



The Promise of Reconciliation: The Limits of Amnesty Law in Post-Conflict Aceh

By Harison Citrawan

June 2019

Working Paper
SHAPE SEA Research Project

Abstract

This article attempts to depict the contribution of the Gerakan Aceh Merdeka (GAM) amnesty law ('amnesty law') towards the promotion of reconciliation in post-conflict Aceh. Whilst amnesty laws can serve as solution to states in times of internal conflicts, they lack the ability to bring about sustainable peace and reconciliation. In the case of post-conflict Aceh, the amnesty law for former GAM combatants, combined with the Disarmament, Demobilization, and Reintegration (DDR) program as well as exclusive political participation and empowerment programs, appears unable to work effectively in a context characterized by deeply embedded power-sharing issues. More than a decade after the peace agreement, the envisioned win/win end of "will to empower" amnesty beneficiaries has been confined by the win/lose arrangement of "will to power" amongst them. In this framework, the GAM amnesty law creates class division among former combatants, the political elite, economic rank-and-files, and non-amnestied groups. This class division is essentially counterproductive to the reconciliation process enshrined in the amnesty law. Within the current post-conflict policy, which attempts to apply a developmental-welfare approach for former combatants, it appears that any future violent conflict reoccurrence should be anticipated by the government.

Key words: Aceh, amnesty law, reconciliation

Introduction

The amnesty law has been long reckoned as an alternative solution by the government to resolve protracted internal conflicts peacefully. As part of the transitional justice mechanism, putting past wrongs to rest is considered a possible means to build peace and security in a post-conflict society (O'Shea, 2002). Such a measure was also chosen by the Indonesian government in settling the prolonged self-determination conflict in Aceh. Amnesty towards former combatants was clearly enshrined under the "Helsinki Memorandum of Understanding" (MoU) in 2005 between the Government of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka or GAM) (Schulze, 2007). Under the MoU, the state granted (general or blanket) amnesty towards thousands of former GAM combatants, supplemented by a social reintegration mechanism for all amnesty beneficiaries.

Nonetheless, as the MoU has now been executed for more than a decade, Aceh is still considered the most prone-to-conflict province, especially during local political elections. Furthermore, the number of armed criminals (e.g. the recent threat of former combatant Din Minimi's splinter group) has also become a particular concern amongst the law enforcement officials and the central government (Djuli & Stange, 2017). Presumably, pardoning combatants' who committed criminal activities through

amnesty appears to be *prima facie* irrelevant in the promotion of reconciliation in the region. In this sense, reconciliation could simply refer to principles of basic national kinship in which former enemies “must not only live together non-violently but also respect each other as fellow citizens” (Crocker, 1999), and without any reconciliatory component.

This article shall depict the impact of the amnesty law towards the promotion of reconciliation in post-conflict Aceh from a transitional justice perspective (Teitel, 2014). Within this framework, the contribution of transitional justice in establishing reconciliation might be viewed in two ways: “first, as a product of the outcome of transitional justice mechanisms; and second, as embedded in the process of transitional justice as it unfolds” (Kerr, 2017, p. 122). It is evident, however, that the promotion of reconciliation and rule of law in a post-conflict society might involve a wide range of contributing socio-political factors (Arthur, 2016; UN Doc. S/2004/616, 2005). Thus, under the term ‘impact’, this article attempts to understand whether amnesty could catalyze sustainable peace and reconciliation or whether it instead preserves a culture of impunity in a post-conflict society.

This article is divided into three parts: first is a description of the process of creating amnesty clauses as part of the Aceh peace agreement. This is followed by a descriptive analysis on the current implementation of conditions of amnesty law. Lastly, it this article addresses the impact of the amnesty law with regard to the current socio-political dynamics in post-conflict Aceh.

Theoretical perspectives

Research method

Using “amnesty as a tool to peace and reconciliation” (Mallinder, 2008, p.46) as the main concept, this study applies a socio-legal perspective (Banakar, 2015) to delineate the application of the amnesty law under the MoU, and to describe its effects on the promotion of reconciliation in Aceh. This article is based on field research undertaken in Aceh, mainly in Banda Aceh City. In this regard, this article's author conducted several interviews with local government officials, former combatants, and civil society organizations. In order to gather more input on this issue, additional primary and secondary data was collected in Jakarta related to the human rights situation in Aceh, particularly after the amnesty policy. This shall be fruitful in order to describe trends of law enforcement and social conflict in Aceh, more specifically amnesty beneficiaries' involvement in crimes, violence, and other illegal activities.

Literature review

While studies on the impact of amnesty have been undertaken by several case studies, mostly focusing on Latin America (Cerqueira & Arteaga, 2016) and South Africa (Slye, 2000), post-conflict Aceh might provide a useful and unique perspective on how a rule of law-based post-conflict society could be established through pardons against people who committed crimes. In particular, within the current era of human rights protection the state ought to find a balance between the promotions of peace through legal measures, and endorsing rule of law in a post-conflict society (McAuliffe, 2013). As the amnesty policy appears to be alluring for states to resolve internal conflict through a peaceful manner, this study shall provide some parameters of the amnesty law that conform to the main objective of promoting reconciliation in a post-conflict society.

