

THE CONSTRUCTION OF LAW IN ORDER TO ESCALATE THE BILATERAL RELATIONSHIP BETWEEN INDONESIA AND TIMOR-LESTE

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I. PREFACE

From the point of view of International law, East Timor as the 27th Province of Indonesia, and as a part of Republic of Indonesia, holds a very special position compared with another province. Based on Sui Generis, the other provinces were an integral part of Republic of Indonesia since August 17th, 1945, and It has been in accordance with Article I of Montevideo Convention 1933¹.

East Timor became an integral part of Indonesia through Act number 7, 1976 LN 1976135 about unification endorsement of East Timor: as integral part of Republic of Indonesia and establishment of regional province level I of East Timor, that was entered in force since July 17th, 1976².

Integration process of East Timor into Republic of Indonesia that ended in separation of East Timor from Republic of Indonesia was a very unique situation. Long history of Colonialism transformation in East Timor, start from colonialism by Portuguese, which change over to occupation of Indonesia, and ended by establishment of an independent nation, Timor Leste. This long journey was resulted in Gross violation against human rights and has caused a great number of refugees.

If we observed, after the occupation of East Timor by Indonesia government, many issues of violation against human right have been emerged. After occupation by Republic of Indonesia. "Indonesianisasi" propaganda in East Timor tends to use military force. At the end of the period, Indonesia government built many concentration camps in East Timor for destroying the emerged separation movement and indoctrination effort for people of East Timor.

Democratic Republic of Timor Leste, which previously called as East Timor, and will known as Timor Loro Sa'e, is a small country on north of Australia and east of Timor Island. As a nation that has been separated from Indonesia. Timor Leste has gained independence since May 20, 2002. When Timor Leste become a member of United Nation, they decided to use their Portuguese name. Timor Leste, as their's nation official name.

East Timor province was located on the east side of Timor Island, while on the west side, lays East Nusa Tenggara province. One unique thing here is that one of the district of East Timor, Ambeno District, where its capital Oekusi was located within the East Nusa Tenggara province. It means that Ambeno District has become an "enclave region", a part of East Timor region inside of East Nusa Tenggara province.

Since Timor Leste has become one of Indonesia's province, many conflicts has occurred within this area. Conflict that happened in Timor Leste is a part of internal conflict regarding the separation of region. This conflict ended by a gross violation against human rights and violation toward international humanitarian law. This violation occurred in January 1999, when President of Indonesia. B.J. Habibie declared that there were 2 option left for the future of East Timor province. These options were:

1. Social Autonomy option for East Timor province
2. Separation of East Timor province from Republic of Indonesia

In order to determine which option would be taken, the government of Indonesia held a referendum, which

¹ Hermawan P.S. Notodipuro, Status Integrasi Timor Leste ke dalam Negara Kesatuan Republik Indonesia Kajian Hukum Internasional Khususnyadari Praktek Perolehan Wilayah Dan Hukum Pengakuan. The Thesis was addressed in Discussion Forum by National Center of International Organization Study. Politic Science Faculty of Airlangga University. Page 5

² Before government of Indonesia has accepted Balibo Petition dated May 31st, 1976 about integration statement of East Timor citizen into Republic of Indonesia from temporary government of East Timor, and since that. East Timor has become an Integral part of Republic of Indonesia

resulted in the separation of East Timor province from Republic of Indonesia and became a new independent state, Democratic Republic of Timor Leste.

Internal conflict as characteristic of contemporary conflict becomes very important in international relation study. Some of the reasons are³:

1. Internal Conflict can spread
2. Internal Conflict can cause human to suffer
3. Internal Conflict can affect neighboring states and threaten regional stability
4. Relate with the interest of big nation and international organization
5. International societies' efforts to solve this conflict

As one of the examples is contemporary conflict that happened in Timor Leste was connected with the separation of Timor Leste region with Republic of Indonesia. This conflict ended with gross violation of human rights that affected by several factors, including the involvement of international organization, such as United Nations.

There comes a time when conflict occur when a government is willing to resolve problems with their own way. When a society or the policy maker of a country has an attitude and predisposition, such as prejudice and suspicion toward other countries, then tension will be amount. This tension automatically will cause conflict. *Moreover, when a country tendency in resolving the conflict is against the interests of another states*⁴. This potential tension is within the psychological dimension, colored by skepticism, concern, and other antagonistic attitudes. Many of these actions show that problems, which become the source of the conflicts, can be originated from many directions, such as conflict that originated from differences in objective, attitude of policy makers that tend to *apply threat against sanction and political behavior*⁵. R. Soeprapto, *International Relations: System, Interaction, and Behavior*, Raja Grafindo Persada, Jakarta, 1997, page 211.

