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ABSTRACT

There are seven clauses regarding Aceh's economic rights regulated in the Helsinki Agreement. Firstly, Aceh has the right to obtain funds through foreign loans and to set interest rates. Secondly, Aceh has the right to establish and collect taxes as well as to conduct trade and business internally and internationally. Third, Aceh will have authority over living natural resources in the territorial sea. Fourth, Aceh will have the right to control 70% of revenues from hydrocarbon reserves. Fifth, Aceh will conduct the development and management of all seaports and airports. Sixth, Aceh will enjoy free trade. Finally, seventh, Aceh will enjoy direct and unhindered access to foreign countries by sea and air. From all the above clauses, only part of it was adopted by Act No. 11/2006 regarding Aceh Administration. This condition demonstrates the exclusion of Aceh's economic rights, which were mandated by the 1945 Constitution.

There are two issues addressed in this paper, i.e., the legal perspective of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006 and the sociological viewpoint of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006. The four approaches employed to review the Helsinki Agreement and the Aceh Administration Act in this paper are the legislative approach, the analytical approach, the philosophical approach, and the legal sociology approach. Firstly, based on a legal perspective, Aceh's economic rights in the Helsinki Agreement generated legal certainty and must be implemented by the central government because the Aceh Administration Act has partly adopted these rights. The economic rights are constitutional rights of the Acehnese people that must be fulfilled by the central government. Failure to fulfill these rights is a violation of the provisions in the 1945 Constitution. Secondly, based on the sociological perspective, the Aceh's economic rights in the Helsinki Agreement impact the people of Aceh as social institutions. Therefore, all economic rights should immediately be carried out by the authorities, including the central government, the Government of Aceh, and the Aceh Parliament as legal functionaries.

Keywords: economic rights, the Helsinki Agreement, the Government of Aceh.

1. INTRODUCTION

The 1945 Constitution already accommodated Aceh's economic rights in Article 33 Paragraph 3. It

stated that "The land and the waters and the natural resources contained therein are to be controlled by the state and to be exploited to the greatest benefit of

the people". This constitutional norm is the basis for the maximum utilization of natural resources for the people's prosperity, which refers to the people of Aceh who are, in general, also part of the people of Indonesia (Djumala, 2013).

During the conflict, the Acehnese people did not fully access their economic rights due to the dispute between the Free Aceh Movement (*Gerakan Aceh Merdeka*/GAM) and the Indonesian Army for more than three decades (Zainal, 2016). The conflict had a massive effect on people. In 1971, natural gas reserves were discovered off the coast of Aceh, which potentially generated 2-3 billion dollars per year. The natural gas production began in 1977, which produced enormous royalties for the central government; however, disregarding the Acehnese people. The natural gas exploitation during the New Order era leads to a negligence of the Acehnese people's economic rights. In other words, Aceh did not have any authority over natural resources during the New Order era (The World Bank, 2009).

Hydrocarbons are hydrogen and carbon elements found in oil and natural gas, as well as wood, palm oil, and coal. Wood, which is the main hydrocarbon element, is utilized by many elites of the central government. The central government granted around 500,000 hectares of forest tenure rights to nine companies, including PT. Alas Helau, PT. Kertas Kraf Aceh, and PT. Raja Garuda Mas. This action means that the central government has completely erased the Acehnese people's economic rights to hydrocarbons (TR, 2018).

During the New Order era, investment rights were highly dependent on central government regulations. Moreover, ironically, investment opportunities were not supported by adequate electricity. This condition continued for more than 30 years leading to a remarkably minimum investment situation in Aceh. This circumstance implies that the central government highly dominates the economic rights in the field of investment. This issue has caused the poverty rate in Aceh to increase continuously (Armia, 2016).

The examples above are only fractions of Aceh's economic rights that have been reduced by the central government in the past (Affan, 2019). The Government of Aceh's investment opportunities are understandably closely linked to poverty reduction in the province. Therefore, in the post-peace era, Aceh's economic rights were included in the Helsinki Agreements signed by the Government of Indonesia and GAM as follows:

1. 1.3.1. Aceh has the right to obtain funds through foreign loans. Aceh has the right to set interest rates beyond that set by the

Central Bank of the Republic of Indonesia (*Bank Indonesia*).

