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Granting Autonomy to Aceh
Region as a Conflict Resolution
between the Government of
Indonesia and Free Aceh
Movement

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Abbreviations

AGAM	= Angkatan Gerakan Aceh Merdeka (sub-institution of GAM consisting of the youths)
CoE	= Council of Europe
CSCE	= Conference for Security and Cooperation in Europe
CRC	= Convention on the Rights of the Child 1989
DPR	= Dewan Perwakilan Rakyat Daerah; People's Representative Council
DPRD	= Dewan Perwakilan Rakyat Daerah (Regional People's Representative Council)
DOM	= Daerah Operasi Militer (Military Operation Zone)
FGM	= Female Genital Mutilation
GA	= UN General Assembly
GAM	= Gerakan Aceh Merdeka (Free Aceh Movement)
GC	= General Comment
GDP	= Gross Domestic Product
GoI	= Government of Indonesia
HCHR	= High Commission for Human Rights
HCNM	= High Commissioner on National Minorities
HRC	= Human Rights Committee
HRComm	= Human Rights Commission
ICCPR	= International Covenant on Civil and Political Rights 1966
ICERD	= International Convention on the Elimination of All Forms of Racial Discrimination 1965
ICESCR	= International Covenant on Economic, Social and Cultural Rights 1966
ICJ	= International Court of Justice
IDR	= Indonesian Rupiah
ILO	= International Labour Organisation
Komnasham	= Komisi Nasional Hak Asasi Manusia (National Commission of Human Rights-Indonesia)
MoU	= Memorandum of Understanding concluded by the GoI and GAM on 15 August 2005 in Helsinki, Finland
NAD	= <i>Nanggroe Aceh Darussalam</i> , a new given name for the Aceh Province since 2001 under UU 18/2001, literally means 'The Land of Aceh of House of the Peace'
NGO	= Non-Governmental Organisation
OHCHR	= Office of the High Commissioner on Human Rights
OP	= Optional Protocol
OSCE	= the Organisation for Security and Cooperation in Europe
Res.	= Resolution
SC-PDPM	= Sub-Commission on Prevention of Discrimination and Protection of Minorities
TNI	= Tentara Nasional Indonesia or Indonesian National Military
UN	= United Nations
UDHR	= Universal Declaration of Human Rights

USA = United States of America
USD = USA's Dollar
USSR = United Socialist Soviet Republic
UU.../... = Undang-Undang (Law or Act, followed by number and year)
WGM = UN Sub-Commission Working Group on Minorities

1 Introduction

1.1. Background

This work attempts to analyse and evaluate the full realisation of the autonomy granted to NAD Province by UU 18/2001 and to expound the MoU concluded by GoI and GAM on 15 August 2005 as to whether it would be a solution to cease permanently the perpetual conflict between GoI and GAM for around 29 years. Moreover, it analyses things that are necessarily need to be set out in the forthcoming autonomy or self-government law underlain by the MoU. The work relies on International Customary Law. This basis is used since granting autonomy for minorities is not recognised explicitly within the existing International Instruments. Therefore, the author must extract the main ideas of autonomy from the UN Special rapporteurs on Minorities' reports, resolutions of General Assembly as well as Security Council, and also some of selected state practices in autonomy as a comparison.

Moreover, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Lund Recommendation on the Effective Participation of National Minorities in Public Life, one of the most leading regional autonomy instrument, are used since the latter one can be considered as world-wide prominent jurist teachings as it was discussed by experts all around the world and it can be envisaged as an extraction of autonomy model representing Europe under the auspice of OSCE. Additionally, other international instruments that have a strong relation with this work, such as ICCPR, are implemented.

1.2. Statement of Problem

Would autonomy be a viable solution to overcome the perpetual conflict between GoI and GAM that has undergone since 1976, even stemming from 1949? If so, what are the pre-requisites that need to be fulfilled first? Moreover, to what extent and to what degree should the autonomy be granted?

1.3. Operative Terms

1.3.1. *Autonomy*

Creifelds defines autonomy as, “parts of state’s territory are authorised to govern themselves in certain matters by enacting laws and statutes, but without constituting a State of their own”.¹

Nordquist defines autonomy as “an intra-state region with a unique level of local self-government”.² This indicates that autonomy is a *sui-generis* form of the broader concept of self-government.

¹ H. J. Heintze, 'On the Legal Understanding of Autonomy', in M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, 1998) p. 7.

² K. Å. Nordquist, *Autonomy As A Conflict-Solving Mechanism- An Overview*, in M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, 1998) p. 59.

1.3.2. *International Customary Law*

International customary law is a rule that based on practice of States.³

1.4. **Research Methods**

This work will apply legal and socio-legal methods to analyse the gathered information in order to answer the abovementioned statement of problems.

1.5. **Organisation of Chapters**

The organisation of this thesis will be devised as follows:

Chapter 2 briefly depicts the protection of persons belonging to minorities under the UN System. First of all, it voyages into to the heated-debate during the drafting process of Article 27, concluded in the *travaux préparatoires* and later to the recent protection of minorities, in order to get a yardstick on the development of the protection of minorities within its positive and negative aspects. Later, it explores the other related international standards concerning protection of minorities and the role of Human Rights Committee as a quasi-judicial body piercing the iceberg of article 27. Moreover, it discusses how to assess minorities and types of minorities, whether minorities possess rights individually or collectively, elements that influence such rights, positive measures concerning States' obligations, and finally the Indigenous Peoples.

Chapter 3 specifies on the development of the right to autonomy as a paramount item endorsing the protection of minorities. It also clarifies whether the autonomy is a right or a means for protection of minorities and autonomy is a customary international law or not. This chapter also attempts to divulge the nature of autonomy *i.e.* territorial and non-territorial autonomy. Finally, this chapter gives a brief description on the role of autonomy as a conflict resolution, especially in coping with the separatism issue, and some of the autonomy concepts viewed from other states' practices and other regional instrument.

Chapter 4 is the core element of this thesis. It amplifies from the very basic thing, *i.e.* how to constitute Aceh people as a minority. It delineates on the conflicts escalated between GoI and GAM in a nutshell, to get a clear view of what is going on. It also scrutinises UU 18/2001- the law of autonomy in Province of NAD- attached with its historical background, full-realisation, and failure. Moreover, it explains also about the new MoU between GoI and GAM concluded on 15 August 2005 and its comparison with UU 18/2001. The employed analysis method for the latter one is by comparing it with UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, some necessary items of selected state practice, and the Lund Recommendation on the Effective Participation of National Minorities in Public Life. The latter one is considered to be an

³ M. Akehurst, 'Custom as a Source of International Law', *The British Year Book of International Law* (1974-1975) p. 1.

extraction of autonomy practice in European states as well as teaching of prominent jurists since most of the participants of the document drafting were prominent jurists and autonomy experts. Other related UN instruments also are employed.

Chapter 5 is served as a conclusion and contains recommendations for this work.

2. UN Protection on Minorities in a Nutshell

2.1. The Greater Urgency of Protection on Minorities

The first question that arises is why do states need to protect their minorities. Likewise, democracy is often misled by the government as an absolute *vox populi* or ‘the majority rules anything’. Pertaining to this question, notes should be taken from some of the international human rights institutions as well as views from experts.

Office High Commissioner on Human Rights denotes that:

“Interest in issues affecting minorities has grown, however, as ethnic, racial and religious *tensions* have escalated, all too often as a result of violations of minority rights”.⁴

So, protection on minorities is attached to the possibility of ‘tension’ otherwise, protection is not provided.

Similar opinions have been elucidated by HCHR:

Harmonious relations among minorities and between minorities and majorities and respect for each group's identity is a great asset to the multi-ethnic and multi-cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals.⁵

It is clear, based on previous statement that protection on minorities has a strong adherence with ‘tension’ and ‘harmonious relations’.

Kymlicka depicts the problem of minorities vividly as following:

“Throughout the world, minorities and majorities *clash* over such issues as language rights, federalism and regional autonomy, claims, immigration and naturalisation policy, even national symbols such as the choice of national anthem or public holidays.”⁶

Kymlicka, thus, portrays minority issues in the world as being accompanied by ‘clashes’.

⁴ ‘Pamphlet No. 2’, Minorities and the United Nations, *the UN Working Group on Minorities*, <www.ohchr.org/english/about/publications/docs/pam2.doc>. visited on 20 May 2005.

⁵ Fact Sheet No. 18 (Rev. 1), *Minority Rights*, <www.unhcr.ch/pdf/factsheet27.pdf>, visited on 20 May 2005.

⁶ W. Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford University Press, Oxford, 1995) p. 1.

Pursuant to the preamble of the Minorities Declaration, protection on minorities is concerned with ‘political and social stability’. It is noteworthy also that within Article 8(4) of the Minorities Declaration, is the assertion of the importance of ‘sovereign equality’, ‘territorial integrity’ and ‘political independence’ of states which consequently rejects minorities calling for state succession.

Alfredsson’s view underscores protection on minorities to the ‘continual integration’ of states.⁷

Therefore, the standing point of protection on minorities thereof is to prevent or settle conflict due to regard to stability (harmonious) or integrity of states or otherwise would have resulted in clashes and tensions between two different minorities in a state (horizontal clash) or between minority and state (vertical clash).

2.2.UN Protection on Minorities: Over Time Development

Minorities remain minorities. They are helpless and will always be subjected to oppression by the majority. They deserve to live in ghettos and to be discriminated. Frankly, these spontaneous statements are true when referring to what happened during the drafting process of UDHR and Article 27 of ICCPR.

The protection of minorities within the UN commenced at the drafting process of UDHR when there was an outgoing debate between the need for assimilation of immigrants and indigenous peoples *vis-à-vis* the requirement of specific protection of minority. The former idea was supported by the New World *i.e.* Latin American States, USA, Canada, Australia and New Zealand, whilst the latter proponents were the Old World states *i.e.* Western and Eastern European States. However, this debate resulted in a dead end.⁸ Another debate concluded during the same period, on whether or not the minority provision would be detailed⁹, had ended as the same output as before. Åkermark highlights this by referring to Haskar that:¹⁰

“The Division on Human Rights, the Drafting Committee and the Sub-Commission, all favoured the insertion of a minority provision in the Declaration, while the political bodies, *i.e.* the Commission and the General Assembly rejected such provision”.

Not surprisingly, these endless debates led to the absence of minority protection provision in the UDHR.

⁷ G. S. Alfredsson, ‘Minority Rights: International Standards and Monitoring Procedures’, *5/6 Latvian Human Rights Quarterly: Minorities Rights Handbook* (Human Rights Institute of the University of Latvia, 1998) p. 14.

⁸ M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 2005) p. 636.

⁹ The proponents of the detailed-provision were USSR, Denmark and Yugoslavia.

¹⁰ A. S. Åkermark, *Justification of Minority Protection in International Law* (Kluwer Law International, The Hague, 1997) pp. 124-125.

Later, a similar debate between the ‘assimilationists’ and ‘specific protection on minorities’ defenders recurred during the drafting process of Article 27 of ICCPR. The former requested that minorities should be those who existed within a long period of time and those who were clearly defined. This view could be foreseen as barricading immigrants or new-settlers to become new minorities. Contrary to this, the supporters of the latter view, for instance the USSR, proposed that “the state shall ensure to national minorities the right to use their native mother tongue and to possess their national schools, libraries, museums and other cultural and educational institutions”.¹¹ Finally, HRCComm took a standing point to formulate Article 27 in a negative wording of ‘shall not be denied’ in order to prevent the awakening of the minorities as the USSR’s positive formulation was prevailed eight to four within the voting process.¹² As a conclusion, Åkemark put a critic on the issue of *ratione personae* weighing more on Article 27 than the issues of *ratione materiae*.¹³

Despite the ‘historical defect’, the definition on *ratione personae* within article 27 evolves. Previously, special rapporteur of the SC-PDPM, Capotorti, emphasised that one of the minorities’ criteria was “being nationals of the states”.¹⁴ Nowadays, it is likely to be more flexible and increased broader burdening on objective criteria in spite of the subject possibly being only migrant workers as well as visitors¹⁵ or children.¹⁶ This due regard to the question of minority existence is not a question of law, but is obviously a ‘question of fact’, *inter alia* the fact of continuation of a distinct group.¹⁷

Moreover, Article 27 contains a ‘programmatic element’,¹⁸ in which states have a so-called ‘substantial margin of appreciation’ in formulating and implementing policies, programmes or arrangements related to protection on minorities, considering that this article is not formulated in a detail manner.¹⁹ As an example, economic and social factors of a state might be envisaged in formulating policies related to minority protection.²⁰ Yet, this does not mean that States can act arbitrarily without having certain objective criteria as a yardstick. Whatever the policy, programme or action

¹¹ P. Thornberry, *International Law and the Rights of Minorities* (Clarendon Press, Oxford, 1994) p. 150.

¹² Nowak, *supra* note 8, pp. 657-658.

¹³ Åkemark, *supra* note 10, p. 126.

¹⁴ F. Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities* (United Nations, New York, 1991) p. 96.

¹⁵ GC 23 para. 5.2.

¹⁶ Article 30 CRC.

¹⁷ See GA A/52/498. HRC stated that “equal rights were granted to all individuals and that all individuals were equal before the law did not exclude *the existence in fact of minorities* in a country, nor did it exclude their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group”.

¹⁸ Åkemark, *supra* note 10, p. 130.

¹⁹ T. Hadden, ‘Integration and Separation: Legal and Political Consequences in Implementing Minority Rights’, in N. Ghanea & A. Xanthaki (eds.), *Minorities, Peoples and Self-Determination* (Koninklijke Brill NV, the Netherlands, 2005) p. 173.

²⁰ Capotorti, *supra* note 14, p. 100 para. 597.

taken, it must be in accordance with the objection of the protection of minorities within ICCPR, *i.e.* “to ensure the survival and continued development of the cultural, religious, and social id of the minorities concerned and to enrich the fabric of society as a whole”, as set forth in paragraph 9 of GC 23. This includes the protection of the minority from violations by other private actors within the state, as stated in paragraph 6(1) of GC 23.

Furthermore, the policy and programme related to the minority must take into account the legitimate interests of the members of the minority, from planning to the implementation phase, as set out in Article 5(1) of Minorities Declaration. Thus, a legitimate effective participation of the minority concerned is greatly required.

Lastly, Article 27 must be read in the light of other provisions enshrined in ICCPR or other international human rights documents. Article 27 is an ‘integral part’ of the whole protection of human rights and fundamental freedom.²¹ Even, Åkemark views Article 27 as a *lex specialis* of certain provisions, namely Article 18, 19, 21 and 22 of ICCPR.²² For instance, if a credo of a religion sparks hatred to another religion, the concerning state must prohibit such credo from being taught to members of the religious minority concerned since it obviously breaches the limitations in conjunction with Article 18 and Article 20 (2) of ICCPR. The given example demonstrates the ‘principle balance of human rights’ pursuant to Article 8(2) Minorities Declaration.²³

The next question that arises is whether the rights granted can be enjoyed fully without any limitations. Article 4(2) of Minority Declaration reads:

“States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, *except where specific practices are in violation of national law and contrary to international standards*”.

Therefore, one of the limitations is that exercise and enjoyment of the rights of the minorities must not be contrary to the national law and international standards.²⁴ For instance, the cultural practice of FGM in Tanzania infringes ‘international standards’, *e.g.* Article 2(2) (non-discrimination based on sex), article 3 (equality between men and women), 6 (right to life), 7

²¹ Capotorti, *supra* note 14, p. 99.

²² Nowak, *supra* note 8, p. 667.

²³ Åkemark, *supra* note 10, p. 186.

²⁴ See E/CN.4/Sub.2/1994/36. During the 46th Session, Sub-Commission on Prevention of Discrimination and Protection of Minorities stated that common legal order and the human rights of the majority must be respected by the minorities.

(prohibition of torture, inhuman and degrading treatments) and Article 17 (non-interference of private life) of ICCPR.²⁵

However, restrictions upon the rights must be based on reasonable and objective criteria, referring to *Lovelace v. Canada*. Moreover, Thornberry adds that such restriction may only be applied on a 'specific practice' and not for all culture as a whole.²⁶

2.3. Related International Instruments and the Role of Human Rights Committee and Other Related Institutions

2.3.1. Related International Instruments

The related international instruments concerning to protection on minorities are:

- 1) Article 27 of International Covenant on Civil and Political Rights 1966 and its General Comment no. 23;
- 2) Article 1(4) and 14 of International Convention on the Elimination of All Forms of Racial Discrimination 1965, regarding ethnic minorities and the basic principle of non-discrimination;²⁷
- 3) Article 30 of Convention on the Rights of the Child, concerning children minorities 1989;
- 4) Article 5 of the Convention against Discrimination in Education (UNESCO) 1960;
- 5) UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992 (hereinafter Minorities Declaration);²⁸
- 6) Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief 1981, concerning religious minorities.²⁹

2.3.2. HRC and Other Related Institutions

HRC is a treaty-based body established under ICCPR that has a mandate to monitor the implementation of ICCPR, including Article 27. It has 'quasi-judicial', 'supervisory' and 'conciliatory' functions.³⁰ Likewise, it has two main tasks, the first is to examine reports from the state parties and the last is either to deal complaints from individual or inter-states.

First of all, state parties have to submit a periodic report to HRC that contain their compliance with the standards set forth in ICCPR, *inter alia* legislative, judicial and administrative measures as well as their implementation in practice to ensure the enjoyment of rights for the minorities concerned. Additionally, the reports must outline the situation

²⁵ S. Mwaipopo, *The Law and Practice Relating to Female Genital Mutilation in Tanzania (thesis)*, p. 64 < [www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/1FDFE29D0EBB65E7C1256F7400066FB0/\\$File/xsmall.pdf?OpenElement](http://www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/1FDFE29D0EBB65E7C1256F7400066FB0/$File/xsmall.pdf?OpenElement)>, visited on 20 August 2005.

²⁶ Åkemark, *supra* note 10, p. 186.

²⁷ See Capotorti, *supra* note 14, p. 98. Capotorti advised states that have minorities should ratify ICERD since the pre-condition of minority protection is principles of equality and non-discrimination.

²⁸ GA Res. 47/135.

²⁹ GA Res. 36/55.

³⁰ Åkemark, *supra* note 10, p. 155.

and condition of the minority concerned, the number comparison between the minorities and the rest of the population of the states and their representation in central and local government.³¹ Afterwards, HRC responded the report with a ‘concluding observation’. During the examination of the reports, a ‘constructive dialogue’ between HRC and governments will be undergone.³² After having examined the reports, HRC will issue a so-called ‘view’ that underscores the positive and negative aspects of the implemented measures taken by States, violations of ICCPR and recommendation calling upon the improvement of the protection of minorities. It is noteworthy, however, that the concluding observation is not legally binding.³³

Secondly, a state must make a declaration of its submission and recognition upon HRC competency in order to access HRC’s jurisdiction in considering complaints in the light of 41(2) ICCPR and Article 1 of first OP of ICCPR. Under Article 3 and 5(2) of first OP of ICCPR, individual complaints can be submitted if they fulfil the following requirements:

- All available domestic remedies are exhausted or if the application of the remedies are dully prolonged,
- Anonymous petition would not be accepted
- Must not be an abuse of the right of submission
- Must be compatible with the provisions of ICCPR

However, dealing inter-state complaints is more likely to be rather peculiar since it tends to have more political weight rather than humanitarian reason.³⁴

Finally, HRC has the authority to interpret the ICCPR, usually in a form of General Comment, based on Article 40 (4) ICCPR.³⁵

Those aforementioned features have enriched HRC to develop more far-reaching rights to the minorities.

2.3.2.1.WGM

WGM was established in 1995 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter: Sub-Commission). WGM has tasks in reviewing the application of Minorities Declaration, providing recommendations to the Sub-Commission and other concerning bodies with regard to risk of violence and providing horizontal (minority to minority) and vertical dialogues (minority to government).³⁶

WGM often held discussion forums regarding recent minority issues involving minority groups, NGOs, academicians, governments and

³¹ *Supra* note 5.

³² Thornberry, *supra* note 11, p. 148.

³³ Åkemark, *supra* note 10, p. 155.

³⁴ Thornberry, *supra* note 11, pp. 145 & 148.

³⁵ Åkemark, *supra* note 10, p.175.

³⁶ Åkemark, *supra* note 10, p. 188. *See* Pamphlet No. 2, Minorities and the United Nations, *the UN Working Group on Minorities*, <www.ohchr.org/english/about/publications/docs/pam2.doc>, visited on 20 May 2005.

international agencies to find solutions.³⁷ WGM also helps the minorities to give a ‘constructive solution’ to solve their problems.³⁸

2.3.2.2. Secretary General

Secretary General has been entrusted by GA to perform the following duties:³⁹

- To provide, through the Centre for Human Rights of the Secretariat, at the request of governments concerned and as part of the programme of advisory services and technical assistance of the Centre, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities;
- To provide human and financial resources for the advisory services and technical assistance of the Centre for Human Rights, within existing resources;
- To continue the dissemination on the (minorities) Declaration and the promotion of understanding thereof;
- To give, due regard to the (Minorities) Declaration, in training programmes for officials.