Based on the inquiry by National Human Right Commission for human rights violation in Timor Leste, found that gross violation against human rights in Timor

Leste was not caused by the civil war, but more caused by the systematic violence⁶ and can be attributable to three subjects. They were:⁷

- a. Subject that directly involved in the field, such as militia, military personnel, and police.
- b. Subject that controlling the operation, such as civil bureaucratic officials, especially the regent, governor, military commander, and local police/ authority.
- c. Subject that hold responsibility for national safety policy, such as high-ranking military officers, active or passive that has been involved in the crime.

John G. Taylor presented same perspective, implying that gross violation of human rights that happened in Timor Leste is a schematic project recognized as "Sapu Jagad" Operation, and Indonesia's special forces held a very important role in brought out this operation. Aim of these forces was to create a chaotic condition in Timor Leste that ruined by its own civil war and making them unable to hold their own government. These forces also aimed to sabotage the referendum and to eliminate the local leaders of Timor Leste independence movement⁸.

From many argumentations above, Indonesia's President issued only two options. They are autonomy or independence of East Timor at the end of 1999. To follow up these options, on May 5th 1999, in New York "Tripartid" Agreement signed by Indonesia, Portugal, and United Nations. In this agreement, preparation and execution of the referendum was fully authorized to United Nations Mission in East Timor (UNAMET)⁹.

Indonesia's policy changes under Habibie administration in giving autonomy to Timor Leste, gained special attentions and differently responded by many party both national and international. Many debates surfaced regarding this problem. Indonesia government wanted to resolve the problem in Timor Leste through this proposal. On the other hand, the opposition side thought differently. They argued that this referendum was essential to determine their future. However, President Habibie still held key position in determining the international policy. In the crisis condition (economy, politic, and indictment for reformation), his international policy objective was

³ Michael E. Brown (ed.). *The International Dimensions of International Conflict*, Cambridge, MA and London, The MIT Press, 1996, page 3-9.

⁴ Maria Putri Kusumanegari, *The Dynamics of International Relations between Indonesia-Timor Leste in 2004-2006*, Thesis for International Relations, Faculty of Social and Political Science, University of Airlangga, Surabaya, 2007, page 86.

⁶ Executive Summary Investigation Report of Violation against Human Rights in Timor Leste, January 31st, 1997, page 3.

⁷ Ibid, page 11

⁸ These militants were recruited from West Timor, Flores, and Java. Militant groups were formed in all districts of Timor Leste (13 of them). Indonesia National Forces commander chose each group's commander. These groups was recognized with different names, such as: "Besi Merah Putih", "Mahidi (Matu Hidup Demi Indonesia)", "Aitrak", and "Darah Merah". More of this subject can be seen from John G. Taylor Book, *East Timor: The Price of Freedom*, Zed books, London, 1999, page XIX-XX.

⁹ UNAMET is United Nations organ that formed by United Nations Security Council on June 11th, 1999 especially to execute the referendum in Timor Leste as the result of meeting by Indonesia, Portugal, and United Nations in New York on May 5th, 1999.

shifting. Realizing this condition, President Habibie directed his administration international policy, in prioritizing cooperation of international organizations and support of friendly states in order to recover national economy and to deal with Indonesia's crisis¹⁰. Recognizing its own position as transitional government, and amid demands for changes, Habibie tried to take revolutionary steps in his policy by accelerating evolution and changing in politic, economic, law, and other sectors, including his commitment in preparing democratic political process with the establishment of new and legitimate government. These considerations were responsible for brave steps taken by President Habibie by offering two options to Timor Leste and caused the disintegration of East Timor from Republic of Indonesia¹¹.

Since the announcement of the referendum results, with the winning result on the Pro-Independent side, causing the opposition side to rally their power. Bloody incidents between the pro-independent and the opposition sides were inevitable. Until the mid of September 1999, thousands of civilian took refugee to the ridge area of Timor Leste. In the same period, some of them that evacuated to Indonesia nearly reached 150.000 lives. More than 40.000 lives were evacuated by crossing the border from land to region of Belu District. These numbers almost equal with the refugee in the border region when this ex-colony of Portugal engaged in civil war in 1975¹².

