AUTONOMY-BASED APPROACH FOR ETHNIC CONFLICT SETTLEMENT

Analyzing the successfulness of autonomy arrangements related to the inclusion of the right to democracy into the national legal framework
(The case of Aceh, Indonesia)

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1. INTRODUCTION

1.1. Background

The Helsinki Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) has ended ethnic conflict[1] in Aceh. The panacea to the conflict is the adoption of autonomy-based approach which gives Aceh opportunity to exercise authority within all sectors of public affairs, which will be administrated in conjunction with its civil and judicial administration, except in the field of foreign affairs, external defense, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the government of the Republic of Indonesia in conformity with the constitution[2].

Autonomy-based approach has been applied several times in Aceh before the signing of the Peace Agreement but did not provide viable solution. Yash Ghai provide interesting framework for analysis related to the successfulness of autonomy arrangement in connection with the ethnicity[3]. One of the frameworks is that Autonomy arrangements are most likely to succeed in the states which established tradition of democracy and the rule of law[4]. The presence of democracy and the rule of law will provide for respect to pluralism, religious and cultural differences, facilitating process give-and-take during autonomy arrangement, the law for providing the framework for relations between the center and regions and defining the powers of the respective government, and also the court for legal disputes. Starting from this point, this study will analyze autonomy-based approach for ethnic conflict in Aceh related to the inclusion of the right to democracy into the national legal framework.

1.2. Research Questions

This research is intended to investigate the relationship between autonomy-based approach for ethnic conflict settlement and the inclusion of the right to democracy into

[1] Ethnic conflict in this study is defined as the conflict between an ethnic group of Aceh and the given State of Indonesia. Definition of an Ethnic group is a type of cultural collectivity, one that emphasizes the role of myths of descent and historical memories, and that is recognized by one or more cultural differences like religion, customs, language, or institutions' (Smith 1991:20). *Autonomy, Self-governance and Conflict Resolution: Innovative approaches to institutional design in divided societies,* Edited by Marc Weller and Stefan Wolff. Oxon, (Routledge) 2005. pp. 4-5

[2] Article 1.1.2 (a) of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement. Helsinki, Finland. In 15 August 2005

[3] Ghai, Yash. *Ethnicity and Autonomy: A framework for analysis*. In: Autonomy and Ethnicity, *Negotiating competing claims in multi-ethnic states*. Edited by Yash Ghai. Cambridge (Cambridge University Press) 2000. pp.14-24

[4] Supra, p.16

the national legal framework with the help of a main research question as follows:

To what extent does the inclusion of the right to democracy into the national legal framework determine the viability of autonomy arrangement for ethnic conflict settlement?

Providing deeper analysis and more focus to those research area, the sub-questions to the problem can be described as below:

(1) During the process of ethnic conflict settlement of Aceh, whether the national legal framework provide sufficient features of the right to democracy for guaranteeing the viability of autonomy-based approach and to what extent influence the degree of success?

(2) Democracy as a human rights which refers to international human right law instruments, what are the benefits, challenges and obstacles during the implementation or enforcement at the national level especially for ethnic conflict settlement?

1.3. Why study inclusion of the right to democracy into the national legal framework related to the viability of autonomy arrangements in Aceh?

The resolution of The General Assembly of the United Nations No.32/130 in 16 December 1977 on Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedom affirms that all human rights and fundamental freedom are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion, and protection of both civil and political, and economic, social, and cultural rights. Reaffirming this concept the Vienna Declaration and Programme of Action as adopted by the World Conference on Human Rights on 25 June 1993 states in point (5) that All human rights are universal, indivisible and interdependent and interrelated.

Encouraged by this concept, this research is intended to examine the indivisibility of human rights and the link between the right to self-determination, the right to democracy, and autonomy in relation with the case of ethnic conflict in a multi-ethnic state. The type of ethnic conflict in this study is between an ethnic group and the central government.

It can be described about how the conflict between an ethnic group and given State occurred that the development process after colonialism era especially in the third world

to some extent provides unequal or unjust distribution among the regions of the state and ethnic relation under certain circumstances is a process of internal colonialism. Domination and exploitation politically or economically in the region of powerless ethnic minority by the majority ethnic group represented by State or central government may lead to the ethnic tension and on the certain level becomes ethnic conflict[5].

1.4. Hypothesis or framework for analysis

Investigating interrelationship between the right to self-determination, autonomy-based approach settlement, ethnic conflict, and the right to democracy requires a framework for analysis in order to make it focus and comprehensive. Therefore, this study will be guided by some hypothesis or frameworks for analysis as below:

1.4.1. Autonomy as possible means for claiming human rights

The international treaties on human rights have not yet establish the right to autonomy as part of human rights which can be claimed by regional entities. However, the concept of autonomy undoubtedly has been widely recognized and practiced to end conflict especially between an ethnic group and the State. On the normative level, the concept of autonomy related to the exercise of the right to self-determination has been introduced, adopted and upheld by the United Nations Declaration on the Rights of Indigenous Peoples 2007.[6] Article 4 of the Declaration states that *Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions*. International community has recognized also the importance of autonomy arrangements for implementation of the right to self-determination and the concept of decentralization[7].

1.4.2. Autonomy-based approach is suitable for ethnic conflict settlement

Historically autonomy has been applied as a conflict-solving mechanism in many areas of different continent in the world such as Europe, Asia, Africa, America, and Australia where some of them are viable and durable[8]. Autonomy is important because it may serve as a means of recognizing cultural, religious

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5 Stavenhagen, Rodolfo. *Ethnic Conflict and Human Rights, Their Relationship.* In: Ethnic Conflict and Human Rights. Edited by Kumar Rupesinghe. Oslo (Norwegian University Press) 1988 p.18

6 The General Assembly of the United Nations, the Declaration No.A/61/L.67 in 7 September 2007

7 Hannikainen, Lauri. *Self-determination and Autonomy in International Law.* In: *Autonomy : Applications and Implications.* Edited by Markku Suksi. Hague (Kluwer Law International) 1998 pp.90-94

8 Nordquist, Kjell-Åke. *Autonomy as a Conflict-Solving Mechanism- An Overview.* Supra, pp.74-77

and linguistic diversity and identity, while at the same time maintaining unity of the State, and also as conflict prevention, avoiding succession and a step to independent statehood[9].

1.4.3. The inclusion of the right to democracy into the national legal framework will determine the viability of autonomy arrangements

The implementation of the right to democracy will influence the level of durability of conflict settlement between central government and an ethnic group. The more democratic national legal framework and the government the more durable ethnic conflict settlement[10].

The definition of the right to democracy could be *the subjective capacity of individuals and peoples to demand of their rulers for a political regime based on the rule of law and separation of powers, in which citizens can periodically elect their leaders and representatives in free and fair elections, on the basis of the interaction between a number of political parties, full for the exercise of the freedoms of expression, the press and association and the effective enjoyment of human rights*[11]. Related to the definition of the right to democracy, the Article 21 of Universal Declaration of Human Rights (UDHR) and Article 25 of International Covenant on Civil and Political Rights (ICCPR) affirmatively state that everyone has:

(1) The right to take part in the government of his country, directly or through freely chosen representatives;

(2) The right of equal access to public service in his country;

(3) The will as the basis of the authority of government and this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting process; and

(4) The right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

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[9] Lundberg, Maria. Lecturer Material HUMR 5501: *Ethnic Challenges to the Nation State, Legal responses I: International Law and Autonomy.* Oslo (Norwegian Center of Human Rights) 2007, p.2

[10] Supra note 8 pp.69-70

[11] Cuadroz, Manuel Rodriguez. *Promotion and Consolidation of Democracy.* Working paper at the Fifty-third Session of the Sub-Commission on the Promotion and Protection of Human Rights. 5 July 2001. p.17

The forgoing definition of the right to democracy is the main reference for this study; however, it is still possible to use additional reference in order to enrich analysis.

1.5. Methodology

This study emphasizes the use of legal positivist methodology which focus on the analysis of legal documents related to the case of ethnic conflict settlement in Aceh. The use of legal positivist methodology is an effort to get legal objectivity of the source of law. The sources of law are the facts which separate from the moral aspects; therefore, it seems to be objective.

Any political and historical descriptions are not intended to be methodological approach but only as additional explanation of legal aspects.

The research try to focus and find a deeper understanding of the problems from the perspective of human rights law.

1.6. Resources

The main resources of research will include international and national legal documents which have direct or indirect relationship to the area of study. Related to the international legal resources, article 38 of the Statute of the International Court of Justice classifies as below:

(1) International conventions, whether general of particular, establishing rules expressly recognized by the contesting states;

(2) International custom, as evidence of a general practice accepted as law;

(3) The general principles of law recognized by civilized nations; and

(4) The judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Regarding to the national legal documents of Indonesia, article 7 of the Law No.10/2004 on the Conduct of Legal Arrangement (*Pembentukan Peraturan Perundang-undangan*) classifies hierarchically as follow:

1) *The 1945 Constitution (Undang-undang Dasar 1945);*
2) *Statutes or Governmental Regulation as substitution for the Statutes (Undang-Undang / Peraturan Pemerintah Pengganti Undang-Undang);*
3) *Governmental Regulation (Peraturan Pemerintah);*
4) *Presidential Regulation (Peraturan President); and*
5) *Local or Regional Regulation (Peraturan Daerah), which consist of:*

(1) *Provincial Regulation (Peraturan Daerah Provinsi);*

(2) *District/Municipal Regulation (Peraturan Daerah Kabupaten/Kota);*

(3) *Village Regulation (Peraturan Desa).*

Secondary resources of this research will be any interpretation or explanation to the main resources in relation with the research area which may include the books, academic writings,

and other research reports.

1.7. Thesis outline

Chapter Two of the thesis will discuss about the concept of autonomy in the view of international human rights law. The concept and normative linkages between the right to self-determination, minority rights, and indigenous peoples rights are applied to analyze the nature of autonomy. After getting understanding on the concept of autonomy then its possible roles for ethnic conflict settlement will be investigated in the last section of Chapter two.

Defining the right to democracy in the view of international human rights law is the focus of Chapter Three. The right to democracy as critical standard for the viability of autonomy arrangements will be analyzed deeply prior to the discussion in the case of Aceh.

Chapter Four is going to investigate the inclusion of the right to democracy into the national legal framework of Indonesia in relation with the implementation autonomy-based approach for ethnic conflict settlement in Aceh. This chapter will address firstly with the overview of the practices of democracy in Indonesia along with the history of conflict in Aceh and be followed by an overview on the Indonesian legal system. After this, the practices of autonomy-based approach along with the sift of various regimes in Indonesia will be discussed in order to find out the relationship between the viability of autonomy arrangements and the inclusion of the right to democracy into the national legal framework.

Finally, the conclusion of thesis will be presented in Chapter Five.

2. THE NATURE AND ROLES OF AUTONOMY RELATED TO THE ETHNIC CONFLICT SETTLEMENT

2.1. Legal basis of autonomy in the view of international human rights law

Autonomy-based approach for ethnic conflict settlement requires a legal basis in order to be enforceable and effective. The basis of autonomy in this research is limited to the scope of international human rights law[12] which is defined simply as the law that addresses the protection of individuals and groups against violations of their internationally guaranteed rights. The classification of law which can be used as legal basis will refer to the article 38 of the Statute of the International Court of Justice which states that the sources of international law are as below:

(a) International conventions, whether general of particular, establishing rules expressly recognized by the contesting states;

(b) International custom, as evidence of a general practice accepted as law;

(c) the General principles of law recognized by civilized nations;

(d) Judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

It means that International Conventions, International customs, the General principles of law and Judicial decision related to issues of the International Human Rights are going to be referred as legal basis.

Studying the legal aspect of autonomy will include the discussion of other concepts of human rights which have relationships and interconnections to the concept of autonomy . The evolution of the concept of autonomy has legally relevant category with the legal aspect of the right to self-determination, minority rights, and indigenous peoples rights[13]. Therefore, the scope of legal basis of autonomy in the view of international human rights law will share with the legal basis of the right to self-determination, minority rights, and the rights of indigenous people.

2.1.1. The right to self-determination

There are many hortatory references to self-determination in General Assembly resolutions and elsewhere; however, the only legally binding documents in which the right of self-determination is proclaimed are the two international covenants,

[12] Buergenthal, Thomas, et al. *International Human Rights in a Nutshell*. Minnesota (West Group) 2004, p.1

[13] Suksi, Markku. *Concluding Remarks.* Supra Note 7. p.357

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) [14] which states in the common Article 1 that :

1. *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;*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
3. *The states parties to the present covenant, including those having responsibility for the administration of non-self-governing and trust territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

The provisions of the Charter of the United Nations which are concerned with the issue of self-determination are Article 1 (2) and Article 55 which confirm that the purpose of the United Nations is, inter alia, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people. It means that the principle of self-determination of people is the basis for developing peaceful international relationship.

Supporting to the important place of self-determination issue in the international arena then the General Assembly of the United Nations in 24 October 1970 provided the Resolution No.2625 on the Declaration on Principles of International Law concerning Friendly Relation and Co-operation among States in accordance with the Charter of the United Nations. Under the Principle of equal rights and self-determination of peoples the Declaration suggests that all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. The aims of the promotion of those principles are mainly to this end are:

(a) To promote friendly relations and co-operation among States; and

[14] Hannum, Hurst. *The right of self-determination in the twenty-first century.* http://findarticles.com/p/articles/mi_qa3655/is_199807/ai_n8801110/pg_2 as visited in 10 March 2008

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.

Furthermore, the violations to the principle of self-determination among other things are subjection of peoples to alien subjugation, domination and exploitation, as well as a denial of fundamental human rights, and is contrary to the United Nations Charter.

Implementing the right of self-determination, the establishment of a sovereign and independent State, the free association of integration with an independent State or the emergence into any other political status is freely determined by a people. The resolution suggest also that every State has the duty to refrain from any forcible action which deprives peoples' right to self-determination.

On the other hand, the General Assembly states that all stipulations of the resolution should not be construed as authorizing or encouraging any action which would dismember of impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color. For respecting to the national unity and territorial integrity of States, the principle urges that every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State of country.

