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Research Paper

State Responsibility against Territory Sovereignty of the Republic of Indonesia: A Review of the Right of Self-Determination Principle

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ABSTRACT:- The development of self-determination carries serious implications for multi-ethnic countries where certain ethnic groups who suffered repressive actions by a government as the juridical legitimacy of self-determination as recognized in various international law instruments. The type of study was a normative and sociological research. The juridical approach is intended to explore and study the legislation as a basis for a research, while the sociological approach is intended to explore the factors and impacts incurred the right of self-determination principle by the government. The results of the research indicated that the right of self-determination is only to those who colonized, while the Unitary of the Republic of Indonesia is not colonialism for Papua, the desire of Papua's people has been implemented in terms of welfare, only its implementation is not yet fully implemented properly. Sovereignty and Indonesia's independence was built on the basis of *consensus* which is born of the desire of a nation as an entity of the nation. Territory is an essence that laid basic foundation for sovereignty of a country and its reference to the boundaries of a country. The principles included the principle of *non-intervention* in matters contained by the domestic jurisdiction and to respect the principle of territorial integrity of other countries.

Keywords:- State Responsibility, Territorial Souvereignty, the Right of Self-Determination

I. INTRODUCTION

The right of self-determination principle is a valid principle in the development of law and the international community. The right of self-determination is often regarded as an effort to impose the legitimacy of a ruling government. It has been present long before World War I, that known as *plebiscites* before the outbreak of the French revolution in 1789. The right to self-determination is a recognized principle in international law for a group of people to determine political, economy and own culture rights. This principle has become the basis or at least become *soft law* for freedom fighters.

The right of self-determination for the first time formulated in the Charter of the United Nations which confirms that respect for the principle of equal rights and self-determination for every nation "people" (Article 1, paragraph 2). Then, Article 55 clarifies the status of self-determination in the Charter of UN. Article 1 (2) of the Charter of UN states: "develop friendly relations among nations based appreciation of the principles of equal rights and self-determination, and take other measures to strengthen universal peace".[1]

The right of self-determination enshrined in the Charter of UN is strengthened by a Declaration on the Granting Independence to Colonial Countries and Peoples that received by the United Nations in December 1960 through A Resolution of General Assembly No. 1514 (XV) for the region not self-governing, self-determination is done in three ways: *emergence as a sovereign state*, *free association with an independent state*, *integration with an independent state*.

In its development, *the right to self-determination* is understood as the rights of minorities, *indigenous*, *ethnic* in an *independent state*. This shift in meaning is the influence of changes in the world situation continues

[1] See Article 1 paragraph (2) the UN Charter and Statute of International Court, San Fransisco 26 June 1945, page, 3

to evolve. In anticipation of this change, in its development the right of self-determination is divided into two types include *external self-determination* and *internal self-determination*. This division for certain extent brings this principle to the domestic territory of a state, in the sense that a state has a right to resolve the issue peacefully within the framework of territorial. It is certainly shifted from the basic concept, which is an effort of self-determination and politic, economy and culture identities.

In the Indonesian context, the principle of self-determination in the manifestation of the desire for independence and out of the Unitary Republic of Indonesia occurs by a small minority of people in Papua and Aceh, especially for those who are on the political front by internationalize the issue of welfare and human rights. Political interests of neighboring countries such as Australia are granted asylum in the form of temporary protection visas to 42 *asylum seekers* from Papua resulted in a strained relations between Indonesia and Australia. Although, it realized that a good relationship in cordial and friendly relations between the two countries has always been difficult to be realized permanently.

