punishment must be in equal measure to the deed, that the punishment for intentional murder must be death, and that the punishment of indirect perpetrators of a crime should be the same as for direct perpetrators. No specific Qur'anic reference or religious scholar is cited to support these statements, but the judges note that these principles of punishment accord with the Indonesian justice system and the legal theory of *Yus talionis* (retributive justice).<sup>82</sup> Proceeding to Christian concepts of punishment, the judges invoke the Ten Commandments, erroneously stating that two of the commandments are to "love your fellow man" and "punishment in equal measure for evil deeds for fellow men."<sup>83</sup> They finally note that Christianity teaches "Man shall surely reap what he sows," again with no reference to the verse of the Bible. Elsewhere, they say the death penalty has the intention of "preventing other people from perpetrating the same acts as the condemned." Finally, in very similar terms to the prosecutors, the judges noted the cruel nature of the defendants' acts and the number of people killed during the third period, the men's lack of remorse, and the damage to religious harmony as among the aggravating factors in sentencing.<sup>84</sup>

Each of the men appealed the sentence, but their appeals failed at every level of the criminal justice system.<sup>85</sup> Their appeal to the Central Sulawesi High Court was rejected on May 17, 2001, and the Supreme Court rejected their second appeal on October 11, 2001. Their judicial review request was rejected in February 2004, but this wasn't publicly announced until some months later.<sup>86</sup> After this, the men employed a new defense team—the Team of Human Rights Defenders (TP-HAM), comprising lawyers

<sup>82</sup> *Tibo Decision*, p. 75.

<sup>83</sup> The other commandment the judges cited, "Thou shalt not murder," is correct. See *Tibo Decision*, p. 75, cf Deuteronomy 5: 4–18 and Exodus 20: 1–17.

<sup>84</sup> *Tibo Decision*, pp. 76–79.

<sup>85</sup> The Indonesian legal system has two levels of appeals courts. The defendant (or prosecutors) first lodge an appeal (*banding*) with the provincial high court, and then can appeal (*kasasi*) the high court's decision to the Indonesian Supreme Court. If still found guilty, the defendant may request a judicial review of his sentence (*peninjauan kembali*) by the Supreme Court based on new circumstances, a contradiction between the factual bases of verdicts of two or more cases, or a mistake on the part of the judges.

<sup>86</sup> The men were informed of the result of their appeal for judicial review on November 27, 2004. See "Nasib Tibo Cs di Tangan Presiden," *Radar Sulteng*, November 29, 2004, p. 1.

and activists from Tentena, Palu, and Jakarta—to draft a plea for clemency to the president of Indonesia. The plea acknowledged that Tibo, Dominggus, and Marinus had broken the law and must be punished, but challenged the validity of the death penalty in the Indonesian justice system and said the uniquely severe punishment was inconsistent with the policy of equal treatment. The plea also claimed that the circumstances of the conflict ameliorated some of their personal responsibility and challenged the fairness of the district court trial.<sup>87</sup> When Indonesian President Susilo Bambang Yudhoyono rejected this plea on November 10, 2005, all formal avenues of appeal were exhausted.<sup>88</sup>

### Objections to the Trial

Before discussing how particular deficiencies in the investigation and trial have been repeated in subsequent cases in Poso, it is necessary to pause to consider the fairness of the trial in its own right. This is not a separate issue to the impact of the trial on stemming violence, because doubts over the trial's fairness meant that the proceedings could not serve as a clear record of the men's involvement in violence when the case became controversial. Claims of an unfair trial may be unavoidable in a conflict setting, what with the highly polarized versions that emerge of what violence took place. But the Tibo trial exacerbated this inherent difficulty because aspects of its conduct provided needless evidence for claims of unfairness. In particular, the unique severity of the punishment handed down to the three men led to suggestions that this sentence was the result of religious discrimination.

The three men themselves always questioned the fairness of the proceedings, dwelling in particular on the influence they believed the presence of angry crowds at the court had on the conduct of the trial. It is true that holding the trial in majority Muslim Palu, at a time when many Muslim IDPs had fled to the city from Poso, meant that the trial was held in an atmosphere that was hostile to the defendants. It should be noted, however, that this is not unique in Indonesia or even in Palu. Also, the presence of crowds at the trial does not in itself make the proceedings unfair if there is no evidence that their presence influenced those involved.<sup>89</sup>

Even disregarding the presence of crowds, some aspects of the trial's conduct were certainly not in accordance with proper procedure. One example, involving a failure on the part of the judges to control the courtroom, involved a witness being able to slap the three defendants on the face before giving her testimony. The husband of the witness in question had been murdered during the third period of violence, and the

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<sup>87</sup> TP-HAM, *Pengampunan Menuju Rekonsiliasi Sejati*, April 13, 2005.

<sup>88</sup> Nevertheless, a new defense team calling itself Padma Indonesia succeeded in lodging a second request for judicial review. Two hearings were held by the Palu District Court for the defense team to submit its new evidence. The Supreme Court rejected this appeal, however. It reiterated that no second judicial review was allowable under Indonesian law, but in an apparent concession to the sensitive nature of the case, still examined the request and declared it to have no substance. See "MA Tolak PK Kedua Tibo Dkk," *Kompas*, May 10, 2006.

