

Examining the Legitimacy of the Myanmar Military Coup in the Eye of International Law: After the 2020 Elections

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Abstract

The forced takeover of a country's government is also known as a coup (Coup d'état), the coup has become a polemic on its legitimacy in international law, such as the coup incident in Myanmar after the 2020 elections carried out by the highest military power holder or the head of the Myanmar military junta. The regulation regarding the coup d'état in the eyes of international law must be studied properly and correctly. The existence of the Montevideo Convention on the Rights and Duties of the State equips international countries so that coups are not carried out arbitrarily, resulting in violations of the rules of international law. Looking at the Myanmar military coup from the concept of international recognition of the government of a country, then from the concept of international recognition of the succession of the Myanmar government. Then how is the concept of international recognition of the government that can be obtained or comes from the coup d'état. And about how the legitimacy of the coup as a form of transition of government in the perspective of International Law. So that it becomes clear about the Myanmar military coup action which is right if it does not violate the rules of international law and becomes wrong if it violates the rules of international law.

Keywords

Coup d'état; Coup; military junta; Myanmar; international



I. Introduction

In the government of a country there is a chair of the head of government which is meant to be the holder of power in a country as a controller, manager, regulator of a country's policies and decision makers to which the country wants to be led. The holder of government power has a very important role in a country, in tune with its functions and objectives. However, often the head of government becomes the target of ambitious people for their personal interests, from individualism (a person / personality) and groups (community groups to state agencies) with certain aims and objectives.

Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

The government is the head of the governing body of a country, as Lauterpacht said that the element of government is the main (important) condition for the existence of a country. In a government, there is a head of government who must be alert and alert for

mistakes from decision making or other things that can make blunders and be fatal so that it can become a gap in opportunity for those who have an interest or want the seat of the head of government. The head of government can be overthrown or replaced at any time. And to get the seat of head of government can be in various ways. One of them is by means of a coup (coup d'etat) or a coup.

In this sense, coup d'etat is a way of taking power from the holders of power with bad actions. A coup is an act of coercion by the coup d'état against the coup d'état, in the incident in Myanmar, the party who took the coup was the military junta and the coup d'état was the head of the government holding power, usually accompanied by brutal treatment, and violating the rules of national law and international law. Actions not based on the Myanmar constitution or international legal norms). Coup d'etat is also known as the overthrow of power from a legal and competent government in a country. The Coup d'etat attacks strategically, tactically, and politically the legitimacy of the government then intends to accept the handover of power from the holders of power of the ousted government.

Coup as the subject and the head of government who is the object of it, from a coup there is an idea from a person or group who has a role to carry out a coup. While in KBBI what is meant is a coup d'etat, namely to take power by force and not legally. Coup itself is an act of taking over power holders in an unethical and unkind way. In the coup that took place in Myanmar, the top military leadership led the coup or took over the head of the government. The coup method was used by the highest ranking Myanmar military junta to replace the temporary seat of the head of government in Myanmar.

The coup case stands in the name of a country, therefore it is needed international law in maintaining world order and peace. The legitimacy of the regulation regarding the coup in the eyes of international law must be clear to provide a deterrent effect for the perpetrators of the arbitrary coup, the coup incident in Myanmar after the 2020 election caused a very prominent polemic, one of which was the case of crimes against humanity. Therefore, the author will discuss the connection with the coup event in Myanmar after the 2020 elections aimed at minimizing other countries so that there will be no more coups that lead to cases of other violations that are also regulated by international law. A state cannot emerge as a legal subject without an acknowledgment. In this recognition, it is possible for new countries to participate with international countries in establishing official relations.

The background regarding the Myanmar military coup has been exposed in the introduction. So what then?

Myanmar military junta the author examines the importance of international state recognition of the government of the Myanmar state, the importance of recognition of the clarity of international law on the succession of the government of the Myanmar state, and the rule of international law on the recognition of governments originating from the coup d'etat or those originating from the coup d'etat. Obtained from the coup of a legitimate government. And finally regarding the legitimacy of the coup in international law as a form of transition to Myanmar's government.

II. Research Methods

The scientific research method is a tangible form of human curiosity at the scientific level. Legal research and writing methods are all activities of a person in using the opportunity to answer legal and practical legal problems, both those that are legal principles, legal norms that live and develop in society, as well as those relating to legal realities in society. .