2. 1.3.2. Aceh has the right to set and collect local taxes to fund official internal activities. Aceh has the right to conduct domestic and international trade and business as well as directly attract foreign investment and tourists to Aceh.
3. 1.3.3. Aceh will have authority over living natural resources in the territorial sea surrounding Aceh.
4. 1.3.4. Aceh has the right to control 70% of the revenues from all existing and future hydrocarbon reserves and other natural resources in the territory of Aceh as well as the territorial sea surrounding Aceh.
5. 1.3.5. Aceh carries out the development and management of all seaports and airports within the area of Aceh.
6. 1.3.6. Aceh will enjoy free trade with all regions of the Republic of Indonesia without hindrance to tax, tariff, or other restrictions.
7. 1.3.7. Aceh will enjoy direct and unhindered access to foreign countries, by sea and air (Ulya, 2014).¹

Act No. 11/2006 regarding Aceh Administration includes the description of Aceh's economic rights. The rights related to access to loans following clause 1.3.1. is regulated in Article 185 Paragraph (1) of the Aceh Administration Act as follows (Putra, 2014):

"The Government of Aceh and governments of regencies/cities can obtain loans from the Government. The funds may be sourced from abroad or from other sources under the Minister of Finance's approval and after consideration of the Minister of Home Affairs."

The provision related to foreign loans in the Helsinki Agreement is part of the economic rights and is documented in economic clauses and, thus, becomes the absolute authority of the Government of Aceh and the Aceh Parliament. However, legally, foreign loans must be approved by the Minister of Finance after consideration of the Minister of Home Affairs. Thus, the economic right to foreign debts remains disregarded by the central government. It remains bound by the words "agreement" and

¹ Teks asli, Nota Kesepahaman antara Pemerintah Republik Indonesia dan Gerakan Aceh di Helsinki ditanda tangai oleh Hamid Awaluddin (Menteri Hukum dan HAM) selaku utusan Pemerintah Indonesia dan Malek Mahmud (Perdana Menteri Gerakan Aceh Merdeka) selaku utusan GAM disaksikan oleh Marti Ahtisaari (1994-2000) selaku Ketua Dewan Direktur Crisis Management Initiative.

"consideration", even though it is the people's constitutional right that is important to accelerate the development of Aceh (Bintang, 2016).

Another issue is the economic right to the management of oil and natural gas resources. Clause 1.3.3. explained that Aceh would have the authority of oil resources. Indeed, this provision becomes the fundamental principle in regulating oil and natural gas resources in Aceh. However, the Aceh Administration Act Article 160 Paragraph (1) stated that "The Government and the Government of Aceh shall conduct joint-management of natural resources and natural gas both on land and at sea in the Aceh authority area". This provision implies that the Government of Aceh's authority over oil and natural gas resources must include the central government. Thus, Aceh's oil and natural gas resources remain controlled by the central government due to its joint-management (Dani, 2015).

The economic rights mandated by the Helsinki Agreement and partially adopted in the Aceh Administration Act appear to collide or inconsistent with the spirit of the agreement. Whereas, it should be independent and not interfered with by anyone as mandated in the 1945 Constitution Article 28A to Article 28J. The agreement, including economic rights, was the result of a struggle that has claimed many lives. The economic rights are efforts of constitutionalism protection, aiming for a dignified Aceh (Ridwansyah, 2017). Nevertheless, this paper further examined two issues. Firstly, the legal perspective of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006 and secondly, the sociological viewpoint of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006.

There are several approaches employed in this paper. The statute approach examines the laws and regulations related to economic rights, i.e., the 1945 Constitution, the Aceh Administration Act, and the Helsinki Agreement. This approach is more focused on positive laws and legal principles regarding rights in the constitution (Efendi, 2018). The analytical approach seeks to reveal the meaning of the Helsinki Agreement phrases and understand its application with regards to the implementation of the Aceh Administration Act. There are two methods, i.e., attempt to obtain new meanings contained in the laws and testing the terms contained in the Helsinki Agreement (Ali, 2012). A philosophical approach is an approach that seeks to question the answers that appear while working on this paper (Fajar & Ahmad, 2010). A characteristic of the method is fundamental research resulting in an in-depth understanding of the social implications and implementation effects of the Helsinki Agreement and the Aceh Administration

Act on Aceh's economic rights. Finally, the legal sociology approach examines the economic rights' relevance to the Aceh people's lives.

2. DISCUSSION

A. The Legal Perspective of Aceh's Economic Rights as Mandated in the Helsinki Agreement with regards to Act No. 11/2006

Aceh's economic rights are the fundamental rights of the Aceh people that must be protected by the constitution. The 1945 Constitution contains ten articles regarding constitutional rights and its guarantees. In principle, the Indonesian law already adheres to constitutionalism, i.e., a concept in which the constitution has a control mechanism over state power. This condition is critical for the Aceh people to access their economic rights because constitutionalism is an antithesis of arbitrary power. The rule of law limits the arbitrariness of the central government over Aceh's economic rights. The continuous existence of arbitrariness and impropriety demonstrates a denial of the rule of law (Siahaan, 2011).