From a normative standpoint, a brief description on amnesty would be worth noting, particularly on how the international community defines a legitimate amnesty in the current era of human rights protection (Mallinder, 2017). Given a wide range of applications on amnesty in various countries, Freeman (2009) crafted a brief yet comprehensive definition of amnesty, as “an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offenses irrespective of whether the persons concerned have been tried for such offenses in a court of law” (Freeman, 2009, p. 13). Arguably, the existing studies on amnesty have been much more on the debate of peace versus justice in a post-conflict society (Greenawalt, 2000). Hence, conceptually the explication on the impact of amnesty in post-conflict situation has been challenging to be measured by both qualitative and quantitative methods. For instance, by using a large number of amnesty datasets, Daniels (2015) finds two possible ways which amnesties can have effect: “The first is as an incentive and this is explored with respect to rebel elites. In keeping with the assumptions of the transitional justice literature, the results consistently find that more generous amnesties can have positive effects, particularly unlimited ones. These amnesties help reduce fighting when given directly, but can also extent to indirect (when given to others) and long-lasting effects (given to others within the past three years). [...] amnesties during a negotiation process have greater impact, and can even support termination, a higher threshold for testing effect. The research supports many of the findings from case studies – generous amnesties and those given during negotiation can help bring peace” (Daniels, 2015, pp. 74-75).

Furthermore, the debate over the legality of amnesty decree from the perspective of international law has been pervasive, mainly given the proliferating norms and practices in the human rights area (Mallinder, 2017, pp. 11-12). In this context, the UN has actually delineated three balancing tests to

determine a 'legitimate' amnesty: (i) the process by which the amnesty was enacted; (ii) the substance of the amnesty legislation; and (iii) the domestic and international circumstances (Trumbull, 2007, p. 320). Thus in terms of process, it can be discerned that amnesty legislation ought to be enacted through a democratic procedure by providing channels of victims' approval in amnesty granting processes. Whereas on a substantial level, it should also be understood that as any amnesty beneficiaries should be otherwise held accountable for their actions, any decision to declare amnesty law ought to be able to ensure non-reoccurrence of the crime in the future. Lastly, the international circumstances require that an amnesty is necessary to end the hostility when the international community is not willing or able to intervene to stop the conflict.

Other studies also convey some parameters to deal with a legitimate amnesty from a human rights lens. Kushleyko (2015) outlines what she calls 'smart amnesty', which requires several elements to be fulfilled, including (i) amnesties must be democratic in creation with general involvement of the public and governmental structures in the drafting process; (ii) they must exclude from application those most responsible for war crimes, crimes against humanity, and other serious violations of international humanitarian and human rights law; (iii) they must foresee a mechanism of public procedure or accountability on recipients; (iv) they must give a chance to the victims to challenge an individual's claim to amnesty and provide them with some concrete benefit, usually in the form of reparations; and (v) they must be designed to facilitate a transition to a democratic regime, or represent a part of a society reconciliation mechanism (Kushleyko, 2015, p. 35). Moreover, a practical guideline in enacting amnesty is also formulated through an experts' study called the 2013 Belfast Guidelines on Amnesty and Accountability (Transitional Justice Institute, 2013) that provides parameters in formulating amnesty laws both in terms of procedure and substance.

Context: Findings and discussion

The 'Surrender and Amnesty' mode in the Aceh Peace Process

The Aceh conflict has been one of the most-researched internal conflicts in Indonesia (Schulze, 2004; Abubakar, 2015; Dibley, 2014). One particular interesting aspect of the conflict is the peace negotiation process. Historically, the process was realized due to various internal and external factors, particularly in 2005. The peace negotiation was founded to be "compelled by the combination of Western-led humanitarian intervention and intergovernmental financial aid, supported by perception management to match the operation's strategic goals" (Davies, 2006, p. 236).

The first talks were held in Helsinki on January 27, 2005, and four issues were addressed between the involved parties: First and foremost were issues related to security and demilitarization, including both basic principles (e.g. the number and role of Indonesian troops remaining in the province after a successful agreement) as well as thorny technical problems (e.g. how could GAM disarmament be arranged and guaranteed and how would it be timed in relation to reductions in Indonesian troop numbers?). Second, topics concerning monitoring and enforcement were important due to failures made in the Cessation of Hostilities Framework Agreement (COHA), which eventually contributed to its collapse. Yet the Government of Indonesia (GoI) resisted calls to ‘internationalize’ the effort and thus, composition, size, and negotiation powers of any monitoring team were likely to be a contested issue. A third important topic, although less likely to create difficulties in practice, concerned amnesty and economic compensation for former GAM members, which had figured prominently in the approaches made by the Kalla camp to GAM leaders in the preceding months. Lastly, the future political status of Aceh was by far the most difficult issue, and at the beginning of talks, there was no public sign that either side would soften its position on this specific matter (Aspinall, 2005, p. 72).

Viewing the MoU as a comprehensive peace deal formulated under a so-called ‘balanced equation’ between the GoI and GAM, compared to several practices in the past, Aspinall (2015) stated that, however, both parties have very different interpretations of key elements of the accord, in which GAM views the political provisions of the MoU as providing for wide-ranging autonomy that does not fall far short of independence. Some government officials believed that the MoU required only minor political reforms and hoped that GAM members, once they received their amnesty and were reintegrated into the Acehnese society, would soon cease to be an important political force (Aspinall, 2005, p. 67). Hence, the bottom line of both perspectives would be power-sharing commitment, which was deemed a possible and preferable solution in resolving hostilities between parties. At the same time, the amnesty law - tied up with economic compensations for former combatants - was arguably perceived by both parties as a practical medium to achieve such an outcome of agreement. Nonetheless, rather than affirming the ‘balanced equation’ situation, the dynamics during amnesty formulation under the peace agreement instead describe an “ironic sign of the government’s strength”, as Aspinall (2008, p.19) identified. During both the negotiations and the implementation of the MOU, it was never suggested by either party that the amnesty would apply to individuals from the government side. For government officials, doing so would have been an admission of culpability that would have undermined all their previous assertions that government troops had operated lawfully, and that a framework for protecting human rights was already in place.