<sup>89</sup> To provide a recent example, the trial of Morowali district head Andi Muhammad on charges of corruption also took place in 2006 while protests were held outside the court.

witness herself testified that she had been sexually assaulted by Dominggus during the May–June 2000 violence.<sup>90</sup>

Another aspect of the judges' behavior during the trial led Tibo's lawyers and some other observers to believe that the judges had decided on guilt before the trial's conclusion. Namely, one of the judges commented during the trial that the witnesses the defense had presented were further incriminating the defendants, not assisting in their defense.<sup>91</sup> Such suspicions were also fueled by the omission from the judgment of any mention of the testimony of the three defense witnesses. But neither detail is conclusive proof of bias. It is not clear why the judges did not include a record of the defense witnesses' testimony in the judgment. They are not required by law to do so, and the varied structure of different district court judgments, often poorly assembled, makes it more difficult to draw conclusions from this omission.<sup>92</sup> Nevertheless, given the circumstances of the trial, it showed poor judgment not to at least record the defense witnesses' testimony.

The most serious question regarding the fairness of the trial, though, arises from the testimony of one key prosecution witness: Anton, the young Muslim man who claimed to have infiltrated *kelompok merah* training in Kelei. Both the centrality of his testimony to the murder conviction and the problems with it are reflected in the attention paid to Anton in the appeals filed by the lawyers for the three men—seven out of thirty-two pages in the appeal to the Supreme Court are devoted to rebutting Anton's testimony and questioning his credibility. Several inconsistencies and implausible claims in Anton's testimony place heavy doubt on his credibility as a witness:

- He testified regarding a far greater degree of training for *kelompok merah* members than anything described in other depositions. Moreover, while Anton's account of *kelompok merah* training is extremely detailed, it is also incomplete on some key details—for example, on how, as a Muslim, he was able to infiltrate the training. His claim that he attended forty-two days of training also makes his testimony inconsistent with the chronology of the conflict, as the training has to fit in the gap between the second and third periods of violence.
- He testified that 727 factory-standard weapons were airlifted to Kelei for use by the *kelompok merah*. No sign of the weapons was ever found, and the judges acknowledged that this aspect of Anton's testimony was not supported by any other evidence. They also noted, though, that his testimony regarding weapons was not central to the murder charge, and they did not consider his implausible claim about the guns to cast doubts on his testimony regarding training.<sup>93</sup>

<sup>90</sup> "Tibo Cs Ditampar di Ruang Sidang," *Mercusuar*, February 6, 2001.

<sup>91</sup> "Bofo: Tidak Sependapat Dengan Pernyataan Hakim," *Nuansa Pos*, date not recorded.

<sup>92</sup> In any case, the records of the testimony of the three defense witnesses in the defense plea do not conclusively show that the testimony of the witnesses would have been relevant to either adjudication on guilt or sentencing of the men. The testimony of one of the witnesses, Yosefina, was confined to describing the men's presence at the Santa Theresia school. The two GKST members testified mainly that A. L. Lateka, himself killed during the third phase, was the leader of the *kelompok merah*. See *Tibo Defense Plea*, pp. 135–139.

<sup>93</sup> *Tibo Decision*, p. 70.

- Despite the high profile of the investigation into Tibo's activities, Anton did not come forward as a witness until early November 2000, more than three months after Tibo, Dominggus, and Marinus were arrested. Anton's deposition was one of the last two included in the dossier, and by the time Anton was questioned, the media had reported extensively on the three men's case and the details of the May–June 2000 violence.

In addition to the process by which the court arrived at its guilty verdict, the unique severity of the sentences against the men in the context of the Poso conflict has also led to questions over the trial's fairness, and ultimately contributed to much of the Christian anger in Poso upon the executions. Up until the time that the three men were executed, no one else had received a sentence longer than fifteen years in cases relating to Poso-conflict violence.<sup>94</sup> Most sentences—for both Muslims and Christians—have been five years or less, even for murder or the equivalent offence under the terrorism law.<sup>95</sup> Although the men's sentence is exceptional in comparison to other sentences for both Christians and Muslims, various observers have concluded that the severity of the sentence indicates religious discrimination against the men.

One of the men's lawyers stated privately after the trial that he believed religious discrimination influenced the severity of the sentences.<sup>96</sup> The men's defense team also made an unsuccessful request at the second session of the trial—in which the defense presents its objections to the indictment—on December 14, 2000, to have the trial moved out of Palu. The district-court judges devoted little space in their judgment to the defense claim of discrimination, rejecting it with a short statement to the effect that other people apart from Tibo, Dominggus, and Marinus had also been tried and sentenced in connection with the conflict.<sup>97</sup> However, in the men's plea for clemency, the second defense team also raised the question of bias, saying the trial was not based on equal treatment. They did this by providing a list of incidents for which the perpetrators had not been arrested or received only light sentences. Although the lawyers did not say so explicitly, the perpetrators of all the incidents listed were Muslim.<sup>98</sup>

<sup>94</sup> This contrast has been reduced by just-completed trials and may be further eroded by trials soon to start. For instance, in late March 2007, Hasanuddin, alias Slamet Raharjo, accused of planning the beheadings of three Christian schoolgirls in October 2005, was sentenced to twenty years' imprisonment. The charge filed against him actually carried a mandatory minimum life sentence. Prosecutors also separately requested a twenty-year sentence for two accomplices in the beheadings, who were each sentenced to fourteen years. Direct observation of trial of Hasanuddin (alias Slamet Raharjo). Direct observation of trial of Lilik Purnomo (alias Haris) and Irwanto Irano (alias Iwan), all at Central Jakarta District Court.

<sup>95</sup> Exceptions were Herman Parimo, fifteen years; Herry Mangkawa, twelve years; Ferinandus Kuhe, eight years; and Sarlis Arima, ten years—all Christians. Andi Ipong, nine years; M. Yusuf, nine years; Fauzan Arif, six years; Firmansyah, five years; Fajri, six years; and Nizam Kaleb, six years—all Muslims. Shortly after they were executed, another Muslim man, Andi Makassar, already twice sentenced to one year in two different Poso-related corruption cases, was also sentenced to six years for an October 2004 shooting. Details drawn from relevant court decisions and Simansari Ecip et al., *Kerusuhan Poso yang Sebenarnya* (Jakarta: Global Mahardika Netama, 2001), pp. 119–122.

