**THE HELSINKI MoU AND THE LAW ON THE GOVERNING OF ACEH:**

**COMPARATIVE ANALYSIS WITH THE SAHARA AUTONOMY INITIATIVE**

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**Abstract**

In Aceh’s history since the independence of Indonesia in 1945, two armed conflicts have been recorded: *Darul Islam-Tentara Islam Indonesia* *(DI-TII)* in 1953, followed by *Gerakan Aceh Merdeka* (GAM)/Free Aceh Movement declared in 1976. The Indonesian government’s efforts to resolve the conflict through military force proved a failure and both armed conflicts were resolved through peace dialogue. The *Ikrar Lamteh* agreement has resolved the *DI-TII* conflict in 1957 and the Helsinki MoU resolved the GAM conflict in 2005. Unfortunately the *Ikrar Lamteh* was not a long-lasting solution since commitments were not enforced and not included into a legal instrument. Peace achieved through the Helsinki MoU was relatively better since the peace and political commitments were formalized in a legal instrument (an Act), called the Law on Governing of Aceh (Act No. 11/2006, LoGA). Moreover this Act – popularly known as the Aceh Special Autonomy Act – became a reference for the special autonomy status of Aceh, which slightly differs from the autonomy of other Indonesian provinces. From these two experiences it can be concluded that the commitment/political decision to end a conflict, especially an armed conflict, must be formalized into a legal instrument. Although the process of recovery of territorial integrity is different from the one followed for the Sahara region, the lessons learnt from the Aceh process could be applicable to the case of the Sahara region.

1. **BACKGROUND**

Aceh is located on the western part of Indonesia and is one of Indonesia’s 33 Provinces. In the early history of Indonesia’s independence, Aceh became one of the main areas of Indonesia and was labelled as ‘Capital Area’ by Indonesia’s first president, Soekarno. There were several reasons for so doing, such as sending troops from Aceh to fight against the Dutch Army to other parts of Indonesia (North Sumatra area) and also providing funds to purchase an aircraft to support the movement of the Indonesian government at that time. Later on, the aircraft became the embryo of Garuda Indonesia Airways (Indonesia’s national airline). History also records that when other Indonesian areas were declared as parts of the Indonesian Federal State formed by the Dutch, Aceh refused the federal state concept. Aceh just recognized a republic instead of a federal state.[[3]](#footnote-3)

Support towards the republic concept was based on the expectation that it would ensure the welfare of each province. However, a problem started to occur when ‘political promises’ were not implemented by the Indonesian leader. Aceh’s status as a province was deleted at that time and the Indonesian government grouped Aceh as part of North Sumatra Province in 1959. This policy was considered as counter-productive and fuelled the Aceh-Indonesian government conflict. Eventually, Tgk. Daud Beureuh, a local charismatic Islamic leader who had been actively involved in the struggle for Indonesia’s independence, declared Aceh as part of *Daarul Islam* (Indonesian Islamic State).

The Indonesian government, in order to solve the problem, decided to deploy a huge military force; however, since the insurgency used a guerrilla strategy, military force did not succeed. Considering that there was no military solution to the problem, the Indonesian government then decided to start a peace dialogue and mandated the Military Commander for the Aceh Region and Aceh’s Governor at that time (Ali Hasjmi) to start the peace dialogue.[[4]](#footnote-4) This peace dialogue was concluded with an agreement by both parties to end the armed conflict and was known as *Ikrar Lamteh*.[[5]](#footnote-5) The agreement was then enacted as Indonesian Prime Minister Decision No 1/MISSI/1959, on the Special Status for the Aceh Province.

When the DI/TII conflict was successfully settled through peaceful methods, new hopes arose through the birth of a new status for the Aceh Province. Unfortunately, the centralistic approach deployed by the Indonesian government resulted in Aceh being marginalized. The special status granted for Aceh was not sufficient as a legal decision such as an Act.

The exploration and management of natural resources within Aceh’s area through a centralistic approach then triggered another conflict. In 1969 natural gas was found in the North Aceh District and its exploration started in 1977. However, the huge natural gas exploration did not raise the welfare of the Acehnese. In fact, most of the poor villages in the district were located in the surrounding area of the *Arun[[6]](#footnote-6)* natural gas plan.

