

Formal Reconciliation to Adjudge Psychological and Physical Abuses Committed During Civil War in Acehese Society

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Abstract

The civil war caused many psychological and physical trauma for common people. As a way to end this such war, related parties usually take formal and social measures in peace agreement. In this case, the formation of the truth and reconciliation commission (TRC) in Aceh is one of a task to accomplish after the signing of memorandum of understanding in Helsinki (MoU Helsinki), and the implementation of law number 11, 2006 on the Acehese government. On one side, the situation has urged TRC to be formed in Aceh, however local regulation has not specifically organized the forming of the commission. Reconciliation in Aceh comes with its own character by stressing more on the application of religious, custom, and local wisdom approaches without forgetting the effort of truth revealing on some cases of heavy human rights violation which occurred during conflict. The Acehese society is a society who lives with their Islamic values and specific custom.

Keywords: *reconciliation, truth-seeking, local wisdom, forgiveness*

Introduction

The establishment of Truth and Reconciliation Commission (TRC) in Aceh is one of duty, which has to fulfil after signing memorandum of understanding in Helsinki (MoU-Helsinki) between Government of Indonesia and The Free Aceh Movement (GAM/ *Gerakan Aceh Merdeka*). The importance of TRC establishment is also mention in Law Number 11/2006 about The Government of Aceh (UUPA)¹. In one side, the circumstance enforce the establishment of TRC in Aceh, however the regulation in Aceh was not fulfil yet. Those matters are difficult after The Decree of Constitution Court deciding The Law Number 27/2004 concerning Truth and Reconciliation Commission was against constitution². It is mean that TRC Law in national level has not its supremacy and cannot be established anymore. So, it has to remake again in the new format. Therefore, the order in UUPA that TRC Aceh is the part

of national TRC was not being established.

There are some alternative to fulfil law requirement for Aceh TRC. First alternative, propose *Peraturan Pemerintah Pengganti Undang-Undang* (Perpu/ Government Regulation In Lieu of Law). However, Perpu will be made in emergency situation. It is the difficult to explain that TRC Aceh is in emergency situation. The process of making Perpu will take too much time, due to the process between President and House of Representative (DPR RI) have a lot of step to fulfill. Another reason is that Perpu is only for temporary, so, if in one year it is not to be the law, it is mean that Perpu will not be valid anymore³. Second alternative, is to establish *Qanun* TRC. This alternative is really possible due to all of legislation process will be set up in Aceh. Therefore, the legislation process can be fasten, but the minus point is that *qanun* (a local bylaw in Aceh) has limit teritorial authority, it is mean that it cannot reach perpetrator staying outside Aceh.

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Formal establishment of Truth and Reconciliation Commission

The establishment of TRC in Aceh has differential among TRC in other countries, such as South

Africa, Rwanda, Yugoslavia, and other places. The reconciliation in South Africa after the apartheid regime as an example that people choose to forgive rather than to sue the perpetrator who did human rights violation in the past^{4,5,6}. The reconciliation process in South Africa is the resultant of negotiation between apartheid regime and Nelson Mandela who was still in prison. This reconciliation was meant as an allurements to forgive and to forget a past period, so the normal life can be started and the circle of revenge can be avoided^{7,8,9,10}. In other words, the function of social-politics to forget the past period is really important. The primary purpose is to build civilized-life, to stop hostility between color skin and dark skin⁷. However, the reconciliation experience from South Africa is not completely appropriate with TRC in Aceh. Reconciliation in Aceh has their own specialties. It has a custom, religion, and local wisdom approach. Below will be discussed the specialties of Aceh TRC.

Reconciliation approach based on religion, custom, and local wisdom

Reconciliation in Aceh has its own character focusing on religion, custom, and local wisdom. However, those character will not forget the truth seeking process for gross human rights violation which was happened during conflict. People of Aceh are the society living with Islamic value and special custom. Both Islamic value and special customs are the part which cannot separate each others. For this reason, in Acehese culture has proverb that *Adat ngon hukom lagee zat ngon sifeut* (custom and Islamic value are part that cannot separate each others). Brotherhood, understand each others, and forgiveness can build trust-feeling among parties who was conflict in the past. Those principle is known as *meusuloh* (peace) which is followed by custom ceremony such as *pesijuek*, *meumat jaroe* (*shakehand*), etc. Generally, each district in has their own specific approach *meusuloh*. *Peusijuk* is custom ceremony to make brotherhood between parties who had conflict before.

