

010

ENDORISING CIVIC INSTITUTIONALIZATION: THE STRUCTURE OF LOCAL BY LAWS AGAINST FUTURE SOCIAL CONFLICT

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Abstract

During the post-orde baru era, democracy and human rights protection appear to contribute a significant change in the society. In particular, given the high diversity amongst the Indonesians, human rights and fundamental freedom protection may to some point bring the people into social conflict vulnerability. The normative framework to manage social conflict has been enacted by the state through the Social Conflict Handling Law No. 7 Year 2012. Under this framework, the government, especially the local government, ought to involve civic participation (both social and Adat institutions) in managing a local social conflict. This management system shall thus cover conflict prevention, conflict termination, up to post-conflict rehabilitation. This paper attempts to scrutinize the civic institutionalization in local level based on circle of conflict analysis. In conclusion, the present authors argue that such an institutionalization ought to be regulated under local bylaws, upon which the circle of conflict ought to be applied as theoretical basis for future social conflict mechanism.

Keywords: civic institution, social conflict, local government.

A. Introduction

During the post-new order era, the socio-political dimension amongst Indonesians has been highly fueled with various types of social conflict. It appears that the larger freedom endowed by the Constitution during the current *reformasi* era has apparently created dysfunctional state's control upon conflict potentials. This could be signified by the current trends of Indonesia's social conflict including: ethnic and religious based conflict, natural resources/agrarian conflict, separatism, and political violence.

Consequently, such a phenomenon was responded by the State through the enactment of the Law No. 7 Year 2012 about Social Conflict Handling (SCH). It is

expected that the State shall be equipped with normative tools to regulate the society. To be more specific, departing from the current decentralization policy, the SCH Law gives weight to the role of local government to handle social conflict commencing from conflict prevention, conflict termination, up to the post-conflict rehabilitation. Moreover, the central government even issued a Presidential Instruction No. 2 Year 2013 on the Handling of Interior Security Disturbance to ensure the conduciveness of social, legal, and security order in the society by establishing integrated teams composed by all relevant ministries and local governments, which supported by national army and

national police. These laws-in-paper may give us an understanding that homeland security has become a major concern of the central and local government.

This paper attempts to analyze the application of the SCH Law, in particular on how it may effectively prevent future social conflict with respect to the institutionalization of civic participation through local bylaws. Based on circle of conflict theory accompanied by mass mobilization theory, several aspects of the SCH Law will be elaborated, covering the law's normative framework, the future conflict prevention feasibility, and civic participation institutionalization through regional bylaws.

B. Social Conflict: A Normative Framework

Arguably, the enactment of SCH Law in 2012 is to be deemed as a way for the State to preserve public order and national security. The long repressive-military approach in undertaking social conflict appears to be out-dated and incompatible with the demand of human rights and fundamental freedoms in Indonesia.³ Hence, the creation of SCH Law ought to be seen as a comprehensive, effective, efficient, accountable, and transparent measure in conflict prevention, conflict termination, and post-conflict rehabilitation.⁴ Nonetheless, many human rights activists voiced their concern regarding the SCH Law, as it may allegedly serve as state's legitimacy to control and curb individual's freedom thus harm Indonesia's democracy.⁵ These critics could also be seen as a deep trauma of

the society against a long circumcision of freedom conducted by the state, particularly by military control.

However, from a human rights standpoint, the authors argue that the SCH Law should be seen as a proactive measure by the State to create a secure society. A publicly well-known principle in human rights discourse called the 'Siracusa Principle' defined public safety as "protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property".⁶ The Principle also mentioned a safe guard clause by stating that "the need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse".⁷

Furthermore, in Article 20 of the ICCPR, we can find that first, any propaganda for war shall be prohibited by law; and second, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Thus, the state may take proactive action by restricting any religious speech and ceremonies that provoke war propaganda and incitement, which to a certain extent can breed social conflict potentials. These explanations simply suggest that the state, as the duty bearer in human rights regime, is legally required to conduct positive actions in making policies and legislations not only to protect individuals to exercise their freedom, but the most important is to set a safeguard

in maintaining public order and security.