For the Indonesian government, the attitude of Australia which has given temporary protection visas is a less friendly attitude. Therefore, the country life in a concept of geographic proximity such as Indonesia and Australia must be with respect and fostering political in a peaceful coexistence, non interference in the internal affairs of state, mutual respect in a good neighbor policy to foster mutual trust and a deeper understanding between the two countries.[2]

Anatomy of Papuan separatists states, the population of the eastern provinces which are rich in these resources easily influenced by separatist ideas. Irrational demands for indigenous rights to land and limited infrastructure and transportation have hindered economic growth. Responding to the desire of a minority of Papuan people that demand for an independent, a former President of the Republic of Indonesia, Susilo Bambang Yudhoyono asserted that Papua and West Papua is a legitimate territories of Indonesia. The President also responded to the desire most Papuans that want historical rectification poll in Papua in 1969, stating that poll in Papua by United Nations has been clear and final, so there is no more that needs to be clarified. Papua poll conducted in the United Nations and the final results are already evident, "Papua is part of the Republic of Indonesia."[3]

In addition to the events in the country, as mentioned above, as well as the relation between Indonesia and Australia in the case of *asylum seekers*, an interesting look at what happened on February 17, 2008, when the world was shocked by the unilateral declaration of Kosovo's independence. Why is surprising, at least it is caused by two fundamental things: *First*, territorially Kosovo is part of Serbian state that its existence and validity has been recognized by the international community. *Second*, theoretically, the establishment of a state within the state is not possible, as this would be contrary to the international law.[4]

The international community is more providing its support for Kosovo's independence, this is because as long as the government of Serbia is considered to have conducted the violation of human rights and crimes against humanity on the population of Albanian ethnic who are Muslims in Kosovo. International law has given recognition for the right of self-determination as one of the human rights and based on that right then all the nations ("peoples") are free to determine their political status and pursue economic development, social and cultural."[5]

The context of international law set independence as a manifestation of the right to self-determination (in the fields of economics, politics, and so on) it meant to liberate themselves from colonialism and domination or the presence of foreign powers. These rights can only be used once and cannot be applied to the nation ("peoples") that have been organized in the form of a country are not in colonialism and foreign domination. The importance of development and survival of a country that is recognized by international law, but also about *independence* itself, the sovereignty of a country and the most important is how respect for territorial integrity of a country recognized by the international community.[6]

The principle of recognition of the international community is the most elementary aspects of the recognition of state's sovereignty. The right to self-determination is a principle of international law that can be found as a norm in many international agreements on certain human rights and this rights states that all states or the nation ("peoples") has the right to forming its own political system and has its own internal rules, freely to pursue economic development, their own social and cultural rights; and to use their resources.

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[2] Sumaryo Suryokusumo, *Studi Kasus Hukum Internasional*, Jakarta: PT. Tatanusa, 2007, page. 285

[3] Limited Cabinet Meeting in the Field of Politic, Law and Security, in BBC Indonesia 30 June 2012, accessed 28 April 2015

[4] Audrey Sujatmiko, *Kemerdekaan Sebagai Hak Untuk Menentukan Nasib Sendiri* ("*right of Self-Dtermination*) Dalam Perspektif Hukum Internasional (A Case Study of Kosovo Independence), Jakarta, without year.

[5] Article 1 paragraph (1) *"International Covenant on Civil and Political Rights*" / ICCPR, yaitu: *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

[6] Sumaryo Suryokusumo. (2001). *Praktek Diplomasi*, Jakarta: UI Press, pages 64-65

Normatively, the right to self-determination has been regulated in various international legal instruments, includes: Article 1 (2) of the Charter of UN; Article 1 (1) "*International Covenant on Civil and Political Rights*" and "*International Covenant on Economic, Social and Cultural Rights*". The resolution of UN General Assembly No. 1514 (XV) of 14 December 1960 concerns the declaration on the granting of independence to the colonized nation, the resolution of UN General Assembly No. 2625 (XXV) 24 October 1970 concerns the declaration of the principles of international law on cooperation and the friendly relations between the countries in the world and the friendly relations in accordance with the UN charter.

