

## CHAPTER I INTRODUCTION

### A. Background

The international community has set torture as a form of attack that is very brutal and unacceptable for human dignity and everyone in the region of the world had been freed from torture. The prohibition against torture and degrading treatment or punishment that is inhuman and degrading clearly prohibited in countless international conventions, either universal or regional. Therefore, unconditional prohibition of torture is recognized internationally as an obligation to any officer of the state, regardless of whether the government has ratification of human rights instruments. However, despite the universal condemnation of torture has been voiced, terrible abuses are still happening all over the world.

According to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, which both provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. According to UDHR and ICCPR, create a convention which is The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture) which was recognized on 18 December 2002 by the General Assembly UN was created.

The United Nations Convention against Torture contains a number of obligations for States Parties aimed to prohibit and prevent torture. This

is important, especially as the Convention against Torture contains a definition of torture that is internationally recognized and obliges States Parties to ensure that acts of torture are offenses under their national laws.

Convention against Torture states that the prohibition against torture is a right which can't be excluded, in other words, prohibition against torture should be applied in every situation.

The Convention also requires States Parties to take effective measures to prevent torture and other forms of treatment or punishment that is cruel, inhuman or degrading. In this case, the Convention against Torture contains a number of obligations for States Parties, which are designed to prevent and prohibit actions, such as: a review of interrogation techniques; prompt and impartial investigation; prohibition of using of any statement obtained through torture as evidence in court; the right to redress and compensation

In Sudan, there was a conflict happened which involved element of torture. Since Sudan has gained independence in 1956, this nation has experienced various conflicts in the country. The conflict in Sudan is so diverse, because of the ongoing conflict in Sudan. Sudan has caused it to be categorized as the poorest and backward nation in Africa because it is not able to manage its resources.

Prolonged conflict in Sudan has led imbalance development process, uneven economic growth due to the activities of development and conflict that always happened in Sudan before. The wide range of issues of

this conflict caused the process of development and growths in Sudan stunted and impressed the way place and tend to decrease each year. This made the public felt fulfilled their rights, gotten their welfare, performed various forms of discontent and rejection so that the system of government has been increasingly becoming unstable and volatile. At the end of the appearance some form of conflict is a civil war in Sudan, especially in Darfur.

Darfur is located in the west of Sudan which covers more than 2.5 million km<sup>2</sup> with a population of about 6 million people, consisting of 80 tribes which have grouped into two groups: Arab and black African groups predominantly Islam or Muslims.

Since Sudan gained independence, which the region of Darfur in Sudan politically and economically marginalized by the central government. These made most of the population of Darfur felt treated unfairly.<sup>1</sup> Moreover, it caused a number of educated people from Darfur to form a political movement around the 1960s to fight for Darfur parallel with the others. In the late 1980s, it led tribes such as tribal farmers' Fur and Masalit tribe face conflicts not only with the Arab tribes, but also with the central government. As a result, African tribes (Fur, Masalit, and Zaghawa) have formed an armed resistance group in the late 1990s and in 2001 they launched sporadic attacks against buildings police and army head quarters. In 2002, the third tribe decided to join the rebel groups,

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<sup>1</sup> Robert O. Collins, "Disaster in Darfur" <http://ias.berkeley.edu/Africa/Courses/lectures/Rcollins-DisasterInDarfur.doc>, downloaded on 28 October 2014

namely the Sudan Liberation Army or the Sudanese Liberation Army (SLA) or Jaisy Tahrir al-Sudan Justice and Equality Movement, or The Justice and Equality Movement (JEM) or Jaisy Tahrir al-Sudan. On April 25, 2003, attacked on El Fasher airport has considered as the starting point of this civil war in Darfur.

Major conflict that occurred in the region of Darfur at first began to appear and it revealed to the surface on February 26, 2003 until the end of 2006 with the emergence of a variety of battle casualties were stained with either death or displacement has occurred throughout 2003 until the end of 2006. In 2004, several thousand people, especially the non-Arab population had been killed and millions more had been driven from their homes due to the humanitarian crisis in Darfur, which is carried out by the Janjaweed militant.

The government of Sudan took revenge by giving a counter-attack on the rebel action using the Janjaweed forces for physical violence, mental and sexual. The government didn't take a resolution, and there were no effort from Sudan to stop the destruction, International Criminal Court finally interference the case according to the Rome Statute.

The other case that resemble to the Sudan case was Aceh case. The conflict in Aceh, on the northern tip of the Island of Sumatra in Indonesia, was an increasingly brutal war in which both sides have violated human rights with impunity. The two sides are the Indonesian security forces and the armed insurgency known as GAM (Gerakan Aceh Merdeka), an



acronym for the Free Aceh Movement. In 1990-1998, Indonesian Military Operation in Aceh also known as Military Operation Area (Daerah Operasi Militer/ DOM) was launched to against the separatist movement of GAM. During that period, the Indonesian army practiced large-scale and systematic human rights abuses against the Acehnese by arbitrary executions, kidnapping, torture and disappearances and torching of villages. Villages which were suspected of harboring GAM operatives were burnt down and family members of the suspect militants were kidnapped and tortured.

Many efforts were used, even using a third party as a mediator, such as the Henry Dunant Centre (HDC), but failed because of the difference purpose between Indonesia and GAM. Since HDC failed, the other mediator tried to defuse the conflict. The negotiator from Crisis Management Initiatives (CMI), CMI began to initiate peace talks in Aceh in January 2005. Various meetings and informal dialogue has been successfully discussed, even the most sensitive issue between Indonesia and GAM. GAM finally wants to withdraw the claim of independence and accept special autonomy. On the 15<sup>th</sup> of August 2005, the Memorandum of Understanding agreed between GAM and Indonesia in Helsinki.

According to these two cases, the population in Darfur and Aceh were obtained a torture indirectly and directly from the government. This kind of torture is against absolute of human rights, which state that violate the rights will be considered as a serious violation of human rights. Sudan

had signed United Nations Convention against Torture on 4 June 1986 and Indonesia ratified the Convention on 28 October 1998. Therefore, Researcher wants to find out about the torture that against the human rights and make a comparison from two difference states' cases resolution under international law according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thus Researcher choose the title **“THE IMPLEMENTATION OF CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A COMPARATIVE STUDY BETWEEN ACEH AND DARFUR CONFLICTS)”**

### **B. Research Questions**

Based on the background of the research above, the research questions are as follows:

- a. Whether Aceh conflict can be categorized torture against human rights according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?
- b. Whether Darfur conflict can be categorized torture against human rights according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?
- c. What is the resolution for Aceh and Darfur conflicts under the International Law

## C. Research Purpose and Benefits

### 1. Research Purposes

The purposes of this research are:

a. To describe and analyze whether Aceh conflict can be categorized torture against human rights according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

b. To describe and analyze whether Darfur conflict can be categorized torture against human rights according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

c. To describe and analyze the resolution for Aceh and Darfur conflicts under the International Law.

### 2. Research Benefits

This research is expected to give benefits such as:

a. To gain a better understanding regarding the torture against human rights according to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

b. To gain better information about torture and other cruel, inhuman or degrading treatment or punishment case, especially Aceh and Darfur conflicts.

c. To gain a better information about the resolution of the case against human rights under the International Law.