The word *Suloh* is taken from verses of Quran Sura al-Nisa (114)¹¹:

“In most of their secret talks there is no good: But if one exhorts to a deed of charity or justice or conciliation between men, (Secrecy is permissible): To him who does this, seeking the good pleasure of Allah, We shall soon give a reward of the highest (value).”

Suloh is the part of reconciliation which is based on indigenous people. This approach is as alternative dispute resolution which is really effective to prevent conflict which is happened again. *Suloh* can be functioned as a tool to cut the circle of revenge which is possible happened again. *Suloh* is one of method to solve conflict with custom approach. It is unwritten law and uncodified. Soepomo give definition of custom law as a custom law, which is unwritten and uncodified, most of them is Islamic law^{12,13}. That law is unwritten in state *gazzete* like most of state law. Although it is unwritten, it life in social culture as a living law.

Customary law in Islamic law is known as ‘*urf*’ (habit). It is one of resource in Islamic law. The function of this resource is to support others resources in Islamic law such as *mashalih al-mursalah*, *istihsan*, *istishab*, etc. These resources will be used when the special cases laws are not mention in Quran and Sunnah. In the dignity of Acehese social life, they do not have revenge feeling, because it is against Islamic value. The resolving method using customary law can avoid revenge^{12,13}. So, the power to get peace can be used in a positive way such as building bright future. However, Acehese is still use self-defense to protect themselves from threat which is called *tuengbeela*. However, it will be used only in emergency.

Peace and reconciliation have a meaning to rebuild a brotherhood that was destroyed during the conflict, and to heal heart feeling in peaceful and brotherhood. In Aceh history was implemented the process of reconciliation using customary approach between The Government of Republic of Indonesia and DI/TII. This reconciliation was known as *Piagam Blangpadang* (Blangpadan Charter) which was held on December 18-21, 1962. This event was named as Musyawarah Kerukunan Rakyat Aceh (The Deliberation of Reconciliation People of Aceh). This event was known as reconciliation. The prominent people as delegation from The Government of Republic of Indonesia, Acehese, and DI/TII attended this event. The main point of this event is to solve conflict during ten years between DI/TII and Indonesia, which was really disturbed the process of developing Aceh in multi-aspect. In the other sides, the customary law has a international power after United Nation on Declaration of Rights Indigenous People which is declared on September 13, 2007. The declaration consist

of the protection to indigenous people to develop their customary, to protect tradition, faith and believe, to adopt legal resources, etc.^{14,15,16}.

Since the Islam and local custom aspects are dependable one upon another, thus in Aceh there is one wise word saying *adat ngon hukom lagee zat ngon sifeut* (the custom and Islamic law cannot be separated). Brotherhood, maintaining social relationship, and forgiving are aspects that can develop mutual trust among people involving in conflict intentionally or unintentionally. For Acehnese people, there is principle known as *Meusuloh* (peace process) which is followed by local custom such as *peusijuek* (showering), *meumat jaroe* (shaking hands for forgiveness), and many other ways of *meusuloh* (peace process) with its specific character for each area in Aceh. In addition to the above matters, to fulfil the need for regulation at the state level, president can propose for Emergency Law or Perpu to fasten the process of truth revealing and reconciliation. The apparent problem is the forming of the Emergency Law is only temporarily, thus unless it is legalized within one year period, then the Law is considered as void. Another alternative is by immediately forming *Qanun* (Law) on the truth and reconciliation commission in Aceh^{14,15,16}. This is as the most possible alternative to be implemented in the nearest moment as the whole arrangement process of the law can be done locally. Yet, this solution makes the scope of the truth and reconciliation commission becomes narrower since this commission is of the national scale level¹⁷.

