Policy Brief

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

1. **Time to Forget: Amnesty, Human Rights & the Dynamics of Empowerment**

Based on several practices around the world, there are two ways applied by national governments to justify the relationship between amnesty law and attempted reconciliation (Mallinder, 2008). Firstly, amnesty's aim is to promote reconciliation as national unity. Secondly, amnesty is used to call for reconciliation as forgetting crimes of the past. Under such understanding, in order to draw the nexus between amnesty law and reconciliation in post-conflict societies, any conditions attached to amnesty laws shall reflect the very idea of reconciliation envisioned by the drafters (Kushleyko, 2015; Trumbull IV, 2007). Based on the Helsinki Peace Agreement between the Government of Indonesia and Gerakan Aceh Merdeka (GAM), it is quite apparent that the provisions shed more of a reflection of the state's dominance in the negotiation rather than putting the agreement under a 'balanced equation' (Aspinall, 2008).

This argument is evident as the amnesty grant shall only be applicable for GAM-related persons, which consequently excludes the state - in particular the military. From a legalist point of view, this imbalance conveys the government's attempt to hide its alleged human rights violations that happened during military operations in Aceh (Abubakar, 2015). Furthermore, the sole crime of 'makar' (treason) that falls within the amnesty object affirms this situation by directly incriminating the combatants. While 'makar' is considered a crime under the Indonesian Criminal Code, the application of it has been evidently used by the state to silence the state's political enemies (Citrawan, 2016). Moreover, from a human rights standpoint, the legality of criminalizing 'makar' is highly debated, especially in the current post-reform era.

Evidently, the agreement to forget crimes committed in Aceh in the past through amnesty was taken without a clear reference to human rights abuses that occurred during the conflict. By leaving human rights norms and principles aside, it is difficult to imagine how any formulated instruments in the peace process could transform the divided society (Laplante, 2009). At this point, it is also worth noting that the Amnesty Decree could be regarded as separated and distinct element from the role of victims. While in principle, a legitimate amnesty should be based on a democratic process, the lack of victims' participation during the GAM Amnesty Decree discussion is a great challenge particularly for the promotion of reconciliation within the post-conflict society.

2. **Sustaining Peace, and the Limits of the Amnesty Law**

The practice of amnesty in resolving violent conflict in Aceh was highly dynamic, starting from the enactment process up to its implementation. In conjunction with the decision to pardon, there are several further conditions that should be fulfilled by both parties but mainly the government itself, for instance through reintegration programs. As an implementation of this program, the Aceh Reintegration Body (BRA) was established as an independent agency whose authority is to facilitate former combatants' reintegration processes into society, mainly by using economic-welfare approaches. Due to this approach, the BRA Chairman's position has been a 'hot-seat' up until today as it implies authority to manage large sums of funds. The reintegration program, however, works separately from reconciliation run by the Aceh Truth and Reconciliation Commission.

The (political) dynamics within the BRA directly affirm Ansori's broader findings related to the current post-conflict segregation in Aceh (Ansori, 2012). After the MoU was signed, there were at least three types of conflict in the region: Firstly, a rather 'internal' conflict produced from the competition among former GAM elites over "political positions, privileges, facilities, business activities, and contracts with major state-owned enterprises." 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 the third, "involves ethnic hostility between the dominant Acehnese ethnic group, who were prominent supporter of the GAM, and the diverse non-Acehnese ethnic groups, who were generally opponents of GAM." These types of post-conflict segregation were articulated by some violent incidents, mainly during the local election process (Stange & Missbach, 2018).

In line with these characteristics, there appears a class division amongst amnesty beneficiaries during the current post-conflict peace building. Such a division, in combination with the existing conflict segregation, could be best depicted into several categories as well: First, the political-elite amnesty beneficiary, including the contesting actors pursuing political positions. This can also be extended to the surrounding high profile actors who formerly affiliated with GAM. Secondly, the economically low-ranking amnesty beneficiaries. This includes several former combatants who were often involved in government-funded project lobbying and sometimes extortion. The third group would be the splinter non-amnestied former combatants.

Evidently, such a division has severe implications for the intensity of violence in the region (Djuli & Stange, 2017). Also, complaints lodged by victims up to the present and 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 the current political conflict segregation in Aceh and the absence of an integrative vision between reintegration and reconciliation, the Amnesty Law in fact creates a class division amongst the former combatants. In order to escape from this utilitarian approach towards amnesty accordingly, the state ought to weigh in any considerable aspects of process and substance in enacting and implementing the Amnesty Law.

3.   Policy recommendations

Based on the research conclusion, several recommendations were formulated as follows:

•   The Aceh Government has to conduct data recollection on all amnesty beneficiaries and a comprehensive evaluation of the combatants reintegration program;

•   The Aceh Government needs to implement its commitment to reconciliation through strengthening and empowering the Aceh Truth and Reconciliation Commission (TRC), especially in terms of funding and infrastructure;

•   The Aceh Reintegration Body should work in line with the Aceh TRC so that the entire developmental assistance programs are put under the reconciliation framework;

•   The Central Government, specifically the Ministry of Law and Human Rights shall set up human rights-based parameters to serve as guiding principles in enacting the Amnesty Law.