

THE URGENCY OF ESTABLISHING THE TRUTH AND RECONCILIATION COMMISSION IN ACEH: AGAINST NATIONAL AMNESIA

URGENSI PEMBENTUKAN KOMISI KEBENARAN DAN REKONSILIASI DI ACEH: MELAWAN LUPA NASIONAL

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ABSTRAK

Sejak sepuluh tahun perjanjian damai (MoU Helsinki) antara Pemerintah Indonesia dan Gerakan Aceh Merdeka pada Agustus 2005, telah mendapat tantangan dalam pembentukan Komisi Kebenaran dan Rekonsiliasi (KKR), sebagai lembaga penting untuk dugaan pelanggaran hak asasi manusia selama konflik bersenjata di Aceh. beberapa isu politik dan hukum telah menarik perhatian serius untuk kepentingan kedua belah pihak. Kebijakan melalui program uang tunai untuk korban tidak akan mencegah urgensi pembentukan KKR. Oleh karena itu tulisan ini membahas bahwa KKR ini penting tidak hanya bagi para korban yang mencari kebenaran dan keadilan, tetapi juga untuk mengembangkan kembali landasan untuk Indonesia sebagai negara berdaulat yang beradab.

Kata Kunci: Komisi Kebenaran dan Rekonsiliasi, MoU Helsinki, Hak Asasi Manusia, Pemerintah Aceh.

ABSTRACT

Since ten years of the peace agreement (the MoU Helsinki) between the Government of Indonesia and the Free Aceh Movement on August 2005, has posed a challenge over the establishment of the Truth and Reconciliation Body (TRC), as an essential institution for the suspicious of violation of human rights during armed conflict in Aceh. Several political and legal issues have attracted serious attention to both parties' interests. The imposing policy of cash program for the victims would not prevent to the urgency of the TRC establishment. This paper therefore highlights that the TRC is essential, not merely for the victims who seeking the truth and justice, but also for re-developing a foundation for Indonesia as a sovereign civilised state.

Keywords: Trust and Reconciliation Body, MoU Helsinki, Human Rights, Government of Aceh.

“We do want to forgive but we don't know whom to forgive” (Desmond Tutu)

INTRODUCTION

The establishment process of Truth and Reconciliation Commission (TRC) in Aceh as a mandate of the MoU Helsinki 2005 and the Law of Aceh Governance (UUPA) 2006 has been lasted for about 10 years with no clarity. Even the issue of KKR tends to disappear along with the bustle

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of political and economic dynamics such as the elections of regional head and legislatures, the determination of flag pattern, the existence of traditional apex institution of Wali Nanggroe, and the establishment of Aceh Oil Management Agency (BPMA).¹ Nevertheless, academic papers and draft of Qanun KKR² have been prepared by many parties as an anticipation upon the absence of legal protection since the cancellation of Law of National TRC by the Constitutional Court (MK).³

The establishment of TRC in Aceh is closely related to the political transformation process that goes by so fast and requires mutual trust amongst the parties in disputes in the past. This process is concerned to rise a new conflict if the recovery of the old trauma does not gain more serious attention. The disclosure of truth and reconciliation is one form of acknowledgment towards a past mistake, expecting that the mistake and errors will not be repetitive in the future.⁴ The absence of TRC establishment in Aceh is a serious matter in the context of enforcement of human rights (HAM) in Indonesia, particularly in the exposure and settlement of allegations of severe human rights violations in Indonesia.⁵

Therefore, this paper attempts to investigate why the establishment of TRC in Aceh is extremely hard not to say impossible based on the national situation over the last 10 years. This paper is expected to serve as a lesson learned in the fight against national amnesia towards the settlement of human rights violations in Aceh or Indonesia in general.

¹ See Government Law Number 23 of 2015 regarding the Shared Management of Oil and Gas Natural Resources in Aceh

² See academic papers and draft of Qanun KKR Aceh prepared by Aceh Peace Resource Center (APRC) in Aceh in 2008-2009.

