



Inclusion of ex-combatants: Aceh, Indonesia as a case study

Munawar Liza Zainal

By way of background, Aceh, a region in the north of Indonesia, experienced a long period of civil conflict from 1976 to 2005, in which the Free Aceh Movement (GAM in the Indonesian acronym) sought to separate from Indonesia. Peace negotiations between GAM and the Indonesian government led to a Memorandum of Understanding (MOU) signed on 15 August 2005, known as the Helsinki MOU. The Helsinki MOU provided for self-government for Aceh as a region with special autonomy within Indonesia. The MOU included provisions on political participation, economic matters and disarmament and reintegration of GAM members.

Who was included in the peace-building and constitution-building processes? Were any categories of combatants excluded?

During the peace negotiation process, the civilian leadership of GAM always included the combatants throughout the process. After the contents of the Helsinki MOU were agreed upon, the result was communicated to the representatives from civil society and the combatants. Only after their consent was given were the contents finally agreed. With this strategy, the peace agreement which was signed on 15 August 2005 was willingly accepted by the combatants in the field.

The Aceh Monitoring Mission was then established to monitor the implementation of peace process. The Aceh Monitoring Mission comprised representatives from the government of Indonesia, GAM, and the member states of the European Union and Association of South East Asian Nations that contributed to the monitoring mission.

Besides GAM political figures, combatants were included. They were placed at the Aceh Monitoring Mission headquarters in Banda Aceh as well as in districts all over Aceh. The combatants' inclusion was vital in this process. Under the decommissioning and troop withdrawal agreements, the combatants had the right to receive aid and to give recommendations as to the civilian victims in need of medical assistance. GAM were also given several positions in the Rehabilitation and Reconstruction agency established after the 2004 tsunami in Aceh.

After signing of the Helsinki MOU, the Aceh Reintegration Agency was established. Point 3.2.3 of the MoU stipulated:

[Government of Indonesia] 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".

Implementing this point of the peace agreement has proven to be most difficult and 14 years after the signing of the Helsinki MoU, the reintegration process is still not complete. Until today, no

suitable lands for agriculture have been given as compensation to former combatants, former political prisoners or to victims of the conflicts. There has been no social security or job opportunities as promised.

The creation of the Aceh Reintegration Agency raised the issue of excluded categories of combatants as the militias formed by the military during the conflict demanded the same rights as the GAM. After several heated discussions, it was decided that only civilian victims of conflict were entitled to receive aid from the Aceh Reintegration Agency.

At what points in the constitution-building processes were ex-combatants included?

In relation to constitution-building, it was the responsibility of the Government of Indonesia to make a new law for Aceh's self-government. Several universities in Aceh prepared drafts for the new law, which were examined closely by GAM and civil society groups. In the end there were three draft laws from Aceh: one from the universities, one from the Aceh parliament, and one that GAM drafted together with civil society groups.

Unfortunately, none of these drafts from Aceh were taken into consideration by Jakarta. The draft taken to the national parliament was drafted by the Indonesian Interior Ministry. The new Law No 11 2006, known as *Law on Governing of Aceh* (LOGA), was not in line with the Helsinki MOU. Although GAM protested strongly, they accepted it in the hope that the law would be revised in the future. But this never happened and the law remains, until his day, unrevised.

In future efforts for revising the LoGA, the national government must sincerely allow greater room for GAM and the Aceh government to prepare their own draft. This is also affirmed in the latest Aceh Monitoring Mission annual report to the European Union, which stated: 'In case a legislative process for reviewing the LoGA should be initiated, the provincial government and/or parliament should be free to elaborate their own draft revision of the law for submission to the national government for further deliberations'.

Inclusion of ex-combatants in law making

The key to 'inclusion' of former GAM combatants in political life is their participation in the legislative and executive elections through the local parties. Article 1.2.1. of the Helsinki MOU stipulated that the Indonesian government would 'facilitate the establishment of Aceh-based political parties that meet national criteria'. This was a significant provision as local political parties are banned in other parts of Indonesia.