Responding to this condition, especially regarding the gross violation of human rights in Timor Leste, Security Council of United Nations produced Resolution 1272/1999. This resolution called upon the nations to establish a new mechanism to ensure that the perpetrators of this violation be brought to justice. Moreover, this resolution called upon Indonesia government to bring into justice all the perpetrators as soon as possible, including swift, whole, effective, and transparent legal process based on International standard of justice and fair trial. This resolution was issued on October 25th, 1999, which among other things regulated the mechanism in investigation and prosecution for gross violation of human rights that happened in Timor Leste. Same mechanism has been applied before in Sierra Leone and Cambodia. This mechanism acted as alternative of International Tribunal known as Hybrid tribunal. Hybrid tribunal was an internationalized tribunal located locally and performed by national and international staff.

Moreover, this tribunal implemented the unification of national and international law.

Security Council's action based on Chapter VII of United Nation Charter that basically called upon all nations to establish a multi national peace corps and asked for Indonesia Government for restoring the peace and security in Timor Leste. Moreover, Indonesia government was obliged for protecting and supporting UNAMET's operation in Timor Leste and in facilitating humanity operational assistance and called upon other nations in participating with the multi national Peace Corps for enforcing the United Nation's mandate.¹³

Gilian Triggs stated:

*The Security Council has a general power to prevent "aggravation of the situation" by calling on the parties to comply with provisional measures that are not to prejudice the juridical positions of the parties. The Security Council also has the power to make recommendations or to decide on measure to be taken to maintain or restore international peace and security.*¹⁴

This statement was very similar with chapter 39 of United Nations Charter, which stated:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression."

Moreover, the action taken by Security Council of United Nations was in accordance with the preamble of the United Nation Charters, that basically describing the purposes of United Nations:

*To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggressions or other breaches of the peace and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.*¹⁵

As the result of the violence against humanity that caused Security Council of United Nations adopted Resolution 1272/1999, Timor Leste produced many refugees. This evacuation brought problems both for

¹⁰ Ahmad Watik Pratiknya, et al., Standpoint and Reformation Measure. B.J. Habibie, P.T. Raja Grafindo Persada, Jakarta, 1999, page 280

¹¹ Political views of Habibie while serving as President of Indonesia were more focused on democratization aspects in dealing with changes both domestic and international. Habibie stated that democratization process post the New Era ("Orde Baru") could not be stopped. The democratization process in his administration has to be seen as swift process of evolution and not as a revolution.

¹² Angkasa, October 1999, www.angkasa.com/rubrikmiliter.htm (accessed on February 23rd, 2007)

¹³ United Nations Security Council Resolution 1264, Adopted by Security Council at its 4045th meeting, on September 15th, 1999.

¹⁴ Gilian Triggs, International Law: Contemporary Principles and Practises, Lexis Nexis Butterworths, Australia, 2006, page 565.

¹⁵ United Nation Charters and Statue of The International Court of Justice

Indonesia government and Timor Leste government. Therefore, we can conclude that speaking of refugees will include many aspects and dimensions. *The 1951 Convention Relating to the Status of Refugees (Convention 1951) and 1967 Protocol Relating to the Status of Refugees (Protocol 1967)* was an international law structure that gave guidance in protecting the refugees.

Until now Indonesia government has not yet become the members of Convention 1951 and Protocol 1967. Moreover, Indonesia government also did not have mechanism in determining refugees' status or known as "Refugee Status Determination" (RSD). Regulation toward these problems about refugees was embodied by UNHCR in accordance with mandate received by UNHCR based on UNHCR statute 1950. All nations, including nations that have not yet ratified this convention, were obliged to honor the high standard of refugees protection this has become a part of International Law, since this convention has become an *ius cogens*. No refugee can be sent back to nation where his life and freedom was threatened¹⁶. Correlation with International Law could be used as a foundation in classifying national interest criteria for Indonesia in ratification process, which basically implying that national interest has to fulfill criteria of law and morality¹⁷. One of the classifications of other national interest was secondary interest, including protection of citizen abroad and supporting diplomatic immunity for our diplomatic agents¹⁸. Timor Leste government's action toward the refugees outside Timor Leste region by signing MOU, showed that there was national interest that can categorized as secondary interest.

This action also in accordance with Holsti concept about correlation of law norm with interaction between nations regarding decision making policy and execution of action including collective interests and core value, between nations in exercising their friendship, while government organized measures in accordance with the rule of law¹⁹.