2.3.2.3. UN Centre for Human Rights

The UN Centre for Human Rights has a task to provide experts and technical assistance to the minority groups, which was entailed by the Vienna Declaration and Programme Action.⁴⁰

2.3.2.4. High Commissioner for Human Rights (HCHR)

HCHR has been given mandates by GA “to promote the implementation of the principles” contained in the Minorities Declaration and “to continue to engage in a dialogue with Governments concerned” to achieve that purpose.⁴¹ Moreover, HCHR may set up programmes of advisory service and technical assistance.⁴²

2.3.2.5. Special Rapporteurs

Special rapporteur is entrusted to conduct an investigation on minority rights violations, which can be a country-based issue or a thematic-based issue. Afterwards, special rapporteur publishes a conclusion or recommendation that will be addressed as an international issue after a debate has been held. This serves as guidance or a means of pressure towards the concerning government.⁴³

As an example, a series of discrimination, prohibition of freedom to assembly, short-term detention and extra-judicial executions practices to the Baha’i attracted the international attention after the report had been

³⁷ *Supra* note 4.

³⁸ *Supra* note 5..

³⁹ UN Doc A/RES/49/192; UN Doc A/Res/50/180.

⁴⁰ Åkemark, *supra* note 10, p. 196. *See* UN Doc A/RES/49/192.

⁴¹ UN Doc A/RES/49/192.

⁴² *Supra* note 5.

⁴³ *Ibid.*

published, which subsequently the Islamic Republic of Iran was asked to cease its outrages practices towards the Baha'i minority.⁴⁴

2.4. Assessing Who Constitutes as a Minority

2.4.1. Qualifications

Alfredsson pinpoints that the elements that suffice the notion of minority are:⁴⁵

- 1) Certain objective characteristics, of which the members must have a strong affinity tied amongst themselves and intention to preserve their related culture, religion, origin of nation or ethnic.⁴⁶ In order to get a clear picture of this, in the case of *Kitok v. Sweden*, reindeer breeding is one of the objective criteria of the Sami peoples differing from the rest of the population in Sweden. Capotorti describes:

“[W]hen its members display in their everyday life a strong sense of identity, unity and solidarity, when they strive to maintain their traditions and culture and preserve, sometimes against heavy odds, in the use of their language, when they regard themselves and are regarded by the others as belonging to a distinct group, it is logical to conclude that their general attitude should be viewed as a clear affirmation of their will to preserve and develop their own characteristics”.⁴⁷

- 2) Self-identification. This requires two qualifications of (1) self-recognition of a member of a group and (2) acceptance by other group members.

The first qualification has been demonstrated throughout the *Lovelace v. Canada* case, that a member of minority group has the choice to keep maintaining his/her group's identity or attribute him/herself to so-called 'voluntary assimilation' with the majority of the population or the national identity.⁴⁸ Such right to choice can be inferred from Article 3(2) Minorities Declaration that stated “no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration”.

Lastly, the group acceptance to the person without having any means of force has been portrayed in the *Kitok v. Sweden* case, whereby the Sami community refused Ivan Kitok's membership as a part of it;

- 3) The number of the minority which have to be less than one-half of the entire population in the State;⁴⁹
- 4) Long period of presence. This element requires approximately one generation or thereabouts, with a reference to the new territory where the group lives.⁵⁰

⁴⁴ E/CN.4/1998/59.

⁴⁵ Alfredsson, *supra* note 7, p. 12.

⁴⁶ See Hadden, *supra* note 19, p. 190. See also Capotorti, *supra* note 8, p. 96. Criteria of minorities, which some are possessing “ethnic, religious or linguistic characteristics differing from those of the rest of the population” and “a sense of solidarity of culture, traditions, religion or language”, despite the latter one is regarded as subjective criterion.

⁴⁷ Capotorti, *supra* note 8, p. 97.

⁴⁸ Hadden, *supra* note 6, p. 176. See Article 3.1 European Framework Convention

⁴⁹ See Nowak, *supra* note 4, p. 643. See also Capotorti *supra* note 8, p. 98. (Free will assimilation)

2.4.2. *At the T-Junction: Individual Rights or Collective Rights?*

Do these rights confer to persons belonging to a minority as their capacity as individuals or confer to the whole members within a minority collectively?

Article 3(1) GC 23 explains that “Rights of minorities *belong to individual* and cognisable under the OP”. Moreover, the individual character of Article 27 has been proven by the replacement of the word ‘minorities’ to ‘persons belonging to minorities’ at the third session of the UN Sub-Commission due regard to the containing of legal personality within the term of ‘persons belonging to minorities’. Article 27 can be interpreted “...protects ‘persons belonging to’ minorities rather than the minorities themselves, although the right is to be exercised ‘in community with the other members’ of a minority”.⁵¹

However, it is obvious that the phrase “in community with the other member of their group” maintains the ‘collective character’ of the provision as proposed by the British expert Monroe amid the drafting process.⁵² Such a phrase is used to recognise group identity. Therefore, Article 27 consists of ‘hybrid’ rights of individuals and collective rights that give benefit to individuals but demands collective exercise.⁵³ An individual exercise alone without having collective support is devoid protected under Article 27 ICCPR that subsequently cannot invoke the minority rights easily.⁵⁴

2.4.3. **Types of Minorities**

2.4.3.1. *Ethnic Minorities*

Ethnic minorities include also racial and national minorities. They are associated with cultural and historical backgrounds.⁵⁵ Usually ethnic minorities have their own language so they can enjoy rights as ethnic minorities as well as linguistic minorities.⁵⁶ The most fundamental protection for them is to protect their existence from being discriminated or victimised because of hatred.⁵⁷

2.4.3.2. *Religious Minorities*

⁵⁰ Compare Hadden, *supra* note 19, p. 188-189 (“...length of settlement or status as indigenous or ‘first peoples’ clearly contribute to the legitimacy of claims for special recognition and special protections”). It seems that immigrants may find difficulties to be regarded as minorities based on Haden’s opinion) with Alfredsson, *supra* note 7, p. 12; GC 23 par. 5 (‘New minorities’ are not hindered to enjoy Article 27 ICCPR). See also Nowak, *supra* note 8, p. 647 (Nowak takes a moderate position by recognizing the element of stability that have to be preceded whilst the same time embracing the non-denial immigrants rights of Article 27 ICCPR).

⁵¹ H.J. Steiner & P. Alston, *International Human Rights in Context: Law, Politics, Morals-Text and Materials* (Oxford University Press, Oxford, 2000) p. 1292.

⁵² Nowak, *supra* note 8, p. 639.

⁵³ Thornberry, *supra* note 11, pp. 149 & 173.

⁵⁴ Nowak, *supra* note 8, pp. 653, 656 & 657.

⁵⁵ *Ibid.*, p. 649.

⁵⁶ Capotorti, *supra* note 14, p. 99.

⁵⁷ ICERD Article 4.

Minorities whose members profess and practice a religion voluntarily that distinct from the rest of the population are regarded as religious minorities.⁵⁸

2.4.3.3. *Linguistic Minorities*

Linguistic minorities are minorities who use a language, either in a private or public sphere, that distinguish them from the rest of the population of a state. Different dialects are excluded here.⁵⁹

2.5. Positive Measures Taken

2.5.1. *Constitutional or Legislative Safeguard*

Constitutional or legislative safeguard is very crucial for the protection of minority. This is somehow expressed in Article 1 (2) Minorities Declaration using the word “shall adopt appropriate legislative or other measures”.⁶⁰ Even, HRC highlights that minority status and rights should be governed through legal provision in which the minority has to know.⁶¹ The ambit is not solely about recognition, but also ‘available and accessible remedies’.⁶² Furthermore, the provision concerned has to cover ‘*de facto*’ as well as ‘foreseeable’ legal acts.⁶³

In practice, usually there is no need for constitutional safeguard in less well established or less numerous minorities, unless in well-established or large number of minority’s members which highly require a detailed legislative or constitutional safeguard.⁶⁴ If the constitutional or legal safeguard is mere recognition of the minorities, then it employs as a subsidiary significance.⁶⁵

2.5.2. *Non-Discrimination and Equal Treatment*

Discrimination is a major source of tension in the world. That is why Article 2(1) of ICCPR guarantees that non-discrimination and equal treatment embraces all individuals, including members of minority.⁶⁶ This also indicates that no one can be discriminated on the basis of his identity of a minority member. Article 4(1) of Minorities Declaration states:

⁵⁸ Nowak, *supra* note 8, p. 648.

⁵⁹ *Ibid.*

⁶⁰ See article 2 (2) ICCPR. *c.f.* Alfredsson, *supra* note 7, p. 10.

⁶¹ Åkemark, *supra* note 10, p. 140.

⁶² Alfredsson, *supra* note 7, p. 10. See Capotorti, *supra* note 8, p. 102. Capotorti has found out that members of linguistic minority suffer the most from the absence of legal remedies in enjoying their culture and using their own language

⁶³ Åkemark, *supra* note 10, p. 140.

⁶⁴ Hadden. *supra* note 19, pp. 177-178.

⁶⁵ Nowak, *supra* note 8, p. 653.

⁶⁶ See UN Charter 1945 Articles 1 & 55; UDHR 1948 Article 2; ICESCR 1966 Article 2; ICERD 1965 Article 1; CRC 1989 Article 2; Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief 1981 Article 2; UNESCO Convention against Discrimination in Education 1960 Article 1; UNESCO Declaration on Race and Racial Prejudice 1978 Articles 1,2 & 3; ILO Convention No. 111/1958 concerning Discrimination in Respect of Employment and Occupation Article 1.

“States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

Nevertheless, it is indeed permissible for states to set up differentiation or preferential treatment or ‘special measures’ in a positive manner. The special measures must be based on reasonable and objective criteria,⁶⁷ such as giving an opportunity for the members of a minority to attain equal footing to the rest of population within a state, or “to promote effective equality and the welfare of the community as a whole”.⁶⁸ Thus, the notion of ‘equality’ must be understood in a broader context than mere ‘identical treatment’.⁶⁹ For instance, imposing certain quotas on members of a minority in private or public employment is thus allowable.⁷⁰ However, special measures will no longer be needed when the objective of such policy has been achieved.⁷¹

2.5.3. *Language*

A Person belonging to a minority group has the right to use his/her language with other members of the same minority group, either in public or private life. Such right should be distinguished from freedom of expression under Article 19 ICCPR. However, this right may not be used by an accused person before a court proceeding⁷² or may not be made as an official language,⁷³ unless a law governs to do so or under special autonomy arrangement. One should know that the states should search for measures that protect the minority from a disadvantage position of speaking different language.⁷⁴

A slightly detailed provision can clearly be seen on Article 4(3) of the Declaration. Under this article, the State should take positive measures that “persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue”. Aside of that, based on the concluding observations taken by HRC, considerations that have to be taken into account are:⁷⁵

- 1) the use of minority language in education, including teaching of minority language in primary and secondary school,
- 2) the use of minority language before official authorities,
- 3) positive measures taken to ensure aforementioned rights.

⁶⁷ GC 23 para. 6.2. Cf. *Ballantyne, Davidson and McIntyre v. Canada* para. 11.4, that prohibition to advertise outdoor in English for commercial purpose does not endanger the francophone minority in Canada so subsequently no fulfilment of reasonable and objective criteria to limit such freedom of expression.

⁶⁸ E/CN.4/52 Sec. V.

⁶⁹ Alfredsson, *supra* note 7, p. 15.

⁷⁰ Hadden, *supra* note 19, p. 174.

⁷¹ See ICERD Article 1(4).

⁷² GC para. 5.3.

⁷³ Nowak, *supra* note 8, p. 659. See Capotorti, *supra* note 14, p. 100.

⁷⁴ Capotorti, *supra* note 14, p. 101.

⁷⁵ Åkemark, *supra* note 10, p. 146.

2.5.4. Education

Glazer asked, “can we, however, solve the problems of group discrimination by using language, and the law, of individual rights?”⁷⁶ It is thus almost impossible to solve such problems without having any education measure. Education is a focal point of minorities’ rights. It is because minorities will not be able to preserve and develop their own culture unless they can pursue their right to education and supported by the special adaptation of the educational system.⁷⁷

Pertaining to the content of the curriculum, the members have the opportunity to acquire knowledge about their historical, cultural, traditional and linguistic backgrounds and *vice versa*, to attain knowledge about the society as a whole in which such measures are provided by states.⁷⁸ In conjunction with article 4(4) Minorities Declaration, a minority will take advantage from ‘inter-cultural study’ between minority and majority. This is strengthened by article 13 ICESCR that the members may accept education that “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.⁷⁹ Such education will then benefit both minority group and the other majority within the state in achieving a harmonious relationship between them. Moreover, human rights education is essential to be included as part of the curriculum of primary education.⁸⁰ In addition, members of the minority have the opportunity to learn and having instructions in their mother tongue with due regard to their language in favour of Article 4(3) of Minorities Declaration.

In practice, the policy implementation as to whether establishing separate schools for minorities or on the other hand building integrated national schools, relies on the number of members of the minority concerned, and whether the members of the minority are concentrated in a definite or scattered territory.⁸¹

Under Article 5(1c) of the Convention against Discrimination in Education 1960, national minorities may maintain their own school as long as:

- 1) it will not hinder their members from understanding the culture and language of the whole community;
- 2) its standard is the same as what has been laid down as the general standard;
- 3) it operates as an option for the members to attend to.

2.5.5. Religion

⁷⁶ N. Glazer, “Individual Rights against Group Rights”, in W. Kymlicka, *supra* note 6, p. 123.

⁷⁷ Caportori, *supra* note 14, p. 37 para. 217 & p. 100 para. 598.

⁷⁸ Minorities Declaration Article 4.4.

⁷⁹ See Convention against Discrimination in Education Article 5(1a), adopted by the General Conference on 14 December 1960 in Paris.

⁸⁰ E/CN.4/Sub.2/1993/34/Add.4.

⁸¹ Hadden, *supra* note 19, p. 183.

Positive measures related to religion refer to religious minority. Article 18(3) set out permitted limitations that “are prescribed by law and are necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others”. Capotorti summed up the rights of the minority as follows:⁸²

- 1) the legal status of the minority religion,
- 2) freedom to participate in worshipping and practising rites,
- 3) freedom from being constrained in participating other religion’s activity,
- 4) right to administer affairs,
- 5) right to establish institution in education field.

Article 6 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief derives of rights of religious minority as followings:

- (a) “To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels”.

In addition, an effective participation must be granted in religious matters in the light of article 2 (2) Minorities Declaration.

2.5.6. *Economic Development*

Once again, states have a wide discretion in taking further measures concerning ‘right to participate effectively’ of the minority, related to economic progress and development.⁸³ As an example, states might set up a formal quota system to secure the level of proportionality by assessing the fact that the minority suffers from economic disadvantage or involving the minority concerned in the development policy or programme that will support their identity preservation.⁸⁴

2.5.7. *Right to Contact*

Persons belonging to minorities have the right to establish contacts freely as long as it is peaceful, irrespective of internal, of inter-minorities or of across-frontiers contact, as set forth in Article 2(5) of Minorities Declaration. This means that the use of violence is not allowed and this

⁸² Åkemark, *supra* note 10, p. 147.

⁸³ Minorities Declaration Article 2 (2) & 4(3)

⁸⁴ Hadden, *supra* note 19, p. 184-186.

must be in accordance with the principles of the UN Charter, as set out in Article 8(4) Minorities Declaration.⁸⁵

2.5.8. *Effective Participation in Decision Making*

According paragraph 7 of GC 23, states have to take special measures to ensure the effective participation of the members of the minority communities in decision making which will affect them. The addressed subjects of effective participation are:

- 1) Cultural, religious, social, economic and public life (Minorities Declaration Article 2(2));
- 2) National or regional level concerning the minority to which they belong (Minorities Declaration Article 2(3)).

This is simply because the majority does not understand the interest and needs of the minority⁸⁶ and eventually an effective participation of the minority must be ensured.

The detail or concrete of the special measures varies from state to state. The concrete system may be, for example, reserving seats for minority's representatives in legislative body, establishing a system that enables members of the minority to appoint officials representing their interests, etc.⁸⁷ Additionally, in the *Mahuika et al. v. New Zealand* gives a perfect example on how important it could be to engage the active and effective participation of the members of the minority, *i.e.* involving the Maori people in decision making concerning their fishing livelihood's exploitation by a large scale fishing corporation.

2.6. Indigenous Peoples

Pursuant to Article 1(b) of ILO Convention No. 169, indigenous peoples are:⁸⁸

“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”.

Based on this definition, things that distinguish indigenous peoples and minorities are that indigenous peoples settled the territory concerned as a heritage from their ancestors or at the time of conquest or colonisation or the establishment of present state boundaries and they have a culture that has a nexus with their ancestral land and its natural resources.⁸⁹ Nonetheless, pursuant to paragraph 3(2) of GC 23, indigenous peoples constitute

⁸⁵ A. Eide, Final text of the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
<www.unhchr.ch/html/racism/minor2.doc> visited on 12 November 2005.

⁸⁶ Alfredsson, *supra* note 7, p. 10.

⁸⁷ Alfredsson, *supra* note 7, pp. 19-20.

⁸⁸ The only specific convention that deals with the matter of indigenous peoples is ILO Convention No. 169 that cannot be asserted by any of non-indigenous minority.

⁸⁹ E/CN.4/Sub.2/2000/10 par. 24.

minorities.⁹⁰ Therefore, indigenous peoples, individually, are able to send a complaint to HRC in order to defend their rights.

⁹⁰ See Nowak, *supra* note 8, pp. 651-652. *E.g. Lovelace v. Canada, Lubicon Lake Band v. Canada, Kitok v. Sweden and Mahuika v. New Zealand.*

3. The Development of the Right to Autonomy

3.1. The Relation between the Right to Autonomy and the Protection on Minority

In the previous chapter, it has been depicted that protection on minorities has a strong relation with prevention against conflict between minorities and states as well as inter-minorities. Furthermore, the world has been witnessing throughout history that the rapid redrawing of the inter-state borders was caused by state dissolution resulted from conflicts between states *vis-à-vis* their minorities. Even, minority problem was the caused of the eruption of the World War I. This historical background was a part of reason of the provision of UN Charter Article 1 (2):

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

In the course of time, these conflicts have been subduing as many states learn to listen, recognise and respect their minorities' desire to be recognised about their special characteristics differing from the rest of population of a state. One of the means is by granting autonomy to the minorities concerned. As Gurr formulates fundamental principles to settle conflicts down, which one of them is:

“Threats to divide a country should be managed by devolution of state power and *granting to national peoples and minorities rights to exercise some autonomy* within the existing state” (stress added)⁹¹

Presently the right to self-determination seems to evolve into granting autonomy. Based on Hannum's conclusion, the right to self-determination written in Article 1(2) and Article 55 of UN Charter refers to 'self-government' within the *travaux préparatoires*. Moreover, Eide arguably contended that the right to internal self-determination, nowadays, is “almost synonymous with local autonomy”.⁹² Therefore, UN Charter infers autonomy as means to strengthen 'universal peace.

In relation with Article 27 ICCPR, Sukssi points out that autonomy is recognised as an 'option' of protection on minorities due regard to its

⁹¹ P. Foradori & R. Scartezzini, 'Strategies of Ethnic Conflict Resolution: The Trentino-South Tyrol Case and the Balkans', in Z. A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, 2005) p. 490.

⁹² Hannum, *supra* note 134, p. 9.

collective character and solution of human rights and protection from self-determination.⁹³

Furthermore, autonomy is not only aimed to put down minority conflict, but also it serves as an ‘instrument’ of a greater integration, as stated by Skurbaty below:

“Autonomy...should be viewed as an *instrument* for the effective integration of members of minorities, for securing their equality in the common political and economical domains and for minimisation of their experience of disadvantage, marginalisation and exclusion”. (stress added)⁹⁴

Resembling to what Skurbaty said, Capotorti admitted:

“[T]he establishment of a federal structure of government or *the granting of autonomy* to a particular region has been considered an *efficient means* of safeguarding and protecting the individuality and the rights of these groups”.(stress added)⁹⁵

Granting autonomy has been recognised as a peaceful means to avoid secession in a certain region or territory within a state.⁹⁶ Peaceful means in the context of finding a win-win solution, as inferred from what Hannum conceived:

“Indeed, most conflicts include political, economic and social issues in which the goal must be to accommodate competing interests, not simply to decide whose ‘rights’ are worthy of protection”.⁹⁷

Granting autonomy to minorities also supports ‘the protection of the human dignity of the members’, ‘preservation of peace’ and ‘preservation of culture’.⁹⁸

3.2.Development of Autonomy as Customary International Law

Inferring Article 38 (1) of the ICJ Statute, one of the sources of International Law is “International custom, as evidence of a general practice accepted as law”. This requires two elements, which are:

⁹³ M. Sukksi, ‘Autonomy, Minorities and Self-Determination - The Protection of the Rights of Minorities by Means of Autonomy: The Cases of the Aland and Kosovo’, in Z. A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, 2005) pp. 384-385. See also Heintze, *supra* note 1, p. 15.

⁹⁴ Z. A. Skurbaty, ‘Is There An Emerging Right to Autonomy? Reflections, Conclusions and Recommendations’, in Z. A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, 2005) p. 566. See also Heintze, *supra* note 1, p. 28.

⁹⁵ Capotorti, *supra* note 8, p. 97.

⁹⁶ Heintze, *supra* note 1, p. 28.