An essential concept of the rule of law is that the code must not be arbitrary or irrational. Therefore, the constitution contains provisions to curb the arbitrariness of the executive (central government) and the legislative (parliament) bodies. A strategy to advance constitutionalism is to instill guaranteed and expected rights and freedoms to the people. Thus, the 1945 Constitution grants several rights to the people through (Simanjuntak, 2002). Article 28 paragraph (1) and (2) as follows:

- i. (1) Every person has a right to self-realization through the fulfillment of basic needs, the right to education, partake benefits of science, technology, art, and culture; to improve the quality of his life and the well-being of mankind.
- ii. (2) Each person has the right to self-improvement through a collective struggle to develop the society, the nation, and the country.

Implicitly, the Government of Indonesia's constitution must guarantee Aceh's economic rights, as mentioned in the Helsinki Agreement. However, the legal implementation in the Aceh Administration Act is not in harmony with the Helsinki Agreement (Yani, 2009).

Firstly, clause 1.3.1. of the Helsinki Agreement is a manifestation of the central government and GAM's wishes to accelerate Aceh's physical development after the longstanding conflict. Article 186 of the Aceh Administration Act stated that the Government of Aceh and regency/city

governments could obtain foreign loans with the Minister of Finance's approval and after consideration by the Minister of Home Affairs. This provision contradicts the mandate of the Helsinki Agreement, which stated that foreign loans do not require the Minister of Finance's approval and the Minister of Home Affairs' consideration. Theoretically, the central government's policy stated in the article violates the principle of asymmetrical decentralization. By concept, the establishment of the Government of Aceh should not be entirely dependant on the central government, but instead, it should be independent in terms of foreign loan management. Administratively, foreign loans are reported directly to the President as the head of government, technically approved by the Aceh Parliament, as well as acknowledged by the Guardian of Nanggroe Aceh and the Aceh Ulema Consultative Council (Jalil, 2010).

The next matter is related to clause 1.3.2. in the Helsinki Agreement. One of the sources of local revenue is local taxes. The terms "establishes and collects" are keywords related to the Aceh taxation arrangements in the Helsinki Agreement. However, Article 180 of the Aceh Administration Act stated that the management of local revenues in the provincial and regency/city levels, in the form of local taxes and retributions, are carried out following the laws and regulations. Meanwhile, the term "to establish" is defined as the self-determination of local taxes and not referring to the national tax-related statutes and regulations. The article should stipulate that tax arrangements in Aceh differ from the national taxes. Although the Aceh *Qanun* (Regional Regulation) No. 11/2017 regarding Amendments to the Aceh *Qanun* No. 2/2012 regarding Local Taxes has been established, the principle is similar to tax arrangements in other regions in Indonesia (Hirawan, 2006).

The third matter is related to clause 1.3.3, which Aceh will have authority over the existing natural resources in the territorial sea surrounding Aceh. The phrase "having authority over natural resources" is the consequence of a mutual agreement between the Government of Indonesia and GAM. Clause 1.3.3. was adopted by the Aceh Administration Act Article 160 paragraph (1), which stated that the central government and the Government of Aceh should carry out joint management of the oil and natural gas resources located on land and in the sea within Aceh's jurisdiction area. When analyzed, the meaning of authority is the power to make decisions, govern, and delegate responsibilities to others. By classification, there are three sources of authority. Attribution is granting authority to certain state

bodies/institutions/officials both by the constitution and the legislators. An example is the attribution of the President and the Parliament's power to formulate laws. Another category is delegation, which is the handover of authority to other state bodies/institutions, having the responsibilities shifted to the delegation recipient as a consequence. A delegation example is the Parliament's approval of regional heads candidates. Lastly, a mandate delegates authority and responsibility to others, but the issuer still holds the responsibility. An example of a mandate is the Minister's decision-making responsibility, which is shifted to the subordinates. Article 160 in the Aceh Administration Act does not specify the type of authority in the management of oil and natural gas resources in Aceh. Whereas the Helsinki Agreement stated that the jurisdiction over oil and natural gas resources is solely for Aceh without the involvement of the central government. Therefore, the Government of Aceh should exclusively manage it as the rights holder with the central government having a monitoring role. However, legal facts demonstrate that even collaboration contracts still require an agreement from the central government, in this case, is the Ministry of Energy and Mineral Resources (Brodjonegoro, 2005; Purnama, Yani, & Bahri, 2010).

Clause 1.3.4. stated that Aceh has the right to control 70% of revenue from all current and future hydrocarbon reserves and other natural resources in its territory and its surrounding territorial sea (Sanusi, Mujibussalim, & Fikri, 2013). This provision was adopted by Article 181 Paragraph 1b of the Aceh Administration Act, which stated that the revenue sharing funds sourced from hydrocarbons and natural resources are as follows:

- 1) Share from the forestry sector is 80%;
- 2) Share from the fisheries sector is 80%;
- 3) Share from the general mining sector is 80%;
- 4) Share from the geothermal mining sector is 80%;
- 5) Share from the oil mining sector is 15%; and
- 6) Share from the natural gas mining sector is 30%.

