

RESEARCH PAPER

**NEGOTIATING ACEH SELF-DETERMINATION IN INDONESIA'S
UNITARY SYSTEM:
*A Study on Peace Agreement Helsinki Memorandum of Understanding 2005***

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Abstract - Aceh, the northern-most province of Indonesia came through long suffering of armed conflicts for *self-determination* under the Dutch (1873-1942) and Japanese colonisation (1942-1945). It continued until Aceh joined Indonesia's unitary system in 1945, in which it was formally initiated by Tgk. Daud Beureueh between 1953-1963, and further to be declared by Tgk. Hasan Tiro on 4th December 1976 under the banner of the Free Aceh Movement (GAM). This struggle was ended by peace agreement, *the Helsinki Memorandum of Understanding* (MoU) on 15th August 2005 with the Aceh *self-government* notion consensus. In this regard, Aceh has more spaces and opportunities to re-determine its political, economic, social and cultural status under the Indonesian system. According to the international law, the notion of *self-government* is considered as internal *self-determination* under the International Human Rights Law regime. This would refer to two covenants: *the United Nations International Covenant on Civil and Political Rights* and *on Economic, Social and Cultural Rights 1966*. However, in practice, despite this ongoing implementation has achieved some progress in short term local political development, yet there are still many challenges for long-term economic, social and cultural advancement objectives, in particular regarding human rights related issues. This paper endeavours to analyse the issue through the overview of historical background of Aceh *self-determination* from an international law perspective. Hopefully, this paper contributes to a conceptual understanding of the MoU Helsinki in terms of Aceh *self-determination* movement as well as some challenges ahead.

Keywords: *Self-determination; Self-government; Peace agreement; Free Aceh Movement; Government of Indonesia.*

Introduction

In the thirteenth century, Aceh established itself as an important trading centre in South East Asia, and by the seventeenth century it had become embroiled in conflicts between the Dutch and the English over colonial domination of the region. In 1873, the Netherlands formally declared war and invaded Aceh, which continued intermittently until the Japanese occupation in 1942. In 1949 the United Nations (the UN) initiated an agreement to transfer all of the former colonial territory of the *Dutch East Indies* to the sovereign state of the Federal Republic of Indonesia (which became the

Republic of Indonesia in 1950).¹ Unfortunately, Aceh was included in the new Republic, despite having never been formally incorporated as a Dutch colonial possession.

Since 1950 under Indonesian state, the political and economic affairs of Aceh had been dominated by non-Acehnese, and there had been an even more continued repressive presence of the Indonesian military.² However, Aceh has been considered a loyal region to the Indonesia's establishment in the first decade as it proved by financial and military support to the crisis in Indonesia at the time. Yet, the dissatisfaction and uncertain situation after being attached to Indonesia urged Tgk. Daud Beureueh, the prominent leader after the decline of the Aceh Sultanate, to lead a new struggle to *self-determination* for religious and regional autonomy. Although it was thought that it would end in peace by promises of the Soekarno regime, unfortunately, later on it would also be considered hypocrisy of Jakarta (Indonesia).³ Following such dissatisfaction, the Acehnese continued their struggle for independence in 1976 which were led by Tgk. Hasan Tiro under the banner of the Free Aceh Movement (GAM). It was a sporadic fighting and repressive military responses from Government of Indonesia (GoI), including declaration of *martial law* in 2003 and *civil emergency* on May 2004, which had made it a more difficult situation. During this time, the access of national and international media hardly operated in this region.⁴

The earthquake and tsunami disaster on 26 December 2004 caused the deaths of thousands⁵ of the protagonists in the civil conflict had urged temporary and then permanent lifting of civil restrictions of 'State of Civil Emergency' by the GoI on 18 May 2005.⁶ It was the huge scale of the tragedy that forced the GoI to open the Acehnese border, albeit reluctantly, and to agree to the promise of massive international and national relief. This emergency situation had urged both parties to contemplate for the negotiation of *self-determination* (GAM) and *territorial sovereignty* (GoI) based on humanitarian conditions.⁷

As other *self-determination* conflicts, in the Aceh *self-determination* settling it became essential to take into account in accordance to avoid other conflicts in future and became a lesson learned to the existing state on how to treat their people based on dignity and prosperity.⁸ This is relevant to the objective of international law that is to maintain peace and justice and to promote the international relation in solving economic, social and cultural problems.⁹ Accordingly, this paper poses a question as to what extent the Aceh *self-determination* has been negotiated within the Indonesia's unitary system with reference to the Helsinki MoU 2005 and its implementation during the last six years.

Overview of Self-determination in International Law

The initial interpretation of self-determination was merely related to decolonisation from European empires. However, after this phase, its understanding has shifted to be extended to minorities,

¹ See Alexandrowick, C.H. (1967) *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th centuries)*, Oxford University Press, Oxford, p.1.

² See complete analyses of Aceh rebellion in Nazaruddin Sjamsuddin (1985) *The Republican Revolt, A study of the Acehnese Rebellion*, Institute of South East Studies, Singapore.

³ *Ibid.*

⁴ See McCulloh, Lesley(2005) *Aceh: Then and Now*, Minority Right Group International, London.