⁹⁷ Hannum, *supra* note 92, p. xvii.

⁹⁸ Åkemark, *supra* note 10, p. 31.

- 1) Objective Element (material), which is consistency and uniformity of states practice,
- 2) Subjective Element, which is a belief or consent amongst states that such practice contains legal weight (*opinio juris*).

However, it is hard to detach the objective from the subjective elements or *vice-versa* deriving from states practices. Thus, there is no need to prove a subjective element in a state if a consistent, uniform and widespread practice has been demonstrated in a certain circumstances.⁹⁹

It is noteworthy that state practices are not the only valid source to prove the existence of international customary law. Some of UN documents and regional instruments can provide evidence that certain practices have reached the notion of international customary law. Moreover, General Assembly, in which consists of numerous states, can be regarded as a legitimate institution indicating an international customary law, particularly when it comes to the need of quantity evidence to prove the widespread practice within states by taking the voting figures.

3.2.1. Related UN and Regional Documents

Some of General Assembly and Security Council's Resolutions relating to minorities as well as indigenous peoples recognise the highly need of autonomy. Some examples are:

- 1) GA Res. 194 (III) (1948) ordered the Conciliation Commission for Palestine to propose 'maximum local autonomy' for the distinctive groups that live in the Jerusalem area. This resolution bestowed the Palestinians right to return to their homeland;
- 2) GA Res. 742 (VIII) (1952) entitled 'Factors which Should be Taken into Account in Deciding Whether a Territory is or is not just a Territory Whose People Have Not Yet Attained a Full Measure of Self-Government', pointed out the 'degree of autonomy' to the extent of economic, social and cultural affairs;
- 3) GA Res. No. 1353 (XIV) (1959) took into consideration on the people of Tibet's autonomy which they traditionally enjoyed. The consideration articulates "Mindful also of the distinctive cultural and religious heritage of the people of Tibet and of *the autonomy* which they have traditionally enjoyed" (emphasise added). The vote casts of 45 to 9, with 29 absentions;¹⁰⁰
- 4) SC Res. No. 1160 (1998) endorsed Kosovar-Albanians and others who live in Kosovo to attain a 'substantial greater degree of autonomy' and self-administration within the territory of the Federal Republic of Yugoslavia;
- 5) SC Res. No. 1246 (1999) reaffirmed the free choice of the East-Timoresees opting between to acquire 'special autonomy' from the

⁹⁹ _____, *Report of the Sixty-Seventh Conference of the International Law Association in Helsinki on 12-17 August 1996*, International Law Association, London, 1996, pp. 625 & 627.

¹⁰⁰ *Tibet at the United Nations: UN General Assembly Resolutions* <www.savetibet.org/tibet/un/resolutions/resolution1353.php>, visited on 28 November 2005.

Indonesian Government within the constitutional framework of Indonesia or to stop incorporating from Indonesia's territory invoking their right to self-determination. This resolution was adopted unanimously without having any right to veto exerted.

Beside of those examples, there are some international or multinational level practices whereby the League of Nations or inter-states agreements suggested autonomy to settle the minority conflict. The League of Nations affirmed its decision that Åland was a part of Finland and the Finnish Government must provide a broad self-governance to the Ålanders. This judgment was passed in June 1921.¹⁰¹ In 1924, a multi-national convention between Lithuanian Government and United Kingdom, France, Italy and Japan was concluded to give autonomy in financial, administrative, judicial and legislative fields for the territory of Memel (Klaipeda).¹⁰² Danzig, a territory which is consisted of German-speaking minorities in Poland, was granted a certain degree of autonomy by the Polish Government under the mandate of the League of Nations.¹⁰³ In 1969, an agreement to establish an effective autonomy in South Tyrol, Italy, was agreed after Austria brought the problem to UN.¹⁰⁴ More example, the Organisation of the Islamic States facilitated an agreement between the Philippines Government and Mindanao people in 1976 calling for autonomy within the Mindanao Territory.¹⁰⁵ These examples indicate that autonomy as a means of minority conflict resolution has been internationally practiced predated far away before the UN was established and yet, still has been practiced hitherto.

Besides some of UN Documents as well as some international or multinational arrangements, the content of the reports from UN Special Rapporteurs has to be considered as a source of international customary law.¹⁰⁶ There are some UN special rapporteurs who called upon autonomy or evaluate the implementation on autonomy pertaining to states' obligation to protect their minorities as well as indigenous people.¹⁰⁷ For instance, Special Rapporteur Mr. Enrique Bernales Ballesteros reported that the Parliament of the Government of Georgia attempted to settle the conflict of South Ossetia with a peaceful means by guaranteeing a cultural autonomy of that region and put aside any discussion on succession.¹⁰⁸ Special

¹⁰¹ E.J.R. Vieyetz & M. Kallonen, 'Territorial Autonomy and European National Minorities: South Tyrol, the Basque Country and the Åland Islands', 2 *European Yearbook of Minority Issues* (Martinus Nijhoff Publishers, Leiden, 2002-2003) p. 249-250.

¹⁰² Nordquist, *supra* note 2, pp. 75-76.

¹⁰³ J. McGarry, 'Asymmetrical Federalism and the Pluri-national State', working draft paper for the 3rd International Conference on Federalism, Brussels, 3-5 March 2005 in 'Socio-cultural Identities and Asymmetric Federalism', <www.federalism2005.be/home/attachment/i/580> visited on 28 November 2005. *c.f.* <www.en.wikipedia.org/wiki/League_of_Nations>

¹⁰⁴ Vieyetz & M. Kallonen, *supra* note 100, p. 251.

¹⁰⁵ Nordquist, *supra* note 2, pp. 75-76.

¹⁰⁶ See Akehurst, *supra* note 3, p. 11.

¹⁰⁷ E.g. UN Doc. No. E/CN.4/Sub.2/1993/34/Add.2, UN. Doc. No. E/CN.4/1994/23 paras. 78 & 130, A/52/490 para. 78, E/CN.4/1999/58/Add.1 para. 67.

¹⁰⁸ UN Doc. E/CN.4/1994/23 para. 78.

Rapporteur Mrs. Elisabeth Rehn acknowledged that Article 15 of the Constitution of the Republic of Croatia guarantees its minorities to have, one of them, ‘freedom to use their language and script and cultural autonomy’.¹⁰⁹ Special Rapporteur Mr. Abdelfattah Amor apprehended the progress made by USA in a greater protection and autonomy for the Native Americans’ indigenous people regardless the profound abuses in the past.¹¹⁰

In regional level, the only continent that has a far-reaching autonomy arrangement, despite its non-legally binding character, is Europe, particularly under the auspice of OSCE. The document that clearly devise autonomy is “The Lund Recommendation on the Effective Participation of National Minorities in Public Life” (hereinafter Lund Recommendation). The Lund Recommendation was concluded after a meeting of experts from all around the world in Lund, Sweden, in September 1999, consisted from jurists, political scientists, sociologists, etc.¹¹¹ This document was preceded by ‘initiation process on autonomy’ events, which were:

- 1) The Second Conference on the Human Dimension of the CSCE in Copenhagen, on 5-29 June 1990, resulted a so-called “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, which in paragraph 35 articulated:

“The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, *appropriate local or autonomous administrations* corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.” (emphasise added)

- 2) In the Report of the CSCE Meeting of Experts on National Minority, in Geneva, 1-19 July 1991, paragraph IV, expressed:

“Aware of the diversity and varying constitutional systems among them, which make no single approach necessarily generally applicable, the participating States note with interest that positive results have been obtained by some of them in an appropriate democratic manner, by *inter alia*...local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections”.

- 3) A conference held in Locarno, on 18-20 October 1998, by the HCNM and the OSCE’s Office for Democratic Institution and Human Rights entitled “Governance and Participation: Integrating Diversity”. This conference initiated the need to elaborate the concept of good-governance with the effective participation of the national minorities more into detail and this was the cornerstone of the Lund Recommendation.¹¹²

¹⁰⁹ UN Doc. A/52/490 para. 78.

¹¹⁰ UN Doc. E/CN.4/1999/58/Add.1 para. 67.

¹¹¹ Introduction of Lund Recommendation.

¹¹² *Ibid.*

Lund Recommendation gives very good standards of autonomy model that should be established by state to secure its own national minority. The standards that should be set out by state are:

- 1) Arrangements at the level of the central government:
 - Reserved seats for representative of national minorities in national parliament
 - Consent or mechanism or special measures to have national minorities in the government, the courts, advisory bodies or others
- 2) Elections:
 - A single members districts for concentrated minorities
 - Representation of national minorities in national legislative through the political parties
 - Minority representation in candidates ranking system through some forms of preference voting
 - Lower numerical thresholds for representation in legislature
 - Equitable representation of national minorities based on the geographical boundaries of electoral districts
- 3) Arrangement at the regional and local levels:
 - Transparency and accessibility in setting out measures of participation of national minorities at the regional and local levels
- 4) Advisory or consultative body
 - Establishment of advisory or consultative bodies to facilitate dialogue between State and its national minorities and be consulted by the government regularly, which is equipped with functions of raising issues with decision makers, preparing recommendations, formulating legislative and other proposals, monitoring developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities;
- 5) Non-territorial arrangements:
 - The arrangements are aimed to maintain and develop the identity and culture of national minorities, usually such arrangements embrace education, culture, use of minority language, religion, and other crucial identity, *e.g.* to choose name in minority language, to set up local-based curricula, to enjoy local symbol, *etc.*
- 6) Territorial arrangements:
 - In territorial self-governance, devolution of powers shall be arranged based on principle of subsidiarity aiming on improving the opportunities of national minorities to exercise authority over matters affecting them
 - Generally central authorities exercise defense, foreign affairs, immigration and custom, macroeconomic policy, and monetary affairs exclusively
 - Primary functions or asymmetrical functions that may be granted for national minorities in territorial self-governance include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, housing, health, and other social services

- Shared functions between central governments and national minorities include taxation, administration of justice, tourism and transport
 - Human rights assurance by the regional or local authorities within their territory
- 7) Constitutional and legal safeguards:
- Self-governance arrangements should be established by law that cannot be amend the same manner as ordinary legislation
 - Higher threshold of legislative or popular consent for the adoption or amendment of self-governance arrangement in constitution
 - Approval by a qualified number of legislature, autonomous bodies or bodies representing national minorities to change self-governance arrangement in law
 - Periodic review of implementation of self-governance
 - Step-by-step arrangement in testing and developing of new forms of participation
- 8) Remedies:
- Judicial resolution of conflict and additional dispute resolution mechanism

3.2.2. *State Practices*

Autonomy has been widely practiced by many states as a part of domestic policy in order to stabilise their own territorial integrity from self-determination.

As examples, in Europe, the Government of Ireland Act 1920 gave asymmetrical autonomy to Ireland under the sovereignty of the United Kingdom. South Tyrol, Valle d'Aosta and Friuli-Venezia Giulia became autonomous regions in Italy after the Second World War. In Spain, Basque Country (Euskadi), Catalonia and Galicia regions could exercise their own self-governments. Corsica had been granted a limited autonomy also by France in 1982.¹¹³

In Africa, there are some of autonomous regions that were established, such as autonomous region of Eritrea in Ethiopia in 1952 after the General Assembly adopted GA Res. 390 (V) (1950)¹¹⁴, and autonomous region of Zanzibar in Tanzania in 1964. Whilst in Asia, the Papua New-Guinean Government had a negotiation on a greater autonomy with the BRA (Bougainville Revolutionary Army) which led to the establishment of Bougainville Assembly and the Bougainville Reconciliation Government in 1999.¹¹⁵ In Indonesia, Papua Province had been given its status as an autonomous region by the Government of Indonesia by Papuan Special Autonomy Act 21/2001 and also Aceh Province has gained a special autonomous status under Special Autonomy Act for Nanggroe Aceh

¹¹³ McGarry, *supra* note 103.

¹¹⁴ See also I. Diaconu, *Minorities from Non-Discrimination to Identity* (Lumina Lex, București, 2004) p. 237. In 1962, the self-government status of Eritrea ceased to exist as the Eritrean Front Liberation began to struggle for its independence.

¹¹⁵ *Papua New Guinea: History*, <www.thecommonwealth.org/Templates/YearbookInternal.asp?NodeID=145176>, visited on 3 December 2005.

Darussalam Province 18/2001. The Autonomous Region of Muslim Mindanao (ARMM) was established in Philippines after the Philippines Government signed a peace agreement with MNLF (the Moro National Liberation Front) on 2 September 1996.¹¹⁶ Autonomy Act on Kurdish Land Number 33 was enacted in 1974 by the Iraqi Government, though subsequently it was rejected by KDP (Kurdistan Democratic Party) due to question of oil and mineral right in Kirkuk and the inclusion of only 60% of the Kurdish Land within the autonomous region.¹¹⁷ Moreover, in favour of Article 11 of the Agreement between China and United Kingdom on the Future of Hong Kong after 1997, Hong Kong would enjoyed a high degree of autonomy under Chinese sovereignty, except in foreign and defence affairs, with its special status as SAR (Special Administrative Region) in the light of Article 31 of the Chinese Constitution.¹¹⁸

3.3.Factors Influencing Durability of Autonomy

There are factors that correspond to the durability of autonomy, namely:¹¹⁹

- 1) Autonomy cannot be accompanied by a higher degree of militarisation at the same time. If an armed conflict exists between the minority and the central authority, then it must be preceded by so-called DDR (Disarmament, Demobilisation and Reintegration) prior to autonomy. This is due regard to achieving a certain level of security as well as creating a favourable situation and condition of peace and stability in a long run, which aftermath supports the establishment and implementation of autonomy concerned,¹²⁰
- 2) International or neutral-third party involvement during autonomy establishment and its post-implementation denotes a positive correlation to a high autonomy durability,
- 3) State that has a democratic system has a strong positive nexus to a higher autonomy durability,¹²¹
- 4) Major structural change in the state system may influence also to autonomous region,
- 5) The level degree of autonomy depends on how far the national legislative body transmits some of its powers to the autonomous region,¹²²
- 6) Autonomy that might be recalled into question whenever dissatisfaction from the group occurs tends to be more durable,¹²³

¹¹⁶ *Brief Political History of the Autonomous Region in Muslim Mindanao*, <www.mindanao.org/mindanao/overview/muslim2.htm>, visited on 3 December 2005.

¹¹⁷ H. Hannum, *Autonomy, Sovereignty and Self-Determination: the Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, 1990, pp. 192-193.

¹¹⁸ *Ibid.*, p. 137.

¹¹⁹ Nordquist, *supra* note 2, pp. 72-73.

¹²⁰ *See Disarmament, Demobilisation and Reintegration of Ex-Combatants in a Peacekeeping Environment: Principles and Guidelines*, United Nations Department of Peacekeeping Operations, <www.un.org/Depts/dpko/lessons/DD&R.pdf> visited on 5 October 2005, p. 1. *See also* Nordquist, *supra* note 2, pp. 72-73.

¹²¹ *See also* Foradori & Scartezzini, *supra* note 91, pp. 498-499. The absence of democracy institutions and weak in political legitimacy have somehow made ethnic conflicts in Balkan more even perpetual.

¹²² Heintze, *supra* note 1, p. 17.

- 7) The organ of the vested autonomy has to comply with human rights and minority rules, including safety and protection of all settlers in the autonomous region, since otherwise, the probability to discriminate or abuse other groups within the minority territorial will be foreseeable and subsequently may create a tension between the 'autonomous' minority and the other minority within the territory,¹²⁴
- 8) Safety and protection of all settlers in the area or a step forward by creating a representative or elected body,¹²⁵

3.4.Types of Autonomy

3.4.1. Territorial Autonomy

Territorial autonomy arrangement has special characteristics, as following below:

- 1) It is based on specific historical or regional background of the minorities or the territory linked to them,
- 2) The territory on where the minorities live has to be well-defined,
- 3) The minorities constitute as majority numerically in the territory where they live or in another word, live concentrated in a particular area,¹²⁶
- 4) There are three types of distribution of power, firstly is centralised functions, functions that can be exercised by state exclusively, such as foreign affairs. Secondly, primary or asymmetrical functions, functions that can be exercised by autonomous region exclusively, such as culture. Lastly, shared-functions, functions that are shared between state and its autonomous region,¹²⁷
- 5) A locally elected legislative body with some independent legislative authority,
- 6) A locally selected chief executive,
- 7) An independent local judiciary with full responsibility for interpreting local laws,
- 8) Power sharing arrangements between the central and autonomous governments combining local flexibility and central government's broad policy parameters.¹²⁸

3.4.2. Non-Territorial Autonomy (Personal Autonomy)

Personal autonomy means granting the opportunity for the members of minority to join and participate in the minority's activities without taking account their residence or domicile or giving a special arrangement to minority that has a particular identity or culture, such as

¹²³ *Ibid.*, p. 29.

¹²⁴ *See Ibid.*, p. 19. *See also* Sukssi, *supra* note 93, pp. 394 & 396. Presumably a good example is recognition of the Serbs special rights as minority within the Albanian minority in Kosovo, as set forth in Article I paragraph (7), *e.g.* school designation assistance and right to participate in social benefits programme.

¹²⁵ Heintze, *supra* note 1, p. 19.

¹²⁶ Heintze, *supra* note 1, p. 18.

¹²⁷ Lund Recommendation para. 20.

¹²⁸ *See* H. Hannum (ed.), *Documents on Autonomy and Minority Rights* (Martinus Nijhoff Publishers, Dordrecht, 1993), pp. 467-468.

indigenous peoples. This might be granted if meet the following conditions:¹²⁹

- 1) Dispersion of the members over a larger territory,
- 2) Mixing with other populations,

The characteristics non-territorial autonomy are:

- 1) The aim of such arrangement usually solely to maintain and develop of the identity of the minority concerned,
- 2) Fields that fall under the authority of the autonomous region are education, culture, use of minority language, religion, and other matters that relate with the identity and the way of life of minority.¹³⁰

3.5. Model of Autonomy: Some Examples

To take examples of all countries which granted autonomy to their minorities would not suffice this limited thesis. Hence brief descriptions about the model of autonomy in selected states would be given to get a clear picture that autonomy, indeed, has various and miscellaneous models and no uniformity can be found, despite its wide-scale practice. This is more likely that autonomy is a part of domestic law and hence, it submits under the sovereignty of the concerning State whereby the state has a discretion to set out autonomy arrangements bearing in mind the consent of the minority concerned and its special background.

The examples are Åland-Finland, South Tyrol-Italy and Basque Country-Spain. Åland-Finland and South Tyrol-Italy are taken as comparison models since those are amongst considerably ‘durable’ autonomy regions as pinpointed by Nordquist. ‘Durability’ in the sense of reduction of the conflict after initiating autonomy and continual of the existence of autonomy on the basis of an operative political document.¹³¹

Whilst Basque is chosen since it has similar minorities’ conflict background coincided to what happened in Aceh region that would be discussed in the forthcoming chapter, *i.e.* the exploitation of rich and abundant region where its people suffered from unfair revenue distribution.¹³² Moreover, both regions also have their respective institutionalised traditional organisation, *i.e.* ‘The Historic Territories’ for Basque Country and ‘Lembaga Tuha Nanggroe’ for Aceh.

¹²⁹ Alfredsson, ‘The Most Effective Way to Protect Group Dignity...Is to Allow Them to Control Local Affairs...’, in Z. A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, 2005) p. xxiii.

¹³⁰ See *supra* note 127, paras. 17 & 18.

¹³¹ Nordquist, *supra* note 2, p. 67.

¹³² See generally Hannum, *supra* note 92, p. 8. Hannum analyses factors that underpin minorities conflicts are (1) underdevelopment, such as Tamil Eelan Tiger; (2) Exploitation or unequal treatment at rich region, such as Basque and Punjab; (3) foreseeing that the region will be economically beter after separation, such as Biafra; (4) Foreseeing be less well off after separation, such as Quebec; and (5) Economically deprived groups, such as the Malays. See also Nordquist, *supra* note 2, p. 60. Briefly, Nordquist denotes that conflict in Asia mainly erupted as results from (1) unsuccessful decolonisation and (2) internal state policy.

3.5.1. *Constitutional or Legal Safeguard*

In Åland, the Autonomy Act of Åland was adopted in 1991. This Act, indeed, preceded the Constitution of Finland containing autonomy recognition that was adopted in 2000. This Autonomy Act cannot be amended by the Finnish Parliament unless accompanied by the decision of at least two-third majority of the Legislative Assembly of Åland.¹³³

In South Tyrol, autonomy is granted in both the Constitution of Italy and the Autonomy Statute for the South Tyrol of *1 Raccolta Ufficiale delle Leggi 3136 No. 670*. The latter was passed on in 1972. Article 5 of the Constitution of Italy recognises and promotes local autonomy and Article 6 affirms that the state protects the linguistic minorities. If the Autonomy Statute for the South Tyrol needs amendment or modification, then it must be adopted by two chambers of the House of Representatives of Italy twice within no less than three months and need the approval of a majority of the members of each chamber in the second voting. Afterwards, it will be challenged upon popular referendum as set forth in the Constitution of Italy Article 138 and the Autonomy Statute for the South Tyrol Article 103.¹³⁴

In Basque Country, the Constitution of Spain (1978) recognised the rights of autonomous communities generally, as in Article 2 and Article 137 concerning recognition of autonomous communities in Spain, Article 3(2) concerning official language of minority in an autonomous community, Article 138 concerning adequate economic balance amongst the areas in Spain as well as autonomous communities, Article 143-161 concerning the autonomous communities in general under Chapter Three of the Constitution, and additional provision one about the territories with *fuero*. One year later, the Organic Law 3/1979 on “Autonomy Statute of the Basque Country” was enacted to meet the need of the Basque Country for a more-detailed of special status arrangement.¹³⁵

3.5.2. *Local Legislative Body and Law*

The Legislative Assembly of Åland consists of thirty members who are elected by the Ålanders every four years.¹³⁶ In Åland, state laws related to certain fields falling under the Legislative Assembly of Åland cannot be applied directly, unless it has been enacted by the body thereof. It is because that the only superior laws in Åland are the Constitution of Finland and the Autonomy Act. Therefore, any query concerning the validity of a law or provision has to be brought to either the Supreme Court or the Legislative of Åland by enacting such law. In addition, the Legislative of Åland is utilised

¹³³ S. Palmgren, 'Chapter 5: The Autonomy of the Åland Islands in the Constitutional Law of Finland', in L. Hannikainen & F. Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997) pp. 85-86.