The above-mentioned facts among others were the causal factor of the Free Aceh Movement (GAM) declared by Dr. Hasan Tiro on 4 December 1976. The movement was then handled by the Indonesian government through military operations. As a matter of fact, military operations then created a more serious humanitarian problem that cannot be forgotten by Acehnese people. In 1998, the new Indonesian government, as a result of the national reform agenda, decided to use a peaceful strategy in solving the Aceh problem instead of military force. President BJ Habibie at that time officially offered an apology for all the violence that had occurred during the military operations in Aceh and also decided to conduct the investigation of human rights violations. Furthermore, he decided to pull out the Indonesian army from Aceh. The government declared the end of military operations in Aceh.

Dialogue involving foreign mediators also took place in Aceh’s peace process. The Swiss Henry-Dunant Centre (HDC) for instance was involved in negotiating the Cessation of Hostilities in Aceh (COHA). Apart from dialogue, other efforts to bring peace to Aceh were recorded such as the enactment of Act No. 44/1999, Act No. 37/2000 and Act No. 18/2001. Unfortunately those efforts were ineffective although it has to be admitted that the autonomy status has increased the local government’s budget significantly. Those efforts again failed to solve the conflict and the Indonesian government decided to declare ‘martial law’ in the Aceh province.

The recovery of territorial integrity in Morocco was completely different. Morocco opted, from the outset, for a diplomatic process under the auspices of United Nations. However, the reluctance of the other parties and the complexity of tribal organisation of the Sahara led the Security Council, in its resolution SC 1570 of 28 October 2004 and subsequent resolutions, " to call upon the parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution". Morocco responded to that call by proposing its “Initiative for the Negotiation of an Autonomous Statute for the Sahara Region”, within the framework of Morocco's sovereignty, national unity and territorial integrity. The Moroccan Initiative was qualified by the Security Council in its resolution 1754 dated on April 2007 and subsequent resolutions as “serious and credible”.

1. **Comparative reading in HELSINKI MoU and the Moroccan Autonomy initiative**

The government of Indonesia under President Yudhoyono and Vice President Kala were aware that the military approach had failed to solve the long conflict in Aceh. Therefore, they decided to start a dialogue with the GAM leaders, particularly those who had been residing overseas. When the efforts to begin the dialogue started, a tsunami occurred (in December 2004). The tsunami attracted huge attention and sympathy from the international community. The tsunami, international attention and, most importantly, the spirit on both sides to end the conflict within a peaceful framework successfully brought both parties to sign a peace agreement. It was signed in Helsinki in the form of a Memorandum of Understanding (Helsinki MoU) by Hamid Awaludddin, Indonesia’s Minister of Justice on behalf of the government of Indonesia, and Malik Mahmud, GAM’s Prime Minister on behalf of GAM, and witnessed by Martti Ahtisaari, the Finnish facilitator for the negotiation process.

The Helsinki MoU consists in six substantial parts:

1. On the governing of Aceh: a special Act regulates political participation, as well as economic and technical regulations to implement those provisions. Political participation includes the establishment of local political parties, elections for the local parliament and the local government. Economic aspects include economic infrastructure management and natural resource management.
2. On human rights: provisions are based on the International Covenants (ICCPR and ICESCR), and include a human rights court and a Truth and Reconciliation Commission.
3. On Amnesty and the integration programme.
4. On Security regulations.
5. On the establishment of a Monitoring Mission for Aceh.
6. On the Dispute Mechanism.

In the same vein, the Moroccan Autonomy Initiative, inspired by internationally admitted standards of autonomy as applied in neighbouring democratic countries, proposes, in its section B (organs of the region) the organisation of the three organs of power: Legislative Executive, and Judiciary.

## - The Parliament of the Sahara Region: the Parliament of the Sahara autonomous Region shall be made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region's population. There shall be adequate representation of women in the Parliament of the Sahara autonomous Region.

- The Local Government of the Sahara Region: the Head of Government shall be elected by the Parliament of the Sahara autonomous Region. He shall form the Region's Cabinet and appoint the administrators needed to exercise the powers devolving upon him, under the autonomy Statute. He shall be answerable to the Region's Parliament.