³ See Constitutional Court of the Republic of Indonesia Verdict Number 006/PUU-IV/2006.

⁴ See Desmond Tutu's explanation about KKR in South Africa in Desmond Tutu (1999), *No Future Without Forgiveness*, Rider: London.

⁵ See: Nashrun Marzuki and Adi Warsidi (ed), *The Fact Speaks: Uncovering Human Rights Violations in Aceh 1989 – 2005*, (Banda Aceh: Coalision of NGO HAM Aceh, 2011).

DISCUSSION

1) A Review on the Truth and Reconciliation Commission

The primary political grounding on the idea of establishing the TRC in Aceh is originating from the Peace Treaty between the Government of the Republic of Indonesia and Free Aceh Movement signed on 15 August 2005 in Helsinki (MoU Helsinki). Through this MoU, both sides have declared themselves to abide the International Covenants of the United Nations regarding Civil, Political, Economic, Social and Cultural Rights. This is a good intention to initiate a reconciliation process to heal an old trauma. The assertion about TRC in MoU Helsinki is published in the section of Human Rights, thus putting the process of uncovering the truth and reconciliation as an integral part of the enforcement of human rights values.⁶

Furthermore, Indonesian Constitution governs the upholding of human dignity by particularly discussing it in CHAPTER XA regarding Human Rights especially Articles 28A-28J. Next, to execute it, the government has legislated Law Number 39 of 1999 regarding Human Rights and Law Number 26 of 2000 regarding the Human Rights Court as the executor's regulation. These Laws discuss the roles of Truth and Reconciliation Commission in article 47: *(1) Severe human rights violations occurring before this Law do not rule out the possibility of settlement by the Truth and Reconciliation Commission; (2) Truth and Reconciliation Commission as referred in verse (1) is established under the Law.*⁷

Therefore, Law Number 27 of 2004 about TRC was established which was then becoming a legal protection for the establishment of KKR in Aceh under Aceh Governance Law Number 11 of 2006. Besides, Indonesian government has also issued Government Regulation Number 3 of 2002 regarding Compensation, Restitution, and Rehabilitation towards Victims of Severe Human Rights Violations; and Presidential Decree Number 40 of 2004 regarding National Action Plans of Human Rights in Indonesia Years 2004-2009.

⁶ See the Coalition of Disclosers on Aceh's Truths (2008), *In the Name of Truth and Justice in Aceh, Formulation Record of Establishing KKR Aceh During 2007*, Coalition of Disclosers on Aceh's Truths: Jakarta. Accessed in <http://kontras.org/buku/kata%20pengantar%20aceh.pdf> on 5 January 2012.

⁷ See Laws regarding the Court of Human Rights, Law No. 26, LN No. 208 of 2000, TLN.4026, art. 47.

The establishment of regulations on Human Rights is also part of compliance with International Laws of Human Rights that have been ratified by Indonesia such as Law Number 5 of 1998 regarding the Legalization of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Law Number 29 of 1999 regarding the Convention Ratification on the Elimination of All Forms of Discrimination.

Under Law Number 27 of 2004 regarding TRC, article 1 (3) that truth commission is an independent agency established to uncover the truth upon severe human rights violations and execute reconciliation. The establishment of TRC in Aceh is one of the enforcement processes of the supremacy of human rights which at one time becomes a method of restoring trust and harmonious relation between the people of Aceh and central government who was worn away in the past time.

TRC in Aceh is expected to have special functions in the settlement of past human rights violations. This commission has a characteristic of specific approach like traditional customs, religion, and local wisdom which are different from the existing judicial mechanism. This specificity lies on the victim-centered approach and not projustice. This is in accordance with its nature as a complement to the existing judicial mechanism such as courts. With this specific character, the main objective of establishing TRC is to: provide a comprehensive description about severe human rights violations occurring in the past.⁸ Comprehensive nature is indicated by unfolding the crime pattern and broad scope of those involved, either the victims, perpetrators, or state institutions allowing or contributing to the occurrence of the crimes.⁹

⁸ See various confession stories in KKR in Jillian Edelstein, (2001) *Truth & Lies, Stories From The Truth and Reconciliation Commission In South Africa*, the New Press: New York.