¹³⁴ Hannum, *supra* note 128, pp. 462-495. See Vieyetz & Kallonen, *supra* note 100, pp. 257-258 & 493. See *The Constitution of Italy*, <www.oefre.unibe.ch/law/icl/it00000_.html>, visited on 27 December 2005.

¹³⁵ *Ibid.* pp. 146-156.

¹³⁶ Vieyetz & Kallonen, *supra* note 101, p. 259.

with the authority to create of an offence and the extent of the penalty in which the matter falls within the legislative competence of Åland. However, it is noteworthy that the President of Finland has the power to veto that an Ålandic Law or certain part of a law is void after acquiring opinion from the Supreme Court. The veto may be exercised if the President of Finland deems that the Legislative Assembly of Åland has exceeded its legislative power and if such law or some of its parts strongly pertains state's security, either internally or externally. Moreover, in relation with the National Parliament, one seat from totally two hundred persons within the national parliament of Finland is granted for the representative of Åland.¹³⁷

It is quite common in practice that foreign affairs are under the authority of the State. This goes as well for the relation between Finland and Åland. However, similar to mentioned before, ratified international treaties containing provisions related to Åland, do not come into force in Åland directly, unless with the consent of Legislative Assembly of Åland. Therefore, the Finnish Government must inform the Government of Åland about the agreement process and result. Moreover, the Government of Åland may have the opportunity to participate the negotiations thereof in a special circumstances.¹³⁸

In South Tyrol, the Regional Council elects the members of the executive body of which must take into account the German, Italian and Ladin linguistic groups through a proportional representation system. In national level, however, the national parliament does not have any representative from South Tyrol set out in legal provision as otherwise it is in Åland and Basque Country.¹³⁹ Moreover, if there is a matter of particular interest of the Region which does not fall under the authority of the Region, the Regional Council may record votes and propose legislative draft bills, which will be sent by the Regional Government to the central Government. Beside those above, the Regional Council of South Tyrol may be dissolved if:

- the acts contrary to the Constitution;
- the acts qualifying as grave violations of the law;
- it fails to recall Regional Government or a President of the Regional Government or Assessor (Regional Officials that correspond to ministers in a national government);
- it relates to national security reason;
- it lacks the capacity to function caused by resignations or inability to constitute a majority.

This may be done after preceded by a substantiated decree of the President Decree of the Republic of Italy following the consideration of the Council of Minister of the National Government of Italy and after consultation with the Parliamentary Committee for Regional Questions.¹⁴⁰

¹³⁷ Palmgren, *supra* note 133, pp. 87-90.

¹³⁸ *Ibid.*, pp. 93-94.

¹³⁹ Vieyetz & Kallonen, *supra* note 101, pp. 258-259.

¹⁴⁰ Hannum, *supra* note 128, pp. 474-476.

As for the Parliament of the Basque Province, it is composed by an equal number of representatives from every Historic Territory whereby each Historic Territory constitutes as an electoral district (proportional representative system). In national level, a certain number of members of Basque Parliament are granted for seats in the national parliament since both chambers of parliament are elected through the provinces. Furthermore, the national parliament of Spain must pass the revision or amended draft of the autonomy act and having it submitted by the Basque people through referendum after fulfilling minimum of one fifth of its members in the initiation of the amendments process. This is as about much as its lack of constitutional or international guarantee.¹⁴¹ It is noteworthy that the law of Basque is a *lex specialis* of any other law and thus shall prevail it. State law is only supplementary if there is no regional provision or law concerning thereof. Moreover, the Basque Parliament enacts law relating to the manner of electing the President and also the relations of the Government with Parliament. Nonetheless, the Constitutional Tribunal is the national institution that controls the legislative products of the Basque Province whether they are constitutional or unconstitutional.¹⁴²

The Parliament of Basque may hold an election to resign the Basque Government on the basis of a loss of parliamentary confidence or upon resignation or death of the President of the Basque Country. This ‘loss of parliamentary confidence’ item can presumably be viewed as a “political safeguard” in one hand or even can create a “political tension” between the Regional Government and the Regional Parliament as the members of the Parliament of Basque are representatives of their respective people in historic territories, whilst the President of Basque is appointed by the King of Spain. The Basque Parliament enacts law relating to the manner of electing the President and also the relations of the Government with Parliament.¹⁴³

Concerning to cooperation with other entity, the autonomous community may conclude agreements either with other autonomous communities or with other historic territories for the management and provision of services falling under their exclusive jurisdiction, which before it has to be communicated with the Spanish State Parliament.¹⁴⁴

3.5.3. *Local Executive Body*

The President of Finland is obliged to have a consensus by agreement with the Speaker of Legislative Assembly of Åland before appointing a governor. If, however, this could not be achieved, the Governor can be appointed by the President amongst five candidates nominated by the Legislative

¹⁴¹ *Ibid.*, pp. 167-175 & 258-266.

¹⁴² *Ibid.*, pp. 167-172.

¹⁴³ *Ibid.*, p. 170.

¹⁴⁴ *Ibid.*, p. 169.

Assembly of Åland. The first procedure also applies for the Governor's dismissal.¹⁴⁵

In South Tyrol, the executive body is the Regional Government which is led by a President and whom assisted by vice-president. According to Article 30 Autonomy Statute for the South Tyrol, the President shall be elected from amongst the Regional Council members who belong to the Italian linguistic group and the Vice-President from amongst the Regional Council members who belong the German-speaking group for the first thirty months of a legislative period. Moreover, for the succeeding period, the President will be elected from amongst the members of the Regional Council belonging to the German-language group and the Vice-President will be elected from amongst the members of the Regional Council belonging to the Italian-speaking Group.¹⁴⁶ Additionally, the President of the Regional Government is the representative of the region and he/she shall execute the delegated administration functions directly if State delegates such functions to him/her.¹⁴⁷

Whilst in Basque Country, the Basque Government exercises the executive and administrative functions. This body is led by a president or so-called *Lendakari*, whom is appointed by the King of Spain from amongst the members of the Government. The President has a double status, *inter alia* as the highest representative of the Basque Country and as the representative of the State in this region.¹⁴⁸

3.5.4. Local Judiciary Body

State courts from district to the highest appellate court have the jurisdiction over Åland, which subsequently they also can apply Ålandic laws. Nonetheless, Åland has the Administrative Court of Åland comparably with the other county administrative courts, which deals with administrative cases.¹⁴⁹

In South Tyrol, a Regional Court of Administrative Justice is set up, which includes an autonomous section for the Province of Bolzano/Bozen.¹⁵⁰ For an example, administrative acts of public officials deemed to violate the principle of equality of the different linguistic group can be brought to this court.¹⁵¹

As for Basque Country, the organisation of the Administration of Justice in the Basque Country is exercised based on the organic law of the judiciary. It also has a high court, of which entitled as the last appeal. Uniquely, the President of the High Court is appointed by the King of Spain.

¹⁴⁵ _____, 'Annexes', in L. Hannikainen & F. Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997) p. 327.

¹⁴⁶ Hannum, *supra* note 128, p. 473.

¹⁴⁷ *Ibid.*, p. 476.

¹⁴⁸ *Ibid.*, p. 170.

¹⁴⁹ Palmgren, *supra* note 133, p. 93.

¹⁵⁰ The Region of South Tyrol is divided into two provinces, which are the Trentino Province and Bolzano/Bozen Province.

¹⁵¹ Hannum, *supra* note 128, pp. 487-488. See Article 85 and 92 of the Autonomy Statute for the South Tyrol.

The judges and other members of the court shall be preferred for those who possess the knowledge of Traditional Basque Law and Basque Language (Euskera).¹⁵²

3.5.5. *Administration and Public Service*

The Legislative of Åland has the competency in municipal administration; public order and security, fire fighting and rescue service.¹⁵³ The unique feature of the Autonomy Act is that Ålandic authority might convey its administration power to the State authority vice versa by issuing so-called ‘consentaneous decree’, a presidential decree which has to be agreed by the Government of Åland.¹⁵⁴

3.5.6. *Taxation*

The Legislative of Åland within this field embraces municipal taxation, additional tax on income and provisional extra income tax; farming and forestry, hunting and fishing; trade with certain exceptions subjected.¹⁵⁵ Åland receives so-called ‘amount of equalisation’, a sum of money from the State for autonomy expenditure, as established in the State final account, by multiplying the State income for the appropriate year excluding new State loans, with basis of equalisation 0.45 percent, as stipulated on section 45 to 47 of the Autonomy Act. An extraordinary grant may be proposed for particularly great non-recurring expenditures as regulated under section 48. Furthermore, features such as issuance of bond loans and other taken outside and proposal special subsidy are conferred, by virtue of subsequent section 50 and 51 in a row. If the income and property tax surpasses 0.5 per cent of the corresponding tax in whole Finland during the annual fiscal, Åland shall benefit the tax retribution concluded from section 49.¹⁵⁶ However, the Ålanders have been demanding diversified tax legislation, such as tourism.¹⁵⁷ Mineral finds and mining falls under the legislative of the state under section 27 sub-paragraph 17, but the Legislative of Åland has the right to prospect for mineral finds as well as claim and utilise thereof under section 17 sub-paragraph 19.¹⁵⁸

In South Tyrol, the Italian Government has an obligation to give finance to South Tyrol from state revenue, tax and share finance from projects that are conducted within the province. These specialities of South Tyrol are not enjoyed by other regions. Moreover, there is an unique arrangement of economic share in this region. Based on Article 69-70 of the Autonomy Statute for the South Tyrol, the Region of South Tyrol can get revenue from taxes collected in the regional territory consisted of ninety percent of the taxes on inheritance and donations and on the total net value of the inheritances, twenty percent of the added value taxes regarding the

¹⁵² Hannum, *supra* note 92., p. 171.

¹⁵³ Palmgren, *supra* note 133, p. 86.

¹⁵⁴ *Ibid.*, p. 91.

¹⁵⁵ *Ibid.*, pp. 86-87

¹⁵⁶ *Supra* note 145, pp. 325-326.

¹⁵⁷ Palmgren, *supra* note 133, p. 93.

¹⁵⁸ *Supra* note 145, pp. 314 & 318.

Regional territory after deduction of the portions due to local agencies, ninety percent of the proceeds of the State lottery and levy of visitor tax. Whilst the Provinces within the Region of South Tyrol, which are Trento Province and Bolzano/Bozen Province, may assign power and gas consumption within respective province and ninety percent of the annual fee from the concession of great derivation of public water.¹⁵⁹ Hence, the revenues are distributed to the Region of South Tyrol and its Provinces based on the distribution of the type of tax.

Whilst the Basque Country enjoys in creating and collecting its own taxes from its own citizens giving priority in distributing the revenue to the autonomous region over the State. Nonetheless, the tax collection and taxation regulation are maintained by the respective Historic Territories bearing in mind the Economic Agreement between the State and the Basque Country as well as rules to be issued by the Basque Parliament in relation with the tax of Basque Country and the general taxation regulations of the State. Finally, every Province or Historic Territory will enjoy the distribution of tax by equitable distribution based on the contribution made by the Provinces.¹⁶⁰

3.5.7. *Education and Language*

The Ålanders can enjoy learning and being taught in Swedish as its status as official language in Åland in the light of Section 36 of Åland Autonomy Act. Moreover, Finnish is an optional language, unlike English, which is mandatory. Likewise, learning Swedish is an obligation for every Finn even in a purely Finnish-speaking region since Swedish is the second official language of the country, in municipal administration, in opinions and decisions in Supreme Court and in Evangelic Lutheran Church.¹⁶¹

In South Tyrol, whereby consisted of three linguistic minorities thereof *i.e.* German, Italian and Ladin, teaching will be conducted within respective language of the pupils. Nonetheless, German language is the official language in South Tyrol and everyone can use German in regional administrative level.¹⁶²

As for the Basque Country, children's parents have the right to choose amongst Spanish (Model A), Basque (Model D) or both (Model B) for the teaching language.¹⁶³

3.5.8. *Others*

If a dispute occurs in the future between the state authority and the peripheral government, the Ålandic Delegation will settle it down. The body consists of experts whose two members amongst are elected by the Council of the State and the other two members are elected by the Legislative Assembly of Åland. The Governor of Åland acts as the chairperson of the

¹⁵⁹ Vieyetz & Kallonen, *supra* note 101, p. 262. See also Hannum, *supra* note 128, p. 487.

¹⁶⁰ Hannum, *supra* note 92, pp. 173-174. See also Vieyetz & Kallonen, *supra* note 101, p. 263.

¹⁶¹ *Ibid.*, p. 249. See also *supra* note 145, pp. 323-324.

¹⁶² Vieyetz & Kallonen, *supra* note 101, p. 249.

¹⁶³ *Ibid.*, pp. 255-256 & 264.

body. Moreover, the body has an authority of giving opinions to the Council of the State, the Government of Åland and the courts drawn upon request.¹⁶⁴ Furthermore, based on section 56, the Ålandic Delegation shall carry out the abovementioned equalisation, determine the aforementioned tax retribution and give the extraordinary grant and subsidy within the possible conditions therefore.¹⁶⁵ The Ålanders have the right to vote and the right to stand for election to guarantee their active participation and role in democracy in Åland. They are also guaranteed to enjoy international human rights post to the consent of the Legislative Assembly of the Åland. They, furthermore, have the right to be excluded from military service.¹⁶⁶ It is noteworthy that the ones who have the right to domicile in Åland are exclusively citizens of Finland.¹⁶⁷ Land-purchasing limitations are set out for those who are non-Ålanders in order to maintain the idea of linkage between the possession of real property and Swedish language and cultural preservation. This provision, however, does not apply for those who have right to domicile.¹⁶⁸

As for South Tyrol and Basque Country, the respective constitutional courts have the authority to declare a disputing act or law of either respective autonomous region or state to be constitutional or otherwise unconstitutional.¹⁶⁹

According to Article 56 of the Autonomy Statute for the South Tyrol, if a bill is envisaged to violate the equal rights of the different linguistic groups concerned or the cultural characteristics of respective group, the majority of the members of the Regional Council of one of the groups may call a vote by language group. If however, the call for separate voting is unacceptable or when the bill be passed in spite of two-third of the language group concern, the majority of that group may deny the law before the Constitutional Court.¹⁷⁰

All Åland, South Tyrol and the Basque Country have their own representatives in EU's committee of Regions and respective permanent mission to the EU. All of them do not have the authority in terms of international relation. Besides that, Åland has its permanent representative in Nordic Council.¹⁷¹

3.6. Conclusion

The concept and the implementation of autonomy in states varies, though sometimes certain practices and significant qualifications amongst some states quite common. Due to the fact of the variation of the states world-wide practices on autonomy, therefore, the detailed or specific model of autonomy is not a part of customary international law. This goes also as claiming autonomy as a right of the minority, of which has not developed

¹⁶⁴ Palmgren, *supra* note 133, p. 89.

¹⁶⁵ *Supra* note 145, p. 328.

¹⁶⁶ M. Sukssi, *supra* note 93, pp. 387-390.

¹⁶⁷ *Ibid.*, p. 391.

¹⁶⁸ Sukssi, *supra* note 93, pp. 389-390.

¹⁶⁹ Vieyetz & Kallonen, *supra* note 101, p. 265.

¹⁷⁰ Hannum, *supra* note 128, p. 480.

¹⁷¹ Vieyetz & Kallonen, *supra* note 101, pp. 260 & 262.

into customary international law. However, the idea of autonomy as a means of protection of minorities has developed into customary international law. Autonomy operates as a means of conflict resolution as well as to prevent from state succession and to support for greater integration with the state concerned. This is because of there are many states that use autonomy arrangement to safeguard their minorities hitherto.

Moreover, the basic idea of autonomy is simple, as stated by Alfredsson, is granting the minority a certain self-government by delegating some of the states' powers and expanding functions to the authority of the minority concerned so they can manage their own local affairs.¹⁷² The foundation of autonomy that underlies autonomy is 'the principle of subsidiarity', whereby members of minorities are let by state to preserve their special character. This basic idea is common in practice which eventually makes the basic idea of autonomy more likely to be accepted as a part of customary international law. Moreover, the development of autonomy has been endorsed by the principles of democracy, equality, and political and economic participation are the accepted values in world wide, which the latter is a cornerstone that underlies autonomy.¹⁷³

Figure 1. Comparison amongst Selected Autonomous Regions

No.	Autonomy Items	Åland	South Tyrol	Basque
1.	Constitution and/or Law	Constitution of Finland 1991; Autonomy Act of Åland 1991	The Constitution of Italy; The Autonomy Statute for the South Tyrol of <i>1 Raccolta Ufficiale delle Leggi 3136 No. 670</i>	The Constitution of Spain 1978; Autonomy Statute of the Basque Country 3/1979
2.	Regional Legislative Body	The Legislative of Åland is elected by Ålanders every four years.	(1) Proportional Representative System from the German, Italian and Ladin linguistic groups; (2) The Regional Council of South Tyrol may be dissolved by	(1) Proportional Representative System from every Historic Territory; (2) The Parliament of Basque may hold an election to resign the Basque Government

¹⁷² Alfredsson, *supra* note 7, p. 20.

¹⁷³ Heintze, *supra* note 1, pp. 12-13.

			Italian Presidential Decree	
3.	Regional Executive Body	The Governor of Åland is appointed by the President of Finland after having a consensus by the Legislative Assembly of Åland	The President shall be elected from amongst the Regional Council members who belong to the Italian linguistic group and the Vice-President from amongst the Regional Council members who belong the German-speaking group.	The president is appointed by the King of Spain
4.	Regional Judicial Body	(1) State courts from district to the highest appellate court have the jurisdiction over Åland; (2) Ålandic laws are applicable.	(1) State Courts have the jurisdiction over South Tyrol; (2) The administrative acts of public officials deemed to violate the principle of equality of the different linguistic group can be brought to court	(1) State Courts have the jurisdiction over Basque Country; (2) The members of the State Courts within Basque Country must have the knowledge of the traditional Basque Law and Basque Language/Euskera; (3) The President of the High Court is appointed by the King; Knowledge of Traditional Basque law and of the Basque Language
5.	Amendments	The Amendments by the Finnish Parliament must be accompanied by the decision of at least two-third majority of the Legislative Assembly of Åland	Must be adopted by two chambers of the House of Representatives of Italy twice and approval of a majority of the members of each chamber in the second voting following with popular referendum	Must be submitted by the Basque People through referendum
6.	Taxation	(1) The Legislative of Åland within this field embraces municipal taxation, additional tax on income and provisional extra	(1) The Region of South Tyrol gets revenue from taxes collected in the regional territory consisted of ninety percent of the taxes on inheritance and donations and on	(1) The Collection and Regulation are carried out by the Provinces/ Historic Territories based on the Economic Agreement between the State and the Basque

		income tax; farming and forestry, hunting and fishing; trade with certain exceptions subjected; (2) Åland receives so-called 'amount of equalisation', a sum of money from the State for autonomy expenditure, as established in the State final account, by multiplying the State income for the appropriate year excluding new State loans, with basis of equalisation 0.45 percent	the total net value of the inheritances, twenty percent of the added value taxes regarding the Regional territory after deduction of the portions due to local agencies, ninety percent of the proceeds of the State lottery and levy of visitor tax; (2) Trento Province and Bolzano/Bozen Province may assign power and gas consumption within respective province and ninety percent of the annual fee from the concession of great derivation of public water.	Country, rules to be issued by the Basque Parliament in relation with the tax of Basque Country and the general taxation regulations of the State; (2) The Equitable Distribution amongst Provinces/ Historic Territories the tax collection and taxation regulation are maintained by the respective Historic Territories based on the contribution made by the Provinces
7.	Laws	(1) State laws concern with Åland have to be enacted by the Legislative Assembly of Åland; (2) The Regional Council may record votes and propose legislative draft bills, which will be sent by the Regional Government to the central Government, if it concern matters of particular interest of the Region which does not fall under the authority of the Region; (3) Regional Laws that strongly pertain state's security can be voided by the President of Finland after	If there is a matter of particular interest of the Region which does not fall under the authority of the Region, the Regional Council may record votes and propose legislative draft bills, which will be sent by the Regional Government to the central Government.	(1) The State laws only are supplementary if there is no regional provision or law concerning thereof; (2) The Constitutional Tribunal controls the legislative products of the Basque Province whether they are constitutional or unconstitutional

		acquiring opinion from the Supreme Court.		
8.	Dispute Resolution Institution	The Ålandic Delegation	Constitutional Court	Constitutional Court
9.	Representatives in National Parliament	Yes	No	Yes
10.	Education	(1) Swedish is the teaching language; (2) Swedish is taught; (3) English is taught as mandatory, but Finnish is an option	Teaching is conducted within respective language of the pupils, either German, Italian or Ladin.	The pupils have the to choose amongst Spanish (Model A), Basque (Model D) or both (Model B) for the teaching language
11.	Language	Swedish is the official language both in Åland and Finland	German is the official language in South Tyrol	Euskera is the official language in Basque Country

4. Autonomy Implementation in Province of NAD

4.1. Assessing Aceh People as a Minority in Indonesia

Province of NAD consists of 17 regencies and 4 cities, which are, South Aceh Regency, South East Aceh Regency, East Aceh Regency, Central Aceh Regency, West Aceh Regency, Greater Aceh Regency, Pidie Regency, North Aceh Regency, Simeule Regency, Aceh Singkil Regency, Bireun Regency, North West Aceh Regency, Gayo Lues Regency, Aceh Jaya Regency, Nagan Raya Regency, Aceh Tamiang Regency, Bener Meriah Regency, Banda Aceh City, Sabang City, Lhokseumawe City, and Langsa City.