- The Judiciary of the Sahara Region: courts may be set up by the regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region. As the highest jurisdiction of the Sahara autonomous Region, the High Regional court shall give final decisions regarding the interpretation of the Region's legislation, without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council. Laws, regulations and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region’s autonomy Statute and with the Kingdom's Constitution. The Region's populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized.

On the political organisation and participation of the people, the Moroccan autonomy initiative is similar to the Helsinki MoU: both confer local executive power to locally elected authorities even in the field of international relations. The Moroccan authorities will consult with the autonomous region of the Sahara elected authorities on issues directly related to the competencies of the region. The Indonesian Government, according to the LoGA, when entering into international agreements that relate to matters of special interest to Aceh, is obliged to consult with the Local Parliament.

The economic and natural resources management provisions are also similar in both processes. The autonomous region of Sahara resources are financed by: taxes and contributions enacted by the competent organs of the region; income from the natural resources of the region; resources derived from the national solidarity framework; income from the patrimony of the region.

Both mechanisms in Aceh and in the Sahara region base Human Rights provisions on the International Covenants. Amnesty and the integration programme have been already implemented unilaterally by the Moroccan authorities since the earlier stages before the autonomy initiative. While the autonomous initiative for the Sahara region is still under a negotiation process between Morocco, Algeria, Mauritania and Polisario under UN auspices, the Helsinki MoU, implementation still faces some obstacles six years after its signature. Some points can be implemented in a short time since they do not require amendment of national laws (such as the elimination of GAM’s weapons, amnesty and reintegration, as well as security regulations). However, with regard to the governance of Aceh, some amendments to existing national regulations are necessary. Indeed several aspects such as local political parties, the respective rights of the local parliament and the Governor in enacting Aceh-related laws were inconsistent with national laws.[[7]](#footnote-7) Therefore both parties agreed, as mentioned in the Helsinki MoU, that the Law on the Governing of Aceh (LoGA) had to be enacted by 31 March 2006 at the latest.[[8]](#footnote-8)

The Helsinki MoU did not enjoy wide support particularly by some groups such as political parties in Jakarta. Various reactions appeared either in support or against it. For the MoU’s supporters, solving Aceh’s long conflict in a peaceful way is crucial and important. On the other hand, those who stand against the MoU argued that the agreement contradicted Indonesia’s Constitution and endangered Indonesia’s position as a state. In the meantime, the autonomous initiative for the Sahara region enjoys a national consensus in Morocco.

While in Aceh the signing of the Helsinki MoU was widely celebrated by all sections of society, in Jakarta some stakeholders showed their disagreement with its signing. Those even included former President Megawati, who was leading one of the three main national political parties.

Critiques and even objections towards the Helsinki MoU from several groups were handled by the Indonesian government by explaining that the substance of the MoU was not contrary to the Constitution. This argument was made by Hamid Awaluddin, then Minister for Justice. According to him, it was not true that the signing of the MoU lowered the state’s dignity. In fact, it even raised it by allowing the end of the 30-year-old armed conflict in Aceh. Finally, the government succeeded in convincing the opponents to the Helsinki MoU that it was not contrary to the Constitution.

Despite differences in support and opposition to the Helsinki MoU, it has brought new optimism that an armed conflict could be resolved peacefully. Therefore, it eventually received much support locally, nationally and internationally.

1. **AUTONOMY AND SPECIAL AUTONOMY BASED ON THE LAW ON THE LOCAL GOVERNMENT OF ACEH**
2. **THE GENERAL AUTONOMY CONCEPT**

Indonesia in principle implements the decentralization principle in its governance system. Indonesia has decentralized some government’s functions to local governments either at the provincial or district level. As a matter of fact, decentralization has been started since the colonial era through the *Decentralisatie Wet* in 1903.[[9]](#footnote-9) After Indonesia declared its independence in 1945, the decentralization policy remained implemented but in an inconsistent way: sometimes its scope was wide, sometimes narrow. Act No 32/2004, which has been amended several times (the latest through Act No 12/2008), is the legal basis of the autonomy policy in Indonesia. An autonomy status has been given to the provincial and district governments.[[10]](#footnote-10)

The distribution of functions between the central and the local governments is based on the following:

1. There are governance functions that wholly remain in the central government’s hands such as foreign policy, defence, security, monetary policy, the judicial, religion and some parts of particular nationwide governance matters.
2. There are governance functions that are concurrent in nature. It means to some extent that they can be implemented by the central government together with the local governments. The functions of provincial governments and district governments are regulated in Government Decision No.38/2007. Therefore, there are functions which are attributed to provincial governments and others to district governments, and the rest remains in the central government’s functions.

