

**SPECIAL AUTONOMY AS A TOOL FOR CONFLICT SETTLEMENT**

***A Comparison between Aceh, Indonesia and the Sahara Region, Morocco***

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**Abstract**

*As post-colonial countries, Indonesia and Morocco often faced similar challenges in the relationship between regional areas and the central government. In order to cope with the insurgency which aimed to separate itself from the central government in a peaceful way, Indonesia has used the referendum with the supervision of the United Nations (UN) in East Timor to resolve the case that ended with the independence of East Timor from Indonesia. Resolving a similar case in the Aceh province, the central government agreed to extensive negotiations with the mediation of international non-governmental organisations (NGOs) in resolving the case that ended with the acceptance of Aceh's special autonomy as the final solution.*

*In 2001, the Free Aceh Movement (known as Gerakan Aceh Merdeka - GAM) rejected special autonomy for Aceh through Law No. 18 of 2001, because it was considered as a unilateral proposal from the government of Indonesia, while special autonomy under the name of "Governing of Aceh" was considered as a solution to end the conflict through the Helsinki Memorandum of Understanding (MoU) (later published in Law No. 11 of 2006) which was accepted by GAM following many rounds of negotiations. Therefore, the solution was not merely imposed by the government of Indonesia. This success cannot be separated from the provision of facilitation and mediation carried out by the Crisis Management Initiative (CMI) led by Martti Ahtisaari, the former President of Finland. Based on the experience of resolving the Aceh conflict, the 2007 Moroccan Autonomy Plan for regional autonomy as a solution for conflict resolution in the Sahara Region offers a framework to provide sufficient space for compromise while not reducing the sovereignty and territorial integrity of the Kingdom of Morocco.*

**INTRODUCTION**

The Kingdom of Morocco and the Republic of Indonesia have already developed a very good relationship and friendly ties for a long time. Over this period, their bilateral relation has been politically entwining well, mainly because the two countries have much in common both in their policies and political views in addressing various issues of both regional and international importance.

As independent countries that are relatively young, Morocco and Indonesia, like other similar countries, are facing many challenges. Movements of armed insurgency to separate from the central government occur in several countries, including the Moro Islamic Liberation Front (MILF) in the Philippines, Polisario in the Sahara Region of Morocco and the Free Aceh Movement (GAM) in Indonesia. In this regard, Indonesia has experienced the dynamic of relations between a regional and the central government, for instance in the case of Aceh.

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At the beginning of Indonesia's independence from the Netherlands in 1945, Aceh was a very important region that played a significant role for the existence of the Republic of Indonesia. When the Kingdom of the Netherlands carried out its second aggression in 1948, the entire territory of Indonesia (the Dutch East Indies) was controlled, except Aceh. Through an old radio transmitter in Rimbaraya, Central Aceh, which was established one day after the aggression on 20 December 1948,<sup>2</sup> the Acehnese leader announced to the international community that the territory of a newly independent Indonesia still existed, namely Aceh. On that basis, then Aceh was known as a capital area for the Republic of Indonesia. Aceh was also dubbed as a capital area, because when the Republic of Indonesia needed an airplane, the Acehnese leader through a meeting at the Kutaraja hotel, which was also attended by President Soekarno, succeeded in mobilizing the people to contribute gold, and at that time a donation of 20 kg of gold was collected. With that capital then the Indonesian Government bought a Dakota DC-3 aircraft, which was named RI-001 Seulawah. This aircraft then became the initial capital of the establishment of the national airline, Garuda Indonesia Airways (GIA).

When based on the results of a roundtable conference on 27 December 1949, the Republic of the United States of Indonesia was formed, Aceh decided not to revive its own State, but remained within the Republic of Indonesia whose capital was Yogyakarta. This was the moment of the Aceh honeymoon led by Tgk Daud Beureueh with Jakarta (Indonesia) led by President Soekarno.

However, Indonesia had to face the turmoil in the form of uprising movements in various regions that wished to separate from the unitary state of the Republic of Indonesia. There were several movements namely: DI / TII led by Karto Suwiryo in West Java; DI / TII led by Daud Beureueh in Aceh; PRRI / Permesta in West Sumatra and the Republic of South Maluku (RMS) in Sulawesi. The various rebellions were successfully overcome, both with violence (West Java, West Sumatra and Sulawesi) and with negotiations (Aceh). After West Irian became part of the NKRI in 1961, there was also a rebellion known as the Free Papua Organization (OPM) which until now has not been successfully quelled.

Besides, Indonesia also experienced conflict with the movement that demanded the independence of East Timor. The East Timor conflict was finally resolved through a referendum on 30 August 1999, with the two options: wider autonomy within Indonesia or independence. The referendum was carried out under the supervision of the United Nations Mission in East Timor (UNAMET) and resulted in the secession or independence of East Timor.

The resolution of the East Timor conflict through a referendum that caused the breakaway of East Timor became a bitter experience for Indonesia. Based on this experience, the demands for a referendum to resolve the Aceh conflict were rejected by the Indonesian government. The government of Indonesia was willing to resolve the conflict with GAM through direct negotiations mediated and facilitated by Crisis Management Initiative (CMI), an international NGO led by Martti Ahtisaari and supported by friendly countries.

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<sup>2</sup> Harry Kawilarang, *Aceh dari Sultan Iskandar Muda ke Helsinki*, Bandar Publishing, Banda Aceh 2008, p.151.

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The problem faced by Morocco since the Polisario was created and self-proclaimed the independence of western Sahara (SADR) has attracted the world's attention and became a nuisance for the welfare and the historical unity of the people of Morocco. The attention of the United Nations, which has issued several Security Council Resolutions, and the efforts made by the UN Secretary General through his Personal Envoy, have not yet produced a final solution, which would be realistic, practical, based on compromise, fair and sustainable.