The province is laid on the northernmost part of Sumatra with a width of 56,500.51 km² or approximately 5,539,000 hectare and occupied by 3,899,290 people. This means that its area is 3.04% from the total area of Indonesia of 1,860,359.67 km² and its population is 1.76% from the total Indonesian of 220,953,634 people.¹⁷⁴ Besides those, Aceh consists of several ethnics, which are Acehnese as the major, Alas, Gayo, Singkil, Tamiang, Kluet, Aneuk Jameie, Bulolehee and Simeleue, in which they have been living thereon from generation to generation.¹⁷⁵ Based on those facts, Aceh numerically constitutes as a minority.

The next question is whether Aceh constitutes as an ethnic, linguistic or religious minority.

Based on a historical point of view, it is widely known that Aceh is recognised with its strong Islamic culture as a part of its traditional value. This religious culture was rooted from Aceh Darussalam Kingdom, a huge kingdom established by Sultan 'Ali Mughayat Syah (1511-1530). The kingdom was a unification of several kingdoms, namely Daya Kingdom (West Aceh), Aceh Kingdom (Aceh Besar and Banda Aceh), Bedir Kingdom (Pidie Regency), Samudera Pasai Kingdom (North Aceh), Lingé Kingdom (Central Aceh), Peureulak Kingdom (East Aceh), Benua Kingdom (Aceh Tamiang) and Aru Kingdom (North Sumatra). The kingdom even gained its greater grasp by expanding its power to Malay Strait. Henceforth, Aceh Darussalam Kingdom was famous as one of the big five Islamic States in the world besides Usmanian Turk Kingdom (Turkey), Maroccon Islamic Kingdom (North Africa), Isfahan Islamic Kingdom (Middle East) and Agra Islamic Kingdom (India).¹⁷⁶ Thereby, Aceh attained its famous name as 'Porch of Mecca', indicating its strong Islamic culture and way of life, including the law governed. The source of the law was taken from *Al-Quran*, *Hadits*, *Ijma'* and *Qiyas*. Furthermore, an Islamic Constitution, known as *Kanun Al-Asyi*, was made and enacted by Sultan Alauddin Riayat

¹⁷⁴ Annex of Law of Domestic Affair Ministry 18/2005. *See also* Ishak, Otto Syamsuddin, Sang Martir Teungku Bantaqiah, Yappika, Jakarta, 2003, p. 1.

¹⁷⁵ General Explanatory Note of UU 18/2001.

¹⁷⁶ H.Y. Adan, *Sejarah Aceh dan Tsunami*, Ar-Ruzz, Yogyakarta, April 2005, p. 20.

Syah II Abdul Qahhar with its complete revision and new name as *Kanun Al-Asyi Meukuta Alam* under the auspice of Sultan Iskandar Muda.¹⁷⁷ In the 14th century, the kingdom maintained foreign relationship far away to Rome and France.¹⁷⁸

Based on legal perspective, the Consideration of UU 18/2001 letter b explains that the struggle in Aceh against the Dutch colonialism was predominated by its way of life and its societal character based on strong Islamic culture. Even the 'secular document' of MoU¹⁷⁹ still recognises so-called 'kanun', a local law that rooted from historical traditions and customs of Aceh, in favour of Paragraph 1.1.6.

Lastly, based on cultural perspective, the famous local idioms, *Adat bak Po Teumeureuhom* (the custom comes from Sultan), *hukom bak Syiah Kuala* (the law comes from the 'ulama), *Qanun bak Putro Phang* (the law comes from the Princess of Pahang) and *reusam bak Laksamana* (emergency law comes from the Commander),¹⁸⁰ would prove its ethnical character. Likewise, GAM made propaganda of 'Aceh Nationalism' bound by blood ties, religion and ethnic group putting off other ethnics that share the same territory.¹⁸¹ Also traditional institutions has been preserved as an identity attached to every Aceh people, like the Islamic names possessed by most of the members, many Aceh organisations for the Aceh people who reside outside Aceh, the role of 'ulama in the society which still exist and function up to now. Besides that, Aceh has its own language, *Bahasa Aceh*.

Therefore, Aceh refers to ethnic minority, fulfilling a broader-objective criteria, such as biological and genetic features, culture, name, family ties, etc.¹⁸²

4.2. An Overview of the Conflict between GoI and GAM¹⁸³

4.2.1. The Nexus between DI/TII and GAM and the Causes of Rebellions

So, what was the cause of a series of resistant movements in Aceh? Moreover, Aceh people were the first ones who gave their greater and sincere support to the Indonesia's independence. Some contended that their unique and distinctive culture in Aceh as mentioned before was not recognised by GoI.¹⁸⁴ This is true referring to the cause of the first rebellion

¹⁷⁷ *Ibid.*, p. 36

¹⁷⁸ *Special Committee D's 10th Meeting of People's Representative Council: Public Hearing Meeting*, 24 of April 2001. This was expressed by Abdullah Puteh, p. 5

¹⁷⁹ See Sabili Magazine, Indonesia, August 2005

¹⁸⁰ *Supra* note 2.

¹⁸¹ K.E. Schulze, 'Gerakan Aceh Merdeka: Freedom Fighters or Terrorists?', *RSC Working Paper No. 24, Queen Elizabeth House Department of International Development, University of Oxford, July 2005*, <www.rsc.ox.ac.uk/PDFs/workingpaper24.pdf>, visited on 30 September 2005, p. 29.

¹⁸² See Nowak, *supra* note 4, p. 653.

¹⁸³ For the brief chronology of the conflicts from 1873 to 2000, see generally 'Sejarah Kekerasan dan Perlawanan terhadap Republik', <www.detik.com/peristiwa/2000/12/13/20001213-095749.shtml>, visited on 14 January 2006.

¹⁸⁴ See 'Dari Daud Beureueh ke Hasan Tiro', <<http://www.acehkita.com/content.php?op=modload&name=reportase&file=view&coid=4345&lang=>>>, visited on 13 September 2005. Teungku Ilyas Leube, a former DI/TII member who joined GAM, was angry to the

organisation struggle in Aceh, DI/TII, under the lead of Teungku Daud Beureueh.¹⁸⁵ Besides that, it is also because that GoI didn't have any concern to the economic condition of Aceh people, the unclear education in Aceh, and the special autonomy demand that enabled Aceh exercise its own self-government based on Islamic value, whilst in the same time, the central government politicians were very busy fighting each other to get power in parliamentary political system.¹⁸⁶ In the case of GAM, the most severe cause was entrenched on the social-economic injustice that resulted into the distrust of the Aceh people, which eventually sparked GAM to rebel against GoI.

The next question is whether those two organisations that were established because of different causes have a relation due regard to the same territory? One should know that Hasan Tiro was Teungku Daud Beureueh's third layer man in DI/TII and had a strong relationship with him.¹⁸⁷ Moreover, some of former DI/TII members joined GAM, for instance Teungku Haji Ilyas Leube and Daud Husin a.k.a. Daud Paneuek.¹⁸⁸ These facts indicated that allegedly there must have been a structural relationship between those two organisations considering the relation between those two top leaders in respective organisations.¹⁸⁹ Therefore, there is a continuation between DI/TII and GAM.

Ironically, Teungku Daud Beureueh was one of the local prominent figures in Aceh who in the beginning supported fully the incorporation of Aceh into the new established country so-called Indonesia on 15 October 1945. The Indonesian red-white flag was raised for the first time in Aceh on 23 August 1945, six days after Indonesia gained its independence day. He also gave a vivid contribution by mobilising the Aceh people to donate their money, gold and valuable things to buy two Dakota aeroplanes so-called *Seulawah*, to buy Indonesian Government Bond, to establish Indonesian

Government since the Islamic Law, a part of Aceh people identity, was not recognised by the Government, and also empty promise

¹⁸⁵ See generally T. Abdullah, 'Teungku Daud Beureueh: Pejuang Kemerdekaan yang Berontak', *Tempo Special Edition Magazine 18-24 August 2003*, p. 27. Teungku Daud Beureueh was an Islamic scholar as well as politician that was supported by a strong local leadership chain.

¹⁸⁶ Beureueh, *Pemberontak dengan Sebab Klasik*, *Tempo Special Edition Magazine 18-24 August 2003*, p. 29.

¹⁸⁷ *Supra* note 184. See 'Yang Dikagumi, Yang Dikhianati', <<http://www.acehkita.com/content.php?op=modload&name=reportase&file=view&coid=4294&lang=>>>, visited on 13 September 2005. Hasan Tiro was Teungku Daud Beureueh's student. See also O. S. Ishak, *Dari Maaf ke Panik Aceh 2: Sebuah Sketsa Sosiologi Politik* (Cordova-Institute for Civil Society Empowerment, Banda Aceh, 2001) p. 181. Even, Teungku Daud Beureueh gave recommendation for Teungku Hasan di Tiro to study at Normal School Bireuen and Faculty of Law of Indonesian Islamic University in Yogyakarta, Indonesia. See also N. S. Pane, *Sejarah dan Kekuatan Gerakan Aceh Merdeka: Solusi, Harapan, dan Impian* (Grasindo, Jakarta, 2001) p. 68-70. He took his first education background in *Sa'adah Abadiyah* Islamic School in Blang Paseh, Sigli, Aceh, a school owned by Teungku Daud Beureueh, on the merit of his father and moreover, Teungku Daud Beureueh assigned him as the embassy of Aceh Islamic State in UN in 1954.

¹⁸⁸ *Supra* note 184

¹⁸⁹ Dialogue with Otto Syamsuddin Ishak, a sociologist of Aceh, 13 September 2005

representative office in Singapore, to give money for the Central Government. Those efforts were aimed to support Indonesian struggle against the Dutch colonialism and to get an immediate international recognition.¹⁹⁰ After half decade, however, GoI made a mistake by integrating Aceh to the North Sumatra Province and named the merged province as North Sumatra Province on 8 August 1950, which severely caused Aceh people anger.¹⁹¹ This means that the existence of Aceh was not recognised at all. This incorporation led to a resistant movement which aimed to put a big riddle on the question of recognition of the region's particularity. Finally, in 1959, the movement was weakened due to diplomacy of GoI which promised to bestow special region status to Aceh with autonomy on religion, education, and culture, as requested by Teungku Daud Beureueh on behalf of the Aceh people.¹⁹² Ever since that moment, Aceh was recognised as Special Region of Aceh (Daerah Istimewa Aceh). The pride and joy, however, did not last long as the autonomy arrangements were nothing than an empty promise.¹⁹³ For instance, in 1968, regional regulation of Islamic Law, which was approved by DPRD Aceh, was rejected by the former Indonesian Ministry of Domestic Affairs, Amir Machmud, which subsequently made the law voided. The disappointment and distrust of the Aceh people were the price to pay.¹⁹⁴

Things had even become worse when the retired general Soeharto came into power. The abundant region of oil and natural resources that exported approximately USD 1.3 billion contributing slightly one-fifth of Indonesia's total export revenue, was exploited without any proper and just revenue sharing for the local people causing poverty.¹⁹⁵ The centralistic governmental style was not exercised in economic and political fields only. In cultural administration arrangement, the Aceh people's structure was ruined due to a nationalisation programme replacing the existing local

¹⁹⁰ See generally Pane, *supra* note 187, pp. ix-27.

¹⁹¹ *Ibid.*, p. 8. See *supra* note 187. See also T. Abdullah, 'Teungku Daud Beureueh: Pejuang Kemerdekaan yang Berontak', *Tempo Special Edition Magazine 18-24 August 2003*, p. 27.

¹⁹² Aguswandi, 'Masyarakat Madani: Bagian yang Hilang dari Penciptaan Perdamaian di Aceh', in *Transisi Politik dan Konflik Kekerasan: Meretas Jalan Perdamaian di Indonesia, Timor Timur, Filipina, dan Papua New Guinea* (Pusat Bahasa dan Budaya (State Islamic University of Syarif Hidayatullah, Jakarta, 2005) p. 27.

¹⁹³ *Ibid.* See also *Special Committee D's 9th Meeting of People's Representative Council: Public Hearing Meeting*, 23 of April 2001, p. 5. This can be inferred from Nazaruddin Syamsuddin's opinion.

¹⁹⁴ *Special Committee D's 11th Meeting of People's Representative Council: Public Hearing Meeting*, 24 of April 2001, p. 44. This statement was from Alyasa Abubakar.

¹⁹⁵ T.R. Shie, 'Disarming of Peace and Development in Aceh' <www.peacestudiesjournal.org.uk/docs/Disarming%20for%20Peace%20in%20Aceh%20final%20version%20edited.pdf>, visited on 30 September 2005, p. 18. Near year 1980, approximately around thirty percent of Indonesian oil and gas exports came from this region. See also Aguswandi, *supra* note 192, pp. 27-28. See also E.J.R. Vieytes & M. Kallonen, *supra* note 101, p. 256. Åland has GDP of the second only in Finland acquired from agriculture, fishing and shipping sectors. South Tyrol reaches one of the highest per capita income in Italy relying on its tourism, manufacturing industrial and agriculture sectors. Whilst Basque Country can be considered as one of the highest per capita income in Spain.

structure with a new territorial administration system adopting the major ethnic tradition in Indonesia, Javanese tradition.¹⁹⁶ The local territorial administration concepts, such as *sagoe*, *banda*, *sagoe cut* and *mukim*, were radically changed into ‘alien’ concepts adopting from Javanese territorial administration concepts, such as *kabupaten* (regency), *kota* (city) and *kecamatan* (district). These backgrounds had exerted into the declaration of GAM on 4 December 1976 by Teungku Hasan Di Tiro and his followers.¹⁹⁷ Afterwards, GoI responded with repressive means by military operation zone or DOM, code name *Operasi Jaring Merah* or ‘Red Net’ Operation in 1989.¹⁹⁸ The operation resulted in 1,994 people dead, 864 people disappeared, 1,386 women became widows, 4,521 children became orphans, 2,449 people were tortured, 375 people disabled, 542 people had their house burnt and 115 women were raped.¹⁹⁹

Figure 2. Comparison between DI/TII and GAM

No.	Rebellion Institution	Vision	Ideology
1.	DI/TII	Recognition	Islam
2.	GAM	Succession	Aceh Nationalism

4.2.2. Reformation 1999: A Hope was Nothing More than a Hope

On 26 March 1999, following the fall down of Soeharto’s authoritarianism regime, the new president B.J. Habibie made a promise to the Aceh people in Banda Aceh, as follows:²⁰⁰

- 1) The Government would care about Aceh more,
- 2) The President instructed that TNI would never do violence and shed blood again,
- 3) To investigate human rights perpetrators in TNI and society,
- 4) The mass grave yard of the victims of military operation will be plowed up and ritually treated in Islamic way by the permission of the victim’s family and all cost would be burden on the government,
- 5) Government will grant amnesty to political convicts in Aceh,
- 6) Eighty-five private Islamic schools will be changed into state Islamic schools and teachers too would be included,
- 7) Sultan Iskandar Muda Airport in Aceh will be rendered into airport that serve for *hajj* or Islamic Pilgrimage,
- 8) Reviving train transportation,
- 9) Developing Continual Economic Zone in Sabang,
- 10) The referendum must take into account the opinion from MPR.

Despite the promising promises, the human rights violators remained untouchable by law and the promises were not kept, resulting in

¹⁹⁶ Aguswandi, *Ibid.*, p. 28

¹⁹⁷ *Ibid.*

¹⁹⁸ See ‘Gerakan Aceh Merdeka: Catatan Harian yang Belum Selesai’, *Kompas Daily Newspaper*, 24 May 1999, p. 20. Before 1989, there was only a latent military operation since GAM activities were only restricted to reconsolidation and not use of force, such as to publish books or pamphlets, disseminate international and public opinion.

¹⁹⁹ Ishak, *supra* note 187, p. 119.

²⁰⁰ ‘Masyarakat Serambi Mekkah Anggap Habibie Ingkar Janji’, *Kompas Daily Newspaper*, 15 July 1999, p. 1.

disappointment blooming in the heart of the Aceh people.²⁰¹ At the same moment, GAM struggle has been supported by more and more Aceh people since the issue was not solely about what is just and unjust, but it developed into the unsolved gross violation of human rights.²⁰²

In August 1999, Komnasham (National Commission on Human Rights) suggested DPR to establish of Commission of Truth and Reconciliation emphasising on Aceh, but there was no further respond to this.²⁰³

In December 1999, special committee of DPR made recommendations, which one of them was to investigate the human rights violations during the DOM. However, such recommendation was not taken into account by the government.²⁰⁴ Almost a year later, on 9 March 2001, the Ministry of Defence and the Commander of TNI announced new military operation to extinguish GAM. Many suspected civilians and members of local organisations were killed.²⁰⁵

A dialogue approach was then introduced by the 4th President of Indonesia, Abdurrahman Wahid, or well-known as Gus Dur. On 12 May 2000, he managed to hold a dialogue between the GoI and GAM which was facilitated by Henry Dunant Center (HDC) resulted with “Humanitarian Pause”. Then, a series of meetings were held following up the agreement to conclude implementation mechanism of the agreement. Two institutions were formed, *Komite Bersama Modalitas Keamanan* or Joint Committee of Safety Modality to prevent military operation and *Komite Bersama Aksi Kemanusiaan* or Joint Committee of Humanitarian Action to distribute aid. The other institution was Safety Modality Monitoring Team carrying out monitoring task. Once again, military operation was conducted in April 2001 after the president’s position weakened.²⁰⁶ On 11 April 2001, Gus Dur enacted Presidential Instruction Number 4 Year 2001 on Comprehensive Measures on Solving Problem of Aceh containing rehabilitation policy on economic, social, political, cultural, legal and security issues in Aceh replacing military approach. However, this was used incorrectly for military operation under paragraph 14 concerning security rehabilitation as Gus Dur’s position in the government was weakened.²⁰⁷ Military Operation was conducted in April 2001 as Gus Dur’s position weakened.

²⁰¹ A.E. Priyono, ‘Post-DOM Aceh: The Escalation of State Terror and Resistance of Civil Society Movements’, in *Post-Soeharto Democracy Movement*, (DEMOS, Jakarta, December 2003) p. 515. See ‘Penyelesaian Aceh: Dialog’, Kompas Daily Newspaper, 2 December 1999, p. 22. Many NGOs based in Aceh requested that the government must bring into justice human rights perpetrators in Aceh to build trust of the Aceh people.