⁵ Based on many reports of international and national agencies which worked in Aceh, about 200.000 people disappeared after the earthquake and tsunami in Aceh.

⁶ See The Jakarta Post, 13 May 2005, retrieved from www.thejakartapost.com on 12 November 2010.

⁷ For example, some of international humanitarian workers were shot by unknown persons during the rehabilitation and reconstruction process in 2005 and it positively contribute to international pressure for peace process.

⁸ See Weller, Marc, (2009) Settling Self-determination Conflicts: Recent Developments, *the European Journal of International Law*, Vol. 20, No.1, pp.101-132.

⁹ See Art. 1, para. 1-3 the Charter of the United Nations 1945.

ethnic, and indigenous people. The entire notion is concerned with the transfer of territory rather than transfer of welfare, justice and non-discrimination.¹⁰

Normatively, the principle of *self-determination* is obviously stated in the Charter of the United Nations 1945 (the UN), article 1 (2) “To develop friendly relations among nations based on respect for the principle of *equal rights* and *self-determination of peoples*, and to take other appropriate measures to strengthen universal peace”. Article 55 “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of *equal rights* and *self-determination of peoples*”. In addition, Article 1 (1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966) states that: “All peoples have *the right of self-determination*. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development”.

In the meantime, on the ground according to Weller, there are about 26 *self-determination* conflicts still ongoing with about another 55 groups promoting *self-determination* campaigns in which have become dynamic in development.¹¹ The concept, which emerges as an effect of decolonisation after the World War II, seems difficult to adapt the growth of the international situation. Equally, the basic theory of conditions for statehood with traditional criteria as mentioned by Montevideo convention that 1933 article 1, “the states as a person of international law should possess the following qualifications: permanent population, a defined territory, government, and capacity to enter into relations with other states” is not totally applicable.¹² These criteria have been considered quite flexible in application in terms of political and social circumstances of what is termed the ‘people’ and its relation to international power.¹³ Thus, each people have a similar chance to seek its form of self-determination with different circumstances. For example the Western Sahara case, which has not had a defined territory, the Israeli case which has boundary disputes, Palestine which is waiting for recognition of the UN, and Taiwan, Tibet, Kurdistan with their respective problems as well.¹⁴

In regard of Aceh self-determination, almost all the criteria were fulfilled except the international support, in particular the UN in which considered Aceh as a part of Indonesia.¹⁵ It is contentious that on one side Indonesia has the right to protect its claimed territories, but on the other side GAM¹⁶ is strictly held on the *self-determination* theory mentioned in the UN Charter and several resolutions.¹⁷ Therefore, the concept of *self-determination* has been a dilemma in the framing of

¹⁰ See Antonio Cassese (1996) *Self-determination of Peoples, a Legal Reappraisal*, Cambridge University Press, Cambridge, pp. 64-65.

¹¹ See Weller, Marc, (2009) Settling Self-determination Conflicts: Recent Developments, *the European Journal of International Law*, Vol. 20, No.1, pp.101-132.

¹² *The Convention on the Rights and Duties of States*, Montevideo, 26 December 1933, 165, League of Nations Treaties Series 19.

¹³ Brownlie (1998), *Principle of Public International Law*, 5th ed, Clarendon Press: Oxford, p.70

¹⁴ See Warbrick (2003) “ State and Recognition in International Law” in Evan, Malcom (ed.), *International Law*, Oxford University Press, Oxford, p.208

¹⁵ Compare with the Quebec case that intends to separate from Canada, Tibet from China, Gibraltar from Spain, Western Sahara from Morocco in Castellino, J. (1999) Territory and identity International Law: The Struggle for self-determination in the Western Sahara, *Journal of International Studies*, Vol.28, No.3, p. 23.

¹⁶ See the Schulze, Kirsten E., (2004) *Free Aceh Movement (GAM): Anatomy of Separatist Organization*, Policy Studies 2, accessed from www.eastwestcenter.com on 20 December 2010.

¹⁷ See Di Tiro, Hasan (1980), *The Legal Status of Aceh-Sumatra*, No. 2 /1980, Aceh Sumatra National Liberation Front, New York.

International law practices to date.¹⁸ However, the essential thing is how the people can live equally in prosperity and justice in their territory. Otherwise a people in a state have the right to self-determination pursuant to international law.¹⁹ Obviously, many territories have become a subject to be disputed by almost all states, to the extent that they sometimes use force and make justification for their repressive acts. It seems like George Eliot said "...It is like almost all such enterprises, about the control of territory, resources and other nation's economies".²⁰

Equally, the establishment of the *United Nations Trusteeship Council* to promote the advancement of the inhabitants of *Trust Territories* and their progressive development towards external *self-determination* (independence) or self-government in existing independent states could not help much current *self-determination* conflicts. The Trusteeship Council suspended operation on 1 November 1994, with the independence of *Palau*, the last remaining UN trust territory on 1 October 1994.²¹ However, the self-determination exercises and claims have continued both for internal (autonomy) or external *self-determination* (independence) in different types and circumstances.²² Recent development of a people which have succeeded in their *self-determination* claim can be seen in Kosovo on February 2008 and South Sudan on February 2011.²³ Essentially, the self-determination principle is the basis for developing statehood in international law, despite rules are not clear how the land is to be distributed and justified in the world.²⁴