Finally, it was then under such dynamics that the amnesty provisions formulated under the peace agreement as stated below:

3.1 Amnesty

3.1.1 GoI will, in accordance with constitutional procedures, grant amnesty to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of this MoU.

3.1.2 Political prisoners and detainees held due to the conflict will be released unconditionally as soon as possible and not later than within 15 days of the signature of this MoU.

3.1.3 The Head of the Monitoring Mission will decide on disputed cases based on advice from the legal advisor of the Monitoring Mission.

3.1.4 Use of weapons by GAM personnel after the signature of this MoU will be regarded as a violation of the MoU and will disqualify the person from amnesty.

In relation to this, from a normative point of view, under the amended 1945 Indonesian Constitution the President has the authority to issue amnesty and abolition by considering the Dewan Perwakilan Rakyat's (House of Parliament) opinion. It is important to note that under the Constitution as well, there are three different legal terms of pardon that could be declared by the President, namely amnesty, abolition, and clemency. This division consequently implies different material and procedural aspects to be applied (Pascoe, 2017). Since the independence era in 1945, Indonesia has enacted twenty-eight amnesty decrees (some combined with abolition). Based on historical data, ranging from the amnesty for the 1950 Dutch military activities up to the 2005 GAM amnesty decree, it seems that the 'oblivion' policies were issued towards political-nuanced crimes, such as rebellion, subversion, and other attacks that may impair Indonesia's sovereignty (Citrawan, 2016). Thus given there is no strict and clear mechanism in issuing amnesty and abolition, the decision in granting amnesty falls dominantly within political considerations rather than legal ones.

Consequently, the so-called 'surrender and amnesty' mode has been predominantly chosen by the GoI during the MoU drafting process. This stance was evidently found in most comments and criticism of state officials - either the government, the military, or politicians. As a result, this made the process "often difficult to draw a clear dividing line between mainstream official discourse about the negotiations and comments expressing dissatisfaction with them" (Aspinall, 2008, p. 34). The 'surrender and amnesty' mode is also reflected under the Presidential Decree 22/2005 on the Granting of General Amnesty and Abolition for Everyone Involved in GAM issued by former President Susilo Bambang Yudhoyono. In its consideration, the Decree clearly aims to "achieve national reconciliation

in order to affirm national unity, human rights protection, fulfillment, and promotion, and to resolve the conflict permanently” (Presidential Decree 22/2005). To achieve this goal, the Decree rules two substantial points: first the granting of general amnesty and abolition towards everyone on behalf of the GAM, whether in the country or abroad, who: (i) has or has not surrendered to the authority; (ii) is exercising or has completed the exercise of corrections by the authority; (iii) has been investigated or arrested during an investigation, or a court proceeding; (iv) has been condemned, whether it has reached a final decision or not; (v) currently serving or has completed the service inside the correctional facilities. Secondly, as for the legal effect, those who fit into the amnesty beneficiary category shall enjoy annulment and abolishment of any criminal proceedings. On the other hand, the amnesty decree also set exclusionary clauses for amnesty beneficiaries by ruling that the decree shall not be applicable to those who “conducted crimes that do not have causal relationship or has no direct relevancy with the GAM” or those who were “involved with the GAM by using arms after the Decree has been entered in force.”

Arguably, given the prolonged nature and the complexity of the conflict, such a broad wording in the Decree caused technical difficulties in implementing amnesty. Related to this, Aspinall (2008, pp. 19-21) mentions two major controversies in implementing the amnesty parameters: the first was how liberal the amnesty would be applied; the second concerned the one-sided nature of the amnesty and its implications for possible future human rights investigations and legal processes. As for the first issue, the debate emerged over the criteria of ‘crime carried out on behalf of the movement’, as the GoI interpreted that only those who were involved in ‘makar’ (crime of treason) could benefit the amnesty. As this dispute on criteria within the MoU implementation unfolded, the Head of the Aceh Monitoring Mission subsequently turned the situation by bringing in Christer Karphammar, a Swedish Judge. Judge Karphammar then set up two parameters to consider the criteria, including: “connection of the crime to GAM’s struggle and its seriousness” (Aspinall, 2008, p. 20). As a result, as Aspinall (*ibid*) notes, “much of the time for assessment was spent on determining whether a prisoner’s crime had been carried out on behalf of the movement.” The amnesty process was finally wrapped up on August 14, 2006.

Time to forget: Amnesty and the dynamics of empowerment

As this article attempts to apply amnesty as a tool reconciliation as conceptual framework, it would be significant to further discuss the dynamics of reconciliation in today’s post-conflict Aceh. In relation to this and despite the wide range of discussions in defining reconciliation, it should be understood that

reconciliation by nature is a process rather than a definite goal (Lederach, 1997). In a wider sense, as Avonius (2009) argues in the context of post-conflict Aceh, reconciliation measures “must be built into a wide range of processes that take place in the peace process, starting from rearranging everyday life relations in communities and rebuilding relationships between civilians and state authorities to finding new (or revived) methods for dispute settlement and establishing truth about and ensuring justice in past and present human rights violations” (Avonius, 2009, p. 124). Departing from this definition and adopting Crocker’s (1999) explication on several categories of reconciliation, it becomes evident that the objectives of reconciliation shall cover ranging from thinner reconciliation that focuses on the cessation of hostility, up to a thicker one where former enemies must not only live together non-violently but also respect each other (Mallinder, 2008, p. 48; Moon, 2004).