²⁰² _____, *Laporan Kemajuan Penyelenggaraan Programme Pascasarjana (S2) Integratif: Nanggroe Aceh Darussalam, Sumatera Utara, Sulawesi Selatan, Sulawesi Utara dan Nusa Tenggara Timur Periode Tahun 2003* (Program Pascasarjana Politik Lokal dan Otonomi Daerah-Program Studi Ilmu Politik Universitas Gadjah Mada, Yogyakarta, 2004) p. 6

²⁰³ ‘Aceh di Bawah Darurat Militer: Di Dalam Perang Rahasia’, *Human Rights Watch*, Vol. 15 No. 10 (C) December 2003, <www.hrw.org/indonesian/reports/2003/12/aceh1203.pdf>, visited on, 29 March 2005, p. 9.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*, pp. 10-11

²⁰⁶ Aguswandi, *supra* note 192, pp. 33-34

²⁰⁷ Priyono, *supra* note 201, pp. 526-527. See Aguswandi, *supra* note 192, pp. 33-34

On 29 July 1999, vice-President Megawati Soekarnoputri made an overwhelming speech.²⁰⁸

“Dedicated to my brothers and sisters in Aceh, please be patient. If then *Cut Nyak*²⁰⁹ leads this country, I would not let even a single drop of blood of Aceh people touches this *Rencong* Land²¹⁰ which had a big merit in Indonesia becoming independent. To all of you I shall give all of my love, I would give your Arun²¹¹, so that the people can enjoy how beautiful it is Porch of Mecca if it is built with love and responsibility amongst the people of the nation, The Indonesian nation”

However, after becoming a president on 23 July 2001, she continued Gus Dur’s policy within the length of six months from September 2001 to February 2002 continued with the resurrection of Iskandar Muda Regional Military Command under the Presidential Instruction 7/2001. The obligation of the regional military commander to monitor implementation of the operations implemented by the organic troops was governed by Presidential Instruction 1/2002 on Increase Comprehensive Measures to Accelerate the Solution Problem of Aceh.²¹² On 18 May 2003, President Megawati Soekarnoputri enacted Presidential Decree 28/2003 declaring a state of military emergency and martial law in Aceh by integrated operation to restore security and order followed by deployment of military troops the next day and approximately 40,000 soldiers deployed to Aceh in May 2003.²¹³

After Megawati lost the president election in 2004, nevertheless, President Susilo Bambang Yudhoyono issued Regulation 2/2004 on Declaration on Prolongation Emergency Situation with Civil Emergency Level in NAD Province. Regulation 38/2005 replacing Regulation 2/2004 which state emergency status in Aceh was replaced by ‘civil order’ and ‘adjusted’ security operations due regard to the work of Reconstruction and Rehabilitation Body (BRR) after the tsunami stroke. Despite of the new ‘friendly’ status, this policy did not followed by withdrawal of military troops in Aceh.²¹⁴

²⁰⁸ M. Armas, ‘Aceh, Soekarno, and Megawati’, *Republika Online Daily Newspaper*, 18 August 2005 <www.republika.co.id/kolom_detail.asp?id=209840&kat_id=16>, visited on 11 January 2006.

²⁰⁹ Term used for women in Aceh

²¹⁰ *Rencong* is a traditional dagger of Aceh people.

²¹¹ Arun is one of the natural resources site in Aceh, which is non-liquid gas.

²¹² Priyono, *supra* note 201, p.527

²¹³ E.L. Hedman, ‘A State of Emergency, A Strategy of War: Internal Displacement, Forced Relocation and Involuntary Return in Aceh, in Aceh Under Martial Law: Conflict, Violence and Displacement’, *RSC Working Paper No. 24, Queen Elizabeth House Department of International Development, University of Oxford, July 2005*,

<www.rsc.ox.ac.uk/PDFs/workingpaper24.pdf>, visited on 30 September 2005, p. 7. See *supra* note 187. See also ‘Kronik Perundingan RI dan GAM’

<www.acehkita.com/content.php?op=modload&name=berita&file=view&coid=2430>, visited on 13 September 2005.

²¹⁴ Hedman, *supra* note 213, p. 7. See ‘Status Aceh Resmi Tertib Sipil’, <www.liputan6.com/view/0,101783,1,0,1137017087.html>, visited on 11 January 2006. See also ‘Aceh Sudah Normal, Operasi Terpadu Jadi Program Terpadu’, <www.acheh-eye.org/a-eye_news_bahasa/news_item.asp?NewsID=825>, visited on 11 January 2006.

4.2.3. *Agreements Concluded between GoI and GAM*

There were many agreements between GoI and GAM, which mostly were voided of that distrust between those two parties and inconsistency in carrying out the contents of the agreement. However, the last agreement facilitated by Crisis Management Initiative, Finland, was the most successful one, especially in growing trust between those two parties. This allegedly influenced by the tsunami stroke in Aceh on 26 December 2004.

The chronology of the agreements was:

1) 12 May 2000

The dialogue was facilitated by the Henry Dunant Center (HDC) in Bavois, Switzerland. The GoI delegation was Dr. Hasan Wirajuda whilst GAM was represented by Dr. Zaini Abdullah. The meeting resulted with “Joint Understanding on Humanitarian Pause for Aceh”²¹⁵

2) 2 June - 2 September 2000

A dialogue between GoI and GAM which was facilitated by HDC resulted so-called the First Humanitarian Pause. Unfortunately, the other elements or stakeholders of Aceh’s peace-building process (NGOs, student and religious organisations under Team 21) were not recognised as parties in the dialogue and even their safety was not guaranteed, even though they played a very vital role in stimulating peaceful dialogue between GAM and GoI which requested both parties to cease fire and to form certain safety zones.²¹⁶

3) 15 September 2000-15 January 2001

Second humanitarian pause²¹⁷

4) 9 January-20 February 2001

On 9 January 2001, GoI and GAM signed temporary document in transforming their struggle from armed-struggle into political-struggle. GAM conceived the idea to transform its military activity to political activity through local political party in Aceh in which its aspiration could then be accommodated.²¹⁸ On 10 February 2001, Field Commander of GAM and the Regional Police of Aceh promulgated Joint Statement to cease all acts of violence from 11 January to 20 February 2001.²¹⁹

5) 18-31 March 2001

Safe zone was created at Bireuen and North Aceh regencies. This, however, lasted on 31 March 2001.²²⁰

²¹⁵ *Supra* note 213.

²¹⁶ Aguswandi, Madani Society: A Missing Part of Peacebuilding in Aceh (Masyarakat Madani: Bagian yang Hilang dari Penciptaan Perdamaian di Aceh), in Political Transition and VIOLENCE? Conflict: MERETAS Peace Pathway in Indonesia, East Timor, the Philippines, and Papua New Guinea, (Transisi Politik dan Konflik Kekerasan: Meretas Jalan Perdamaian di Indonesia, Timor Timur, Filipina, dan Papua New Guinea), Culture and Language Center (Pusat Bahasa dan Budaya), State Islamic University of Syarif Hidayatullah, Jakarta, 2005, p. 41

²¹⁷ *Supra* note 213.

²¹⁸ _____, Special Committee D’s 8th Meeting of People’s Representative Council: Public Hearing Meeting, 23 of April 2001, p. 14.

²¹⁹ *Supra* note 213.

²²⁰ Priyono, *supra* note 201, p.526

- 6) 29 June-1 July 2001
The GoI and GAM agreed to relief tension in Aceh and to hold a forward meeting which would involve each representative from GoI, GAM and civil society elements in Aceh to settle the conflict comprehensively. Moreover, they also agreed to establish a Joint Committee on Security Task (Komite Bersama Masalah Keamanan) and to dissolve Joint Committee on Humanitarian Action (Komite Bersama Aksi Kemanusiaan). However, on 20 July 2001, the police of Aceh captured six negotiators of GAM at Kuala Tripa Hotel witnessed by a number staffs of HDC.²²¹
- 7) 2-3 February 2002
Both conflicting parties agreed on the cease of hostilities and all forms of political violence in 2002, holding an all-inclusive and transparent political dialogue for Aceh in 2002-2003 in the designation on the operation of the concept of “Nanggroe Aceh Darussalam”, and holding a democratic election for Aceh’s leadership in May 2004. Moreover, these were preceded with a commitment to respect the Aceh people willingness in managing their own matters, to respect human rights and humanitarian law, to reconsider the temporary agreement between GoI and GAM concluded on 9 January 2001.²²²
- 8) 10 May 2002
A commitment came up into restatement of holding an all-inclusive dialogue in Aceh involving all elements of civil society in Aceh based on UU 18/2001. This meeting was the final meeting held in Geneva, Switzerland.²²³
- 9) 9 December 2002
The cease of Hostilities Agreement (CoHA) was signed by the GoI and GAM to reduce victims from violence drastically, to establish so-called JSC or Joint Security Committee which concluded peace zone in certain place in Aceh, humanitarian aid, reconstruction, and civilian reform.²²⁴ President Megawati Soekarnoputri called this ‘a golden promise to move on to a life of peace’.²²⁵
- 10) 18 May 2003
Joint Council Meeting was held in Tokyo, Japan. The GoI required GAM to accept UU 18/2001 within Indonesia and to surrender weapons. In the other hand, GAM would like both parties to undergo CoHA. The meeting was failure.²²⁶ Of course, GAM refused to accept the special autonomy arrangement and to concede Aceh as a part of Indonesia.²²⁷

²²¹ *Supra* note 213.

²²² Priyono, *supra* note 201, p.531

²²³ *Ibid.*

²²⁴ *Supra* note 213.

²²⁵ Shie, *supra* note 195, p.3

²²⁶ *Supra* note 213.

²²⁷ I.B. Prasodjo, ‘Aceh at the Crossroads’, *The Opening Plenary Session of the 100th Annual Meeting of the American Sociological Association (ASA), Philadelphia, 12 August 2005*, <www.asanet.org/galleries/default-file/ACEH%20AT%20THE%20CROSSROADS-ENGLISH.pdf>, visited on, 30 September 2005, p. 4

However, before the meeting, on 16 May 2003, GAM negotiators which were going to attend Joint Council Meeting in Tokyo were arrested.²²⁸

11) January-August 2005

First Negotiation between GoI and GAM in Helsinki facilitated by Crisis Management Initiative (CMI) led by former President of Finland, Martti Ahtisaari, on 27-29 January 2005, followed subsequently by another series intensive meetings on 21-23 February 2005, 12-17 April 2005, 26-30 May 2005. The 5th negotiation on 12-17 July 2005 was focused on draft MoU and finally the draft was signed on 15 August 2005.²²⁹

4.3. The Concept of UU 18/2001 and Its Realisation

4.3.1. Backgrounds

The concept of law of NAD was made under the initiative from Aceh people who live in Jakarta and DPRD.²³⁰ However, it was through process of involvement of some of prominent figures, social organisations, Islamic scholars, academicians, journalists and students, all in Aceh.²³¹ Moreover, the local government and DPRD had hearing meeting with the Aceh people and component of Aceh people in 13 regencies.²³² Efforts were made to involve GAM by holding informal meetings between Syamsuddin Mahmud (the Governor of Aceh 1999-2000, second period) and Teungku Muhammad Yus (Aceh politician) in one side and Teungku Hasan Di Tiro and latter with Teungku Abdullah Syafe'i (former commander of GAM) in another side, but the invited GAM did not attend.²³³ It was more likely that GAM still did not have any trust to the Government, besides due to security reason.²³⁴

The backgrounds to make such law were:

- 1) Recognition and protection of Aceh people identity and dignity, custom and culture, including the cultural-sociological territorial concepts,

²²⁸ *Supra* note 213.

²²⁹ See 'Perundingan RI-GAM Masih Alot', <www.tempointeraktif.com/hg/nasional/2005/02/29/brk,20050129-14,id.html>, visited on 11 January 2006. See also 'Dewan tidak Perlu Khawatirkan Hasil Pertemuan RI-GAM', <www.aceh-eye.org/a-eye_news_files/a-eye_news_bahasa/news_item.asp?NewsID=884>, visited on 12 January 2006. See also 'Draf Aceh Damai Diparaf: Pemerintah Akan Konsultasi soal Parpol Lokal dengan DPR', <www.kompas.com/kompas-cetak/0507/18/utama/1902725.htm>, visited on 12 January 2005. See also 'Aceh Damai, Jakarta Ribut', *Tempo Magazine Edition 28-28 August 2005*, p. 23.

²³⁰ *Supra* note 218, p. 8 & 12.

²³¹ _____, *Special Committee D's 11th Meeting of People's Representative Council: Public Hearing Meeting, 24 of April 2001*, p. 6. Speaking by Ferry Mursyidan Baldan. See also *supra* note 178, p. 9, opinion was expressed by Dayan Dawood.

²³² *Supra* note 178, p. 5. This was expressed by Abdullah Puteh.

²³³ *Supra* note 231, p. 22. This was expressed by Teungku Muhammad Yus.

²³⁴ M. I. Sulaiman, *Politik dan Bisnis di Aceh pada Masa Autonomy (Politik and Business in Aceh in Autonomy Era)*, <www.kitlv.nl.pdf>, visited on 24 April 2005, p. 34, GAM made a statement that the draft of autonomy act is nothing more than a trick from GoI to turned territories outside Java island into its occupied territory. See also 'Penyelesaian Aceh: Dialogue, Kompas Daily Newspaper, 2 December 1999, p. 22. GAM demanded that a dialogue must be conducted abroad from Indonesia and facilitated by 3rd Party, such as UN, or in Indonesia within the security guarantee from UN.

cultural symbol, restoring prominent figures roles (*Urung Tuha Gampong*) which is predominated by Islamic values,

- 2) Trust-building²³⁵
- 3) To prevent disintegration of Aceh²³⁶

During the discussion in Special Committee of DPR, there were several times of public hearing meetings that involved Acehese prominent figures as resource persons. The meetings were:

- 1) Special Committee D's 8th meeting on 23 April 2001,²³⁷ involving Acehese prominent figures who live in Jakarta and part of Concerned Forum of Aceh Society (*Forum Keprihatinan Masyarakat Aceh*), an organisation established in 1999 consisted of elder Aceh people who were concerned about the situation of Aceh.
- 2) Special Committee D's 9th meeting on 23 April 2001,²³⁸ presenting Nazaruddin Syamsuddin, an Acehese political expert;
- 3) Special Committee D's 10th meeting on 24 April 2001,²³⁹ presenting Abdullah Puteh (Governor of Aceh from 2000-now, non-active status), and Aceh academicians,
- 4) Special Committee D's 11th Meeting on 24 April 2001,²⁴⁰ involving Ex-Special Committee A of DPRD NAD, Aceh academicians, an economy and finance expert, representative from Indonesian Islamic Scholar Council of Aceh, and an ex-member of DI/TII who is also a representative from Development Unification Party, Teungku Baihaqi.

Finally, UU 18/2001 on 'Special Autonomy for Special Region of Aceh as the Province of Nanggroe Aceh Darussalam' was enacted on 9 August 2001 after having phases from discussion in DPRD to signature by President Megawati. This law grants territorial autonomy to Province of NAD.

4.3.2. *The Content of UU 18/2001*

4.3.2.1. Regional Legislative Body (DPRD NAD)

According to Article 9, DPRD NAD mainly has three functions, which are legislation function, especially in making *qanuns* as the executing law of UU 18/2001, budgeting function, lastly election and supervision function to the provincial government. The last function equips it with right to inquire and right to raise opinion, right to ask and express suggestion. It held governor and vice-governor election through candidates system which both are nominated by fractions within it consisting of political parties or merged political parties. Lastly, its members have immunity right.

4.3.2.2. Regional Executive Body

According to Article 11, a Governor has a policy decision-making authority concerning stability, peace and security outside police task. Regarding her/his capacities, she/he has a capacity as the head of the Province, of

²³⁵ *Supra* note 193, p. 8. This was articulated by Nazaruddin Syamsuddin.

²³⁶ *Supra* note 231, p. 53. This was conceived by M. Munir Aziz.

²³⁷ *See generally supra* note 218.

²³⁸ *See generally supra* note 193.

²³⁹ *See generally supra* note 178.

²⁴⁰ *See generally supra* note 231.

which she/he is responsible to DPRD NAD, and as the representative of the central government, of which she/he is responsible to the President of Indonesia. These capacities are very common in state practice in autonomy since the first capacity is related to shared-function with the central government and the latter one is related to asymmetrical-function in which the central government has no right to interfere in administering the region's own local affairs.

4.3.2.3. Regional Judicial Body: *Mahkamah Syar'iyah*

Mahkamah Syari'iyah is the new feature within the history of Indonesian judicial institution. Basically, Indonesia has Islamic Court, but it is only limited to private law, particularly marriage law and heritage law, and only by the consent of the disputing parties to settle within the court. Nevertheless, according to Article 25-26, *Mahkamah Syar'iyah* is the Islamic Law Court of Aceh that is still a part of national court system which is based on and applies both Islamic Law and national legal system. It has authority to examine cases regarding to criminal law regulated by *Qanuns*, besides civil and national law. It consists of three levels from trial court level in *Sagoe* and *Banda*, appeal court level in the Province and final appellate court carried out by the Supreme Court of Indonesia. As for the judges, they shall be appointed or dismissed by the President of Indonesia taking into account suggestions of Ministry of justice after taking consideration from the Governor of NAD and the Head of Supreme Court of Indonesia.

4.3.2.4. Economic, Financial and Natural Resources Arrangements

Based on Article 4 (1) and 4 (2), the revenue sources of the Province of NAD consist of local revenue of the province, balance funds from the State, revenue of the province in connection with special autonomy, regional loans, and other permissible revenues. As for the local revenue of the province, it consists of regional tax, regional retribution, *zakat* (a portion of one's wealth that must be given to the poor or other specified causes based on Islamic Law),²⁴¹ revenue from regional owned companies and result from management other regional wealth which is separate; and other permissible regional revenue.

Balance funds, as set forth in Article 4 (3a) comprise ninety percent of land and building tax, eighty percent from fee of right to land and building, twenty percent from private earning tax. As for natural resources, it receives balance funds from state comprising eighty percent from forestry sector, eighty percent from general mining, eighty percent from fisheries, fifteen percent from oil mining and thirty percent from natural gas mining.

As for the autonomy revenue set forth in Article 4 (4) and 4 (5) , it will receive fifty-five percent from oil mining income which will be dropped into thirty-five per cent from the 9th annual period, and forty per cent from

²⁴¹ 'Purifying Wealth', <www.islamonline.net/english/introducingislam/Worship/Zakah/article01.shtml>, visited on 14 January 2004.

natural gas income which will be dropped into twenty percent from the 9th annual period.

Article 5 (2) to (4) regulated that Province of NAD may benefit domestic and/or foreign-loans to cover some of its budget that must be approved by DPRD for domestic loans and by DPRD and GoI for foreign loans in accordance with law. It may receive foreign aid after informing GoI according to Article 5 (1). Likewise, in Article 6, the Provincial Government can also participate in capital sharing in state-owned enterprises (BUMN) in Aceh to the extent of an amount jointly agreed by the GoI and part of the Government's revenue originating from profit sharing from state-owned enterprises in Aceh, the amount of which shall be determined jointly by GoI and the Provincial Government. It will be used to improve people's welfare in the associated areas.

4.3.2.5. Employment and Administration

In the employment and administration affairs, the appointment of the Regional Police Chief of Province of NAD shall be exercised by the Chief of National Police of Indonesia upon approval of the governor based on Article 23. Besides that, the appointment of the Head of the Prosecutor's Office of Province of NAD shall be carried out by the Attorney General upon approval of the governor in favour of Article 24.

4.3.2.6. Education and Culture

Province of NAD may determine its own regional symbol, including nature and grandiose emblem, but not symbol of sovereignty, as granted in Article 8. Moreover, according to Article 7 (5), at least thirty percent from the income shall be allocated to education expenses. Moreover, the Wali Nanggore and Tuha Nanggroe institutions are revived by this law as cultural preservation institutions in favour of Article 10.

4.3.2.7. *Qanun*

Basically, *Qanun* of Province of NAD is regional law which implements the organic law. It may prevail another law as it is the *lex specialis* of any other national law. In spite of its *lex specialis* character, its material can be contested by the Supreme Court of Indonesia based on Explanatory Note of UU 18/2001.

4.3.3. *The Realisation of UU 18/2001 and Its Failure*

4.3.3.1. Economic Arrangement

After UU18/2001 has been enacted, there was a massive progress in the revenue of the province itself. The oil and gas revenue from the central government had increased bombastically from IDR 215,829 million in 2001 to IDR 2.1 trillion in 2002 and 2.3 trillion in 2003. In spite of the progress, the revenue was not as much as the value of oil and gas export. The value of oil and gas export was US\$ 1.5 billion or approximately IDR 12.5 trillion in 2000 and slightly the same in 2001, 2002 and 2003. Contrary to that, the province only received small amount of revenue as mentioned before. Mostly the value was to cover production cost and distribute revenue between Pertamina, Indonesian National Oil Corporation, and Exxon Mobil,

a Multi-National Corporation. From the oil revenue, some was distributed thirty percent to provincial budget for education fund, thirty percent for provincial government, 32.5% for both North Aceh and East Aceh as the regencies where the oil and gas came from, and 37.5% for the rest of the regencies.

Provincial Budget had increased from IDR 542 billion in 2002, boomed into IDR 1,572 trillion in 2002 and 1,573 trillion in 2003, of which IDR 1,12 trillion from the last year came from oil and gas revenues, ninety million rupiah came from provincial original income. There were also sector project fund coming from national budget. The sector project fund was managed by delegated-central government institution, Regional office of Religion Department, Department of Justice, Police, Attorney Office, etc. One of the impacts of the decentralisation law²⁴² was that some of delegated-central government institutions, having shared function with the central government, had been liquidated and shifted into asymmetrical function. Governor Abdullah Puteh, thus, had a gripped of some of the fund from the liquidated institutions.

However, this increasing revenue did not accompany by an effective control towards the Governor. Many projects assigned by the provincial government were ineffective and efficient or even pervasively corrupted, such as electrical supply project, printing machine supply project, Seulawah NAD Air corporation, YPAB Nur Raudha (a social foundation).²⁴³

Figure 3. *Earned Fund Composition of Provincial Budget and National Budget Year 2001-2003 in Province of NAD (in billion Rupiah)*²⁴⁴

	2001	2002	2003
Provincial Budget	542.753	1,572.094	1,579.000
National Budget	760.000	888.000	1,024.000
Total	1,302,753	2,460,094	2,603,000

4.3.3.2. Islamic Law (*Syari'ah*)

The legislative products concerning Islamic law are:

- 1) Qanun 12/2003 about *khamr* (Liquor). This law prescribed that every muslim who consumes liquor shall be whipped forty times. Moreover,

²⁴² UU 22/1999 about Local Government. This law is voided in Aceh after UU 18/2001 came into force.