III. Results and Discussion

3.1 The Root of the Problem of the Coup 2021

The military coup that took place in February 2021 in Myanmar began with the Tatmadaw's dissatisfaction with the results of the November 2020 democratic general election which was won by the National League for Democracy (NLD) Party. A statement from the Tatmadaw leader alleges that fraud by the NLD victory party, which is affiliated with Myanmar's de facto holder Aung San Suu Kyi, has rigged the election results. The unilateral accusations made by the military junta were not accompanied by any evidence of voting fraud which resulted in the defeat of the party it supports, the Union Solidarity and Development Party (USDP). The pull back at the beginning of the successful military junta coup from the Myanmar government in 1962 can be said as the beginning of the collapse of democracy in Myanmar, Ne win is the leader of the military dictator who succeeded in the coup d'etat of the Unu government in 1962. Then translated into Indonesian "on 5 March 1962 The Revolutionary Council placed Myanmar's military dictator Ne Win as Chairman of the Revolutionary Council with full legislative, judicial and executive powers.". Such is the uncertainty, inconsistency and secrecy created by the military regime (Such is the uncertainty, inconsistency and secrecy created by the military regime). According to Steinberg, Myanmar, based on its government system, calls it "the most monolithically military-controlled in the world".(The most monolithic militarized one in the world). According to the author, what Steinberg says is true, because based on historically Myanmar itself, its government can still be manipulated by the military continuously like an opium that attracts longing.

3.2 Coup D'etat Arrangements in International Law

In February 2021, a coup took place in Myanmar, where the dictator of the military junta was in charge of the coup, while the one in the coup was the holder of the power of the elected democratic government. Coup d'etat or coup d'etat in the eyes of international law has its own basis and basic rules. There are several concepts of recognition that lead to coup rules: "Recognition is the process by which certain facts are accepted and endowed with certain legal statuses, such as statehood, sovereignty over newly acquired territories, or the international effect of granting citizenship. The process of recognition as a new state entity in accordance with state criteria is a political process, each country decides for itself whether to extend the recognition".

3.3 Concept of Recognition of Government and State in Law International

Basically, every country should have rights and obligations in recognition, namely being recognized and acknowledged. Recognition is a state political act in terms of acknowledging the situation in the form of facts and there are legal consequences of the confession made . International recognition is a very complicated thing in international political life because a country must be able to guarantee that the new state occupies its rightful place as an independent, sovereign, and independent political organism. . With the recognition of a new country, it is able to carry out various world and bilateral relations with countries and international organizations .

The existence of a country in which there is a government, between countries and governments are bound to each other, but in the eyes of international law the recognition of the state with the recognition of the government of a country is very different. This is based on differences, the most significant of which is that an independent country is clearly sovereign and deserves to be recognized, while the government in office is not

necessarily sovereign in accordance with the procedures for the rule of international law.

In practice, recognition of the government and the state has been running simultaneously. However, there are many rejections of the equality of recognition, due to the new government's recognition has nothing to do with state recognition. Sovereign countries are obtained in the name of the country itself. Unlike the government, the holder of government power is not necessarily in the name of the country itself, sometimes even for personal interests and not for the interests of the state. A government that deserves to

be recognized by the international community is a government that has passed the procedures in accordance with the international legal order. The role of governance in international recognition is the procedure by which state governments are clear and respond to certain changes in the international community. The international community is a group of people in the world, it is active (dynamic). Where it changes from time to time. With the existence of the international community and international countries, this recognition was born.

Recognition can also be a means by which existing states seek to effect change in the international community. The role of International Recognition is when the government of a country experiences status and is in a state of doubt or doubt. State recognition in the eyes of the international community is an acknowledgment of the unity that already has a constitutive element as a state. Meanwhile, the recognition of government in the eyes of the international community is the recognition of organs acting for and on behalf of their country which can then be revoked and given back at any time.

The birth of a new country inevitably have to relate to other countries. A country cannot be born just like that, the country must meet the conditions that have existed for a long time. in international law that can be recognized by world relations are those that meet the requirements as contained in Article 1 of the "Montevideo" Convention concerning the rights and obligations of the state, in which it has several conditions that must be fulfilled in order to be classified as the same as other international countries. namely permanent residents, a conditional territory, government, and the ability to carry out various relations with other countries.