<sup>96</sup> "Penasehat Hukum Minta Tempat Persidangan Tibo Dipindahkan," *Pedoman Rakyat*, December 15, 2000, p. 5. Interview with defense lawyer, January 18, 2002.

<sup>97</sup> *Tibo Decision*, p. 70.

<sup>98</sup> See TP-HAM, *Pengampunan Menuju Rekonsiliasi Sejati*, April 13, 2005.

The claim that the defendants had been set up as scapegoats also became common after the men's plea for clemency was rejected. The three men—all Catholics—made statements to the effect that they were sacrificed as “fall guys” to protect the Poso Protestant church, and claimed that their lawyer in the original trial advised them not to speak out, purportedly to protect the church.<sup>99</sup> Admittedly, two members of the Central Sulawesi Christian (Protestant) Church (Gereja Kristen Sulawesi Tengah, GKST) did broker the three men's arrests, and the head of the synod at the time did distance the church from the men by saying, “We are GKST, they are Catholic.”<sup>100</sup> Nevertheless, several other facts mitigate against any claim that the lawyers colluded with the Protestant church to undermine their clients' defense. For instance, Robert Bofe, the head of the men's defense team, called on the GKST to take responsibility for the third period of violence in an interview with the local paper *Mingguan Al-Khairaat* at the time of the trial.<sup>101</sup> Furthermore, two of the three defense witnesses in the trial were members of the GKST, and one of them—Rinaldy Damanik—became an outspoken critic of the death penalty imposed on the three men prior to their executions, by which time he had risen to be head of the Central Sulawesi church synod.<sup>102</sup>

Given the way the case has polarized opinions and the strong emotional response that the violence of the third period generated, it is certainly possible that religious discrimination played a part in the severity of sentencing. This does not mean, though, that the sentences are clear evidence of broader discrimination against Christians in the Indonesian courts, either in Poso or in Indonesia as a whole.<sup>103</sup>

<sup>99</sup> The majority of Poso's Christians are Protestant. Some observers, for instance Catholic intellectual Frans Magnis-Suseno, have even made the false claim that their lawyer in the first trial was Protestant (Robert Bofe, the main lawyer for the men, was Catholic). See transcript of Radio National Encounter program, “On Indonesia's Death Row: What Price Justice for Tibo, Dominggus, and Marianus [sic]?” July 9, 2006, transcript available at <http://www.abc.net.au/rn/encounter/stories/2006/1678465.htm>, accessed February 23, 2007.

<sup>100</sup> For comment made by Reverend Papasi, then head of GKST Sinode, see “Kami GKST, Mereka Kan Katolik,” *MAL*, third week, August 2000, p. 6.

<sup>101</sup> “GKST Tidak Punya Tanggung Jawab Moral,” *MAL*, fourth week, September 2000, p. 14.

<sup>102</sup> Damanik resigned from his position as head of the synod after Tibo was executed, citing a commitment to do so he said he had made at the time of the trial. Some community members in Tentena were also calling for Damanik's resignation over allegations of irregularities in the GKST's finances.

<sup>103</sup> There is not a complete dataset of all trials held as a result of the Poso conflict, but the data I collected make some claims of widespread discrimination appear questionable and outright contradict others. For instance, Aragon wrote in an October 2001 paper that no “Muslim killers” were tried or sentenced. In fact, by that time, several Muslim men had been put on trial for the 2000 murder of local Christian politician Gerald Polii during the third phase, with Ical sentenced to four years for “aiding murder,” while two Muslim men were arrested and tried after a December 2000 attack on Sepe village, of which at least one served a one-year jail term. In 2005, Aragon wrote, “Christians exclusively are named to fill the malevolent posts. As each publicly named puppeteer is killed or jailed, a new one springs forth like a hydra head to take his place in media headlines.” The implication is that Muslim-owned media only name Christians as villains, but Aragon's characterization of media coverage accurately describes the media depiction of a succession of at least three Muslim men from 2004–2005, namely Wagiman, Ipong, and Hasanuddin. All three have now stood trial—Wagiman was acquitted, Ipong was sentenced to nine years, and Hasanuddin received a twenty-year sentence. In 2006, George Aditjondro wrote that Christians were subjected to serious court trials and serious sentences while Muslims, be they “provocateurs, local *laskar* commanders, or combatants” invariably escaped legal punishment. More than fifty Muslim men had stood trial by the time Aditjondro wrote his article, arguably including representatives of each of his three categories, with at least six of these men receiving sentences of more than five years. See Lorraine V. Aragon, “Communal Violence in Poso”; Lorraine V. Aragon, “Mass Media Fragmentation and Narratives of Violent Action in

In addition, the pattern of government responses to violence in Poso—and indeed the response to the conflict in Maluku—may also provide a partial explanation for the men’s death sentences. The violence of the third period was horrific, and for a time thereafter spurred political will to act and hold someone responsible for the violence, manifest in the round-up and trial of more than a hundred suspects. Among all of these suspects, it was Tibo, Dominggus, and Marinus who came to be held most responsible. The beheading of three Christian schoolgirls in October 2005 generated a similar temporary resolve to act, which nine months after the event had begun to fade. The widespread condemnation of that attack spurred senior police to become personally involved in Poso and resulted in the round-up of suspects—this time mostly Muslims—for many of the unsolved cases that had occurred during the preceding two years. In Maluku, the trigger for a similar period of political will to establish accountability was a May 2005 attack on a paramilitary police post on Seram in which five police, their cook, and one of the attackers were killed.<sup>104</sup> Around thirty men, all Muslims, were brought to trial for this attack and a string of others carried out since May 2004. One man—Asep Jaja, a member of the jihadist group Kompak—was even sentenced to death in these trials, although the sentence was commuted to life imprisonment on appeal.

