



Myanmar Military Coup: Can ICCPR Protect Civil Society?

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Abstract

This article questions how the International Convention On Civil And Political Right protects Myanmar Civil Society in the Myanmar Military Coup Case and how the legal protection for Myanmar civil society against conflicts that occur in the region. This research is a normative legal research. With a statute approach, case approach and conceptual approach. Based on research, that in the convention on civil and political rights there are provisions that regulate and guarantee the rights of civil society, but the rights of civil society in Myanmar are not guaranteed due to the coup conflict and the struggle for power in the country. This shows that the convention on civil and political rights has not optimally guaranteed the protection of the rights of civil society. As well as how ASEAN's role in resolving conflicts carried out by the Myanmar military against Myanmar's civil society. The forms of protection of Myanmar's civil society are contained in the existing rule of law and if there is a problem, this problem is resolved at the Summit or ASEAN Summit level.

Keywords: *asean; civil society; ICCPR;*



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Abstrak

Artikel ini mempertanyakan bagaimana *International Convention On Civil And Political Right* melindungi Masyarakat Sipil Myanmar dalam Kasus Kudeta Militer Myanmar serta bagaimana perlindungan hukum terhadap masyarakat sipil Myanmar terhadap konflik yang terjadi di wilayah tersebut. Penelitian ini merupakan penelitian hukum yuridis normatif (*normativelegal res earch*). Dengan pendekatan Penelitian perundang-undangan (*statute approach*), pendekatan kasus (*case approach*) dan pendekatan konseptual (*conceptual approach*). Berdasarkan penelitian, bahwa didalam konvensi hak-hak sipil dan politik terdapat ketentuan yang mengatur dan menjamin hak-hak masyarakat sipil, namun hak-hak masyarakat sipil di Myanmar tidak dijamin dikarenakan konflik kudeta dan perebutan kekuasaan di negara tersebut. Hal ini menunjukkan bahwa konvensi hak-hak sipil dan politik belum optimal menjamin perlindungan hak masyarakat sipil tersebut. Serta bagaimana peran ASEAN dalam menyelesaikan konflik yang di lakukan militer Myanmar terhadap masyarakat sipil Myanmar. Bentuk-bentuk perlindungan masyarakat sipil Myanmar terdapat dalam *rule of law* yang ada serta bila ada masalah, persoalan ini diselesaikan di tingkat KTT atau ASEAN Summit.

Kata Kunci: asean; masyarakat sipil; ICCPR

A. Introduction

In the early 2021, Myanmar experienced a political tragedy, this occurred due to a coup by the Myanmar military against the legitimate government under Aung San Suu Kyi, President of the Republic of Myanmar. Myanmar is one of the countries in the Southeast Asia whose government dominated by the military. Myanmar is a country that became independent in 1948 after gaining independence from England, besides that Myanmar is also one of the countries in the Southeast

Asia region.¹ The phenomenon of military entry in government is a problem commonly experienced by newly independent countries. This is because political, social, and economic problems are so complex and the vulnerability of civilian government has resulted in the military taking the initiative to enter the government stage.²

The coup is started by the arrest of Aung San Suu Kyi, President Win Myint and leaders of the National League for Democracy (NLD) by the Tatmadaw military before the inauguration of a hearing by parliament on alleged fraud in the general election on November 8, 2020, Myanmar held its second general election were accused of having elements of fraud by the right opposition party, Union Solidarity Development (USD), which was fully supported by the Myanmar military. This is because the final result of the election of USD party led by Than Htay only won 33 votes out of 476 total votes collected, while the number of votes owned by the NLD party led by Suu Kyi reached 396 votes.

¹Ikrimah. Peranan Asean Mendorong Pemerintahan Militer Dalam Menegakkan Demokrasi Di Myanmar. *Skripsi*. UIN Syarif Hidayatullah Jakarta. 2010. hal. 1.

²*Ibid*, hal. 12.