This distribution of powers is similar to what the Moroccan Initiative proposes for the distribution of powers between the central government of Morocco and the autonomous Sahara Region:

1. According to Article 14, “The State shall keep exclusive jurisdiction over the following in particular:
	* The attributes of sovereignty, especially the flag, the national anthem and the currency;
	* The attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms;
	* National security, external defence and defence of territorial integrity;
	* External relations;
	* The Kingdom’s juridical order.
2. Article 15 stipulates that: “State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region. (…).”
3. Finally, according to Article 17, “powers which are not specifically entrusted to a given party shall be exercised by common agreement, on the basis of the principle of subsidiarity.”
4. **SPECIAL AUTONOMY AS A POLITICAL SOLUTION**

The Helsinki MoU should be considered as a political instrument despite the debate on whether or not it is a legal instrument, while the Moroccan autonomy initiative is a political and negotiated solution. One of the principal points in the MoU is the obligation of the Indonesian government to establish a specific act on the governing of Aceh.[[11]](#footnote-11) This Act was then widely known as Act No 11/2006, Law on the Governing of Aceh (LoGA) that was enacted on 1 August 2006 and published in State Gazette No 82/2006.[[12]](#footnote-12) This Act is also known as *Lex Specialis* of Act No. 32/2004.

As for the Sahara Autonomy Initiative, it states that "the region's statute shall be subject of negotiations and shall be submitted to the populations concerned in a free referendum. This referendum will constitute a free exercise, by these populations, of their right to self-determination, as per the provisions of international legality, the Charter of the United Nations and the resolutions of the General Assembly and the Security Council. To this end, parties pledge to work jointly and in good faith to foster this political solution and secure its approval by Sahara populations. Moreover, the Moroccan Constitution shall be amended and the autonomy Statute incorporated into it, in order to guarantee its sustainability and reflect its special place in the country's national juridical architecture" (Article 27 of the Initiative). This is a fundamental and positive aspect which gives a constitutional guarantee to the Autonomy initiative and enhance its constitutional irreversibility.

For its part, in the Aceh process based on the MoU (Article 1.1.2), the establishment of the new Act on the governing of Aceh is articulated on four principles:

1. Aceh will run all of its public service sector. The function itself will be implemented with regard to civil and judicial administration to the exclusion of foreign policy, defence, national security, fiscal and monetary policy, judicial power and religious freedoms. All of these functions remain part of the central government functions based on the Constitution. For the Sahara Region, Article 12 of the Moroccan proposal provides that the Autonomous Region shall exercise powers (inter alia) over “the Region’s local administration, local police force and jurisdictions.”
2. Any treaty concluded by the Indonesian government that relates to Aceh’s special status should be consulted with the local parliament. As seen above, in the case of the Sahara Region, “State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region.”
3. Any Indonesian Parliament’s decision that relates to Aceh should be consulted with and under the consent of the local parliament. For the Sahara Region, according to Article 18 of the Moroccan Initiative, “The populations of the Sahara autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections.” While for Aceh, the Acehnese also do have their representative at House of Parliament and not just at Local Parliament similar to other provinces in Indonesia.
4. Administrative policy decided by the central government relating to Aceh requires consultation with and approval from Aceh’s governor. For the Sahara Region, Article 16 of the Moroccan plan stipulates that “The powers of the State in the Sahara autonomous Region (…) shall be exercised by a Representative of the Government.”

From those principles it can be argued that the implementation of the MoU within the LoGA’s context should not be seen word per word. However, the most important aspect is the principles. Among other crucial aspects are the requirements to consult with the local parliament with regard to treaty making and the national law enactment process as well as the requirement to receive approval from Aceh’s Governor with regard to administrative policy. Because the principles and examples mentioned above may seem to contradict the Constitution (since the state’s institutions are higher compared with provincial’s institutions), a specific approval has been required.[[13]](#footnote-13) The LoGA as a legal instrument for implementing the Helsinki MoU should refer to Indonesia’s Constitution and principles such as those mentioned in Article 1.1.2 of the Helsinki MoU.

