

MYANMAR MILITARY COUP 2021 IN INTERNATIONAL LAW

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Abstract

Nowadays, problems in a country can be related to internal and external problems. These problems are often not included in disputes or problems between international countries but can also be problems between one country and its internal ones that threaten order and peace in the international world. One example is the case of a coup where a process of overthrowing a key government is carried out by a certain group or party, while a military coup is carried out by a group of armed forces together with the state police with the emergence of acts of violence carried out by the military against civilians. Myanmar has a history of military coups from 1962, 1988 until 2021 but this case cannot be interfered with other countries, international or regional organizations because of binding international law, this creates a polemic for all parties.

Keywords: *Military Coup; Myanmar; International Law*

Introduction

Problems that arise in a country can often affect the peace of society and other international countries, this can affect various factors, one of which is to capture a desired interest, this can aim for the interests of a group of people or their own interests. The problem of these interests can be initiated by several issues such as economic, political, religious, social cultural problems that exist in a country and often these problems can trigger conflicts so that they can disturb the comfort and convenience of a country. one form of conflict that threatens the security of a country such as the form of cases of interference or participation in intervening in a problem by the military resulting in an act of coup.

A coup is an act carried out to overthrow or change the power or authority of a person or group of authorities in an illegal or illegal way, this can be done brutally and with acts of violence in carrying out this overthrow or takeover of power it can be said to be successful if: the people and the military forces have one vote to carry out the action. One of the countries that experienced a coup action which was intervened by civilians with the military so that it hampered the progress of democracy, this became one of the issues that was quite polemical.

Myanmar in the development of democracy and the country has experienced ups and downs which are influenced by various aspects ranging from political, economic and socio-cultural problems that develop in Myanmar society. Since 1948, this country has experienced a coup and has become one of the problems that often occurs in that country because power in Myanmar was taken over by the military in terms of government, economy and politics, giving rise to a dictatorship by the military against citizens and the civilian government. .

Political issues became one of the hottest issues and were dominated by the military, starting from the overthrow of the power of the prime minister of Myanmar so that a new prime minister was replaced, then the problem regarding Myanmar's unwillingness to lose the 2020 election, not because of fraud in the election. but there was a sense of disapproval and a military effort arose to maintain its influence in the country.

The rebellion which was carried out through a coup carried out by the military which resulted in a loss of peace within the country of Myanmar, became the spotlight for the international legal community, but this could not be touched and interfered with by countries, organizations both regionally, namely ASEAN and internationally because the existence of international law which regulates that countries and organizations outside the Myanmar side do not interfere in the problems of that country. This makes it difficult to take action to resolve the problems experienced by Myanmar.

Method

The method applied in this study is to use qualitative research in the nature of literature or library research, literature study is more inclined to use several books and other literature as the main object, and qualitative research is research that focuses and focuses on the concepts that appear from the data, these concepts are sought for correlation with each other to construct a theory. Qualitative research has the intention of getting a full reflection of something based on the views of the people being studied and qualitative research is also oriented towards the perceptions, ideas, responses, opinions, or beliefs of the person being studied, this type of research does not find inventions through calculation procedures or other statistics, methods this is more according to the phenomenological nature which prioritizes appreciation or *verstehen*, so if data is found in the form of numerical or systematic calculations then it can be separated first. The object of this research is the coup carried out by the military in Myanmar based on the perspective of International Law. Furthermore, in collecting data, the technique used by the author is documentation or document study, namely the method of observing and investigating documents. Documentation is carried out with a collection of compiled data sets that are carefully reviewed and reviewed. The data used in this study is data analysis in the form of journals and books. Researchers conduct data analysis by collecting information, looking for relationships, comparing, finding patterns on the basis of data from these sources. Data that has been analyzed or reduced will provide a clearer picture. for the preparation of further data if needed, then the data is narrated to respond and fulfill the objectives of the research.

Result and Discussion

Definition of Coup in View of International Law

A coup is an act of gaining power against a person holding a position of power in an illegal or illegitimate and often brutal, unconstitutional manner in the form of taking over power, overthrowing the power of a state government by attacking (strategic, tactical, political) the legitimacy of the government then intending to accept the handover of power of the overthrown government. A coup will be successful if it can first consolidate in building legitimacy as the approval of the people and has received support or participation from non-military and military (army) parties.