The foregoing arguments on the right of self-determination in the Declaration is also reiterated in the Paragraph 2 of the Vienna Declaration and Programme of Action adopted during the World Conference on Human Rights 1993[15].

The right to self-determination is a norm of *jus cogens* which are the highest rules of international law and must be strictly obeyed at all the times. Both the International Court of Justice and the Inter-American Commission on Human Right have ruled on cases in a way that supports the view that the principle of self-

[15] The United Nations Document A/CONF.157/23, 12 July 1993. the Declaration and Programme of Action were endorsed by General Assembly Resolution 48/121, adopted without a vote, 20 December 1993. *Basic Document on Human Rights, Fith Edition.* Edited by Ian Brownlie and Guy S. Goodwin-Gill. Oxford (Oxford University Press) 2006. p.140

determination also has the legal status of *erga omnes* which obligates the international community as a whole to respect it in all circumstances in their relations with each other[16].

Inherent to the provisions of the right to self-determination as stated on the common Articles 1 of the Covenants as "freely determine political status and freely pursue economic, social and cultural development" of the people is the "limitation concept" to the application of the right to self-determination as stated on the General Assembly Resolution No.2625 on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation of the United nations that is "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States[17]". The freedom to determine political status and to pursue economic, social and cultural development in the very beginning must compete with the principles of territorial and political integrity of the State which stated on the declaration as a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

A full exercise of the right to self-determination as foregoing explanation is the granting of independence to colonial countries and people[18]. The historical background of such granting is the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations. Establishing of a new sovereign and independent State based on the exercise of the right to self-determination is usually called as External (and Full) aspect of Self-determination[19]. However, the principle of self-determination also recognizes other forms of its implementation such as the free association or integration with an independent State or the emergence into any other political status[20]. This

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16 Parker, Karen. *Understanding Self-determination: The Basic.* *http://www.webcom.com/hrin/parker/selfdet.html* As visited in 10 March 2008

17 Paragraph 7 of the General Assembly Resolution 2625 (XXV), Annex, 25 UN GAOR, Supp. (no.28), UN Doc.A/5217 (1970) on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations under the point of *The principle of equal rights and self-determination of peoples*

18 General Asembly Resolution 1514 (XV), 14 December 1960. *Declaration on the Granting of Independence to Colonial Countries and Peoples.*

19 Supra note 7 p.82

20 Supra note 17. Paragraph 4

stipulation gives the possibility to adopt the concept of autonomy in a given existing State as a realization of the right to self-determination[21]; however, autonomy as a concept is not directly stated on the Declaration as one of the reference concept of the political status.

2.1.2. The Minority Rights

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) as an important legal source for protection to the Minority Rights under the International Human Rights Law affirms that in the States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The next question for the exercising of the minority rights is related to the definition or explanation of the persons belonging to the minority because the convention does not clearly and directly specify and categorize who Persons are. However, addressing to the question, the Human Rights Committee gives explanation or interpretation to the scope of person who are protected under Article 27 of International Covenant on Civil and Political Rights (ICCPR).

The protected persons under the article 27 are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 of International Covenant on Civil and Political Rights (ICCPR) are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction and State party may not, therefore, restrict the rights under article 27 to its citizens alone[22].

Although article 27 is expressed in negative terms, that article, nevertheless, recognize the existence of a "right" and requires that it shall not be denied.

[21] Supra note 7 p.82

[22] Paragraph 5.1. of the General Comment No.23: *The Rights of Minorities* (Art. 27):. 08/04/94. CCPR/C/21/Add.5, 8 April 1994, Office of the High Commissioner for Human Rights

Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party[23].

Related to the linkage between the right to self-determination and the minority rights, there is a distinction between the right to self-determination and the rights protected under article 27. The right to self-determination is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol[24]. However, none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant included the right to self-determination[25].

The linkage between the protection of minority rights and autonomy as a form of such protection is the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe where in the Paragraph 35 states that the participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned[26]. The document clearly provide possibility for implementation of autonomy concept as responds to the existence of minority group and their rights.

United Nations Commission on Human Rights also issued Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic

[23] Supra Paragraph 6.1
[24] Supra note 20, Paragraph 3.1
[25] Supra note 20, Paragraph 8
[26] The Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, adopted 29 June 1990. *Documents on Autonomy and Minority Rights*. Edited by Hurst Hannum. Dordrecht (Martinus Nijhoff Publisher) 1993 pp 63-64

Minorities (adopted in Res.1992/16, 12 February 1992) and marking the first time since the adoption of Article 27 of the International Covenant on Civil and Political Rights (ICCPR) in 1966 that the substantive rights which should be enjoyed by members of minorities have been defined by the entire international community. The declaration is, in many respects, a relatively conservative document which formally concerns with the rights of persons belonging to minorities and therefore continues the individualistic focus of Article 27 of the International Covenant on Civil and Political Rights (ICCPR)[27].

In the same year after the publication of the Declaration by the United Nations, in 2 October 1992, the European Charter for Regional or Minority Languages, adopted by the Committee of Ministers of the Council of Europe, was opened for signature. The Charter concerns only on specific aspect of minority rights that is the Linguistic right in the region of European countries. It shows that the minority rights has been concern of the European countries and furthermore the declaration provides a path way for other countries in international arena to promote, protect and fulfill of minority rights.

2.1.3. The rights of Indigenous People

Indigenous peoples are a group of people who meet the criteria as *peoples in independent countries who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions*.[28]

The Typical examples of the indigenous populations are the American Indians, the Australian Aborigines, the Inuit or Eskimos in Canada and Alaska, the Sami of Northern Scandinavia, the Ainu of Japan, the Veddha of Sri Lanka and the Chittagong Hill tribes in Bangladesh.

The only convention existing at the international level on indigenous peoples is the

[27] *Documents on Autonomy and Minority Rights.* Edited by Hurst Hannum. Dordrecht (Martinus Nijhoff Publisher) 1993 p.79

[28] Article 1 point (1) of the International Labor Organization Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries. Adopted 27 June 1989, entered into force in 5 September 1991

International Labor Organization (ILO) Convention No.107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (signed 26 June 1957, entered into force 2 June 1959). the Convention has been seen as inadequate and inappropriate by indigenous peoples and their advocates because its prevailing assimilationist goals of its time. However, the Convention is an important document which recognizes, inter alia, the principle of non-discrimination, the right of collective and individual indigenous land ownership, the relevance of indigenous customary laws, and the right to be compensated for land taken by the government[29].

In 26 August 1994 of 36th meeting, finally the The Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a final text of the Draft Declaration on the Rights of Indigenous Peoples (E/CN.4/SUB.2/1994/2/ Add.1 (1994)). The draft may have represented a stronger pro-indigenous position by the UN-approved declaration on indigenous peoples. The work on the draft actually has been started from the adoption of such declaration by the Working Group on Indigenous Populations of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1992 (UN Doc. E/CN.4/Sub.2/1992/33, Annex I).

The Draft Declaration on the Right of Indigenous Peoples has a very significant role in relation to the recognition of the right to self-determination in relation with a right to autonomy. Article 31 of the Draft states that Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions. The linkage between a right to autonomy and the right of self-determination was built by the Draft and this is kind of breakthrough upon such issues under the auspice of the United Nations.

After nearly 25 years of contentious negotiations over the rights of native people to protect their lands and resources, and to maintain their unique cultures and

[29] *Documents on Autonomy and Minority Rights.* Edited by Hurst Hannum. Dordrecht (Martinus Nijhoff Publisher) 1993 p.8

traditions, at the end the General Assembly on 7 September 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples with the resolution No. A/61/L.67. Clearly Article 3 of the Declaration states that indigenous peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. In relation with the linkage between the right to self-determination and the right to autonomy for Indigenous peoples, Article 4 affirms that indigenous people in exercising their right to self-determination have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. Indeed, the Declaration is the sole document under the auspice of the General Assembly of the United Nations which definitely uses the term of the right to autonomy in exercising the right to self-determination.

2.2. Ethnic Conflict and Autonomy

2.2.1. Defining Ethnic Conflict

Ethnicity is a broad concept which contains some distinctive factors of one group of peoples from others. The distinctive factors can be based on the race, religion, language, and colour. Those factors are transformed into the ethnicity when they are used by a group of peoples as a mean of social distinctions meanwhile as the basis of political identity and claims to a certain role in the political process or power[30].

Related to the distinctive factors of an ethnic group, there are four features that can be used to distinguish an ethnic group from the others which as follow[31]:

1) The sense of of unique group origins;
2) The Knowledge of a unique group history and belief in its destiny;
3) One or more dimensions of collective cultural individuality; and
4) A sense of unique collective solidarity.

There is possibility that between groups of people who identify each other in ethnic term such as color, race, religion, language or national origin exist social, political, and economic conflict. When ethnic differences are used consciously or unconsciously to distinguish the opposing actors in a conflict situation, particularly

[30] Supra note 3, p.4

[31] Smith, D. Anthony. *The Ethnic Revival, The Modern World.* Cambridge (Cambridge University Press) 1981, p.66

when they become powerful mobilizing symbols, then ethnicity does become a determinative factor in the nature and dynamic of the conflict.

The parties to an ethnic conflict are not merely one ethnic group and another ethnic group such as Madurannese fighting to Dayakesse (both are Indonesian ethnic groups) but also between the ethnic group and the given state, for example, the case of armed conflict between Acehnesse and the Central government of Indonesia. The development of the conflict will depend on the political system, the ethnic balance of power, and the strategies adopted by the state, the history of such ethnic group and their perception[32], and the conflict occurs in the situation where there exists a clash of interests or a struggle over rights: right to land, to education, to the use of language, to political representation, to freedom of religion, to the preservation of ethnic identity, to autonomy or self-determination, and so forth.

2.2.2. Autonomy and its roles in ethnic conflict resolution

Ethnic conflict is not legally and institutionally regulated both by international law or domestic law compare to other kind of conflicts such as labor conflicts. Therefore, when ethnic tension which has existed for a long time latently bursts into open ethnic conflict, societies, politician, and government tend to refuse its existence and dealing with such conflict by adopting repressive measures against one or other opposing ethnics and when this occurs then the human rights abuses happen. Treatment to such conflict has been likely to be considered a domestic affairs. It may find its basis on the the principle of non-intervention based on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, 1970, which states that *no State or group of States has the right to intervene...armed intervention and all other forms of interference or attempted threats against the personality of the States or against its political, economic and cultural elements, are in violation of international law*. Furthermore, another paragraphs says that every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State. It seems that the international law principles have internalized the problem of ethnic conflict. However, the application of these principles should not not preclude the international community from having a

[32] Rupesinghe, Kumar. *Theories of Conflict Resolution and Their Applicability to Protracted Ethnic Conflicts*. In: Ethnic Conflict and Human Rights. Edited by Kumar Rupesinghe. Oslo (Norwegian University Press) 1988, p.40

concerns with internal conflicts, could be examined its legitimacy based on other international law principles and/or human rights standards such as the right to self-determination, the protection of minority rights, humanitarian law in armed conflicts, and the protection and promotion of individual human rights[33].

However, massive and severe human rights abuses provided by ethnic conflict will be fallen into not only national issue but also must be international concern because of the principle of universality of human rights protection. The international communities under the umbrella of the United Nations or in narrower scope like regional organizations have obligation or duty in both prevention and settlement of such human rights violations. The preamble of the Universal Declaration of Human Rights,1948, affirms that member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Solving the problems of ethnic conflict requires commitment both national and international stakeholders under the frame of the principles of international law and/or international human rights law. And the phenomena of ethnic conflict which engages an ethnic group competing with their government has raised very prominent alternative solution by which the interest of both parties on the maximum level may be covered, that is autonomy.

Autonomy as a mechanism to solve ethnic conflict has been international precedents that in some cases it may be very effective to end or prevent the conflict , inter alia, in Åland Island of Finland and Aceh of Indonesia.

In the light of international human rights law, the right to autonomy is solely recognized in the non-binding international document of the United Nations Declaration on The Rights of Indigenous Peoples 2007 which on the Article 4 states that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. This declaration provides the path for international recognition of the right to autonomy as a collective right especially in relation to Indigenous people and the way how they exercise the right to self-determination. Indeed, in this Declaration

[33] Eide, Asbjørns. *Internal Conflicts under International Law, Focus on Ethnic Conflict, Minority Rights and Human Rights*. In: Ethnic Conflict and Human Rights. Edited by Kumar Rupesinghe. Oslo (Norwegian University Press) 1988, pp.26-27

there exists relationship on the normative level based on the declaration between the concept of autonomy, the right to self-determination, and ethnicity.

The right to self-determination provides peoples with the rights to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right[34]. The message of this provision textually and generally is that the peoples has autonomous power to manage their life without any interferences, pressure, or disruption of other parties. Historically the right to self-determination is intended to end the era of colonialism over the globe. However, the development of the concept of the right to self-determination has provided a broader meaning of the right than just decolonization such as the issuing of the declaration of the rights of indigenous peoples, 2007. Autonomy, on the other hand, has also close meaning to the concept of the right to self-determination. Autonomy lexically means the possession or right of self-government or freedom of action which is from the Greek words autonomia, autonomos (having its own laws) that originally consist of autos 'self' and nomos 'law'[35]. In legal terminology the terms of autonomy and self-government are synonyms and compared to the holder of the right to self-determination, the holders of the right to autonomy are more limited in the point that self-government still gives opportunity for interference from central government or at least power or authorities sharing but the holders of the right to self-determination may have an option to get full independence[36]. Additionally, The concept of autonomy can be identified also as belows[37]:

1) as a right to act upon one's own discretion in certain matters;
2) as a synonym of independence;
3) as a synonym of decentralization;and
4) as exclusive powers of legislation, administration and adjudication in specific areas of an autonomous entity.

And as a general conceptual reference to this research, Autonomy in the principle

[34] Article 1 Paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCRs)

[35] Concise Oxford English Dictionary (Tenth Edition) on CD-ROM 2001 Version 1.1. Oxford (Oxford Universality Press) 2001

[36] Hannikainen, Lauri. *Self-determination and Autonomy in International Law.* Supra note 6, p.79

[37] Lapindoth R. *Autonomy: Potential and Limitations,* 1 International J. Group Rts. (1993), pp. 269-290, at p.277. Quoted in: Heintze, Hans-Joachim. *On the Legal Understanding of Autonomy,* Supra note 7, p.7

is the granting of internal self-government to a region or group of persons, thus recognizing a partial independence from the influence of the national or central government and the independence can be determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision making process[38].