The case is clearer, though, that the government’s determination to go ahead with the executions was influenced by factors other than just the merits of the case itself. Almost no clemency pleas succeed in Indonesian capital cases, but the timing of executions is essentially a political decision, as no law currently specifies at what point an execution should take place after clemency has been rejected.<sup>105</sup> In some cases, it make take years for prisoners to be executed after their pleas for clemency have been rejected; indeed, in early 2007 there was one person still on death row whose pleas for clemency had been rejected in 1972 and 1995.<sup>106</sup> But with the high profile of the Tibo case, the government was never likely to be able to defer decisive action for that long; it either had to execute the men or commute their sentences to life imprisonment. It is also clear that some senior government officials, themselves satisfied that the guilt of the men had been proven, began to perceive the executions as a band-aid solution to address Muslim complaints of injustice in Poso.

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Sulawesi’s Poso Conflict,” *Indonesia* 79 (April 2005): 1–55; and George Aditjondro, *Tibo dan Penyerangan Jilid II Pesantren Walisongo*, nd.

<sup>104</sup> For details of this attack, see ICG, *Weakening Indonesia’s Mujahidin Networks*, pp. 4–6. Four other Muslim men received life sentences for the charges arising from these arrests.

<sup>105</sup> A 2004 study by the Indonesian human rights monitor Imparsial found only one instance of clemency being granted for a death sentence handed down since 1982. The one plea for clemency that succeeded was submitted by Kamjai Thong Thavorn, a Thai seaman initially sentenced to death in 1989 for heroin possession. His plea for clemency was accepted in 1998. An Amnesty International report on the case suggested that an earlier unsuccessful plea for clemency had been submitted by prison officials without the knowledge of Thavorn or his lawyers. During the same period, there have reportedly been as many as thirty-five other cases where clemency has been rejected but the prisoner is yet to be executed, as well as at least nine executions since the mid-1990s (not including the executions of the three men discussed here). Neither previous president Megawati nor current president Yudhoyono have accepted any plea for clemency in a death-penalty case, and Yudhoyono told the media on the occasion of the 2006 International Day Against Drug Abuse and Illicit Trafficking that it was extremely unlikely he would do so for any narcotics case. See Imparsial, “Jalan Panjang Menghapus Praktik Hukuman Mati di Indonesia,” 2004; Amnesty International, “Indonesia: A Briefing on the Death Penalty,” October 1, 2004; “Presiden Tolak Grasi Penjahat Narkoba,” *bnn.go.id*, July 13, 2006.

<sup>106</sup> “Komnas HAM Minta Presiden Beri Grasi pada Bahar Matar,” *Kompas*, March 12, 2007, p. 3.

These sorts of considerations, rather than the comparisons that observers later drew between the three men's case and that of the Bali bombers, were likely the most important in prompting the government's initial moves toward executing the men. The comparison with the Bali bombers probably gained importance as the Tibo case developed into a national controversy. Certainly, it would have been particularly controversial for the government to commute the sentences of Tibo, Dominggus, and Marinus but execute Amrozi, Imam Samudra, and Mukhlas, irrespective of the merits of either case. To do so would expose the government to accusations within Indonesia that it was discriminating against Muslims on account of perceived foreign intervention, all the more so after the Vatican sent a letter to the Indonesian government in August 2006 petitioning for the Poso death sentences to be commuted.

Even so, the government wavered twice in its decision to execute the men, and in so doing maximized the case's negative impact on religious tensions in Poso. The first time the executions appeared imminent—in March–April 2006—government officials publicly announced several deadlines but then allowed them to pass without incident in the face of large protests in Sulawesi, Jakarta, and the men's home, East Nusa Tenggara province. The government's next move was to announce another date for the executions—August 12, 2006—which deadline also lapsed, seemingly because of strong opposition from the provincial police chief in Central Sulawesi.<sup>107</sup> By this time, though, large protests were taking place in Central Sulawesi both for and against the executions, and the case was becoming ever more politicized, with members of parliament, the vice president, government officials, community leaders, and activists all giving comments to the media.

Finally, the Central Sulawesi public prosecutor informed the three men on September 18, 2006, of their impending execution (under Indonesian law, three days' notice is required). This time, the police blocked the front entrance to the prison and deployed extra security personnel in Palu and Poso. Late at night on September 21 authorities blacked out the prison lights, and under cover of darkness a convoy of vehicles took the men out the prison's rear entrance. Some time in the early hours of September 22, Tibo, Dominggus, and Marinus were each shot dead in a secluded location near the prison. The prosecutor's office denied a request for the bodies to be displayed at the Santa Maria church in Palu. Instead, within several hours of his death, Dominggus was buried in a roughly marked grave in Palu's Petobo public cemetery, while that same morning police flew the remains of Tibo and Marinus to Soroako, in South Sulawesi.<sup>108</sup>

Despite these precautions, the executions triggered unrest, particularly in NTT province, but also on a smaller scale in Poso. In NTT, thousands gathered on the streets of the predominately Catholic town Atambua and proceeded to burn down the official residence of the head of the prosecutor's office, damage several other government offices and shops, and raid the local prison and set free all the inmates held there.<sup>109</sup> In

<sup>107</sup> For their part, on this occasion the prosecutor's office went as far as displaying the coffins they planned to use to the press shortly before the executions were planned to take place.

<sup>108</sup> Dominggus's remains were exhumed the night after his execution and, in accordance with his family's wishes, taken to Flores and reburied there. Tibo and Marinus were each buried in their home villages in Morowali district on September 24, 2006.