A coup is also a key for the military to be able to take over state power, which can then be called a military coup. In this case, this is usually done based on the state of the country where the situation is getting worse in all aspects, both economically and politically, for example, there is a lot of corruption by state officials, rising high inflation rates, separatist

actors, and rising unemployment rates, and so on.¹ In general, this military coup occurs when the people or the people of their country feel no longer trusting the government that is in power and are not complying with their obligations.

Case Chronology

The coup that occurred in 2021 is the third stage of the coup that Myanmar is experiencing. The third phase of the coup in Myanmar opened a new chapter in the country's coup crisis. For 60 years, the military has ruled Myanmar and was a key player in government takeovers.

The coup in 2021 initially came after the announcement of the results of the November 8, 2020 general election. In that election, the National League for Democracy won 396 of them, 476 seats in parliament, a figure that is a larger margin of victory compared to the 2015 election. Meanwhile the Military Party and The United Solidarity and Development Party won only 33 seats. The coup began on 1 February 2021, when State Councilor Aung San Suu Kyi, President Win Myint and several ruling party leaders were arrested by the Myanmar military. Hours after the arrests, the Myanmar armed forces declared a state of emergency and announced that government powers had been transferred to the commander-in-chief of the army, Min Aung Hlaing.

Although military might has been in power for 60 years, this has not prevented the military from continuing to dominate the government of Myanmar. The actions of the military that allegedly committed fraud in the 2020 Pilkada where they were defeated show that.

As previously mentioned, the beginning of the coup stems from the refusal of the Myanmar military to accept defeat in the 2020 general election. Party member. The Solidarité et Développement coalition suffered a crushing defeat against the National League for Democracy, dashing its supporters' hopes of democratically electing a president from the military.

The Impact of the Myanmar Military Coup With ASEAN and the United Nations

Tadmadaw's defeat triggered a military coup and caused many deaths from demonstrations demanding that the government be returned to the legitimate election winner. This military coup also caused many clashes between Myanmar citizens and the military which resulted in casualties, this caused divisions in Myanmar society. At least 60 demonstrators were killed and 1,900 civilians were arrested for resisting military rule. Myanmar is also known as a country with political leadership and military leadership. The Myanmar case received a lot of criticism from international organizations and other countries, such as the United Nations, which said that the violence in Myanmar could also threaten the stability of Southeast Asia, especially in terms of the economic aspect. In addition, the UN Human Rights commissioner opposed and stated that they used "Disproportionate Power" on the ruling military junta in Myanmar.

If seen in outline, ASEAN is the third largest economic market in the Indo Pacific region and the fifth largest in the world with a GDP (Gross Domestic Product) of more than US\$ 2.8 trillion in 2018. This value is greater than Taiwan, India, South Korea, and Australia. What is currently happening to Myanmar is geopolitically a threat to GDP growth and the trade balance within the ASEAN region. This is because ASEAN has a strong role in

¹ Boer Mauna. (2005). *Hukum Internasional: Pengertian, Peranan, dan Fungsi Dalam Era Dinamika Global*. Edisi Kedua. Bandung; Pt. Alumni. Hal. 74

suppressing or preventing the Myanmar coup, while Article 2 Paragraph 2 of the ASEAN Charter contains the concept of non-intervention.²

Myanmar has the capacity to reject ASEAN as a reference for its foreign policy and can turn to certain forces and it is also feared that Myanmar will overhaul various agreements regarding the South China Sea; Zone of Peace, Freedom and Neutrality (Zopfan), and the South East Asia Nuclear Weapon Free Zone (SEANWFZ). This is because the geographical location of Myanmar attracts many neighboring countries to invest, including Indonesia. Its location is directly adjacent to India as a South Asian country, China in East Asia. It is a strategic advantage to join ASEAN politically. China is in second place with a high investment value, with a value of US \$ 3.5 billion. Myanmar can be said to be a strategic partner for China, in the Belt and Road Initiative (BRI) project in Asia, namely the China-Myanmar Economic Corridor (CMEC). Myanmar's political instability may affect the strategic project. The thing that has the most impact from the coup is the micro-economic aspect of Myanmar, Myanmar's economic growth will shrink by 10% from 2021.