From the definition above, it seems that autonomy is part of domestic matters of a State related to its relationship with certain areas or regions within the jurisdiction or sovereignty. Therefore, the next question is whether autonomy is only as national issue or also a part of international law principle?

Autonomy can be considered as a principle of international law refers to the arguments as follow:

1) Autonomy for specific populations is a principle of customary international law, based on an assertion of a common practice of leading states. The state practice is a part of customary law other than *opinio juris* and *jus cogen.* There is a developing international consensus that political autonomy is the proper response to the phenomenon of territorial minorities, particularly territorial indigenous minorities;
2) Autonomy is a distinctive right of minorities and often considered as a mechanism that assists in ethnic conflict resolution as a result of its potential for protecting minorities;
3) Autonomy is a means to exercise the right to self-determination and has basis in the international law.

There are questions on these arguments related to their position in international law.

Article 38 of the Statute of the International Court of Justice states that the sources of international law simply consist of customs, treaties, conventions, and the practices of international organizations, doctrines, reports, and documents. For the treaties, there is *pacta sunt servanda principle* which says that *every treaty is binding upon the parties to it and must be performed by them in good faith.*[39]

It is still vague that autonomy meets the qualification as a common practice and *opinio juris* in the international law; therefore, there is also doubt that autonomy

[38] Heintze, Hans-Joachim. *On the Legal Understanding of Autonomy,* in: Autonomy: Applications and Implications edited by Markku Suksi. Hague (Kluwer Law International) 1998. p.7

[39] Article 26 of the Vienna Convention on the Law of Treaties, 23 May 1969

for specific populations is a principle of international customary law. In fact of frequent occurrence of autonomy, forms of self-government and autonomy vary so much from case to case and its content depends on the particular circumstances of each country or State. Custom entitled as a source of international law should be kind of repetitive actions in the same manner and form. Therefore, the existence of autonomy in the world history is still not sufficient enough to be considered as a principle of customary international law.

Related to the minority rights, the Article 27 of International Covenant on Civil and Political Rights (ICCPR) does not include the right to autonomy as a part of the minority rights. In other international documents also not specifically and directly states that autonomy is inherent part of the protection and promotion of minority rights although provides autonomy as a choice or possibility to implement these rights. Even Article 35 paragraph 2 of the Copenhagen Document, 1990, only affirms that appropriate local or autonomous administrations as one of the the possible means to achieve protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities. It is the same cases in some other various international or regional documents addressing minority rights, inter alia, the Report of the CSCE Meeting of Experts on National Minorities (Geneva, 1991); Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow, 1991); the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992); The European Charter for Regional or Minority Languages (1992); and the Framework Convention for the Protection of National Minorities, Council of Europe (1995). All in all, a right to autonomy is not expressed in major international documents regarding minority rights nor in the practices of the Council of Europe, or the United Nations, or any universal minority rights treaty.

The relationship between the right to self-determination and the right to autonomy is clearly only specified in the United Nations Declaration on the Rights of Indigenous Peoples, 2007, which has been discussed before. However, the status of non legal-binding of the declaration is still problematic for enforcement especially in an ethnic conflict. Based on the Article 38 of the Statute of International Court of Justice related to the sources of international law, the right

to autonomy specified on the Declaration is not a part of binding international law principle. Furthermore, Article 4 of the Declaration states that the beneficiary of the right to autonomy as implementation of the right to self-determination is solely an indigenous peoples group, not extended for other groups.

The right to autonomy has shaky foundation or limited legal basis in the international law. In addition, the United Nations procedures for enforcing minorities and indigenous peoples' rights include state reporting obligations and fact-finding and investigative procedures only work if the State has ratified related Conventions.

It has to be a big question whether autonomy is capable to do the job for settling ethnic conflict in fact when autonomy has no strong legal basis in the international law. Autonomy in this position will always depend on the pattern of relationship or conflict between subjects of autonomy and central government or State. Therefore, political pattern and constitutional law of the State have significant roles to successfulness in implementing autonomy as ethnic conflict settlement.

3. DEFINING THE RIGHT TO DEMOCRACY

3.1. The interdependency between human rights and democracy

Democracy lexically means a form of government in which the people have a voice in the exercise of power, typically through elected representatives or a state governed in such a way and sometimes also described as control of a group by the majority of its members. The word of democracy originally is from the Greek *Dumos* (people) and *Kratia* (power, rule)[40]. Starting from the concept, the people or citizen is both the starting point and the focus of the democratic process. It is from citizens that democratic governments receive their authorization, and it is to the citizens that they remain accountable and responsive both directly and through the mediating organs of parliament and public opinion.

It will be easier to recognize the interdependency between human rights and democracy if started by identifying the basic principles of democracy. The identification is going to provide some core elements of democracy from which the linkage between democracy and human rights as general concept is tried to be analyzed.

The basic principles of democracy simply consist of two famous concepts, which are *popular control* and *political equality*. The former concept means that the peoples have a right to controlling influences over public decisions and decision-makers and the later suggests that the people should be treated with equal respect and as of equal worth in the context of such decisions. Additionally, as extensive parts of the basic principles of democracy, there exist key principles of democracy which include the rule of law, open government, public participation, and policy decisions taken only after extensive public debate[41].

Interdependence between human rights and democracy can be found firstly on the fact that protection, promotion, and fulfillment of human rights has been generally characterized as typical for modern democratic State or society. It implies that human rights have been functioned as important indicators of democracy. Secondly, the process of reformulation and refinement of the key principles of democracy in social

[40] Supra note 35

[41] Beetham, David. *Democracy and Human Rights, Contrast and Convergence.* In the seminar: *The Interdependence Between Democracy and Human Rights.* Office of the High Commissioner for Human Rights. Geneva, 25-26 November 2002. Paragraph 6-8

lives takes their form into rights such as the right to freedom of expression, the right to vote, etc., in order to be enforceable. The third is that the principles of equality and human dignity on the human rights concept are reinforced by theories and practices associated with social and economic democracy[42].

Paragraph 3 of the Universal Declaration of Human Rights states that *it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law*. The preamble provides starting point for normative linkage and interdependence between human rights, democracy and the rule of law. Tyranny and oppression can be assumed as representation of undemocratic system which can impair human rights values so that the rule of law must be exist to protect such values.

3.2. Democracy in the light of international human rights law

The word of democracy is not directly defined on the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR). However, from the foregoing discussion about the principles of democracy it can be traced where the elements of democracy lies on the human rights documents.

Article 21 of the Universal Declaration of Human Rights entitles every people certain rights and principle as below:

1. *The right to take part in the government of their country, directly or through freely chosen representative;*
2. *The right of equal access to public service in their country; and*
3. *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Those rights and principles are kind of basic principles of democracy which reflects the principle of political equality and popular control although in the narrow and general dimension.

Furthermore, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) reaffirms the principles of democracy on the perspective of human right in

[42] Gutto, Shadrack. *Current Concepts, Core Principles, Dimensions, Process and Institutions of Democracy and the Interrelationship between Democracy and Modern Human Rights.* Office of the High Commissioner for Human Rights. Geneva, 25-26 November 2002

Article 21 of the Declaration and emphasizes that the exercising of the principle without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Both the Article 21 of the Declaration and the Article 25 of the Covenant protect the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. As the consequence of those articles is the requirement of related institutions such as legislative body and other measures to ensure the enjoyment of the rights. Article 25 of the Covenant places at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant[43].

There is also linkage between Article 25 of the Covenant and the right to self-determination as stated on the common article 1 of the Covenants which entitles the peoples the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 provides the right of individuals to participate in those processes which constitute the conduct of public affairs, and as individual rights, the people has possibility to claim under the first Optional Protocol of the Covenant.

Based on the paragraph (a) of Article 25 of the Covenant, every citizen has the right to take part in the conduct of public affairs. The conduct of public affairs is abroad concept which relates to the exercise of political power, particularly the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws[44].

The forms of direct participation of the citizens to the conduct of public affairs could be the exercise of their power as members of legislative bodies or by holding executive power, giving vote during general elections, taking part in popular assemblies for making decisions about local issues, and as represents of a community to have consultation with the government. It must be emphasized that the conduct of direct

[43] Paragraph 1 of the General Comment No.25: The right to participate in public affairs, voting rights, and the right to equal access to public service (Art.25): 12/07/96.CCPR/C/21/Rev.1/Add.7. Office of the High Commissioner for Human Rights

[44] Supra, Paragraph 5

participation should be exercised in conformity with the principle of equality without any discrimination based on the race, gender, color, language, so on and so forth as stated on the article 2 (2) of the Covenant.

Popular control by the people can also be exercised by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. Therefore, the freedom of expression, assembly and association is absolutely required to support the implementation of the right to democracy. Without support of such freedom, it is almost impossible for the people to participate in the conduct of public affairs. It shows also that among the rights prescribed by the human rights documents are interdependence and indivisible.

Genuine periodic elections is part of the mechanism to ensure the accountability of representatives for the exercise of the legislative or executive powers. The election must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligation provided for by the processes of the elections should be guaranteed by the law without any illegitimate discriminations.

The Covenant directly does not suggest any particular electoral system to exercise the right to vote and to be elected;however, whatever the electoral system operated by a State party must be compatible with the rights protected by article 25 of the Covenant and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

Related to the right and the opportunity of citizens to have equal access to public service, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Public authorities and administratives must be free from political interference or pressures in order to ensure that there will be no any discriminations based on any of the illegitimate grounds.

During the application of the right to democracy, it is important to guarantee the freedom of getting or sharing information and ideas about public and political issues between citizens, candidates and elected representatives. The free press and other media to comment on public issues without censorship or restraint and to inform public opinion is essential part to support such freedom. In favor of the situation, it requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

3.3. The linkage between the right to democracy and autonomy

The right to democracy is directly cited on the Commission on Human Rights Resolution No.1999/57 on Promotion of The Right to Democracy which affirms on the paragraph 1 that democracy fosters the full realization of all human rights, and vice versa. This is the starting point to carry out further investigation on how the way between democracy and autonomy are interconnected and interrelated.

The resolution then details the rights of democratic governance, inter alia, as follow[45]:

(a) The rights to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly;

(b) The right to freedom to seek, receive and impart information and ideas through any media;

(c) The rule of law, including legal protection of citizens' rights, interests and personal security, and fairness in the administration of justice and

[45] Paragraph 2 of the Resolution on Promotion of the Right to Democracy. Commission on Human Rights Resolution 1999/57, 27 April 1999

independence of the judiciary;

(d) The right of universal and equal suffrage, as well as free voting procedures and periodic and free elections;

(e) The right of political participation, including equal opportunity for all citizens to become candidates;

(f) Transparent and accountable government institutions;

(g) The right of citizens to choose their governmental system through constitutional or other democratic means;

(h) The right to equal access to public service in one's own country;

On the other hand, the right to autonomy is only clearly specified on the article 4 of the United Nations Declaration on the Rights of Indigenous Peoples, 2007, which states that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. In the case of indigenous people, autonomy is part of the exercise of the right to self-determination, especially internal self-determination. Therefore, the right to autonomy is closely related to the right to self-determination and this is restatement what has been discussed in the second chapter.

The right to autonomy to some extent is the right to self-government in matters relating to the internal and local affairs as stated on the Declaration of the Rights of Indigenous Peoples, 2007. The right to democracy is present when members of certain group as citizens exercise the right to freedom of speech, freedom of opinion or expression, freedom of association, and the right to choose governmental system through constitutional or other democratic means in order to gain a right to autonomy before the home State. The lack of democracy during that process will make it difficult for the peoples to voice their aspirations. Also, when the right to autonomy has been achieved by establishment of autonomous region or governance, the right to democracy has to be part of how the local government operated through the principles of popular control and political equality.

Both the right to democracy and the right to autonomy are distinct from the right to

self-determination; however, the Resolution 1999/57, General Comment 25, and the Declaration of Indigenous Peoples place the right to self-determination as a "shared room" or an umbrella norm for guaranteeing the right of all people to freely determine their political status and freely pursue their economic, social and cultural development. The Resolution recalls that all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The General Comments in paragraph 2 states that by virtue of the right to self-determination peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. As foregoing mentioned, the right to self-determination is also central for exercise the right to autonomy for indigenous people as stated on its declaration.

4. THE VIABILITY OF AUTONOMY ARRANGEMENTS FOR ETHNIC CONFLICT SETTLEMENT IN ACEH RELATED TO THE INCLUSION OF THE RIGHT TO DEMOCRACY INTO THE NATIONAL LEGAL FRAMEWORK

4.1. Overview to the national legal framework of Indonesia

The implementation of the right to democracy has important roles to the viability of autonomy-based approach for ending an ethnic conflict.[46] Analyzing such implementation will consist of very wide areas of study mainly in the historical, political, and legal aspects. This research is not intended to discuss all of such area studies but will be focused on the legal perspective. However, historical and political aspects are still required to provide additional explanation for getting impartial and deeper understanding of the case. Therefore, a general review on the Indonesian legal system, history and national policies related to the inclusion of the right to democracy and autonomy will be conducted prior to the deeper review on the case of Aceh.

4.1.1. The hierarchy of Indonesian legal system

(1) Pancasila as State ideology

Pancasila simply means Five Principles (Panca = Five; Sila = Principles) from which all national-laws resources refer to. The legal basis for fundamental position of Pancasila in the structure of national legal system is the Preamble of the 1945 Constitution which in the fourth paragraph states that the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on:

1. Belief in the One Supreme God;
2. Just and civilized Humanity;
3. Unity of Indonesia;
4. Deliberative Democracy; and
5. Social justice.

Furthermore, article 2 of the Law No.10/2004 on the Conduct of Legal Arrangement (*Pembentukan Peraturan Perundang-undangan*) affirms that Pancasila is the supreme source of Indonesian laws (*sumber dari segala*

[46] Supra note 3 pp.14-24

sumber hukum). Therefore, the place of Pancasila in the Indonesian legal system is as fundamental norms for legal arrangement.

