

Myanmar's Rejection of The United Nations Resolution: Allowed or Not?

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Abstrak

Seruan embargo senjata Myanmar dan perebutan kekuasaan yang dilakukan oleh militer dalam resolusi majelis umum PBB ditolak oleh Kementerian Luar Negeri Myanmar pada february lalu karena resolusi tersebut dianggap atas dasar tuduhan sepihak serta asumsi yang salah dan juga resolusi tersebut dianggap tidak mengikat secara hukum. Disamping itu, beberapa pernyataan Myanmar telah diadopsi oleh dewan keamanan PBB yang memiliki otoritas serta resolusi yang dianggap mengikat secara hukum seperti dilarangnya tindakan kekerasan terhadap pengunjuk rasa. Selain itu resolusi tersebut menyerukan militer agar tidak melakukan tindakan kekerasan juga memulihkan transisi demokrasi. Tujuan dari penelitian ini adalah untuk mengetahui apakah Myanmar boleh menolak resolusi Majelis umum PBB atau tidak. The study uses normative legal research with a case approach using qualitative descriptive methods to describe bagaimana alasan hukum yang digunakan dalam penolakan resolusi majelis umum pbb oleh Myanmar dan bagaimana jika menerapkan prinsip pacta sunt servanda dalam kasus ini. Hasil penelitian menunjukkan bahwa Myanmar menolak resolusi pbb yang menyerukan embargo senjata karena Myanmar menganggap bahwa resolusi tersebut tidak mengikat secara hukum dan berdasarkan pacta sunt servanda Myanmar harus menerima resolusi majelis umum pbb karena mengikatnya suatu perjanjian kepada pihak yang membuatnya.

Kata Kunci: PBB, Resolusi, Kudeta, Myanmar

Abstract

Myanmar's Ministry of Foreign Affairs rejected the Myanmar Ministry of Foreign Affairs calls for an arms embargo and power struggle by the military in a UN general assembly resolution last February because the resolution was considered based on unilateral accusations and false assumptions, and the resolution was deemed not legally binding. In addition, several Myanmar statements have been adopted by the UN security council, which has the authority as well as resolutions deemed legally binding, such as the prohibition of acts of violence against protesters. In addition, the resolution calls on the military not to commit acts of violence as well as restore the democratic transition. The purpose of this study is to find out whether Myanmar may reject the UN General Assembly resolution or not. The study uses normative legal research with a case approach using qualitative descriptive methods to describe the legal reasons used in Myanmar's rejection of the UN General Assembly resolution and how to apply the principle of pacta sunt servanda in this case. The results show that Myanmar rejects the UN resolution calling for an arms embargo because Myanmar considers that the resolution is not legally binding and based on the pacta sunt servanda. Myanmar should accept the UN General Assembly resolution because it binds an agreement to the parties who made it.

Keywords: *United Nation, Resolution, Coup, Myanmar.*

INTRODUCTION

General Min Aung Hlaing, who leads the Myanmar military, took over the government before the inauguration meeting, which was held in November 2020 before the first parliamentary meeting of the general election results. Aung San Suu Kyi, who is a pro-democracy activist in Myanmar and also the leader of the national league for democracy (NLD), was arrested by the military along with several members of the national league for democracy (NLD) and President Win Myint. On February 1, 2021, Myanmar was again controlled by the Military, at which time Myanmar was just starting its transition to democracy. The coup triggered large-scale demonstrations so that various elements of the people in Myanmar took to the streets and also strikes throughout Myanmar to express the opposition of the Myanmar people to the coup.¹

Coups carried out by the military in Myanmar against civilians are nothing new. In domestic political life, the Myanmar military has a long history. For decades the government of Myanmar was controlled by the military along with the growth of the democratic movement. In 1962, the takeover of power by the military against a semi-democratic government became an important point of military rule in Myanmar.²

In 1988, Aung San Suu Kyi founded the NLD to pressure the military government to hold democratic elections. That year, there was violence by security forces against Myanmar

student activists and killed around 5000 people. Accordingly, in 1990, Myanmar held a democratic general election, and the NLD won the general election. However, the military junta's rejection of the results, the Myanmar military junta detained Suu Kyi to keep the government controlled by the military. The Tatmadaw, which is Myanmar's military, has determined that the military will get 25% of the national and local parliamentary seats in its new constitution. With the constitution, in 2011, elections were held again in Myanmar, and the Union Solidarity and Development Party (USDP) won the elections. In 2015, elections were again held and won by the NLD, and its president was Htin Kyaw because Suu Kyi at that time could not become president because of the obstruction by the constitution made by the military. At that time, Suu Kyi became the head of government placed by Htin Kyaw by creating the State Counselor.³

On February 1, 2021, the Myanmar Military Junta again took over the power of the civilian government because the coup was a response to the election fraud in November 2020. The general election at that time was won by the NLD and could have a significant effect that could change the constitution and undermine the military's role in government. The coup carried out by the Military in February 2021 was enforced by the termination of the internet network, the imposition of a curfew, crowd restrictions as well as the deployment of armored vehicles and the use of force to suppress protests as well as the Light Infantry division 77.