⁹ See Graeme Simson, "Tell No Lies, Claims No Easy Victories, A Brief Evaluation of South Africa's Truth and Reconciliation Commission" in Deborah Posel and Graeme Simpson, (eds) (2002) *Commissioning The Past, Understanding South Africa's Truth and Reconciliation Commission*, Witwatersrand university press: South Africa, p. 220-247. See also Ministry of Laws and Human Rights, "Draft of Academic Papers in Revision of Law No. 27 of 2004 Regarding KKR," p. 18.

In other words, TRC in Aceh serves as one of the state instruments in preventing the impunity, formed under primary principles widely acknowledged internationally. Those primary principles include:¹⁰

- a. General principle related to the state obligation to prevent any impunity, therefore the State should ensure the accountability upon human rights violations occurring in the past, ensure the fulfillment of the rights for the disclosure of truth for the victims and their families to find out information about crimes against them, and ensure recovery mechanism for the victims.¹¹
- b. Principle of preserving collective memories of past crimes.¹² Basically, collective memories of past violence and crimes are important legacy that needs to be preserved for two interests. First, to ensure the safety of important documents which are useful for the enforcement of accountability for the past crimes, and second, to protect future generations from the possible occurrence of similar crimes.
- c. Principle of impartiality and independence. Every truth commission is formed over impartiality principle, that is the ability to fully act without taking a side to any or other party. Independence principle involves the necessity of a truth commission to be free from any forms of governmental interventions in carrying out its credentials.
- d. Principle of precautionary recurrence. Truth commission is formed under the principle of similar precautionary recurrence in the future (*non-recurrence*). Therefore, the recommendation and report from the truth commission should specifically be followed up for institutional improvement or directly related to the fulfillment of rights for the victims and their families.

¹⁰Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted from General Assembly of the United Nations through Resolution 60/147 on 16 December 2005.

¹¹ See article 1 Statute of Rome 1998: "...and shall have the power to exercise its jurisdiction over **persons** for the most serious crimes of international concern...". See also Frederic S. Pearson & Martin Riches, *International Relations, The Global Condition in the Late Twentieth Century*, McGraw-Hill, 1992, p. 332. See Jorge R Coquía and Miriam Defensor Santiago, *International Law*, Central Professional Books, Philippine, 1998, p. 79-83.

- e. Principle of complementary. The establishment of truth commission is not meant to replace the function of the court and state's obligation to prosecute the perpetrators of severe human rights violations. Truth commission is a complement of the court function. Under no circumstances, it cannot take judicial functions owned by the court nor interfere cases on trial. This commission is not authorized to decide whether an individual is legally responsible for occurrences being investigated.

From the above principles, it can be concluded that TRC is an institution established by the government under transitional condition in order to uncover the truths from alleged severe human rights violations and execute a peace reconciliation by compensation, restitution and amnesty outside of judicial system.

2) From Law to Qanun TRC

The Decree of Constitutional Court deciding that Law Number 27 of 2004 regarding Truth and Reconciliation Commission is against 1945 Constitution of the Republic of Indonesia, and does not have binding legal force,¹³ becomes the main reason for the delay of the accelerated establishment of TRC in Aceh as mandated in Law Number 11 about Laws of Aceh Governance (UUPA) article 229 and article 230 as well as Peace Treaty of the Republic of Indonesia (RI) and Free Aceh Movement (GAM). Therefore, several alternatives were proposed to accelerate the establishment of TRC.

The first alternative is by proposing Government Regulations in Lieu of Laws (Perpu) to accelerate the disclosure of truth and reconciliation. The problem encountered is the establishment of Perpu is emergency in nature requiring logical reason that the establishment of TRC can be classified as emergency need. Another reason is that the Perpu is temporary, so if within one year it

¹² See Hendaridi, "Facing the Past, Reconciliation or Justice?" , <<http://www.hamline.edu/apakabar/basisdata/2001/05/09/0048.html>>, accessed on 27 February 2014.