Aceh Self-determination in the History

Historically, Aceh was considered the first sovereign Islamic kingdom in South East Asia (Perlak and Pasai), and it reached its glory under Sultan Iskandar Muda (1607-1636). However, the failure of the Aceh fleet to recover Malacca from the Portuguese has been considered a major failure for Aceh in the following decades in enhancing political bargaining with colonial emporium.²⁵ Moreover, the failure of negotiation between the Dutch and Aceh Kingdom contributed to the Dutch declaring war between 1873 -1942, without a clear end date. It was the beginning of the Acehnese war against foreign colonial power which has adversely contributed to the advancement of Aceh sovereignty to date. This might be considered as the first Aceh *self-determination* conflict over colonial power which adversely impacted on the decline of the Acehnese royal family and its system as a whole.

Additionally, after the Dutch had transferred its power to the Japanese ruling through the traditional chieftain for a short period, the struggle of the Acehnese people to maintain their sovereignty still continued to some degree.²⁶ It was not really clear who was the leader of Aceh during this period. Siegel said that *Daud Beureueh* as a representative of youth Islamic group was the leader of Aceh until transferring from the Kingdom of Netherlands to Indonesia in 1949. Meanwhile, Indonesia had integrated Aceh to become a part of the province of North Sumatra,

¹⁸ Nanda (2003), *Self-determination and Succession Under International Law*, *Journal International and Policy*, Vol.29, p. 4.

¹⁹ See Nur Djuli, M., and Jereski, R., (2002) *Prospect for Peace And Indonesia's Survival*, Vol. IX, No. 1, p. 9.

²⁰ Eliot, G (2003), "Too Much of Good thing", *The Guardian*, February 18, 2003.

²¹ See <http://www.un.org/en/mainbodies/trusteeship/> accessed on 2 December 2010.

²² See some stages of self-determination development in international law in Simpson, Gerry J., (1996) *The Diffusion of Sovereignty: Self Determination in the Post Colonial Age*, 32 *Stanford Journal of International law*.

²³ Southern Sudan hold a referendum on 9 January 2011 with resulted to be the latest (193) new state in the world.

²⁴ See David Raic (2002) *Statehood And The Law of Self-determination*, Kluwer Law International, the Netherlands.

²⁵ See Siegel, James T., (2000) *The Rope of God*, University of Michigan, the US, p. 5-10.

²⁶ See Siegel, James T., (2000), *Ibid.*, p. 4-6.

which contributed to the more dissatisfaction of the Acehnese with Indonesia.²⁷ This situation might have confirmed that Aceh *self-determination* was eroded initially by Indonesia and it was fuelled naturally to the movement of *self-determination* that becomes stronger day by day.

Essentially, as it was a sovereign kingdom, the Acehnese demand for autonomy from Indonesia's unitary frame, was expressed by the support for a Javanese Islamic rebellion in the 1950s. However, it was partially met by the central government's acceptance of a "special region" status for the province in 1959. Hence, the emergence of Indonesia as a unitary state and its centralistic policies were then conceived as Javanese imperialism for most of the Acehnese People.²⁸ This was a reason why *Daud Beureueh* began to rebel in 1953 until he reached the agreement with the central government of Indonesia (Soekarno). Unfortunately, then Indonesia had been considered to have defied the agreement until a new movement of Aceh *self-determination* was declared on 4th December 1976 by Tgk. Hasan Tiro as follows:²⁹

"We, the people of Aceh, Sumatra, exercising our right of *self-determination*, and protecting our historic right of eminent domain to our fatherland, do hereby declare ourselves free and independent from all political control of the foreign regime of Jakarta and the alien people of the island of Java. Our fatherland, Aceh, Sumatra, had always been a free and independent Sovereign State since the world began..." (Aceh Proclamation on 4th December 1976).³⁰

Furthermore, Hasan Tiro on self-determination argues that the transfer of Aceh into Indonesia, in the Hague 1949 was illegal under international law as he confirmed that Aceh was not proved formally capitulated to the Dutch colonial.³¹ This legal discrepancy then supported by a coincidental situation, in which Aceh was within "*post power syndrome*" situation after the decline of the Acehnese Sultan and its successors, as a consequence of the Dutch repressive and massive attack during the colonial period. In the meantime, a rather similar policy was commanded in Soeharto's regime. This repressive policy has become an inter-link to human right violations over the years.³² This was a hard situation for GAM,³³ that forced them to flee abroad in order to seek international support and to maintain the notion of Aceh's self-determination to some degree. Additionally, the Presidential decree 28/2003 regarding the *Martial law* over Aceh signified how hard the GoI had attempted to maintain its territory by even sacrificing civilian as considered a sort of human rights violation. This situation attracted international attention to a minimal degree, but Indonesia succeeded to hide it under an internal affairs argument. Equally, Indonesia also imposed special autonomy status on Aceh, including Islamic *Shari'ah* policy according to the law number 18/2001. Externally, Indonesia also had succeeded to prevent the GAM diplomacy in the UN system and other international agencies. The impact of this was the failure of Aceh to be included as

²⁷ See complete analyses of Aceh rebellion in Nazaruddin Sjamsuddin, (1985) *The Republican Revolt, A study of the Acehnese Rebellion*, Institute of South East Studies, Singapore.