In addition to the abuse of military power, which is clearly contrary to democratic principles, the United Nations sent Christine

¹ Faustina Ivana S.D.J, Euneke Dewi T & Fiki Rahmatina N, 2021, *Kudeta Myanmar: Junta Militer di Era Modern*, Jurnal Pena Wimaya Vol. 1 No. 1

² Marco Bünte and Jörn Dosch, 2015, *Myanmar: Political Reforms and the Recalibration of External Relation*, Journal of Current Southeast Asian Affairs Vol. 31 No. 2

³ Rizki Roza, 2021, *Kudeta Militer di Myanmar: Ujian bagi Asean*, Info Singkat Vol. 13 No. 4

Schraner Burgener to convey a warning to the deputy head of the Myanmar military junta that the international community will monitor and observe that any use of violence against demonstrators will also have serious consequences. This warning was conveyed through communication channels to protect the people of Myanmar. In addition, the UN General Assembly passed a resolution against Myanmar. However, a UN general assembly resolution calling for an arms embargo was rejected by Myanmar's foreign ministry on Myanmar because it considered the resolution not legally binding. Thus, this study will discuss how international law views Myanmar's actions against the resolution of the United Nations General Assembly regarding the Myanmar arms embargo.

RESEARCH METHODOLOGIES

A. Type of Research

The type of writing used in writing the paper is a type of normative legal research.⁴ The paper contains reviews, summaries, and the author's thoughts on several literary sources. Such as analyzing literature, articles, books, journals related to the theme and discussion of problem formulations, whose writing is based on existing data and is explained by words or statements, not numbers. The legal approach and the case approach are carried out in this paper.

B. Data collection technique

The technique used by the author in collecting data begins with the search for trusted journals about How the legal views regarding Myanmar's rejection of the UN general assembly resolution. References can be obtained from accessible internet sources such as Google Scholar and other sources. After searching for

relevant references with the data needed, group members then understand and analyze the information data that has been collected in depth and filter the information that has been collected from sources, journals, and references. Then, the author of the paper finds problem solving and introduction of the contents of the paper from the images to be discussed. In addition, group members also evaluate or assess the truth or appropriateness of the information that has been obtained from reference sources on the problems to be discussed and to check what needs to be improved. The sources used for reference in this paper are from reliable sources, as well as from Google Scholar, libraries, and other sources. The source used as a reference in the paper is the article.⁵

C. Data analysis method

Based on the paper, the data presented will be analyzed systematically and legally. The systematic and legal analysis here is the study in the paper, which is analyzed on the basis of current international law. The data were analyzed systematically through a qualitative juridical approach. Systematically, through evaluation, where data is taken relating to the problem to be studied.⁶

RESULTS AND DISCUSSION

The UN General Assembly passed a resolution against Myanmar calling for an arms embargo against Myanmar. In addition, the United Nations also condemned the military action that took government power from civilians, but the resolution was rejected by the Myanmar foreign ministry because it was considered that the resolution was not legally

⁴ Soerjono Soekanto and Sri Mamudji, 2011, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p. 16

⁵ Mike McConville and Wing Hong Chui, 2007, *Research Methods for Law*, Edinburgh University Press, Scotland, p. 89

⁶ Johnny Ibrahim, 2005, *Teori & Metodologi Penelitian Hukum Normatif*, Banyumedia Publishing, Malang, p. 102

binding, and the resolution was considered a unilateral accusation and a wrong assumption. Therefore, in Myanmar's capital, Naypyidaw, the Myanmar foreign ministry made a statement that the Ministry of Foreign Affairs had sent to the UN secretary-general a letter of objection.