The resolution of UN General Assembly No. 1514/1960 and *the International Covenant on Civil and Political Rights* (ICCPR) does not distinguish between the "*right to*" and "*the right of self-determination*". Also, they used ambiguous. Actually, there are two types or levels of self-determination, self-determination as follows: 1. "*right to self-determination*", which is a right that is once and cannot be separated, to form a country (or integration or association); 2. "*Right of self-determination"*, which is the right sourced and as a consequence of "*right and self to determination*", i.e the right to determine the form of a state (Republic or empire), the system of government (presidential or parliamentary), which is the setting affairs of a country.[7]

The implementation of the "*right and self to determination*" that realized through independence in order to establish a state, both to free themselves from colonialism, as well as to integrate or to associate with other countries. It was done only once and for all. Meanwhile, the implementation of the "*right and self to determination*" can be realized through a variety of state action that aimed to inside as an authority of a sovereign state.

Based on the description above, the repressive actions of a country that is contrary to legal norms and international human rights and humanitarian law is then triggered the disintegration of a country that led to the emergence of a region or certain community that wants independence for their region with internationalize the issue of welfare and the occurrence of human rights violation, so that they are demanding the right to self-determination.

II. METHODS OF RESEARCH

The type of study was a normative and sociological research. The juridical approach is intended to explore and study the legislation as a basis for a research, while the sociological approach is intended to explore the factors and impacts incurred the right of self-determination principle by the government.[8]

The study was conducted in the State Capital of the Province of Jakarta to obtain secondary data to support the results. The main reason the study authors took place in Jakarta, because the author believes that the existence of ministries, both Aceh and Papua province in the capital city of Jakarta can represent the level of desire for self-determination

III. ANALYSIS AND DISCUSSIONS

Scope of State Responsibility in International Law Perspective

A state under the Convention of Montevideo (Uruguay) provides the elements called constitutive and declarative elements. *Constitutive* element of a country is the presence of: 1) Occupants (people, population or citizen); 2) Area (specific) or the ruling environment; 3) the highest powers (sovereign ruler), a sovereign government; and 4) The ability to relate to other countries. While, *declarative* element of a country is a recognition of other countries for its existence as a country.[9]

State according to the understanding of Aristotels, a philosophical in ancient Greece (384-322 BC) has formulated the meaning of state in a book entitled *Politica*. Aristotle in his formulation still argues and binds to a small region called the *polis* (state as recently understanding). Because Aristotle tied to a small town country and has a small population, he formulated a state as a law state in which there are a number of citizens who participated in state consultative (*ecclesia*).[10]

Sovereignty is a manifestation on the basis of exclusive right of a state to control a territory, government, and society. Sovereignty over the territory can be defined as the authority of country to the territories that have been part of its power, no exception to the Republic of Indonesia, which has the territory ranging from Sabang to Merauke and Miangas to Rote Island. Traditionally, sovereignty as a concept has a

[7] Hassan Wirajuda, *Indigenous People Internal Self-Determination (Pribumi dan Otonomi dalam Mengatur Urusan Sendiri)*, in Sugeng Bahagijo dan Asmara Nababan, (ed.), *Hak Asasi Manusia Tanggung Jawab Negara Peran Institusi Nasional dan Masyarakat*, Jakarta: Komnas HAM, 1999, pages 126-127. Also described, that the distinction between "*right to self-determination*" and "*right of-determination*" is a thought of Prof. Leo Gross of *Fletcher School of Law and Diplomacy*.

[8] Mely G. As cited in H. Aminudin dan Zainal Asikin, 2010, Pengantar Metode Penelitian Hukum, PT. Raja Grafindo, Jakarta, pg.118

[9] See Montevideo Convention Uruguay, 1933

[10] Kusnadi and Bintan Saragih, *Ilmu Negara*, Gaya Media Pratama, Jakarta, 2001, page 49

sense internally and externally,[11] the internal sovereignty is an assumption when a country has the highest authority within its jurisdiction.

Sovereignty or jurisdiction of a county over the territory is restricted by the interests of other countries, and its restriction is the application of fundamental principles of international law that applies universally to a country. External sovereignty is the ability for countries to conduct international relations with other countries in the world. The relationships established through the bilateral relations between a country with other countries, regional relations between one area, as well as multinational relationship between a countries to other country in the world.