<sup>109</sup> "NTT Rusuh, 205 Napi Kabur," *Radar Sulteng*, September 23, 2006.

another town, Maumere, a crowd burned the courthouse and threw rocks at the local legislature building and district head's office.<sup>110</sup> In Poso itself, crowds of Christians threw rocks at police in Watuawu village, injuring the Lage sectoral police chief, and burned tires in Tentena.<sup>111</sup> The executions also appear to have provided the motive for the murder of two Muslim fish traders, Arham Badaruddin and Wandu, who were abducted as they passed through Taripa, south of Tentena, on September 23.<sup>112</sup> Within the very first hours after they took place, it was clear that the executions had aggravated old wounds, rather than acting as a band-aid to cover complaints of injustice in Poso.

### The Tibo Case and the Impact of Other Trials

If some shortcomings of the Tibo trial simply draw its fairness into question, others have hampered the contribution that the investigation and trial could have made to revealing a comprehensive picture of how violence was waged in Poso. The result may be that appropriate action against other key perpetrators was stalled or avoided. Two such shortcomings are discussed below. Repeated across many subsequent trials, these shortcomings have greatly limited the contribution of court trials to stemming violence in Poso.

**No systematic approach to prosecution; no clear picture of combatants' command structure.** Even though Tibo's, Dominggus's, and Marinus's convictions for murder essentially came to rest on a notion of command responsibility, neither the prosecution nor the judges established a clear characterization of the *kelompok merah* (as an organization or other entity) or of its command structure. Indeed, as the men's defense counsel argued during the trial, in other indictments stemming from the third period, prosecutors named different Christian men as *kelompok merah* leaders. As a result, the investigation into the involvement of Tibo, Dominggus, and Marinus did not provide a strong and clear basis for further investigations or prosecutions. This failure to place each case within a broader context has become a feature of the prosecutions of both Christians and Muslims in Poso. It has arguably limited the number of people brought to trial and contributed to a continuing sense of injustice stemming from unsolved cases. Moreover, it conceivably has lessened any deterrent effect that fear of arrest might otherwise have had on actual and potential perpetrators. It has also meant that key planners and perpetrators of violence have remained at large. The final point is of particular importance, if we remember that, unlike many other conflicts, in this case significant numbers of trials have taken place while the conflict is still in progress.

<sup>110</sup> "Atambua berangsur Tenang," *Suara Merdeka*, September 23, 2006.

<sup>111</sup> "Massa Mengamuk, Kapolsek Lage Luka," *Radar Sulteng*, September 23, 2006.

<sup>112</sup> Taripa residents then objected to what they perceived as a heavy-handed attempt on the part of police to investigate the disappearances, for the provincial police chief himself came by helicopter to Taripa on September 29. A crowd burned four police vehicles and a traffic post. Police eventually located the two men's bodies in a shallow grave and arrested seventeen suspects in connection with the murders. The murders of Arham and Wandu appear to have triggered retaliatory attacks on three villages in Masamba, in South Sulawesi, in which two houses located behind a church were burned. Police swiftly arrested at least seventeen suspects for this attack and said they would charge the men under the anti-terrorism law. "Poso Mulai Membara," *Mercusuar*, September 30, 2006; and "Teror Masamba, Dua Rumah Dibakar," *Fajar*, October 30, 2006.

While the evidentiary challenges of assembling indictments in cases of large-scale violence are often difficult, I would argue police investigators and prosecutors failed to pursue at least two clear “entry points” in Tibo’s interrogation depositions that could reasonably be expected to have enabled them to develop a more systematic picture of the *kelompok merah*’s command structure.

The first is Tibo’s admission that he had taken part in the May 24, 2000, meeting in Kelei, the day after the May–June violence began, in which he says the Protestant leader A. L. Lateka ordered the group to raze Poso. Although the meeting appears to have brought together several of the more-senior figures of the *kelompok merah*—such as Lateka himself, Paulus Tungkunan, and another man, Yanis Simangunsong—police do not appear to have sought further details of the meeting subsequent to Tibo’s first mention of it during his interrogation.<sup>113</sup> A second, similar failure is the lack of detailed evidence assembled regarding the structure of the *kelompok merah* command post (*posko*) in Tagolu, which operated during the May–June violence, and how it came to be established. Interrogation depositions in the Tibo, Dominggus, and Marinus dossiers provide some impression of who was at the *posko* during the third period, but there appears to have been no attempt to develop a clear picture of the hierarchy within the command post or its role in coordinating *kelompok merah* activities.

Instead, it has been the list of sixteen names that Tibo, Dominggus, and Marinus submitted to the court that appears to have shaped a good deal of the subsequent investigations into the third period of the violence. Although police have sporadically questioned some of the men on the list, Muslims’ demands for these sixteen men to be investigated have persisted, and as late as 2006 police declared their intention to bring each of the sixteen to meet Tibo, Dominggus, and Marinus in a “confrontation” interrogation.<sup>114</sup> The notion that the sixteen were responsible for the May–June violence is now so deeply ingrained in the public psyche that police are hereafter likely to face demands to investigate the men almost indefinitely.<sup>115</sup> A systematic approach to identifying third-period command structures appears the only way to counter such demands, regardless of whether such investigations lead to judicial trials or are part of a reconciliation process.

Statistical data for the years 2002–2005 also suggest that a nonsystematic approach persisted in the investigation of subsequent violence in Poso. During this period, many more Muslims than Christians were brought to trial, reflecting the shifting pattern of violence.<sup>116</sup> Between 2002–2005 there were at least 120 Poso-related violent incidents,

<sup>113</sup> The record of the interrogation session shows questioning swiftly shifting to focus on where various people led attacks and Tibo’s personal involvement in attacks.