Refugees' problems were not strict about refugees, but also including resolving human rights problems. Since 1945, International Law put more attention towards human rights. Before that year, when a country committed violation against human right towards alien or

its own citizen, then those problems fully became jurisdiction and sovereignty of that nation. When a country committed impunity against violation towards human rights, international community could not intervene, reminding that these problems were within the jurisdiction of that nation. However, this concept has changed since International community paid more attention towards enforcement of human rights by implementing *Universal Declaration of Human Rights* in 1948. D.J. Harris stated: "It was therefore no surprise when the realization and protection of human rights became one of the purpose of The United Nations and when The Charter imposed obligations upon members to this end."²⁰ According to D.J. Harris, there were 3 generations of Human Rights. First Generation consisted of civil rights and politic that came from Law of Nature by John Locke, Rousseau, and others scholars that put as priority on western states. On the other hand, Second Generation consisted of economic, social, and cultural rights that recognized in twentieth century through establishment of socialism principle. While third generation arose around 1970 supported by majority of developed states that consisted of collective group right, such as self-determination and right of development in 1986.²¹

At the beginning, human rights were a moral right descending from the highest norm. Moreover, human rights developed as a right that based on the International Covenant. Nations' consequences as member states of International Covenant regarding human rights were that those nations obliged to establish regulation regarding human rights. These regulations also causing human rights became very common issue between nations²².

Definition of refugee here based on International Law that applied universally such as: Convention 1951 and Protocol 1967 that until today has not been ratified yet by Indonesia Government. Principles of International Law in these Refugee Convention actually came from assertion of Customary International Law that bound upon Indonesia government.

Territory integration process of Timor Leste to become part of Republic of Indonesia based on Acts No.7/1976, while based on the referendum in Timor Leste regarding the victory of Pro-Independence side, the victory at last was inaugurated in MPR's decision No.

¹⁶ These problems related with principle of non-refoulement as regulated in Geneva Convention 1951. Ratification Can Cause Differences, Swiss, Geneva, International Protection Division, March 1999, page 10.

¹⁷ Based on classification of national interest can be seen in T.A. Coulombis and J.H. Wolfe, 1990, page 153-154

¹⁸ Thomas W Robinson in Rosenau, James, International Politics and Foreign Policy: A Reader on Research and Theory, 2nd edition, The Free Press, New York, 1969, page 184-185

¹⁹ K.J. Holsti, International Politic: An Analytic Structure, Bandung, 1987, page 353

²⁰ D.J. Harris, Cases and Material On International Law, Sweet & Maxwell, Fifth Edition, London, 1998, page 624.

²¹ Ibid, page 99

²² Koesrianti, Implementation of International Law in Case Concerning Gross Violation Against Human Rights in Indonesia, Dinamika HAM journal, Study Centre of Human Rights UBAYA, Surabaya, Vol.6 No.3, October 2006, page 201

II/MPR/1999.²³ Based on the referendum, numbers of Indonesia's citizen declaring their support toward democratic referendum results while the others declare their disappointment as their nationalism were hurt.²⁴

As a common knowledge, disintegration of East Timor from Republic of Indonesia has caused many problems. This article is focusing on the residual issues that arise from the disintegration of East Timor. Those problems are regarding refugee problems that are causing state succession, violation towards human rights, state responsibility, and bilateral relationship between these two nations. The question arise whether that residual issues will cause impact towards both nations bilateral relationship. This problem becomes urgent since Indonesia has not yet adopted Geneva Convention 1951 and New York Protocol 1967. On the other hand, number of refugees and asylum seekers has been double over time. These refugees were originated from Vietnam, Afghanistan, Iraq, Palestine, Myanmar, and from African states

II. Interaction Theory, National Interest, and Correlation between National Law and International Law Theory

a. Interaction Theory

Interaction pattern in International relationship could not be separated from form of interaction that happened in international community both by state actors and non state actors. Illustration of relationship pattern or interaction between states described by Holsti and divided in 2 forms. These forms were conflict and cooperation. However, there was another interaction that known as competition. This interaction fell in category between conflict and cooperation between states. Moreover, the state action and citizens determined the state relationship.

Conflict is a condition when differences in principle arise between parties regarding their purposes.²⁵ Collaboration is an agreement towards specific problem between two states or more in order to use their agreement or disagreement. This collaboration is occurred inside international organization. However in reality even in the best collaboration between states conflict still presents. Collaboration is not focused on the identification of the similar purposes but more in how to achieve the goals.

Relationship between 2 states or more were always reciprocal. This condition was the result of interaction process between action and reaction²⁶. As an example, State A and B interact with each other in competition type relationship. When State A acts X towards State B, then B will acts X or Y towards State A. B acts can be less or more than what State A does to it. There are some factors to be considered regarding this interaction or reciprocal relationship, such advantage that can be gained, cost or risk that has to be suffered. This relationship can result in stable or unstable condition. Condition is stable when both party occupy same or almost same position and balance of all factors in the interaction. Stable or not, relationship between state is really depending in both state interaction pattern.