Indonesia's experience in resolving the Aceh conflict through peace negotiations which resulted in the issuance of the "Helsinki MoU of 15 August 2005" and "Special Autonomy" with the term "Governing of Aceh" in Law No. 11 of 2006 can be used as a comparison for resolving the conflict in the Sahara Region.

### **REGIONAL REVOCATION AND ITS COMPLETION**

The dilution and existence of Aceh within Indonesia did not work smoothly. This disturbance was initially triggered by pledges during Soekarno's presidency which were not fulfilled (including the implementation of Islamic Shari'a in Aceh). Since then, Aceh felt betrayed, and therefore on 20 September 1953, Tgk Daud Beureueh proclaimed Aceh as part of the Indonesian Islamic State led by SM Kartosoewirjo based in Tasikmalaya, West Java. The DI / TII rebellion in Aceh was initially responded to by the Indonesian government through violence by deploying the Army, but unexpectedly it turned out that this effort was unsuccessful. Finally, after tough negotiations, the rebellion was successfully terminated with what came to be known as the "Ikrar Lamteh" (Lamteh Pledge). After this pledge the government of Indonesia, through the Decree of Prime Minister Hardi No. 1 / Missi/1959, gave Aceh the status as a Special Regional Province, with privileges in the fields of religion, education and culture. The privileges however have never been realized concretely. This caused disappointment among the Acehnese people. In addition to that, Aceh also did not feel the positive impact of the exploitation of natural gas by PT Arun NGL in North Aceh Regency. The yield from natural gas, which at that time was one of the largest, was all put in the Indonesian National Budget and very little was returned for any development plan in Aceh. Moreover, the villages surrounding the PT Arun NGL complex are classified as poor villages, and up to now Aceh is still a Province with the highest poverty rate in Sumatra (15.97%) and number 6 of the poorest nationally (Data from Aceh BPS in 2018) .

Armed conflict also occurred again in Aceh led by Tgk Hasan Tiro in the name of the Free Aceh Movement (GAM). This movement was revived as a consequence of social and economic inequality during the Suharto regime.<sup>3</sup>

The movement which demanded independence was initially faced by the government with violence, but failed. Finally, following the Indonesian Reformation of 1998, efforts to resolve the Aceh conflict were initiated and tailored in the era of President Abdurrahman Wahid. After alternating between peaceful efforts and military strength, finally the conflict was resolved through peace negotiations in the era of President Soesilo Bambang Yudhoyono. During that presidency, the conflict was resolved through negotiations facilitated and mediated by the Crisis Management Initiative (CMI) led by Martti Ahtisaari, the former President of Finland. The negotiations

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<sup>3</sup> Harry Kawilarang, *Ibid*, p. 156.

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successfully ended up in a Memorandum of Understanding (MoU) signed on 15 August 2005 in Helsinki, which later became known as the "Helsinki MoU".

The success of this conflict resolution began with the strong determination of President Susilo Bambang Yudhoyono to peacefully resolve the Aceh conflict. According to Damians Kingsbury, "*The election of Susilo Bambang Yudhoyono as president in September 2004, and his commitment to finding resolution to the Aceh conflict was a primary contributor to this return to talks.*"<sup>4</sup> The peace settlement in Helsinki is supported by the European Union and friendly countries, such as the United Kingdom, Japan and Singapore. According to Kirsten Schulze, even though GAM wanted international support for Aceh's independence, this never happened. International involvement in resolving the Aceh conflict remained based on Indonesian territorial integrity.<sup>5</sup> The international community did not support Aceh's independence, but what they did support was that the Aceh conflict resolution efforts should peacefully go through dialogue. This was stated by the United States Ambassador to Indonesia Robert Gilbard when visiting Aceh in May 2001: "*Only dialogue could lead to a resolution of the conflict.*"<sup>6</sup> This is very meaningful for the awakening of Indonesia's belief in choosing a peaceful path and accepting international involvement in resolving the Aceh conflict.

From the above description, it can be seen that the involvement of the international community in resolving the Aceh conflict played an important role. In this context, the government of Indonesia chose international NGOs, which were considered more reliable, independent and impartial. For this reason, for an initial dialogue, the Geneva-based Henry-Dunant Centre (HDC, later Centre for Humanitarian Dialogue) was chosen by President Abdurrahman Wahid and was also accepted by GAM. The negotiations facilitated and mediated by HDC succeeded in agreeing to put an end to violence with the signing of the Joint Understanding on a Humanitarian Pause for Aceh document on 12 May 2000, and then agreeing to the Cessation of Hostility Agreement (COHA) on 9 December 2002. Despite its failure to resolve the conflict permanently, the results of this achievement however was considered as an embryo for further steps in resolving the conflict through negotiations. Furthermore, the choice of international NGOs was again carried out by President Soesilo Bambang Yudhoyono, asking for the involvement of the Crisis Management Initiative (CMI), led by Martti Ahtisaari, to be the mediator of the negotiations.

The resolution of the Aceh conflict in Indonesia through peace negotiations attracted the attention of the international community. On this basis the Philippine Rebellion Leader, the Moro Islamic Liberation Front (MILF), and the Leader of the Rebellion in Southern Thailand visited Aceh for comparative studies in resolving conflicts. Therefore, it would be useful if the Polisario leadership had the opportunity to do a comparative study in Aceh, Indonesia. Their dialogue with the former Free Aceh Movement (GAM) rebels who are now involved in the

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<sup>4</sup> Damians Kingsbury, *Peace in Aceh: A Personal Account of the Helsinki Peace Process*, Equinox Publishing, Jakarta-Singapore, 2006, p. 15.

<sup>5</sup> Kirsten E. Schulze, "The Free Aceh Movement (GAM): Anatomy of a Separatist Organizations", *Policy Studies 2*, East-West Center, Washington, 2004, p. 54.