Based on Mallinder’s amnesty dataset (2008), the government created two ways to justify the relationship between amnesty law and the perceived reconciliation. Firstly, the goal of amnesty is to promote reconciliation as national unity. Secondly, amnesty is used to call for reconciliation as forgetting the crimes of the past. Based on such understanding, in order to draw the nexus between amnesty law and reconciliation in post-conflict society, this article's author argues that any conditions attached to amnesty law could be viewed as a reflection of the very idea of reconciliation envisioned by the drafters. Based on section 3.1 of the MoU, it is quite apparent that rather than putting the agreement under a ‘balanced equation’, the provisions shed more of a reflection of the state’s dominance during the negotiation. This argument is self-evident as the amnesty grant shall only be applicable to GAM-related persons, which consequently excludes the state - in particular the military (Stange & Missbach, 2018).

From a legalist point of view, this imbalance situation conveys the government’s attempt to hide its alleged human rights violations during military operations in Aceh (Abubakar, 2015; John Doe VII v. Exxon Mobil Corp.) Furthermore, the sole crime of ‘makar’ that falls within the amnesty object affirms this situation by directly putting the combatants as legally wrong. While ‘makar’ is considered a crime under the Indonesian Criminal Code, the application of it has been potentially used by the state to silence political enemies. Moreover, from a human rights standpoint, the legality of criminalizing ‘makar’ is highly debated, especially during the current post-reformation era (Amnesty International, 2008). It thus could be argued that in the context of the Aceh conflict, the arrangement to forget past crimes through amnesty was evidently taken without a clear reference to human rights abuses that occurred during the conflict. By leaving human rights norms and principles aside, it would be difficult to imagine that any instruments formulated in the peace process could transform a divided society

(Laplante, 2009). Under the existing norms it is also worth to note that the Aceh Amnesty Decree was taken separately and distinct from the role of the victims. The lack of victims' participation during the GAM amnesty decree discussion created another challenge in the attempt to promote reconciliation within the post-conflict society. Nonetheless, pinpointing the above human rights abandonment assumption with the Amnesty Presidential Decree 22/2005 provisions, it could be argued that there seems to be a shift of rhetoric employed by the government, as to subsequently mention some key phrases of 'reconciliation', 'national unity', 'human rights protection, fulfillment, and promotion', and 'to resolve the conflict permanently' as the purpose of the decree. Consequently, despite the apparent surrender and amnesty mode during the peace process, the Amnesty Decree aims to serve both as a way to promote reconciliation as national unity, and at the same time calls on people to forget all alleged human rights violations that happened during the conflict. Substantially, this kind of contradictive purposes shall put the decree's purpose to protect, fulfill and promote human rights into question. From a broader lens, in conjunction with amnesty decision under the MoU provisions, there are several further conditions that should be fulfilled by parties, mainly the GoI, as stated below:

3.2 Reintegration into society

3.2.1 As citizens of the Republic of Indonesia, all persons having been granted amnesty or released from prison or detention will have all political, economic and social rights as well as the right to participate freely in the political process both in Aceh and on the national level.

3.2.2 Persons who during the conflict have renounced their citizenship of the Republic of Indonesia will have the right to regain it.

3.2.3 GoI and the authorities of Aceh will take measures to assist persons who have participated in GAM activities to facilitate their reintegration into the civil society. These measures include economic facilitation to former combatants, pardoned political prisoners and affected civilians. A Reintegration Fund under the administration of the authorities of Aceh will be established.

3.2.4 GoI will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh.

3.2.5 GoI will allocate suitable farming land as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows:

- a) All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
- b) All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

c) All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

3.2.6 The authorities of Aceh and GoI will establish a joint Claims Settlement Commission to deal with unmet claims.

3.2.7 GAM combatants will have the right to seek employment in the organic police and organic military forces in Aceh without discrimination and in conformity with national standards.

At this point, one might consider that the issue of economic, as it appears to be alluring for the former combatants, emerged and eventually dominated the discourse between parties (Mietzner, 2006). As an implementation of the MoU, the Aceh Reintegration Body (BRA) was established as an independent agency to facilitate former combatants' reintegration processes. In addition to this, the MoU also ruled the establishment of social services intended for the victims. In this case, the term 'victim' stands for 'all civilians who suffered a demonstrable loss' during the conflict. Consequently, due to such welfare assistance provisions the BRA chairman position has been a 'hot-seat' up to even today as it implies authority to manage a large sum of funds. Two years after the MoU, the BRA was established without a strong legal basis. It was then in 2013 that the Aceh by-laws (Qanun) on BRA were finally enacted. Generally speaking, the BRA activity focused on five points of peace development initiative, namely: peace empowerment and development planning, promoting security and conflict prevention, promoting political consolidation, transformation in peace development, and conflict resolution. It is evident that the BRA's reintegration programs were attached to the social services unit (Dinas Sosial) at the Aceh Government, before the BRA was established independently on 27 January 2017. These programs included several dimensions of reintegration with primary focus on social empowerment towards the victims affected by the conflict. While the empowerment involves a broad area of social field, the BRA emphasizes particularly on (i) economic integrations through providing labors, equipment, and training skills in the fields of: forestry, farming, and convection industry; (ii) land distribution that would be executed in 2018; (iii) assisting communal activities such as grave renovation and health service assistance for victims; and (iv) financial assistance towards 1,500 social rehabilitation beneficiaries.