Based on the "Draft Declaration on Rights and Duties of States with commentaries" article 1, every State has the right to independence and therefore to exercise freely, without being dictated by any other State, all of its legal powers, including the choice of its own form of government. Win Myin is the holder of the power of the government, which was coup in 2021. This is a government that has received international recognition because it was obtained in a democratically legitimate way through general elections. Then the confession is called a de facto confession, which is only given according to the truth of an event that has occurred. Win Myint was nicknamed the de facto leader, namely someone who is recognized as having succeeded in making Myanmar a democracy. The doctrine of the legitimacy of forming a constitutional government is the right of every nation to make and change its government .

The opposite of de facto is de jure acknowledgment, namely the party who will give recognition on condition that it meets the qualifications. Effectively control, formally or substantially, the area and community under its control. all good societies have mostly conveyed full availability, meaning that they have recognized the new power .

In international law, recognition is not a legal act because it is not part of an act of obligation and there is no regulated obligation for a country to give recognition to the government of a country. Every country has freedom in its own way in giving a recognition, therefore international law does not clearly regulate how to give a recognition There is no obligation for a state to give or refuse recognition of the existence of a new

state, and in international law there is no institution that provides for recognition. As a result, the recognition is a matter of discretion in the national law of each country, whether to grant or refuse recognition. The international community has agreed to assess the importance of the minimum requirements for the establishment of a state, namely the existence of a territory, population and government. There are 2 main theories that are often debated by the international community regarding the basic guidelines for granting recognition to a country.

3.4 Declaratory Theory

Based on the declaratory theory, recognition is only limited to statements or ratifications given by other countries for the recognition that a new State has been born in the international community, its qualification is that by objective means it has met the requirements of international law, then it can be accepted as an international person, regardless of the presence or absence of a recognized State, still that country can have rights and obligations for international countries. Countries that have gone through and passed the requirements will then be able to enjoy the same rights and carry out their obligations in accordance with applicable international law, and are considered the same as other countries. The theory of declaratory (proof) in terms of providing a statement about the state or government power that was new and existed before the existence of recognition. A confession that is only limited to the official approval of that fact.

In this declarative theory, recognition is limited to the acceptance of a new country by other world countries. It is contained in Article 3 of the Montevideo Convention. The act of a politician of a country to recognize a new country to become the main element of international law gives rise to certain legal causes that can provide the best possible place for the new government or country so that it can become part of the international community and become a liability given to a new country that the country has been accepted as a member of the international community.

3.5 International Constitutive Theory

A State can become a major part of international law only on the basis of recognition. The main thing is that international law applies, the state is the subject of international law, based on an agreement that the state is said to be unable to communicate with other countries without the recognition of a recognized state and government.

Although the main factor of the state has been owned by a political community, it cannot be directly accepted as a state in the midst of the international community. And the most important thing is the statement from other countries that the political community has fulfilled all the requirements to become a state. Based on the opinion of adherents who support this constitutive theory, they assume that a country is born as a new country if it has received recognition or is recognized by another country, meaning that a country is not considered to exist as a new country if it has not received recognition from another country.

Therefore, this type of recognition must have permanent or constitutive power. As Brownlie said, "Constitutivist doctrine creates a great many difficulties which translates "Constitutivist doctrine creates a lot of difficulties". The confusion regarding this theory is based on the difficulty of experts to examine the merits of this theory.

3.6 The Concept of International Recognition of The Succession of Government of a Country

Succession is the change in something over time. Succession in question is about succession in the government of a country. Government succession is a change process in the event of a change in the government system. There is a concept of international recognition in the succession of the Myanmar government. The theory of succession of government in international law in principle, succession of government contains an element of continuity, and the problem lies in the domestic state itself. Even though there are changes in the composition of the government, as well as the systematic constitution, they are still bound by rights and obligations in accordance with the rules of international law.

Each successive government under international law will be responsible for the treatment of the previous government. This theory is the basis of reference that the state has a constitutive element, and not a substantive one. The succession of government only involves the legitimacy of the power holders and the content of the government itself, namely the legitimate government of a country based on the sovereignty of its own country.

Recognition of a government according to the country that recognizes it, namely the government that is recognized as carrying out effective control over the territory of the state. Recognition of Government, however, also involves somewhat different issues. A change of government can in principle occur in any state at any given moment. In Myanmar, succession of government has occurred repeatedly, since the beginning of this independent and sovereign country, Myanmar has experienced changes in the government system that has changed. In accordance with history regarding changes or changes to the Myanmar government system from time to time.