<sup>6</sup> Edward Aspinall & Harold Crouch, "The Aceh Peace Process: Why It Failed", *Policy Studies 1*, East West Center, Washington, 2003, p. 27.

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Governing of Aceh would be very useful to convince them about the advantages of the Moroccan proposal to resolve the conflict in the Sahara Region.

### **THE SAHARA CONFLICT AND ITS RESOLUTION EFFORTS**

The Sahara conflict has been going on since 1975 as an opposition to Morocco's sovereignty over the region by the so-called popular front group for the liberation of Saquia el-Hamra and Rio de Oro (polisario) that was created and self-proclaimed the independence of western Sahara in 1973. The Sahara conflict was complicated by the involvement of Algeria's political support, and Kaddhafi's (former president of Libya) financial and military support to polisario, in the context of the Cold war. The Sahara conflict even became more complicated due to the self-proclamation of the so-called SADR administered by polisario on the territory of Algeria.

Since then, the issue of the Sahara region has attracted the attention of the international community, and has even been discussed in various UN forums. The involvement of the UN in resolving what it calls the Western Sahara conflict is also supported by the African Union (AU), as stated by the Chairperson of the AU Commission, Moussa Faki Mahamat, in July 2018: he recognized that the United Nations was the only body with legitimacy tasked to find an agreed upon and mutually acceptable solution to the conflict. This also reiterated the AU's support to the UN-led political process to end the conflict.<sup>7</sup>

The settlement of the Sahara conflict is handled by the UN Security Council (UNSC), which among others has issued Resolutions 2414 (2018) and 2440 (2018). The polisario did not clearly accept the Security Council resolutions and has its own interpretation of the texts. This can cause polisario to confront the UN Security Council which has the authority and responsibility to maintain international peace and security.

The above conditions can be utilized by Morocco to get better support from the members of the Security Council and also from the UN Secretary General in negotiations with polisario.

### **The Moroccan Autonomy Initiative**

Following the Security Council calls to resolve the conflict in the Sahara Region, Morocco submitted a proposal containing an offer of autonomy for the Sahara Region, while remaining within the sovereignty of the Kingdom of Morocco. On 11 April 2007, Morocco presented “The Moroccan Autonomy Initiative for Negotiating an Autonomy Statute for the Sahara Region” to the United Nations as a compromise that could facilitate the opening of negotiations for a “just, durable, and peaceful” political solution. The initiative was the product of a year-long consultation process in which all sectors of the local Sahrawi population, the views of foreign governments, and the expert of international authorities were also included. The plan provides broad outlines of an autonomy arrangement for the Sahara Region under Moroccan sovereignty, including a description of areas of local and

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<sup>7</sup>Safaa Kasraoul, “Western Sahara: Marrakech to host conference on AU Support to UN-Led Process”, *Morocco World News*, 24 March 2019 ([www.moroccoworldnews.com/2019/03/268817](http://www.moroccoworldnews.com/2019/03/268817)), accessed 30 April 2019.

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shared powers for the Region with the central government. The Initiative states that specific arrangements should result from direct negotiations between the parties.<sup>8</sup>

The position of the other parties regarding the referendum is in contradiction with the Security Council resolutions which has been calling since 2004 for a political solution and which do not refer to the referendum since 2001. In fact, the referendum has been buried by the UNSG and the Security Council because it is impossible to implement due to disagreements on the electorate. Indeed, the Secretary-General underlined in his report S/2000/131 of 17 February 2000 that after nine years *“it has not been possible during this period to implement, in full, any of the main provisions of the United Nations Settlement Plan, with the exception of the monitoring of the ceasefire”*, due to *“fundamental differences between the parties over the interpretation of its main provisions”*.

In relation to this, Indonesia had a bad experience with the breakaway of East Timor from the sovereignty of the Republic of Indonesia, when the referendum was chosen as a solution to the resolution of the conflict in East Timor.<sup>9</sup>

The Moroccan autonomy plan submitted to the UNSC on 11 April 2007 as a means of conflict resolution was considered as an extremely flexible scheme giving broad autonomy to the Sahara Region within the Kingdom of Morocco. It offers some general guidelines but leaves the details of the arrangement to the negotiations between the parties. The existence of broad support from the international community is a plus for this proposal and this support must be used effectively by Morocco. In all its resolutions since 2007, the Security Council has considered the Autonomy Initiative as *“serious and credible”*.

In the Sahara conflict, Indonesia's position is clear, namely supporting the continuation of the UN mediation process and encouraging dialogue between the parties. In this regard, efforts are needed to strengthen confidence building.

In the latest developments, the negotiation about the Sahara conflict was handled by former German President Horst Köhler, the UN Secretary-General's Personal Envoy, who endeavoured to bring together Morocco, Algeria, Mauritania and Polisario through a roundtable process. So far, the four participants took part in two Roundtables in Geneva, from 5 to 6 December 2018 and from 21 to 22 March 2019. This is a direct negotiation after the 2007 attempts failed. Even though no significant breakthrough has been achieved yet, the willingness to conduct direct dialogue is a sign of progress towards the peaceful conflict resolution, as underlined by Köhler in his invitation letter: *“It is time to open a new chapter in the political process”*. According to Köhler, another important thing is the fact that *“the parties have engaged in open and in a spirit of mutual respect”*. Köhler's efforts received full support from the UN Security Council, as stated in the Press Statement dated 31 January 2019, because this process is in line with Security Council Resolution 2440 (2018), calling for a *“just, lasting and mutually acceptable solution that will provide for the self-determination of the people of Western Sahara”*.

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<sup>8</sup> The Moroccan American Center, on behalf of the Kingdom of Morocco, “Resolving the Western Sahara Conflict”, ([www.morocconthemove.com](http://www.morocconthemove.com)), accessed 30 April 2019.

<sup>9</sup> See: Darmasjah Djumala, *Soft Power Untuk Aceh*, Gramedia Pustaka Utama, Jakarta 2012, pp. 164-165.