This coup took place right after Myanmar's election commission rejected the NLD's allegations of fraud in the general election, the military led by Senior General Ming Aung Hlaing then launched a coup action and announced a state of emergency in Myanmar's government for up to one year until the request for re-election was realized. The landscape of military coups and authoritarian leadership has been an ongoing problem for the people of Myanmar in realizing a democratic system of government. Myanmar is experiencing a humanitarian and democratic crisis, with 700 casualties consisting of civilians and activists as of April 13, 2021.³

Furhermore, the Myanmar military ignored the election results and instead detained Aung Suu Kyi and several other pro-democracy figures, they were considered rebels and the cause of the political instability that occurred in Myanmar.⁴ The political instability that occurs in Myanmar will certainly have

³Deandra Silka A, Cheryl Jemina Faustine, Gabriella Alva Cayetha, Marline Kurniawan, Nadia Suhairy, Veronica Anastasia K. Mengukur Efektivitas Preventive Diplomacy Indonesia Di ASEAN dalam Menanggapi Konflik Kudeta Militer Myanmar 2021. *Jurnal Sentris Edisi Khusus Diplomasi*. Vol. 2, No. 1. 2021.

⁴Farid Pardamean Putra Irawan. *Kudeta Militer di Myanmar dalam Perspektif Hukum Internasional*. Jawa Tengah: Pustaka Rumah Cinta. 2020.

implications for the surrounding environment, namely the disruption of peace and security stability in the region. It is not an exaggeration that the international community continues to criticize the situation developing in Myanmar, especially related to the development of democracy in the political life of its citizens.

From the case that occurred in Myanmar, there were many violations that occurred there, one of which was human rights violations. Human rights themselves, namely; Human rights are the recognition of rights related to human dignity that have been bound and embedded in humans, including freedom, justice and peace.⁵ There are several studies that discuss the causes of coups, then there are other causes related to social conditions in the country, Myanmar. The causes of coups are based on condition in a country using the terms acute and chronic conditions.⁶

⁵Simela Victor Muhamad. Harapan Atas Peran Asean Inter – parliamentary Assembly (AIPA) Dalam Mendorong Berkembangnya Demokratisasi di Myanmar. *Badan Keahlian DPR RI*. Vol. 15, No 2. 2010. Hal. 373.

⁶ Eric A. Nordlinger, *Militer Dalam Politik : Kudeta dan Pemerintahan*, Jakarta, Rineka Cipta, 1990, Hal. 150.

a) Causes of the Acute Coups

The dissatisfaction of the military was the source of the military's desire to oppose the civilian government. In addition to military causes, there are also other domestic causes. A domestic political crisis triggers the opportunity for a coup. This crisis can be economic, electoral or constitutional.

b) Causes of Chronic Coups

The economy in a country triggers this coup because the economy is monolithic.

Indeed, human rights must be protected by law. Currently, human rights are something that cannot be separated and attached to the laws of each country because it concerns the nature and dignity of humans in a country to be able to live properly as as basic rights that are important and necessary in life. The purpose is none other than to maintain human dignity. However, human rights are basically an issue that is sometimes difficult to resolve until finally in 1945, the ossie of human rights began to be recognized globally by international law.

As a legal basis, political rights are one of the components of human rights regulated in the International Covenant on Civil and Political Rights

(ICCPR). The Covenant affirms the civil and political human rights principles contained in the Universal Declaration of Human Rights (UDHR) so that they become legally binding provisions and their elaboration includes other related principles. The Covenant consist of a preamble and Articles covering 6 chapters and 53 Articles.⁷

The resolution of serious violations of human rights by law basically refers to the principle of exhaustion of local remedies through the mechanism of the national court forum. The mechanism for resolving serious violations of human rights at the national level is usually formed by a state by establishing a specialized human rights court. These courts are either permanent or ad hoc based on the national statutory regulations of the country concerned. The establishment of these courts is either done independently by the state concerned or in

⁷Mohammad Fahrian Aryasa Wardana. Kegagalan International Covenant on Civil and Political Right Sebagai Rezim International dalam Penegakan Hak Sipil dan Politik pada Konflik Semenanjung Krimea. *Skripsi*. Universitas Katolik Parahyangan. 2018. hal 1.

cooperation with international institutions such as the United Nations.⁸

In essence, the purpose of enforcing civil and political rights against the state of Myanmar is to protect individuals from abuse of power from the authorities, awareness of human rights is very necessary to be implemented in the country so that the human rights needs of each individual are met and the violations that occur in Myanmar are reduced.