Legally speaking, under Article 1 (1) the SCH Law defines social conflict as feud and/or violent physical clash between two or more groups of people for a certain period of time and gives impact to social unrest and disintegration, which may interfere the national stability and impede the national development. Under Chapter VI of the SCH Law regarding the institutionalization and mechanism of conflict termination, Article 40 rules that conflict settlement institutions including central and local government, *Adat* and/or social institutions, along with Social Conflict Settlement Task Forces. It is of particularly important to highlight that the Law prevails and preserves *Adat* and/or social institutions preceding all other actors in social conflict settlement. However, this type of institution has to be first facilitated or accommodated by the local authorities in dealing with conflict settlement in the region. Article 41 mentions five points concerning *Adat* and/or social institution:

- (1) Conflict settlement conducted by the central and local government by advancing existing and recognized *Adat* and/or social institution;
- (2) Central and local government shall recognize the conflict settlement resulted through an *adat* and/or social institution mechanism;
- (3) Agreement resulted from conflict settlement through *adat* and/or social institution mechanism as stated under paragraph (1) has a legal-

binding force upon conflicting social groups;

- (4) In circumstance of failure within the *Adat* and/or social institution mechanisms stated under paragraph (1), thus the social conflict settlement process shall be conducted by the Social Conflict Settlement Task Force;
- (5) Conflict settlement through *Adat* and/or social institution mechanism as stated under paragraph (1) shall be facilitated by the regency or city administration with the involvement of district, sub-district, and also village apparatus.

Within this normative framework, the Law requires the local authorities to involve the recognized *Adat* and/or social institution mechanism in social conflict settlement process. This proposition implies several legal consequences: *first*, through this *Adat* and/or social institution mechanism the normative civic-based customs may have the equal legal binding force with positive national laws; *second*, the recognition of *Adat* and/or social institution by the local authority consequently requires an institutionalization measure to the local authority structure, for instance by giving membership to *Adat* and/or social institution as part of social conflict settlement task force.

C. From Termination to Prevention: Forecasting Causes of Conflict

The current trend of social conflict indicates us that the problem of the conflict prevalence derives mainly from the weakness of law enforcers to uphold the

positive laws. Such a condition impacts directly to a situation of *eigen-rechting*, where individuals are prone to disrespect the positive law by arbitrarily enforcing their own concept of justice.

While it is the fact that the long era of authoritarian *orde baru* has cut down most of public channel to voice their aspiration, the emerging concept of human rights (and arguably constitutional rights) has been sending a message of freedom to the longing Indonesians. Specifically, the significant aspects are freedom to associate and freedom of expression and opinion. Furthermore, the absence of clear division between security and legal matter has created a deep distrust between the civil society and the state apparatus, especially the military and police.

Currently, the Human Development Index and the number of poverty in Indonesia indicate us that poverty and welfare inequality, and the problems of individual's basic rights fulfillment will still be faced by the government of 2015-2019, which directly makes it logical to apprehend that natural resources, agrarian and religious based conflict shall potentially be dominant figure of social conflict.

Moreover, one particular causal aspect that needs to be highlighted

is the state's relatively weakness of law implementation. Related to this, the Indonesian Legal Roundtable has recently published the Indonesian Rule of Law Index 2013 that measures legal phenomenon in Indonesia during 2013. The report values the rule of law in Indonesia at the point of 5.12 out of 10, which considerably could be regarded as weak in terms of upholding the rule of law.⁸ The Indonesian Legal Roundtable considers that the common problems that hinder the application of rule of law are including: the overlapping legal rules, the executive, legislative, and judicial incapacity to uphold the law, and the lack of access to justice. It is worth to note as well that the Report points that the implementation of law is to be the lowest indicator with 4.61.⁹ Further, the Ministry of Law and Human Rights through the people's communication service directorate recap a total of 363 communications delivered to the Ministry during January to June 2014. From the 363 communications, arbitrary conduct by the state apparatus, due process of law, right to information and agrarian conflict mark the highest form of individual's right infringement. A detailed recapitulation read as follows:

Table 1. January-June 2014 People's Communication to the Ministry of Law and Human Rights¹⁰

Thematic interference	Comm.
Labor	20
Arbitrary conduct by apparatus	83
Mal-administration	4
Agrarian	38

Thematic interference	Comm.
Penitentiary	6
Religious freedom	1
Adat people	2
Criminals	39

Thematic interference	Comm.
Civil lawsuit	14
Environment	6
Due process of law	41
Eviction	3
Governmental policy	6
State's employee affair	13
Natural resources	2
Past human rights abuses	8