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Indeed, there are still problems that may become obstacles to the political process in the form of exclusive offers from each party. On the one hand, Polisario still wants the final status for self-determination through a referendum by including one option, namely independence. On the other hand, Morocco wants regional autonomy for the Sahara Region within the Kingdom of Morocco.

Although there are still serious obstacles due to the differences of principles, meaningful progress has been achieved. The important thing is that there is the willingness of the parties to keep building mutual trust and starting to discuss regional issues. All delegations have recognized that cooperation and regional integration, not confrontation, were the best ways to address the ongoing regional matter, and expressed willingness to continue meeting.

In the second Roundtable of 20-22 March 2019 in Geneva, significant progress has been achieved as Köhler explained in reading the joint communiqué after the meeting ended: *"Delegations held in-depth discussions on how to achieve a mutually acceptable political solution to the question of Western Sahara that is realistic, practicable, enduring, based on compromise, just, lasting, which will provide for the self-determination of the people of Western Sahara in accordance with Security Council Resolution 2440 (2018). In this regard, they agreed to continue the discussion in order to identify elements of convergence."*<sup>10</sup>

Willingness to have the resolution of the conflict based on compromise is very important, because then the achieved results will be a joint effort and will thus be better implemented, instead of building it upon the pressure of either party. Polisario could be tempted to reject the option of regional autonomy perhaps because this solution was seen as a unilateral gesture from Morocco. This is similar to the rejection by GAM of the 2001 Aceh special autonomy offered by Indonesia because it was considered as a unilateral gift from the government of Indonesia, while the special autonomy in 2006 based on "Governing Aceh" was accepted as a solution to the conflict because it was the result of negotiations that led to the Helsinki MoU. Based on the above point of view, Morocco's proposal has a better chance of being accepted if it is seen as providing space for Polisario's aspirations as long as it does not contradict the sovereignty and territorial integrity of the Moroccan Kingdom. At the same time, Polisario should also be realistic by not holding on to the option of independence in a referendum, which is clearly not negotiable for Morocco, not realistic, not implementable, nor supported by the international community.

In this context, Morocco's willingness to offer the opportunity to improve its proposals regarding regional autonomy in the negotiations could result in broader regional autonomy or other agreed terms (such as "special autonomy" similar to "Governing Aceh") through dialogue, which might greatly help resolving the conflict. Following the resignation of President Horst Köhler for health reasons on 22 May 2019, the UNSG as well as the four participants agreed to preserve the momentum and expressed their commitment to the roundtable process initiated by the former Personal Envoy Köhler.

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<sup>10</sup> UN Office at Geneva, "Near-verbatim transcript of the press stakeout by Mr Horst Köhler, Personal Envoy of the UN Secretary-General for Western Sahara on the Second Roundtable on Western Sahara", Geneva 22 March 2019.

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Another important aspect in the settlement of the conflict in Sahara is the active involvement of Algeria as one of the parties, since from the outset it was known that Algeria was the main supporter of Polisario. Having invited Algeria and Mauritania to the direct talks is very positive and could lead to successful resolution of the conflict.

## **SPECIAL AUTONOMY AS CONFLICT RESOLUTION IN ACEH**

### **Special autonomy as asymmetric decentralization**

In accordance with the 1945 Indonesian Constitution, the implementation of regional government is carried out by:

1. Decentralization, namely the central government delegates some authority to the regions (except in six fields, namely foreign affairs, defence, security, religion, monetary issues and justice);
2. Deconcentration, namely the administration of government is carried out by the central government agencies in the regions; and
3. “Assistance task” or “co-rule” (*Medebewind*), namely the authority of certain agencies of the central government is implemented by the regions whose policies and costs are those of the central government.

The decentralization system is regulated in the Law on Regional Government, which is currently amended by Law No. 23 of 2014, lastly revised with Law No. 9 of 2015. This law recognizes the specificity of certain regions, which is different from the government-regulated system of law. This different system of government is known as Asymmetric Decentralization. The existence of special autonomy that is different from regional autonomy is generally made possible by the provisions of Article 18 B of the 1945 Constitution.

If decentralization as the implementation of autonomy to the regions in general is regulated in the Law on Regional Government (now Law No. 23 of 2014 as lastly amended by Law No. 8 of 2015), different decentralization (asymmetry) in the form of granting special autonomy to certain regions is regulated in each separate law. Now there are five Provinces that have special autonomy, namely: the Special Province of Yogyakarta (with Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta), the Special Capital Region of Jakarta (with Law No. 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta As the Capital of the Republic of Indonesia); Aceh Province (with Law No. 11 of 2006 concerning the Governing of Aceh); Papua Province (with Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua); and the Province of West Papua. Each Province with the special autonomy status obtains different competencies and specificities as stipulated in their respective laws.

### **Aceh Special Autonomy**

The Province of Yogyakarta Special Region, DKI Jakarta Province, Papua Province and West Papua Province obtain special autonomy because they are given special authority by the central government through their respective laws. Although the special autonomy for the Aceh Province was given by the central government through the law, the substance of the Act was the implementation of the Helsinki MoU peace agreement and the results of negotiations between Aceh and the central government. Previously, Aceh also had special autonomy status based