The provision stating that Aceh has the right to control 70% of revenues from hydrocarbon reserves is not in-line with the Aceh Administration Act, which mentioned that the share from the oil mining sector and the natural gas mining sector is 15% and 30%, respectively. This condition demonstrates that the central government once again violated the Helsinki Agreement. The 70% portion should not be altered because a 15% share from the oil mining sector shows restricted access to the Acehnese people's economic rights. Clause 1.3.4. used the term 'control' which can be interpreted as

having power over something or holding authority over something. Aceh is given the right to control up to 70% of the hydrocarbons in oil and natural gas, forestry, and fisheries; therefore, it is necessary to review the share in the oil and natural gas sector because the central government seems to weaken some of the economic rights (Smoke, 2003).

The fifth matter is related to clause 1.3.5, which states that Aceh has the economic right to carry out the development and management of all seaports and airports in its territory (Bintang, 2010). This provision is contained in the Aceh Administration Act Article 254 as follows:

- 1) The transfer of authority in managing public seaports and airports from the Government to the regency/city governments referred to in Article 19 shall be carried out no later than the beginning of the 2008 fiscal year.
- 2) The management of public seaports and airports that has already existed at the time this Act is enacted, which is collaborated between state-owned companies, the Government of Aceh, and regency/city governments as referred to in Article 173, shall be implemented no later than the beginning of the 2008 fiscal year.

However, the transfer of authority has not been completed yet by the central government. All airports such as Sultan Iskandar Muda International Airport, Rembele Airport, Patiemang Blangkejeren Airport, Malikussaleh Airport, and Alas Leuser Airport, are managed by the central government, i.e., PT. Angkasa Pura II and the Ministry of Transportation. None of the management rights are granted to the Government of Aceh. Based on Aceh's economic rights, airports and seaports' development and management should be entirely carried out by the Government of Aceh. This self-management is an excellent opportunity to reduce poverty in Aceh; however, the legal implementation is still lacking. This situation is analogous to a discovered treasure chest without the key being provided to the proper party, but instead, it is given to another party (Simanjuntak, 2005).

The sixth is clause 1.3.6, which stated that Aceh would enjoy free trade with all parts of the Republic of Indonesia without the hindrance of tax, tariff, or other restrictions. This provision is stated in Article 167 of the Aceh Administration Act in the form of Sabang Free Trade and Free Port Zone. This area exempts import duties, value-added tax, and the sales tax on luxury goods. Before the formulation of the Aceh Administration Act, the Government

of Indonesia had enacted Act No. 36/2000 regarding the Establishment of Government Regulation in Lieu of Acts No. 1/2000 on Free Trade Areas and Free Ports into an Act. Geographically, Sabang's unique location and its exact position at the global shipping route may potentially lead to this area and its surrounding islands becoming a center of international shipping traffic (Haikal, 2014). It may become a gateway for incoming investments, goods, and services from abroad. The Sabang area is a massive opportunity for the Government of Aceh; however, the Sabang Port is not yet optimum in the post-peace era. The cause of Sabang's decline is not yet understood. Article 169 of the Aceh Administration Act stated that the Sabang Trade Area is jointly developed by the central government and the Government of Aceh. It remains questionable whether the central government's participation becomes an obstacle (Syahrial, 2003).

The seventh is clause 1.3.7, which stated that Aceh would enjoy direct and unhindered access to foreign countries, by sea and air. This principle was not accommodated by the central government, proven by the absence of phrases stating that the Acehnese people will enjoy this access. The provision in clause 1.3.7, can support Aceh's improvement because the relationship between the Government of Aceh as an autonomous region with foreign governments will be beneficial. The researchers suspect that this clause was not adopted in the Aceh Administration Act because of the central government's distrust of Aceh. This clause should be taken in the Aceh Administration Act if there are planned revision efforts, as it may support Aceh's future improvements (Fikri, 2013).

Legally, provisions related to the above clauses already exist in the Second Amendment of the 1945 Constitution. A comprehensive human rights constitutionalization supports this in Chapter XA of the 1945 Constitution. One such recognition is the right to the economy. It is understood that under the Helsinki Agreement, the economic rights of the Acehnese people must be protected. Protection of Aceh's economic rights is the central purpose of modern constitutionalism.

B. The Sociological Perspective of Aceh's Economic Rights as Mandated in the Helsinki Agreement with regards to Act No. 11/2006

The idea of economic rights belongs to three categories of human rights generation inspired by the three normative themes of the French revolution. The first generation consists of civil and political rights, the second generation consists of economic, social, and cultural rights, and the third generation includes

solidarity rights (Gardbaum, 2017). Meanwhile, the rights to social security, work, education, a healthy environment, oil and natural gas resources, hydrocarbons, and many other rights inspired economic rights (Nolan, 2014). Indeed, these rights require state intervention to achieve equitable production and fairness of distribution following the socialism philosophy (Weston, 1993).