There are several philosophical points involved in the enactment of LoGA, such as:

1. Aceh remains within the Republic of Indonesia and its constitutional frame. Despite some differences within GAM, the Movement did not agree with this starting point initially. However, officially this principle was eventually accepted as the starting point and also the broad frame of all agreements reached. Paragraph 2 of the Preamble to the Helsinki MoU clearly stated that both parties would create a situation whereby the Aceh government would be formed “through a fair and democratic process within the unitary state and constitution of the Republic of Indonesia.” Similarly, in the case of the Sahara Region, according to the Moroccan proposal, the autonomous region would remain within the Kingdom of Morocco and recognize the authority of the Moroccan constitution; it would also be formed as a result of negotiations among the parties to the conflict and be democratically governed on the basis of regional elections.
2. As a legal implementing instrument of the MoU, the LoGA accommodates the agreement that has been reached and it allocates the legal power for the implementation of the agreement. With this principle, the LoGA not just considered as a legal implementing instrument but also considered as a conflict resolution instrument. Similarly, the status proposed by Morocco for the Sahara Region would put an end to the conflict.
3. The law accommodates substantial points from the previous law on Aceh. There are several Acts specifically related to Aceh such as: Act No 44/1999 on the Privileges of Aceh; Act No 37/2000 on Sabang Freeport Area; and Act No 18/2001 on the Special Autonomy Status for Aceh. These three Acts are part of the efforts in solving Aceh’s long conflict; therefore their substantive principles should be integrated into the LoGA, considered as the latest and most complete Act on Aceh.
4. It is a comprehensive solution for Aceh’s conflict. The problem in Aceh is not just a conflict between the Indonesian government and GAM. The problems are quite complex such as the lack of development, justice, welfare and human rights problems. In order to solve those problems, the LoGA has addressed them and identified resource solutions to solve them. In the LoGA we can find articles on the Human Rights Tribunal, the Truth and Reconciliation Commission and regulations on the management of natural resources that are considered as solutions to the above-mentioned problems. Similarly, in the case of the Sahara Region, the negotiated status would go beyond conflict resolution and would provide solutions to major issues such as development, justice, welfare, management of natural resources, and human rights.

The term “autonomy” cannot be found as such in the Helsinki MoU since the term was considered by GAM as old and general. However, the LoGA in particular is a formulation of the autonomy concept and has been later known as the ‘special autonomy’ concept.[[14]](#footnote-14) Another interesting point of the LoGA was its drafting process. Usually an Act is prepared by the central government or one house of parliament. For the LoGA, the initiative to prepare the draft came from the local government together with the local parliament and civil society. A task force[[15]](#footnote-15) at the local parliament was formed to accommodate inputs from all stakeholders.

After going through a long process, which included seminars, focus-group discussions and public hearings (either direct or through printed and electronic media), eventually the local parliament produced a final draft. By involving stakeholders through public hearings, the local parliament has gained support from the national and international community and even had the Acehnese draft recognized by Parliament.[[16]](#footnote-16)

The draft has been prepared by the local parliament, and was submitted to the central government through the Interior Ministry. One House of Parliament received the draft sent by the Interior Ministry on behalf of the central government; it was registered in Presidential Letter No.R.10/Prs/1/2006, 26 January 2006.[[17]](#footnote-17) The local government mandated the expert team to follow the discussion held by the house of parliament to make sure that all aspirations expressed in the drafting process remained accommodated by the house of parliament. In addition civil society was also involved in monitoring the process by forming a civil society organization named *Jaringan Demokrasi Aceh.* Finally after a long process, the draft was approved by the House of Parliament with some revisions on 1 August 2006 and was officially titled Law on the Governing of Aceh (LoGA).