¹³Constitutional Court of the Republic of Indonesia Verdict Number 006/PUU-IV/2006.

is not legislated, automatically it is no longer valid.¹⁴ Thus, the arrangement of Perpu would need quite a long time because it must go through the lobby to the President and after it is established, it must go through the lobby to the DPR RI to be legislated.

The second alternative is by immediately forming Qanun regarding the Truth and Reconciliation Commission in Aceh. This alternative is likely possible in the near future as the whole series of lawmaking can be done in the regions, so the accelerations to establish the regulations can be maximally executed. This is also in accordance with the mandate of UUPA article 230 declaring that *“further conditions regarding the procedures of election, members appointment, organization and administration, terms of office, and operational costs of Truth and Reconciliation Commission in Aceh are regulated by Aceh Qanun referring to the legislation.”*¹⁵

Qanun KKR in Aceh cannot specifically cover the remission to the perpetrators of severe human rights violations because it has been the authority of Human Rights Court. However, Qanun KKR in Aceh can specifically regulate the filing process of reduced sentences, clemency, amnesty, abolition, remission to the perpetrators of severe human rights violations before receiving the verdict from Human Rights Court.

3) From Qanun KKR to Economic Empowerment

No legalization of the draft on TRC to date (July 2015) does not mean that the government does nothing for the conflict-affected victims in Aceh. Various direct and indirect programs executed so far indeed become the antidote of the impasse of the TRC establishment caused by formal legality issues. Indirect programs can be seen by having the program of Aceh Health Insurance (JKA) providing health access to all people of Aceh including the victims of the conflict. Secondly, scholarships for orphans also minimally ease the burden of single parents especially the conflict-affected victims. Besides that, the involvement of Aceh Rehabilitation and Reconstruction

¹⁴See Indonesia (2), *Laws Regarding the Establishment of Constitutional Laws*, Laws No. 10, LN No. 53 of 2004, TLN 4389. See also Muhammad Shiddiq Tgk.Armia, *Mind Development in Laws*, 1st Ed., (Jakarta: Pradnya Paramita, 2003), p. 103

¹⁵*Laws regarding Aceh Governance*, Laws No.11, LN No. 62 of 2006, TLN. 4633, art. 230.

Agency (BRR) which was originally focusing on the victims of tsunami, after MoU Helsinki in August 2005 has also indirectly given positive effects to the economic development of the conflict-affected victims. Moreover, the existence of special institute of Aceh Reintegration Agency (BRA) focuses on economic empowerment for the conflict-affected victims. In order to implement social and economic rehabilitation for the conflict-affected people, BRA uses four models of economic empowerment that have been practiced, namely:

- a) BLT (Direct Cash Assistance).
- b) Proposal-Based Economic Empowerment.
- c) Community-Based Economic Empowerment.
- d) Individual-Conflict-Victim-Based Economic Empowerment.¹⁶

The emphasis on the importance of increasing economic capacity of the conflict-affected victims is part of the implementation of Peace Treaty between the Government of the Republic of Indonesia and Free Aceh Movement items 3.2.3, 3.2.4, and 3.2.5, namely:¹⁷

3.2.3. Governments of the Republic of Indonesia and Aceh will make efforts to help people participating in GAM activities to facilitate their reintegration into the community. The steps include the economic facilitation for the former combatants of GAM, political prisoners obtaining amnesty and affected community. A Reintegration Fund under the authority of Aceh Government will be provided.

3.2.4. Government of the Republic of Indonesia will allocate funds for the rehabilitation of public and private properties damaged or destroyed as a result of conflicts to be managed by Aceh Government.

3.2.5. Government of the Republic of Indonesia will allocate farmland and sufficient funding to Aceh Government aiming at facilitating the reintegration of former combatants of GAM into

¹⁶ Explanation from the chairman of the executive board of BRA Nurdjuli in the commemoration of III MOU Helsinki 2007. See proceeding workshop and seminar on 3-year commemoration of MOU Aceh Peace in Hermes Palace Hotel.