<sup>114</sup> If this was ever a serious plan, it appears to have been abandoned after Tibo, Dominggus, and Marinus did not recognize the first of the sixteen men, Yahya Patiro, when he was brought to confront them.

<sup>115</sup> Police have periodically declared that not all of the sixteen have links to the violence, saying that the list should in fact consist of only ten or eleven men, but they have never explicitly explained the status of any investigations into the guilt of each of the sixteen individuals on the list.

<sup>116</sup> Although both Christians and Muslims have perpetrated violence during the Poso conflict, most violence since 2002 has been directed at non-Muslim targets, in part reflecting the continuing activity of mujahidin groups in Poso.

both in Poso itself and in the provincial capital, Palu.<sup>117</sup> In the same period, based on court records and media coverage assembled by the author, an estimated fifty to seventy people were brought to trial for Poso-related violence. Around a third of the men brought to trial, however, faced charges for one of just two incidents: the October 10, 2003, attack on Beteleme village, in Morowali district, in which two people were killed (at least sixteen defendants); and the murder of Fery Silalahi (at least seven defendants). In both cases, those standing trial were alleged to be either direct participants in the attack or among those who hid the attackers.<sup>118</sup>

In late 2005–mid 2006, there were some signs that police were beginning to acknowledge the need for a more systematic investigative approach. For instance, two ad hoc security bodies established in response to serious violence in late 2005 each announced that a list of twelve priority cases had been established.<sup>119</sup> These cases included some of the more prominent incidents of violence perpetrated by both Muslims and Christians. While these ad-hoc bodies were operating and the attention of senior police was focused on Poso, initial results were promising. Investigations appeared to stall, however, when the ad hoc bodies were dissolved.

Instead, the next round of arrests didn't take place until late 2006 and early 2007, when police were spurred to act on information gathered months earlier after two incidents of violence in October 2006.<sup>120</sup> These arrests may well be more far-reaching than earlier round-ups in Poso, despite their exclusive focus on Muslim perpetrators of recent violence. But the early signs are that the second shortcoming of the Tibo trial process, detailed below, may be repeated for these cases.

**Shortcomings in Indictments.** A second shortcoming evident in the trial of Tibo, Dominggus, and Marinus is the prosecutors' failure to make use of all the information in the interrogation dossiers when assembling their indictment, or to present evidence to support all of the charges that were filed.<sup>121</sup> Like the nonsystematic pattern of prosecutions, this is a feature of other cases stemming from the Poso conflict as well. It has meant that communities have not seen men charged with responsibility for the violence that most directly affected those communities, and it has limited the incidental function of court trials to establish a record of the violence.

<sup>117</sup> Lists of incidents are provided in appendices of ICG, *Jihad in Central Sulawesi*; ICG, *Weakening Indonesia's Mujahidin Networks*. The 2004 ICG report contains at least one erroneous incident, the August 28, 2002, attack on Sepe, which appears to be a repeated reference to the August 12, 2002, attack.

<sup>118</sup> Each of the men charged with the Silalahi murder were acquitted (seemingly correctly) of all charges relating to the murder, although some served time for unrelated firearms offences.

<sup>119</sup> The two bodies were the Poso Task Force (Satgas Penanganan Poso), established shortly after the October 2005 beheading of three Christian school girls, and the Central Sulawesi Security Operations Command (Komando Operasi Keamanan—Koopskam), established in response to the December 2005 bombing of a Palu pork market, which killed nine people.

<sup>120</sup> These were the October 16, 2006, murder in Palu of the interim head of the GKST Synode, Reverend Irianto Kongkoli, and a clash on October 22, 2006, between police and Muslim youths in the Tanah Runtuh neighbourhood of Poso, which took place right before the end of the Islamic fasting month. For a summary of these developments and subsequent arrests, see ICG, *Jihadism in Indonesia: Poso on the Edge*, January 24, 2007. Before these incidents took place, two Muslim fish traders were murdered in Taripa village in late September 2006. Police also arrested seventeen Christian suspects for this attack.

<sup>121</sup> In the second instance they may be hampered by the failure of police to investigate adequately the full extent of involvement of a suspect in the conflict.

The failure in the Tibo trial to incorporate all information from the dossiers into the indictment is evident from an examination of the murder charge. As outlined above in the description of the trial, this charge mentioned four specific murder incidents or attacks: on May 23 in Moengko, May 28 in Sintuwulemba, May 28–June 1 in Tagolu, and June 1 near Tagolu. In his depositions, however, Tibo admitted to being involved in or present at three other attacks: in Sepe/Silanca around May 25, Sayo on May 28, and Moengko in late May or early June. Dominggus also admitted to being present at a clash in Sayo, in his case probably on both May 27 and 28. In addition to not including these incidents, the indictment does not differentiate clearly among the alleged roles of each defendant in those murders.

Similarly, the battery charge is confined to cover injuries to just one person during a period of violence when hundreds or even thousands must have been wounded. For the arson charge, which appeared to be the clearest opportunity to explore the extent of Marinus's authority within the *kelompok merah*, no witnesses were introduced to testify about the June 16 attack on Toinasa village.<sup>122</sup> As mentioned previously, the indictment also omits charges that could have been brought against the men based on information in their dossiers, most clearly a charge of sexual assault against Dominggus based on the statements of Siti Munawarah and Sufiah Siswandi.