This process has achieved mixed results. It was very successful on one hand, in that any member of GAM has the right to form or join local (Aceh) political parties, as well as Indonesian national parties. On the other hand, however, this process has also led to breaking up GAM unity, and is often abused by certain elements in the national Government to weaken GAM unity, which they had failed to do during the conflict.

After being elected to governmental and parliament posts, former GAM combatants have had wide opportunity to produce local laws. But, due to lack of competency, many local laws passed are not satisfactory as planned.

The LoGA is a special law that regulates the special and autonomous region for Aceh. It is *lex specialis*, but conflicts can arise between the LoGA and other Indonesia law. The former GAM combatants in parliament call this regulation conflict.

To avoid a collision with other national regulations that would be made, LOGA article 8 clause 2 stipulates that any laws that are to be drafted by the Indonesian parliament in relation to Aceh must be consulted and made with the consent of the Aceh parliament. Article 8 clause 3 states that government regulations should be made with the consultation and consent of the Governor of Aceh. But the fact is, contradictions with regulations often arise. For example, Government Regulation/Peraturan Pemerintah No 3 of 2015, states that almost all authorities in Aceh are controlled by the Central Government. This Government Regulation was introduced without consultation and concern of the Governor of Aceh and is against spirit of the MoU Helsinki.

Some Aceh laws have been held to be in conflict with national law. For example, Article 246 of LoGA stipulates that Aceh has the right to have its own regional flag. This mechanism would be regulated by the Qanun (by-law) drafted by the Aceh Parliament. In fact way before the Qanun was drafted by Aceh Parliament, the government passed Government Regulation/Peraturan Pemerintah No 77 of 2007, that restricted Aceh from having its crescent-star as their regional flag. This Government Regulation is lower in hierarchy than the LoGA. It is also subject to consultation with and approval from the governor, which was not implemented. In 2013, Aceh Parliament passed a Qanun (law) for the flag and symbol of Aceh. Qanun No 3 of 2013 stated that Aceh's flag is the crescent and star. Since the Qanun was passed, it was considered to be in contradiction to the Government's Regulation, and the issue of the flag is still not resolved and it could not be raised in Aceh.

In many processes, the Government of Indonesia is still very intensely suspicious towards GAM. The Qanun of the flag and the Qanun of Wali Nanggroe (the symbolic, traditional head of state) could not be properly implemented because of the suspicion of the Indonesian military.

Another issue is that the Helsinki MOU provided that Aceh would establish a Truth and Reconciliation Commission and Human Rights Court for Aceh. But no Human Rights Court has been set up. The Truth and Reconciliation body has been established but it has met with serious challenges from different quarters because the local law (Qanun) which is weak, is being applied.

What lessons might be drawn for constitution building in countries in similar circumstances?

While the Indonesian government prepared the LoGA in accordance with the provisions of the Helsinki MoU, the involvement of GAM and former GAM combatants was very little and minimized. The result is that the LoGA is not as expected, leading to conflicting regulation.

One of the strategies of GAM is to control the parliament and government. In so doing it would have a greater opportunity to draft the local laws. However, the former GAM combatants have no role whatsoever in the process of constitution building at the national level. Local political parties are not involved in electing the national parliament. Several GAM combatants have attempted to be elected to the national parliament through national parties but many were unsuccessful. As a result, the channel of communication between Jakarta and Aceh is yet to be effectively and properly built.

Munawar Liza Zainal

Munawar Liza Zainal is the Co-founder of Aceh National Party, Indonesia. He was Mayor of Sabang City, Aceh from 2007 to 2012 and a member of GAM representative at Aceh Monitoring Mission (AMM). He is also the co-founder of Sekolah Perdamaian dan Demokrasi Aceh (SPD), School of Peace and Democracy, Aceh