On the other hand, the sociological perspective (the legal sociology study) provides a more in-depth analysis of an issue than the legal point of view. The legal sociological approach includes the relationship of law with morality and the internal logic of law. Theoretically, the three main focuses in the legal sociology approach are legal influences on social behavior (including the Helsinki Agreement), the people's beliefs in their social life, and the social organization which inclines more towards social development, and the legal institutions concerning the law and the social conditions underlying it (Anwar, 2008).

Conceptually and theoretically, it is necessary to describe the basic concepts of the legal sociology perspective. This perspective wishes to understand the reality of law and the view of social sciences, especially sociology, or otherwise known as the sociology of law. The legal sociology has more focus on the legal phenomena but uses social sciences and sociology theories as objects. Legal sociology is a science that studies the interconnection between law and other social events, analytically and empirically (Fuadi, 2011).

The sociological perspective study of the Acehese people's economic rights evaluates the degree of rights agreed upon by the Government of Indonesia and GAM. It also examines whether the economic rights contained in the Helsinki Agreement and the Aceh Administration Act are correlated with the Acehese people or only serve a long-term interest of the ruler. The legal sociology perspectives on the Helsinki Agreement are detailed below (Rahardjo, 2010).

7 Firstly, it is related to Aceh's right to raise funds through foreign loans and to set interest rates. In reality, Aceh desperately needs external lendings and interest rates. In 2016, the Government of Aceh and the Aceh Parliament planned to build five regional public hospitals using foreign loans from a bank in Germany worth 106.8 million US dollars (Rp. 1,396 trillion) with a loan interest rate of 2.5 – 3.5%. However, the plan was hampered because the payment scheme for foreign loans was not yet regulated in the Aceh *Qanun*. A payment scheme using Aceh's special autonomy fund is not justified by Article 183 of the Aceh Administration Act. This fund is only authorized in six sectors, i.e.,

infrastructure development and maintenance, community economic empowerment, poverty reduction, education, social, and healthcare (Putra, 2014). This situation means that the Aceh Administration Act does not authorize the use of special autonomy funds as a source of loan repayment. However, empirical facts demonstrate that the special autonomy fund alone is not enough to finance Aceh's development needs. Nevertheless, the legal sociology approach views that foreign loan repayment using special autonomy funds is necessary. The Government of Aceh and the Parliament only need to create a multi-year loan repayment scheme (Dani, 2016; Wignjosobroto, 2002).

The second concern is related to Aceh's economic right to set and collect local taxes, conduct trade and business internally and internationally, as well as directly attract foreign investment and tourists to Aceh. From the legal sociology perspective, the Acehese people's behavior patterns show that they are very competent at trading and business, both locally and internationally, in line with clause 1.3.2. of the Helsinki Agreement. In fact, in the Pidie Regency, almost all community members live by trading and business. Unfortunately, Article 180 of the Aceh Administration Act only views Aceh narrowly and does not see it from a broad perspective. Full implementation of this clause may assist Aceh to rise from the current poverty that has been suffered since the conflict era. The location of Aceh Province at the Malacca Strait, an international trade gateway, must be utilized by the Government of Indonesia, the Government of Aceh, and the Aceh Parliament for the great Aceh revival (Ishadi, n.d.; Roesa & Iqbal, 2012; Roger, 2004).

2s The third matter is related to Aceh's jurisdiction over existing natural resources in the territorial sea surrounding Aceh. Aceh's authority over natural resources is a mandate of the Helsinki Agreement, therefore by internal logic of law, the central government should provide freedom over the management of oil and natural gas resources to the Acehese people. Unfortunately, the central government did not fully grant management rights (Mulyawan, 2012). The behavior of central government officials seemed to complicate the Government of Aceh's authority, which eventually affects the local own-source revenue (*Pendapatan Asli Daerah*/PAD). If the local own-source revenue fails to increase continuously, Aceh's development will be challenging to improve and poverty issues will not be adequately resolved. Socio-culturally, the central government officials do not seem to be fully independent but rather as an integral part of the Javanese people (Zulfadli, 2013).

The fourth concern is Aceh's right to control 70% of revenues from all hydrocarbon reserves and other natural resources. From a Western cosmology perspective that employs modern law with individualistic characteristics, it only serves the interests of individual capital owners or corporations without considering Aceh's energy sovereignty. Energy sovereignty is a fundamental command of the 1945 Constitution. Energy, including hydrocarbons (Efendi, 2017; Ridwansyah, 2018), must be utilized maximally for the people in general and the people of Aceh in particular. However, the concept of clause 1.3.4 was not fully incorporated into the Aceh Administration Act; therefore, it cannot be implemented. According to Indonesian law, a law can be implemented if it has been positivized. Nevertheless, the legal sociology approach can be applied to this clause due to the social phenomena of the Acehese people. The focus on the policy formulation on hydrocarbon in Aceh is not on certainty, but instead on the utilization because the share percentage is regulated in the Aceh Administration Act (Ali, 2012).