Based on the specificity and the complexity of Aceh, the LoGA accommodates those aspects. Therefore the special autonomy concept slightly differs from the general autonomy concept applied in other provinces. The specificities are as follows:

1. The governance level is divided into five levels: provincial level, district/municipal level, sub-district, group of villages *(mukim)* and villages. In the other provinces, the level of governance is divided only into four levels (without the group of villages).
2. There are some additional governance functions decentralized to the local government by the central government which it does not apply in other provinces:
3. The central government’s role in Aceh will be regulated by a Government Regulation[[18]](#footnote-18) and the remaining functions will become the role of the local government. For other provinces except Papua, the functions decentralized to local governments are regulated in Government Regulation No. 38/2007 on the Distribution of Government Functions to Provincial and District/Municipal Government.[[19]](#footnote-19) In the status proposed for Sahara, the respective powers of the central government and the Region would be clearly delineated in the agreement resulting from the negotiation.
4. For the legislation-related functions, every treaty related to Aceh concluded by the central government and the national law formulation process related to Aceh should be consulted with and under the consideration of the local parliament. A similar consultation is envisaged in the case of Sahara.
5. The central government, prior to releasing an administrative policy such as a Government Regulation, a Presidential Regulation and a Ministry Regulation that relate to Aceh, would consult with and under the conideration of Aceh’s governor. For the Sahara Region, the populations of the Region would exercise powers over their administration in the wide range of domains listed in the Moroccan Initiative.
6. Direct international cooperation for certain aspects. For its part, “the Sahara autonomous Region may, in consultation with the Government, establish cooperation relations with foreign Regions to foster interregional dialogue and cooperation.”
7. *Sharia Law* implementation: the local Law on the implementation of *Sharia Law* cannot be denied by the central government unless through a Judicial Review decision by the Supreme Court. The implementation of *Sharia Law* is conducted by the *Sharia Court* based on a code of conduct that was enacted through the Local Law.[[20]](#footnote-20) In Sahara, the State will continue to exercise “the attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms” as well as the “Kingdom’s juridical order.”
8. Oil and natural gas management: oil and natural gas that is explored from Aceh’s area will be handled mutually between the central and the local governments. Oil and Natural Gas exploration contracts should be mutually agreed upon between the central and the local governments. The management of oil and natural gas will be regulated with a separate Government Regulation that is being discussed by the central government and the local government. Although the technical instrument is being discussed, the current practice is that the contract is mutually discussed and signed by Aceh’s governor. In the case of Sahara, the Region will keep the “proceeds from the exploitation of natural resources allocated to the Region” as well as the “share of proceeds collected by the State from the exploitation of natural resources located in the Region.”
9. Land-related functions: rights over land, including the right of using state land and right of building will be decentralized to the local government.
10. Investment-related aspects: the central government will decentralize to some extent the rights of issuing investment permits to the local government. As for Sahara, the Region will have competency over economic development, regional planning, promotion of investment, trade, tourism, agriculture, and infrastructure.

To make sure that the implementation of those decentralized functions from the central government to the local government will not be used against Indonesia’s sovereignty, the central government will determine norms and procedures that have to be followed. In addition to the above-mentioned specific circumstances found in the LoGA, we also can find regulations that differ from the general autonomy concept:

1. The number of local government members: the number of local parliament members at the provincial level is 125% higher than the general formula for local parliament members.
2. Local political parties: the establishment of local political parties is regulated by Government Regulation No. 20/2006. In the 2009 general election, there were six local political parties involved; however, only three local parties got seats at the provincial parliament.[[21]](#footnote-21)
3. Oil and natural gas fund sharing: Aceh will receive 70% of the oil and natural gas fund that explores the oil and gas from Aceh’s area. As a comparison, other provinces respectively receive 15.5% (oil) and 30% (natural gas).
4. Special autonomy fund: within 15 years, Aceh will receive a special autonomy fund allocated for 2% from the national fund allocation and 1% further for the next 5 years. The special autonomy fund described previously has been implemented since 2008.
5. Human rights regulations and the formation of a human rights tribunal for Aceh: according to the LoGA, the Human Rights Tribunal will be formed at least one year after the enactment of the LoGA. Unfortunately, until today it has not yet been possible to form the tribunal.
6. Local Truth and Reconciliation Commission: the local Commission will be part of the National Commission. Unfortunately, the National Commission has not been established since the national law on this aspect has been cancelled by the Constitutional Court.
7. The election of the Governor and the head of district/municipality differs from other provinces. Prior to the latest Constitutional Court decision on independent candidates, Aceh has been given the right to have independent candidates for Governor and head of district/municipality. The election itself will be conducted by an independent commission that was formed based on the LoGA and Local Law *(Qanun)*
8. The head of the provincial police and the provincial prosecutor are sworn in by the central government; however, it requires the Governor’s approval.
9. Any amendment of the LoGA should be considered through consultations with the local parliament.