On the other hand, the structural body of BRA has been frequently changing according to the mandate of Head of BRA. The structure of BRA consists of four members to cover 23 districts. Between the time lapses, the social program was hard to be implemented effectively due several challenges: First, the program did not have solid legal foundation, which resulted in dissatisfactions amongst the targeted

beneficiaries. As an independent governmental agency, the absence of a legal basis before 2017 resulted in the Agency suffering from a lack of funds to exercise its mandate. Besides, as the Agency was structurally attached to the Social Unit under the Aceh (provincial) Government during the initial phase of its program, this created bureaucratic complications in facilitating former combatants' reintegration into the society. Secondly, in conducting its mandate to empower the former GAM member, the lack of credible data and information about the victims remained a significant challenge for the Agency to elaborate, and to be able to target the amnesty law beneficiaries accurately. Thirdly, the empowerment and economic assistance programs were difficult to execute as the Agency did not have sustainable resources while still attempting create established market chains.

The dynamics of combatants' reintegration processes found its reflection through a division within the BRA itself. During the last eight years, the structure of BRA has usually been changing due to the government's mandate and the demand to reshuffle. In this respect, the current head of BRA has replaced a number of personnel and put some 'important names' into position within the new structure. These 'important names' involve several interest groups, including former GAM affiliated persons, former political prisoners, and military/police personnel. Against these competing interest groups, the BRA has a serious challenge to address as some of the members that have been outstated might have bad intentions in the future, which potentially could instigate violent propaganda to the people in their districts.

The (political) dynamics in the BRA thus implicate the victims' reparation program. In practice, the victims are not fully satisfied with the current peace-building initiatives because of the significant gaps in Aceh's transitional justice measures. Currently, the reintegration addresses only one aspect of transition which is the marginalization of vulnerable victims with a too broad of a focus on short-term rather than long-term economic assistance (Clarke, 2015). Many financial aid benefactors, including former combatants, evidently expressed their dissatisfaction and requests in front of officers rather than delivering their messages through the local extended body. A few of them even resorted to violence and rebel actions. Moreover, considering themselves as victims, many of the military members have yet to be empowered by the BRA. The situation gets even more complicated as some of the victims took more advantages of the grants by extending their loss of property by including their relatives and families.

It also appears that the structural problem inside the BRA, especially related to the representation-sharing debate, implies a broader reflection on how politics work between the government and society.

Based on this phenomenon, and with the important mandate to promote and create peace between former combatants, victims, and the Acehnese society as a whole, it is evident that the BRA has actually been trapped by an internal power-sharing dilemma. Practically, rather than attempting to pursue the envisioned long-term national reintegration, the conditionality of amnesty has been taken for granted by both parties - the former GAM combatants and the government - through putting their energy into short-term, pragmatic issues and interests. At the same time, as the Aceh Truth and Reconciliation Commission has just commenced its activities in 2018, there seems to be a wide gap between reintegration and reconciliation efforts. As a result, the failure to resolve the situation comprehensively may considerably implicate the long-term effect of peace agreement to create reconciliation and to promote rule of law in the society (Staub, 2000). It could then be concluded that, while the amnesty law attempts in principle to forget the past, the dynamics in empowering former combatants, as the main condition of amnesty law, have become a major obstacle in achieving reconciliation in post-conflict Aceh.

Sustaining peace and the limits of amnesty

Whilst on the one hand the GAM amnesty law has made a significant contribution in suppressing the external self-determination movement, it is arguably trapped somewhere between power-sharing demand and the envisioned reconciliation on the other hand. Under this understanding, there should apparently be a clear corresponding relation between amnesty decree and power-sharing dilemma in resolving the conflict. In this sense, power-sharing is sought to “offer parties institutionalized insurance that they will not face future policies that are discriminatory, retributive, or otherwise harmful to their interests” (Sriram, 2008, p. 19). Based on peace-building operation practices, such consociational approaches may involve five types of practices: (i) territorial autonomy and confederal arrangements, (ii) polycommunal ethnic federation, (iii) group proportional representation in administration, and consensus decision rules, (iv) proportional electoral system in a parliamentary framework, and (v) acknowledgment of group rights or corporate non-territorial federalism. In the context of post-conflict Aceh, the current political and social dynamics appear to be twofold to cover the exclusive local politics, and the relation between central and local governments (Palmer, 2010).

The (political) dynamics within the former combatant integration body directly affirm Ansori's (2012) broader findings related to the current post-conflict segregation in Aceh. After the MoU, at least three types of conflict appeared in the region: firstly, a rather ‘internal’ conflict produced by the competition among former GAM elites over “political positions, privileges, facilities, business activities, and

contracts with major state-owned enterprises” (Ansori, 2012, p.35); secondly, the conflict that “produced by the inequitable distribution of the rewards between the elites and the rank-and-file combatants in the post-Helsinki period”; and thirdly, “involves ethnic hostility between the dominant Acehese ethnic group, who were prominent supporter of the GAM, and the diverse non-Acehese ethnic groups, who were generally opponents of GAM” (ibid). These types of post-conflict segregation were articulated by some incidents, mainly during the local election process (Stange & Patock, 2010).

In line with these characteristics, rather than positing this interest group exclusively as former combatant, it would be best to regard them as amnesty beneficiaries for the sake of amnesty impact analysis. Taking this argument into account, there appears to be a class division amongst amnesty beneficiaries during the current post-conflict peace building in Aceh. Such a division, in combination with the existing conflict segregation, could be best depicted into several categories: First, the political-elite amnesty beneficiary: This shall include the contesting actors pursuing political positions, and could be extended to the surrounding high profile actors who formerly affiliated themselves with GAM (Sindre, 2014). Secondly, economically low-ranking amnesty beneficiaries: This includes several former combatants who were often involved in government-funded project lobbying and sometimes extortion (Official, 2017). Lastly, the third group would be the splinter non-amnestied former combatants. Evidently, such a division has by and large several implications towards the intensity of violence in the region.