²⁸ See Donal E. Wheatherbee, (2002) Indonesia, Political Drift And State Decay, *Brown Journal World Affairs*, Vol. 1, No. 1, p. 34.

²⁹ The role of Christian Snouck Hurgronje was being a part of the Dutch strategy to conclude the war and Indonesian ruler as well. See Siegel, James T., (2000) *Op.cit.*

³⁰ See Tengku Hasan Di Tiro (1984) *The Price of Freedom: The Unfinished Diary*, Yogyakarta, Indonesia.

³¹ See the example of self determination struggle before MOU, *An Analysis for Self-determination for Aceh*. <http://Acehnet.tripod.com/determine.htm>, International Forum for Aceh, New York April 29, 2000.

³² See some examples of human rights violations in Al-Chaidar (2001) *Aceh Bersimbah Darah*, Pustaka Al-Kaustar, Jakarta.

³³ See the history of Free Aceh Movement in Isa Sulaiman (2001) *Gerakan Aceh Merdeka*, Pustaka Al-Kaustar: Jakarta.

non self-governing territory under the UN Frame as well as the absence of the UN in the Helsinki MoU process.³⁴

Peace and Aceh Self-determination

Many peace negotiations had been initiated, even though generally they failed, such as the one that was mediated by Henry Dunan Center (HDC) in 1999.³⁵ The issue was that the GoI initially was strongly against international involvement in what they deemed a domestic dispute, but eventually they acknowledged that the conflict had little hope of being resolved without dialogue, and agreed to give the HDC a chance. However, the GAM had never seen themselves accepted by an international body as a legitimate party, readily agreed to mediation.³⁶ By May 2000, however, an agreement had been reached which was called the “Joint Understanding on Humanitarian Pause”.

This ceasefire would be implemented for three months, and two joint committees were to be set up; one for overseeing the deliverance of humanitarian aid, and the other to continue to work towards a rather nebulous goal of a “further reduction of tension and violence.” GAM went so far as to raise its flag and staged rallies calling for a referendum ballot. The GoI responded through arresting six of GAM’s official negotiators and charging them with “rebellion”.³⁷ On 9th December 2002, the parties signed the *Cessation of Hostilities Framework Agreement* (COHA) an accord that represents a real possibility for achieving peace in this long and bloody conflict. The agreement allows for substantial political and economic autonomy for the province with a deal that stops short of the full independence that GAM were seeking, but does represent significant concessions on the part of the Indonesian Government.

Unfortunately, it was only a temporary halt to the violence, while in the following months COHA ended when the Indonesian government declared a “military emergency” in Aceh on May 2003 and announced that it wanted to destroy GAM once and for all.³⁸ The failure of this initiative to some degree was caused by the objection of Indonesia to recognise GAM as a *belligerent* status, and it seems reluctant to sit at one table with GAM representatives in an international forum. On the other side GAM tended to be unenthusiastic to accept autonomy from Indonesia.

GAM between Belligerent and Insurgent

The notion to distinguish between *belligerent* and *insurgent* might be based on the effort to nationalise *self-determination* from international recognition. Being a belligerent requires extra effort from diplomatic to political and military power both in a national and an international sphere. Economic interests, democratic justification and religion to some extent would give benefit to such recognition. However, it is a controversial rule which depended on the political situation and the capacity of the group to reach international attention. Also, the strength of diplomatic power of a state will contribute to the weaknesses of its *self-determination* group being internationally recognisable.

³⁴ The lack of international support to GAM might be caused by the more consistent Indonesian diplomacy in the international sphere.

³⁵ HDC is created by a group of established humanitarian activists and diplomats; the Geneva-based organization has a mandate of resolving conflict through a mediation style that is based upon humanitarian concerns. See Kira Kay, *the ‘New Humanitarianism’, the Henri Dunan Center and the Aceh Peace Negotiation*, WWS case study 02/2003.

³⁶ See Kira Kay, *Ibid.*,

³⁷ “GAM Negotiators Charged with Rebellion.” *Serambi Indonesia*, July 21, 2000.

³⁸ Aspinal, Edward (2005) *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?* Policy studies 20, East West Center Washington, www.eastwestcenterwashington.org/publication, accessed on 20 November 2010.

Regardless of some controversy to the exact meaning of insurgency, there has been a consensus that *insurgency* can be developed to be *belligerency*. McDougal and Reisiman stated that the distinction that the insurgent does not establish a territorial base which involved effective control over the population.³⁹ Another term used for *insurgency* is *insurrection* which has been described as a war of citizens against the states for the purposes of obtaining power in the whole or in part.⁴⁰ Some basic conditions to be a *belligerent* referred to the qualification of a prisoner of war in international humanitarian law (the Geneva Convention 1949) as follows:

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

- a. To be commanded by a person responsible for his subordinates
- b. To have a fixed distinctive emblem recognizable at a distance
- c. To carry arms openly
- d. To conduct their operations in accordance with the laws and customs of war.”⁴¹