(2) The classification and hierarchy of Indonesian Law

Recently, the law which classifying Indonesian laws and their hierarchy is the Law No.10/2004 on the Conduct of Legal Arrangement (*Pembentukan Peraturan Perundang-undangan*). The Classification and hierarchy based on the article 7 of the Law is as follows:

(1) The 1945 Constitution (*Undang-undang Dasar 1945*);
(2) Statutes or Governmental Regulation as substitution for the Statutes (*Undang-Undang / Peraturan Pemerintah Pengganti Undang-Undang*);
(3) Governmental Regulation (*Peraturan Pemerintah*);
(4) Presidential Regulation (*Peraturan President*); and
(5) Local or Regional Regulation (*Peraturan Daerah*), which consist of:
    i. Provincial Regulation (*Peraturan Daerah Provinsi*);
    ii. District/Municipal Regulation (*Peraturan Daerah Kabupaten/Kota*);
    iii. Village Regulation (*Peraturan Desa*).

The provision is successor of article 2 of the Decree of the Peoples' Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*) No.III/MPR/2000 passed in 18 August 2000 about the Legal Sources and the Hierarchy of Indonesia's Laws which are stated as below:

(1) The 1945 Constitution (*Undang-Undang Dasar 1945*)
(2) The Decree of the Peoples' Consultative Assembly (Ketetapan *Majelis Permusyarawaratan Rakyat*)
(3) the Statutes (*Undang-Undang*)
(4) Governmental Regulation as substitution for the Statutes (*Peraturan Pemerintah Pengganti Undang-Undang*)
(5) Govermental Regulation (*Peraturan Pemerintah*)
(6) Presidential Decree
(7) Regional Regulation.

The classification and hierarchies foregoing mentioned are products of

reformation era[47]. During the New Order regime from for around three decades in power from 1966 to 1998, the classification and hierarchy of Indonesia's laws was based on the Decree of the Provisional Peoples' Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat Sementara*) No.XX/MPRS/1996 as below:

(1) The 1945 Constitution (*Undang-Undang Dasar 1945*)
(2) The Decree of the Peoples' Consultative Assembly (Ketetapan *Majelis Permusyarawaratan Rakyat*)
(3) Statutes or Governmental Regulation as substitution for the Statutes (*Undang-Undang / Peraturan Pemerintah Pengganti Undang-Undang*)
(4) Governmental Regulation (*Peraturan Pemerintah*);
(5) Presidential Decree
(6) Miscellaneous operational Regulations, consist of:
    i. Ministerial Regulation
    ii. Ministerial Instruction
    iii. Unspecified miscellaneous regulations

Interestingly, the Decree of the Peoples' Consultative Assembly as part of the hierarchy has been omitted in the recent hierarchy of Indonesian laws. In fact the Decree was the second highest law in the hierarchy during the New Order regime. The powerless of the Decree is the consequence of the amendment of the 1945 Constitution on the matter of sovereignty. There has been transformation in the conduct of State sovereignty from the People' Consultative Assembly as the solely implementer of the State sovereignty[48] into the people as direct holders of the sovereignty based on the Constitution. Therefore, the people after the year 2004 has wider space and opportunities to influence the conduct of the State based on the principle of constitutional democracy.

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[47] The reformation era is considered as the era of the student movement in confrontation with the New Order regime of Soeharto in 1998 which the main agenda was stepping down the President Soeharto as part of comprehensive reformation of Indonesia. Opinion of the writer as part of the student elements during this era.

[48] Article 1 (2) of the 1945 Constitution *pre-amendment* which states that "the State sovereignty is held by the Peoples but fully transferred into the Peoples' Consultative Assembly"

4.1.2. The enforcement of international human rights norms into the national level

Concerning the relationship between international law norms and its applicability to the national legal system, It is clear from the previous explanation that Indonesia follows the principle of dualistic approach which means that international law and national legal system constitute two distinct and formally separate categories of legal orders.

The fact that international law cannot directly address itself to individual and to become binding on domestic authorities and individuals requires it to be transformed into the national law. International rules are only possible to the extent that they can rely on national rules. Furthermore, international rules cannot alter or repeal national legislation and national laws cannot create, modify, or repeal international rules too[49]. It is surprisingly that Indonesian domestic law has more significant roles to the promotion of international human rights norms than the international law. Therefore, the transformation of international human rights norms into the national law and regulations will be the first step toward effective enforcement of human rights.

4.2. The practices of democracy in Indonesia

The application of autonomy will be likely succeed within a democratic State which upholds the rule of law. Reasonings for such argument are[50]:

a) Pluralism is valued by a democratic State therefore it will make it possible for respecting cultural and religious differences;
b) The rule of law provides the framework for relations between the center and regions and defines the powers of the respective governments;
c) Disputes on the meaning of the law are resolved ultimately by the courts, whose decisions have to be respected by all parties concerned.

The Resolution of the Commission on Human Rights No.1999/57 on Promotion of The Right to Democracy states that the rule of law is included in the right to democratic governance. Therefore, this research includes the rule of law within the right to democracy so that it is not necessary to wording or stating separately hereafter.

Indonesia after proclaiming its independence in 17 August 1945 has experienced at least three types of democracy which can be simply categorized as follow:

[49] Cassese, Antonio. *International Law*. *Second Edition.* Oxford (Oxford University Press) 2005. pp.214-215

[50] Supra note 3, p.16

a) Liberal/Parliamentary democracy

The milestone of the parliamentary or liberal democracy in Indonesia is the establishment of the Provisional Constitution 1950. The Constitution adopts a parliamentary system of government and provides constitutional guarantee for human rights in line with the United Nations Universal Declaration of Human Rights. Based on this Constitution Indonesia for the first time experienced democratic genuine elections peacefully contested by multi-political parties in 1955.

Together with successfulness for electing Indonesia's first General and Constitutional Assembly is extended period of political instability with very short period of governmental cabinet. Referring to that situation then President Soekarno issued Presidential Decree 5 July 1959 to dissolve the Constitutional Assembly and restoring the 1945 Constitution replace the 1950 Provisional Constitution[51].

b) Guided democracy

Guided democracy (*Demokrasi terpimpin*) concentrated power within the executive, particularly the president. Guided democracy was a great contrast to liberal democracy. While liberal democracy put the emphasis on the process, guided democracy emphasized the attainment of one major objective; 'a just and prosperous society', only to be achieved by a 'systematic and planned democracy'. President Sukarno loved to call it 'democracy with leadership'. Guided democracy was implemented in Indonesia from July 1959 to October 1965. After six years, however, the 'systematic and planned democracy' failed to achieve a healthy economic system. Indonesia's economic situation was dire in 1965. Production had slowed dramatically. Exports and imports came to a halt and hyperinflation of more than 600 percent crippled the country. This economic collapse was followed by a struggle for power between the army and the Indonesian Communist Party. The murder of six army generals and one lieutenant by a left-wing elements in the Army capped the political and economic chaos and led to the Army coup d'etat on 11 March 1966 to bring down President Sukarno and his guided democracy.

[51] *Sejarah Pemilu Indonesia (*the History of Indonesia's Elections). http://www.tempointeraktif.com/hg/narasi/2004/03/19/nrs,20040319-01,id.html As visited on 29 April 2008

c) Pancasila democracy

Pancasila democracy is a form of democracy guided by five principles of national ideology (Pancasila). When General Suharto came to power he used the term Orde Baru or the 'New Order' and called Sukarno's guided democracy Orde Lama, or the 'Old Order'.

The Soeharto regime under its principle of democracy Pancasila interprets the implementation of democracy which should always be in line with the five principles of Pancasila which includes the sense of responsibility towards God Almighty according to the respective faith; uphold human values in line with human dignity; guarantee and strengthen national unity; and be aimed at realizing social justice for the whole of the people of Indonesia.

However, In a democratic life based on Pancasila, the People's Consultative Assembly (MPR), being the highest state institution, has a very important role to play then the real holder of the sovereignty, the Peoples. On that time, the People's Consultative Assembly appoints the President and Vice-President and determines the Guidelines of State Policy for implementation by the President. The House of Representatives (DPR), the members of which is from the people and is elected by the people, has the function of exercising control over the conduct of the administration by the President. The mechanism of this control by the House of Representatives constitutes a means to prevent constitutional deviation or deviations from the people's wish by the government.

Centralistic and corrupt government which opposed the principles of Pancasila during Soeharto administration has undermines the legitimacy of Pancasila democracy. Finally, Pancasila democracy is ended in 1998 together with the fall of Soeharto after 32 years running the presidency.

d) Democracy in reformation era

After the falling down of New order regime then Indonesia adopts liberal democracy which can be symbolized by multi-parties election in 1999, 2004 and also direct election for President in 2004. The process of direct election is also applied to the local election for the position of Provincial governor (Gubernur) and the Head of District or Mayor in the district level. Simply, the peoples or citizens in this era are capable to determine who can be their government and leader and the members of the legislature.

There are significant changes during this era in the perspective of politics and law like the four times amendment of the 1945 Constitution which introduced human rights norms into the national constitution and also the way the president elections should be conducted. However, this research is not intended to cover all the significant reforms of the Constitution but only citing related issues in connection with the topic.

4.3. The viability of autonomy arrangements in Aceh related to the promotion of the right to democracy

4.3.1. Autonomy as the struggling history of Acehnese peoples

Historically, the Aceh was established as an autonomous province was in 17 December 1949 based on the Decree No.8/Des/W.K.P.M signed by Sjafrudin Prawiranegara on behalf of the Indonesian Emergency Government (*Pemerintahan Darurat Republik Indonesia*)[52]. The establishment of Aceh as a province was a part of struggle for getting autonomy from central government after the application of the Law No.10/1948 which divided Sumatra island into three provinces consisted of North Sumatra, Middle Sumatra, and South Sumatra where article 2 of the Law states that AcehAceh was part of North Sumatra province. A prominent figure for lobbying the central government in such matter, inter alia, was Hasan di Tiro who in the next is the leader of Gerakan Aceh Merdeka (Free Aceh Movement)[53].

The demand for autonomy in Aceh was encouraged by ambition of the Acehnese religious elites, PUSA (Persatuan Ulama Seluruh Aceh/all-Aceh union of Islamic scholars), in applying Islamic law at least in the area of Aceh if not to the whole area of Indonesia. Therefore, soon after getting status as a province then Daud Beureu'eh established Shari'a court and many Islamic schools. It is clear that Islam historically has been part of the distinctive identity of Acehnese people and to some extent getting recognition from the central government in early Indonesian independence. Religion, Islam in the case of Aceh, as distinctive factor of Acehnese people has been transformed into ethnicity because it is used by the group as a mean of social distinctions meanwhile as the basis of political identity

[52] http://www.aceh.net/acehinindonesiahistory.html, As visited in 01 May 2008

[53] Sulaiman, M.Isa, *From Autonomy to Periphery: A Critical Evaluation of the Acehnese Nationalist Movement.* In: Verandah of Violance, The Background to the Aceh Problem. Edited by Anthony Reid. Singapore (Singapore University Press) 2006. pp.126-129

and claim to political process or power[54].

The policy of central government to dissolve Aceh as autonomous region was conducted in the top-down pattern following national policy in 17 August 1950 to re-establish unitarian system into the republic. The central government preferred to adopt centralistic approach without sufficient negotiation to the local stakeholders during the process of determining the status of Aceh. Natsir administration was formed soon after getting full independence by the Dutch recognition in 27 December 1949 and the central point of its national policy was the spirit of national consolidation after the Dutch colonialism. The spirit of localities or the demand to be special based on the ethnicity was identified as a thread, hostility, or rebellion to the State therefore should be eradicated from the beginning. That is why the demand for the establishment of Aceh province found difficulties and even the existing province dissolved and incorporated into the North-sumatra province by the Law No. 5/1950.

The historical context during the granting of autonomy to Aceh in 1949 (which was effective as of 1 January 1950) was the national struggle for getting full sovereignty and finally in 27 December 1949 the Dutch accepted and recognized the sovereignty of the Republic of the United States of Indonesia by signing the RTC (round table conference) Agreement between Dutch Prime Minister Willem Drees and Indonesia Vice President of Indonesia Mohammad Hatta witnessed by Queen Juliana. Less than one year experiencing as federal State, in 17 August 1950 President Soekarno proclaimed that the form of the State was back into the unitary State of the Republic of Indonesia. Additionally, Indonesia joined as a member State of the United Nations in 28 September 1950 under the governance of the Prime Minister M. Natsir. In the same year, the central government passed the Governmental Regulation as substitute of Statute (*Peraturan Pemerintah Pengganti Undang-undang*) No.5/1950 on the establishment of the Province of North-Sumatra by which incorporating Aceh as part of Nort-Sumatra province. Such incorporation has brought Aceh to the situation the same as in the 1948 when the government passed the Law No.10/1948 on the Division of Sumatra Island which also included Aceh as part of North-sumatra province.

Some institutions as Islamic symbol and traditions such as Islamic schools and

[54] Supra note 3, p.4

Shari'a court suffered from operational problems regarding to the lack of financial support from local government of Aceh which has been dissolved. Therefore, the Acehnese people were unable to practice their distinctive culture sufficiently since the absence of autonomy power.

As result of culminated disappointment to the central government, the first revolt in Aceh was arisen in 21 September 1953, about three years after dissolution of the Aceh province, with the label of *Negara Islam Indonesia/NII* (Indonesia Islamic State) which was proclaimed by Teungku Daud Beure'uh as the former governor of Aceh[55]. He also stated that the NII[56] of Aceh was part of NII of West Java led by RM.Kartosuwirjo in 7 August 1949 as effort to uphold Islamic law within Indonesia legal system. The armed conflict NII of Aceh and Indonesia central government also included horizontal conflict between the Ulama (Islamic scholars) and Uleebalang (traditional district administrators) who in the past was alliance of the Dutch.