Practically, the local elections in Aceh have been mostly involving former GAM combatants - categorically the beneficiaries of ‘blanket’ amnesty in 2005 (Palmer, 2010). It is plausible to regard this situation as a positive direct implication of amnesty law, as Jeffery (2012) argues: “Although free and fair elections are only the start of the process of establishing and consolidating democracy in Aceh and many challenges remain – not least of all those posed by the fact that members of GAM have little experience of governing, and the ever-looming potential for conflict with the Indonesian government over natural resource revenues and past human rights violations - Aceh’s current democratic status certainly marks a significant improvement on the political situation in the province prior to the Helsinki MoU, improvements that could not have taken place without GAM combatants being granted amnesties” (Jeffery, 2012, p.76).

Related to this, based on the 2015 Habibie Center’s Violence Intensity Index, Aceh is classified as ‘low intensity’ violence region amongst other 32 provinces. As for comparison, its neighboring province North Sumatra posits ‘mid-intensity’ of violence (The Habibie Center, 2015). The Index comprises

eight aspects of source of violence, covering: natural resources, public services, local election, identity, vigilante, state's violence, criminality, and separatism. It is particularly important to highlight that, among those aspects, Aceh scores the highest violence intensity on local election-based violence. During 2014, the report mentions 89 violent incidents, causing the loss of life of four people, 33 persons being injured, and 30 buildings damaged. In the province, most incidents occurred in Aceh Utara Regency, contributing 31 incidents that caused one casualty, 10 injuries, and nine damaged buildings. Furthermore, the number of local election-based violence in Aceh is almost three times the amount of that in 2014 in Papua, another special autonomous province. Given a wide spectrum and special characteristics endowed to the region under the 2006 Aceh Special Autonomy Law, such a phenomenon illustrates the dynamics of post-conflict Aceh's local politics (Trisni, 2014).

Moreover, while public service has been arguably well-running during the post-conflict situation, the statistics show a quadrupling number of crimes from 2005 up to 2015 in the province (Central Statistic Agency, 2016). This also includes the existing social interaction that put the former combatants 'beyond' the regulations (Grayman, 2016). Such phenomenon became more evident when the non-amnestied splinter group turned into a local security threat in 2015. The self-proclaimed GAM-affiliated Din Minimi group, for instance, subsequently demanded amnesty as a bargain for crimes they committed (IPAC, 2015). It is widely known within society that the group members were provided occupations by the Aceh government to run parking businesses at a traditional market in downtown Banda Aceh. As for this case, up to the present however, the state is yet to enact an amnesty law for this group.

Furthermore, in terms of human rights violations, based on the National Commission of Human Rights' annual report in May 2015, there were three reports on the allegation of torture in Aceh (NHRC, 2016). Although the Aceh Reintegration and Rehabilitation Body played a considerable role in contributing to economic development in the province through the use of funds, crimes and violence reemerge shortly after. This phenomenon might signify one particular challenge of amnesty grant, namely the lack of deterrent effect argument (Leebaw, 2011).

While amnesty seems to be alluring for any states to cease hostility internally, it does not bring reconciliation as a direct implication (Freeman, 2009). In this sense, the amnesty law combined with the DDR program, special political participation, and empowerment programs appear to be unable to work in tandem with occurring violence based on power-sharing issues (Greiff, 2009), The desired will to

achieve a win/win situation benefitting both hostile parties seems to have been confined to a win/lose arrangement of will to power (Boudreau, 2011, p. 25).

While the current policy attempts to apply a developmental-welfare approach towards mainly former combatants, local politics have fulfilled the elite's self-sufficiency which has in turn excluded the envisioned former combatants' empowerment program. Moreover, amnesty beneficiaries as instant receiver - especially of international funds provided to Aceh, have divided the classes even further. The government's failure to tackle this situation seriously might bring back conflict based on economic inequalities and lack of fairness (Ross, 2005). As a consequence, it appears the future challenge of potential violent conflict reoccurrence should be anticipated by the government (A/HRC/21/46, 2012).

By taking the UN balancing test to determine whether an amnesty accommodates the interest of justice and peace, it could be argued that the Aceh Amnesty Decree is found to be flawed, not just in terms of its implementation and outcomes, but also in its process and substance. It is clear that the United Nations Secretary General (UNSG) report provides that, "carefully crafted amnesties can help in the return and reintegration of both [displaced civilians and former fighters] and should be encouraged, although, ... these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights" (S/2004/616, 2004). Considerably, while the decision to grant amnesty would fall under state's domain to predict and act, it is the virtue of human rights in relation justice, conflict history, and local culture that the amnesty law is lacking (Lambourne, 2014). Even worse, the absence of a clear concept and implementation of reintegration and victims' reparation programs push the imagined reconciliation further away than expected (Sandoval, 2017).