In addition to the arms embargo, the UN General Assembly resolution also wants to restore Myanmar's democratic transition by calling on the military junta, condemning all forms of excessive and lethal violence since the military coup, and preventing all arms flow to Myanmar. Suu Kyu, President of Myint and the NLD members who have been under house arrest since the military took power. asked to be released from Myanmar's armed forces. In addition, the Myanmar armed forces are required to release all persons detained, charged, and arrested without authorization. 119 countries approved the resolution, but major arms suppliers to Myanmar rejected the resolution, and 36 countries, voted to abstain.

In February 2021, Kyaw Moe Tun, who was the Ambassador of Myanmar who did not condone the issue of the military takeover of power, but now agreed to the issue of the coup and asked the international community to act as strong as possible so that the Myanmar military coup could end. But Kyaw Moe Tun was deemed to have betrayed Myanmar and was dismissed from his position according to the Ministry of Foreign Affairs.

ASEAN, with its proud non-interference approach, is likely to view the arms embargo as interfering in a member state's internal affairs, according to Hunter Marston, a Canberra-based international relations expert. Resolutions adopted by the UN General Assembly are not binding on its members, but they are “an

important barometer of international willingness to condemn the coup.”⁷

The UN Security Council has a responsibility to enforce international peace and security. One of its responsibilities is to resolve international conflicts by making decisions in the form of UN Security Council resolutions.⁸

UN resolution is a decision of the UN Security Council in the maintenance and or restoration of international peace and security which has binding force which is essentially a reflection of international legitimacy desired by the principles and objectives of the United Nations. Based on Article 39 of the UN Charter, the Security Council's powers include situations where there is a threat to peace, breach of peace and acts of aggression. Since the end of the cold war, the definition of threats to international peace has been expanded to include threats due to civil conflicts, humanitarian crises, international terrorism and the spread of weapons of mass destruction.⁹ Resolutions on the United Nations have often been made, for example, United Nations Security Council Resolution No. 2169 of 2014 and Resolution No. 2328 of 2016 entitled The Situation in the Middle East (Syria).

The United Nations, through its Security Council, issued several resolutions that were

⁷ Shailaja Neelakantan, 2021, *Asean Lobbying to Omit Arms Embargo from UN Resolution on Myanmar*, taken from <https://www.benarnews.org/english/news/indonesian/sea-asean-un-mn-resolution-05272021154026.html>, accessed on 08/07/2021

⁸ I Komang Oka Dananjaya, 2017, *Kekuatan Mengikat Resolusi Dewan Keamanan PBB dalam Penyelesaian Sengketa Internasional*, taken from ocplayer.info/38754640-Kekuatan-mengikat-resolusi-dewan-keamanan-pbb-dalam-penyelesaian-sengketa-internasional.html, accessed on 09/07/2021

⁹ Hata, 2012, *Hukum Internasional: Sejarah dan Perkembangan Hingga Pasca Perang Dingin*, Setara Press, Malang, p. 27

officially proposed by members of the United Nations, as in this case proposed by the UK and the European Union as an international response to the ongoing conflict in Myanmar regarding the coup carried out by the military in Myanmar against civil society, also regarding Myanmar's disapproval of the UN resolution that discusses the arms embargo, the problem that occurs here is a misunderstanding on the part of Myanmar, namely that the resolution, which has been ratified is not legally binding, based on unilateral accusations and wrong assumptions.¹⁰

This case can also be referred to as relating to the veto power over the rejection of resolutions made by the United Nations. The veto right is a privilege that is owned by every permanent member of the United Nations Security Council, although, in fact, the veto power is not clearly stated in the UN Charter.¹¹ Members and Myanmar have not proposed or discussed the Veto Right. The veto right applies to political considerations rather than legal considerations.

The resolution of the problem in Myanmar is indeed unsolved, because of that the United Nations Security Council has made various statements on Myanmar, including denouncing the use of force against peaceful protesters and urging the military to recover. All parties should avoid using violence throughout the democratic transition. However, due to China and Russia's potentially certain near-vetoes, the United Nations Security Council has never been able to condemn the coups or allow an arm of

embargo or other penalties. As a result, it would be unable to make judgments about its resolutions at will.

"To provide the conditions under which fairness and respect for responsibilities stemming from treaties and other sources of international law can be sustained," the UN Charter states in its Preamble. Since then, the Organization's activities have focused on a progress from international law and who respects it.¹² This work is carried out in a variety of ways, including by courts, tribunals, and multilateral treaties, as well as by the Security Council, which can approve peacekeeping missions, impose sanctions, and exercise powers of force if it is deemed necessary at the time. there is a threat to international peace and security. The UN Charter, which is considered an international treaty, gives him this authority. As such, it is an international legal instrument binding on the United Nations' Member States.¹³

Basically, the binding process starts with an agreement, which can be anything legally binding arrangement between countries (countries). It is the content of a treaty, not the name, that distinguishes it as a contract. A treaty is a legally binding agreement between states that requires Senate ratification as both "advice and consent." All other treaties (international agreements) are referred to as Executive Agreements, but they are still legally binding on one United States under international law.