Frankel argued that interaction in relationship between states can be done through instrument and technique, such as: diplomacy, economic instruments, military power, and war. Most of the State behavior is consist of verbal and including of diplomacy category and propaganda.²⁷ Usually economic and military sector have their own unique trait, thus both of the sectors are treated differently separate from other sector. Military tools are actually used, while economic tools are treated indirectly. All of these interaction tools and instruments are indicator of intensity and relationship form between states. Concept of this relationship between states can be seen through diplomatic relation between them.

Interaction theory is used for describing the dynamic of bilateral relationship between Indonesia-Timor Leste as reaction of an action, which resolving the issue of Human Rights in Timor Leste.

b. National Interest Theory

National Interest Theory concept was used as foundation in describing political behaviours' of one nation.²⁸ National interest has become the central part in foreign politic and part of essential needs of nation in order to survive. Foreign politic was a tool for bringing success toward the goal and national interest. National interest emerged with help of interaction between essential factors of a nation, based on geographical location and its strategic, economic level, politic and development, national history, tradition and culture.

Donald E. Nuechterlein defined the national interest as a need and desire of a nation in corresponding with another states that surround them as their external

²³ MPR's Decision No. II/MPR/1999 conforming inter alia MPR's decision No. VI/MPR/1978 regarding the integration of Timor Leste as part of Republic of Indonesia was no longer valid.

²⁴ Hotman M. Sihan, dkk., Study on Review of East Timor Referendum, First Edition, Pess Gamang, Jakarta, 2001, page 2

²⁵ K.J. Holsti, Op.Cit, page 589

²⁶ Ibid.

²⁷ Joseph Frankel, Contemporary Theory of State Behavior, Biña Aksara, Jakarta, 1991, page 116-146

²⁸ Kas'oe'd Mochtar, International Relationship Science: Discipline and Methodology, Jakarta, LP3ES, 1990, page 162

environment²⁹. National Interest according to Nuechterlein divided into 4, they were:

1. Defense Interest, as in interest to protect their citizen from outside threat.
2. Economic Interest, as in interest for improving the economical welfare through economic relationship with another state, including existent expansion and product management through bilateral and regional cooperation.
3. World Order Interest, as in interest for creating a world order in security and economic sector.
4. Ideology Interest, as in interest for protecting and spreading values and trust to others.

Robinson classified national interest in 2 general categories, which were: national interest of a nation and degree of similarity on interest between 2 nations or more, international interest. According to Robinson, national interest of a nation was divided into 6 part, which were:

1. Primary interest, such as protection toward cultural identity, politic, and physic, including survival in facing outside pressure. This interest could never be compromised.
2. Secondary Interest, such as protection of citizen abroad and supporting diplomatic immunity for diplomats.
3. Permanent Interest, as in general interest with constant nature in long term and ability to change along with time pass by.
4. Variable interest, as in interest which part of personality differences, public opinion, politic interest, including moral values, and politic of a nation.
5. General Interest, as part that could been used by a nation through positive point of view in their geographic area, some of nations or in some specific sectors, such as economic, social, education, etc.
6. Specific Interest, as part of general interest but in smaller scope with relatively narrow range³⁰.

National Interest concept has become a foundation in analyze fluctuation background of Indonesia-Timor Leste dynamic bilateral relationship.

c. Correlation between International Law with National Law Theory

Theory about correlation between national law and international law concerning with international law inside national environment. There were 2 different theories about position of international law inside national legal system. Both of the theories were monolithic and dualistic theory. Monolithic theory saw international law and national law as an integral part of same system, so there were no needs in special adoption or transformation. Dualistic theory based on assumption that international law and national law were 2 separate systems and for that transformation and special adoption was needed.³¹ Along with idea above, Sugeng Istanto stated that differences in monolithic and dualistic theory was located on the binding power, because national law bound individual personally, while international law bound individual collectively.³²

International law and National law were one aspect when the nation accepted international law automatically as integral part of their national legal system and did not require assertion from the legislative. When a nation followed dualistic system, the international law would only become the part of national legal system, if the international law were accepted as an act that created by the legislative.³³ This was based on assumption that international rules were not applicable directly into national environment by national courts or by anyone as the consequence of structural differences between two legal systems. For this international law able to be applied, there has to be a transformation of agreement into the national law.³⁴

Admittance of international law into national law could also be seen through delegation and transformation theory³⁵. Delegation theory confirmed the necessity of special adoption for the international law into national law, but this adoption was not a transformation of international law into the national law. This adoption was the part of law making process which has been started from the establishment of international agreement until became legal provision that binding within a state. This adoption process was used to determine the time and how to apply international law into the national law.