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on Law No. 18 of 2001, but because the status was considered as granted by the central government, GAM did not recognize it.<sup>11</sup> GAM did not want the term “special autonomy” to emerge at all in an agreement with the government of Indonesia because they felt “allergic and sensitive” to the special autonomy granted by the government of Indonesia unilaterally through Law No. 18 of 2001. Law No. 11 of 2006 exceeded the implementation of the Helsinki MoU because this Law was the result of the Aceh negotiations (represented by the DPRD of the Province of Nanggroe Aceh Darussalam) with the central government and the Indonesian Parliament.<sup>12</sup> The specificity in the field of Islamic Shari'ah and the existence of special autonomy funds which are equal to 2% of the National General Allocation Fund (known as DAU) of the National Budget are not included in the Helsinki MoU, but are contained in Law No. 11 of 2006 concerning Governing of Aceh as a result of negotiations during the drafting of the Bill Act in the Indonesian Parliament (DPRRI).<sup>13</sup> With a mechanism of discussion that indirectly involves the Acehnese people, when the Law on Aceh Governance was passed into Law No. 11 of 2006, there was no significant rejection. Although not all proposals of the Acehnese were accommodated in the Act, the Aceh Government, the Aceh Parliament (DPRD) and GAM could accept and feel proud of the existence of Law No. 11 of 2006, whose contents included the specificity and privileges of Aceh that became known as Aceh's Special Autonomy.<sup>14</sup>

The naming of this Law with the term "Governing of Aceh" was the result of a compromise in the Helsinki negotiations, where GAM wanted the name "Self-Government", while the Indonesian government wanted the name "special autonomy"<sup>15</sup>. GAM refused the term “special autonomy” from the beginning because it assumed that autonomy was a gift from the government. Finally, the government accepted the compromise term "Governing of Aceh", because for the central government it was important that the contents did not come out of the principles of regional autonomy. This principle is then contained in Points 1.1.2.a. of the Helsinki MoU: "*Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with civil and judicial administration, external affairs, external 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*". This principle is then contained in Article 7 paragraph (1) and paragraph (2) of Law No. 11 of 2006, which reads as follows:

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<sup>11</sup> See: Nur Djuli & Nurdin Abdul Rahman, “The Helsinki negotiations: A perspective from Free Aceh Movement negotiators”, in Aguswandi & Judith Large (eds.), “Reconfiguring Policies: The Indonesia-Aceh Peace Process”, *Accord - Conciliation Resources*, London, Issue 20, 2008, p. 29.

<sup>12</sup> Draft Law on The Governing of Aceh as mandated by the Helsinki MoU was prepared by many parties in Aceh, starting from Universities, Local Governments, Free Aceh Movement (GAM) and NGOs.

<sup>13</sup> The Provincial Parliament of Nanggroe Aceh Darussalam formed an Advocacy Team to oversee the discussion of the draft of the Law on the Governing of Aceh in the DPRRI so that the interests of Aceh, both those contained in the Helsinki MoU and other interests remain accommodated in the Act.

<sup>14</sup> This law is titled the Law on the Governing of Aceh in accordance with the contents of the Helsinki MoU (1.1.), but the content is in the form of special autonomy for Aceh.

<sup>15</sup> See: Darmasjah Djumala, *Op.Cit*, pp. 226-227.

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- (1) *"Aceh and Regency / City Governments are authorized to regulate and administer government affairs in all public sectors except government affairs which are under the authority of the Government.*
- (2) *Government authority as referred to in paragraph (1) includes governmental affairs of a national nature, foreign policy, defence, security, justice, national monetary and fiscal, and certain matters in the field of religion."*

In the theory of regional autonomy, the authority outside of the six fields which constitute the absolute authority of the central government is a concurrent authority or authority divided between the central government and the regional government. It is in this context of concurrent authority that Aceh obtains greater authority than that obtained by other regions based on ordinary autonomy. The central authority of the national government in Aceh is detailed in Government Regulation No. 3 of 2015, while the authority of Aceh is all authority in which it is not mentioned in that Government Regulation. In other words, the determination of Aceh's authority uses the residual theory, which is what remains or is not referred to in the Government Regulations mentioned above being the authority of Aceh.

Apart from the authority obtained based on the above-mentioned residual theory Aceh also obtained authority and/or specificity/privileges, which included:

**A. Derived from the Helsinki MoU :**

1. Establishment of the Law of the Republic of Indonesia, and international agreements relating to Aceh's interests are carried out with consultation and consideration<sup>16</sup> of the Aceh Parliament (DPRA);
2. Establishment of administrative policies carried out with consultation and consideration<sup>17</sup> of the Governor of Aceh;
3. Aceh has the right to use symbols, including flags, symbols and hymns;
4. The existence of the Wali Nanggroe institution, as a unifier and coach of the customary law of Aceh;
5. Existence of local political parties, who are entitled to take part in general elections for the local legislative, and regional executive elections, both at the provincial level for the election of Governor/Vice Governor, as well as at the district/city level for the election of regents/vice regents and mayors/vice mayors .
6. Management of natural resources, including joint management with the central government of natural resources of oil and gas;
7. The right to oil and natural gas profit sharing is 70%;<sup>18</sup>

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<sup>16</sup> In the Helsinki MoU, the term used was "consent", not "consideration". The use of the term "consideration" in Law No. 11 of 2006 is not in conflict with the 1945 Constitution of Indonesia.

<sup>17</sup> In the Helsinki MoU, the term used was "consent", not "consideration". The use of the term "consideration" in Law No. 11 year 2006 is not in conflict with the 1945 Constitution of Indonesia.

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8. Appointment of the Head of the Aceh Regional Police and the Head of the Aceh High Prosecutor shall be carried out with the approval of the Governor of Aceh;<sup>19</sup>
9. Establishment of the Human Rights Court in Aceh;
10. Establishment of the Truth and Reconciliation Commission (KKR or TRC) for Aceh.<sup>20</sup>

**B. Derived from Law No. 18 of 2001:**

1. Applicability of Islamic Shari'ah;
2. Establishment of Ulama (Muslim Scholar) Consultative Council;
3. Establishment of the Aceh Customary Council;
4. The number of members of the DPR Aceh (Aceh Parliament) is 125% of the total nationally;
5. *Zakat* (charity) as Regional Original Income;
6. The election of the Regional Executive/Vice Regional Executive shall be carried out by the Independent Election Commission (known as KIP) and supervised by the Election Supervisory Commission formed by the DPRD;
7. Inauguration and oath taking of the Governor/Vice Governor, Regent/Vice Regent and Mayor/Vice Mayor shall be carried out before the Chairperson of the Provincial/Regency/City Shari'ah Court (Mahkamah Syar'iyah).