The fifth ⁵ related to Aceh's economic rights to carry out the development and management of all seaports and airports within the territory of Aceh. However, the authority to manage all ports in Aceh is regulated by the central government. There are two principles related to management rights to seaports and airports. The organized behavior concept is more focused on constant habits. It can also be seen from a psychological perspective aimed at the desire to achieve peace, namely harmony between order and peace. Therefore, from a legal sociological approach, the authority to manage both airports and seaports is more inclined to the Government of Aceh. As for the principle of unique behavior, decisions are taken by legal functionaries and the community who aims to achieve peace (a collective peaceful living). Based on the unique behavior principle, the empirical facts are not the case because the authority to manage the airport and ¹ seaports is in PT. Angkasa Pura II. This situation means that the central government does not implement the legal principles in the Aceh Administration Act (Mandasari, Kusumastanto, & Mulyati, 2017; Soekanto, 2006).

² The sixth concern is related to Aceh's access to free trade with all parts of the Republic of Indonesia, which is unhindered by tax, tariff, or other restrictions. Sociologically, the decision regarding free trade has been made. However, the legal functionaries are not going well because there is no progress in the management of the Sabang Free Port. The behavior of legal functionaries is a manifestation of social phenomena. There is an interrelationship between the Aceh Administration Act and the

occurrence of social events, including the unstructured pattern of officials. The stagnation ¹ results in the ineffectiveness of the Sabang Port. The central government and the Government of Aceh should understand the port's benefits so that the Acehese people will immediately enjoy free trade without tax, tariff, or other barriers (Black, 1989; Gultom, 2017).

⁸ The seventh issue is related to Aceh's access to direct and unhindered access to foreign countries, by sea and air. It seems that the Government of Indonesia's legal functionaries did not agree to include clause 1.3.7. in the Aceh Administration Act because it assumed that GAM combatants were still polarized by their traditional ideas (intention for independence). Therefore, sociologically, the central government did not fully trust the Government of Aceh. Clause 1.3.7 may provide the Acehese people the freedom to be more advanced than in other regions (Rahardjo, 2008; Sari, 2008).

The above sociological facts explain that Aceh's economic rights in the Helsinki Agreement have a critical role in Aceh's overall development. Comprehensive development is not only in the form of money transfers to Aceh from the central government, but the sociological perspective should also be considered because the two are not in opposite positions. Thus, the development of Aceh will be able to attract the participation of the national and international community.

3. CONCLUSION

Two conclusions are drawn from this article. Firstly, from a legal perspective, Aceh's economic rights in the Helsinki Agreement ¹ rise to legal certainty and must be carried out by the central government because the Aceh Administration Act already mandated the economic rights of the Acehese people. These are also constitutional rights of the Acehese people ¹ that must be fulfilled. Failure to fulfill these rights means that the central government has violated the provisions of the 1945 Constitution. Therefore, a balanced approach is expected, not a restraint on the Government of Aceh by the central government, related to Aceh's economic rights mandated in the Helsinki Agreement. This approach is necessary to assess and give a constitutional meaning if legal conflicts occur between the Aceh Administration Act and other equivalent laws and regulations. Secondly, from a sociological perspective, Aceh's economic rights in the Helsinki Agreement affects the Acehese people as a social institution. Therefore, all economic rights should be carried ¹ immediately by the authorities, i.e., the central government, the Government of Aceh, and the Aceh Parliament as legal functionaries. In the future,

it is expected that the implemented policies not only consider the legal perspective but also consider the

sociological perspective to achieve the desired legal norms.