Based on transformation theory, which sourced from positivism, international law was unable to be implemented directly into the national law because international law

²⁹ David V. Edwards, *The American Experience: Introduction to American Political Experience*, New Jersey, Prentice Hall Inc, 1985, page 508

³⁰ Thomas W. Robinson, *Op. Cit.*, page 184-185

³¹ Rebecca M.M. Wallace, *International Law*, Semarang, 1993, page 3

³² Sugeng Istanto, *International Law*, Atma Jaya, Jogjakarta, 1991, page 5

³³ *Ibid*, page 39

³⁴ J.G. Starke, *Introduction to International Law*, 10th edition, Jakarta, 1999, page 95-96

³⁵ Sugeng Istanto, *Op. Cit.*, page 7

and national were two different subjects. Therefore, in order to apply international law into the national law, transformation process was needed. This process was substantive requirement for implementation of international law into the national law.

Indonesia as a sovereign state did not follow dualistic or monolithic systems. However, Indonesia directly consider herself bound to the obligation in enforcing and abiding the international agreement or convention that has been ratified without the necessity to establish the implementing legislation.³⁶ In the reality, every piece of international agreement or convention has to be ratified by legislative organ, which was House of Representative, before became a law that bound upon the peoples.

Correlation between national law and international law theory has become the foundation for seeing the transformation of international law (Refugee Convention 1951 and Protocol 1967, or any other convention regarding international gross violation against human rights in Timor Leste) into national law. International law will be ratified if it was according with the national interest. National law has been used as a tool for protecting the sovereignty and achieving national interest by states.

Based on Vienna Convention 1969, Chapter 7, regarding International agreement, it stated:

"Zin virtue of their functions and without having to produce full powers, the following are considered as representing their state a heads of state, heads of governments and Minister for Foreign Affairs, for the purpose of performing all act relating to the conclusion of treaty..."

Based on the context of international agreement, Nation has a very big role, since nation was the most important subject of international law that owned sovereignty for determining when an international agreements was necessary to be made or not. Moreover, when enforcing international agreements, a state was subjected to Vienna Convention 1969. When a state became a subject of international law, then international agreements was a source of international law that could be used as foundation in regulating relationship between states.³⁷

II. Establishment of Legal System in order to Create Harmonic International Relationship

a. Principle of Peaceful co Existence

Based on chapter 2 of yearly press conference of

Foreign Minister of Indonesia, Marty Natalagawa, January 8th, 2010 stated:

"Year of 2010 promise very big potential in reinforcement of Indonesia position in the worlds. This time is an opportunity for us in supporting the democratic dividend for our nation. Indonesia is a nation that able to strengthen its contribution in her region, South East Asian, and in the same time, also able to increase its interest and global care. Indonesia is able to realize its vision for having a thousand friends and zero enemies. Underlining the statement above, Indonesia has to establish a legal system (bilateral agreement) between states, including Timor Leste."

Diplomacy and Negotiation also have a very important role. A close relationship between diplomacy and negotiation was illustrated in definition of diplomacy by Webster Dictionary, such as: "the art of managing international negotiations; the skill in conducting such negotiations; the practice of conducting negotiations between nations; the forms of international negotiations." Oxford English Dictionary defined diplomacy as: "the management of international relations by negotiation; the skill or address in the conduct of international intercourse and negotiations". While Sir Harold Nicholson, a diplomat from England, defined diplomacy as "the process and machinery by which negotiations are carried out".

Principles were needed in engaging international relationship. Some of these Principles were created in "Dasa Sila Bandung". This summit was attended by several nations, included Afghanistan, Cambodia, China, Egypt, Ethiopia, Gold Coast, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Nepal, Philippines, Saudi Arabia, Sudan, Syria, Thailand, Turkey, North and South Vietnam, Yemen. Sponsor nations were Myanmar, Pakistan, India, Indonesia, and Sri Lanka. This summit results were very famous, and more known as "Dasa Sila Bandung". This summit also produce, cooperation document, including 12 Principles in cultural cooperation, 2 human rights concept, and self-determination.

Another document, which also produced was the problems in dependency of nation towards another nations or organs, nuclear weapon development, and colonialism. Asia-Africa Conference also agreed in hard work for realizing world peace and nations cooperation.

In order to increase the cooperation and friendship between states, General Assembly of United Nations produced Resolution No. 2625/1970 (XXV) regarding: "*Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of The United*

³⁶ Mochtar Kusumaatmadja, Introduction to International Law, Jakarta, Bina Cipta, 1982, page 87.