¹⁰ Nur Aivanni, 2021, *Myanmar Tolak Resolusi PBB yang Serukan Embargo Senjata*, taken from <https://mediaindonesia.com/internasional/413198/myanmar-tolak-resolusi-pbb-yang-serukan-embargo-senjata>, accessed on 09/07/2021

¹¹ Setya Widagdo, 2007, *Dasar Pengaturan Prinsip Persamaan Kedaulatan dan Hak Veto dalam Pengambilan Keputusan di Dewan Keamanan Perserikatan Bangsa Bangsa*, Risalah Hukum: Jurnal Hukum, Vol. 1 No. 1

¹² M. Ya'kub A. Kadir, 2011, *The United Nations General Assembly Resolution (UNGAR) I As a Source of International Law: Toward a Reformulation of Sources of International Law*, Indonesian Journal of International Law, Vol. 8 No. 2

¹³ United Nations, 2021, *Peace, dignity and equality on a healthy planet*, taken from <https://www.un.org/en/our-work/uphold-international-law>, accessed on 09/07/2021

A treaty negotiated by a group of countries, either through an agency set up specifically for that purpose or through an existing body such as the United Nations Council on Disarmament. Depending on the nature of the agreement and by the number of countries involved, the negotiation process can take several years. After the negotiations are completed, the officials of the participating governments sign a treaty. Before a treaty is to become legally binding, it may need to be ratified as well as signed. A government ratifies a treaty by placing its instruments of ratification in the treaty. This specified site; An instrument of ratification is a document containing official evidence that governments agree to the treaty's conditions. The ratifikasi prosedur berbeda setiap negara, tergantung pada yang undang-undang dan konstitusi.¹⁴ Therefore this strengthens that the United Nations is legally binding on its members because of the applicable international law. The United Nations and its members issue resolutions for the country. These resolutions are usually issued by the United Nations Security Council on the advice of various member countries.

Through a non-interference approach, ASEAN considers that the arms embargo is interference in state affairs within member states, while according to Hunter Marston, the UN resolutions are not legally binding, but UN resolutions can be an important barometer of international willingness to condemn the takeover of power by the military in Myanmar.

If viewed based on the principle of *pacta sunt servanda*, it has been embodied in the rule of law both from the international legal system and the national legal system. This means that in relations between countries in international

agreements or national legislation, the principle of *pacta sunt servanda* has been recognized and has received certainty.

The legal principle is embodied in the legal rules of a positive legal system, and then the legal principle is in the system. International law is a legal system consisting of several elements, one of which is an international agreement. This refers to Article 38, paragraph 1 of the Statute of the International Court of Justice that one of the sources or elements of positive international law is an international agreement.

The principle of *pacta sunt servanda* is one of the legal principles in the system, because it has been embodied in the legal rules of the international legal system and positive national law. In other words, the existence of the principle of *pacta sunt servanda* has gained recognition and certainty in relations between countries as contained in international agreements as well as in national laws and regulations, and in particular, has become part of international law. One of the concretizations of the principle of *pacta sunt servanda* is applied in international agreements, namely in article 2 paragraph 2 of the UN Charter, which states:

“all members in order to ensure to all of them the rights and benefits resulting from membership shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”

Based on this article, Myanmar, as a member of the United Nations, is bound to fulfill its obligations based on the principle of good faith. Besides, Myanmar has the right to receive its rights and benefits as a member of the United Nations. Fulfillment of obligations means that Myanmar must fulfill the agreements that have been made, which are realized in the form of ratification of the UN charter. In a reflection of the principle of *pacta sunt servanda* paired with

¹⁴ S3: Science, Safety, Security, 2016, *International Agreements*, taken from <https://www.phe.gov/s3/law/Pages/International.aspx>, accessed on 09/07/2021

the principle of good faith as in the UN charter, Myanmar is required to follow the resolution.

The Security Council resolution is binding not only on UN member states but also on non-UN member states as stated in Article 2 paragraph (6), namely "The Organization shall ensure that states which are not members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security".¹⁵ Based on this article, countries that are not members of the United Nations or countries that are not members of the UN security council have an obligation to implement or be bound by the resolution, especially for countries that are in dispute and can endanger international peace.