²⁴³ See generally Sulaiman, *supra* note 234. See also 'Why the Military Option Won't Work', *Indoensia Briefing, International Crisis Group*, Jakarta-Brussel, 9 May 2003, <www.crisisgroup.org/library/documents/report_archive/A400970_09052003.pdf>, visited on 30 September 2005, p. 5. The economic benefits in which special autonomy should have granted to, fall into unscrupulous officials and contractors. In mid of April 2003, the education funds was put into question on its whereabouts. More over, once a parliament member asked where did IDR 16 billion (USD 1.8 million) fund that had given to district-level government for disseminating CoHA pact information go. No clear answer was given.

²⁴⁴ Sulaiman, *supra* note 234, p. 19.

every person or corporation that produces, provides, sells, supplies, distributes, delivers, keeps, trades, gives, and promotes liquor or who is involved in doing so shall be imprisoned maximum a year or minimum three months and/or shall pay penalty maximum seventy five million rupiah or minimum twenty five million rupiah;

- 2) Qanun 13/2003 about *Maisir* (Gamble). This law prescribed that every person who does or involves in gambling shall be whipped maximum twelve times or minimum six times in front of public;
- 3) Qanun 14/2003 about *Khalwat* (a man and a women hiding to be together without blood tie or without both in the same marriage relationship). This law prescribed that every Moslem who commits or nearly commits *khalwat* shall be whipped maximum nine times or three times minimum and/or shall pay maximum ten million rupiah or minimum 2,5 million rupiah.

To enforce those *Qanuns*, *Syari'ah* Police are provided and *Mahkamah Syar'iyah* applies those. The first enforcement and punishment was conducted on 24 June 2005 in front of public.²⁴⁵ However, some protests occurred either from the convicted persons, some of the society members, and NGOs. Some of them raised issues on justice, since, for instance, corruptors or human rights perpetrators were not condemned the same way as they were.²⁴⁶ UU 18/2001 did not have any provision that regulate about international human rights law as a safeguard for the Aceh people nor attempt to contest whether such laws were really part of demand from the people to the Supreme Court of Indonesia.

Article 4 (1) of UN Declaration on Minorities states:

“States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their *human rights and fundamental freedoms* without any discrimination and in full equality before the law”. (emphasis added)

Paragraph 3 Lund Recommendation explains:

“When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, *they must respect the human rights of all those affected*”. (emphasise added)

Moreover, paragraph 21 of the same document expounds:

“Local, regional, and autonomous authorities *must respect and ensure the human rights of all persons*, including the rights of any minorities within their jurisdiction” (emphasise added)

²⁴⁵ ‘Syariat Islam: Hukuman Cambuk Menjadi Titik Awal Penegakan Hukum’

<www.liputan6.com/view/0,104110,1,0,1137275646.html>, visited on 14 January 2006.

²⁴⁶ See generally ‘TNI di Aceh tak Tersentuh Hukum Cambuk’ <www.tempointeraktif.com/hg/nusa/sumatera/2005/09/29/brk,20050929-67287,id.html>, visited on 14 January 2006.

See also <www.acehkita.com/?dir=message>, visited on 14 January 2006.

This has been also analysed by Sukssi that the organ of the vested autonomy has to comply with human rights and minority rules²⁴⁷

4.3.3.3. The Poor Supervision Enforcement from DPRD NAD

Conceptually, UU 18/2001 gave DPRD NAD strong supervision functions, for instance, monitoring function, budget approval, right to inquire, seemed not working properly. The causes of this were:²⁴⁸

- 1) The Weberian concept of 'neo-patrimonialism', whereby there was a 'patron-client' relationship between most of the DPRD members and the Governor giving the Governor 'personalised power' and surrounded by competing 'communal-patron' of small elites which some were DPRD members,²⁴⁹
- 2) Members of DPRD NAD were economically vulnerable to bribery,
- 3) After winning the election, the Governor built a strong political alliance even to his opponents in election that afterwards sat in DPRD which subsequently the opposition function from DPRD was lacked²⁵⁰

4.3.3.4. Conclusion

There are causes why did UU 18/2001 meet its failure, which are:

- 1) GAM, one of the conflicting party, was not involved during the drafting process of UU 18/2001,
- 2) The implementation of autonomy was carried out along with war between GoI and GAM and not preceded by DDR (Disarmament, Demobilisation and Reintegration) process since otherwise achievement of certain level of security is one of the requirements for the success of autonomy implementation. ²⁵¹
- 3) Local political parties had no chance under UU 18/2001, as pointed out by Aspinall and Crouch.²⁵² Some of the political actors in the Government of NAD as well as DPRD had a strong relationship with the

²⁴⁷ M. Sukssi, *supra* note 93, pp. 394 & 396.

²⁴⁸ See generally Sulaiman, *supra* note 234, p. 2.

²⁴⁹ *Ibid.*, p. 33. Even the Governor had a strong alliance with the Chairman of DPRD, Muhammad Yus.

²⁵⁰ See generally *Ibid.*, pp. 30-34, 44. For instance, each DPRD member had to pay at least one million rupiah to his/her respective political party whom he/she represented to as the national political parties mostly gave money to the their respective local political parties close to the election only. Subsequently, most of them tried to find other incomes misusing their powers, which one of them by collaborating with the Provincial Government.

²⁵¹ See Nordquist, *supra* note 2, pp. 72-73. Nordquist contends that there will be no high autonomy durability preceding a higher degree of militarisation during the autonomy operation. See also *Disarmament, Demobilisation and Reintegration of Ex-Combatants in a Peacekeeping Environment: Principles and Guidelines*, United Nations Department of Peacekeeping Operations, <www.un.org/Depts/dpko/lessons/DD&R.pdf> visited on 5 October 2005, p. 1.

²⁵² T. Kell, Tim, 'The Rootedness of Rebellion: Aceh in the Grip of the Past', in *RSC Working Paper No. 24, Queen Elizabeth House Department of International Development, University of Oxford, July 2005*, <www.rsc.ox.ac.uk/PDFs/workingpaper24.pdf>, visited on 30 September 2005, p. 25.

- actors of national political parties that had power in the central government or DPR,²⁵³
- 4) No effective supervision by DPRD NAD towards corruption in the Provincial Government as both bodies had a strong relationship of ‘patron-client’,
 - 5) There was no involvement of 3rd party before making any autonomy law to build trust between GAM and GoI. Studies shows that there is a correlation between the involvement of 3rd party to the durability level of autonomy as in Åland and South Tyrol,²⁵⁴
 - 6) Autonomous region that still can be influenced by the central government power or has most shared-function with the central government would also be affected by corruption if the central government is corrupted too.

4.4. MoU

4.4.1. Background

The tsunami stroke on 26 December 2004 forced both GAM and GoI to have a discussion on the future of Aceh. CMI -an NGO in Finland that has many experiences of settling disputes- was chosen by both parties. The meetings were five rounds from January to August 2005. The first round was held on 29 January 2005 and ended by the signing of MoU on 15 August 2005.

During those five rounds, GAM had a series of meetings with other elements of Aceh people, in which consisted of twice in Malaysia and twice in Sweden. The latter were facilitated by The Olof Palme International Centre in Stockholm. The meetings were held secretly due to security reason. GAM changed its position from instead of demanding independence they demanded referendum, and finally they settled with self-government and local political parties establishment.²⁵⁵ MoU, thus, fulfilled adequate representation of Aceh people besides the disputing parties, despite that the other elements of Aceh people were involved indirectly.

4.4.2. The Content of MoU

The MoU consists of six main paragraphs, which are Governing of Aceh (Paragraph 1), Human Rights (Paragraph 2), Amnesty and Reintegration into Society (Paragraph 3), Security Arrangements (Paragraph 4), Establishment of the Aceh Monitoring Mission/AMM (Paragraph 5) and Dispute Settlement (Paragraph 6). The last three main paragraphs reflect the

²⁵³ See generally Sulaiman, *supra* note 234, pp. 30-34.

²⁵⁴ See Nordquist, *supra* note 2, pp. 72-73. See also Vieytes & Kallonen, *supra* note 101, pp. 249-250, 258, & 270. South Tyrol is asymmetry to the other regions and also for Åland since it was settled and facilitated by respective UN and the League of Nation.

²⁵⁵ Dialogue with Agung Wijaya, activist and researcher of democratisation in DEMOS (The Indonesian Centre for Democracy and Human Rights Studies), an NGO that focused on substantive democracy and human rights issues, based in Jakarta, on 8 September 2005. See Aguswandi, *supra* note 192, p. 26. Aguswandi affirms the important of civil society involvement as one of the important stakeholders in Aceh besides GAM and GoI to support peace-building process. See also Priyono, *supra* note 201, p. 531. GAM and GoI made a statement that it is important to involve element of civil society in Aceh representing the Aceh people following the implementation of UU 18/2001.

necessity of DDR process following by amnesty for GAM-involvement prisoners as one of pre-requisites of autonomy in solving conflict.²⁵⁶

4.4.2.1. Self-Governance

Based on Paragraph 1.1.2, all public affair sectors in conjunction with civil and judicial administration, except foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies falling under the authorities of GoI in accordance with the Constitution. Moreover, there will be recognition of separation of power between the legislature, the executive and the judiciary according to Article 1.4.1. This affirmation is very important since during Governor Abdullah Puteh, separation between particularly local executive and legislative was blurred due to political interest.

4.4.2.2. Legislative Arrangement

Regarding to international agreement, GoI's International agreement that related to Aceh will be consulted with and with the consent of Legislature of Aceh. This goes also for every decision with regard to Aceh by the Legislature of Indonesia will be consulted with and with the consent of the Legislature of Aceh. These are written on paragraph 1.2.1.

As for the administration arrangement, the name of Aceh and the titles of senior elected officials will be determined by the Legislature of Aceh after the next elections as set forth in paragraph 1.1.3.

Furthermore, the legislature of Aceh will not be entitled to enact any law without the consent of the Head of Aceh Administration up to 2009 in accordance with paragraph 1.2.4. It is because that the first legislature based on the forthcoming new autonomy law of NAG enshrined from MoU will be elected in 2009.

Concerning to Qanun, the Legislature of Aceh will redraft the legal code fore Aceh based on universal principles of human rights as provided by the ICCPR and ICESCR enshrined from paragraph 1.4.2.

4.4.2.3. Executive Arrangement

The arrangements in administrative affairs are administrative measures undertaken by GoI with regard to Aceh will be implemented in consultation with and with the consent of the Head of Aceh Administration in favour of paragraph 1.1.2, and the appointment of the Chief of the organic police forces and the prosecutors shall be approved by the Head of the Aceh administration based on paragraph 1.4.4. The same paragraph also states that the recruitment and training of them will be consulted and with the consent of the Head of the Aceh Administration in compliance with the applicable national standards.

4.4.2.4. Rights of Citizens, Election and Political Participation

²⁵⁶ See Nordquist, *supra* note 2, pp. 72-73. Nordquist contends that there will be no high autonomy durability preceding a higher degree of militarisation during the autonomy operation. See also *supra* note 251, p. 1.

According to paragraph 1.2.1, establishment of Aceh-based political parties and GoI shall create the political and establishment thereof within a year or the latest eighteen months from the signing MoU, which means along 15 August 2006 to 15 February 2007. Moreover, based on paragraph 1.2.2, the people of Aceh will have the right to nominate candidates for the position of all elected officials to contest the elections In Aceh in April 2006 and thereafter. Free and fair local elections will be organized under the new Law on the Governing of Aceh to elect the Head of the Aceh administration and other elected officials in April 2006 as well as the legislature of Aceh in 2009 in favour of paragraph 1.2.3. Full participation of all Aceh people in local and national elections will be guaranteed in accordance with the Constitution as mentioned in paragraph 1.2.6. Furthermore, to secure fair and just of the election, outside independent monitoring organizations will be invited to monitor the elections in Aceh and also local elections may be undertaken with outside technical assistance based on paragraph 1.2.7. Lastly, paragraph 1.2.8 denotes that there will be full transparency in campaign funds to ensure a clean and disclosure election process.

4.4.2.5.Economic, Finance and Natural Resources

According to Paragraph 1.3.1., Aceh has the right to raise funds by external loans. Moreover, the new feature is that Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia.

Concerning to taxes affair as mentioned in Paragraph 1.3.2, it has the right to set and raise taxes to fund official internal activities.

Regarding to trade and commercial affairs, Paragraph 1.3.2 and 1.3.6 writes that it has the right to conduct trade and business internally and internationally and to seek foreign direct investment and tourism to Aceh. It will enjoy free trade with all other parts of the Republic of Indonesia unhindered by taxes, tariffs or other restrictions.

Lastly, it will have jurisdiction over living natural resources in the territorial sea surrounding it. It is entitled also to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh as set forth subsequently in paragraph 1.3.3 and 1.3.4.

4.4.2.6.Education and Culture

Paragraph 1.1.5 grants Aceh to use regional symbols including flag, a crest and a hymn. Moreover, according to paragraph 1.1.7, the Institution of *Wali Nanggroe* with all its ceremonial attributes and entitlements will be established which this arrangement is the same as UU 18/2001.

4.4.2.7.Development, Transport, and Physical Infrastructure

Based on paragraph 1.3.5 and 1.3.7, Aceh conducts the development and administration of all seaports and airport within the territory of Aceh. It will enjoy direct and unhindered access to foreign countries, by sea and air.

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

4.4.2.8. *Kanun*

According to paragraph 1.1.6, *Kanun* will be re-established for Aceh respecting the historical traditions and customs of Aceh people reflecting contemporary legal requirements of Aceh. This provision is similar to UU 18/2001. However, there is a restriction under paragraph 1.4.2. The *Kanuns* and the legal code of Aceh will be redrafted by the legislature of Aceh based on universal principles of human rights as provided by the ICCPR and ICESCR.

4.4.3. *Comparison between MoU and UU 18/2001*

The comparison between MoU and UU 18/2001 can be observed as the following table:

Figure 4. Comparison between MoU and UU 18/2001

No.	Item	UU 18/2001	MoU
1.	Self-Governance (in general)	Economic sources, natural and human resources, promotion and enhancement of democracy, enhancement of public participation, implementation of social order based on local values, optimisation of DPRD's functions, application of Islamic Law (General Explanatory Note)	All public affair sectors in conjunction with civil and judicial administration (para. 1.1.2.a)
		Exclusion: self-defence (General Explanatory Note)	Exclusions: foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies falling under the authorities of GoI in accordance with the Constitution (para. 1.1.2.a)
		The executive body of NAD province is in the hand of the Local Government of NAD, which consists of Governor of NAD, assisted by Vice-Governor of NAD and other local government institution of NAD (Article 1.6, Article 9 para. 1)	The recognition of separation of power between the legislature, the executive and the judiciary (para. 1.4.1)
2.	Legislative Competency	DPRD NAD have functions, which one of them is legislation function (Article 9 para. 2)	GoI's International agreement that related to Aceh will be consulted with and with the consent of Legislature of Aceh (para. 1.1.2.b)
			Decisions with regard to Aceh by the Legislature of Indonesia will be consulted with and with the consent of the Legislature of Aceh (para. 1.1.2.c)
			The name of Aceh and the titles of senior elected officials will be determined by the Legislature of

			Aceh after the next elections (para. 1.1.3)
			The legislature of Aceh will not be entitled to enact any law without the consent of the Head of Aceh Administration up to 2009 (para. 1.2.4.)
			The Legislature of Aceh will redraft the legal code fore Aceh based on universal principles of human rights as provided vy the ICCPR and ICESCR (para. 1.4.2.)
		DPRD NAD have functions, which one of them, is budgeting function (Article 9 para. 2.)	N/A
		DPRD NAD have functions, which one of them, is supervision of local government policy (Article 9 para. 2)	N/A
		DPRD NAD have the authority related to governor and vice-governor election prescribed by this law (Article 9 para. 3)	N/A
		DPRD NAD has the right to inquiry and right to rise opinion (Article 9 para. 4), right to question, right to express suggestion and opinion, immunity right (Article 9 para. 6)	N/A
		The maximum membership number of DPRD NAD is 125 per cent from the provision prescribed by the law of national education (Article 9 para. 7 and its Explanatory Note)	N/A
3.	Executive Competency	N/A	Administrative measures undertaken by GoI with regard to Aceh will be implemented in consultation with and with the consent of the Head of Aceh Administration (para. 1.1.2.d)
		The Governor shall be responsible in policy decision making concerning stability, peace and security excluding police task (Article 11 para. 2)	The appointment of the Chief of the organic police forces and the prosecutors shall be approved by the Head of the Aceh administration. The recruitment and training of those above will be consulted and with the consent of the Head of the Aceh Administration in compliance with the applicable national standards (para. 1.4.4.)
		The Governor is the representative of the central	N/A

		government with regard to her/his position (Article 11 para. 3)	
		The governor shall be responsible to DPRD NAD with regard to her/his capacity as the head of region (Article 11 para. 4)	N/A
		The Governor shall be responsible to the President of Indonesia with regard to his/her capacity as the representative of the Central Government (Article 11 para. 5)	N/A
4.	Right of Citizens, Election and Political Participation	N/A	Establishment of Aceh-based political parties and GoI shall creates the political and establishment thereof within one year or the latest 18 months from the signing MoU (para. 1.2.1.)
		Electors in NAD have the right, which one of them is to elect head of regional government and deputy head of regional development (Article 18)	The people of Aceh will have the right to nominate candidates for the position of all elected officials to contest the elections In Aceh in April 2006 and thereafter (para. 1.2.2.)
		The election shall be undertaken by Independent Election Commission...(Article 13 par. 1); The members of Independent Election Commission consists of members of National Election Commission and members of society (Article13 par. 2)	Free and fair local elections will be organized under the new Law on the Governing of Aceh to elect the Head of the Aceh administration and other elected officials in April 2006 as well as the legislature of Aceh in 2009 (para. 1.2.3.)
		Elector is a citizen of Republic of Indonesia that domicile within NAD province whom is at least 17 year old above or has been married and of which his/her right to elect is not being revoked by the court (Art. 17)	Full participation of all Aceh people in local and national elections will be guaranteed in accordance with the Constitution (1.2.6.)
		Electors in NAD have the right, of which amongst, is to monitor the election process (Article 18) of which right can only be exercised post to the election (Explanatory Note)	Outside monitors will be invited to monitor the elections in Aceh. Local elections may be undertaken with outside technical assistance (par. 1.2.7.)
		Electors in NAD have the rights, of which one of them is to monitor the employment of the budget (Article 18) upon which rights can only	There will be full transparency in campaign funds (par. 1.2.8.)