REFERENCES

- Affan, H. (2019). Menilik Geliat Ekonomi Aceh Selama 10 Tahun Perdamaian. Retrieved July 15, 2019, from BBC.com website: https://www.bbc.com/indonesia/berita_indonesia/2015/08/150816_indonesia_ekonomi_aceh
- Ali, A. (2012). *Menjelajahi Kajian Empiris Terhadap Hukum*. Jakarta: Kencana Prenada Media Group.
- Anwar, Y. (2008). *Pengantar Sosiologi Hukum*. Jakarta: Grasindo.
- Armia, M. S. (2016). Perlindungan Hukum terhadap Ketahanan Energi Nasional Melalui Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 13(2).
- Bintang, S. (2010). Special Autonomy in Investment and Related Legal Issues: Case Study in the Province in Aceh. *Kanun Jurnal Ilmu Hukum*, 12(2).
- Bintang, S. (2016). Regions as Parties to International Investment Contracts (Case Study of Aceh Province). *Jurnal Konstitusi*, 13(4).
- Black, D. (1989). *Sociological Justice*. New York: Oxford University Press.
- Brodjonegoro, B. (2005). *Study on Decentralization Framework and Fiscal and Administrative Capacity of Local Governments in Indonesia*. Jakarta: Universitas Indonesia Press.
- Dani, S. (2015). Pinjaman Luar Negeri Aceh Terganjil Sumber Pembayarannya. Retrieved July 16, 2019, from <https://aceh.tribunnews.com/2015/08/25/apa-tugas-dan-wewenang-bpma>
- Dani, S. (2016). Pinjaman Luar Negeri Aceh Terganjil Sumber Pembayarannya. Retrieved July 17, 2019, from <https://aceh.tribunnews.com/2016/05/24/pinjaman-luar-negeri-aceh-terganjal-sumber-pembayaran>
- Djumala, D. (2013). *Soft Power untuk Aceh Resolusi Konflik dan Politik Desentralisa*. Jakarta: Gramedia Pustaka.
- Efendi. (2017). The Authority of Natural Resources Management in The Scope of Special Autonomy in Papua. *Kanun Jurnal Ilmu Hukum*, 19(1).
- Efendi, J. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Jakarta: Prenada Media Grup.
- Fajar, M., & Ahmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar.
- Fikri. (2013). The Protection on Fishery Resources at The Indonesian Territorial and Exclusive Economy Zone in Aceh. *Kanun Jurnal Ilmu Hukum*, 15(3).
- Fuadi, M. (2011). *Teori-Teori dalam Sosiologi Hukum*. Jakarta: Prenada Media Grup.
- Gardbaum, S. (2017). Revolutionary Constitutionalism". *International Journal of Constitutional Law*, 15(1).
- Gultom, E. (2017). Indonesian Ports As A Country Devised in Business Legal Perspective. *Kanun Jurnal Ilmu Hukum*, 19(3).
- Haikal, M. (2014). The Sovereign of Sea Local Resources: Human Rights Perspective. *Kanun Jurnal Ilmu Hukum*, 16(2).
- Hirawan, S. B. (2006). Evaluasi Lima Tahun Desentralisasi Fiskal di Indonesia. *Jurnal Ekonomi Dan Pembangunan Indonesia*, VI(2).
- Ishadi. (n.d.). Selat Malaka dan Potensi Industri Bioenergi Indonesia. Retrieved July 17, 2019, from <https://news.detik.com/keuangan/d-4223947/selat-malaka-dan-potensi-industri-bioenergi-indonesia>
- Jalil, H. (2010). Special Autonomy Implementation in Province Aceh based on the act Number 11 of 2006. *Kanun Jurnal Ilmu Hukum*, 1(51).
- Mandasari, Kusumastanto, T., & Mulyati, H. (2017). Economic Policy Analysis for Port Development in Province of Aceh. *Jurnal Ekonomi Dan Pembangunan Indonesia*, 18(1).
- Mulyawan, M. (2012). Menyongsong Kedaulatan Migas Aceh. Retrieved July 15, 2019, from <https://aceh.tribunnews.com/2012/03/13/menyongsong-kedaulatan-migas-aceh>
- Nolan, A. (2014). Holding Non State Actors to Account for Constitutional Economic and Social Rights Violations: Experiences and Lessons From South Africa and Ireland. *International Journal of Constitutional Law*, 12(1).
- Purnama, E., Yani, T. A., & Bahri, S. (2010). Identification for Qanun of Aceh in Developing Production Atmospher Toward Economic Democration Based on 1945 Constitutions. *Kanun Jurnal Ilmu Hukum*, 12(2).
- Putra, E. J. (2014). Creating the Welfare Through Special Autonomy Fund in Aceh in The Perspective of The State Finance Law. *Kanun Jurnal Ilmu Hukum*, 16(3).
- Rahardjo, S. (2008). *Membedah Hukum Progresif*. Jakarta: Gramedia Pustaka.
- Rahardjo, S. (2010). *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*. Yogyakarta: Gantra.
- Ridwansyah, M. (2017). Efforts to Find the Ideal Concept of Central-Local Relations Based on the 1945 Constitution of the Republic of Indonesia. *Jurnal Konstitusi*, 14(4), 841.
- Ridwansyah, M. (2018). Aceh dan Kedaulatan Energi. Retrieved July 15, 2019, from <https://wainadvisory.com/2018/11/18/acehkedaualataneenergi/>
- Roesa, N., & Iqbal, M. P. (2012). International Law of The Freedom Principle on Sailing in Straits. *Kanun Jurnal Ilmu Hukum*, 14(3).
- Roger, C. (2004). *The Sciologi of Law*. London: Butterworths.
- Sanusi, Mujibussalim, & Fikri. (2013). Aceh Forest Carbon Trade: Legal Analysis in The Planning Step. *Kanun Jurnal Ilmu Hukum*, 15(1).
- Sari, C. A. D. (2008). Analisis Yuridis Perjanjian