Most states which have a kind of self-determination movement in its territory usually do not recognise themselves as belligerent, as it will extend the impact as the same position in international law. Hence, the recognition of GAM as belligerent would automatically impact on the legal status of Helsinki MoU whether it would be considered an international or a national agreement. Hikmahanto Juwana insisted that MOU Helsinki is not regarded as an international agreement since the GAM movement has not been recognised internationally, so it is considered merely *insurgent* instead of *belligerent*.⁴² However, it should be noted that initially GAM was not well recognised from the international environment, but somehow the fact that the MoU had been signed in the mediation of Crisis Management Initiatives (CMI) which supported by European Union and ASEAN, could be considered as a great achievement for GAM to be recognised as a *belligerent*. Moreover, this would much be affected by the implementation of the MoU which was monitored by international communities. Aspinal mentioned that actually the UN should be a monitoring agency for the MoU implementation, but Indonesia seems ignorant to accept the UN as it would be considered internationalisation of Aceh *Self-determination*.⁴³ It could be understood as Indonesia’s strategy to protect GAM from being widely recognised by the international community. However, it is obscure in international law on who has a capacity to justify whether a separatist movement is considered as a *belligerent* or an *insurgent*.⁴⁴ Hence, the status of a ‘belligerent’ or an ‘insurgent’ in international law may affect on the status of the MoU whether it is considered as a domestic agreement under national law or an international agreement under the international law of treaty.

Aceh’s Self-determination and Self-government in Helsinki MoU

After five rounds of tough bargaining between GoI and GAM delegates, eventually they agreed on the peace agreement of Helsinki MoU on 15 August 2005. This agreement has a much greater chance of success than the previous peace accords. The Humanitarian Pause and COHA both called

³⁹ McDougal and Reisiman (1981) *International Law Essays*, the Foundation Press, New York, p. 522.

⁴⁰ Dhokalia, R.P. (1971) Civil War in International Law, 65, *American Journal of International Law*, 219, p. 225

⁴¹ Article 4 (2), Geneva Convention III 1949.

⁴² Hikmahanto Juwana, professor in International Law, answered a question regarding the status of MoU Helsinki at public lecture at the Law Faculty, Syiah Kuala University on 1st June 2010.

⁴³ See Aspinal, Edward., (2005) *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?*, Policy studies 20, East West Center Washington, www.eastwestcenterwashington.org/publication, accessed on 20 November 2010.p. 47.

⁴⁴ See the Palestinian self determination case as an example of belligerent.

for ceasefires and demilitarization leading to open dialogue on the political status of Aceh. Both sides remained far apart on the core issue of whether Aceh should become independent or remain part of Indonesia. In such circumstances, it proved impossible for the two sides to develop confidence in one another. In particular, military and government officials believed that GAM was using the peace agreement to strengthen its separatist struggle.⁴⁵

The new mediator in 2005, the Crisis Management Initiative (CMI) of former president of Finland Marti Ahtisaari, reversed the sequence for peace. Using the formula that “*nothing is agreed until everything is agreed,*” he required the two parties to agree on the broad outlines of a political formula before a ceasefire and related security arrangements would be put into effect. This placed great pressure on both parties to modify their positions at the meeting table.⁴⁶ Fortunately, both parties had reached the peace agreement on 15 August 2005 in Helsinki, and it then became a pillar for further peace development as well as the end of formal exercise of Aceh’s *self-determination* in the international sphere.

The process of MoU is still considered controversial. Nur Djuli stated that in the early stage of MOU, Marti might be under estimated GAM’s position due to the lack of information he received. But then after GAM said they will move to another place Marti considered that he has

to treat both parties equally. Marti in his first speech mentioned that he merely recognised Indonesia not GAM.⁴⁷

The term of self-government emerged in the second day of session 2, and referred to the answer of Marti when answering the question in a talk show on Finnish TV. In this regard self-government was considered as one layer above autonomy.⁴⁸ The self-government term was used as a bargaining solution by GAM based on experience in the international community such as Olan (Aaland) island in Finland, Catalonia (Spain), Sarawak (Malaysia), Hong Kong (China), etc.⁴⁹ Hence, GAM viewed a solution based on “self-government” as only an interim step in a longer-term struggle to win independence. In this interpretation, a future government dominated by GAM or their sympathizers might be able to move Aceh toward independence. GAM’s chief spokesperson, Bakhtiar Abdullah, pointed out at the conclusion of the second round of MoU Helsinki process:

“I would also like to offer a clarification of some media reports. There have been some misquotations about GAM dropping its claim for independence. To be clear, GAM has not given up its claim for independence for Aceh. However, it has recognized that in a spirit of cooperation in the post-tsunami period, it should make concessions. It has therefore not brought to the negotiating table the issue of independence, and this is therefore not being considered during these talks”.⁵⁰

Hamid Awwaludin as a representative of Indonesia considered the self-government term as only a term, and he said ‘yes’ as long as it was under Indonesian jurisdiction. According to Marti,

⁴⁵ See Aspinal, Edward, (2005), *Op. cit.*

⁴⁶ See Aspinal, Edward, (2005), *Ibid.*

⁴⁷ See some constraints during MOU process such as a statement from Marti speech to remain GAM not to use the term of ‘independence’ or ‘referendum’ ...“please don’t waste your time here, you would better go back to wherever you had come from” and then interrupted by Nur Djuly...“Excellency, we are here as your guests, if we are no longer welcome, we are ready to pack our bag and go somewhere else”. See in M. Nur. Djuli, *Antara Self Government dan Otonomi*, Serambi Indonesia, 14 October 2010, retrieved from www.serambinews.com on 18 October 2010.