Thematic interference	Comm.
Domestic violence	4
Business and Human Rights	1
Vulnerable groups	3
Human trafficking	2
Information	63
Racial discrimination	2
Housing dispute	1
Refugee	1

The above mentioned reports and phenomenon should give us some light on how the current social changes may affect future dynamic of social conflict. Based on the reports, there are two bottom lines that could be discerned: *first*, psychologically speaking there is an emerging distrust, and to some extent disrespect, by the society at large against the current authority and bureaucracy resulted from a long authoritarian regime. Such a phenomenon implicates a growing number of both vertical and horizontal conflict amongst the society;¹¹ *second*, sociologically the protection of human rights and fundamental freedoms give a larger channel for the society to communicate and participate in public affairs, which at the same time demand a proactive measure by the state to fulfill and protect individual's basic right.

Back to the social conflict potential sources issue at hand, the SCH Law however seems to accommodate this socio-psychological phenomenon by bringing civic participation in state's soft power in undertaking public and order. By bringing social conflict as a contemporary object, the state thus intended to manage the Indonesia's potential sources of

conflict namely: cultural diversity, natural resources, economic and welfare gap.

The present authors believe that the ideology and economic causes will still be dominant catalyst in creating social conflict in Indonesia in the next five years. Based on such a social conflict trend, the sole primacy of legal approach shall not be adequate in undertaking these issues without a strong civic participation. Related to this, in general a strong democracy requires a multi-aspect civic participation, as McCoy states that:

Civic engagement implies meaningful connections among citizens and among citizens, issues, institutions, and the political system. It implies voice and agency, a feeling of power and effectiveness, with real opportunities to have a say. It implies active participation, with real opportunities to make a difference.¹²

From a deliberative democracy point of view, the conflict is thus best resolved through public *deliberation* rather than public *dialogue*, upon which McCoy concludes that:

First, dialogue and deliberation as usually understood need to be

combined. This deliberative dialogue creates a more holistic form of communication that acknowledges the importance of building community connections and of collective action and shared work. *Second*, community organizing and deliberative dialogue must be combined in an effort to bring everyone to the table and to create a true public context for public conversation.¹³

Hence, while the primacy of law enforcement is to be deemed as a necessary foundation in creating a harmonious society, civic participation is nonetheless may contribute in dealing with social conflict prevention. Under human rights logic, as the duty-bearer the state ought to be able to provide positive measure in channeling civic participation in order to prevent future social conflict. To be more specific, such participation ought to be put in a form of *deliberation* between the duty-bearer and right-holder.

D. Bridging the Interests

Based on the aforementioned description regarding the normative framework of social conflict in Indonesia, the phenomenon of existing conflicts in the community arguably may reflect on how the disruption of security and order in the society emerge. Based on the current social conflict phenomenon, social interaction within the local communities arguably could often lead to a social conflict. To be more specific, a social conflict is closely associated with human feelings,

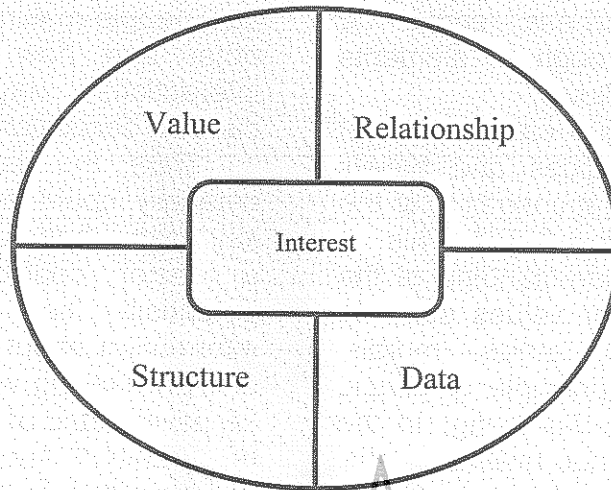
including feeling neglected, unappreciated, ignored, abandoned, and also feeling upset because of competition in the community. These feelings can sometimes lead to anger. These circumstances will affect a person in carrying out his/her activities as a social creature.

Over time, both micro and macro scale conflicts could easily found amongst the society. In many circumstance, a social conflict might sometimes occur due to minor problems.¹⁴ At the same time, the conflict management mechanism chosen is very decisive in handling and prevention pattern.