The NII rebellion was decreased after central government approached the conflict with issuing the Law No.24/1956 in 29 December 1956 on Establishment of Autonomous Province of Aceh and Amendment of the Law on the Establishment of North-sumatra Province. The law provides wider space for local government of Aceh to manage their local interests like natural resources, social life, etc. Paragraph 1 of article 13 of the Law states that Aceh province has the right to govern all local interests which are not part of central-government authorities as prescribed by the law. Following the law was the accommodating of the rebellion elite, Ali Hasjmy who former rebellion and activist of PUSA (the association of Islamic scholars of Aceh), to become Acehnese governor. The status of Aceh military was upgraded from regiment to be regional military commando (*Kodam Iskandar Muda*). Acehnese military units which had been on duty outside Aceh were brought back to restore order. More and more the Acehneses were involved into the local administration.

Central government established and sent a special mission to Aceh led by Deputy Prime Minister Hardi in 25-26 March 1959 to negotiate for ending totally the armed rebellion under the command of Teungku Abdul Beureu'eh. Based on the

[55] Supra, p.130

[56] NII is abbreviation from Negara Islam Indonesia which in English means Islamic State of Indonesia

negotiation, there would be promise or commitment by central government to give amnesty for rebellion members and then they would be accommodated to the local police or army forces. However, there was still polemic about the status of Aceh province whether as part of unitary State of Indonesia or become federal State. The leader of rebellion, Teungku Daud Beureu'eh, insisted that Aceh should be part of a federal system. As result of negotiation then the Deputy of Prime Minister Hardi passed the Prime Minister Decree No.1/Missi/1959 on the granting status of Aceh as Special Territory. The special status based on the Decree provided for the local government of Aceh to manage local interests in the field of religion, custom, tradition, and education as long as it was in line with the Law No.1/1957 on the Principles of Regional Government[57]. However, article 3 of the Law No.1/1957 states that the granting of special status to a regional area shall be based on the law /statute (*undang-undang*). Normatively, the Prime Minister Decree was provisional legal document which is required to be replaced by the higher law, Law/Statute. It seems that the Decree was an emergency legal document during the negotiation to accommodate the interest of the rebellion in order to achieve peaceful agreement.

To this end, the granting of autonomy had been effective to end armed conflict during the first rebellion in Aceh. The negotiation between central government mission and the rebellion give a space for local elites to voice their political participation and to choose what kind of governmental system suitable with local peoples based on the religion, culture, and tradition.

4.3.2. The protracted ethnic conflict in Aceh: the dilemma of national legal framework for implementing autonomy-based approach

The constitutional framework for implementing regional government in Indonesia during the period of conflict was article 18 of the 1945 Constitution under the Chapter VI about Regional Government which states that the division of Indonesian territories into the sub-territories with their governmental structure prescribed by law shall be based on the deliberation of governmental system and the right to special status shall be based on the origin of the region. There are not any stipulations in the Constitution discussing about the right to autonomy in relation with the central-local relationship. The form of regional governmental

[57] Supra note 53, p.133

system absolutely will be determined by the law on the principles of regional government. Furthermore, the strict limitation to the creation of governmental system is the form of Indonesia as unitarian State based on the paragraph 1 of the article 1 of the 1945 Constitution. However, article 18 of the 1945 still make it possible for regional entities to have a special status based on their uniqueness. The degree of recognition to the specialness of local entities then will depend on the related laws, and how the law prescribe such recognition absolutely is determined by the will of the State authorities and in this case it is central government and the central legislature.

The granting of autonomy for Aceh territory during the first revolt based on the Prime Minister Decree No.1/Missi/1959 was inherently fragile. The Decree in the perspective of legal system is only a starting point which requires to be followed-up by the establishment of higher law or/and regulation. However, Article 88 (1) of The Law No.18/1965 on the Principles of Regional Government recognizes and classifies Aceh as a province but the governmental system must be based on that Law. In fact, the characteristic of the reference law is a very centralistic one by which the governor of Aceh must be responsible directly to the President via Internal affairs minister and also the President has the right to appoint and dismiss the governor[58].

Aceh as a special province also suffered from financial aspect because the Law No.32/1956 on the Financial Balance between State and Autonomous Regions[59] obligates high and various tax to the region in favor of central government[60]. Simply, during the guided democracy era under the Soekarno regime, the implementation of the right to autonomy in special province of Aceh was almost infeasible because the lack of national legal framework and political support. In other words, the rule of law and political situation make it impossible for the people of Aceh to exercise democratic values such as, inter alia, choosing governmental system and political participation.

The New Order administration led by General Soeharto replaced the Law

[58] Article 11 of the Law No.18/1965 on the Principles of Regional Government, 1 September 1965

[59] Autonomous regions is translated from "daerah-daerah yang berhak mengurus rumah tangga sendiri" which lexically means "regions with the right to manage their own interests

[60] Article 2 & 3 of the Law No.32/1956 on the Financial Balance between State and Autonomous Region, 31 December 1956

No.18/1965 with the Law No.5/1979 on the Principles of Regional Government. It is in point (c) of the consideration directly states that the position of the regional government should be optimally uniformed on the basis of the unitary State of the Republic of Indonesia. The terminology of regional autonomy is introduced by the Law and defined as the right, authority, and obligation of regional territory to govern and manage their own interests based on the applicable regulations[61]. Regional territory prescribed by the Law mainly only refers and limited to the District level[62]. Additionally, the existence of regional government may be dissolved by the Law if not already eligible for, inter alia, national defense, security and political stability[63].

The Law No.5/1979 provides no more space for Acehnese peoples to exercise their right to autonomy based on the Decree No.1/Missi/1959. Based on the Law clearly the beneficiary of regional autonomy is prioritized at the District level and not at the Province level so that Aceh as a region will not be granted status as autonomous region. The Law is established in the spirit of uniformity irrespectively to the distinctness of the region according to the principle of unitarian State system. The Law also provides multi-interpretation about the meaning and scope of national defense, security, and political stability as the basis for dissolving regional entities. This situation gives a chance for power abuse by the ruling Party or the regime to suppress the voice of peoples which considered as opposition to the government. Therefore, the demand for autonomy on the basis of ethnicity is almost impossible to be claimed under the Soeharto administration.

It is easy to understand why every attempt to settle armed conflict in Aceh during the New Order administration was far away from the democratic principles and autonomy-based approach in the perspective of international human rights values. The repressive-military-based approach was legally more legitimate then human-rights-based approach because it was in line with the Law No.5/1979 and the 1945 Constitution which prioritize the unitarian State system, national security, political stability, and uniformity over the country. On the other hand, the national legal system provides no basis for the establishment of pro-autonomy law and regulations.

[61] Article 1 (c) of the Law No.5/1974 on the Principles of Regional Government
[62] Supra, Article 11 (2)
[63] Supra note 61, Article 5

Along with the fragile autonomous arrangement of Aceh, Teungku Hasan M. di Tiro, launched Acheh Sumatra National Liberation Front (ASNLF) in 4 December 1976. This is the origin of Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) which would have central roles during armed conflict with the Republic. The purpose of the ANSLF is to gain a free and independent Aceh from Indonesia[64].

ASNLF/GAM in early years of its emergence was not as a big organization and had only a few hundred supporters. The group activities consisted of propaganda dissemination, popularizing the group flag, and rarely military actions. Lack of Islamic symbolization during the first emergence as effort to maintain sympathy from the Western States, the GAM on the other hand got less support from Acehnese people and the members were limited only from intellectual, technocrats and businessman. The issue of independence was not attractive for the peoples on that time. Historically, the Acehnese people has lost in the fight for establishing Islamic State of Indonesia and then tried to preserve their Islamic tradition by struggling to get status as special territory but as mentioned before that the national legal and political system make it difficult or almost impossible to be realized. On the other hand, centralistic governmental system during the New Order regimes provided marginalization in the economic sectors. Therefore, over the time GAM got growing support from local peoples. Knowing this situation the Government increased repressive military operation in Aceh and as consequences in the period of 1989-91 there were around 2,000 peoples as casualties. The more peoples suffered from military operation the bigger GAM's support and sympathy from the people. Therefore, GAM which began from a marginal group now became symbol for the Acehnese peoples as a resistant movement toward not only the centralistic government but also Indonesia as a State and Nation.[65]

The stepping down of Soeharto in 21 May 1998 opened some opportunities for settling conflict in Aceh as the shift of the related legal system took place. The new regime under the Habibie administration in 7 May 1999 passed the Law No.22/1999 on the Regional Governance as successor of the Law No.5/1974. The former is the product of reformation era which prioritizes the principles of democracy, public participation, equality and justice, and respect to the potency

[64] The first paragraph of the Declaration of Independence of Acheh-Sumatra, 4 Desember 1976

[65] Bertrand, Jacques. *Nationalism and Ethnic Conflict in Indonesia*. Cambridge (Cambridge University Press) 2004. pp.171-173

and diversity of the region.[66]

Article 1 (h) of The Law No.22/1999 defines regional autonomy as competence of autonomous region to govern and manage local-peoples' interests based on their own initiative according to the people's aspiration and the Law.[67] The scopes of such competence consist of all governmental sectors other than competence in the field of foreign affairs politics, national defend and security, judicial system, fiscal and monetary policies, religious affairs, macro national development plan and control, financial-balance budget, State administrative system, State economic system, human resource development, natural resource and strategic high-technology development, conservation, and national standard qualification.[68] Comparing to the previous law, The Law No.22/1999 provides more space for all regions of Indonesia to enjoy devolution after about three decades under centralistic governmental system. Article 122 of the Law states its recognition to the Specialness of Aceh Province; however, the implementation of such specialness should be based on the Law. There are no any special provisions on the Law which deal with the specialness of Aceh. Therefore, special status for Aceh province has no any meanings before the Law and will be treated like other provinces in Indonesia.

Protracted bloody conflict was still occurred in Aceh when in 23 July 1999 Indonesian armies massacred 57 students and a teacher of Islamic school of Beuteng Ateuh.[69] The Law No.22/1999 had no significant impacts for reducing the conflict. Legally, President Habibie responded to this situation by passing the Law No.44/1999 on the Implementation of the Peculiarities of Special Province of Aceh in 4 October 1999. The new Law had not any features related to the autonomy-based approach for conflict settlement and merely focus on the formalizing of Shari'a Law related to the field of religion and customs, education, and the roles of Ulama (local Islamic scholars) in the decision making process of local policies. However, the position of Ulama is kind of local consultative body

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66 Point (b) of Consideration of the Law No.22/1999 on Regional Governance, 7 May 1999

67 See also Article 4 (1) of the Law No.22/1999 on Regional Governance, 7 May 1999

68 Supra note 66, Article 7

69 Jemadu, Aleksius. *Democratisation, the Indonesian Armed Forces and the Resolving of the Aceh Conflict.* In: Verandah of Violance, The Background to the Aceh Problem. Edited by Anthony Reid. Singapore (Singapore University Press) 2006. pp.277

which had no any authority in the governmental structure.[70]

The fourth president, Abdurrahman Wahid, also faced a difficult situation when approaching the conflict in a peaceful manner because the lack of support from the parliament and armed forces[71]. In the difficult situation, the President passed the Presidential Instruction No.4/2001 on the Comprehensive Actions toward Aceh Problems in 11 April 2001. The Law is a kind of legal support for repressive measures to cope the conflict. It is implied from its consideration which states that the increasing of security disturbance by separatist group has caused social fear and therefore requires *special treatment*.[72] The Law also introduced the term of separatist movement for replacing the other party, the GAM, and following this policy was the increasing demand for referendum not only by the GAM but also voiced by the peoples and non-governmental organizations (NGOs). Having such new legal umbrella for addressing the conflict, the government through military forces treated any movements in Aceh repressively and made far from a peaceful settlement.

Finally, the President of Megawati Soekarnoputri in 9 August 2001 fulfilled the demand of local elites of Aceh for special-autonomy status in Aceh by passing the Law No.18/2001 on tth Special Autonomy for Special Province of Aceh as Province of Nanggroe Aceh Darussalam. Traditional and Islamic institutions as well as other Acehnese cultural and identities were adopted by the Law.[73] Additionally, regional government of Nanggroe Aceh Darrussalam would also rettain bigger percentage of revenues from tax and natural resources exploration.[74] The Law also provided for the implementation of Shari'a law and local sharia courts.[75] The biggest question for the Law was about the accommodation of the members of rebellion based on the assumption that the peace process is reached. There are not any provisions in the Law which relate to the process of reconciliation, accommodation, and amnesty. The law is merely about the

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70 Article 3-9 of The Law No.44/1999 on the Implementation of Peculiarities of Special Province of Aceh, 4 October 1999.

71 Supra note 65, pp.171-173

72 Point (d) & (e) of the Precidential Instruction No.4/2001 on the Comprehensive Actions toward Aceh Problems. 11 April 2001

73 Chapter V & VII of the Law No.18/2001 on the Special Autonomy for Special Province of Aceh as Province of Nanggroe Aceh Darussalam, in 9 August 2001

74 Supra, Chapter IV

75 Supra note 73, Chapter XII

governmental system and formalizing the religious identity or culture and lacks discussion on the GAM.

Surprisingly, soon after the establishment of the Law, Megawati in 11 October 2001 established the Instructional President No.7/2001 on the Comprehensive Actions toward the Aceh Problems, the same title as the one Wahid passed. The Instructional President tend to strengthen the tie between state sovereignty with national security rather than to support the implementation of the Law on special autonomy (the Law No.18/2001). Furthermore, this is the fact that there exists inconsistency during the application of autonomy-based approach to settle the conflict. After two years, Megawati passed the Presidential Decree No.11/2003 on the Shari'a Court and Provincial Shari'a Court of Nanggroe Aceh Darussalam in 3 March 2003 which could not also to end the conflict.

After the application of inconsistent approaches, the Megawati administration failed to end the conflict peacefully and as a new approach She declared Martial Law (*Darurat Militer, lexically means Military Emergency*) over the Aceh territories by the Presidential Decree No.28/2003 in 18 May 2003. The reasons for applying military emergency rule is based on the assumption that the granting of special autonomy, comprehensive development approaches, national and international dialogues are not viable to end the demand for independence by the GAM and tend to be terroristic movement by which threatened peoples' security, State sovereignty, and development processes.[76]

4.3.3. The Helsinki Memorandum of Understanding 2005 and the demand for viable autonomy arrangements

The Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement related to the peaceful process for ethnic conflict settlement in Aceh was signed in Helsinki, Finland in 15 August 2005 after long negotiations starting from the first face-to-face talk among the parties in 27-29 January 2005.[77] The scopes of the Agreement generally consist of the Governance of Aceh, Human rights, Amnesty and reintegration into society, Security arrangements, Establishment of the Aceh monitoring mission, and the mechanism of dispute settlement.