State sovereignty can be defined as sovereignty in the territory of a State, the State that is fully sovereign. Government is seen as a country organization that has the unrestricted right to life, liberty, and its citizens welfare. Their compliance with state law is not due to the agreement, but the law is a state will.[12] State has sovereignty is seen as the sole source of all power. Unlike the case with state sovereignty in the Islam's view that combines the concepts and theories of state, assumed that the theory of "Sovereignty of God" states that the power given to man on earth comes from the choice and the grace of Allah SWT.[13]

The perspective of international law puts the concept of sovereignty associated with a government that has ultimate control over the affairs of its own country in a region or territorial or geographical. Sovereignty of the territory of a country must be based on the rules of international law and human rights in a country.

Sovereignty puts a state has jurisdiction over the territory exclusively, Article 1 on Convention of Montevideo Uruguay in 1933 to include the rights and obligations of the state territory is one of main elements to declare an entity as a state, the subject of main legal in international law, it shows a clear correlation between the sovereignty, territory, and state. Although, giving meaning that the absence of law subject cannot be called as a country.[14]

In the context of the Republic of Indonesia as a vast country is a country that is called an archipelago state, as a state that is formed in a series of islands that stretches from west to east and north to south united with the group of islands that we called as maritime belt.[15] Politically, the Indonesian island countries stated in the Declaration of Djuanda at 13 December 1957.

The Declaration of Djuanda provides strong political and legal foundation for Indonesia in the fight for territory in the eye of international.[16] The conception of international law on Indonesian territory post-independence in 1945 is covering the entire territory of ex-Dutch colony as the first country in the archipelago.[17] It is based on the principle of international law *Uti Possidetis*.[18] Generally, this principle implies that the territory of new country to follow all territory of the country that previously govern. This means that all territory of Indonesia under Dutch colonies including Papua is to belong to Indonesia.

The territory of Indonesia from Sabang to Merauke, and from Miangas Island at the northern tip of North Sulawesi to Rote island at the southern of Nusa Tenggara Timur is a boundary of sovereignty the territory of the Republic of Indonesia. Speaking on the territory of the Republic of Indonesia in the conception of the islands, then Papua which includes the provinces of Papua and West Papua in the area and the history is part of the Republic of Indonesia. The term of Papua which we know so far, is administratively composed of Papua and West Papua.

The transfer of sovereignty over the Dutch Indies to Indonesia on 27 December 1949 raises the issue of political status of Papua that still occupied by Dutch.[19] Conflicts between Indonesia and Dutch is related to this issue ends with the New York Agreement in 1962 where the Dutch handed over Papua to UNTEA (United Nations Temporary Executive Authority) and subsequently UNTEA handed over Papua to Indonesia, as part of the New York Agreement, Indonesia carry out the determination of people opinions (Pepera) 1969 and official result 1.024 representatives of Papuan people choose to join in Indonesia.

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[11] Kurt Mills, *Human Rights in the Emerging Global order* ; A New Sovereignity, London : Mc Milan, 1998, dalam Jawahir Thontowi *Hukum Internasional Kontemporer*, Refika Aditama, Jakarta, 2006 page 176

[12] Muhammad Ashri and Rapung Samuddin, *Hukum Internasional dan Hukum Islam tentang Sengketa dan Perdamaian*, Gramedia Pustaka Utama, Jakarta, 2013 page 116

[13] *Ibid*.

[14] Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press, 1997. page 329 on Jawahir Thontowi *Hukum Internasional Kontemporer*, Refika Aditama, Jakarta, 2006 page 177

[15] Saru Arifin, *Hukum Perbatasan Darat antar Negara*, Sinar Grafika, Jakarta, 2014 page. 1

[16] Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi isu*, Rajawali Press Jakarta, 2009 pages 217-18

[17] The status of the Netherlands who was replaced by Indonesia that the Vienna Convention on State succession to the treaty called *Predescessor State*. While Indonesia who succeeded called *Successor State*. See Article 2 point (a) and (b) *Vienna Convention on Succession of State in respect of Treaties*.