As a result, the principle of *pacta sunt servanda* might be argued to be a part of the general basis of law. This is supported by the views of scholars such as Anzilotti, who argues that the principle of *pacta sunt servanda* constitutes a binding force for International law therefore bears the status of the highest or fundamental norm. The rule of law embodies the principle of *pacta sunt servanda*, both in international and national law, so that the principle of *pacta sunt servanda* is known to have an absolute position in both international and national law. Meanwhile, according to Kelsen, one of the binding powers of international agreements is the principle of *pacta sunt servanda*, so that the nature of the principle of *pacta sunt servanda* is to bind international law. Meanwhile, according to Verdross, the principle of *pacta sunt servanda* is a general legal principle, not an a priori assumption.

Therefore, the principle of *pacta sunt servanda* binds Myanmar in the implementation

¹⁵ Sri Setianingsih Suwardi, 2004, *Pengantar Hukum Organisasi Internasional*, Universitas Indonesia Press, Jakarta, p. 165

of its rights and obligations as a member of the United Nations, in this case fulfilling the obligation to follow the resolution. Although the resolution is not legally binding, the resolution is an important barometer for the international community to condemn violence in the United Nations. It can almost be said that the agreement must fulfill the principle of its application absolutely. In other words, under these circumstances, Myanmar has made promises that must be fulfilled because the existence of this principle is also based on religious teachings. As Kelsen said, the principle of *pacta sunt servanda* is the basic norm.

CONCLUSIONS

A. Conclusion

In the article above, it can be concluded that the resolution asks the military not to commit acts of violence and restore the democratic transition. The purpose of this study is to find out whether Myanmar can reject UN General Assembly resolutions or not also regarding what UN resolutions are and whether the UN is legally binding on its members and it is explained that:

1. Myanmar was again controlled by the military, which at that time Myanmar had just started the transition to democracy. The coup sparked large demonstrations so that various elements of the people in Myanmar took to the streets and also strikes throughout Myanmar to express the opposition of the Myanmar people to the coup, and this coup has been carried out more than once.

2. In addition, the United Nations also condemned the military action that took government power from civilians, but the resolution was rejected by the Myanmar Ministry of Foreign Affairs because it was considered that the resolution was not legally binding and the resolution was considered a unilateral and false accusation assumption. In

addition, Myanmar's armed forces are required to release all persons detained, charged, and arrested without permission. 119 countries approved the resolution, but major arms suppliers to Myanmar rejected the resolution, and 36 countries, including Myanmar's neighbors China, India, and Russia, voted to abstain.

3. One of its tasks is to resolve international disputes that occur by issuing decisions in the form of resolutions from the UN Security Council resolutions. Since the end of the cold war, the definition of threats to international peace has been broadened to include threats resulting from civil conflict, humanitarian crises, international terrorism, and the spread of weapons of mass destruction.

4. Furthermore, the veto right is a privilege that is owned by every permanent member of the United Nations Security Council, even though, in reality, the veto is not clearly stated in the UN Charter. The veto itself applies to political considerations rather than legal considerations, although in reality, this has not been resolved.

5. The principle of *pacta sunt servanda* binds Myanmar in the implementation of its rights and obligations as a member of the United Nations, in this case fulfilling the obligation to follow the resolution. Although the resolution is not legally binding, the resolution is an important barometer for the international community to condemn violence in the United Nations. It can almost be said that the agreement must fulfill the principle of its application absolutely. In other words, under these circumstances, Myanmar has made promises that must be fulfilled because the existence of this principle is also based on religious teachings. As Kelsen said, the principle of *pacta sunt servanda* is the basic norm.

In the case that is currently happening in Myanmar Regarding the call for the Myanmar arms embargo and the seizure of power carried out by the military in the UN general assembly resolution, the Myanmar Ministry of Foreign Affairs rejected last February because the resolution was considered based on unilateral accusations and wrong assumptions and the resolution considered not legally binding. Basically, everything has been regulated by the UN in international law, either directly or indirectly, regarding this case, the advice that will be given is regarding the veto rights in Myanmar which have not been reported have been used, if Myanmar refuses and object to the resolution what Britain and America have proposed to the United Nations, Myanmar and the Pro-Myanmar countries can apply for their veto rights even though it is in the UN text that this veto right is not stated directly but implicitly. That the veto right exists and the UN Security Council recognizes it.

B. Suggestions

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Regulation

United Nation Charter