⁴⁸ See Djuli M. Nur. Djuli, *Antara Self-Government dan Otonomi*, Serambi Indonesia, 14 October 2010, retrieved from www.serambinews.com on 18 October 2010.

⁴⁹ See Aspinal, Edward, (2005), *Op. Cit.*, p. 66.

⁵⁰ See Aspinal, Edward., (2005) *Op. Cit.*, p. 29.

Aceh has self-government in the frame of special autonomy. It has not found any clear concept to define the self-government for Aceh.⁵¹ Even, Yusra Habib Abdul Gani highlighted that self-government according to MoU is really different to self government in other countries such as Scotland, Bougainville, and Palestine which have specific authorities written in the MoU itself. Yet, MoU Helsinki is quite general and has to be interpreted through the Indonesian law system.⁵² So, self-government in Aceh is considered rhetoric but a substantially special autonomy.⁵³ M.Nur Djuli one of Free Aceh Movement delegates at Helsinki MoU stated differently that actually there is no difference between the term 'autonomy' and 'self-government'. But it is a psychological problem for most Acehnese to hear the term 'autonomy' since it was conceived as hypocrisy from Indonesia.⁵⁴

The MoU sets out a variety of broad principles for the government of Aceh and its relations with the national government. These principles are to be enshrined in the new law of Aceh Government 2006 (LAG), although the agreement pointedly avoids using the terms "self-government" and "special autonomy."⁵⁵ It does not deal only with security matters but also sets out in broad terms a new political relationship between Aceh and the Indonesian state. It includes provisions concerning political participation, human rights, the rule of law, and economic matters as well as measures for the disarmament of GAM and its members', amnesty and reintegration into society, security arrangements, establishment of Aceh Monitoring Mission and dispute settlement.

Many GAM members view provisions on Aceh's government as quite wide in scope and as giving Aceh almost unfettered powers to determine its own affairs. On the other hand, some in the government view the MoU as providing at best for only minimal extensions of arrangements already provided in a Special Autonomy Law number 18/2001. In the wider Indonesian elite, some politicians and commentators warned that "self-government" could be a threat. Wiryono Sastrohandoyo, the chief negotiator during the Megawati presidency said that "Self government means *self-determination*. Self determination means independence. This needs great care, the real agenda of the talks should be a ceasefire and reaffirmation of the Special Autonomy Law".⁵⁶

Though some argue that self-government is hard to be implemented since it is not clearly written in the Indonesia's constitution (UUD 1945), the LAG has opened up the space to negotiate the meaning of self-government in following years.⁵⁷ The LAG includes many special authorities delegated from Indonesia which other provinces do not have, with the exception of six areas: foreign politics, external defence, national security, judicial system, monetary and fiscal matters, and certain issues on religion (Point 1.1.2 (a) MoU and article 7 LAG). Another authority is that Aceh has a right to build relations and to participate in any international events in foreign countries in art, culture and sport (Art 9 LAG).

⁵¹ See a brief reflective history of process MOU in Otto Syamsudin Ishak, *Self-Government*, 7 October 2010, retrieved from www.serambinews.com on 18 October 2010.

⁵² See Yusra Habib Abdul Gani, *Partai Lokal*, 17 January 2008, retrieved from www.serambinews.com on 18 October 2010.

⁵³ See comparative analyses of self governance in Yusra Habib Abdul Gani, (2009) *Self Government, Studi Perbandingan Tentang Desain Administrasi Negara*, Paramadia Press, Jakarta.

⁵⁴ M. Nur. Djuli, *Antara Self Government dan Otonomy*, Serambi Indonesia, 14 October 2010, retrieved from www.serambinews.com on 18 October 2010.

⁵⁵ See Aspinall, Edward., (2005) *Op.cit.*

⁵⁶ See *Kompas*, February 25, 2005.

⁵⁷ Amrizar J.Prang, *Jika Self-Government (Aceh) Diatur Konstitusi*, serambi Indonesia, 4 February 2010, retrieved on 18 October 2010. See also scale degree of self-government in the United States in Alan Tauber, *Remnant of Past Trouble, Defining Self Government among Territories*, accessed from www.ssrn.com on 20 December 2010.

MoU Helsinki in Practice

In Memorandum of Understanding between the Government of the republic of Indonesia and the Free Aceh Movement on 15 August 2005 (MoU) stated:

“The government of Indonesia (GoI) and the free Aceh Movement (GAM) confirm their commitment to a peaceful, comprehensive and sustainable solution to the conflict in Aceh with dignity for all. The parties commit themselves to creating conditions within which the government of the Acehese people can be manifested through a fair and democratic process within the unitary state and constitution of the republic of Indonesia. The parties are deeply convinced that only the peaceful settlement of the conflict will enable the rebuilding of Aceh after the tsunami disaster on 26 December 2004 to progress and succeed”.