³⁷ When a state made an international agreement with another state, then Principle of Pacta Sunt Servanda applied. This Principle required the state to honor her international agreement with another state.

Nations". These Principles should be obeyed by every nation in their international relationship, so peace and international security could be maintained. Moreover, in organizing the Principles, it was also able to improve the cooperation and friendship between states. Violation towards these Principles could cause international dispute that ended in disturbing the international peace and security.³⁸

International dispute can include dispute between state, state with individual, state with foreign corporation, and state with unitary state not a state. International law facilitated international dispute, so this dispute can be resolved as swiftly, honestly, and fairly as possible. Regulation regarding resolution of international dispute decanted in Den Haag Convention I 1899 and 1907 regarding the peaceful resolution of dispute, including United Nations charter. Generally there were 2 kinds of dispute settlement, which were peacefully or violently.³⁹ United Nations' influence in resolving the dispute peacefully was regulated by United Nations' purposes, including the obligation of its' members. One of the ground purpose of United Nations establishment was peaceful settlement of dispute between states, while one of the obligation of United Nations' members was resolving their dispute peacefully and preventing themselves against action that can cause war or use of force.

United Nations' function in resolving dispute peacefully can also be achieved through political settlement or legal settlement. Political settlement did by General Assembly and Security Council of United Nations, while legal settlement did through International Court of Justice. Moreover, in legal settlement, General Assembly took actions that deemed necessary in resolving the issue⁴⁰. To simply put, Security Council handled 2 types of dispute settlement, which were:

1. Dispute that threatened international peace and security
2. Every threat against peace, breach of peace, or act of aggression

In resolving disputes that threatened international peace and security, Security Council will requested to both parties that in dispute for resolving their dispute through negotiation, mediation, consolidation, inquiry, arbitrate, and legally. Security Council at any time can recommended right way to resolve any dispute. In situation that threatened peace, breach of peace, and act of aggression, Security Council was entitled to determine necessary actions for defending or restoring international

peace and security. Security Council can also put on request to both nations to fulfill the determined action.

Every actions did by Security Council based on United Nations Charter, Chapter V, Paragraph 23 until 50, in order to creating international peace and security for establishment of good relations between states. Based on General Assembly Resolution 2625, XXV, 1970, there were 7 primary Principles that institutionalized by the United Nations. These Principles were:

1. The Principle of Prohibition of the threat or use of force
2. The Principle that state shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered
3. The Principle of sovereign equality of states
4. The Principle of non-intervention in the internal affairs of other states
5. The Principle of the duty to states to cooperate with one another in accordance with the charter
6. The Principle of equal rights and self determination of peoples
7. The Principle of fulfillment in good faith of obligation assumed in accordance with the Charter

Formulation effort did by United Nations was to achieved several goals, including:

1. Acknowledgment of universal legal obligation in handling international relations, so that every nations honor it.
2. To seek for establishment of legal rules that give freedom to nations as subject of international law
3. Acknowledgment towards United Nations Charter as primary sources of International law, and United Nations as Nations Organization through the world.
4. Acknowledgement of General Assembly decision, International Organizations, and other international conference in order to develop international law.
5. Clear mixture of all principles, so that able to ensure the coexistence based on peace, security, and friendly relation.
6. Strengthen nations position as the important subject of international law.

³⁸ I.B.R. Suprancana, International Principles in Increasing Cooperation and Friendship between States, Lecture Material, UKI Faculty of Law, Jakarta, April 14th, 1986, page 1.

³⁹ Peaceful settlement of disputes regulated in United Nations Charters Paragraph 33, in which including negotiation, mediation, consolidation, inquiry, etc. As for Violent settlement of disputes were including war, blockade, retort, and reprisal.

⁴⁰ General Assembly power can be used, except when Security Council was resolving the case.

b. Good Neighborliness Principle

Based on Timor Leste condition, the necessity of new legal system to create harmonic relationship between the two states was very critical. Good Neighborliness Policy was based on the Principle of Peaceful Coexistent and Good Neighborliness Principle. Rendition of these 2 principles crystallized in these principles:

1. Honoring the integrity and territorial sovereignty of states.
2. Mutual Non-Aggression.
3. Non-Intervening in internal affairs of another nations.
4. Equality in position and mutually beneficial.
5. Peaceful Coexistent

Theoretically, durable solution of the refugees could be implemented through repatriation, resettlement, and assimilation. In Timor Leste refugees' case, it was critical to establish bilateral agreement between the two states.