Theoretically, a conflict can be analyzed through the circle of conflict analysis developed by Christopher Moore who defines the concept as a map that categorizes the causes of conflict from a practical situation, thus offers a framework to describe and understand the phenomenon that causes a conflict in order to direct such conflict into a form of resolution.¹⁵

In this sense, the circle of conflict analysis categorizes the underlying causes that drive a social conflict. This analysis elaborates the cause and driver of a social conflict into five categories: values, relationships, data, structures and interests. This analysis further offers concrete advice in analyzing each conflicts driver and directs practitioners toward the six categories as the main focus for conflict resolution. These five categories could be best described under a circular diagram as follows:

Diagram 1. The Circle of Conflict¹⁶



To be more specific, the five categories could be elaborated into several practical elements covering:¹⁷ (i) **relationship** shall comprise elements such as a negative past experience, stereotypes, communication failures, and repetitive negative behavior; (ii) **value** which consists of belief systems, values of right and wrong, good and bad, fair and unfair value; (iii) **data** includes the

elements of the lack of information, incorrect information, too much information, and problems collection; (iv) **structure** which consists of the limited physical resources such as time and money, authority issues, geographical constraints, and organizational structure; and (v) **interest** shall cover elements such as interests, needs, and preference.

Table 1. *The Circle of Conflict*¹⁸

RELATION	VALUE
1. Negative past experiences	1. Belief system
2. Stereotypes	2. Values of right and wrong
3. Communication failure	3. Values of good and bad
4. Repetitive negative behavior	4. Values of fair and unfair
INTEREST	
1. Interests	
2. Needs	
3. Preference	
STRUCTURE	DATA
1. Limited physical resources such as time and money	1. Lack of information
2. Authority issues	2. Misinformation
3. Geographical constraints	3. Too much information
4. Organizational structure.	4. Collection problems

Based on the diagram, the five conflict-driver categories are to be

put in a circulating diagram, from which each categories shall be

interrelated each other and tied up by *interest* as the core category. This interrelatedness could be discerned through elements elaboration as follows:

First, the value category ought to include all values and beliefs held by parties that contribute to the occurrence of conflict.¹⁹ This is related to an understanding of the purpose of life or values such as religious beliefs, ethics, morals, social common principle or simple values of day-to-day living. In the context of Indonesians, this category may seem to be relevant given the current trend of social conflict form, such as the Shia-Sunni conflict, the Ahmadis, and other issue religious based conflict.²⁰ In many circumstances, different values amongst the conflicting parties in conflict may also make things even worse.²¹ Therefore, as an important element of human lives, an intersection between moral values, ethics, ideology or world view, and values of simple day-to-day are vulnerable in creating social conflicts in the community.

Second, the relationship category is concerned with regard to the negative experiences of the past as a cause of conflict.²² Hence, a social conflict might occur if there is a connection between the societal past experience problems with the present societal situation. This premise often described in a form of prolonged stereotype, which shall encourage people to restrict or terminate communication with others.²³ Such a situation often leads to behavior where one party feels the sense of injustice and avenge to the other party; the latter party will do the same to the former

thus creating the endless conflict. In this category, the important point is how people making relation to each other and how their behavioral interactions may contribute to cause a social conflict.

Third, the data or information category could be identified as a key holder in the conflict.²⁴ Data, as a social conflict driver, could potentially be a cause when information about something is lost or even lacking wrong that creates an asymmetric of information within the society.²⁵ Another circumstance in which data to become the cause of social conflict is when there is various meaning or multi-interpretation to certain data or information. This condition is because the existing social culture assumes that the facts speak for themselves, therefore requires interpretation that may open a gap of difference in interpretation between individuals or groups. In brief, this condition often creates negative assumptions amongst the society and hence becomes a social conflict driver.

Fourth, the structure category is to include generally a destructive behavior pattern and interaction; unequal control, ownership, and distribution of resource; unequal power and authority; and other geographical, physical, and environment factors that hinder cooperation between individuals or groups. Briefly speaking, there are three main problems in this category, namely: (i) the lack of resources within the structure would cause the parties to compete and cause structural conflict; (ii) authority will be a problem when there are parties that would resolve the problem but does not have the

authority to make decisions; and (iii) organizational structure issues can occur when people have to work together in different departments but has a different priority on each other's work. Geographical constraints that can be the cause of the conflict is that management should be done in areas that can not be reached. The situation is often called responsibility without authority, and very typical of the conflict that would become the cause of conflict.