The Impact of the Military Coup on State Sovereignty and the Welfare of the Myanmar People

Since the military coup that took place in Myanmar in 2021, of course this has given the people of Myanmar a sense of anxiety and insecurity. The existence of military intervention in this political problem proves that there is a decline in democracy that has occurred in the country. Every country will always experience ups and downs in governing with changes and developments continuously following the times, but these coups are usually marked by turmoil in terms of the economy, politics, society and socio-culture. The taking over of government by the Myanmar military is actually nothing new anymore, since Myanmar became independent from the British in 1948 there have been several coups. Until now there have been 3 coups that have occurred in Myanmar, the last one in 2021 is still ongoing.

The military does have an important role in the government of Myanmar as well as being the key holder who can take over state power. However, in international law, a region can be called a state, if it has state sovereignty and recognition. In accordance with Article 1 of Montevideo that the conditions for a country are that it must have a population, a clear territory, sovereign government and the ability to cooperate with other countries. So-called state sovereignty is power over the territory under its control. Constitutive recognition is a way that can create the status of a country and as a complement to the new government authority in the international sphere. In this military coup that was experienced by Myanmar, it received a lot of criticism from international organizations which conveyed and showed disagreement with the treatment of the takeover of power by the military because it was considered to have violated human rights. Although other countries can express their disapproval of this coup, they cannot interfere with the internal problems of other countries. international law values. However, what can be done by international organizations or other countries is not to give recognition (de facto or de jure) to countries that are considered to have violated the values of international law, seen from the way the territory was acquired.

There are two types of granting recognition to this country³, namely recognition of the emergence of a new country and recognition of its government. Recognition of this

² Ramadhani, Z., & Maburrah, M. (2021). Pengaruh Prinsip Non-Intervensi ASEAN terhadap Upaya Negosiasi Indonesia Dalam Menangani Konflik Kudeta Myanmar. *Global Political Studies Journal*, 5(2), 126-143.

³ Eric A. Nordlinger. (1990). *Militer Dalam Politik : Kudeta dan Pemerintahan*. Jakarta : Rineka Cipta

government when the difference between the old and new governments is very clear, for example, as with the recognition of rebellion, this recognition is only given to a group of people who oppose their government. Of course the recognition of this government and change of government will lead to a political situation that is quite heated between the two parties involved. The problem is if the method of changing the government does not use methods that are in accordance with the values of international law, such as coup d'etat (Coup), revolution, insurrection (rebellion), and others. As in the case of Myanmar, the change of government used the Coup d'etat or Coup method.

The case in Myanmar⁴ started with the upheaval that began with the military party opposing the results of the 2021 general election, where representatives from the military or the Tatmadaw lost to the National League for Democracy and suspected fraud in the election. This shows that the military has very strong ambitions to continue to dominate and maintain its power in the Myanmar government.

Since the government of Myanmar was taken over by the military, all aspects of the economy, politics and society have been regulated by the military.⁵ At this time the situation affecting the people of Myanmar in the midst of this turbulent politics is the large number of casualties that have fallen. These victims were anti-coup demonstrators and civilians. The actions taken by the military were considered to have violated the human rights of Myanmar's civilians and were repressive in nature. If it is adjusted to Article 1 of Montevideo regarding population on state requirements, it is the civilian people of Myanmar who do not agree with this change in military government and want the government to return its power to the government that was previously elected in the General Election.

Conflict Resolution Solutions Viewed from Applicable International Law

It is noted that there are thousands of people who have lost their lives from February 1, 2021 until now because of the coup case. This has certainly caught the attention of international organizations. The International Labor Organization noted that 1.6 million people have lost their jobs since the coup. The Armed Conflict Location & Event Data Project (ACLED) as an international conflict monitoring agency records that the death rate in general reaches more than 11,000 fatalities. In addition, the coup act caught the attention of the United Nations (UN), where in June 2021 the General Assembly declared a resolution urging countries not to sell weapons to Myanmar but was non-binding. This has received support from 119 countries, including ASEAN members, namely Indonesia, the Philippines, Vietnam, Singapore and Malaysia. Western countries such as the United States also sanctioned trade, arms sales, investment, and froze some of the assets of Myanmar's ministers. Even though there have been many protests condemning or imposing sanctions on the Myanmar military for coupling their own country, these protests are just talk because there are still many parties who have different opinions and refrain from taking part.