B. Discussion

1. Military Violations Against the People of Myanmar

The issue of Myanmar's military coup is a serious violation because it impacted a large number of casualties. Thus, it is not easy to resolve the conflict because conflict resolution instruments are more accessible because of their flexibility. However, the resolution of the coup conflict is hindered by international law because there are already binding provisions.⁹

⁸Hasanah , Martha dan Duwi Handoko. Hak Sipil: Hak di Pilih dan Hak Memilih serta Ekosob: Hak Atas Pendidikan. *Riau Law Journal*. Vol. 4, No. 1. 2020. hal. 90 – 91.

⁹Timbo Mangaranap Sirait, *Hukum Pidana Internasional Dan Perkembangannya*, Budi Utama, 2021, Hal 2

Since the beginning of February 2021, Myanmar's military junta, also known as the Tatmadaw, took over the government in Myanmar after finding out that their party lost the general election. The Tatmadaw, led by Min Aung Hlaing, arrested Myanmar President U Win Myint, Aung San Suu Kyi, members of the National League for Democracy (NLD) party, and anti-junta activists.

Until now, months after the military coup, some of the people of Myanmar are desperately resisting the rule of the Tatmadaw in order to fight for a democratic government. This civilian resistance in Myanmar was met with threats and violence by the Tatmadaw. Six months after the military coup, Human Rights Watch recorded acts of crimes against humanity committed by the military junta to maintain its power.

Human Rights Watch has accused the Tatmadaw of committing acts of terror against their political opponents, including murder, enforced disappearances, torture, sexual violence, deprivation of liberty, and other acts of human rights violations. As an illustration, as of August 23, 2021, Burma's Assistance Association for Political Prisoners (AAPP) recorded that 5,821 people had been arrested and made political prisoners by the Myanmar military junta regime. In addition, AAPP also noted, from

the beginning of February to August 2021, as many as 1.013 victims have been dead and allegedly killed by Tatmadaw officers.¹⁰

Upon observation, the military junta's action against Suu Kyi were arbitrary and violated Article 9.1 of the ICCPR which reads: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". Broadly speaking, this Article of the ICCPR strongly prohibits that there are efforts to arrest arbitrarily for reasons that are not clear and definite basis because the UN guarantees and recognizes the existence of freedom and everyone has the right to personal security. Returning to the legality of Suu Kyi's arrest attempt at that time was not a military authority and there was no letter confirming that Suu Kyi has to be arrested, therefore this action could not be tolerated by international institutions because it was contrary to the rules of international law.

¹⁰ <https://www.liputan6.com/global/read/4516255/300-lebih-warga-myanmar-tewas-sejak-kudeta-militer-90-persenkurban-tembak> diakses pada 23 Oktober 2022

2. Legal Protection to Myanmar Civil Society

In the case of Myanmar, the civil rights of the Myanmar people have been violated, International Law and the ICCPR do not clearly regulate military coups. The UN Charter only regulates the principles of equality and non-intervention where all countries are in the same position and should not interfere in the affairs of other countries. However, the international community can intervene for humanitarian action in Myanmar. The coup carried out by the Myanmar military against the civilian government led by Aung San Suu Kyi has been criticized by the international community, such as the United Nations (UN), the European Union, and the United States. This action is considered a form of violation of human rights (HAM) or crimes against humanity. The UN also demanded that the Myanmar military restore civilian rule and release the country's leader, Aung San Suu Kyi.¹¹

Legal protections to the people of Myanmar, namely, the right to be free from torture and humane treatment is one of the human rights that has been regulated in the International Covenant on Civil and Political Rights.

¹¹Muhamad Hari-pin, Mutiara Arumsari. Peran ASEAN dan Masyarakat Sipil Transnasional Dalam Transisi Demokrasi di Burma Pasca Pemilu. *Global: Jurnal Politik Internasional*. Vol. 10, No. 2. 2010. hal. 120.

Article 10 of the ICCPR reads: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Based on what has been mentioned in Article 10 of the Covenant on Civil and Political Rights, it confirms that the right not to be subjected to torture and inhuman treatment is an absolute right that cannot be reduced by anyone, be it by individuals, groups or even the state. The various rejections and protests of Myanmar civil society against the military government are not without reason by looking at the characteristics of the military Junta in the past in running politics and governance.

In general, democracies tend to favor the distribution of power on the populist model. The populist model is a form of power distribution based on democracy. As with democracy, citizens can participate in every political decision-making and implementation that will certainly affect social life. The populist model of power distribution implies that the participation of a large number of people makes it possible to formulate a political policy. Every policy made is based on the demands and support of the community. Thus, every individual has the same political rights.