[18] Generally, this principle contain meaning that the territory of new country follows all territory of country that previously govern. Saru Arifin., *Op.Cit*., page. 2

[19] Papua Road Map, *Negotiating the Past, Improving the Present ans Securing the Future,* Muridan S Widjojo, LIPI, Indonesia, Jakarta 2009, page. 3

Papua during the Dutch colonial commonly called the *West New Guinea* or *Nederlandse New Guinea*. After joining in Indonesian, the name of this area was changed to the province of West Irian. In the New Order era, Suharto rename West Irian become Irian Jaya. Furthermore, after the end of the New Order regime precisely on 31 December 1999, the name of Irian Jaya changed into Papua. Act No. 45 of 1999 and Presidential Decree No. 1 of 2003 has been split Papua Province into Irian Jaya Tengah, Irian Jaya Barat and Irian Jaya. However, in practice, this province changed into two provinces i.e Papua and Irian Jaya Barat that renamed West Papua.

Conceptions of State Responsibility and Its Relation to the Right of Self Determination Principle in Indonesia

Talking about the sovereignty of a state will bear the consequences for the obligations and state responsibility known as *state responsibility*. This concept appears to answer the question of who exactly should be responsible in an effort to uphold, protect and respect human rights. The simplest thought, of course it is understood that everyone has the right, and people each have the right to defend their rights and to defend himself.

Although a state is sovereign, but with the sovereignty does not mean that the state is free from responsibility. The principle that applies to it is that the sovereignty related to the obligations for not misapplied such obligation. Therefore, a state may be asked responsibility for actions that misapplied a power.[20]

Law about state responsibility related to the jurisdiction. Legal about the state jurisdiction is a law governing the power of state to act in terms of the implementation of jurisdiction. While the law of state responsibility is the law regarding state obligations that arise when countries have or take no action.[21] Malcolm N. Shaw[22] argued that the essential characteristics of the birth of state responsibility, depending on the following factors: 1) The presence of an international legal obligation in force between two particular country; 2) The presence of an act or omission in violation of international law obligations; and 3) The presence of damage or loss as a result of unlawful acts or omissions.

Obligations and state responsibilities are to respect human rights and a basic form in the study of state responsibility to provide protection for inaction or a policy contrary to human rights.[23] It means that the state must avoid intervention acts or interference with any pretext to reduce or eliminate the rights of individuals. But it is the principle of international law is not always true, since in addition to the principle of non-interfence, under international law is also known by the term principle of *responsibility to protect*.

State obligations to uphold, protect and fulfill human rights are also contained in the universal declaration of human rights instruments and other human rights. The concept of state responsibility in upholding, protecting and fulfilling human rights are also contained in the principles and guidelines set forth by UNDP namely: "*As with other areas of development, the primary responsibility for human rights promotion and protection is with the state*."[24]

Traditionally, demand responsibility occurs only in relations between states, but at this time there is a new trend that demands responsibility by the individual to the state, for example in connection with violations of the human rights conventions of Europe,[25] including the right of self-determination. The right of self-determination is one of the basic principles of international law that can be found as the norm in many international agreements on specific human rights.

This right states that all countries or nations have the right of self-determination by establishing a political system and government stand alone and apart from the state previously and freely be able to keep pace with economic development, social and cultural development by using their natural resources that exist. Self-determination or commonly we know in terms of international law as *self-determination* has been formulated widely its definition by the United Nations (UN) and as a principle of international law.[26] The right to self-determination or that we known as *rights and self to determination*, expressed as a rights in both international covenants, the covenants on civil rights and political (ICCPR), and covenants on the rights of economic, social and culture. The African Charter or known as the Banjul Charter contains provisions that give emphasis to all nations are same and there is no reason whatsoever that justifies domination of a nation for another.