Therefore, this theory of government succession becomes important for the discussion of the State of Myanmar because of the coups that keep happening to problems in the country. In its fifteenth session, in 1963, the International Law Commission (ILC) considered and unanimously approved the Subcommittee's report, the report based on the opinion of the Commissions, that the priority given to studying the question of State succession was fully justified, and it was agreed that the question of Government succession, for now, will be considered only to the extent necessary to complete the study of State succession.

3.7 Recognition of Government Derived from the Coup D'etat in International Law

Governments that are obtained through a coup may get recognition, and may not get recognition at all from other countries. It all depends on the assessment of each country. Because recognition is a forum that plays an important role in the relationship between countries. It is more ethical if the government comes from a legal way according to its national law. The change of government involved in the recognition will be a problem if the government is obtained in an unconstitutional way. The intended method is that power can be obtained through revolutionary means or through extra juridical ways such as coups, revolutions, rebellions, and others. . In Myanmar itself, in the year of the coup event in 2021, the legitimate government based on the country's constitution was the one who was coup, namely Win Myint, because he was democratically elected, then in a coup by General Min Aung Hlaing. The military junta dictatorship took the coup d'etat route to gain a seat in government power.

The teachings of international jurists relating to the government resulting from the coup: Stimson's teaching is that it refuses to recognize certain circumstances. Then the teaching of Tobar 1907 was about the need or not to give recognition. The agreement of other countries that agree that they do not recognize the government that was obtained by means of an inhumane coup.

Professor Thomas M. Frank's conviction provides an understanding of recognition in internal matters, namely the right to democratic government is a guarantee of the legal force of national constitutions and international law adjustment to the case that occurred in Myanmar based on the concept of non-intervention, if according to Myanmar's national law the coup is a violation then international law can act to resolve the problems that occur.

3.8 Legitimacy of Myanmar's Coup d'Etat in International Law

International law in its ratification does not clearly regulate the coup d'etat actions carried out by the military. And in the UN Charter the coup d'etat rules are limited and there are principles of equality and non-intervention, meaning that international countries have the same position and also include rules regarding the prohibition of other countries from interfering in the affairs of other countries. However, if you look at the course of the coup that took place in Myanmar, then the international community can intervene in terms of caring for human rights, namely humanitarian action against victims after the 2020 coup in Myanmar.

As happened in the recent coup carried out by the Myanmar military against the legitimate civilian government, with the election victory of the party led by Aung San Suu Kyi and the ruling power holder, Win Myint international. The incident received criticism from various countries in the world, international organizations such as the United Nations (UN), the European Union, the Association of Southeast Asian Nations (ASEAN), and even from the international community.

It is clear that in the process of the coup in Myanmar there were many deviations or included in the category of violations of international law. The action carried out by the military junta was considered a form of violation of Human Rights (HAM), in the end the issue could not be seen as a domestic issue but also a foreign issue. According to data from the Association for Political Prisoners (AAPP) as of May 19, 2021, the death toll in the conflict between the Myanmar military junta and anti-coup demonstrators has reached 805 people since the coup took place on February 1, 2021.

Upholding human rights in international law is contained in the Universal Declaration of Human Rights which was adopted by the UN General Assembly since December 10, 1948 through its recommended resolution 217 A (III), providing a reference impact on each international country to uphold human rights at the national level. Universal declarations are the rights of human life that are recognized and are recognized by the world to be protected from all kinds of threats and are binding on legal rules in order to create world peace, create harmony among human beings in the world, and have the function of creating freedom of individual rights such as speaking, religion, freedom from fear, and all the shortcomings of life for all mankind. International humanitarian law (IHL) is a function of international human rights law itself, including events after the coup in Myanmar 2021, namely international legal norms that apply to anyone (all human beings), at any time (any time), and norms such as armed conflict between civil society and the military.

The concept of human rights concerns and is binding on all human beings, human rights exist in human individuals, from humans to humans and by humans by having the rule of law in individual countries (national) and between world countries (international) which aims to create world peace, and for protection human life itself. Meanwhile, the concept of international human rights enforcement is agreements between sovereign international countries aimed at having a binding legal effect between the parties who have agreed to them and customary international law.