It results from the arguments above that, within the special autonomy concept applied to Aceh, the central government’s role in the legislative process is influenced by its obligation to consult with the local parliament, while for the administrative policy, it has to consult with the Governor. In the case of Sahara, although there is, at this stage, no specific provision in the proposal for an obligation to consult the regional populations on any amendment to the Autonomy Statute, one can assume that the negotiators will envisage such a system. The Autonomy Initiative provides that any amendment to the negotiated status would require a revision of the Constitution and a general popular consultation.

1. **OBSTACLES IN IMPLEMENTATION**

For the several aspects that do not require national law amendments, as a matter of fact, implementation is relatively easier. Several examples of issues that work relatively well can be mentioned: GAM’s weapons elimination, reform of the army and police, reintegration, amnesty, the formation of the Aceh Monitoring Mission.

Although the LoGA has been enacted after a long discussion process either at the local parliament, in the government and in the house of parliament, in fact it does not mean that all articles can automatically be implemented directly. Some of the articles in the LoGA were successfully implemented soon after the enactment process (such as the special autonomy budget allocation). However, most aspects require a technical legal instrument such as a Government Regulation, a Presidential Regulation or a Minister Regulation. Obtaining those technical legal instruments unfortunately has taken more than two years while the LoGA had mandated to have those technical legal instruments in place within two years maximum since the enactment of the LoGA.

The technical legal instruments are supposed to have been concluded by 1 August 2008 since the LoGA was enacted and officially became binding starting on 1 August 2006. So far, only three Government Regulations and two Presidential Regulations are available to implement the LoGA and indirectly the Helsinki MoU. Therefore, only several aspects can be implemented, such as the establishment of local political parties, direct elections for the Governor and head of districts/municipalities as well as several administrative activities.

Another obstacle to have the technical legal instruments in place is the fact that the regulations have to be discussed mutually between the central and the local governments. Different perceptions and opinions between the teams often appear during the discussions on the substance of the LoGA.

1. **CONCLUSIONS**

The Helsinki MoU has changed the conditions in Aceh from a conflict situation, full of fears, violations and chaos, into a peaceful and safe situation. All the people living in Aceh can feel this major difference. That is why the Acehnese are not really concerned with some rejection of the Helsinki MoU in Jakarta. One difference between the Helsinki MoU and the *Ikrar Lamteh* that ended the earlier armed conflict in Aceh is the substance of the Helsinki MoU as a political decision which has to be transformed into a legal instrument. And the legal instrument itself is a national law which is quite high in terms of legal hierarchical status. Therefore, it has a binding power. On the contrary, the *Ikrar Lamteh* was not transformed into a legal instrument, and consequently it was not seen as having a binding power for its implementation.

The special autonomy status for Aceh regulated through the LoGA fulfils several functions. Apart from its function as the legal basis for the special autonomy status, it also considered as the implementation of the peace commitment (Helsinki MoU). And finally, the LoGA is also considered as a perfect conflict resolution tool for Aceh that aims at creating justice and welfare for all Acehnese people.

As argued above, the Indonesian government has the responsibility to implement the Helsinki MoU. This is not just an obligation to conclude the technical legal instruments for the LoGA but also to implement the law itself in good will. Many parties believe that failure to implement the law for would endanger the peace process achieved in Aceh. Apart from the main obligation to implement the LoGA which is the responsibility of the central government, support from all Aceh’s stakeholders is also needed. The local government at each level also needs to support the implementation process by preparing the technical matters that will be needed once the mandated technical legal instruments are available. Finally, all parties have to implement the regulations with good will, in a participative, transparent and accountable spirit.

This main lesson could be applied to the proposed autonomy status of the Sahara Region: good will and a spirit of compromise will be needed not only for the negotiation of the status but also for its implementation. More generally speaking, experience has shown that unless a conflict-solving status is enshrined into a legally binding framework clearly delineating the distribution of powers, there are risks of disputes or even resumption of the conflict.