Specific Model for Aceh Reconciliation

Generally, there are two reconciliation models, which is, can be implemented in Aceh. Those reconciliation models will not forget the truth seeking. Those models have adopted Aceh specialties value, and the principals of justice. This resource come from Indonesia Human Right Law and International Human Right Law. Those models are specified into 2 models. First, Truth Seeking, Victim reparation, and Forgiveness. This model is to process truth seeking, to do victim reparation, and to forgive each other. It has to along with increasing victim welfare that can make religion, custom, and local wisdom approach. The reason of suggestion of this model is in Indonesian Constitution (UD 1945) does not tolerate retroactive cases happening in the past. This

is mention on Article 28I (1): Rights to life, rights to are not tortured, rights freedom of thinking and from the bottom of one's heart, rights to have a religious, rights to are not be slaved, rights to occupy as person in front of law, and rights to uncharged based on retroactive law, is the human rights which cannot added and cannot deducted in every circumstance. Because of the difficulties of retroactive punishment, Victim reparation and forgiveness are more essential to establish in the society. Second, truth seeking, tribunal process, and forgiveness. The models is to seek the truth, to make tribunal process, and forgiveness^{14,15,16}. These models are almost same with the first model. It has to along with increasing victim welfare that can make religion, custom, and local wisdom approach. The differential between first model and second model is in the tribunal process. For gross human rights violation, it will be faced to Indonesian Human Right Court. For case which is not identified as gross human rights violation will be handle with reconciliation based on community approach and using Aceh local value.

Conclusion

Reconciliation process is the process to heal hurt feeling due to conflict in the past. It need special treatment in healing all of hurt feeling. Approaching Aceh specialties focus on religion value, custom, and local wisdom which is a part of reconciliation. Victim welfare, justice, and forgiveness are the part which cannot put on separate place. However, they are the unity connecting one each other. Ideally, all of mistake can be forgiven, but we cannot close the door for the victim who has hurt feeling and cannot forgive the mistakes. Forgiveness come from the bottom of one's heart, and cannot be forced from third parties.

Conflict of Interest

There is no conflict of interest.

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Ethical Clearance

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References

1. Law on Aceh Governance, Law No.11, LN No. 62 of 2006, TLN. 4633, ps. 229.
2. The Decree of Constitution Court deciding The Law Number 27/2004 concerning Truth and Reconciliation Commission.
3. Armia MST. Development of Legal Theory Thought [Indonesian], Jakarta: Pradnya Paramita. 2009.
4. van Zyl P. Dealing with the past: reflections on South Africa, East Timor and Indonesia. *Beginning to Remember: The Past in the Indonesian Present*. 2005:324-42. Singapore: NUS Publishing.
5. Gready P. The era of transitional justice: The aftermath of the truth and reconciliation commission in South Africa and beyond. London: Routledge; 2010.
6. Kent L, Affiat R. Gambling with truth: Hopes and challenges for Aceh's commission for truth and reconciliation. *Flowers in the wall: Truth and reconciliation in Timor-Leste, Indonesia, and Melanesia*. 2017:167-84.
7. Graybill LS. Truth and reconciliation in South Africa: Miracle or model?. Colorado: Lynne Rienner Publishers; 2002.
8. De Klerk BJ. Nelson Mandela and Desmond Tutu: living icons of reconciliation. *The Ecumenical Review*. 2003 Oct 1;55(4):322.
9. Gibson JL. The contributions of truth to reconciliation: Lessons from South Africa. *Journal of conflict resolution*. 2006 Jun;50(3):409-32.
10. Arslan HK, Turhan Y. Reconciliation-oriented leadership: Nelson mandela and south africa. *All Azimuth: A Journal of Foreign Policy and Peace*. 2016 Jul 1;5(2):29-46.
11. Ali AY. The meaning of the Holy Qur'an. Beltsville: MD, Amana Publication. 1996
12. Soepomo S. Bab-bab tentang hukum adat. Jakarta: Pradnya Paramita. 1980.
13. Soekanto S. Hukum adat Indonesia. Jakarta: RajaGrafindo Persada. 2008.
14. Suh J. Preemptive transitional justice policies in Aceh, Indonesia. *Southeast Asian Studies*. 2015 Apr 29;4(1):95-124.
15. Schiller R. Reconciliation in Aceh: Addressing the social effects of prolonged armed conflict. *Asian Journal of Social Science*. 2011 Jan 1;39(4):489-507.
16. Mukti TA, Warsito T, Badruzaman I, Pribadi U. Paradiplomacy Management and Local Political Movement in Aceh, Indonesia, and Catalonia, Spain. *European Journal of East Asian Studies*. 2019 Jul 4;18(1):66-92.
17. Judiasih SD, Fakhriah EL. Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia. *Padjadjaran Journal of Law*. 2018 Sep 24;5(2):315-30.