**C. Results of the Struggle of the Acehnese Community through the discussion of the Bill in the DPRRI:**

1. The Special Autonomy Fund is equivalent to 2% of the National General Allocation Fund (DAU) for 15 years and 1% of the national DAU for the next 5 years;
2. The Aceh KIP is authorized as the organizer of the Legislative Election, the Election of the President/Vice President and Election of Regional Executives/Vice Regional Executives.
3. The expansion of the authority of the Mahkamah Syar'iyah includes family law, civil law and criminal law, which is regulated by the Aceh Qanun (bylaw).
4. *Zakat* as paid is a deduction factor for the amount of income tax from taxpayers.

From the above description it can be seen that the special autonomy for the Aceh Province, which was named “Governing of Aceh”, did not all come from the Helsinki MoU.

The term “Governing of Aceh” was used because GAM had not been pleased with the term “autonomy” from the beginning. In GAM's perspective, the use of the term “Governing of Aceh”, not “special autonomy”, has the advantage of dealing with its constituents in the field.

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<sup>18</sup> The right of 70% of oil and natural gas revenue sharing has been in Law No. 18 of 2001, but it is limited to only 8 years, and after that it becomes 50%. For other Provinces in accordance with Law No. 33 of 2004, the yield is 15.50% for oil, and 30.50% for natural gas.

<sup>19</sup> This authority has existed in Law No. 18 of 2001.

<sup>20</sup> The formation of the Aceh TRC (or KKR) was carried out with Aceh Qanun (Law) No. 17 of 2013. The formation of the TRC still leaves problems, because in Law No. 11 of 2006 it was confirmed that the KKR was guided by national law, namely Law No. 27 of 2004, while this law was revoked by the Constitutional Court of the Republic of Indonesia with its Decree No. 006/PUU-IV /2006 dated 7 December 2006.

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1. First: GAM managed to show its constituents that they were not subject to the wishes of the Indonesian government who wanted the term “special autonomy”;
2. Second: the use of the term “Aceh Government”, gives the impression that Aceh has “self-government” whose authority is wider than “special autonomy”.

The Indonesian government accepts the term “Governing of Aceh”, insofar as the contents are a form of broad “special autonomy”. The Indonesian government is more concerned with the content of autonomy than the term used. The contents of “Governing of Aceh”, as outlined in the Helsinki MoU, determine the extent to which extensive special autonomy will be given to Aceh.<sup>21</sup>

The success of the Law No. 11 of 2006 on the Governing of Aceh, which was ratified on 1 August 2006, was greeted with enthusiasm by the Acehnese people. Until now, the Acehnese, including GAM, have always been proud of the Law. Just a few deviations made by the government of Indonesia called for immediate reaction from the Aceh government and the Aceh Parliament<sup>22</sup>.

#### **IMPORTANT MATERIALS IN ACEH SPECIAL AUTONOMY**

The overall contents of Aceh's special autonomy in the Helsinki MoU, which was then accommodated in Law No. 11 of 2006, have several dominant aspects, namely, among others:

##### **A. GAM political participation in the Election of Regional Heads / Vice Regional Heads.**

1. Points 1.2.3. of the Helsinki MoU asserted free and fair local elections to be organized by the Government of Aceh to elect the head of the Aceh administration and other officials in April 2006 as well as the legislature of Aceh in 2009;
2. Since the new Law on the Governing of Aceh was established in August 2006, the election of Regional Executives/Vice Regional Executives provided for by the Helsinki MoU could not be held in April 2006. This election could only be held on 11 December 2006 instead. The election was based on the provisions of Articles 65 to 75 of Law No. 11 of 2006 and Aceh Qanun No. 7 of 2006;<sup>23</sup>
3. Because the local party had not yet been formed, GAM took part in the election through individual nominations, by submitting candidates such as Dr Irwandi Yusuf for Governor, paired with Muhammad Nazar as candidate for Vice Governor. The GAM candidates won with a vote of 38.20%, beating seven other candidate pairs. Dr Irwandi Yusuf and Muhammad Nazar were inaugurated as Governor and Vice Governor of Aceh for the period 2007-2012 by the Minister of Home Affairs of the Republic of Indonesia Mohamed Ma'ruf on 8 February 2007 at the special plenary session of the Parliament (DPRD) of the

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<sup>21</sup> See: Darmansjah Djumala, Op.Cit, pp. 144-145.

<sup>22</sup> Politically, the Aceh Parliament (DPRA) is dominated by the Aceh Party as a GAM representative. In the 2009 election, the Aceh Party gained 33 out of 69 seats, while in the 2014 election it fell to 29 from 81 DPRA seats. The number declined again in the last general election 17 April 2019 to 18 seats out of 81 DPRA seats.

<sup>23</sup> This Qanun is a revision from the Qanun of the Province of Nanggroe Aceh Darussalam No. 2 of 2004 which is the implementation of Law No. 18 of 2001.