¹⁷ Peace Treaty between the Government of the Republic of Indonesia and Free Aceh Movement items 3.2.3, 3.2.4, and 3.2.5

society and compensation for political prisoners and affected civilians. Aceh Government will utilize the farmland and fund as the following:

- a) All former combatants of GAM will receive an allocation of proper farmland, employment, or acceptable social security from Aceh Government if they are unable to work.
- b) All political prisoners obtaining amnesty will receive an allocation of proper farmland, employment, or acceptable social security from Aceh Government if they are unable to work.
- c) All civilians who have suffered a demonstrable loss due to conflicts will receive an allocation of proper farmland, employment, or acceptable social security from Aceh Government if they are unable to work.

Nonetheless, this concept of transitional economic empowerment will not be perfect if there is still resentment between the parties in dispute and the victims that have not been materially and spiritually recovered. Material recovery can be done by increasing the economic level of the conflict-affected victims in a planned way, while spiritual recovery and dignity should be made through religious approach, peace and the removal of resentment. Both of these approaches should run in tandem.

4) TRC Aceh: A Battle against National Amnesia

Political transformation process that goes by so fast in Aceh requires mutual trust amongst the parties in dispute in the past. The acceleration of this political transformation will be hampered and yield a new conflict if the recovery process on the old trauma does not get more serious attention. Reconciliation is one form of confessing a mistake that had been done before, with a target that the error and mistake will not be repetitive in the future.

TRC Aceh institutionally as mandated in MoU Helsinki and UUPA is an unfamiliar concept in the legal culture of the nation and people of Indonesia.¹⁸ However, the culture of peace and

¹⁸ See Hikmahanto Juwana, Empowerment of Law Culture in Human Rights Protection in Indonesia; Human Rights in the Perspective of International Laws, in Prof. Dr. Muladi, SH (Ed.), *Human Rights, Nature, Concept, and Implication in the Perspective of Laws and Society*, PT.Refika Aditama, 2005. p. 70-75.

forgiveness can be the essence of understanding of TRC. Indeed TRC Aceh will get challenges both politically and legally as what happens during this time, but a better future will not be achieved if there are still trauma inside the people's mind with no mechanism to express them.

Some challenges to be anticipated related to TRC in Aceh are such as the difficulty in coordinating between TRC with other state institutions leading to the difficulty in the disclosure of truths involving state apparatus. Second, the lack of awareness and knowledge of the victims of severe human rights violations to claim their neglected rights. Third, the parties involved in severe human rights violations are alleged to have powerful control on various layers either in the governance or private sectors, so far as possible the effort of establishing TRC will be overridden. Fourth, the dominance of practical and pragmatic political mainstream in most of Aceh people have disregard the justice and dignity of the victims with the help of cash compensation. Fifth, government and non-government programs to support conflict-affected victims such as BRA program for house construction, scholarships for victims' children and Aceh Health Insurance have already minimally been expected to slacken the demand for TRC in the society as a systematic attempt for national amnesia towards severe human rights violations in the past.

The terminology of TRC normatively in Indonesian Constitution does not necessarily facilitate its establishment. Perhaps rather than founding new institutions draining political and economic energy, it is better to develop the roles of the existing institutions related to the enforcement of human rights, such as National Commission of Human Rights, Human Rights Court and Aceh customary peripheral aids which may be more rational in the disclosure of truth and reconciliation between human rights violators and the victims or their families.¹⁹

In fact, this is normally the duty of the police to uncover the severe violations of human rights such as murders, tortures, rapes and the like. Unfortunately, however there are still vague and

¹⁹ Compared to Aryos Nevada, *Kontestasi Politik KKR Aceh*, Journal Outlook 015-08, 2011, accessed from <http://joutlook.com/journal/sospol-dan-hukum.html> on 5 January 2012

unpublished cases of human rights violations exposed to society. As a result, people's trust to the state apparatus is still difficult even to unfold the perpetrators who have affiliations with powers.²⁰

Reconciliation is unlikely to happen if there is no disclosure of truth and justice. The awareness of the parties is hard to be expected, unless there is a neutral power to force the violators of severe human rights cases to confess their crimes and apologize as well as pay adequate compensation to the victims.