From the preamble of MoU, it is obvious that both parties have been concerned with the humanitarian aspect of the Acehese after the disaster of the earthquake and tsunami. Kingsbury stated that the peace agreement in Aceh strongly triggered by the disaster of the tsunami which grounded the conflicting parties to the moral base. The shortcoming of the Indonesian government to cope with the disaster and the suffering of Acehese from armed conflict and the tsunami is a great concern of both parties.⁵⁸

The content of the MoU can be divided into three phases of implementation. *Firstly*, the short term peace security maintenance activities, that is that GAM will demobilise all of its 3000 military troops and handover 840 arms, meanwhile GoI will withdraw all elements of non-organic troops and will give an unconditional amnesty to GAM prisoners in four stages from 15 September to 31 December 2005.⁵⁹ Fortunately, these activities are exclusively monitored by Aceh monitoring Mission (AMM) supported by European Union (EU) and Association of South East Asia Nations (ASEAN).⁶⁰ The *Second phase* is to establish peace and self-government infrastructures for the medium period, such as the law of Aceh government on which releases some authorities from GoI as a basis for Aceh self- government, namely the establishment of a local party, Aceh reintegration agency, the election of a new head of administration and legislative, and redistribution of natural resources revenue.

The third phase includes the activities for the long term objectives, that is the establishment of three strategic institutions in terms of recovering, reintegrating peace and justice through Truth and Reconciliation Commission (TRC) and the Human Right Court (HRC). In addition, the third institution is the Wali Nanggrou Institution (WN) in terms of retrieving and recovering of historical and cultural dignity after the confusion of Indonesian’s culture infiltration. In other words, the third phase would be fundamental for further implementation of the MoU in the frame of Indonesian’s unitary states and international atmosphere in achieving the goal of MoU, i.e., peace, justice, democracy and welfare. This division should be seen as an interlink activity instead of separation from each other.

The first phase was done successfully with the support of AMM from the EU and ASEAN. Similarly, the second phase can also come through even without any specific monitoring institutions. However it is a crucial challenge for the third phase in which after a six year period it is still considered stagnant. Of fundamental progress of the MoU after the last six years is the issue of law

⁵⁸ See Kingsbury, D, (2007) *Peace Processes in Aceh and Sri Lanka: A Comparative Assessment*, Security Challenge, Vol. 3, No. 2, p. 23. See also Kingsbury, D., (2005) *A Mechanism to end conflict in Aceh*, Security Challenge, Vol. 1, No. 1, p.47.

⁵⁹ See, the Helsinki Memorandum of Understanding 15 August 2005, part Four on Security Arrangements.

⁶⁰ See the Helsinki Memorandum of Understanding 15 August 2005, part Five on the Establishment of the Aceh Monitoring Mission.

number 11/2006 on the LAG as a legal foundation for Aceh self-government under the Indonesian legal system. This law comprises 40 chapters and 273 articles covering many essential issues derived from the MoU. Interestingly, in this law there is no wording of 'self-government'. However in article 1 point (2), it states that "*Aceh adalah daerah provinsi yang merupakan kesatuan masyarakat hukum yang bersifat istimewa dan diberi kewenangan untuk mengatur dan mengurus sendiri urusan pemerintahan dan kepentingan masyarakat setempat...*" (Aceh is a legal community with its special nature and given an authority to self-government and carry out government and community interests' affairs...). It might consider that self-government notion had been implied both in the MoU and the LAG.

Hence, the MoU at the international level has been shifted to be a national law through the LAG 2006. In other words, the LAG has currently become an essential pillar for Aceh's self determination process under Indonesia's unitary system. However, there have been some legal conflicts and its different legal interpretations on the LAG as an ongoing challenge. The status of LAG is considered under the hierarchy of the Indonesian constitution 1945 and many aspects mentioned in LAG have been ruled in various regulations without any contradiction to the constitution, and also should be coordinated with other related regulations. However, the GAM was more concerned to justify the LAG to the MoU instead of the Indonesian constitution, on which ruled some basic point of the agreement. The recent discussion on independent candidates for governor election according to the original version of the LAG and its amendment by the constitutional court (Mahkamah Konstitusi) reflected such arguments.

If there are contradictions between Law of Aceh's Government 2006 and MoU Helsinki, it is subject to negotiation and political bargaining between both parties. However, to some extent, GoI has contributed to the failure of the establishment of the TRC through the amendment of the Indonesia's Truth and Reconciliation Commission law (UU No. 27/2004)⁶¹ that has contributed to the uncertainty of the TRC establishment in Aceh.⁶² Moreover, there is no such serious effort from the Aceh government or the former GAM to establish such institutions. The other concerns are economic and cultural issues which are considered insufficient in effort of both parties. These can be seen from the failure of the establishment WN institution and the marginalisation of Aceh culture in institutional and legal framework.⁶³

Thus, the third phase can merely be exercised through re-contemplating, re-determining and re-defining the distinctive of economic and social and cultural status of Aceh. These issues are strongly related to the international human rights related issues. The MoU has clearly mentioned on the obedience of both parties to the human rights values as it was written in International Covenant on Civil and Political Right and International Covenant of Social and Culture 1966. Both covenants are considered as treaty making law of the following of Universal Declaration of Human Rights 1948. The human right approach specifically mentioned in the MoU for establishment of the TRC and the HRC.⁶⁴ Another human rights issue is the economic right for ext-combatant and the right to dispose natural resources in land, air and sea. There is no specific institution mentioned for pursuing economic rights, such as the WN for recovering cultural related rights.