		<p>be exercised post to the election (Explanatory Note); The election shall be...monitored by Election Monitoring Commission whereby each institution shall be set up by DPRD NAD respectively (Article 13 par. 1); The members of Election Monitoring Commission shall comprise of element of DPRD's members, National element of National Election Monitoring and independent members of society (Article 13 par. 3)</p>	
5.	Economy, Finance and Natural Resources	<p>NAD province may benefit domestic and/or foreign loans to cover some of its budget that must be approved by the DPRD for domestic loans and by DPRD and the GoI for foreign loans in accordance with law (Article 5 par. 2-4);</p>	<p>Aceh has the right to raise funds with external loans. Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia (par. 1.3.1.)</p>
		<p>NAD province shall receive balance funds comprising 90 percent of land and building tax, 80 percent from fee of right to land and building, 20 percent from private earning tax (Article 4 par. 3a)</p>	<p>Aceh has the right to set and raise taxes to fund official internal activities. Aceh has the right to conduct trade and business internally and internationally and to seek foreign direct investment and tourism to Aceh (par. 1.3.2)</p>
		<p><u>Balance Funds:</u> NAD province shall receive balance funds comprising 80 percent from forestry sector, 80 percent from general mining, 80 percent from fisheries, 15 percent from oil mining and 30 percent from natural gas mining (Article 4 par. 3a). <u>Autonomy Revenue:</u> 55 percent from oil mining income which will be dropped to 35 percent since the 9th annual period (Article 4 par. 4-5); 40 percent from natural gas income which will be dropped to 20 percent since the 9th annual period (Article 4 par. 4-5)</p>	<p>Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh (par. 1.3.3)</p>
			<p>Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh (par. 1.3.4)</p>

		N/A	Aceh will enjoy free trade with all other parts of the Republic of Indonesia unhindered by taxes, tariffs or other restrictions (par. 1.3.6)
		Sources of revenue of the Province of Nanggroe Aceh Darussalam consists of Local revenue of the Province of Nanggroe Aceh Darussalam; Balance funds; Provincial Revenue in connection with special autonomy; Regional loans; and Other permissible revenues (Article 4 par. 1); Local revenue of the Province of Nanggroe Aceh Darussalam, as meant is paragraph (1), consists of Regional tax; Regional retribution; zakat; Revenue from Regional owned companies and result from management other regional wealth which is separate; and other permissible regional revenue (Article 4 par. 2)	N/A
		NAD province may receive foreign aid after informing GoI (Article 5 par. 1)	N/A
		The Government of the Province of Nanggroe Aceh Darussalam can participate in capital sharing in state owned enterprises (BUMN) which are located and operating in the territory of the Province of Nanggroe Aceh Darussalam in an amount to be jointly agreed with the Government (Article 6 par. 1); Part of the Government's revenue originating from profit sharing from state owned enterprises (BUMN) which only operate in the Province of Nanggroe Aceh Darussalam, the amount of which shall be determined jointly by the Government and the Government of the Province of Nanggroe Aceh Darussalam, will be used to improve people's welfare in the associated areas (Article 6 par. 3)	N/A
6.	Education and Culture	NAD province may determine their own regional symbol, which includes	Aceh has the right to use regional symbols including flag, a crest and a hymn (par. 1.1.5)

		nature and grandiose emblem, that reflect their speciality and uniqueness (Art. 8 par. 1); The regional symbol which include nature as mentioned before, may not be a symbol of sovereignty and may not be treated as sovereignty flag in NAD province (Article 8 par. 2)	
		At least 30 per cent from the income shall be allocated for education expenses within NAD province (Art. 7 par. 5)	N/A
		Wali Nanggroe and Tuha Nanggroe are institutions that constitute as symbols for preservation to the undergoing cultural and customary life and integration of society in NAD province of which those aforementioned institutions do not constitute either as political nor governmental institutions (Article 10 par.1-2)	The Institution of Wali Nanggroe with all its ceremonial attributes and entitlements will be established (par. 1.1.7)
7.	Development, Transportation and Physical Infrastructure	N/A	Aceh conducts the development and administration of all seaports and airport within the territory of Aceh (par. 1.3.5)
		N/A	Aceh will enjoy direct and unhindered access to foreign countries, by sea and air (par. 1.3.7)
		N/A	GAM will nominate representatives to participate fully at all levels in the commission established to conduct the post-tsunami reconstruction or BRR (par. 1.3.9)
8.	Judicial Institution	N/A	All civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh (par. 1.4.5)
		Islamic Law Court in NAD province, as a part of national court system, shall be carried out by Mahkamah Syar'iyah, which is free from interference of other party (Article 25 par. 1); Mahkamah Syar'iyah is based on Islamic Law and national legal system, which will be regulated subsequently under Qanun (Article 25 par. 2)	N/A
		Mahkamah Syar'iyah shall consist of three levels from	N/A

		the trial court level within Sagoe and Banda, appeal court level within the province and the final appellate court level within the Supreme Court of Indonesia (Article 25 par. 1-2); The judges of Mahkamah Syar'iyah shall be assigned and dismissed by the president as the head of the state taking into account suggestion from ministry of justice after taking consideration from the Governor of NAD and the Head of Supreme Court (Article 26 par. 3)	
9.	Administration	The appointment of the Regional Police Chief of the Province of Nanggroe Aceh Darussalam shall be done by the Chief of the National Police of the Republic of Indonesia with the approval of the Governor (Article 21 par. 6)	The appointment of the Chief of the organic police forces and the prosecutors shall be approved by the head of the Aceh administration. The recruitment and training of those above will be consulted and with the consent of the Head of the Aceh administration in compliance with the applicable national standards (par. 1.4.4)
		Appointment of Head of the Prosecutor's Office of the Province of Nanggroe Aceh Darussalam shall be carried out by the Attorney General with the approval of the Governor of the Province of Nanggroe Aceh Darussalam (Article 24 par. 2)	
10.	Qanun/Kanun	Qanun of NAD province is regional law which implement the organic law within NAD province (Article 1 Number 8); Qanun may also put aside another law by following the principle of lex specialis derogat legi generalis and the Supreme Court have the authority to hold a material test thereof (General Explanatory Note)	Kanun will be re-established for Aceh respecting the historical traditions and customs of the people of Aceh and reflecting contemporary legal requirements of Aceh (par. 1.1.6)
		N/A	The legislature of Aceh will redraft the legal code for Aceh based on universal principles of human rights as provided by the ICCPR and ICESCR (par. 1.4.2)

From the table above, it is clearly seen that there is not many difference between those two instruments. It is obvious since MoU refers some of the arrangements from UU 18/2001 and hence, territorial autonomy is the concept that will be employed in Aceh. The only different is the word 'autonomy' with replaced by 'self-government', even though these terms tend to be the same in state practices. Nonetheless, the new important features of MoU that have a strong adherence with the solution of roots of the conflict are:

1) Local Political Party

It is very logic that this feature exists in MoU. The political reason is it is a 'ransom' consequence of GAM surrendering all of its weapons to GoI to be eliminated and replacing independence to self-government in one hand and GoI gives the opportunity for GAM to establish local political party to commutes its armed-struggle into political struggle.²⁵⁷

Besides that, there are advantages in such arrangement, which are:

- Political decentralisation. It is rather peculiar if autonomy delegates and gives some of state functions into region, whilst in another hand recruitment sources in government's positions and DPRD are dominated by centralistic political parties.²⁵⁸ This ambiguous idea had caused corruption in the previous Government of NAD and DPRD.,
- Local Political Party is more likely to have close relationship to its constituents in the concerning region than national political party,
- The existence of local political party will eventually increase political participation level of the local people since it is established and maintained by the local people, and moreover it will strive local people interest and needs

However, there is a fear that this local political party will be used by GAM to achieve its greater idea, which is succession of Aceh from Indonesia.²⁵⁹

Nonetheless, the fear is not legitimate enough to prevent the realisation of such arrangement, at least in international law perspective. Based on explanation on previous chapter, autonomy is an 'option' of Article 27 ICCPR for protection of minorities.²⁶⁰ Minorities can enjoy their various rights under autonomy arrangement. Moreover, Article 22 (1) ICCPR affirms the right to freedom of association. This means that establishment of local political party is a part of human rights, which is right to freedom of association. However, taking account Article 22 (2) ICCPR, the right to freedom of association is restricted by those which prescribed by law and those concerning the interest of national security or public safety, public

²⁵⁷ Dialogue with Dr. Edward Aspinall, expert in Indonesia and Aceh, 20 October 2005. See 'Respons Parpol Lokal Terbelah: Ada yang Khawatir, Ada yang Anggap Tak Berbahaya', *Kompas Daily Newspaper*, 19 July 2005.

²⁵⁸ H. T. Silalahi, 'Parpol Lokal, Siapa Takut?', *Kompas Daily Newspaper*, 19 July 2005, p. 6.

²⁵⁹ See generally 'Bukan Janji Tinggal Janji', *Tempo Magazine Edition 22-28 August 2005*, pp. 30-31.

²⁶⁰ Sukksi, *supra* note 93, pp. 384-385. See also Heintze, *supra* note 1, p. 15.

order, the protection of public health or morals or the protection of the rights and freedoms of others. In conjunction with Article 27 ICCPR, paragraph 3(2) GC 23 explains:

“The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party”.

This means that establishment of political party aiming on achieving succession from the state is not allowable since it endangers national security and sovereignty as well as territorial integrity of a State Party. Furthermore, Article 2(4) Minority Declaration states:

“Persons belonging to minorities have the right to establish and maintain their own associations.”

Establishing local political party is allowable under abovementioned article. Nonetheless, in conjunction with the consideration of the same document, it must contribute to ‘the political and social stability’ of State in which the minority lives. Therefore, establishing local political party heading to state succession does not have place within this document.

Based on customary international law, autonomy is aimed on preventing the minority concerned from self-determination and achieving a greater integration with the State. Likewise, Paragraph 8 Lund Recommendation denotes:

“The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes *the freedom to establish political parties based on communal identities* as well as those not identified exclusively with the interests of a specific community.”

This means that minority will get more effective participation in public life ‘within the state’ by letting it establishing its own local political party.

Even, establishing local political party as a form of freedom of association is recognised according to Article 28 of Constitution of Indonesia 1945, as following:

“Freedom of association and assembly, of verbal and written expression and others shall be prescribed by law”.

2) Human Rights Compliance of the Legal Code for Aceh

It is important that autonomous region has to comply with human rights.²⁶¹ Furthermore, Indonesia has ratified both ICCPR and ICESCR on 30 September 2005.²⁶² Therefore, any law which will be adopted by the forthcoming DPRD must take into account that such law is in accordance with ICCPR and ICESCR. It means that in the future, all valid Qanuns will

²⁶¹ Heintze, *supra* note 1, p. 19.

²⁶² ‘Indonesia Ratifikasi Kovenan Hak-Hak Sipil dan Politik’, <www.kompas.co.id/kompas-cetak/0510/01/In/2092522.htm>, visited on 15 October 2005.

be contested its compatibility with ICCPR and ICESCR. For instance, Qanun 12/2003 about Liquor, Qanun 13/2003 about Gamble, and Qanun 14/2003 about *Khalwat* that contain whipping sentence will be examined as to whether or not they breach prohibition of torture or cruel, degrading and inhuman degrading treatment as stipulated in Article 7 ICCPR.

The importance to respect human rights is stated also in Article 4 (1) UN Declaration on Minorities:

“States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their *human rights and fundamental freedoms* without any discrimination and in full equality before the law”. (emphasis added)

Moreover, Paragraph 3 Lund Recommendation affirms:

“When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, *they must respect the human rights of all those affected*”. (emphasise added)

Likewise, paragraph 21 of the same document states:

“Local, regional and autonomous authorities must respect and ensure *the human rights of all persons*, including the rights of any minorities within their jurisdiction”

The human rights compliance provision has been exercised in many states, like in Åland, whereby the Ålanders are guaranteed to enjoy international human rights.²⁶³

In the national level, it is also noteworthy that general human rights have been written within Chapter X A of the second amendment of the Constitution of Indonesia, such as right to life, right to education, equality before the law, right to profess and practice a religion, right to citizenship status, etc.

The next question is what human rights that correspond to the autonomous region and the local government? The derivative items as well as its supporting institutions within autonomous regions are as follows.²⁶⁴

Figure 5. *Human Rights and Corresponding Institutions in Autonomous Region*

No.	Rights and Institutions
1.	Freedom of speech, assembly and organization
2.	Freedom of religion, belief, language and culture

²⁶³ M. Sukssi, *supra* note 93, pp. 387-390.

²⁶⁴ A. Nababan *et al.*, *Towards an Agenda for Meaningful Human-Rights Based Democracy: Early Conclusions from the 1st and 2nd Round of the National Survey on Problems and Options of Indonesian Democratisation* (The Indonesian Centre for Democracy and Human Rights Studies, Jakarta, 2005) pp. 19-22

3.	Freedom to form political parties, recruit members, and campaign for office
4.	Citizens' participation in extensive independent civic associations
5.	Freedom to carry out trade union activity
6.	Freedom to press, art, and academic world
7.	Public access to and the reflection of different views within media, art and the academic world
8.	Gender equality and emancipation
9.	All social groups' – including women's – extensive access to and participation in public life
10.	Free and fair general elections
11.	Transparency, accountability and democracy within civic organisations
12.	The right to basic education, including citizen's rights and duties
13.	Government's consultation of people and when possible facilitation of direct participation in policymaking and the execution of public decisions
14.	Subordination of the government and public officials to the rule of law
15.	Political parties' independence from money politics and powerful vested interests
16.	Government independence of strong interest groups and capacity to eliminate corruption and abuse of power
17.	Equal and secure access to justice and the integrity and the independence of the judiciary
18.	The transparency and accountability of the executive/public civil servants, on all levels
19.	The capacity of the government to combat paramilitary groups, hoodlums and organised crime
20.	Membership control of political parties, and parties responsiveness and accountability to their constituencies
21.	People's direct contact with political representatives and the public services and servants
22.	Good corporate governance and business regulations in the public interest
23.	The right to employment, social security and other basic needs
24.	The independence of government from foreign intervention (except for UN conventions and applicable international law)
25.	Political parties' reflection of vital issues and interests among people
26.	The transparency and accountability of the military and police to elected government and the public
27.	Political parties' ability to form and run government
28.	The transparency and accountability of elected government, on all levels
29.	The rights of children
30.	Freedom from physical violence and the fear of it
31.	Government's consultation of people and when possible facilitation of direct participation in policymaking and the execution of public decisions
32.	Government support and respect for international law and UN human rights treaties
33.	Equal citizenship
34.	Democratic decentralization of government on the basis of subsidiary principle
35.	Political parties' absence from abusing religious or ethnic sentiments, symbols and doctrines
36.	The rights of minorities, migrants and refugees and reconciliation of horizontal conflict

Those rights and institutions are crucial enough to guarantee a long-lasting autonomy arrangement in Aceh.

3) Fair and Just Natural Resources and Other Economic Distribution

The only key to assure whether or not a natural resources distribution is just and fair is by involving all of the stakeholders of the concerning matter in participating the negotiation about the arrangement, which MoU and its negotiation process has fulfilled this qualification. However, Aceh's right to

set interest beyond what set by the Central Bank of Indonesia has raised heat debate.²⁶⁵ Despite the debate, there are some guidelines that must be considered. Article 4 (5) Minority Declaration states:

“States should consider appropriate measures so that persons belonging to minorities may participate fully in economic progress and development in their country”.

Moreover, Article 5 (1) of the same declaration denotes:

“National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities”.

MoU can be regarded as a document achieved by series of negotiation process between GoI and GAM as an appropriate measure in economic progress within the legitimate interests of the Aceh people. Thus, these arrangement are the best for the Aceh people particularly and all Indonesian generally. Moreover, Lund Recommendation Paragraph 20 stated:

“Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities...functions over which such administrations have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, *natural resources*, *economic development*, local planning functions, and housing, health, and other social services.”

Aforementioned provision infers that natural resources and economic development matters fall under the primary function of autonomous administration, which Aceh has the right to do so.²⁶⁶ This has been demonstrated also at previous chapter in Åland, South Tyrol and Basque Country.

4.4.4. The Establishment of the New Self-Government Institution in NAD

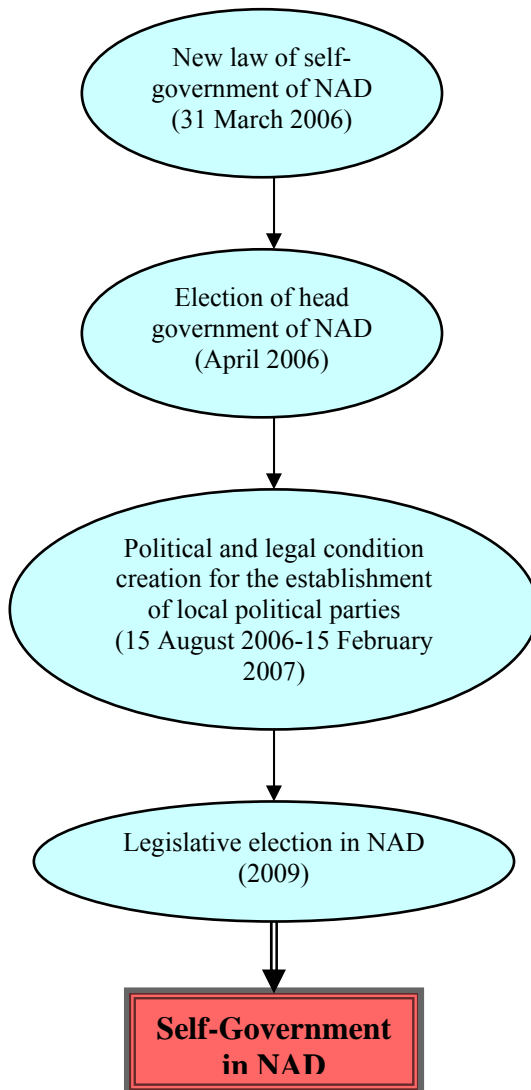
The MoU gives time-frame on the establishment of the new self-government institution in NAD. The new law of self-government of NAD that amended UU 18/2001 will be enacted lately 31 March 2006, taking MoU as its foundation. In April 2006, head of government of NAD will be elected based on the new law on autonomy. Along 15 August 2006 to 15 February 2007, GoI will create political and legal condition for the establishment of local political parties, which they will elect members of DPRD NAD. It is noteworthy that DPRD NAD resulted from the election 2004 will not have authority to enact any law without agreement from the Head of the

²⁶⁵ See generally, ‘Kesepakatan Berwajah Dua’, *Tempo Magazine Edition 22-28 August 2005*, pp. 32-33.

²⁶⁶ See Nordquist, *supra* note 2, p. 8. Referring to Heintz, one should know that concluding international agreements relating economic or cultural matters can be bestowed to the autonomous region.

Government due regard to absence of members of DPRD NAD elected from local political parties guaranteeing effective participation of Aceh people.

Figure 6. *Time Frame of the New MoU-Based Government*



4.5. Recommendations

Despite all of the greatness in MoU as a foundation of the forthcoming autonomy law, there are still things that have to be underscored:

- 1) The local political parties must not be aim on state succession and this must be stipulated in the forthcoming autonomy law. For the long run, it is very important to accompany such arrangement with inter-cultural and toleration study in education. Article 4(4) Minorities Declaration underscores that minority will take advantage from ‘inter-cultural study’ between minority and majority. Article 13 ICESCR also eludes that members of minority may accept education that “enables all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”. This will indirectly sow a comprehension that autonomy and local political party does not meant to revive ethno-centric awareness whilst the same time negating all existence outside the minority, including other ethnics and state itself. It means also to respect other existence outside it, to enhance welfare not only the autonomous

region itself, but also whole population within the State. In another way, autonomy is exercised in a mutualism-symbiosis pattern.

- 2) An institution that consists of experts whom appointed by Aceh people and GoI should be established, to solve conflict between GoI and provincial government and it may review the implementation of autonomy in Aceh, especially within this transitional time whereby trust-building between GAM and GoI is still being grown. Åland is a good example of this. As mentioned in previous chapter, in Åland, the Ålandic Delegation, consisting experts whose two members amongst are elected by the Council of Finland and the other two members elected by the Legislative Assembly of Åland and led by the Governor of Åland, employs as a dispute resolution institution and it can also give opinions to the Council of Finland.

This is amplified also in Paragraph 24 Lund Recommendation:

“Effective participation of national minorities in public life requires established channels of consultation for the prevention of conflicts and dispute resolution, as well as the possibility of ad-hoc or alternative mechanism when necessary. Such methods include...additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues”.

Moreover, Paragraph 22 of the same document underscores:

Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.

Lastly, Paragraph 23 shows:

The possibility of provisional or step-by-step arrangements that allow for the testing and development of new forms of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

Heintze also depicts that autonomy might be recalled into question whenever no satisfaction of the state or in particular of the group occurs.
²⁶⁷

- 3) Likewise, autonomy law is a *lex specialis* from any law and therefore must be prioritised upon other national laws that stipulate slightly the same matter. If it needs amendment or revision, the law itself must contain a provision that guarantees effective participation itself. This can be seen in Paragraph 22 Lund Recommendation that states:

²⁶⁷ Heintze, *supra* note 1, p. 29.

“Self-governance arrangements should be established by law and generally not be subject to change in the same manner as ordinary legislation”.

Moreover, under the same paragraph, Lund Recommendation gives an example of arrangement:

“Changes to self-governments arrangements established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both”.

In Åland, the Autonomy Act of Åland must have decision of at least two-third majority of the Legislative Assembly of Åland which eventually the Finnish Parliament can amend it.²⁶⁸ Whilst in Basque Country, the amended draft from the national parliament must be submitted by the Basque people through referendum after fulfilling minimum of one fifth of its members in the initiation of the amendments process.²⁶⁹

²⁶⁸ Palmgren, *supra* note 133, pp. 85-86.

²⁶⁹ Hannum, *supra* note 128, p. 175.

5. Conclusion

The conflict between GAM and GoI was entrenched because of no recognition to the distinctive character of Aceh people as an ethnic minority and no just and fair share of its natural resources that caused some of Aceh people suffered from poverty. After the military operation came in 1989 and 1999, the conflict was escalated demanding to bring human rights perpetrators into justice, which this was never fulfilled.

The first special autonomy law for Aceh, UU 18/2001, failed to solve the conflict. In the drafting participation level, it was failed because GAM did not participate it due regard to trust and security reason. In the implementation level, it was failed because of the close relationship between the government of NAD and DPRD of NAD as well the close relationship between the government of NAD with the national political actors resulted to corruption and lacked in supervision from DPRD NAD. Moreover, there was neither demilitarisation effort from GoI nor DDR in both parties. In the content level, no local political party was recognised.

However, the MoU seemed to be more promising since GAM finally participated the negotiations with GoI, which also involved some elements of Aceh people indirectly and facilitated by third party, CMI. Moreover, in Chapter 4 and 5 of the MoU, DDR scheme was finally regulated under the supervision of AMM following by amnesty to prisoners that involved in GAM. The human rights compliance provision, local political party arrangement and some new economy arrangement feature will support the durability of the forthcoming autonomy in Aceh. Therefore, the new forthcoming self-government law, having MoU as its cornerstone- will be foreseen as a viable solution to finally put the conflict to rest once and for all.

Despite those above, the law will have to regulate non-disintegration aim of the local political party and its accordance with the constitution. An independent institution consisting of experts appointed from Aceh people and representative from GoI will support this trust-building transitional phase between GAM and GoI and has the competency to solve conflict between GoI and autonomous region of Aceh and to review the autonomy implementation for the long run. Moreover, the forthcoming law must be *lex specialis* in the terms of giving a wide range of participation of Aceh people to amend or modify it and shall prevail other national laws having the same matter. The law also must be accompanied with inter-cultural studies in education field to sow awareness of integration, whilst the same time to maintain the distinctive identity of Aceh People.

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