Conclusion

The practice of amnesty in resolving violent conflict in Aceh has been very dynamic from the enactment process up until to its implementation. This article finds that the amnesty provisions were a clear sign of the state's dominance rather than an effort to reconcile broken relationships. The already narrow classification of 'amnesty beneficiary' covering only former GAM-affiliated people was soon limited further for acts considered as 'makar' (treason) under Indonesian's criminal code. Thus, the decision to forget past crimes was evidently not taken into consideration for a complete transitional justice framework. In this sense, the participatory nature of amnesty along with a vision for further human rights protection seemed abandoned by both hostile parties. Arguably, this situation implicates

the outcome of the policy. Moreover, the ever-lasting complaint of victims up until today as well as the lack of capacity to run the reintegration body ought to be seen as negative impacts of the state's decision to forget the past. In line with current political conflict segregation in Aceh, the amnesty law creates a class division amongst beneficiaries, namely those who contested in local politics ('the political-elite amnesty beneficiary'), low-ranking beneficiaries who have been struggling for economic improvements, and splinter non-amnestied persons - that is the self-proclaimed GAM-affiliated group using amnesty as a bargain of crimes committed. In order to escape this utilitarian approach to amnesty accordingly, the state ought to weigh any considerable aspects of process and substance in enacting a legitimate amnesty, including issues revolving around accountability (Teitel, 2015).

Reference:

Abubakar, M. B. (2015). *The Politics of National Integration in Indonesia: An Analysis of the Role of Military in the Province of Aceh*. Lhokseumawe: Unimal Press.

Amnesty International. (2008). *Jailed for Waving Flag: Prisoners of Conscience in Maluku*. Amnesty International.

Ansori, M. H. (2012). From Insurgency to Bureaucracy: Free Aceh Movement, Aceh Party and the New Face of Conflict. *Stability 1(1)*, 31-44.

Arthur, P. (2016). Notes from the Field: Global Indicators for Transitional Justice and Challenges in Measurement for Policy Actors. *Transitional Justice Review*.

Aspinall, E. (2005). *The Helsinki Agreement: A more Promising Basis for Peace in Aceh?* Washington D.C: East-West Center Washington.

Aspinall, E. (2008). *Peace without Justice? The Helsinki Peace Process in Aceh*. Geneva: Centre for Humanitarian Dialogue.

Avonius, L. (2009). Reconciliation and Human Rights in Post-Conflict Aceh. In B. Bräuchler, *Reconciling Indonesia: Grassroots Agency for Peace* (pp. 121-137). Oxon: Routledge.

Banakar, R. (2015). *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity*. London: Springer.

Boudreau, T. E. (2011). When the Killing Begins: An Epistemic Inquiry into Violent Human Conflict, Contested Truths, and Multiplex Methodology. In T. Matyók, J. Senebi, & S. Byrne, *Critical Issues in Peace and Conflict Studies: Theory, Practice, and Pedagogy* (pp. 19-42). Maryland: Lexington Books.

Central Statistic Agency. (2016). *Criminal Statistic 2015*. Jakarta: Central Statistic Agency.

Cerqueira, D., & Arteaga, L. (2016). *Challenging the Amnesty Law in El Salvador: Domestic and International Alternatives to Bring an End to Impunity*. Due Process of Law Foundation.

Citrawan, H. (2016). The Past is Another Country: Designing Amnesty Law for Past Gross Human Rights Violators. *Indonesia Law Review*, Vol. 6 (2), 225-244.

Clarke, K. M. (2015). 'We Ask for Justice, You Give Us Law': The Rule of Law, Economic Markets and the Reconfiguration of Victimhood. In C. D. Vos, S. Kendall, & C. Stahn, *Contested Justice: Politics and Practice of International Criminal Court Interventions* (pp. 272-301). Cambridge: Cambridge University Press.

Crocker, D. A. (1999). Reckoning with Past Wrongs: A Normative Framework. *Ethics & International Affairs*, 43-64.

Daniels, L.-A. (2015). *Buying Peace: Amnesty as a Tool in Ending Civil Wars*. Doctoral Thesis. Barcelona: Universitat Pompeu Fabra.

Davies, M. N. (2006). *Indonesia's War over Aceh: Last Stand on Mecca's Porch*. Oxon: Routledge.

Dibley, T. (2014). *NGOs as Agents of Peace in Aceh and Timor Leste*. New York: Palgrave Macmillan.

Djuli, M. N., & Stange, G. (2017). Die Reintegration Ehemaliger Kombattanten in Aceh. In *Peacebuilding in Aceh: Vom Tsunami zur Scharia* (pp. 81-111). Regiospectra.

Freeman, M. (2009). Amnesties and DDR Programs. In A. C. Patel, P. De Greiff, & L. Waldorf, *Disarming the Past: Transitional Justice and Ex-Combatants* (pp. 36-85). New York: Social Science Research Council.

- Freeman, M. (2009). *Necessary Evils: Amnesties and the Search for Justice*. New York: Cambridge University Press.
- Grayman, J. H. (2016). Official and Unrecognized Narratives of Recovery in Post Conflict Aceh. *Critical Asian Studies* 48(4), 528-555.
- Greenawalt, K. (2000). Amnesty's Justice. In R. I. Rotberg, & D. Thompson, *Truth v. Justice: The Morality of Truth Commission*. Oxfordshire: Princeton University Press.
- Greiff, P. d. (2009). Establishing Links Between DDR and Reparations. In A. C. Patel, P. de Greiff, & L. Waldorf, *Disarming the Past: Transitional Justice and Ex-Combatants* (pp. 132- 157). New York: Social Science Research Council.
- IPAC. (2015). *Din Minimi: The Strange Story of an Armed Group in Aceh, Indonesia*. Jakarta: IPAC.
- Jeffery, R. (2012). Amnesty and Accountability: The Price of Peace in Aceh, Indonesia. *The International Journal of Transitional Justice* Vol. 6, 60-82.
- United States District Court for the District of Columbia, United States. *John Doe VII v. Exxon Mobil Corp.*, 09- 7125.
- Kerr, R. (2017). Transitional Justice in Post-Conflict Contexts: Opportunities and Challenges. In R. Duthie, & P. Seils, *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (pp. 116-139). New York: International Center for Transitional Justice.
- Komisi Nasional Hak Asasi Manusia. (2016). *National Commission of Human Rights Annual Report*. Jakarta.
- Kushleyko, A. (2015). Accountability v. "Smart Amnesty" in the Transitional Post-Conflict. In N. Szablenska, & D. Bachmann, *Current Issues in Transitional Justice*. Springer Publication.
- Lambourne, W. (2014). Transformative Justice, Reconciliation and Peacebuilding. In S. Buckley-Zistel, T. Beck, C. Braun, & F. Mieth, *Transitional Justice Theories* (pp. 19- 39). Oxon: Routledge.