Several subsequent trials stemming from Poso violence have followed a similar pattern, with the indictment covering a much narrower range of incidents than those with which the suspects had been publicly associated prior to their arrest. Three examples should illustrate this pattern. The first is that of Andi Ipong, a Muslim Poso resident, sentenced in 2003 to two-and-a-half years' imprisonment for armed robbery and then again in 2006 to nine years for a 2001 murder. Prior to each trial, police had indicated Ipong was suspected of involvement in a string of crimes, yet in each case he was charged with only one.<sup>123</sup> The third and most recent example is provided by the trial of Irwanto Irano and Lilik Purnomo, which commenced in November 2006 at the Central Jakarta District Court. The indictment against the two men confines the terrorism and murder charges against them to the beheading of three Christian schoolgirls in October 2005. Police had frequently stated before the trial commenced that the men were involved in other incidents. Indeed, in a police video that was released to the media, Lilik Purnomo admits to being involved in three other murders and two attacks on churches, while Irwanto Irano admits to being involved in the Tentena bombing, two robberies, a murder, and an attack on a Palu church.<sup>124</sup> At some

<sup>122</sup> One deposition named Marinus as the leader of this attack.

<sup>123</sup> For suspected crimes prior to the 2003 arrest, see ICG, *Jihad in Central Sulawesi*, p. 19; and "Daftar Penembakan Orang," *Gatra*, March 15, 2003. Prior to the 2005 arrest, Ipong had frequently been named in connection with the April 2005 bombing of two NGO offices in Poso and for indirect involvement in an armed robbery at the district head's office, also in April 2005. See ICG, "Weakening Indonesia's Mujahidin Networks," p. 11; and deposition of Ahmad Hi Ali alias Mat Sun, September 22, 2005, p. 6.

<sup>124</sup> The edited video is part of an SCTV news broadcast available online; see Pembunuh Siswa SMA Poso Diancam Hukuman Mati, [http://video.liputan6.com/files/hukrim/vid/081106cposo\\_gab.rm](http://video.liputan6.com/files/hukrim/vid/081106cposo_gab.rm), accessed November 17, 2006.

point in the investigation, however, the decision appears to have been made to limit the charges against the two men to just the beheadings.<sup>125</sup>

Of course, mere suspicion that an individual is involved in violence or even a confession of guilt—particularly outside a courtroom setting—do not automatically mean that police and prosecutors will be able to assemble sufficient evidence to gain a guilty verdict in a court trial. But lack of evidence does not always appear to have been the primary reason to exclude specific cases from indictments. A case from Maluku best illustrates this. Asep Jaja was sentenced to life imprisonment for his involvement in the May 2005 attack on the police paramilitary post on Seram Island. He also appears to have been implicated in a murder in Tomohon, North Sulawesi, in October 2001.<sup>126</sup> Asked whether Asep would be charged with this murder, too, a senior detective in Maluku indicated that he was aware of the case but said Asep would only stand trial for the Tomohon murder “if he didn’t get the death penalty in Maluku.”<sup>127</sup>

When limited funds and investigative resources are available, such an approach to investigations and prosecutions is perhaps understandable, particularly when proving an individual’s involvement in additional incidents is not likely to increase their sentence. The clear downside, as mentioned above, lies in denying communities a clear record of who was responsible for particular acts of violence. Not charging individuals for involvement in particular incidents when they have been publicly named as suspects also denies the accused individuals a chance to challenge the accusations against them in court, and in recent times has fueled community claims that police have deliberately “stigmatized” young Muslim men without having clear evidence against them.

## Conclusion

This paper describes the particularities of the Tibo trial at some length and demonstrates how some of the shortcomings of the trial and investigation have been repeated in other cases. We can draw several lessons from the above discussion for how criminal justice might have been handled differently in Poso, and could be better handled in future instances of Indonesian conflict.

The first lesson is to hold trials swiftly after the violence occurs, as leaving cases unaddressed for long periods of time is as likely to generate community disaffection as it is to cause passions to lessen. A key factor, though, to making a success of swiftly held criminal investigations and trials is the political will to devote sufficient resources to communal conflicts such as Poso, and maintain those resources beyond the initial crisis. In Indonesian conflict settings, the scale of violence has proved too great for just the normal police and prosecutors assigned to the province. National-level assistance for investigations and prosecutions is required, so that a systematic approach to the violence can be adopted. The necessity of a systematic approach is evident from the

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<sup>125</sup> Early indications are that a similar process is occurring for some of the men who have been arrested or surrendered since late 2006. Whether this is the case will become clear when these men are brought to trial.

<sup>126</sup> ICG, *Weakening Indonesia’s Mujahidin Networks*, pp. 8–9.

<sup>127</sup> Phone interview with senior detective, Maluku Provincial Police, 2005.

Tibo case, where essentially symbolic prosecution of only a few individuals from among all the key perpetrators did little to answer community demands for justice. A “symbolic” approach to prosecutions also negates one of the primary advantages of swift trials, namely, that key perpetrators can be removed from the conflict setting before they perpetrate further violence.

The response to more recent crises in Poso, particularly the October 2005 beheading of three schoolgirls, gives cause for optimism that, with sufficient political will, police and prosecutors can achieve swift results. Even in the case of the beheadings, though, the full potential efficacy of court trials was hampered by a seeming wavering of attention once the crisis faded. Another key example in support of swift trials comes from the Maluku conflict. The arrests and trials there in the wake of a May 2005 attack on a police post on Seram Island appear to have had a stark preventative effect on the level of violence in Maluku. The arrests and trials came at the end of twelve months of sporadic violence in Maluku, in the aftermath of the most recent riotous episode there in April 2004. To some extent, these arrests went beyond netting just direct perpetrators to apprehending those accused of planning and, in one individual’s case, financing violence. Despite some disquiet regarding the length of the sentences, which seemed long given the generally lax judicial response to crimes committed earlier in the conflict (five of the men received life sentences), there have been no conflict deaths in Maluku in the twenty-two months since the arrests were made, with only two minor bombings causing injuries during that period.<sup>128</sup>

The second is the importance of paying particular attention to the procedural quality of the trial. One reason this attention is needed is because the difficult and polarizing nature of the crimes committed in the course of inter-religious violence can make it particularly difficult to hold a fair trial. Attention to procedure may also help to avoid needless problems in the future, by ensuring that the clearest possible case for guilt is presented and that nothing about the conduct of the trial gives rise to the impression of bias. That is to say that it is important that justice not only be done, but, to the greatest extent possible, also be seen to be done and done fairly. In large part this comes down to political will, in the form of assigning experienced prosecutors and judges to cases, or even moving selected cases to Jakarta, as has been recent practice for Poso.