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Province of Nanggroe Aceh Darussalam. This inauguration received the attention of many circles, both from within and outside the country, because for the first time the candidates for Governor/Vice Governor of GAM who advanced through individual nominations became a Governor and Vice Governor within the Unitary State of the Republic of Indonesia;

4. The second election of the Governor/Vice Governor of Aceh after the Helsinki MoU took place on 9 April 2012. In this election, the candidates from the Aceh Party,<sup>24</sup> Dr Zaini Abdullah and Muzakir Manaf won as Governor and Vice Governor of Aceh with 55.75% of the votes. The Governor and Vice Governor were inaugurated by the Indonesian Minister of Home Affairs Gammawan Fauzi in the Aceh Parliament’s (DPRA) special plenary meeting on 25 June 2012;
5. In the last election of Governor/Vice Governor, Dr Irwandi Yusuf and Nova Iriansyah, who were nominated by a combination of local and national parties, namely Nanggroe Aceh Party (PNA),<sup>25</sup> the Democratic Party (Partai Demokrat) and the Aceh Sovereign Party (PDA), were elected as Governor and Vice Governor for the 2017-2022 period. These Governor and Vice Governor were inaugurated by the Minister of Home Affairs of the Republic of Indonesia in the DPRA special plenary meeting on 5 July 2017;
6. After the Helsinki MoU, there were three elections of the Governor/Vice Governor, and in the three elections the candidates from GAM were successfully elected;<sup>26</sup>

**B. Political Participation of Local Parties in Legislative General Elections.**

1. The existence of local political parties mandated by the Helsinki MoU is regulated in Articles 75 to 95 of Law No. 11 of 2006. The regulation in this law is the legalization of the existence of local political parties, which was previously not possible.<sup>27</sup> This provision is a specificity (part of special autonomy) that is very prominent in Aceh, and does not exist in other provinces. The existence of local political parties has enabled legislative candidates from GAM to participate in the general elections at the provincial and district/city levels;<sup>28</sup>
2. GAM figures formed a local political party, with the name “Partai Aceh” (Aceh Party), on 7 June 2007 chaired by Muzakir Manaf.<sup>29</sup> Partai Aceh for the first time participated in the 2009 general election, and managed to emerge as the winner by obtaining 31 of the 65 seats in the DPRA. In the 2014 general

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<sup>24</sup> The Aceh Party is a local Party formed as mandated by the Helsinki MoU, which is regulated in Law Number 11 of 2006.

<sup>25</sup> The Nanggroe Aceh Party (PNA) is a local party established on April 20, 2012 by GAM figures who were disappointed with the Aceh Party (a local party formed in June 2007 by GAM after the Helsinki MoU)

<sup>26</sup> In 2006, Irwandi Yusuf nominated himself as independent candidate, because at that time the local party had not yet been formed, whereas in 2012 Dr Zaini Abdullah was nominated by the Aceh Party (GAM-formed Party) and in 2017 Irwandi Yusuf was nominated by a joint party, local and national parties

<sup>27</sup> In the Indonesian Law concerning Political Parties, there is no known local political party. All political parties formed must be of a national party and should exist in most provinces.

<sup>28</sup> GAM does not want to participate in general elections through national parties.

<sup>29</sup> Muzakir Manaf is the Commander of GAM before the peace agreement (Helsinki MoU) was agreed.

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election, the number of seats obtained by the Aceh Party decreased to 29 from 81 DPRA seats. The number declined again in the last general election 17 April 2019 to 18 seats out of 81 DPRA seats, but the party remained the winner because other parties gained fewer seats than those obtained by the Aceh Party;

3. With victory in three general elections (in 2009, 2014 and 2019), the Aceh Party has the right to become Chair of the DPRA.<sup>30</sup> With this specificity (special autonomy), GAM through local parties democratically controls both the legislature (DPRA) and the executive (Governor). Thus, GAM's struggle is no longer carried out in a way that violates the law, but has shifted in ways that are legal, democratic and peaceful.

**C. Profit Sharing and Joint Management of Oil and Gas.**

1. One specificity as part of special autonomy based on Law No. 18 of 2001 is that oil and gas revenue sharing for Aceh is different than that of other regions. Aceh gets 70% both for oil and natural gas, while other regions get 15% for oil and 30% for natural gas.<sup>31</sup> This provision is regulated in Law No. 11 of 2006 on Aceh Government. Provisions in Law No. 11 of 2006 are also the implementation of points 1.3.4 of the Helsinki MoU, which states, "*Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbons deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh*".
2. Aceh's special authority is also in the management of oil and gas in the territorial territory of Aceh. Nationally, the management of oil and gas is fully the authority of the central government. Provisions regarding joint management of oil and gas are regulated in Article 160 of Law No. 11 of 2006. As a form of implementation of these provisions, with Government Regulation No. 23 of 2015, the Aceh Oil and Gas Management Agency (BPMA) was formed. With the establishment of BPMA, all activities related to the management of oil and gas in the Aceh region are under the authority of BPMA.<sup>32</sup>

**D. Aceh's authority in implementing the authority of the central government in Aceh.**

In addition to the authority obtained based on the residual theory, Aceh also has authority related to the authority of the central government, namely:

1. International agreements relating to Aceh, made with consultation and consideration<sup>33</sup> of the Aceh Parliament (DPRA);

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<sup>30</sup> In the 2009-20014 period, the Chairperson of the DPRA was Dr Hasbi Abdullah, while for the 2014-2019 period the Chairman of the DPRA was Tgk Muharuddin, and then on 29 November 2019 he was replaced by Sulaiman, SE.

<sup>31</sup> This part of Aceh from oil and gas, the number decreases along with the decreasing production and price of oil and gas.

<sup>32</sup> For the other regions, oil and gas management is the authority and carried out by the state-run company SKK Migas.

<sup>33</sup> In the Helsinki MoU the word "approval" was used. It was changed to the word "consideration" to adjust to the authority of the government based on the 1945 Constitution.

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2. The establishment of laws relating to Aceh by the DPRRI, carried out with consultation and consideration of the Aceh Parliament (DPRA);
3. Administrative product formation (e.g. Government Regulations) related to Aceh are carried out with consultation and consideration of the Governor of Aceh;
4. Additionally, in the field which is the absolute authority of the central government, there is also Aceh's authority, namely:
  - a. Appointment of the Head of the Aceh Regional Police by the Chief of the Indonesian National Police, carried out with the approval of the Governor of Aceh;
  - b. Appointment of the Head of the Aceh High Prosecutor's Office carried out by the Indonesian Attorney General with the approval of the Governor of Aceh.