Some Qanuns have been drafted and are being discussed without a proper date to be in force. However, it seems that both the Aceh and Indonesian government are more concerned over

⁶¹See Mahkamah Konstitusi Republik Indonesia Putusan Nomor 006/PUU-IV/2006.

⁶² See Koalisi Pengungkap Kebenaran Aceh (2008), *Demi Kebenaran Dan Keadilan Di Aceh, Catatan Rumusan Pembentukan KKR Aceh Sepanjang Tahun 2007*, Koalisi Pengungkap Kebenaran Aceh: Jakarta. Accessed at <http://kontras.org/buku/kata%20pengantar%20aceh.pdf> on 5th January 2012.

⁶³ See Kontras, Pro-Kontra Qanun Wali Nanggroe', *Tabloid Kontras*, No. 571, Tahun XII, 17-23 December 2010.

⁶⁴ Lihat penjelasan Desmond Tutu tentang KKR di South Africa di Desmond Tutu (1999), *No Future without Forgiveness*, Rider: London.

the short term political agenda in maintaining the elite political power rather than taking into account to supra-structure of peace and justice through the establishment of the three institutions above. The human rights issues have been alienated from the mainstream of its implementation. Hence it should be noted that both parties should always take into account the last closing of MoU which stated: "GoI and GAM will not undertake any action inconsistent with the *letter* or *spirit* of this memorandum of understanding". Unfortunately, the spirit of the MoU which refers to the fulfilment of human rights approaches is less considered by both parties as none of human rights related institutions has established by December 2011.

It might be concluded that Aceh has merely reached a political symbolic status of MoU as a self-government province in Indonesia. However, economic, social and human rights related issues were considered in lower degree of development.⁶⁵ Somehow, the internal self-determination or self-government would be a beneficial solution not only between GoI and GAM elites, but also could be a trigger for the advancement of Aceh people's welfare as a whole in years to come.⁶⁶ However, it should be noted the warning of O'Brian "Where the right of internal self-determination is denied, the right to external self-determination could arise".⁶⁷ Caution should be taken by both parties as that after vertical conflict between GAM and GoI is dissolved, another tendency would be horizontally political local conflicts and suspicious of collusions that might emerge to some extent.⁶⁸

Conclusion

Aceh self-determination has been negotiated within Indonesia's unitary system since Tgk. Daud Bereueh self-determination movement during 1953-1963, and was continued and extended by Tgk. Hasan Tiro on 4th of December 1976. Fortunately, this struggle could be ended through Aceh *self-government* notion in the MoU Helsinki on 15 August 2005. This notion prevents Aceh to be recognised as a sovereign state politically, but it has given more space to redefine and re-determine its political, social, economic and cultural status within the Indonesian system, with reference to the Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights. This negotiation is and will continue as a dynamic process in terms of political bargaining between Aceh local government and Jakarta (GoI). Equally, the MoU can also be considered as a means of fixing the historical missing-link of the legal based relationship between Aceh self-determination and Indonesia sovereignty for decades, particularly from the unilateral claim of Indonesia over Aceh's sovereignty in the Hague Round Table conference 1949. Accordingly, the MoU and the law on Aceh Government 2006 has been a nexus concept for the new Aceh development in the future.

However, there are some challenges that should be taken into account that Aceh is merely able to redefine its short term political interests, yet the long term objectives on which are related to justice, dignity and cultural recovery are still considered less interesting by both parties. Aceh self-government might be considered too slow to redefine itself after a six year period of MoU, particularly in relation to social, economic and cultural status as part of essential element of

⁶⁵ See Agnes Sri Poerbasari, *the Problem of Self-government in Aceh post the Helsinki Memorandum of Understanding*, working paper 2008

⁶⁶ Many basic rural reconstructions are considered weak enough as many people in west and south coast area still use expired rakits and bridges. This situation has been worsened when many death accidents occurred because of vulnerable infrastructure. See for example Serambi Indonesia, *Pembuatan Rakit Lamtuha Tersendat*, May 19, 2010, *Insiden Jembatan Gantung Terjadi lagi di Gayo Lues* on 19 December 2010 at <http://serambinews.com/news>, accessed on 24 December 2010.

⁶⁷ O'Brien (2001), *International Law*, Cavendish Publishing Limited, London, UK, p.165.

⁶⁸ See the World Bank support for post tsunami reconstruction report, *The Aceh Peace Agreement, How Far Have We Come*, December 2006 at <http://www.worldbank.or.id>, accessed on 15 November 2010.

international human rights law. This might be caused by the poor local government in developing and managing many advantages from both MoU and LAG, especially, the failure to establish human rights related institutions such as the HRC, the TRC and WN. To some extent the government of Indonesia has contributed to this stagnancy, such as the uncertainty of the TRC establishment due to the *legal vacuum* at national level. Yet, the local power shortcomings also contributed some fundamental constraints toward a fully implementation of the MoU. Eventually, somehow Aceh *self-determination* process should be a lesson learned for Indonesia in terms of redefining its political economic relation to different regions and people of Indonesia, as well as for other *self-determination* movements in seeking justice and welfare under an international law sphere.

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