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[20] Huala Adolf, *Aspek-aspek Negara Dalam Hukum Internasional*, Keni Media, Bandung, 2010, page 203

[21] *Cf.*, Rosalyn Higgins, *Problems and Process; International Law and How we use it*, Oxford: Clarendon press, 1994, page.146

[22] Malcolm N. Shaw, *International Law*, Butterworths, 2nd , ed 1986 page, 406

[23] Rocky Gerung, ed. *Hak Asasi Manusia : Teori, Hukum, Kasus* (Depok : Filsafat UI Press, 2006

[24] UNDP, "Human Rights in UNDP : Practice Note", (UNDP : April 2005), page 11

[25] See, Donna Gomien, *Short Guide to the European Convention on Human Rights*, Strasbourg: Council of Europe, 2000

[26] Cobban, *The Nation State and National Self Determination*, 1969, page 107 in Sumaryo Suyokusumo page. 69

In the context of separatism effort in Papua, is inseparable from the problems of development gap and the poverty rate remains high in Papua. It is seen from poverty in Papua since Special Autonomy enacted in Papua since 2001, Special Autonomy funds are not successful in reducing the number of poor people in Papua. The successful of reducing the poor population only shown between 2002 to 2004 and 2007 to 2008, but not a significant reduction.[27]

The success or failure of Special Autonomy in Papua and West Papua can be viewed from three other areas, i.e education, health and employment.[28] But it is not going well. Corruption of special autonomy funds occurs in a variety of different form including a fictional program. Due to the ineffectiveness of Special Autonomy funds, the economy of Papuan people can be said to be running *in situ*. Papuan people, not only lagging behind in the field of infrastructure development, but also the development of human resources, especially when compared with conditions on Java Island.[29]

Apparently it is also related to the angle of view between the central government, regional, and local communities in defining the concept of development in Papua. Claims filed society is often regarded as a form of rebellion, is not seen as inputs to find the best solution solving in Papua. Public protests are often taken inappropriately, on the other hand people also tend to be reluctant to speak out for fear of being branded as rebels, which all eventually lead to communication become increasingly smooth. Chaos complemented by the approval of the regional growth.

Due to any such policy, the special autonomy fund trillions of rupiah, which should be distributed to programs of education, health, community economic and cultural development (custom), the end is not appropriate distribution and widely used for the preparation of the establishment of new areas, rather than to improve the welfare of Papuan people. Political nuance always coloring the various policies in the province of Papua, but it is unfortunate if the development in Papua done half-heartedly.

If explored further, Papua as part of the Unitary Republic of Indonesia, Papua's political status was the final based on the Act and the UN Resolution, Papua Integration is liberation from colonialism and imperialism of Dutch, the security approach to maintain integrity of the Republic of Indonesia, the construction to modernize the Papuans, and the implementation of special autonomy in the context of national integration is a form of how the power is operationalized through political discourse which is run Ideological State Apparatus (ISA) both in the old order, the new order and the present.

The results of LIPI in 2004 mentioned that the magnitude of benefits from mining companies in Papua is not proportional to their contribution to Indonesia and especially for Papua. Total contribution of PT. Freeport to Indonesia in June 2011 for example, only 12.8 billion. Whereas, in 2010 only reported mineral reserves of PT. Freeport reaches 55 million ounces of gold reserves, 56.6 pounds of copper and 180.8 million ounces of silver. While, the existence of Freeport also does not contribute to Papuan, especially communities around the company.[30]

Besides in Papua, also occurred conflict in Aceh arising due to the Indonesian Government policy during previous governments felt by Aceh people, besides less able to protect the existence of Islamic religious identity is so strong in Aceh Province, also not encouraging progress that identity. The central government at that time did not try to take the policy to establish adequate legislation or other means in order to achieve efforts in that direction.

The government at that time was also perceived lack of understanding of self-esteem and values of local wisdom that live in the communities of Aceh that deep in Islam.[31] This view is in line with the Snouck Hugrounje's view that Aceh people does have a high sense of fanaticism in religion and customs and emphasizes the profound dignity and honor.[32]

Policy by former government, for example, makes the province of Aceh became part of North Sumatra province, the history and customary is different. It is not impossible that such a policy then considered very hurt personality of Aceh's people, although later the central government has to reconsider to restore it into separate

[27] Muridan S. Widjojo and Aisah Putri Budiatri, *U.U Otonomi Khusus Bagi Papua: Masalah Legitimasi dan Kemauan Politik*, Jurnal Politik Vol 9 No. 1 Tahun 2012 page 71

[28] Agung Djojosoekarto *et al* (ed), *Kinerja otonomi Khusus Papua* (Jakarta: Kemitraan, 2008), page 83.