**E. Special Autonomy Funds<sup>34</sup>**

1. Special autonomy funds are one of Aceh's sources of income, and are part of the specificity of Aceh, which is regulated in Article 179 and Article 183 of Law No. 11 of 2006. These special autonomy funds are not included in the Helsinki MoU, but are the result of Aceh negotiations with the government and Indonesian Parliament (DPRRI) during the discussion of the Bill on the Governing of Aceh. This special autonomy fund is a fund that is the right of Aceh which is given every year by the Government as Aceh's revenue. It is equal to 2% of the General Allocation Fund (DAU) of the National Budget for 15 years and 1% for the next 5 years. This special autonomy fund is Aceh's main revenue, the amount from year to year continues to increase, in line with the increasing the General Allocation Fund (DAU) in the Republic of Indonesia National Budget;<sup>35</sup>
2. Special autonomy funds are considered as part of Aceh's special autonomy, even though they are actually not an authority but are Aceh's rights and the obligations of the central government;
3. The Special Autonomy Fund was also received by the Papua Province<sup>36</sup> based on Law No. 21 of 2001 on the Special Autonomy for the Papua Province;
4. The existence of a special autonomy fund and profit sharing of oil and gas in the Law on the Governing of Aceh is important in order to build Aceh's trust in the sincerity of the central government to realize prosperity and justice for Aceh, which is also important for maintaining peace as a form of conflict settlement. This is important because due to the conflict for approximately 32 years, Aceh still lags far

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<sup>34</sup> This Special Autonomy Fund was not included in the Helsinki MoU, but was considered important as part of the acceleration of Aceh's development, which was also a commitment of the Indonesian government in resolving the Aceh conflict.

<sup>35</sup> The first year (2008) of the Special Autonomy Fund amounting to IDR 3,590 billion, increased to 8,023 in 2018.

<sup>36</sup> The Papua Province is now the Province of Papua and the Province of Papua Bara based on Law No. 35 of 2008.

behind in development compared to other provinces.<sup>37</sup> The existence of mutual trust between the centre and the regions is an important tool for maintaining the integrity of the country.

### **Indonesia's Experience for Conflict Resolution in the Region of Sahara**

There are two experiences of Indonesia in peaceful conflict resolution, namely the resolution of the East Timor conflict and the Aceh conflict. The settlement of the East Timor conflict was carried out through a referendum facilitated and supervised by the United Nations Mission in East Timor (UNAMET), while the Aceh conflict was resolved through direct negotiations facilitated and mediated by international NGOs, the Henry-Dunant Centre and Crisis Management Initiative (CMI) led by Martti Ahtisaari and supported by friendly countries.

The East Timor crisis was successfully resolved, but with the disappointing result of the independence of East Timor from Indonesia, while the resolution of the Aceh crisis was resolved by the end of the conflict, with the acceptance of special autonomy with Aceh remaining as part of Indonesia. The new-born country continues to face development and economic shortfalls with a high unemployment rate and low economic growth.

Based on this experience, Morocco's Initiative aims at safeguarding the principle of the country's integrity while conducting direct negotiations under the auspices of the UN Security Council and with the facilitation of the UN Secretary-General's Personal Envoy. The role of the UN Security Council in resolving the Sahara conflict is indeed crucial because of the involvement of foreign countries in the crisis, the risk of escalation and the existence of security threats throughout the Sahel region.

Indonesia's success in the case of Aceh results not solely from the substance offered (special autonomy), but also from the process of negotiations that respected the dignity of the parties. The first offer of special autonomy in 2001 was rejected because it was considered as a unilateral gift from the Indonesian government, while the second special autonomy offered in 2005 with the name “Governing of Aceh” was accepted because it was considered as the result of negotiations. Because of that, the Moroccan Autonomy Plan for Sahara has a potential to succeed because it is an open offer to be negotiated whilst maintaining the principle of territorial integrity of the Kingdom of Morocco.

### **CONCLUSIONS AND RECOMMENDATIONS**

Based on the above description, it can be concluded that:

1. The Free Aceh Movement (GAM) rebellion in Aceh was not terminated through violence, but the conflict was resolved through peaceful means, with direct negotiations between the Indonesian government and GAM.

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<sup>37</sup> Data from the Central Bureau of Statistics (BPS) in Aceh, September 2018: Aceh is the poorest province in Sumatra, and ranks 6th in Indonesia.

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2. Negotiations for resolving conflicts between the government of Indonesia and GAM required the role of mediators. In this case, the government of Indonesia preferred international NGOs compared to the United Nations or foreign countries.
3. Special autonomy, which in the Helsinki MoU was called "Governing of Aceh", was accepted by the GAM Party because it was considered as a result of negotiations and not a unilateral decision by Indonesia as special autonomy contained in Law No. 18 of 2001.
4. The Moroccan proposal for resolving the Sahara conflict has the potential to take into account the aspirations of the Sahara people while preserving the territorial integrity and sovereignty of the Kingdom of Morocco.
5. The approach to countries that have recognized and supported the existence of the Polisario and the SADR must be done more intensively, especially to Algeria and neighbouring countries, both directly and through the mediation of the UN.
6. In negotiations facilitated and mediated by the UN, Morocco's aim should remain to guard the principle of its territorial integrity. Indonesia's experience in resolving the East Timor crisis can be a valuable lesson.
7. The contents of the Helsinki MoU can be carried out because they are then contained in Law No. 11 of 2006. With the domestication of an international agreement into the national law, according to the 1945 Constitution, the central government is bound to implement those provisions.
8. The resolution of the Aceh conflict through peace negotiations received the attention and appreciation of many parties as a model for comprehensive and dignified conflict resolution.
9. It would be important for Polisario leaders to visit Aceh (as it was done by the MILF Philippines) to get information about resolving the Aceh conflict through the combination of the Helsinki MoU and special autonomy.

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