[76] Point (a) & (b) Consideration of the Presidential Decree No.28/2003 in 18 May 2003

[77] http://www.asnlf.net/topint.htm, As visited in 5 May 2008

The peace agreement is working beyond all expectations and in less than one year which make the GAM turned in the required numbers of weapon and on the other hand the National Army Forces of Indonesia (TNI) has withdrawn troops on schedule. There are no more threat by both the GAM and the army's militia. A few violent incident between the GAM and the Indonesia's armed forces have been resolved by the Aceh Monitoring Mission (AMM). A new law on local government in Aceh as one of the provisions embedded at the Agreement has been drafted in consultation with broad sectors of the Acehese public and the GAM, and submitted to the Indonesian parliament. The growing and active supports to the Agreement have been gained from the highest levels of the Indonesian government, and Acehnese who were skeptic before.[78] The effectiveness and successfulness of the Agreement will be starting point, reference and framework for this study apart from today's problems of Aceh which are very broad and complex.

The national legal framework is very conducive for agreeing, drafting and applying the Memorandum thanks to the amendment of the 1945 Constitution which has been main trigger for Indonesian legal and political reform. There are sufficient provisions in the amended Constitution which make it possible to realizing an autonomy-based approach in line with the inclusion of the right to democracy both in national or regional level.

Article 6A of the 1945 Constitution after the second amendment in 18 August 2000 states that the President and the Vice are directly elected by the peoples. This provisions will be very significant related to the popular control for national leadership and the voice of the peoples therefore will be more valued by the political elites. The Muslim populations as the majority have important roles to determine the winner in the presidential contest, on the other hand, the case of Aceh to some extent related to the Islam and therefore how the way the candidates addressing to the case will influences the choice of the peoples. Such analysis on the influence of direct election by the people and the way of political elites approaching the conflict may simplify the complexity of the problems;however, at least now the people has their voice to determine who will be the president and it can be consideration for every presidential candidate.

[78] International Crisis Group. *Aceh: So Far, So Good*. Asia Briefing No.44, 13 December 2005, p.1

According to the political development in Indonesia after the 1998 reformation era, the militarist's role in politics was decreased and they were less popular based on their bad reputation during the New Order regime. It seems that the decrease of militaristic approach may characterize the way of central government or elected president prefer to adopt peaceful solution than repressive actions toward armed conflict in Aceh.

Fundamental amendment, if not to say revolutionary change, related to the autonomy-based approach is Chapter IV of the 1945 Constitution on Regional Governance. Based on the Chapter, regional governance on the province, district, and municipal level govern and manage their own governance affairs according to the principle of autonomy and assistance.[79] Applying the autonomy principle, the position of central government follows the residual principle which means that regional government has authorities to govern and manage the whole of regional affairs and the central government on the other hand just holds the remain as constituted by the law.[80] The regional government in order to implement the right to autonomy effectively has the right to establish local laws or regulations. Since 18 August 2000 after the second amendment of the 1945 Constitution, the legal framework for implementing autonomy over the regions of Indonesia actually is very strong and for the case of Aceh make it easier for both parties to negotiate the peace processes. Following the amendment of the Constitution then in 15 October 2004 the Government passed the Law no.32/2004 on Regional Governance to replace the Law No.22/1999. The Law No.32/2004 is intended to operationalize the provisions of the Constitution in the practical sense.

The time surrounding the processes of the peace agreement is at the moment when Indonesia was in the transitional era from centralistic and militaristic government to devolutionary government. It is started from the massive amendment of the 1945 Constitutions which until triple amount of the articles than the previous one.[81] As the guarantee for implementing the amendment results is that the Indonesia now shall be a State based on the rule of law which it is not embedded

[79] Article 18 (2) of the 1945 Constitution after second-amendment in 18 August 2000
[80] Supra, Article 18 (5)
[81] http://www.surya.co.id/web/index2.php?option=com_content&do_pdf=1&id=3764. As visited in 6 May 2008

on the pre-amendment constitution before.[82] Human rights as an international norms has been also adopted on the particular chapter of the Constitution under which most of the provisions of the right to democracy as suggested by the Commission on Human Rights Resolution No.1999/1957 was included although Indonesia had not yet ratified the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCRs)[83]. As an effect of the massive human right abuses during three decade under the militaristic regime, The era of reformation led by Student movement has also ambitiously adopted international human rights norm into the national legal system although it had not basics in the Constitution. The Law No.39/1999 on Human rights is passed in 23 September 1999 prior to the Second amendment of the 1945 Constitution which adopted Chapter XA on Human Rights in 18 August 2000.

The natural disaster of Aceh tsunami in 26 December 2004 which the death toll was about 170.000 peoples[84] provided an impact for the conflict settlement. The worst tragedy put great moral pressures from national and international communities on both Indonesia's government and GAM by which there should be no any reasons to protract the conflict and increasing the severe situation of Acehnese peoples. On the other hand, the 'tsunami' of legal reformation gives opportunities for the establishment of peace agreement and also its implementation for conflict settlement.

On the legal perspective, the provisions of the Helsinki agreement are not difficult to be implemented on the frame work of national legal system. The Governing of Aceh, Human rights, Amnesty and reintegration into society, Security arrangements, Establishment of the Aceh monitoring mission, and Dispute settlement as part of the points should be achieved by both parties based on the peace agreement are now in line with the development of the State Constitution and followed by operational regulations as foregoing discussion.

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82 Article 1 (3) of the 1945 Constitution after the thirth-amendment in 9 November 2001

83 Indonesia ratifies both the Covenants by the Law No.11/2005 and the Law No.12/2005 in 28 October 2005

84 http://www.aceh.net/reconstructionupdate.html, as Visited in 7 May 2008

5. CONSLUSION

5.1. Autonomy-based approach for ethnic conflict settlement

Autonomy-based approach as a particular concept principally has no strong legal basis in the international human rights law although closely related and interconnected to the the right of self-determination, minority rights, and the rights of indigenous people. This lack of strong legal foundation in international law makes the autonomy-based approach for ethnic conflict settlement relies mainly on the national legal framework. On the other side, this situation provides flexibility to apply autonomy-based approach for ethnic conflict settlement in a specific case because there are no any strict definition and rules under the international law. Therefore, it is possible for conflicting parties to make trade off processes during the negotiation based on their interests in the national context.

International human rights norms during the implementation of autonomy-based approach for ethnic conflict settlement has possibility and capability to be functioned as "normative bridge" which means that human rights as general and universal concept will be applied as shared normative and critical standard for the conflicting parties from which the trade off process during the dispute settlement can be processed. Without the presence of this function, the parties will be trapped on their own narrow interests which make it difficult to conclude peaceful and viable agreement.

Autonomy-based approach for settling ethnic conflict especially between an ethnic group and central government has capacity to be compensator of secessional demand of the group meanwhile as guarantor of sovereignty and unity of the State.

5.2. The roles of the inclusion of the right to democracy into the national legal framework for viability of autonomy-based approach for ethnic conflict settlement

In the perspective of law, the failure of autonomy-based approach for ethnic conflict settlement in Aceh before the signing of peace agreement is caused by the contradiction between specific law or regulations (*lex inferior*) as the basis for granting special status to Aceh and the higher hierarchy of national law (*lex superior*). The absence of the right to democracy based on the international human rights norms in the constitution contributes to the lack of peoples' control to the harmonizing processes between the *lex inferior* and the *lex superior*.

The inclusion of the right to democracy into the national legal framework provides spaces for the peoples' to exercise popular control on the conduct of the State by the authorities and to get equal treatment for public service based on the principle of justice. The fulfillment of the right to democracy will give bigger opportunities for a certain group to choose the form of their local government based on their particularities on one hand and still in line with the State constitution on the other hand. The rule of law as part of the right to democracy is able to maintain the durability of autonomy because every dispute can be solved based on the law which has been agreed as guarantee for public order. The adherence to the rule of law will be success if the right to participation during the law making processes is fulfilled.

The embedment and enforcement of the international human rights norms into the national level is not solely depend on the process of ratification by the legislature although the national law follows the dualistic approach. The inclusion of human rights into the national constitution is more effective than only ratification by the law because hierarchically the constitution is higher than the law or statute.

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Note: All materials referred to in this thesis are listed in the reference list

ANNEXES:

1. The 1945 Constituion of the Republic of Indonesia

The 1945 Constitution of the Republic of Indonesia
As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002

(*Unofficial translation*)

THE PREAMBLE TO THE CONSTITUTION

Whereas independence is the inalienable right of all nations, therefore, all colonialism must be abolished in this world as it is not in conformity with humanity and justice; And the moment of rejoicing has arrived in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia which shall be independent, united, sovereign, just and prosperous; By the grace of God Almighty and motivated by the noble desire to live a free national life, the people of Indonesia hereby declare their independence.

Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God, just and civilised humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia.

ARTICLES

Chapter I
Form of the State and Sovereignty
Article 1

(1) The State of Indonesia shall be a unitary state in the form of a republic.
(2) Sovereignty is in the hands of the people and is implemented according to this Constitution.
(3) The State of Indonesia shall be a state based on the rule of law.

Chapter II
The People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR)

Article 2

(1) The MPR shall consist of the members of the DPR and the members of the DPD who have been elected through general elections, and shall be regulated further by law.
(2) The MPR shall convene in a session at least once in every five years in the capital of the state.
(3) All decisions of the MPR shall be taken by a majority vote.

Article 3

(1) The MPR has the authority to amend and enact the Constitution.
(2) The MPR shall inaugurate the President and/or Vice President.
(3) The MPR may only dismiss the President and/or Vice-President during his/her term of office in accordance with the Constitution.

Chapter III
The Executive Power

Article 4

(1) The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.

(2) In exercising his/her duties, the President shall be assisted by a Vice-President.

Article 5

(1) The President shall be entitled to submit bills to the DPR.

(2) The President may issue Government regulations as required to implement laws.

Article 6

(1) Any candidate for President or Vice-President shall be a citizen of Indonesia since birth, shall never have acquired another citizenship by his/her own will, shall never have committed an act of treason against the State, and shall be mentally and physically capable of implementing the duties and obligations of President or Vice-President.

(2) The requirements to become President or Vice-President shall be further regulated by law.

Article 6A

(1) The President and Vice-President shall be elected as a single ticket directly by the people.

(2) Each ticket of candidates for President and Vice-President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections.

(3) Any ticket of candidates for President and Vice-President which polls a vote of more than fifty percent of the total number of votes during the general election and in addition polls at least twenty percent of the votes in more than half of the total number of provinces in Indonesia shall be declared elected as the President and Vice-President.

(4) In the event that there is no ticket of candidates for President and Vice-President elected, the two tickets which have received the first and second highest total of votes in the general election shall be submitted directly to election by the people, and the ticket which receives the highest total of votes shall be sworn in as the President and Vice-President.

(5) The procedure for the holding of the election of the President and Vice-President shall be further regulated by law.

Article 7

The President and Vice President shall hold office for a term of five years and may subsequently be reelected to the same office for one further term only.

Article 7A

The President and/or the Vice-President may be dismissed from his/her position during his/her term of office by the MPR on the proposal of the House of Representatives (Dewan Perwakilan Rakyat or DPR), both if it is proven that he/she has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

Article 7B

(1) Any proposal for the dismissal of the President and/or the Vice-President may be submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court to investigate, bring to trial, and issue a decision on the opinion of the DPR either that the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

(2) The opinion of the DPR that the President and/or Vice-President has violated the law or no longer meets the qualifications to serve as President and/or Vice-President is undertaken in the course of implementation of the supervision function of the DPR.

(3) The submission of the request of the DPR to the Constitutional Court shall only be made with the support of at least 2/3 of the total members of the DPR who are present in a plenary session that is attended by at least 2/3 of the total membership of the DPR.

(4) The Constitutional Court has the obligation to investigate, bring to trial, and reach the most just

decision on the opinion of the DPR at the latest ninety days after the request of the DPR was received by the Constitutional Court.
(5) If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and/or Vice-President, the DPR shall hold a plenary session to submit the proposal to impeach the President and/or Vice-President to the MPR.
(6) The MPR shall hold a session to decide on the proposal of the DPR at the latest thirty days after its receipt of the proposal.
(7) The decision of the MPR over the proposal to impeach the President and/or Vice-President shall be taken during a plenary session of the MPR which is attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the total of members who are present, after the President and/or Vice-President have been given the opportunity to present his/her explanation to the plenary session of the MPR.

Article 7C

The President may not freeze and/or dissolve the DPR.

Article 8

(1) In the event that the President dies, resigns, is impeached, or is not capable of implementing his/her obligations during his/her term, he/she will be replaced by the Vice-President until the end of his/her term.
(2) In the event that the position of Vice-President is vacant, the MPR should hold a session within sixty days at the latest to elect a Vice-President from two candidates nominated by the President.
(3) In the event that the President and the Vice President die, resign, are impeached, or are permanently incapable of performing their tasks and duties within their term of office simultaneously, the tasks and duties of the presidency shall be undertaken by a joint administration of the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defence. At the latest thirty days after that, the MPR shall hold a session to elect a new President and Vice President from the tickets nominated by the political parties or coalitions of political parties whose tickets won first and second place in the last presidential election, who will serve for the remainder of the term of office.

Article 9

(1) Prior to taking office, the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the MPR or DPR. The oath or promise shall be as follows:
Presidential (Vice-Presidential) Oath:
"I swear before God that, to the best of my ability, I shall fulfil as justly as possible my duties as President (Vice-President) of the Republic of Indonesia, that I shall uphold faithfully the Constitution, conscientiously implement all statutes and regulations, and shall devote myself to the service of Country and Nation."
Presidential (Vice-Presidential) Promise:
"I solemnly promise that, to the best of my ability, I shall fulfil as justly as possible my duties as President (Vice-President) of the Republic of Indonesia, that I shall uphold faithfully the Constitution, conscientiously implement all statutes and regulations, and shall devote myself to the service of Country and Nation."
(2) In the event that the MPR or DPR is unable to convene a sitting, the President and Vice-President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the leadership of the MPR witnessed by the leadership of the Supreme Court.