Recognizing that every human being, having duties to other human beings and to the society of which they are a part, responsible for promoting and observing the rights recognized in the present Covenant. In the case of Myanmar, the civil rights of the people of Myanmar have been violated, International Law and the ICCPR do not clearly regulate military coups. The UN Charter only “provides for the principles of equality and non-intervention whereby all states are on an equal footing and may not interfere in the affairs of other states”.

The coup conducted by the military Junta showed that the military was not ready to give full government authority to civilians. However, the involvement of the military Junta in Myanmar's political system and government basically did not receive support from the people of Myanmar because of the people's distrust of the military's performance in the past which ignored democratic values in running the government in Myanmar.¹² The military junta ignored the importance of the public's recognition of the leadership, even fighting civilians who opposed its policies.

¹² M. Adian Firas, *Prospek Demokrasi di Myanmar*, Jurnal Universitas Paramadina, Vol.2 No.2, 2003, hal 130-131.

3. ASEAN's Role in the Myanmar Military Coup Case

Based on the record of human rights violations that occurred in Myanmar, ASEAN as a regional intergovernmental organization is considered to have a significant influence to encourage the military junta government to improve its poor track record in the field of human rights. ASEAN is considered to have the political and moral authority to do so.

TAC (Treaty of Amity and Cooperation in Southeast Asia) is a treaty formed in 1976 and contains 6 basic principles that are held by ASEAN to this day. The first principle is the principle of mutual respect between members, then the second principle emphasizes the right of each member country to lead its country without any interference from other members. The third principle is the well-known principle of ASEAN, which is the principle of non-intervention in managing or dealing with the internal problems of a member country. The fourth principle is the peaceful solution of member states' differences and disputes and the last principle is the principle of efficient ASEAN cooperation. The evolving basic principles of ASEAN that always emphasize respect for the sovereignty of a country to not

interfere in the domestic affairs of a country are indeed very influential in the development of ASEAN.¹³

ASEAN has different views with ASEAN partner countries, especially western countries, on the settlement in Myanmar. Western countries are more inclined to use drastic pressure on Myanmar by crippling its economy and defense capabilities. This is considered by ASEAN as something that will even cause resistance from Myanmar itself. ASEAN's efforts to resolve the issue of Myanmar's military coup are still under pressure from the military to release Aung San Suu Kyi as Myanmar's de facto leader. In addition, ASEAN has issued an appeal for peace to Myanmar, especially considering the many human rights violations committed during the coup that led to the killing of dozens of demonstrators. With human rights violations in Myanmar and sanctions imposed by the United States and the European Union (EU), in essence, ASEAN also has the right to sanction the Myanmar military for the coup and human rights violations.

¹³Alvela S. Putri, Putri Jasmine, Riana Salma, Galang S. Bagasta, M. Padhil Faturrahman. Dampak Prinsip – Prinaip Dasar ASEAN Terhadap Pola Kerjasama ASEAN Menghadapi Krisis Kudeta Myanmar. *Journal of International Studies*. Vol. 4, No. 1. 2021. hal 118.

The principle of non-intervention has a strong foundation in sovereignty. It is within this independent and sovereign political entity that a society made up of individuals implements and obtains the common good. The pursuit and implementation of the common good is one of the main purposes for which states are established.¹⁴

However, policymaking in the form of sanctions is not a simple strategy that ASEAN can adopt, many member states will express opposition as they must respect the principle of non-intervention. ASEAN is still trying to make a decision through constructive dialog, including the Myanmar military's new foreign minister. In the end, the ASEAN Leaders Meeting or ALM was held in Jakarta, April 24, 2021. The ASEAN Leaders Meeting aims to discuss the current military coup in Myanmar. However, the ASEAN Leaders Meeting faced backlash for its decision to invite Myanmar's military junta leader, General Min Aung Hlaing to the event. The end of the ALM was the birth of a 5-point consensus which contained the following points:

¹⁴Ambarawati. Sikap ASEAN Terhadap Pelanggaran HAM di Myanmar Pasca Kudeta. *Jurnal Ilmiah Dinamika*. Vol. 6, No. 1. hal 24.