In April 2021 ASEAN also held an ASEAN Summit which produced consensus agreed upon by ASEAN countries which contained; Asking all parties to be able to restrain themselves and stop acts of violence by starting constructive dialogue to reach a peaceful solution for the benefit of their people, the ASEAN chairman will facilitate mediation which will be accompanied by the Secretary General of ASEAN in which ASEAN will also

⁴ Ambarawati. (2022). Sikap ASEAN Terhadap Pelanggaran HAM di Myanmar Pasca Kudeta. *Jurnal Ilmiah Dinamika Sosial*, Vol 6 No 1. Hal. 22.

⁵ Iqbal, F. M. (2021). Kudeta Militer Myanmar dalam Perspektif Hukum Internasional. *Jurnal Dialektika Hukum*, 3(1), 113-129.

participate in humanitarian assistance through the AHA Center . However, the consensus did not contain any rules for freeing civilian prisoners. The attitude adopted by ASEAN is considered in the code of conduct which is the implementation of the ASEAN Way.

Within the subject of international law, namely the state has rights and obligations in international law, namely the right to independence, equality in position, the right to self-defense and territorial jurisdiction, the obligation not to take acts of violence, to carry out international relations in good faith, and non-intervention.⁶ Which is where the non-intervention obligation resulted in the UN and ASEAN participating more deeply in resolving the coup case. In reality, the UN does not clearly regulate whether a coup is a violation of international law or not. The United Nations only assesses whether the coup act has disrupted international peace and security. This can be seen from the UN charter Article 2 paragraph (7) which contains:

“Nothing in this Charter authorizes the United Nations to interfere in matters which essentially include the internal affairs of a country or oblige its members to resolve such affairs according to the provisions of this Charter; However, this principle does not reduce the provisions regarding the use of coercive measures as stated in Chapter VII.”

In the ASEAN charter Article 2 paragraph 2 point e and f:⁷

item e:

“Non-interference in the internal affairs of ASEAN Member States”

point f:

"Respect for the right of each Member State to maintain its national existence free from external interference, subversion and coercion"

Looking at the contents of the UN Charter or the ASEAN Charter, both states that there is a principle of non-intervention which is used as a point that must be respected by the countries participating in the organization. Which as countries can only respect the problem without taking part or intervening. It is difficult to resolve the conflict because it is hindered by international law because there are provisions that bind countries to international organizations.

Conclusion

The third phase of the coup experienced by Myanmar will be experienced again in 2021, this 2021 coup emerged after the results of the general elections on November 8 2020 came out and were won by the National League Party for Democracy. Even though power for 60 years has been controlled by military force, it has not stopped the military from wanting to remain in power and maintain its power in the Myanmar government, therefore the military suspects that there was fraud in the election results. This led to a coup by arresting State Counselor Aung San Suu Kyi, President Win Myint, and several leaders from the ruling party. Not long after that, the Myanmar Armed Forces issued a declaration of a state of emergency and appointed the Supreme Commander of the Military, Min Aung Hlaing, as the holder of the powers of the government of Myanmar.

The impact that emerged from this coup resulted in clashes between Myanmar civilians and the military, resulting in the deaths of at least 60 demonstrators who were killed and 1,900 civilians arrested for rejecting military rule. This has caused unrest about the actions taken by

⁶ Wigraha, D. Z. (2022). Analisis Yuridis Pengakuan (*Recognition*) Pemerintahan Baru di Myanmar. *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 28(8), 4285.

⁷ ASEAN Secretariat. (2007). *The ASEAN Charter*. Jakarta.

the military and divided the people in Myanmar. Not only that, but this coup could also threaten stability in Southeast Asia. Many international organizations and other countries have condemned the Myanmar coup but still cannot interfere because it adheres to the principle of non-intervention which all countries in the world must respect. However, this does not stop the sanctions imposed by other countries that do not agree with this action, such as freezing the assets of Myanmar's ministers, trade sanctions, arms sales, and others.

The solution to the coup experienced by Myanmar, in April 2021 ASEAN held an ASEAN Summit which resulted in an agreement which was agreed upon by Southeast Asian countries, which stated that all parties must exercise restraint and stop acts of violence that have occurred in the Southeast Asian region.

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