Establishment of legal system through bilateral agreement has to look carefully on principle of human security. Moreover, this security concept has developed, since the security was also including several issues:⁴¹

1. Security of People, not just territories.
2. Security of Individuals, not just nations.
3. Security through development.
4. Security of all the people everywhere in their homes, in their jobs, in their streets, in their communities, and in their environment.

Generally government was obliged to protect security of its own citizen. However, on several cases, some nations were unable to give peace because of some factors. Formulation of legal system or national acts concerning refugee, which based on International law standard, was the key in strengthen the Asylum institution, in creating more effective protection, and gave more ground in resolving the refugee problems. Incorporation of international law into the national law became very important and was very necessary to be done, since many problems were not regulated by international instrument concerning the refugee, such as procedure in determining the refugee status.

Human Security Principle needed as a role model in creating bilateral agreement between Indonesia

government and Timor Leste government through ratification or accession of Convention 1951.

In the reality, Refugee Law was based on Humanitarian Law since International Humanitarian Law determined when victims of armed conflict, drove from their own home, were protected from bad influence of armed conflict and granted help without prejudice. However in the reality many of the refugees were in the middle of international armed conflict or non-international armed conflict. Therefore, Refugee Law was very close with International Humanitarian Law.⁴² Geneva convention IV regarding protection of civilian in the time of war (1949), contained very specific paragraph concerning refugee and displaced persons inside the territory (Article 44). Additional Protocol I (1977) also applied that refugees and people without citizenship were protected in accordance with Chapter I and III of Geneva Convention IV. However, humanitarian law was able to grant protection, only on the time that humanitarian law was applicable, which in the time of armed conflict. When a refugee escaped from an armed conflict, but granted asylum on the nation that not party of the armed conflict, humanitarian law was ceased to apply.⁴³

International Law recognized right of every nation to reject or accept aliens to enter their regions. When a state granted aliens to enter her region after fulfilled conditional requirements, then the aliens became legitimate aliens inside territory of another state, and these aliens were entitled to protection in accordance with the legal system. However, when aliens entered another state territory without fulfilling the requirements, then the law did not protect the aliens. These aliens were leaving their nations, not under persecution because race, religion, social class, political opinion, but more over economic factor, hope for better job, or united with their families. This were the differences with refugees, even tough they entered to the region of another state without lawful procedure, the refugee based their entrance on the persecution, while economical migrant not based on this reason.

Concerning with principle of non-refoulement based on paragraph 33 of Vienna Convention 1951, it was necessary to establish bilateral politic policy between country of origin of the refugee with the host country in order to establish good neighborliness coexistent. Moreover, Convention 1951 and Protocol 1967 provided steps that have to be considered by states in accordance with their national interest.

⁴¹ Mahbub ul-Haq in Mosque of Theranian (ed), *Worlds Apart Human Security and Global Governance*, I.B. Tauris Publishers, London-New York, 1999, page 79.

⁴² Stephene Jaquemet, *The Criss-Fertilization of Internaitonal Humanitarian law and International Refugee Law*, in *International Review of the Red Cross*, Geneva, ICRC, page 651-673.

⁴³ More information concerning International Humanit arian Law, look on *Guidelines for Parliament No. 1, 1999*, original title: *Respect for International Humanitarian Law, Handbook for Parliamentarians No. 1, 1999*, Also looked Marco Sassoli and Antoine Bouvier: *How Does The Law in War*, Geneva, ICRC, 2000.

IV. CONCLUSION

1. Legal efforts in order to increase harmonic international relationship between Indonesia and Timor Leste concerning with problems that occurred as the result of disintegration of Timor Leste from Indonesia was through an establishment of bilateral agreement that nature was durable solutions regarding every problems, including human rights, and problems of ex-externally displaced persons of Timor Leste.
2. In order to protect bilateral relationship between Indonesia and Timor Leste in handling refugee problems, then establishment of legal system in bilateral agreements that prioritizing on principle of peaceful coexistent and principle of good neighborliness has to be realized immediately. This legal system has to in accordance with "Dasa Sila Bandung", United Nations Charter, and Declaration of United Nations General Assembly No. 2625/1970. Important thing to be realized was politic bilateral policy, which collusive in nature, between country of origin with host country of the refugees.
3. Establishment of legal system in bilateral agreement has to look carefully on principle of human security. Moreover, this principle has already developed, since security also covered:
 - a. Security of people, not just territory
 - b. Security of individuals, not just nations.
 - c. Security through development
 - d. Security of all the people everywhere in their homes, in their jobs, in their streets, in their communities, and in their environments.