Article 10

The President is the Supreme Commander of the Army, the Navy and the Air Force.

Article 11

(1) The President with the approval of the DPR may declare war, make peace and conclude treaties with other countries.
(2) The President in making other international agreements that will produce an extensive and

fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will requires an amendment to or the enactment of a law, shall obtain the approval of the DPR.
(3) Further provisions regarding international agreements shall be regulated by law.

Article 12

The President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law.

Article 13

(1) The President shall appoint ambassadors and consuls.
(2) In the appointment of ambassadors, the President shall have regard to the opinion of the DPR.
(3) The President shall receive the accreditation of ambassadors of foreign nations and shall in so doing have regard to the opinion of the DPR.

Article 14

(1) The President may grant clemency and restoration of rights and shall in so doing have regard to the opinion of the Supreme Court.
(2) The President may grant amnesty and the dropping of charges and shall in so doing have regard to the opinion of the DPR.

Article 15

The President may grant titles, decorations and other honours as provided by law.

Article 16

The President shall establish an advisory council with the duty of giving advice and considered opinion to the President, which shall be further regulated by law.

Chapter IV
Supreme Advisory Council

(Deleted by amendment)

Chapter V
Ministers of State

Article 17

(1) The President shall be assisted by Ministers of State.
(2) Ministers of State shall be appointed and dismissed by the President.
(3) Each Minister of State shall be responsible for a particular area of Government activity.
(4) The formation, change, and dissolution of ministries of state shall be regulated by law.

Chapter VI
Regional Authorities

Article 18

(1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies (kabupaten) and municipalities (kota), each of which shall have regional authorities which shall be regulated by law.
(2) The regional authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance (tugas pembantuan).
(3) The authorities of the provinces, regencies and municipalities shall include for each a Regional People's House of Representatives (DPRD) whose members shall be elected through general elections.
(4) Governors, Regents (bupati) and Mayors (walikota), respectively as head of regional government of the provinces, regencies and municipalities, shall be elected democratically.
(5) The regional authorities shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government.
(6) The regional authorities shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.
(7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

Article 18A

(1) The authority relations between the central government and the regional authorities of the

provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the particularities and diversity of each region.
(2) The relations between the central government and regional authorities in finances, public, and the use of natural and other resources shall be regulated and administered with justice and equity according to law.

Article 18B

(1) The State recognises and respects units of regional authorities that are special and distinct, which shall be regulated by law.
(2) The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

Chapter VII

The People's Representative Council (Dewan Perwakilan Rakyat or DPR)

Article 19

(1) Members of the DPR shall be elected through a general election.
(2) The structure of the DPR shall be regulated by law.
(3) The DPR shall convene in a session at least once a year.

Article 20

(1) The DPR shall hold the authority to establish laws.
(2) Each bill shall be discussed by the DPR and the President to reach joint approval.
(3) If a bill fails to reach joint approval, that bill shall not be reintroduced within the same DPR term of sessions.
(4) The President signs a jointly approved bill to become a law.
(5) If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.

Article 20A

(1) The DPR shall hold legislative, budgeting and oversight functions.
(2) In carrying out its functions, in addition to the rights regulated in other articles of this Constitution, the DPR shall hold the right of interpellation (interpelasi), the right of investigation (angket), and the right to declare an opinion.
(3) Other than the rights regulated in other articles of this Constitution, every DPR member shall hold the right to submit questions, the right to propose suggestions and opinions, and the right of immunity.
(4) Further provisions on the rights of the DPR and the rights of DPR members shall be regulated by law.

Article 21

DPR members shall have the right to propose bills.

Article 22

(1) Should exigencies compel, the President shall have the right to establish government regulations in lieu of laws.
(2) Such government regulations must obtain the approval of the DPR during its next session.
(3) Should there be no such approval, these government regulations shall be revoked.

Article 22A

Further provisions regarding the procedures to establish laws shall be regulated by law.

Article 22B

DPR members may be removed from office, according to conditions and procedures which shall be regulated by law.

Chapter VIIA

The Council of Representatives of the Regions (Dewan Perwakilan Daerah or DPD)

Article 22C

(1) The members of the DPD shall be elected from every province through a general election.

(2) The total number of members of DPD in every province shall be the same, and the total membership of the DPD shall not exceed a third of the total membership of the DPR.
(3) The DPD shall hold a session at least once every year.
(4) The structure and composition of the DPD shall be regulated by law.

Article 22D

(1) The DPD may propose to the DPR Bills related to regional autonomy, the relationship of central and local government, formation, expansion and merger of regions, management of natural resources and other economic resources, and Bills related to the financial balance between the centre and the regions.
(2) The DPD shall participate in the discussion of Bills related to regional autonomy; the relationship of central and local government; formation, expansion, and merger of regions; management of natural resources and other economic resources, and financial balance between the centre and the regions; and shall provide consideration to the DPR over Bills on the State Budget and on Bills related to taxation, education, or religion.
(3) The DPD may oversee the implementation of laws concerning regional autonomy, the formation, expansion and merger of regions, the relationship of central and local government, management of natural resources and other economic resources, implementation of the State Budget, taxation, education, or religion and shall in addition submit the result of such oversight to the DPR in the form of materials for its further consideration.
(4) The members of the DPD may be removed from office under requirements and procedures that shall be regulated by law.

CHAPTER VIIB

General Elections

Article 22E

(1) General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years.
(2) General elections shall be conducted to elect the members of the DPR, DPD, the President and Vice-President, and the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah or DPRD).
(3) The participants in the general election for the election of the members of the DPR and the members of the DPRDs are political parties.
(4) The participants in the general election for the election of the members of the DPD are individuals.
(5) The general elections shall be organised by a general election commission of a national, permanent, and independent character.
(6) Further provisions regarding general elections shall be regulated by law.

Chapter VIII

Finances

Article 23

(1) The State Budget as the basis of the management of state funds shall be determined annually by law and shall be implemented in an open and accountable manner in order to best attain the prosperity of the people.
(2) The Bill on the State Budget shall be submitted by the President for joint consideration with the DPR, which consideration shall take into account the opinions of the DPD.
(3) In the event that the DPR fails to approve the proposed Bill on the State Budget submitted by the President, the Government shall implement the State Budget of the preceding year.

Article 23A

All taxes and other levies for the needs of the state of a compulsory nature shall be regulated by law.

Article 23B

The forms and denomination of the national currency shall be regulated by law.

Article 23C

Other matters concerning state finances shall be regulated by law.

Article 23D

The state shall have a central bank, the structure, composition, authorities, responsibilities and independence of which shall be regulated by law.

Chapter VIIIA

Supreme Audit Board (Badan Pemeriksa Keuangan or BPK)

Article 23E

(1) To investigate the management and accountability of state finances, there shall be a single Supreme Audit Board which shall be free and independent.
(2) The result of any investigation of state finances shall be submitted to the DPR, DPD or DPRD in line with their respective authority.
(3) Action following the result of any such investigation will be taken by representative institutions and/or bodies according to law.

Article 23F

(1) The members of the BPK shall be chosen by the DPR, which shall have regard to any considerations of the DPD, and will be formally appointed by the President.
(2) The leadership of the BPK shall be elected by and from the members.

Article 23G

(1) The BPK shall be based in the capital of the nation, and shall have representation in every province.
(2) Further provisions regarding the BPK shall be regulated by law.

Article 24

(1) The judicial power shall be independent and shall possess the power to organise the judicature in order to enforce law and justice.
(2) The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court.
(3) Other institutions whose functions have a relation with the judicial powers shall be regulated by law.

Article 24A

(1) The Supreme Court shall have the authority to hear a trial at the highest (cassation) level, to review ordinances and regulations made under any law against such law, and shall possess other authorities as provided by law.
(2) Each justice of the Supreme Court must possess integrity and a personality that is not dishonourable, and shall be fair, professional, and possess legal experience.
(3) Candidate justices of the Supreme Court shall be proposed by the Judicial Commission to the DPR for approval and shall subsequently be formally appointed to office by the President.
(4) The Chair and Vice-Chair of the Supreme Court shall be elected by and from the justices of the Supreme Court.
(5) The structure, status, membership, and judicial procedure of the Supreme Court and its subsidiary bodies of judicature shall be regulated by law.

Article 24B

(1) There shall be an independent Judicial Commission which shall possess the authority to propose candidates for appointment as justices of the Supreme Court and shall possess further authority to maintain and ensure the honour, dignity and behaviour of judges.
(2) The members of the Judicial Commission shall possess legal knowledge and experience and shall be persons of integrity with a personality that is not dishonourable.
(3) The members of the Judicial Commission shall be appointed and dismissed by the President with the approval of the DPR.
(4) The structure, composition and membership of the Judicial Commission shall be regulated by law.

Article 24C

(1) The Constitutional Court shall possess the authority to try a case at the first and final level and

shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections.
(2) The Constitutional Court shall possess the authority to issue a decision over an opinion of the DPR concerning alleged violations by the President and /or Vice-President of this Constitution.
(3) The Constitutional Court shall be composed of nine persons who shall be constitutional justices and who shall be confirmed in office by the President, of whom three shall be nominated by the Supreme Court, three nominated by the DPR, and three nominated by the President.
(4) The Chair and Vice-Chair of the Constitutional Court are elected by and from the constitutional justices.
(5) Each constitutional justice must possess integrity and a personality that is not dishonourable, and shall be fair, shall be a statesperson who has a command of the Constitution and the public institutions, and shall not hold any position as a state official.
(6) The appointment and dismissal of constitutional justices, the judicial procedure, and other provisions concerning the Constitutional Court shall be regulated by law.

Article 25

The appointment and dismissal of judges shall be regulated by law.

Chapter IXA
State Territory

Article 25A

The Unitary State of the Republic of Indonesia is an archipelagic state, the boundaries and rights of whose territory shall be established by law.

Chapter X
Citizens and Residents

Article 26

(1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalised as citizens in accordance with law.
(2) Residents shall consist of Indonesian citizens and foreign nationals living in Indonesia.
(3) Matters concerning citizens and residents shall be regulated by law.

Article 27

(1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.
(2) Every citizen shall have the right to work and to earn a humane livelihood.
(3) Each citizen shall have the right and duty to participate in the effort of defending the state.

Chapter XA
Human Rights

Article 28

The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

Article 28A

Every person shall have the right to live and to defend his/her life and existence.

Article 28B

(1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.
(2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

Article 28C

(1) Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.
(2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28D

(1) Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.

(2) Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.

(3) Every citizen shall have the right to obtain equal opportunities in government.

(4) Every person shall have the right to citizenship status.

Article 28E

(1) Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

Article 28F

Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

Article 28G

(1) Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.

(2) Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country.

Article 28H

(1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

(2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.

(3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.

(4) Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party.

Article 28I

(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.

(4) The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government.

(5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

Article 28J

(1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.

(2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of

the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

Chapter XI
Religion
Article 29

(1) The State shall be based upon the belief in the One and Only God.
(2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

Chapter XII
State Defence and Security
Article 30

(1) Every citizen shall have the right and duty to participate in the defence and security of the state.
(2) The defence and security of the state shall be conducted through the total people's defence and security system, with the Indonesian National Military (TNI) and the Indonesian National Police (POLRI) as the main force, and the people as the supporting force.
(3) TNI, consisting of the Army, Navy and Air Force, as an instrument of the state has the duty to defend, protect, and maintain the integrity and sovereignty of the state.
(4) POLRI, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.
(5) The structure and status of TNI and POLRI, the authority relationships between TNI and POLRI in performing their respective duties, the conditions concerning the participation of citizens in the defence and security of the state, and other matters related to defence and security, shall be regulated by law.

Chapter XIII
Education
Article 31

(1) Every citizen has the right to receive education.
(2) Every citizen has the obligation to undertake basic education, and the government has the obligation to fund this.
(3) The government shall manage and organise one system of national education, which shall increase the level of spiritual belief, devoutness and moral character in the context of developing the life of the nation and shall be regulated by law.
(4) The state shall prioritise the budget for education to a minimum of 20% of the State Budget and of the Regional Budgets to fulfil the needs of implementation of national education.
(5) The government shall advance science and technology with the highest respect for religious values and national unity for the advancement of civilisation and prosperity of humankind.

Article 32

(1) The state shall advance the national culture of Indonesia among the civilisations of the world by assuring the freedom of society to preserve and to develop cultural values.
(2) The state shall respect and preserve local languages as national cultural treasures.

Chapter XIV
The National Economy and Social Welfare
Article 33

(1) The economy shall be organized as a common endeavour based upon the principles of the family system.
(2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State.
(3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.
(4) The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.

(5) Further provisions relating to the implementation of this article shall be regulated by law.

Article 34

(1) Impoverished persons and abandoned children shall be taken care of by the State.
(2) The state shall develop a system of social security for all of the people and shall empower the inadequate and underprivileged in society in accordance with human dignity.
(3) The state shall have the obligation to provide sufficient medical and public service facilities.
(4) Further provisions in relation to the implementation of this Article shall be regulated by law.

Chapter XV

National Flag, Language, Coat of Arms and Anthem

Article 35

The national flag of Indonesia shall be the Red and White (Sang Merah Putih).

Article 36

The national language shall be Indonesian (Bahasa Indonesia).

Article 36A

The national coat of arms shall be the Pancasila eagle (Garuda Pancasila) with the motto Unity in Diversity (Bhinneka Tunggal Ika).

Article 36B

The national anthem shall be Indonesia Raya.

Article 36C

Further provisions regarding the national flag, language, coat of arms and anthem shall be regulated by law.

Chapter XVI

Constitutional Amendments

Article 37

(1) A proposal to amend the Articles of this Constitution may be included in the agenda of an MPR session if it is submitted by at least 1/3 of the total MPR membership.
(2) Any proposal to amend the Articles of this Constitution shall be introduced in writing and must clearly state the articles to be amended and the reasons for the amendment.
(3) To amend the Articles of this Constitution, the session of the MPR requires at least 2/3 of the total membership of the MPR to be present.
(4) Any decision to amend the Articles of this Constitution shall be made with the agreement of at least fifty per cent plus one member of the total membership of the MPR.
(5) Provisions relating to the form of the unitary state of the Republic of Indonesia may not be amended.