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**BIBLIOGRAPHY**

* Ahmad Farhan Hamid, *JALAN DAMAI NANGGROE ENDATU,* Penerbit Suara Bebas, Jakarta, 2006.
* Fakultas Hukum Unsyiah dan Sekretariat DPRD Aceh, *SEJARAH LAHIRNYA UNDANG-UNDANG TENTANG PEMERINTAHAN ACEH*, DPRD Aceh, 2009.
* Markku Suksi, SUB-STATE GOVERNANCE TROUGH TERRITORIAL AUTONOMY, Springer Heidelberg Dordrecht London New York, 2011.
* Mawardi Ismail,et.al, LOCAL POLITICAL PARTIES IN INDONESIA, The Aceh Test Case, Crowford School of Government, Australian National University, Australia, 2009.
* *Tim Peneliti* ILD, *Kompilasi Undang-Undang Otonomi Daerah*, Institute for Local Development and Tifa Foundation, Jakarta, 2004.
* Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh.
* MoU Between The Government of The Republic of Indonesia and The Free Aceh Movement, Helsinki 15 August 2005.
* Abdelhamid EL OUALI: Autonomie au Sahara, Prélude au Maghreb des régions, eddited by Stacey International 2008
* Letter dated 11 April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, Security Council Document S/200/206 of 13 April 2007 (available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/MINURSO%20S2007206.pdf>)
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3. See Ahmad Farhan Hamid, *Jalan Daman Nanggroe Endatu,* Suara Bebas Jakarta, 2006, p .4. [↑](#footnote-ref-3)
4. Aceh received its provincial status back with Act No. 24/19656. [↑](#footnote-ref-4)
5. Lamteh is a village located in the Great Aceh District Area [↑](#footnote-ref-5)
6. Arun: an area of huge natural gas plan located in North Aceh District. [↑](#footnote-ref-6)
7. In Article 1.1.2 b the Helsinki MoU mentions that “International agreements entered to 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.” According to Article 1.1.2 c, “Decisions with regard to Aceh by the legislature of the Republic of Indonesia shall be taken in consultation with and with the consent of the legislature of Aceh.” [↑](#footnote-ref-7)
8. In reality this mandate could not be carried out on time because of delays in the enactment process. [↑](#footnote-ref-8)
9. See Tim Peneliti ILD, *KOMPILASI UNDANG-UNDANG OTONOMI DAERAH,* Institute for Local Development, dan Yayasan Tifa Jakarta, 2004, p. 5-124. [↑](#footnote-ref-9)
10. In the previous Autonomy Act (Act No. 22/1999), the district governments received wider decentralization functions compared to provincial governments. [↑](#footnote-ref-10)
11. Helsinki MoU, Article 1.1. [↑](#footnote-ref-11)
12. The Helsinki MoU mandates to enact an Act prior to 31 March 2006. [↑](#footnote-ref-12)
13. See Article 7, Law on the Governing of Aceh. [↑](#footnote-ref-13)
14. See Markku Suksi, ‘Sub-State Governance Trough Territorial Autonomy, Springer, 2011, p. 251. [↑](#footnote-ref-14)
15. This task force was led by Azhary Basar (member of the local government) and assisted by an expert panel led by Mawardi Ismail from Syiah Kuala University. [↑](#footnote-ref-15)
16. See “*Sejarah Lahirnya Undang-Undang Tentang Pemerintahan Aceh*”, Faculty of Law Syiah Kuala University-Loal Parliament Secretariat, p. 109-122. [↑](#footnote-ref-16)
17. Article 20 (2) of the 1945 Constitution: each draft of an Act discussed by the House of Parliament and the President needs mutual agreement. [↑](#footnote-ref-17)
18. The Government Regulation is curently being discussed between the local government team and the central government team. [↑](#footnote-ref-18)
19. This Government Regulation does not apply to Aceh and Papua. [↑](#footnote-ref-19)
20. The *Mahkamah Syar’iyah* (Islamic Court) is part of the court system under the Indonesian Supreme Court. [↑](#footnote-ref-20)
21. About local political parties in the 2009 election in Aceh, see Mawardi Ismail et.al, “Local Political Parties in Indonesia, The Aceh Test Case” Crowford School of Economic and Government, The Australian National University, Autralia,2009. [↑](#footnote-ref-21)