Fifth, the interest, as the main core category in the circle of conflict analysis, shall include all interests pertaining conflicting parties that contesting and scrambling each other.²⁶ In this sense, an actual competition and the intensity of interest shall be the basis of the rest categories, which involves economic, politic, cultural, and ideological factors. Presumably, these factors may cause the continuation and protraction of a social conflict.

Having analyzed the five conflict-drivers as causes of problem, there is a need to give pressure point on each location conflicts. From a strategic policy perspective, the circle of conflict analysis may provide some practical guidance on what should be implemented upon various driving-related conflicts identified. The circle of conflict analysis provides some practical guidance about what should be done with a variety of driving-related conflicts that have been identified. Subsequently, the analysis divides the circle into two regions namely upper and bottom area. The upper part consists of the value and relationship categories, while the

bottom part consists of the data and structure. The two areas place the interest category in the middle as in every social conflict phenomenon the interest shall always develop in behind. Furthermore, as for the upper area, the value and relationship categories cannot be solved directly, but rather requires a long time due to it deals with something fundamental. On the other hand, the bottom area of the circle can be resolved directly as it falls under practical matters within the society, upon which the state may have a greater authority to undertake them.

Practically speaking, there are several advantages of applying the circle of conflict analysis –rather than theory or other analysis of conflict resolution, namely: (i) the analysis taken is more practical; (ii) analysis of the conflict and its resolution stems from the conflict background; (iii) such an analysis of values, relationships or environments could be applied in searching for a new relationship pattern as a resolution, hence could analyze the external environment that cause conflict by replacing with a new environment.

E. Endorsing Civic Participation Institutionalization

Based on the definition of social conflict enshrined under the SCH Law, the present authors however sees massive conflicts that involving large-scale religious and ethnic factors shall not loosen the birth of small-scale and limited conflicts, such as: fights involving villages, gang, students, and so forth. In another circumstance, conflicts over natural resources sourced were continually rising

along with the development of plantation enterprises in a number of areas.

As various social conflicts resulted from the seizure of natural resources, economic resources, and political sources have put some consolidated social elements in the into significant role, especially in terms of social integration that is built on the basis of customs, local wisdom, and culture. In this sense, Indonesia society has shifted from an agrarian society integrated in units of culture, to an individually urban-industrial society with fading values and cultural mores. Hence, social authority is currently experiencing shifts in the community.

As an effort to create order and security, it would be rational for the government to involve religious figures, *Adat* leaders, community leaders, or peace activists, under the framework of the Social Conflict Resolution Task. Regarding this issue, Gross, Mason and McEachern define role as "a set of expectations imposed on individuals who occupy a particular social position. These expectations are a counterpoise to the social norms and therefore it can be said that the roles defined by the norms of the society." This proposal could also be regarded as an intervention of balancing roles within the society. In this sense, there is need to distinct Galtung's concept of 'associative' and 'dissociative' which practically described as follows:

In situations where serious human rights abuses have been committed or patterns of injustice are firmly entrenched, some actors may want, or need, to

emphasize that human rights standards lay down a bottom-line that has been crossed; they will distance themselves from individuals or institutions allegedly responsible for such acts or conditions. Such a 'dissociative' approach may manifest in criticizing such persons or institutions, and/or engaging in litigation to establish accountability, enforce rights, and provide redress. However, other actors in the same context may wish to keep channels of communication open and continue engaging with such persons or institutions suspected of having been implicated in violence in order to reach other objectives. Their use of associative strategies may at times be influenced by pragmatic concerns; this is for example the case when an organization is unable to work 'around' the state because it requires permission from the local authorities for implementation of project activities. Also, given the sensitivity of some of the work done through associative strategies, actors using them may want to avoid drawing attention to them because this could jeopardize their efforts and/or compromise the stakeholders involved, including themselves.²⁷

Nevertheless, the role of community leaders and religious leaders is often limited to mere small-scale conflicts.²⁸ While these figures are presumably capable of handling massive conflict, any conflict resolutions mostly being undertaken by the local government