Transitional Provisions

Article I

All existing state institutions shall remain in place in order to implement the provisions of this Constitution as long as new state institutions are not yet established in conformity with this Constitution.

Article II

All existing laws and regulations shall remain in effect as long as new laws and regulations have not yet taken effect under this Constitution.

Article III

The Constitutional Court shall be established at the latest by 17 August 2003, and the Supreme Court shall undertake its functions before it is established.

Additional Provisions

Article I

The MPR is tasked to undertake a review of the content and the legal status of the Decrees (TAP) of the MPRS and the MPR for decision by the MPR at its session in 2003.

Article II

With the enactment of this Amendment to the Constitution, the Constitution of the State of the

Republic of Indonesia shall consist of the Preamble and the Articles.

** Source: Coordinating Ministry of Economic Affairs, Republic of Indonesia

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Memorandum of Understanding
between
the Government of the Republic of Indonesia
and
the Free Aceh Movement

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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 Acehnese 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.

The parties to the conflict commit themselves to building mutual confidence and trust.

This Memorandum of Understanding (MoU) details the agreement and the principles that will guide the transformation process.

To this end the GoI and GAM have agreed on the following:

1 Governing of Aceh

1.1 Law on the Governing of Aceh

1.1.1 A new Law on the Governing of Aceh will be promulgated and will enter into force as soon as possible and not later than 31 March 2006.

1.1.2 The new Law on the Governing of Aceh will be based on the following principles:

a) Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution.

b) International agreements entered into by the Government of Indonesia which relate to matters of special interest to Aceh will be entered into in consultation with and with the consent of the legislature of Aceh.

c) Decisions with regard to Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh.

d) Administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.

1.3.3 Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh.

1.3.4 Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.

1.3.5 Aceh conducts the development and administration of all seaports and airports within the territory of Aceh.

1.3.6 Aceh will enjoy free trade with all other parts of the Republic of Indonesia unhindered by taxes, tariffs or other restrictions.

1.3.7 Aceh will enjoy direct and unhindered access to foreign countries, by sea and air.

1.3.8 GoI commits to the transparency of the collection and allocation of revenues between the Central Government and Aceh by agreeing to outside auditors to verify this activity and to communicate the results to the head of the Aceh administration.

1.3.9 GAM will nominate representatives to participate fully at all levels in the commission established to conduct the post-tsunami reconstruction (BRR).

1.4 Rule of law

1.4.1 The separation of powers between the legislature, the executive and the judiciary will be recognised.

1.4.2 The legislature of Aceh will redraft the legal code for Aceh on the basis of the universal principles of human rights as provided for in the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

1.4.3 An independent and impartial court system, including a court of appeals, will be established for Aceh within the judicial system of the Republic of Indonesia.

1.4.4 The appointment of the Chief of the organic police forces and the prosecutors shall be approved by the head of the Aceh administration. The recruitment and training of organic police forces and prosecutors will take place in consultation with and with the consent of the head of the Aceh administration in compliance with the applicable national standards.

1.4.5 All civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh.

2 HUMAN RIGHTS

2.1 GoI will adhere to the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

2.2 A Human Rights Court will be established for Aceh.

2.3 A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures.

3 AMNESTY AND REINTEGRATION INTO SOCIETY

3.1 Amnesty

3.1.1 GoI will, in accordance with constitutional procedures, grant amnesty to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of this MoU.

3.1.2 Political prisoners and detainees held due to the conflict will be released unconditionally as soon as possible and not later than within 15 days of the signature of this MoU.

3.1.3 The Head of the Monitoring Mission will decide on disputed cases based on advice from the legal advisor of the Monitoring Mission.

3.1.4 Use of weapons by GAM personnel after the signature of this MoU will be regarded as a violation of the MoU and will disqualify the person from amnesty.

3.2 Reintegration into society

3.2.1 As citizens of the Republic of Indonesia, all persons having been granted amnesty or released from prison or detention will have all political, economic and social rights as well as the right to participate freely in the political process both in Aceh and on the national level.

3.2.2 Persons who during the conflict have renounced their citizenship of the Republic of Indonesia will have the right to regain it.

3.2.3 GoI and the authorities of Aceh will take measures to assist persons who have participated in GAM activities to facilitate their reintegration into the civil society. These measures include economic facilitation to former combatants, pardoned political prisoners and affected civilians. A Reintegration Fund under the administration of the authorities of Aceh will be established.

3.2.4 GoI will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh.

3.2.5 GoI will allocate suitable farming land as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows:

a) All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

b) All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

c) All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

3.2.6 The authorities of Aceh and GoI will establish a joint Claims Settlement Commission to deal with unmet claims.

3.2.7 GAM combatants will have the right to seek employment in the organic police and organic military forces in Aceh without discrimination and in conformity with national standards.

4 Security arrangements

4.1 All acts of violence between the parties will end latest at the time of the signing of this MoU.

4.2 GAM undertakes to demobilise all of its 3000 military troops. GAM members will not wear uniforms or display military insignia or symbols after the signing of this MoU.

4.3 GAM undertakes the decommissioning of all arms, ammunition and explosives held by the participants in GAM activities with the assistance of the Aceh Monitoring Mission (AMM). GAM commits to hand over 840 arms.

4.4 The decommissioning of GAM armaments will begin on 15 September 2005 and will be executed in four stages and concluded by 31 December 2005.

4.5 GoI will withdraw all elements of non-organic military and non-organic police forces from Aceh.

4.6 The relocation of non-organic military and non-organic police forces will begin on 15 September 2005 and will be executed in four stages in parallel with the GAM decommissioning immediately after each stage has been verified by the AMM, and concluded by 31 December 2005.

4.7 The number of organic military forces to remain in Aceh after the relocation is 14700. The number of organic police forces to remain in Aceh after the relocation is 9100.

4.8 There will be no major movements of military forces after the signing of this MoU. All movements more than a platoon size will require prior notification to the Head of the Monitoring Mission.

4.9 GoI undertakes the decommissioning of all illegal arms, ammunition and explosives held by any possible illegal groups and parties.

4.10 Organic police forces will be responsible for upholding internal law and order in Aceh.

4.11 Military forces will be responsible for upholding external defence of Aceh. In normal peacetime circumstances, only organic military forces will be present in Aceh.

4.12 Members of the Aceh organic police force will receive special training in Aceh and overseas with emphasis on respect for human rights.

5 Establishment of the Aceh Monitoring Mission

5.1 An Aceh Monitoring Mission (AMM) will be established by the European Union and ASEAN contributing countries with the mandate to monitor the implementation of the commitments taken by the parties in this Memorandum of Understanding.

5.2 The tasks of the AMM are to:

a) monitor the demobilisation of GAM and decommissioning of its armaments,
b) monitor the relocation of non-organic military forces and non-organic police troops,
c) monitor the reintegration of active GAM members,
d) monitor the human rights situation and provide assistance in this field,
e) monitor the process of legislation change,
f) rule on disputed amnesty cases,
g) investigate and rule on complaints and alleged violations of the MoU,
h) establish and maintain liaison and good cooperation with the parties.

5.3 A Status of Mission Agreement (SoMA) between GoI and the European Union will be signed after this MoU has been signed. The SoMA defines the status, privileges and immunities of the AMM and its members. ASEAN contributing countries which have been invited by GoI will confirm in writing their acceptance of and compliance with the SoMA.

5.4 GoI will give all its support for the carrying out of the mandate of the AMM. To this end, GoI will write a letter to the European Union and ASEAN contributing countries expressing its commitment and support to the AMM.

5.5 GAM will give all its support for the carrying out of the mandate of the AMM. To this end, GAM will write a letter to the European Union and ASEAN contributing countries expressing its commitment and support to the AMM.

5.6 The parties commit themselves to provide AMM with secure, safe and stable working conditions and pledge their full cooperation with the AMM.

5.7 Monitors will have unrestricted freedom of movement in Aceh. Only those tasks which are within the provisions of the MoU will be accepted by the AMM. Parties do not have a veto over the actions or control of the AMM operations.

5.8 GoI is responsible for the security of all AMM personnel in Indonesia. The mission personnel do not carry arms. The Head of Monitoring Mission may however decide on an exceptional basis that a patrol will not be escorted by GoI security forces. In that case, GoI will be informed and the GoI will not assume responsibility for the security of this patrol.

5.9 GoI will provide weapons collection points and support mobile weapons collection teams in collaboration with GAM.

5.10 Immediate destruction will be carried out after the collection of weapons and ammunitions. This process will be fully documented and publicised as appropriate.

5.11 AMM reports to the Head of Monitoring Mission who will provide regular reports to the parties and to others as required, as well as to a designated person or office in the European Union and ASEAN contributing countries.

5.12 Upon signature of this MoU each party will appoint a senior representative to deal with all matters related to the implementation of this MoU with the Head of Monitoring Mission.

5.13 The parties commit themselves to a notification responsibility procedure to the AMM, including military and reconstruction issues.

5.14 GoI will authorise appropriate measures regarding emergency medical service and hospitalisation for AMM personnel.

5.15 In order to facilitate transparency, GoI will allow full access for the representatives of national and international media to Aceh.

6 DISPUTE SETTLEMENT

6.1 In the event of disputes regarding the implementation of this MoU, these will be resolved promptly as follows:

a) As a rule, eventual disputes concerning the implementation of this MoU will be resolved by the Head of Monitoring Mission, in dialogue with the parties, with all parties providing required information immediately. The Head of Monitoring Mission will make a ruling which will be binding on the parties.

b) If the Head of Monitoring Mission concludes that a dispute cannot be resolved by the means described above, the dispute will be discussed together by the Head of Monitoring Mission with the senior representative of each party. Following this, the Head of Monitoring Mission will make a ruling which will be binding on the parties.

c) In cases where disputes cannot be resolved by either of the means described above, the Head of Monitoring Mission will report directly to the Coordinating Minister for Political, Law and Security Affairs of the Republic of Indonesia, the political leadership of GAM and the Chairman of the Board of Directors of the Crisis Management Initiative, with the EU Political and Security Committee informed. After consultation with the parties, the Chairman of the Board of Directors of the Crisis Management Initiative will make a ruling which will be binding on the parties.

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GoI and GAM will not undertake any action inconsistent with the letter or spirit of this Memorandum of Understanding.

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Signed in triplicate in Helsinki, Finland on the 15 of August in the year 2005.

On behalf of the Government of the Republic of Indonesia,

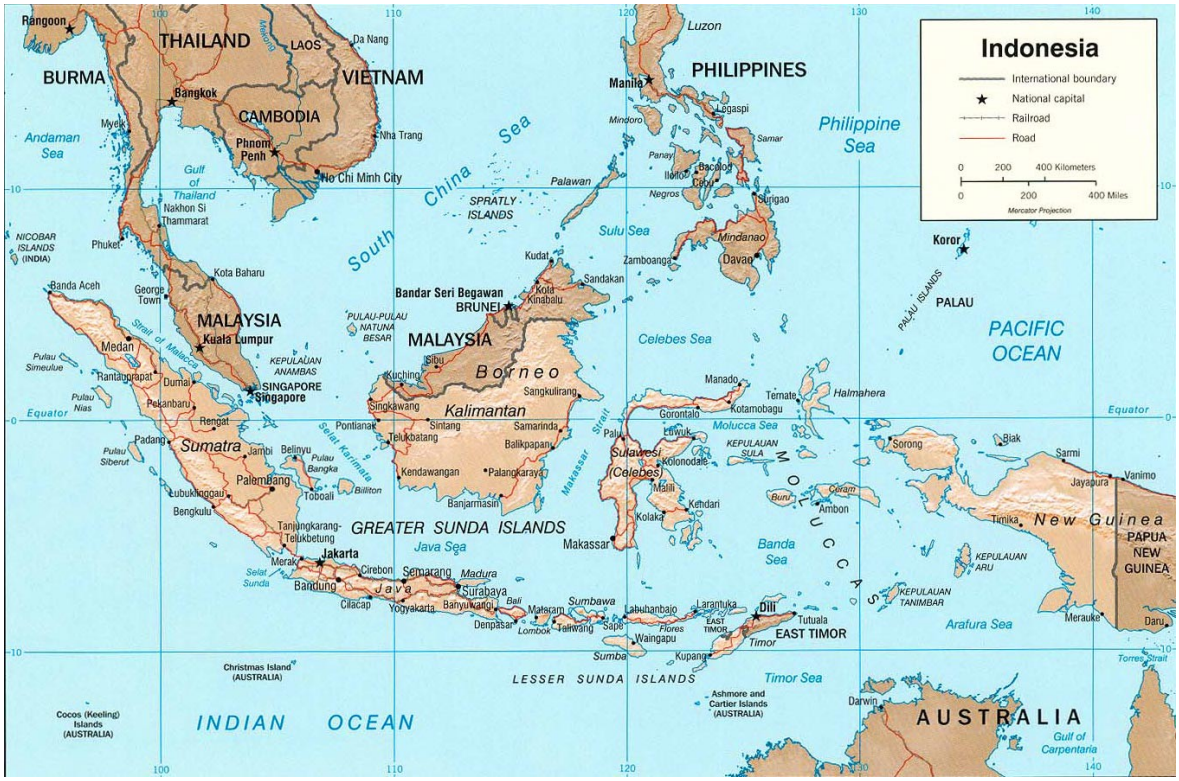
Hamid Awaludin
Minister of Law and Human Rights

On behalf of the Free Aceh Movement,

Malik Mahmud
Leadership

As witnessed by

Martti Ahtisaari
Former President of Finland
Chairman of the Board of Directors of the Crisis Management Initiative
Facilitator of the negotiation process



The Maps of Indoensia (above) and Aceh (below)


Negara Sumatera Timur
Negara Sumatera Selatan
Fed. Kalimantan Timur
D.I. Kalimantan Barat
West Irian
Negara Madura
Negara Indonesia Timur
Negara Pasundan
Negara Jawa Timur
Indonesia:
Situation on December 1, 1948
Republik Indonesia
Dutch-founded "Negara"
Dutch military occupation
Other areas under Dutch control
Partially based on Cribb, "Historical Dictionary of Indonesia"