

## **Historical Wrongs – the case of Rawagedeh**

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### **Introduction**

As you may know, the Netherlands colonized Indonesia from early 1800 until 1949.

The giving up of control did not happen overnight nor particularly peaceful.

A war was fought between 1946-1949.

In that war the Dutch applied a particular tactic: summary executions.

They rounded up all men in villages that allegedly supported the guerrilla and executed them.

Either to set an example, or simply because they did not want to make any prisoners.

The total number of executed men is unknown.

No administration was kept.

Of course the Dutch version of the numbers killed is far below the Indonesian version.

Some of the relatives of those killed are still alive.

10 years ago, they turned to our firm with a request for redress.

They were the widows of Rawagedeh, a small village on Java, east of Jakarta.

On 9 December 1947, a massacre was committed in this village by Royal Netherlands East Indies Army.

The people of the village would not tell where the Indonesian independence fighter Lukas Kustario was hiding.

Almost all males from the village were killed by the Royal Netherlands Army - amounting to 431 men according to most estimates.

No criminal investigation was started.

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We took the case of the widows of Rawagedeh to court, the civil court.

I think it is important in the first place to explain why we did this

### **Why litigation?**

Were there other solutions?

The widows were all 85 years and older.

Long procedures.

Moreover, it was not really in their nature to be resentful, or angry.

They were more after recognition of the suffering that had been inflicted on them.

There was a lot of media attention.

As a consequence, Minister Koenders, then Minister for Development Cooperation, paid attention. He donated 800.000 to the village of Rawagedeh.

I then thought and hoped that the conflict could be solved.

With that money in the village a school or a hospital could be built.

I then suggested that we could attach a sign to that school or hospital that read:

"Commemorating the men of Rawagedeh".

But a real conversation never got off the ground about such an alternative solution with the State itself.

The conversation mainly occurred through the press.

Then the only action that remained was a litigation.

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Now let's turn to the court case. I have selected to elements of it:

- the time bars that applied to the case (as the facts occurred so long ago), and
- reparations (what did the widows get from the case?)

## **Statutes of limitation**

The main bone of contention in the civil proceedings was the statute of limitation.

The executions happened 65 years ago.

In the procedures, the State took the view that the widows are too late.

That their claims are therefore time-barred.

An expected argument and difficult to counter.

Under national law, civil claims are subject to limitations, even when these result from international crimes such as war crimes.

The perpetrator can be brought to justice until the end of time.

Time bars do not apply to the prosecution of international crimes.

But they have been maintained in civil law.

That is strange.

The abolition of statutes of limitation is not something typical for criminal law which is less suitable for other legal domains, such as civil law.

In the case of the Rawagedeh, we had to deal with the time bars.

The limitation period in civil law is determined solely by national law.

International law has to offer the victims little.

The same is true for the human rights treaties, to which the Netherlands, in particular the ECHR.

The European Court considers limitation rules as such does not violate human rights.

And the limitation rules in national law rules are rigid.

They are not rules one can easily circumvent.

Exceptions to these rules are rarely accepted.

The court ruled that the case of the widows of Rawagedeh was in principle time barred.

But that the State could nevertheless not rely on the limitation period.

That, according to the court, would be unreasonable and unfair, or in the terminology of old law: contrary to good faith.

The grounds for this ruling were that:

- it concerned crimes of great severity
- the state had taken too much of a passive attitude over the last 65 years
- and the court also pointed to the inability of the widows to obtain access to the Dutch legal system (we had mostly focussed on this argument, that the widows could not be blamed for being late, as they had no means to address Dutch courts -> expert witnesses)

And so the court held the state responsible for the massacre in Rawagadeh in 1949.

### **Reparation: apologies for the widows of Rawagadeh and South Sulawesi**

The court ordered the state to make reparations.

The question we were facing was: what is the best form of reparation in this particular case?

The Netherlands agreed to pay € 20.000 in compensation to each widow.

But as the massacre hit the entire village and many inhabitants were in one way or the other related to the killings, we also looked for a non-montary compensation.

We agreed with the Netherlands that it would offer apologies.

On 9 December 2011, the Dutch ambassador for Indonesia travelled to Rawagedeh.

The widows, the entire world press and myself all gathered to hear the apologies being expressed:

*“In this context and on behalf of the Dutch government, I apologize for the tragedy that took place in Rawagede on the 9th of December, 1947”*

the ambassador Tjeerd de Zwaan said.

He then repeated the apology in the Indonesian language.

Hundreds of people attending the ceremony applauded.

These apologies were very well received, by the widows and the public at large.

The assumption is often that victims want money.

Apologies are often too soft for lawyers.

They are hard to enforce.

Still the apologies extended to the widows of Rawagedeh were well received.

Why?

At first sight, you may be inclined to think that apologizing for something that occurred 65 years ago is quite late.

What's more, a court order was necessary to force our government to take this step.

And still, apparently, these apologies were well received. Why?

Several components:

- 1) The widows were not really after money.

While money is often the only way to make up for the losses, the widows were more after some form of recognition.

There is very little anger and resentment among the widows, as far as I can see.

- 2) Second, the apologies were regarded as sincere.

It is true that the Rawagedeh apologies were not entirely spontaneous, because they followed a court order.

But they were considered sincere because the facts were fully and publicly acknowledged.

One of the worst things for a victim is that they are not believed or that the facts are shrouded in secrecy.

- 3) The sincerity was further supported by the timing of the apologies and the place they were issued.

Of course: 64 years had passed since the executions in Rawagedeh.

But once the court had handed down its ruling, the government acted swiftly. It did not appeal the ruling.

And in less than three months it offered its apologies to the widows.

In the case of Rawagedeh, the apologies were expressed on 9 December, the day the villagers of Rawagede commemorate their victims.

And these apologies were carried out *in* the village of Rawagedeh.

This seems to also have been an important component of the success of these apologies:

they were issued in the right place: the village where the crimes were committed and where the widows lived.

Forgiving works best if the violator comes to the victim.

If they make an effort.

The ambassador travelled to Rawagedeh to meet the widows shake their hand and address them personally in their own village in front of the monument commemorating the deaths.

So much for the reparation.

Where are we now with the Indonesian cases?

## **Future**

- So far some 30 widows received compensation (in total: €600.000);
- Dozens are still pending;
- The state has agreed to an 'out of court' settlement for the widows of similar massacres;
- The court also ruled in favour of the children of the murdered men, and determined that they were in a similar position;
- Further, we brought a case of a woman raped by Dutch military, raising the question whether rape is as serious a wrongdoing as execution. The state denied this. The court ruled that also for this crime time bars could not be invoked, so it placed this act at the same level as the murders.
- A case of torture of a man is still pending