[29] Fandri Yuniarti (Ed). *Laporan Jurnalistik Kompas, Ekspedisi Tanah Papua*, Kompas, Jakarta, 2007, page x-xi

[30] Sri Yanuari. "*Kemiskinan dan Konflik Papua di tengah sumber daya yang melimpah*", *Jurnal Penelitian Politik*, Vol. 9 No. 1 2012.

[31] The policy was considered to be contrary to Article 3 and 5 of the UN Universal Declaration of 1948, See also Article 2 and 4 of the Convention which prohibits torture and other atrocities, 1984 and Article 1 of the Declaration on the Rights of persons who have ethnic, religious or different languages, 1992, Papers presented at the national seminar concerning *"Keadaan darurat militer di Aceh ditinjau dari berbagai Aspek Hukum Internasional"* organized by the Centre for Humanitarian Law and Human Rights Studies (Terrace) FH-USAKTI in Jakarta on July 1st, 2003.

[32] Snouck Hugrounje, *The Acehnese*, 1906, Introduction

provinces. In the subsequent development, central government also never consistently realizes the special status of Aceh that has been set on the basis of Act No. 1 of 1957.

Such policies lead to instability in the province, so that the central government take a new policy to make Aceh as a Military Operations Area (DOM) in 1989, giving rise to negative accesses, such as operation and other violence is a violation of human rights. The presence of social and political turmoil arising altogether cannot be any reason to perform actions such violence. The central government should immediately take legal actions effectively to prevent violence or inhuman acts committed by the security forces.

Aceh's people argued that there had been discrimination in the field of economy conducted by the central government over social inequality associated with profit sharing uneven development, so it can create political and social upheavals (*the outgrows of local perceptions of economic discrimination on social inequalities associated with uneven distribution of the benefits of development has been stimulating the unrests*). Also, in addition the people who are in the province of Aceh were regarded not as the main heir of the abundant natural resources such as petroleum and LNG (*the local people were not the primary beneficiaries of massive petro-chemical and gas project*).

IV. CONCLUSION

The context of international law set independence as a manifestation of the *right of self-determination* (in the fields of economics, politics, and so on) it meant to liberate themselves from colonialism and domination or the presence of foreign powers. These rights can only be used once and cannot be applied to the nation ("peoples") that have been organized in the form of a country are not in colonialism and foreign domination. The rule of international law of self-determination applies only to those who are not yet independent and not a region within a country. Thus, the right of self-determination is only to those who colonized, while the Unitary of the Republic of Indonesia is not colonialism for Papua, the desire of Papua's people has been implemented in terms of welfare, only its implementation is not yet fully implemented properly.

Sovereignty and Indonesia's independence was built on the basis of *consensus* which is born of the desire of a nation as an entity of the nation. Territory is an essence that laid basic foundation for sovereignty of a country and its reference to the boundaries of a country. The principles included the principle of *non-intervention* in matters contained by the domestic jurisdiction and to respect the principle of territorial integrity of other countries. The conception of international law on Indonesian territory post-independence in 1945 is containing the entire territory of ex-Dutch colony as the first country in power in the archipelago. The status of Dutch was replaced by Indonesia in the Vienna Convention on state succession to the treaty called *Predescessor State*. While Indonesia that replaced it called *Successor State*. Generally, this principle implies that the territory of new country follow all territory of country that govern previously.

The three pillars of the conception of the existence of sovereignty of the Unitary State of the Republic of Indonesia is making caucus *Indomelanesia brotherhood*, by building bilateral and trade relations with countries that are in the Pacific, such as Vanuatu, Samoa, Palau, Fiji and the Solomon Islands to dampen the support in the Pacific countries to support independence for Papua.