- Laplante, L. J. (2009). Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes. *Virginia Journal of International Law*, 916-982.
- Lederach, J. P. (1997). *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington: United States Institute of Peace Press.
- Leebaw, B. (2011). *Judging State-Sponsored Violence, Imagining Political Change*. New York: Cambridge University Press.
- Mallinder, L. (2008). *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide*. Oxford: Hart Publishing.
- Mallinder, L. (2017, 3 23). *Atrocity, Accountability, and Amnesty in a 'Post-Human Rights World'?* Belfast: Ulster University.
- McAuliffe, P. (2013). *Transitional Justice and Rule of Law Reconstruction: A Contentious Relationship*. Oxon: Routledge.
- Mietzner, M. (2006). *The Politics of Military Reform in Post-Subarto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance*. Washington: East-West Center.
- Moon, C. (2004). Prelapsarian State: Forgiveness and Reconciliation in Transitional Justice. *International Journal for the Semiotics of Law* 17, 185-197.
- O'Shea, A. (2002). *Amnesty for Crime in International Law and Practice*. New York: Kluwer Law International.
- Palmer, B. (2010). Service Rendered: Peace, Patronage, and Post-Conflict Elections in Aceh. In E. Aspinall, & M. Mietzner, *Problems of Democratisation in Indonesia: Elections, Institutions and Society* (pp. 286-306). Singapore: Institute of Southeast Asian Studies.
- Pascoe, D. (2017). Legal Dilemma's in Releasing Indonesia's Political Prisoners, *Indonesia Law Review Vol. 7 No.3, 315-340*.

Ross, M. L. (2005). Resources and Rebellion in Aceh, Indonesia. In P. Collier, N. Sambanis, & (eds.), *Understanding Civil War: Evidence and Analysis* (pp. 35-58). Washington: The World Bank.

Sandoval, C. (2017). Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition. In R. Duthie & P. Seils (eds.), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (pp. 166-201). New York: International Center for Transitional Justice.

Schulze, K. E. (2004). *The Free Aceh Movement (GAM): Anatomy of a Separatist Organization*. Washington: East-West Center Washington.

Schulze, K. E. (2007). *Mission Not So Impossible: The Aceh Monitoring Mission and Lessons Learned for the EU*. Berlin: International Policy Analysis: Friedrich Ebert Stiftung.

Sindre, G. M. (2014). Internal party democracy in former rebel parties. *Party Politics*, 1–11.

Slye, R. C. (2000). Amnesty, Truth, and Reconciliation: Reflections on the South African Amnesty Process. In R. I. Rotberg, & D. Thompson, *Truth v. Justice: The Morality of Truth Commission* (pp. 170-188). Oxfordshire: Princeton University Press.

Sriram, C. L. (2008). *Peace as Governance: Power-Sharing, Armed Groups and Contemporary Peace Negotiations*. New York: Palgrave Macmillan.

Stange, G., & Missbach, A. (2018). The Aceh Peace Process: Wheeling and Dealing behind Closed Doors. In U. Fiona, S. D. Negara, & D. Simandjuntak (Eds.), *Aspirations with Limitations: Indonesia's Foreign Affairs under Susilo Bambang Yudhoyono* (p. 231). Singapore: ISEAS Publishing.

Stange, G., & Patock, R. (2010). From Rebels to Rulers and Legislators: The Political Transformation of the Free Aceh Movement (GAM) in Indonesia. *Journal of Current Southeast Asian Affairs*, 95-120.

Staub, E. (2000). Genocide and Mass Killing: Origin, Prevention, Healing and Reconciliation. *Political Psychology Vol. 21(2)*, 367- 382.

Teitel, R. (2014). *Globalizing Transitional Justice*. New York: Oxford University Press.

Teitel, R. (2015). Transitional Justice and Judicial Activism - A Right to Accountability? *Cornell International Law Journal Vol. 48*, 385-422.

The Habibie Center. (2015). *Violence Intensity Index in Indonesia Report 2015*. Jakarta: Sistem Nasional Pemantauan Kekerasan Indonesia.

Transitional Justice Institute. (2013). *The Belfast Guidelines on Amnesty and Accountability*. Belfast: University of Ulster.

Trisni, S. (2014). The Performance of Free Aceh Movement as a Ruling Government 2007-2012. *Andalas Journal of International Studies Vol. 3(1)*, 17-33.

Trumbull, C. P. (2007). *Giving Amnesties a Second Chance*. Berkeley J. Int'l Law.

UN Doc A/HRC/21/46. (2012). *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Pablo de Greiff. Human Rights Council: UNGA.

UN Doc S/2004/616. (2004). *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*.