

CHAPTER V CONCLUSIONS, LIMITATIONS AND RECOMMENDATIONS

A. Conclusions

1. **First issue (Aceh Conflict categorized torture against human rights according to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment):**

Aceh conflict is categorized in torture according to the Article 1 of United Nation Convention against Torture based on three characteristic such as: severe pain or suffering in physical or mental, inflicted on a person for obtaining information or confession, and the consent of the public official. Severe pain or suffering in physical or mental was experienced by the Acehnese when they were beaten, raped, and got sexual assault. Inflicted on a person for obtaining information or confession has happened on the rebels who were captured by the Government to get the information of the others members of rebels.

The public officials were referred to the military of the Government.

Indonesia had done the obligation by the peace settlement under Habibie's authorization till SBY's authorization. In Indonesia, human rights can be protected by through repressive laws which obtain legal protection by seeked the General Court. The General Court which intended was the Human Rights Court that investigated by National Commission on Human Rights (Komnas HAM) regulated in article 18 Act No.26 of 2000 about Human Rights Court.

Based on thus result, Aceh conflict is categorized torture according to the United Nation Convention against Torture. The advantages of

Indonesia in protecting human rights that Indonesia have specifically regulation of human rights which is Act No. 39 of 1999 about Human Rights, besides there was a special court to settle human rights court under national law that is Human Rights Court, this court regulated in Act No.26 of 2000 about Human Rights Court, in this court there is a National Commission on Human Rights that have a right to investigate human rights cases.

The weaknesses in the protection of human rights in Indonesia, in the investigation of a case in violation of human rights, sometimes not thoroughly investigated by the authorities, which resulted in the case of left and forgotten. In addition, the presence of the Commission is not based on the 1945 Constitution, the consequences in the event of a dispute with the authorities of other agencies such as the ministry of law and human rights, the attorney general and the Parliament can't be resolved by the Constitutional Court.

2. Second issue (Darfur Conflict categorized torture against human rights according to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment):

Darfur conflict categorized in torture according to the Article 1 of United Nation Convention against Torture based on three characteristic such as: severe pain or suffering in physical or mental, inflicted on a person for obtaining information or confession, and the consent of the public official. The rebels and civil gained the crimes against humanity

such as abducted, kidnapped, raped, burned and looting of villages, and murdered. Janjaweed done these crimes were for obtained confessions. The worst things from the conflict were the participation of the Government. Janjaweed has been provided the weapon from the President to attack and finish the rebels and civil.

Sudan did not do the obligation as State Party. But the others parties, such like Africa Union, UN, even ICC take a part of the conflict settlement. In September 2004, the Security Council forms the International Commission of Inquiry on Darfur under Resolution 1564 out of fear that the Sudanese government was not fulfilling its obligations under previous resolutions and The Darfur conflict submitted to the ICC by the UN Security Council by resolution number 1593 of 2005.

The advantages of Sudan human rights protection after the occurrence of violation of human rights in Sudan, Sudan became international attention, so the Sudan in terms of protecting human rights became prudent and upheld human rights. Can be seen from the roles of the Advisory Council for Human Rights in Sudan that to advice and consultancy.

The weakness of Sudan human rights protection is Sudan did not have a special court like Indonesia Human Rights Courts and National Commission on Human Rights, so the Constitutional Court has to concurrently hear, investigate and verdict itself.

3. **Third issue (Resolution for Aceh and Darfur Conflicts under the International Law):**

Aceh and Darfur conflicts have similarities such as the rebellions (in Aceh and Darfur) which wanted to separated from their State (Indonesia and Sudan), the rebellions (in Aceh and Darfur) had been tortured, captured, killed and got various human rights violations and the torture and various human rights violation was done by military (TNI and Janjaweed). Besides, Aceh and Darfur conflicts are using the same way settlements, these two conflicts were using peaceful resolution but in a different way. Aceh conflict settled down in politics peaceful resolution, through a negotiated solution and with international support. On August 15, 2005, in Helsinki, Finland, the government of Indonesia and GAM representative took a constructive initiative to sign a Memorandum of Understanding (MoU), and brought an end to nearly three decades of armed conflict in Aceh.

The peace agreement, brokered by the Crisis Management Initiative (CMI) led by Finland's former president and was monitored by the member states of the European Union (EU) as well as five Association of Southeast Asian Nations (ASEAN) countries. With strong support from the EU and five participating ASEAN countries, peace now returned to Aceh, and the Acehnese could exercise authority over its own affairs within the Unitary State of the Republic of Indonesia.

The agreement included a series of requirements of both parties to maintain peace. In exchange, the Indonesian government promised broad autonomy, the right to form local political parties, and local control over the revenues from Aceh's natural resources. In July 2007, Partai GAM (GAM Party) was established by former GAM combatants, with the GAM flag as the party symbol. And yet, in spite of being protested as a violation of the Helsinki agreement, Partai GAM officially changed its name. In April 2008, Partai GAM became Partai Aceh (Aceh Party), and along with the other local parties, the Acehnese were now able to channel their political aspirations.

Darfur conflict was settled by peaceful resolution using law in settlement through international court. International court in this conflict was through International Criminal Court (ICC). The Darfur conflict submitted to the ICC by the UN Security Council by resolution number 1593 of 2005. The government adds several committees against human rights violations. But the courts couldn't work well. The courts also have shortcomings that they do not have the funds for the trial, did not have the facilities of the trials, the court couldn't provide protection for witnesses and others.

ICC is the proper court used to convene as it's established based on a strong legal foundation, it has many members, and funds for trials and investigations, as well as infrastructures and the court, it also got the aid and encouragement from other countries. In December 2014,

the court's prosecutor Fatou Bensouda said on Friday she was shelving the Darfur investigation for lack of support from the Security Council, the UN body can take coercive measures that could compel Bashir and co-defendants to face the court.

The failure of the Sudanese conflict resolution process that is mediated by the ICC considered to have failed, because of the complexity of the conflict and the involvement of actors who have an interest in Sudan. The complexity of this conflict is caused by the ongoing conflict and the involvement of foreign parties who have an interest in Sudan.

Based on the differences ways to settle the conflicts, it can be argued that the best way to settle the conflict is by political using negotiation. By using that method, both sides can reach agreement by the win-win solutions for each party which recommended by the Negotiator(s).

B. Limitations

This research may still be far of being perfect, particularly because:

1. The research is not supported by the primary data which is difficult to collect due the distance of Sudan from Indonesia, so Researcher can only get the information by internet.

2. The limitation of the time in preparation of this research with the existing format because the deadline given by the study program is limited.
3. In addition, Researcher has difficulty in preparing perfect and correct grammar in English.

C. Recommendations

Based on the result of research conducted by Researcher, Researcher recommends the following:

1. Indonesia:

- a. Indonesia in protecting the human rights violation in resolving the case should do with all the responsibility, act fairly in accordance with existing laws and the law should be enforced by issuing strict regulations
- b. National Commission on Human Rights should be given new power in the legal standing to file a judicial review to the Supreme Court and the Constitutional Court, in addition to the National Commission on Human Rights should be granted authority to investigate every case of human rights violations.

2. Sudan

- a. Sudan in protecting human rights should have a special court to handle violation of human rights, therefore the special court can

have a rights to bring the case to the Constitutional Court for the judicial review.

b. Sudan should have a Commission like Indonesia National Commission of Human Rights that have a power to investigate human rights violation cases and the Advisory Council for Human Rights can observed the Commission and the special court and give advice as the rights of the Advisory Council.