The third lesson is to pursue consistency in sentencing. As the Tibo case shows, community attitudes to a sentence in one case will be influenced by the sentences in other cases. Stern punishment in one case is more likely to meet opposition if communities perceive that other, similar cases have been dealt with only leniently or not at all. Such opposition will never be eliminated entirely in a conflict setting, but it can be minimized by trying to avoid stark contrasts among similar cases’ sentences. This again underlines the importance of a systematic approach to prosecutions.

The fourth lesson, a point related to lesson three, is that even in pursuing consistency, imposing the death penalty in conflict cases should be avoided. This need not be a moral argument; the practical benefit of not creating a “cause” or a focal point—an execution, a martyr—for protestors is significant. The Tibo executions have

<sup>128</sup> The main security disturbance during this period has in fact involved several clashes between Indonesian police and the military.

already directly contributed to at least two additional deaths, and will likely continue to complicate future trials concerned with Poso's serious violence.

In making the case that trials are a necessary part of conflict response and resolution, I am mindful of their clear downsides. The polarization of the debate regarding the three men's executions along religious lines, which sharpened old religious enmities from earlier in the conflict, highlights one potential pitfall. Part of this polarization arose from the specific features of the case, but it is reasonable to assume that court verdicts for conflict or post-conflict violence will always run the risk of displeasing some sections of affected communities. But on this point, it must also be kept in mind that many of the arrests and most trials stemming from the Poso conflict have, in fact, passed without significant community protest.

Certainly, more research is needed to survey attitudes to criminal trials in Poso. That study could follow along the lines of two studies conducted to assess empirically community attitudes to international tribunals in Yugoslavia and Rwanda; those studies explored the link between trials and reconciliation.<sup>129</sup> Tentatively, however, I would like to suggest that trials in Poso can still make a positive contribution to conflict resolution even if they do generate a degree of polarization of opinion along religious lines. This is because the contribution to stopping violence by arresting key perpetrators may outweigh any worsening of religious enmities that those arrests may cause in the community.<sup>130</sup> One reason this may be the case is that many of those who harbor resentment over the conflict or the official response to violence will not act on those feelings and actively perpetrate additional violence, particularly if the risk of arrest and punishment is clear.

Where protests over arrests and trials have occurred, they have most often involved primarily those closely linked to the suspects as members of the same combatant group or their relatives. When these protests have spread more widely, there has generally been an additional factor at work.<sup>131</sup> For instance, when crowds gathered in June 2005 to demand the release of those held for involvement in the May 2005 Tentena bombings, wrongful arrests were an issue. It later emerged that none of those held in custody at the time appeared to have actually been involved in the bombing. Moreover, some of those in custody had been badly beaten. When attempts to arrest a group of wanted (Muslim) men resulted in a gun battle between police and supporters of the suspects on January 22, 2007, during which fourteen civilians and a policeman were killed, police violence was one of the issues. To be sure, the Muslim suspects were prepared to fight the police to remain free, but the additional support these men received from others in Poso resulted from lingering resentment over some killings that occurred during another police raid two weeks earlier, as well as a clash

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<sup>129</sup> See Miklos et al., "Attitudes toward Justice and Social Reconstruction in Bosnia and Herzegovina and Croatia," in *My Neighbor, My Enemy*, pp. 193–94; and Longman et al., "Connecting Justice to Human Experience: Attitudes toward Accountability and Reconciliation in Rwanda," in *My Neighbor, My Enemy*, pp. 206–25.

<sup>130</sup> This possibility is not considered in the Miklos and Longman studies (see previous footnote), which do not explicitly consider the relationship between openness to reconciliation on the part of communities and the occurrence of further violence.

<sup>131</sup> For details, see ICG, *Weakening Indonesia's Mujahidin Networks*, pp. 15–16.

between police and residents of the same neighborhood in October 2006.<sup>132</sup> In both of those cases, the suspects' supporters were also able to exploit the issue of officials' past failure to prosecute other cases to corral support.

Finally, it is necessary to note that I'm not arguing that trials can work in isolation to stop violence. Economic, social, and reconstruction assistance from central and provincial governments, as well as local and international NGOs, are well-established as standard responses to large-scale conflict in Indonesia. Poso has not been an exception in this regard, having received a great deal of this assistance since the peak of conflict in 2000–2001. Clearly such programs should remain part of a comprehensive response to conflict, but in the absence of systematic law enforcement, those programs have not in themselves been effective in stemming post-conflict instability, either. While there is much that criminal trials cannot address, and significant political will is required to provide the resources to support criminal justice in a conflict setting, the experience of Maluku in particular suggests that trials can play an important role in stemming violence by removing key perpetrators of violence.

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<sup>132</sup> For details of the January 22 raid and the others that preceded it, see ICG, *Jihadism in Indonesia: Poso on the edge*, pp. 16–17. The challenges police faced in making these arrests were significant, but an important focus for investigation of these incidents will be whether all steps were taken to try to avoid these fatalities.