The disclosure of truth and reconciliation is still perceived as apathetic by most people today. The approach of economic empowerment through cash rewards to those in the category of the victims will leave an issue. *First*, the model of self-proving as the conflict-affected victims requires them to be active to get a letter from the village head known by the local mayor. This approach will leave an issue for those who are unable/fond of getting the access. *Second*, the role of the head of village appears to be very dominant in providing and not providing the letter, so if there is no clarification or supervision, it will easily be misused for the interest of a certain groups. *Third*, systematic omission occurs for the violators for not getting any punishments both socially or judicially.

The perpetrators of severe human rights violations in Aceh during military emergency era are not only those still living in Aceh, but also those reside outside Aceh, and not all these perpetrators violated human rights on their personal initiative but as part of a certain group or on the order of certain individuals. Therefore, it is rather difficult to expose the perpetrators or who sent them with no collective awareness and safety insurance for the perpetrators and their families. Beside the above drawback, what has been done by BRA and other government programs to the conflict-affected victims in Aceh has been able to minimize the turmoil from the effort of establishing TRC in the meantime. However, in the long term, the omission of the perpetrators of

²⁰ Read Claire Moon (2008) *Narrating Political Reconciliation, South Africa's Truth and Reconciliation Commission*, Lexington Books: London.

severe human rights violations will fetch a trauma in the heart of conflict-affected victims and be a poisonous spine in the nation of Indonesia.²¹

For the government, this is merely a process of omitting and forgetting the past (national amnesia),²² but for the victims, mass compensation with no truth disclosure will only physically treat the victims, but not recovering the heart and human dignity as the essence from the emergence of universal human rights. Moreover, it can be presumed that TRC and Human Rights Court in MoU and UUPA are in response of the Indonesian Government and GAM to avoid international pressures related to such violations. However, since TRC has not yet been established up until now, the victims feeling traumatic with the life and situation during the conflict find it difficult to expect more. They just remain silent and pray to God almighty, as well as looking for the karmic laws against the perpetrators who are still wandering around or outside Aceh.

KESIMPULAN

Severe human rights violations presumed to occur in Aceh are a result of political-economic conflicts of elites which impact on casualties from various parties, including civilians, GAM and TNI. Victims' families who have orphans or widows certainly still feel traumatic on their feelings and dignity in the society. Therefore, the establishment of TRC in Aceh is expected to be a medium to reveal the truth, demand justice, and restore victims' dignity. This becomes important as a foundation to develop national pride and human dignity of the victims themselves.

Eventhough some of TRC functions have been done by the government such as cash rewards/compensation, health care insurance and scholarships for school kids, justice and restoration of dignity has yet to finish. This occurs due to the absence of mutual trust in

²¹ See Rose Clark et al. (2008) *Considering Victims The Aceh Peace Process From A Transitional Justice Perspective*, the international center for transitional justice: New York.

²² See Indriaswati D. Saptaningrum, dkk, *Human Rights in Transacitonal Politics Vortex: An Assessment towards Human Rights Policies in Legislation Products and Supervision from DPR RI Period 2004-2009*, (Jakarta: Society Study and Advocacy Agency, 2011).

conflict-affected communities, no confession from the perpetrators, continued resentment from the victims or their descendants for generations to the perpetrators as historic resentment, and no facilitation of legal process for the violators. Therefore, cash and economic assistance will not fully recover the dignity issue of the conflict-affected victims, then fair and just disclosure of truth is a foundation for the reconciliation and reintegration for the long term purposes. This is what becomes the substance of enforcing human rights through the establishment of TRC in Aceh.

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