1. First, violence must stop immediately in Myanmar and all parties must exercise complete restraint;
2. Second, immediately start a constructive dialog between all relevant parties to find a peaceful solution for the benefit of the community;
3. Third, a special envoy of the ASEAN Chairperson will facilitate the mediation of the dialogue process with the assistance of the ASEAN Secretary-General.
4. Forth, ASEAN will provide humanitarian assistance through the AHA Center;
5. Fifth, special envoy and delegation will visit Myanmar to meet all relevant parties.¹⁵

In addressing the problems that occur, ASEAN as a regional organization in Southeast Asia that is expected to be able to resolve conflicts in Myanmar has not been able to do much. This is because ASEAN is held hostage by the doctrine and principle of non-interference in the internal affairs of each country that must be respected. The mechanism for resolving conflicts in ASEAN is in

¹⁵Andi Sulta Agung M. Manggabarani. Peran Association of Southeast Asian Nations Terhadap Kekerasan dan Pelanggaran HAM Junta Militer Kepada Warga Sipil Myanmar. *Skripsi*. Universitas Muhammadiyah Yogyakarta. 2022.

accordance with the principles stated in the ASEAN charter, in which the principle of non-intervention is the main basis for resolving conflicts that occur in its member countries. Likewise, Indonesia and Myanmar continue to uphold the principle of non-intervention, which prohibits member countries from interfering in the domestic affairs of other ASEAN members.¹⁶ Looking at the status of Myanmar's military coup, it can also be reviewed from the UN charter in Article 2 paragraph (7) which states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII. In addition, the principle of non-interference in internal affairs / non-intervention is also contained in the ASEAN Charter Article 2 paragraph 2 letters e and f, namely:

¹⁶Firdaus, Muhamad Iqbal, dan Indah Dwiprigitaningtias. Kudeta Militer Myanmar Dalam Prespektif Hukum Internasional. *Jurnal Dialekta Hukum*. Vol. 3, No. 1. 2021. hal 125.

“Non-interference in the internal affairs of ASEAN Member States” and “respect for the right of every Member State to lead its national existence free from external interference, subversion, and coercion”.

For ASEAN member states, the principle of non-intervention is a guarantee of security, sovereignty, and freedom in dealing with neighboring countries. However, in terms of its development, the principle of non-intervention has become so rigid that it sabotages collective efforts to uphold justice related to humanity in countries including in the case of this coup conflict. ASEAN must take a step forward to get out of the preferences and traditions that have been upholding the principle of non-interference and adapt to developments and dynamics and needs in resolving conflicts. Moreover, the role of regional bodies in resolving conflicts is so central as stated in the UN Charter Article 33(1) and Article 52. Thus, in the future, the principle of non-interference cannot be used as an excuse to allow (legitimize) violence, or brutality, carried out by the military (state) against its population.¹⁷

¹⁷ Christopher Orlando Sylvester, *Roget's International Thesaurus of English Words and Phrases*, New York, Thomas Crowell Company, 1962, Hal. 1258.

As such, ASEAN's approach differs from countries that claim to be guardians of human rights. ASEAN continues to prioritize dialogue and seek peaceful solutions. This attitude is considered a code of conduct, as a form of implementation of the ASEAN Way. This concept is different from the approach adopted by Western countries.

C. Conclusion

Myanmar's military coup has violated international law due to the use of violence and many casualties. The concept and fulfillment of the ICCPR in Myanmar has not yet been realized because Myanmar has not yet become a state party to the ICCPR, but it is hoped that the international community, especially the ICCPR, will be able to provide a solution to the conflict that occurred between the civilian and military parties in order to achieve the fulfillment of human rights for Myanmar's civilians. ASEAN countries have agreed not to recognize the new government resulting from the military junta coup in Myanmar. Thus, it is not easy to resolve the conflict, because through conflict resolution instruments it is easier because of the flexible nature, but the resolution of the coup conflict

is hindered by international law because there are already binding provisions. ASEAN still prioritizes dialogue and seeks peaceful resolution and upholds the principle of non-intervention or non-interference in the affairs of other countries, but ASEAN must take a step forward to get out of the preferences and traditions that have been upholding the principle of non-interference and adapt to developments and dynamics and needs in resolving conflicts. Moreover, the role of the regional body in resolving conflicts is so central. Thus, in the future, the principle of non-intervention cannot be used as an excuse to allow (legitimize) violence, or brutality, committed by the (state) military against its population.

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Asean charter

Charter of the united nations

Christopher Orlando Sylvester, Roget's International Thesaurus of English Words and Phrases, New York, Thomas Crowell Company, 1962

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