The international law of each country has not been firm in dealing with coups since the cold war (1947-1991), therefore coups occurred in various ways with the support of the blocs

at that time, namely the west block and east block who recognize each other as democratic forces. As in many coups, where the implementation of the UN Security Council did not take much meaningful action. Courage for international law Initiated steps to resolve international legal uncertainties in light of the legal status of the "coup".

Based on international humanitarian law regarding the obligation of all states to respect state equality, there should be no threats or violence against the sovereignty of a country (state sovereignty), no domestic interference of a state, and efforts to settle disputes by peaceful means. . However, in the case that occurred in Myanmar, international countries could intervene to resolve the problem through intervention, because in the course of the Coup d'Etat there were human rights violations. For this reason, international countries can intervene directly with the argument for the humanitarian action. Therefore, the legitimacy of the coup in international law is said to be wrong if it is not in accordance with international legal norms, and correct if it is in accordance with international legal norms.

3.9 Research Result

Based on several concepts of recognition from the point of view of international law, the author got the results of the research on the issue of the coup that occurred in Myanmar in 2021. Myanmar has Aung san su kyi who is known as the country's democracy figure. Since returning to elections in 2020, it is clear that Myanmar is already a democracy, but in 2021 darkness has again covered this country of a thousand pagonas, the dictatorship of the military junta has again taken control of the seat of government as the holder of control of the tatmadaw, namely general Aung min hlaing mobilized his troops to overthrow and seize (forcibly take over) government power.

The government that was overthrown was legitimate under national and international law, because it was through a general election. The general election is carried out by the people of Myanmar. There is international recognition of the rights of the people of a country, namely the right to democracy as stated in Article 21 (1). Universal Declaration of Human Rights (1948) which impact on a person's right to take part in the government of the country.

Then regarding the link between international recognition and the coup, in the International Covenant on the rights of the people's authority and politics, ICCPR (Covenant on Civil and Political Rights), in Article 25 explains the involvement of the people for democracy in conjunction with Article 26, namely all people are equal before the law, then from that it means that even if the dictator of the military junta is a general of the highest rank, even if all will be equal before the law.

IV. Conclusion

In a country there is a government, in the government there is a power holder (head of government). It is not easy for the holder of power to maintain it, either one or the other, they can even be overthrown or demoted from their position. In this case, the head of the Myanmar government, which was overthrown in 2021, is known as a coup d'etat. In Myanmar itself, the coup event has been going on for a long time, from the beginning of the collapse of Myanmar's democracy in 1962 to the time of the legitimate government after the 2020 elections.

The regulation regarding the coup d'etat in the eyes of international law has not been regulated clearly (absurdly) although there are other arrangements in international law that lead to the rules regarding a coup in this case, namely in an international agreement concerning international recognition of the government of a country. Although recognition is

not a right and obligation of each international country, but this international recognition plays an important role for a country.

Legitimate government (legal) is obtained from the procedural rules of concrete law. The government of Myanmar, which was ousted, should have received special recognition from international countries because the holders of power were obtained from the results of the general election in 2020. Myanmar in the succession of government has repeatedly experienced changes in the government system in changes in ways that are recognized as legitimate by the country's constitution, but not necessarily legal in the eyes of international law through the recognition of international countries, even though an acknowledgment does not have legal certainty, but this is what can then be used as a reference for the right or wrong of the new government of Myanmar which replaces its old government position.

The new government which was obtained unconstitutionally as in Myanmar, namely General Aung Min Hlaing who occupied the seat of government power holder by means of a coup d'etat. Therefore the recognition of a government should not only be from a political point of view, but the legal aspect is also very important to be considered, especially on the general principles in international law relating to recognition. International countries should not recognize the government of a country that was obtained as a result of the coup d'etat. Because in the process there are many violations, especially human rights violations and also other violations that are contrary to the provisions of international law.

In the concept of international acknowledgment of the coup, it has been explained that what happened in Myanmar was the fault of a state agency in carrying out the forced transfer of power by means of or causing many victims so that it was a polemic for the international community. Regarding responsive actions to care for fellow human beings, so if the coup which is the object of the international state cannot interfere with Myanmar's sovereignty in terms of solving problems, then it is human rights violations that will become objects for international states to help solve problems that occur in Myanmar

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