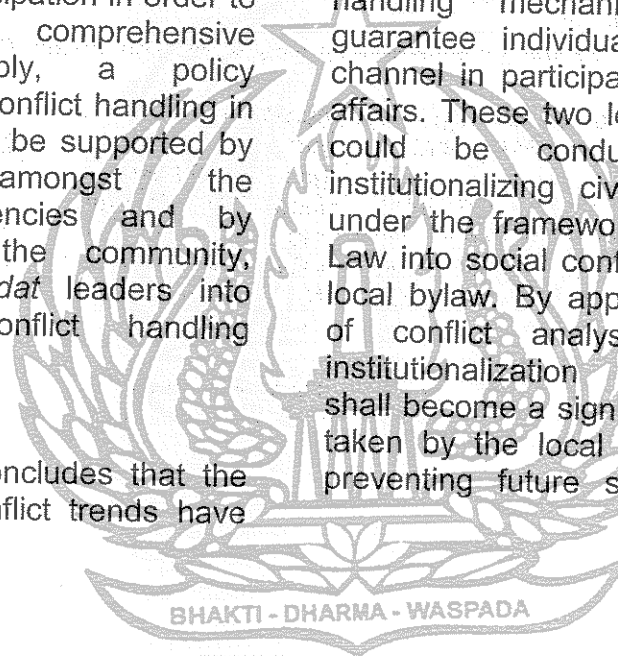
along with the police. This fact indicates that custom figures, or to a certain extent civic participation, were only involved as subsidiary party, instead of playing main actor in handling social conflict. This could be well understood because in a modern rule of law state, the formal legal authority has more significant role than the *Adat* authorities.²⁹

Within the decentralization system at hand, in forming social conflict handling bylaws, the local government has a wider room to involve civic participation in order to create a more comprehensive system. Arguably, a policy regarding social conflict handling in the region should be supported by coordination amongst the government agencies and by institutionalizing the community, religious, and *Adat* leaders into local social conflict handling system.

F. Conclusion

This paper concludes that the current social conflict trends have

yet to be managed in a systematic manner. Through the enactment of the SCH Law, it is thus important for the government, in particular the local government, to involve civic participation more than the previous security-based regime during the *orde-baru* era. Given the protection of human rights and fundamental freedom, the state consequently has two legal obligation regarding this issue, including to ensure public safety, security and order through establishing a comprehensive social conflict handling mechanism, and to guarantee individual's or group's channel in participating into public affairs. These two legal obligations could be conducted through institutionalizing civic participation under the framework of the SCH Law into social conflict mechanism local bylaw. By applying the circle of conflict analysis, such an institutionalization consequently shall become a significant measure taken by the local government in preventing future social conflicts.



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- 3 See Angel Rabasa and John Haseman, *The Military and Democracy in Indonesia: Challenges, Politics, and Power*, 2002, Virginia, RAND.
- 4 See The SCH Law addendum.
- 5 Catatan Kritis ELSAM "RUU Penangan Konflik Sosial: Desentralisasi Masalah, Nihilnya Penegakan Hukum, dan Kembalinya Militer dalam Ruang Sipil."
- 6 United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), para.33.
- 7 *Ibid*, para. 34.
- 8 As a comparison, the Indonesian Rule of Law Index 2012 found the score of 4.53 based on several key indicators: human rights respect, protection, and fulfillment; rule of law-based government; independency of judiciary; access to justice; and the principle of open and clear regulation. See, Indeks Persepsi Negara Hukum Indonesia 2012, Indonesian Legal Roundtable, Mei 2013.
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- 18 *Ibid*, p.30. (modified by the present authors).
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- 24 Furlong, *Op.Cit*, p.32.
- 25 See, *Kebijakan Pemerintah Daerah dalam Penanganan Konflik antar Organisasi Kemasyarakatan*, *Ibid*.
- 26 Furlong, *Op.Cit*, p.34.
- 27 Federal Ministry for Economic Cooperation and Development, *Connecting Human Rights and Conflict Transformation: Guidance for Development Practitioners*, Bonn, Deutsche Gesellschaft für Internationale Zusammenarbeit, July 2011, page.37.
- 28 Arguably, this argument is based on the experience of Papuans and Acehese. See. Badan Penelitian dan Pengembangan HAM, *Evaluasi Kebijakan Pemerintah Daerah dalam Penanganan Konflik Berbasis Agama*, 2013, Jakarta.

²⁹ See, Badan Penelitiandan Pengembangan HAM, *Evaluasi Peran Lembaga Adat dalam Penanganan Konflik Sosial*, Jakarta, 2012.



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