- Internasional Kerja Sama Sister City Antara Pemerintah Kota dengan Pemerintah Kota Higashimatsushima. *Penelitian Fakultas Hukum Universitas Sumatera Utara*.
- Siahaan, M. (2011). *Hak Konstitusional dalam UUD Tahun 1945*. Jakarta: Elsam, Lembaga Studi dan Advokasi Masyarakat.
- Simanjuntak, R. (2002). *Dana Alokasi Umum: Konsep, Hambatan dan Prospek di Era Otonomi Daerah*. Jakarta: Gramedia Pustaka.
- Simanjuntak, R. (2005). *Politik Keuangan Daerah dan Perimbangan Keuangan Pusat-Daerah*. Jakarta: Universitas Indonesia Press.
- Smoke, P. (2003). *Intergovernment Fiscal Transfer in Asia: Current Practice and Challeges for the Future*. Jakarta: ADB.
- Soekanto, S. (2006). *Konsep-Konsep Hukum dalam Pembangunan*. Bandung: Alumni.
- Syahrial, S. (2003). *Otonomi Khusus*. Jakarta: KPPOD News.
- The World Bank. (2009). *Diagnosis Pertumbuhan Aceh*. Jakarta: Sekretariat Bank Dunia Jakarta.
- TR, C. A. H. (2018). Strategi Penguatan Pengelolaan Bersama Minyak dan Gas Bumi di Wilayah Laut. *Jurnal Konstitusi*, 15(1).
- Ulya, Z. (2014). Refleksi Memorandum of Understanding (MoU) Helsinki dalam Kaitan Makna Otonomi Khusus Di Aceh. *Jurnal Konstitusi*, 11(2), 372.
- Weston, B. H. (1993). *Hak-Hak Asasi Manusia: dalam Hak-Hak Asasi Manusia dalam Masyarakat Dunia, Isu dan Tindakan*. Jakarta: Yayasan Obor Indonesia.
- Wignjosobroto, S. (2002). *Hukum: Paradigma, Metode dan Masalah*. Jakarta: : Lembaga Studi dan Advokasi Masyarakat.
- Yani, A. (2009). *Hubungan antara Pemerintah Pusat dan Daerah di Indonesia*. Jakarta: Rajawali Press.
- Zainal, S. (2016). Transformasi Konflik Aceh dan Relasi Sosial Politik di Era Desentralisasi. *Jurnal Sosiologi*, 21(1).
- Zulfadli, B. (2013). Analisis Filosofis tentang Peta Konseptual Penelitian Hukum Normatif dan Penelitian Sosiologis. *Jurnal Dinamika Hukum*, 13(2).

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ABSTRACT

There are seven clauses regarding Aceh's economic rights regulated in the Helsinki Agreement. Firstly, Aceh has the right to obtain funds through foreign loans and to set interest rates. Secondly, Aceh has the right to establish and collect taxes as well as to conduct trade and business internally and internationally. Third, Aceh will have authority over living natural resources in the territorial sea. Fourth, Aceh will have the right to control 70% of revenues from hydrocarbon reserves. Fifth, Aceh will conduct the development and management of all seaports and airports. Sixth, Aceh will enjoy free trade. Finally, seventh, Aceh will enjoy direct and unhindered access to foreign countries by sea and air. From all the above clauses, only part of it was adopted by Act No. 11/2006 regarding Aceh Administration. This condition demonstrates the exclusion of Aceh's economic rights, which were mandated by the 1945 Constitution.

There are two issues addressed in this paper, i.e., the legal perspective of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006 and the sociological viewpoint of Aceh's economic rights as mandated in the Helsinki Agreement with regards to Act No. 11/2006. The four approaches employed to review the Helsinki Agreement and the Aceh Administration Act in this paper are the legislative approach, the analytical approach, the philosophical approach, and the legal sociology approach. Firstly, based on a legal perspective, Aceh's economic rights in the Helsinki Agreement generated legal certainty and must be implemented by the central government because the Aceh Administration Act has partly adopted these rights. The economic rights are constitutional rights of the Acehnese people that must be fulfilled by the central government. Failure to fulfill these rights is a violation of the provisions in the 1945 Constitution. Secondly, based on the sociological perspective, the Aceh's economic rights in the Helsinki Agreement impact the people of Aceh as social institutions. Therefore, all economic rights should immediately be carried out by the authorities, including the central government, the Government of Aceh, and the Aceh Parliament as legal functionaries.

Keywords: economic rights, the Helsinki Agreement, the Government of Aceh.

1. INTRODUCTION

The 1945 Constitution already accommodated Aceh's economic rights in Article 33 Paragraph 3. It

stated that "The land and the waters and the natural resources contained therein are to be controlled by the state and to be exploited for the greatest benefit of