The Government should undertake development in Papua through the *integrated grand design* methods to improve Papua's welfare by eliminate the partial stigma of development among ministries as well as eliminating the competition in the ministries of development in Papua and represent Papua with an integrated-development holistically and comprehensively. Making the Consortium of Development in Papua which deal specifically with the integrated-development in Aceh and Papua in the administration duties by considers local wisdom as the needs of people in Aceh and Papua. In addition, the state should also provide wide scope for the people of Aceh and Papua for independence and welfare. Aceh and Papua should be positioned as part of a nation and not as a nation enemy. So that, the former repressive approach to solve problems both in Aceh and Papua should be changed thoroughly through people welfare approach based on the local wisdom.

REFERNCES

[1]. Agung Djojosoekarto *et al* (ed), *Kinerja otonomi Khusus Papua*, Jakarta: Kemitraan, 2008.
[2]. Audrey Sujatmiko, *Kemerdekaan Sebagai Hak Untuk Menentukan Nasib Sendiri* ("*right of Self-Determination*) on International Law Perspective (A Case Study of Kosovo Independence), Jakarta, without year.
[3]. *Cf.*, Rosalyn Higgins, *Problems and Process; International Law and How we use it*, Oxford: Clarendon press, 1994.
[4]. Donna Gomien, *Short Guide to the European Convention on Human Rights*, Strasbourg: Council of Europe, 2000.
[5]. Fandri Yuniarti (Ed). *Laporan Jurnalistik Kompas, Ekspedisi Tanah Papua*, Kompas, Jakarta, 2007.
[6]. Hassan Wirajuda, *Indigenous People Internal Self-Determination (Pribumi dan Otonomi dalam Mengatur Urusan Sendiri)*, in Sugeng Bahagijo and Asmara Nababan, (ed.), *Hak Asasi Manusia Tanggung Jawab Negara Peran Institusi Nasional dan Masyarakat*, Jakarta: Komnas HAM, 1999.
[7]. Huala Adolf, *Aspek-aspek Negara Dalam Hukum Internasional*, Keni Media, Bandung, 2010.
[8]. Jawahir Thontowi. *Hukum Internasional Kontemporer*, Refika Aditama, Jakarta, 2006.
[9]. Kurt Mills, *Human Rights in the Emerging Global Order*; A New Sovereignity, London: Mc Milan, 1998.
[10]. Kusnadi and Bintan Saragih, *Ilmu Negara*, Gaya Media Pratama, Jakarta, 2001.
[11]. Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press, 1997.
[12]. Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi isu*, Rajawali Press Jakarta, 2009.
[13]. Muhammad Ashri and Rapung Samuddin, *Hukum Internasional dan Hukum Islam tentang Sengketa dan Perdamaian*, Gramedia Pustaka Utama, Jakarta, 2013.
[14]. Muridan S. Widjojo and Aisah Putri Budiatri, *U.U Otonomi Khusus Bagi Papua: Masalah Legitimasi dan Kemauan Politik*, Jurnal Politik Vol 9 No. 1, 2012.
[15]. Papua Road Map, *Negotiating the Past, Improving the Present ans Securing the Future*, Muridan S Widjojo, LIPI, Indonesia, Jakarta 2009.
[16]. Rocky Gerung, (ed). *Hak Asasi Manusia : Teori, Hukum, Kasus* Depok : Filsafat UI Press, 2006.
[17]. Saru Arifin, *Hukum Perbatasan Darat antar Negara*, Sinar Grafika, Jakarta, 2014.
[18]. Sri Yanuari. "*Kemiskinan dan Konflik Papua di tengah sumber daya yang melimpah*", *Jurnal Penelitian Politik*, Vol. 9 No. 1 2012.
[19]. Sumaryo Suryokusumo, *Studi Kasus Hukum Internasional*, Jakarta: PT. Tatanusa, 2007.
[20]. Sumaryo Suryokusumo. *Praktek Diplomasi*, Jakarta: UI Press, 2001.